

**Request For Proposals  
For Lease**

**by**

**The University of Texas at Austin  
for**

**Lease or Leases With or Without Existing Improvements in Austin,  
Texas:**

1. *Lease Option 1: 2.640 acres at Lake Austin Boulevard and Exposition Boulevard with existing improvements, or*
2. *Lease Option 2: 0.560 acres at 2620 Lake Austin Boulevard with existing improvements, or*
3. *Lease Option 3: Both 2.640 acres and 0.560 acres at Lake Austin Boulevard with improvements, or*
4. *Lease Option 4: 2.640 acres at Lake Austin Boulevard and Exposition Boulevard without existing improvements and with a proposal for new development, or*
5. *Lease Option 5: 0.560 acres at 2620 Lake Austin Boulevard without existing improvements and with a proposal for new development, or*
6. *Lease Option 6: Both 2.640 acres and 0.560 acres at Lake Austin Boulevard without improvements and with a proposal for new development.*

**RFP No. 1**

**Issued: July 27, 2018**

**Deadline for Submittal of Proposals: September 25, 2018**

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## SECTION 1

### BACKGROUND AND OBJECTIVE OF THIS REQUEST FOR PROPOSALS

**1.1 Description of the University of Texas at Austin.** The University of Texas at Austin (“**University**”) is part of The University of Texas System and is governed by the Board of Regents of The University of Texas System.

**1.2 Background of this Request for Proposal.** The University is offering for lease an approximately 2.640-acre tract and a non-contiguous 0.560-acre tract (individually or collectively the “**Property**”) located approximately at the intersection of Lake Austin Boulevard, West 7th Street, and Newman Drive, in Austin, Travis County, Texas. See the attached Appendix One with deeds and survey.

The Property is a portion of an original 500-acre land donation granted to the University in 1910 by Colonel George W. Brackenridge (“**Brackenridge Tract**”). After extensive negotiations with neighborhood groups, environmental groups, and golfers, the University entered into what is known as the Brackenridge Development Agreement with the City of Austin on May 25, 1989. This agreement designated eight separate tracts, including the following.

#### Safeway Tract:

- The 2.640-acre portion of the Property was designated as the “Safeway” tract, as the Safeway grocery store was located upon it in 1977.
- The building was renovated in 2010 and is currently a Randall’s grocery store.
- The current Ground Lease expires on May 30, 2019, at which time all buildings / improvements become property of the University.

#### Deep Eddy Tract:

- The 0.560-acre portion was designated as the Deep Eddy tract.
- The tract has been the site of a convenience store since 1983. It is currently a 7-Eleven convenience store.
- The current Ground Lease expires on May 31, 2019, at which time all buildings / improvements are to be removed by the Lessee unless notified by the University to leave in place. The current Lessee shall also remove underground storage tanks and take any remedial measures to deliver the site to the University unencumbered by pollution from Lessee’s use.

Both current ground leases and the Brackenridge Development Agreement expire in May of 2019. In anticipation of the expiration of the Development Agreement, the University is negotiating with the City of Austin to establish mutually acceptable development regulations which will appeal to community and market needs and desires, and will enhance the economic value of the Property and surrounding land.

Prospective Respondents are encouraged to review the Brackenridge Development Agreement dated May 25<sup>th</sup>, 1989, to provide them with a historical background concerning the Property and the rest of the Brackenridge Tract.

The **Brackenridge Development Agreement** may be viewed online at: (<https://realestate.utexas.edu/>).

**1.3 Lease(s).** The University seeks to establish a contract or contracts (collectively, the “Leases”) with a qualified and experienced developer/operator to lease and redevelop the Property for its highest and best use, or use the Property with existing improvements for commercial use (“Proposed Use”). A Respondent to this RFP may propose one or more, or any combination of the following types of lease arrangements for either one or both of the tracts within the Property: (1) a lease of existing improvements without substantial redevelopment, or (2) a lease for development of substantial new improvements.

**1.4 Objective of this Request for Proposal.** The University is soliciting competitive sealed proposals (collectively, “Proposals”) in response to this Request for Proposal for Lease, RFP No.07272018 (“RFP”), from persons qualified under the terms and conditions of this RFP. By issuing this RFP, the University seeks to satisfy the following objectives:

**1.4.1** University seeks to solicit Proposals that help the University identify possible uses for the Property that serve the needs and requirements of the University, including income, long term success of the development, and appeal of the development to the University and surrounding neighborhood community;

**1.4.2** University seeks to identify from among the respondents to this RFP (each, a “Respondent”) the Respondent best qualified to develop the Property for the Proposed Use, based on the Respondent’s (i) concept and plan for the development of the Property; (ii) business and financial qualifications; and (iii) prior experience and success in ventures similar to the Proposed Use; and

**1.4.3** University seeks to enter into a Lease or Leases with the Respondent(s) best meeting the needs and requirements of the University regarding the development of the Property.

**1.5 No Guarantee of Award under this RFP.** The University makes no warranty or guarantee that an award will be made as a result of this RFP. The University reserves the right to accept or reject any or all Proposals, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this RFP or the sample Lease when it deems such to be in the University's best interest. The University reserves the right to seek clarification from any Respondent concerning any item contained in its Proposal prior to final selection. Such clarification may be provided by telephone conference or personal meeting with or writing to the University, at the University’s sole discretion.

**1.6 Possibility of Multiple Awards.** University reserves the right to select one or more Respondents with which to negotiate a Lease or Leases, based on Proposals submitted in response to this RFP. Therefore, the term “successful Respondent” as used in this RFP shall mean one or more entities, as selected by the University in its discretion for the award of a Lease or Leases.

***ANY PROSPECTIVE RESPONDENT TO THIS RFP SHOULD READ THE ENTIRE RFP CAREFULLY AND SUBMIT A COMPLETE RESPONSE TO ALL REQUIREMENTS OF THIS RFP, IN THE MANNER DIRECTED.***

## SECTION 2

### GENERAL INFORMATION CONCERNING LEASE OF PROPERTY

**2.1 Current Use of Property.** The Property is currently used as the site of a Randall's grocery store and a 7-Eleven convenience store.

**2.2 Inspection of Location.** Prospective Respondents who wish to gain a better understanding of the nature of the improvements on the Property may access the Property by making an appointment through the University Contact (See Paragraph 3.2) to tour the Property during the University's normal business hours.

**2.3 Terms of Lease of the Property.** The University's proposed general terms and conditions for the lease of the Property are set out in the attached sample Lease (See Appendix Four for the University's proposed terms and conditions of the Lease) and this RFP. The terms and provisions of the Lease are not subject to substantial change by a Respondent, but specific terms and provisions of the Lease may be negotiated to address specific issues raised by a Respondent in its Proposal. IF A RESPONDENT DESIRES TO MATERIALLY MODIFY ANY OF THE TERMS OR CONDITIONS SET FORTH IN THE LEASE, THE RESPONDENT MUST SUBMIT AS PART OF ITS PROPOSAL A WRITTEN STATEMENT REASONABLY DESCRIBING ALL SUCH PROPOSED CHANGES (See Paragraph 17 in Appendix Two.). The University may consider a Respondent's requested changes as part of University's evaluation of the Respondent's Proposal. The University, in its sole discretion, may determine to accept or reject any or all requested changes to the Lease. Requests by a Respondent for extensive or substantial changes to the terms and conditions of the Lease may result in disqualification of a Respondent's Proposal as being non-responsive to this RFP.

**2.3.1 "As Is" Condition.** The Property will be leased to the successful Respondent (if any) in "as is, where is" condition, save and except as otherwise agreed by the parties in the final negotiated Lease. Subject to the terms and conditions of the Lease, the successful Respondent shall have the right and responsibility, at the successful Respondent's sole expense, to (i) make all improvements to the Property as the Respondent desires for its operations; and (ii) install in the Property such fixtures, furniture and equipment as the Respondent deems desirable.

**2.4 Compliance with Rules, Regulations and Applicable Law.** A Respondent's proposed development and use of the Property must comply with (i) the rules, regulations and policies of the Board of Regents of The University of Texas System, which may be found at <http://utsystem.edu/offices/board-regents/regents-rules-and-regulations> and <http://utsystem.edu/board-of-regents/policy-library>; and (ii) all applicable federal, state, county, and city laws, statutes, ordinances, and regulations. Respondent must obtain all requisite development approvals from the City of Austin and other governmental authorities having jurisdiction over the Property.

**2.5 No Guarantee of Revenue from the Property.** THE UNIVERSITY MAKES NO WARRANTIES, REPRESENTATIONS, OR GUARANTEES OF ANY KIND OR NATURE THAT THE SUCCESSFUL RESPONDENT'S WILL OBTAIN ANY LEVEL OF INCOME OR REVENUE AS A RESULT OF LEASING THE PROPERTY UNDER ANY LEASE RESULTING FROM THIS RFP.

## SECTION 3

### GENERAL INFORMATION CONCERNING SUBMISSION OF PROPOSALS

**3.1 Key Dates for this RFP.** The following key dates and deadlines are applicable to Proposals submitted in response to this RFP:

- |              |   |  |
|--------------|---|--|
| <b>3.1.1</b> | Date of Issuance of this RFP  | July 27, 2018                          |
| <b>3.1.2</b> | Deadline for Questions/Inquiries<br>Prevailing Time<br>concerning this RFP        | September 10, 2018 - 3:00 p.m. Central |
| <b>3.1.3</b> | Deadline for Submittal of Proposals<br>Prevailing Time<br>in response to this RFP | September 25, 2018 - 3:00 p.m. Central |
| <b>3.1.4</b> | Proposals must remain valid through   | December 31, 2019                      |

The University may choose to not accept Proposals in response to this RFP that are submitted after the Deadline for Submittal of Proposals (“**Submittal Deadline**”). The Execution of Offer (See Appendix Three) must be signed and submitted by a Respondent and must state that the Proposal will remain valid through the date specified in Paragraph 3.1.4.

**3.2 University Contact Person for Questions and Inquiries Concerning this RFP.** Interested persons and Respondents must direct all questions, concerns or inquiries regarding this RFP by email solely to the following person (“**University Contact**”) and no other:

Amy Wanamaker  
 Director of Real Estate  
 The University of Texas at Austin  
 1616 Guadalupe Street, Suite 2.508  
 Austin, TX 78701  
 Phone: (512) 471-7582  
 Email: [awanamaker@austin.utexas.edu](mailto:awanamaker@austin.utexas.edu)

**3.2.1 Inconsistencies in this RFP.** A prospective Respondent should immediately notify the University Contact of any perceived conflicts or inconsistencies in this RFP. If there is a conflict or inconsistency among the provisions of this RFP that is not corrected by Addenda issued by the University Contact (See Paragraph 3.2.4, below), the University reserves the right to resolve such conflict in such manner as it deems appropriate under the circumstances.

**3.2.2 Deadline for Inquiries to University Contact.** The University Contact must receive all questions, inquiries, or concerns no later than the Deadline for Questions/Inquiries

specified in Paragraph 3.1.2, above. University will not respond to questions, inquiries or concerns received by the University Contact after such date.

**3.2.3 Response to Inquiries.** The University Contact will have a reasonable amount of time to respond to questions or concerns. It is the University's intent to respond to all appropriate questions and concerns; however, the University reserves the right to decline to respond to any question or concern.

**3.2.4 Addenda to RFP.** In the event that one or more addenda clarifying or altering this RFP ("**Addenda**") are issued by the University, the University Contract will endeavor in good faith to provide a copy thereof to each Respondent or prospective Respondent who has (i) already submitted a Proposal to the University Contact in response to this RFP; or (ii) who has advised the University Contact in writing that it wishes to be provided with such Addenda.

**3.3 Address for Submission of Proposal.** Proposals must be received by the University Contact on or before the Submittal Deadline and should be delivered to:

Amy Wanamaker  
 Director of Real Estate  
 The University of Texas at Austin  
 1616 Guadalupe Street, Suite 2.508  
 Austin, TX 78701  
 Phone: (512) 471-7582  
 Email: [awanamaker@austin.utexas.edu](mailto:awanamaker@austin.utexas.edu)

**3.4 Manner of Submission of Proposal.** All Proposal materials should be placed in a sealed envelope, box, or container and submitted by mail or in person to the University Contact. The RFP Number of this RFP and the Submittal Deadline should be clearly shown in the lower left-hand corner on the top surface of the envelope, box or container. In addition, the name and the return address of the Respondent should be clearly visible. THE UNIVERSITY WILL NOT ACCEPT PROPOSALS SUBMITTED BY TELEPHONE, FACSIMILE TRANSMISSION, OR E-MAIL.

**3.5 Modification and Resubmission of Proposal.** A Respondent may withdraw its Proposal and re-submit a revised Proposal at any time prior to the Submittal Deadline by written request to the University Contact. No Proposal may be withdrawn after the Submittal Deadline without the University's written consent, which will be based on the Respondent's submittal of a written explanation and documentation evidencing a reason for withdrawal acceptable to the University, in the University's sole discretion. After the Submittal Deadline, a Proposal may be modified only in accordance with Paragraph 5.3.4.

**3.6 RFP is a Solicitation, Not a Contract.** Respondent acknowledges and agrees that (i) this RFP is a solicitation for a Proposal and is not a contract or an offer to contract; (ii) the submission of a Proposal by the Respondent in response to this RFP will not create a contract between the University and the Respondent; and (iii) the University has made no representation or warranty, written or oral, that a Lease will be awarded to any Respondent as a result of this RFP.



**3.7 Accuracy of Submissions and Duty to Update.** By submitting a Proposal, the Respondent certifies that all information, representations, warranties and certifications made by the Respondent in its Proposal are (i) binding on the Respondent, and (ii) current, true, accurate, and not misleading in any material respect. The Respondent acknowledges that in evaluating the Proposal submitted by the Respondent, the University will rely on completeness, truth and accuracy of all statements, representations, warranties and certifications set out in the Proposal. The Respondent agrees that all such representations, warranties and certifications are subject to administrative review and approval by the University before the University enters into any contract arising out of this RFP. The Respondent agrees to immediately notify the University of any material change as to the truthfulness or accuracy of any information, representation, warranty or certification made by Respondent in its Proposal. A Respondent acknowledges and agrees that if the University in good faith believes that the Respondent knowingly submitted in its Proposal a false, misleading or inaccurate statement, representation, warranty or certification in its Proposal, the University may immediately disqualify the Proposal.

**3.8 Proposals as Public Information Under the Texas Public Information Act.** The University will endeavor in good faith to avoid the inadvertent public disclosure of the contents of a Proposal prior to selection of the successful Respondent (if any). However, all persons considering the submission of a Proposal in response to this RFP are hereby notified that the University strictly adheres to all statutes, court decisions, and the opinions of the Texas Attorney General with respect to the disclosure of public information under the Texas Public Information Act (Texas Government Code, Chapter 552.001, et seq.). The University may, but is not required to, seek to protect from disclosure all information submitted in response to this RFP until such time as a final Lease under this RFP is executed. UPON EXECUTION OF A FINAL LEASE, THE UNIVERSITY WILL CONSIDER ALL INFORMATION, DOCUMENTATION, AND OTHER MATERIALS SUBMITTED BY A RESPONDENT IN RESPONSE TO THIS RFP TO BE OF A NON-CONFIDENTIAL AND NON-PROPRIETARY NATURE AND THEREFORE SUBJECT TO PUBLIC DISCLOSURE UNDER THE TEXAS PUBLIC INFORMATION ACT. The University will endeavor in good faith to notify a Respondent of a request for disclosure of public information that implicates the Respondent's Proposal to this RFP, in order that the Respondent, at its sole cost and expense, might have the opportunity to raise any objections to disclosure to the Texas Attorney General. Persons submitting Proposals in response to this RFP are advised that certain information contained in a Proposal may be protected from release under Texas Government Code §§552.101, 552.110, 552.113, and 552.131.

**NOTICE:** UNDER TEXAS GOVERNMENT CODE §559.001 ET. SEQ., INDIVIDUALS ARE, WITH FEW EXCEPTIONS, ENTITLED ON REQUEST TO BE INFORMED ABOUT THE INFORMATION THAT GOVERNMENTAL BODIES OF THE STATE OF TEXAS COLLECT ABOUT SUCH INDIVIDUALS. UNDER TEXAS GOVERNMENT CODE §552.021 AND §552.023, INDIVIDUALS ARE ENTITLED TO RECEIVE AND REVIEW SUCH INFORMATION. UNDER TEXAS GOVERNMENT CODE §559.004, INDIVIDUALS ARE ENTITLED TO HAVE GOVERNMENTAL BODIES OF THE STATE OF TEXAS CORRECT INFORMATION ABOUT SUCH INDIVIDUALS THAT IS INCORRECT.

## SECTION 4

### PROPOSAL REQUIREMENTS – SUBSTANCE, FORM, AND FORMAT

**4.1 Minimum Proposal Requirements.** A Respondent's Proposal must provide, at minimum, all of the information requested in Appendix Two ("Respondent's Proposal – Mandatory Content"). The University, in the University's sole discretion, may disqualify and refuse to consider any Proposal

submitted in response to this RFP that fails to (i) provide all information expressly required under the terms of this RFP; or (ii) comply with all the requirements, specifications and conditions set out in this RFP.

**4.2 Nature and Substance of Proposal.** Proposals should provide a straightforward, clearly-worded, and concise description of Respondent's ability to meet the requirements and specifications of this RFP. The emphasis should be on completeness, clarity of content, and responsiveness to the requirements and specifications of this RFP. Proposals should follow the format set out in this RFP. The University reserves the right to reject any Proposals that are difficult to follow or understand or that do not conform to the format and organization specified in this RFP.

**4.3 Qualifications and Irregularities.** Proposals that (i) alter, modify, or revise this RFP in any way not expressly permitted by the terms of this RFP; or (ii) contain irregularities of any kind, are subject to disqualification by the University, at the University's sole discretion.

**4.4 Proposal Validity Period.** Each Proposal must expressly state that it will remain valid for the University's acceptance for the minimum period specified in [Paragraph 3.1.4](#) to allow a reasonable time for the University's review and evaluation of the Proposals submitted in response to this RFP.

**4.5 Original Signature on Proposal.** An *original* signature by an authorized officer of Respondent must appear on at least one (1) copy of the submitted Proposal. The copy of the Respondent's Proposal bearing an original signature should contain the mark "original" on the front cover of the Proposal.

**4.6 Physical Format of Proposal.** Proposals must comply with the following format requirements:

**4.6.1 Number of Proposal Copies to Be Submitted.** A Respondent must submit ***seven (7) physical copies***, complete and identical, of its Proposal. In addition, Respondent will include ***one (1) electronic copy*** of its entire Proposal in ***.pdf*** format. Electronic copies are to be delivered on a portable USB drive. ***If a Respondent has significant proposed comments and revisions to the Lease, those should be provided in electronic format within the Lease Word document. Respondent's comments may be general in nature, rather than specific text; as it is University's intent to establish the overall scope of expected Lease negotiations in response to the RFP, rather than actually negotiating the Lease by means of the Respondent's Proposal.***

**4.6.2 Page Size, Binders, and Dividers.** Proposals must be typed on letter-size (8-1/2" x 11") paper, and must be submitted in a binder. Preprinted material accompanying a Proposal should be referenced in the Proposal and included as labeled attachments. Sections within a Proposal should be divided by tabs for ease of reference.

**4.6.3 Table of Contents.** Proposals must include a Table of Contents with page number references. The Table of Contents must contain sufficient detail and be organized according to the same format as presented in this RFP, to allow easy reference to the sections of the Proposal as well as to any separate attachments (which should be identified in the main Table of Contents). If a Respondent includes supplemental information or non-required attachments with its Proposal, this material should be clearly identified in the Table of Contents and organized as a separate section of the Proposal.

**4.6.4 Pagination.** All pages of the Proposal should be numbered sequentially in Arabic numerals (1, 2, 3, etc.). Attachments should be numbered or referenced separately.

**4.7 Proposal Submittal Checklist.** Respondents submitting a Proposal must complete, sign, and return the following documents as a part of the Proposal. If the Respondent fails to return each of the following items with its Proposal, then the University may reject the Proposal:

**4.7.1 Signed and Completed Execution of Offer.** As part of its Proposal, a Respondent must complete, sign and return the Execution of Offer attached as Appendix Three to this RFP. The Execution of Offer must be signed by a representative of the Respondent duly authorized to bind the Respondent to its Proposal. Any Proposal received without a completed and signed Execution of Offer may be rejected by the University, in its sole discretion.

IN THE EVENT THAT A RESPONDENT CANNOT CERTIFY TO ANY ONE OR MORE OF THE ITEMS SET FORTH IN THE EXECUTION OF OFFER, THE RESPONDENT'S PROPOSAL MUST DISCLOSE IN REASONABLE DETAIL THE SPECIFIC EXCEPTIONS TO THE CERTIFICATIONS AND THE FACTUAL BACKGROUND PERTAINING TO SUCH EXCEPTIONS.

**4.7.2 Respondent's Proposal – Mandatory Content.** As part of its Proposal, a Respondent must restate and answer each of the items set out in the Respondent's Proposal – Mandatory Content attached as Appendix Two to this RFP. In cases where a question does not apply or if unable to respond, the Respondent should refer to the item number, repeat the question, and indicate "Not Applicable" or "Unable to Respond," as appropriate. The Respondent should explain the reason when responding "Not Applicable" or "Unable to Respond."

## SECTION 5

### PROCESS AND CRITERIA FOR SELECTION OF WINNING PROPOSAL(S)

**5.1 Overall Goal of University.** The University's overall goal with this RFP is to enter into a Lease or Leases with the Respondent or Respondents offering the most advantageous use of the Property while providing a fair financial return to the University for the lease of the Property.

**5.2 Nature of Successful Respondent.** In its response to this RFP, a Respondent is encouraged to propose terms and conditions offering the maximum benefit to the University in terms of (i) the Proposed Use of the Property; (ii) the total overall financial return to be realized by the University; (iii) other benefits to the University; and (iv) the Respondent's management and operational expertise in the Respondent's Proposed Use of the Property. The Respondent, if any, selected by the University in accordance with the requirements and specifications set forth in this RFP will be the Respondent that timely submits a Proposal in response to this RFP that is the most advantageous to the University, in the University's sole opinion and discretion, and promotes confidence that the University is achieving its overall goal in selecting such Respondent to be the lessee under a Lease.

**5.3 Evaluation of Proposals.** The University will use a competitive sealed proposal process for this RFP. An evaluation team selected by the University will evaluate all Proposals of proper format that are timely submitted in response to this RFP. The evaluation of the submitted Proposals and the selection of the successful Respondent (if any) will be based on the information provided by the Respondents in their respective Proposals, but the University reserves the right to give consideration to additional information that comes to the University's attention concerning a Respondent or a Proposal if the University deems such information relevant to a fair evaluation of the Proposals submitted in response to this RFP.

**5.3.1 Opening of Proposals.** All Proposals submitted by the Submittal Deadline will be opened and reviewed to identify the name of Respondent submitting a Proposal, to confirm the Proposal's compliance with the requirements of this RFP, and to make an initial evaluation of the merits of the Proposal. Any Proposals that are not submitted by the Submittal Date may be rejected by the University as non-responsive due to material failure to comply with the specifications of this RFP.

**5.3.2 Subsequent Oral Presentations.** After the opening of the Proposals and upon completion of the initial review and evaluation of the Proposals, the University may in its sole discretion invite one or more selected Respondents to participate in presentations concerning their respective Proposals.

**5.3.3 Negotiations with Select Respondents.** At the University's sole option and discretion, the University may discuss and negotiate all elements of the Proposals submitted by selected Respondents. For purposes of such negotiation, the University may, after initial review of the submitted Proposals, establish a competitive range of acceptable or potentially acceptable Proposals composed of the highest rated Proposal(s). In that event, the University will defer further action on Proposals not included within the competitive range pending the selection of the successful Respondent(s); provided, however, the University reserves the right to include additional Proposals in the competitive range if the University deems such to be in the best interests of the University. In conducting such negotiations with Respondents, the University will use commercially reasonable efforts to avoid disclosing the contents of competing Proposals prior to selection of the successful Respondent (if any).

**5.3.4 Revisions of Proposals.** After the Deadline for Submission of Proposals but before final selection of a Proposal is made, the University may request or permit a Respondent to revise its Proposal in order to obtain the Respondent's best and final offer. In that event, representations made by a Respondent in its revised Proposal will be binding on the Respondent. The University will provide each Respondent within the competitive range (See [Paragraph 5.3.3](#)) with an equal opportunity for discussion and revision of its Proposal.

**5.3.5 Determination of Successful Bidder.** The University may make the selection of the successful Proposal on the basis of (i) the Proposals submitted, without discussion, clarification or modification; (ii) negotiation with any of the Respondents pursuant to [Paragraph 5.3.3](#); and/or (iii) review of revised Proposals pursuant to [Paragraph 5.3.4](#). The University is not obligated to select the Respondent offering the most attractive economic

terms if that Respondent's Proposal is not the most advantageous to the University overall, as determined by the University in its sole opinion and discretion.

**5.3.6 Additional Consideration.** The Respondent's Proposal should include other economic or non-economic benefits and considerations that are available to the University and the community, and should identify alternative ideas, structures, or available opportunities.

**5.3.7 Rejection of Proposals.** The University reserves the right, as the University deems to be in the best interests of the University, to (i) enter into a Lease with the selected Respondent; (ii) reject any and all Proposals and re-solicit Proposals; or (iii) reject any and all Proposals and temporarily or permanently abandon this selection process.

**5.4 Criteria for Selection of Successful Respondent.** As a threshold requirement for the University's selection of a Proposal, the Respondent and the Respondent's Proposal must be of a nature and substance that allows the University, if it accepts the Proposal, to comply with all applicable law pertaining to the University's operation and function as a Texas state agency and public institution of higher education. The University will select the successful Proposal (if any) based on, but not limited to, the following criteria, which are presented in no particular order:

**5.4.1** The reputation, competence, and experience of the Respondent in developing and operating real property for the Respondent's Proposed Use.

**5.4.2** The Respondent's demonstration of its capability to provide personnel and materials to effectively develop and operate the Property for the Proposed Use.

**5.4.3** The Respondent's demonstration of its capacity in terms of financial resources to construct and operate the Property.

**5.4.4** The number of years of experience the Respondent has in operating and managing real properties similar to the Property.

**5.4.5** The Respondent's work experience and relationships with other University of Texas institutions or other institution(s) of higher education.

**5.4.6** The scope and quality of references from past and present customers of the Respondent.

**5.4.7** The total financial compensation and other benefits the Respondent will provide to the University if the Respondent is selected to lease the Property.

**5.4.8** The appeal of the Respondent's proposed design, development and use of the Property and the consistency of such with the University's needs.

**5.4.9** The compatibility of the Respondent's proposed design with the surrounding community and benefit to the University.

- 5.4.10** The Respondent's work experience and relationships with the City of Austin and other stakeholders that may affect the approval or development of Respondent's proposed project on the Property.
- 5.4.11** The Respondent's proposed ownership and management structure for the proposed improvements on the Property.

**APPENDIX ONE**

**DEEDS AND SURVEYS OF PROPERTY TO BE LEASED**

*(The 0.560-acre tract and the 2.640-acre tract)*



DENMAN, FRANKLIN &amp; MCGOWN.

THE STATE OF TEXAS, ::

COUNTY OF BEXAR. ::

I, George W. Brackenridge, for the purpose of advancing and promoting University education, hereby grant, donate and convey, in trust for the benefit of the University of Texas, as a part of the permanent fund for said University until the death of the last survivor of the following persons, namely: Katherine Ramsey, age five years, daughter of W. A. Ramsey, Elizabeth Harcourt, age nine years, daughter of G. M. Harcourt, Alexander Erskine, age seven years, son of Michael H. Erskine,- the above named fathers are employes of the San Antonio National Bank,- John Adams Brackenridge, age seven years, Roy James Brackenridge Roberts, age seven years, Isabella Eleanor Roberts, age one year,- the last named three being grandchildren of the late James M. Brackenridge of Austin, Texas,- or until the same is sold or conveyed by the state of Texas or the duly constituted authorities of the University of Texas before the death of the last survivor of the above named persons, remainder over, in case the same is not disposed of by the State of Texas or the duly constituted authorities of the University of Texas before the death of the last survivor of the above named persons, in fee simple title to the State of Texas for the benefit of the University of Texas as a part of said permanent fund with the request merely on my part that it be never disposed of but be held permanently for such educational purposes, but in case said State of Texas or the duly constituted authorities of the University of Texas sell or convey said property from the purposes aforesaid at any time before the death of the last survivor of the above named persons, then and upon that contingency, remainder over in fee simple title to the



County of Jackson, in the State of Texas, for the benefit of the public free schools in and for that County, the following described property situated in Travis County, Texas, to-wit:

Lying on the East bank of the Colorado River about two and one-half miles above the City of Austin, said lands being a portion of the one-third of a league of land granted to Daniel J. Gilbert, containing 353 acres, more or less, and a portion of the Geo. W. Speer league, containing 55 acres, more or less,

Beginning at a point on the East bank of the Colorado River, it being the Southwest corner of the Geo. W. Speer league, and the Southeast corner of the Daniel J. Gilbert one-third league, thence down the river with its meanderings South 47 East 334 varas, South 56 East 320 varas to a corner on the bank of the river, thence North 30 East 475 varas, thence North 60 West 554 varas, thence North 30 East 184 varas; thence North 60 West 92 varas to the division line between said Geo. W. Speer league and said Daniel J. Gilbert one-third league, thence with said division line North 30 East 1054 varas, thence North 60 West 1498 varas along the lands of L. C. Pease, Wm. Walsh and others to the bank of the Colorado River, thence down the bank of the Colorado River with its meanderings to the place of beginning,

Also Ninety-five acres of land, part of the Henry P. Hill league, lying on the West bank of the Colorado River, in Travis County, the property of George W. Brackenridge,

Beginning at a stone mound on the bank of the Colorado River, at the Northwest corner of the Henry P. Hill league, thence with the West boundary line of said Henry P. Hill league South 30 West 1645 varas, thence South 60 East 224 varas, thence North 30 East 254 varas, thence South 60 East 262 varas, thence North 30 East 677 varas to the bank of the Colorado River, thence up the bank of the Colorado River, with the meanderings thereof, to the point of beginning, containing ninety-five acres of land, more or less,

there being excepted from the property above described, and same is not hereby conveyed, about one acre of land assessed and held by C. H. Jung and about one acre assessed and held by Mrs. Johanna Hallman, and also one lot in Lake Addition assessed and held by A. Raggio, which said three parcels, included in the boundaries of the land above described, I do not own.

TO HAVE AND TO HOLD same unto the said respective grantees of the several estates according to the limitations above expressed.

WITNESS MY SIGNATURE, this 17th day of June, A.D., 1910.

*George W. Brackenridge*

THE STATE OF TEXAS, ::  
 COUNTY OF BEXAR. ::

Before me, the undersigned authority,  
 on this day personally appeared George W. Brackenridge, known  
 to me to be the person whose name is subscribed to the fore-  
 going instrument and acknowledged to me that he executed the  
 same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 18th  
 day of June, A.D., 1910.

*Mary James Quigley*

Notary Public, in and for the County of  
 Bexar, State of Texas.

THE STATE OF TEXAS, } I, Paul M. Deats, Clerk of the County Court within and  
 COUNTY OF TRAVIS. } for the County, and State aforesaid, do hereby certify  
 that the within and foregoing instrument of writing, with its certificate of authentication, was filed  
 for record in my office on the 4 day of Jan, A. D. 1911, at 10 o'clock  
P.M., and duly recorded on the 7 day of Jan, A. D. 1911, at 12  
 o'clock M., in the Deed Records of said County, in Book  
 No. 244 pages 77 to 78 inclusive.

WITNESS MY HAND and seal of the County Court of said County,  
 the date last above written.

*Paul M. Deats*  
 Clerk County Court Travis County, Texas.

By *H. A. Murray* Deputy

**EXHIBIT A**

**Legal Description**

0.56 Acres  
Travis County, Texas

July 31, 2009  
FN 5541  
SAM, Inc. Job No. 28118-01

**EXHIBIT "TRACT 6"**  
(7-Eleven Tract)

DESCRIPTION OF A 0.56 ACRE TRACT OF LAND LOCATED IN THE G. W. SPEAR LEAGUE SURVEY NO.7, BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED BY GEORGE BRACKENRIDGE TO THE UNIVERSITY OF TEXAS, DESCRIBED IN A DEED, RECORDED IN VOLUME 244, PAGE 77, DEED RECORDS TRAVIS COUNTY, TEXAS; SAID 0.56 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS;

**BEGINNING** at a 1/2-inch iron rod found for the most easterly corner of the tract described herein, same being in the south right-of-way line of West 7<sup>th</sup> Street, a 60 foot wide right-of-way;

**THENCE** leaving said south right-of-way line of West 7<sup>th</sup> Street, along the east line of the herein described tract, S 54°18'20" W, a distance of 171.68 feet to a 1/2-inch iron rod found in the northeast right-of-way line of Lake Austin Boulevard, a 100 foot wide right-of-way, same being the most southerly corner of the tract described herein;

**THENCE** along said northeast right-of-way line of Lake Austin Boulevard the following two (2) courses and distances:

1. N 32°18'43" W, a distance of 229.68 feet to a 1/2-inch iron pipe found, and
2. with the arc of a curve to the right, through a central angle of 93°31'56", having a radius of 34.17 feet, a distance of 55.78 feet and whose chord bears, N 70°25'46" E, a distance of 49.79 feet to a 1/2-inch iron rod found for the intersection of said south right-of-way line of West 7<sup>th</sup> Street and said northeast right-of-way line of Lake Austin Boulevard;

**THENCE** along said south right-of-way line of West 7<sup>th</sup> Street, S 62°48'14" E, a distance of 242.04 feet to the **POINT OF BEGINNING** of the tract described herein and containing 0.56 acres of land, more or less.

BEARING BASIS: NAD(83) 2002, Texas State Plane NAD-83

THE STATE OF TEXAS        §  
   §        KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF TRAVIS       §

That I, Brian D. Scott, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 31st day of July, 2009 A.D.

Surveying And Mapping, Inc.  
5508 West Highway 290  
Building B  
Austin, Texas 78735



*BDS*  
\_\_\_\_\_  
Brian D. Scott  
Registered Professional Land Surveyor  
No. 5280 - State of Texas

7/31/09





MARCH 31, 1988 JOB NO. 836-0100-01 FIELD NOTE NO. 836-07  
 GEORGE BRACKENRIDGE TO THE UNIVERSITY OF TEXAS, SAFEWAY ADDITION  
 NO. 10

FIELD NOTES

A DESCRIPTION OF 2.640 ACRES OF LAND SITUATED IN THE G. W. SPEAR LEAGUE, SURVEY NO. 7, TRAVIS COUNTY, TEXAS BASED UPON A SURVEY PERFORMED BY METCALFE ENGINEERING COMPANY, AUSTIN, TEXAS IN AUGUST - OCTOBER 1968 AND SHOWN ON PLAN R205B, REVISED AUGUST, 1977, BEING THAT CERTAIN TRACT "A", SAFEWAY ADDITION NO. 10, A PLAT RECORDED IN BOOK 75, PAGE 16 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED BY GEORGE BRACKENRIDGE TO THE UNIVERSITY OF TEXAS BY DEED RECORDED IN VOLUME 244, PAGE 77 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID 2.640 ACRES OF LAND AS SHOWN ON ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a concrete monument at the northwest corner of said 2.640 acres of land, being on the south line of West 8th Street, being on the east line of Exposition Boulevard;

THENCE along the south line of said West 8th Street and the north line hereof, S 60°05' E, 241.05 feet to a point in the west line of Newman Drive;

THENCE departing the south line of said West 8th Street along the west line of said Newman Drive, being the east line hereof S 29°39' W, 492.82 feet to a point in the north line of West 7th Street for the southeast corner hereof;

THENCE departing the west line of said Newman Drive along the north line of said West 7th Street N 60°21' W, 119.25 feet to an iron stake on the east line of Lake Austin Boulevard;

THENCE departing the north line of said West 7th Street along the east line of said Lake Austin Boulevard N 29°52' W, 143.91 feet to an iron stake on the east line of said Exposition Boulevard;

THENCE departing the east line of said Lake Austin Boulevard along the east line of said Exposition Boulevard N 29°57' E, 420.86 feet to the POINT OF BEGINNING containing 2.640 acres of land more or less.

Page 1 of 1

REAL PROPERTY RECORDS  
 TRAVIS COUNTY, TEXAS

10968 0541

### SKETCH TO ACCOMPANY FIELD NOTE NO. 836 - 07



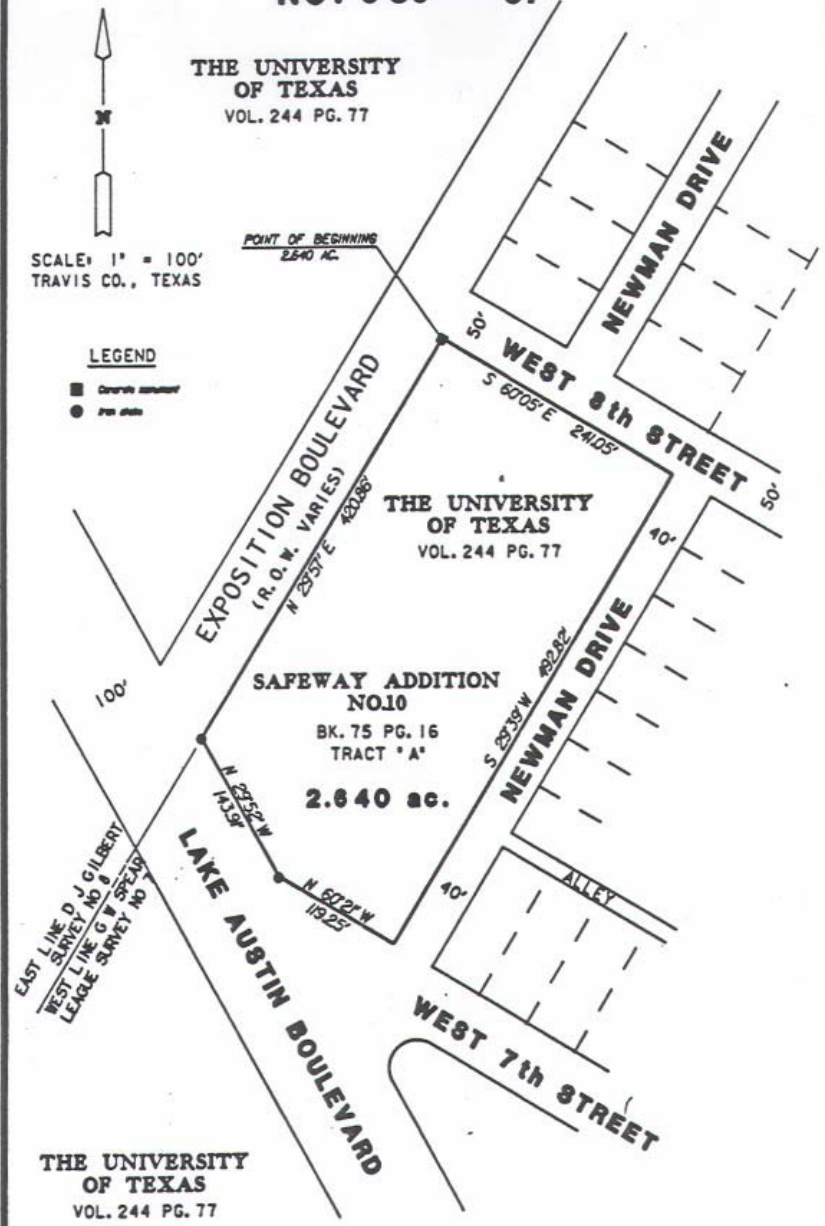
THE UNIVERSITY  
OF TEXAS  
VOL. 244 PG. 77

SCALE: 1" = 100'  
TRAVIS CO., TEXAS

POINT OF BEGINNING  
2.640 AC.

#### LEGEND

- Corner monument
- Iron stake



REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS  
10968 0542

THE UNIVERSITY  
OF TEXAS  
VOL. 244 PG. 77

DATE : MARCH 31, 1988  
JOB NO.: 836-0100-01

Lichliter/Jameson & Associates, Inc. **LJA**  
CONSULTING ENGINEERING PLANNING SURVEYING  
811 BARTON SPRINGS ROAD, SUITE 400, AUSTIN, TEXAS 78704-1164, 512/474-5000

## APPENDIX TWO

### RESPONDENT'S PROPOSAL – MANDATORY CONTENTS AND FORMAT

IN ORDER TO EVALUATE A PROPOSAL AND ASSESS THE CAPABILITY OF THE RESPONDENT TO CARRY OUT THE OBJECTIVES PRESENTED IN THIS REQUEST FOR PROPOSALS, THE UNIVERSITY REQUIRES THAT THE PROPOSAL CONTAIN INFORMATION THAT IS FULLY RESPONSIVE TO EACH OF THE ENUMERATED ITEMS BELOW. THE PROPOSAL SHOULD RESTATE EACH OF THE REQUIREMENTS IN THE SAME ORDER AS THEY APPEAR BELOW AND PRESENT A CONCISE RESPONSE IMMEDIATELY FOLLOWING THE STATED REQUIREMENT. IF ANY QUESTION IS ANSWERED ““NOT APPLICABLE” OR “UNABLE TO RESPOND,” RESPONDENT MUST GIVE A BRIEF EXPLANATION OF WHY SUCH IS TRUE.

#### Respondent's General Profile:

(If Respondent is composed of multiple legal entities, Respondent will provide the required information for each entity.)

(If the proposed tenant is not the Respondent, then Respondent will provide the following information for both the Respondent and the proposed tenant.)

1. **Respondent's General Information.** Respondent must provide all of the following requested information:
  - a. Legal name of the Respondent.
  - b. Name and Employer Identification Number for each person or entity having a 10% or greater legal or beneficial ownership interest in the Respondent.
  - c. Physical address of the principal place of the Respondent's business.
  - d. Physical address of the Respondent's office that would be operating the Property under the Lease.
  - e. Number of years the Respondent has been in business.
  - f. Number of people employed by the Respondent.
  - g. The Respondent's Annual Revenues Volume for the last three calendar years.
  - h. Name of the Respondent's parent entity, if any. **IMPORTANT:** If the Respondent is a subsidiary or related entity, the University will request either to (i) enter into a direct contract or agreement with the parent entity; or (ii) receive a guarantee or other assurance of performance from the parent entity.
  - i. Key Personnel. The identity and summary resumes for the key personnel who will be involved in the Respondent's operation of the Property under the Lease, including their specific experiences with similar service projects and the number of years the individuals have been employed by the Respondent.

**2. Respondent's Proposed Legal and Operating Structure for the Proposed Improvements.**

Respondent must provide all of the following requested information:

- a. Proposed legal structure of the entity that will be the tenant(s)
- b. Proposed ownership of the entity that will be the tenant(s)
- c. Proposed ownership or operating structure of the improvements composing the various different uses of the Project.

**3. Financial Statements.** Respondent must state whether the Respondent will provide a copy of its financial statements for the past two (2) years, if requested by the University. Based on the University's review of financial information, at its discretion the University may require a construction guaranty.

**4. Financial Rating.** The Respondent must provide with its Proposal a financial rating of the Respondent and any related documentation (such as a Dunn and Bradstreet analysis) that indicates the financial stability of the Respondent.

**5. Pending Sale.** The Respondent must indicate whether it is currently for sale or involved in any transaction to expand or to become acquired by another business entity. If so, the Respondent must explain the expected impact, both in organizational and directional terms, of that transaction upon its performance under the Lease or Leases that might result from this RFP.

**6. Litigation History.** The Respondent must describe all past or pending litigation or claims against the Respondent (if any) that would affect its performance under the Lease or Leases that might result from this RFP.

**7. Loan Status.** The Respondent must indicate whether it or any related entity is currently in default on any loan agreement or financing agreement with any bank, financial institution, or other entity. If so, the Respondent must describe the pertinent date(s), details, circumstances, and describe the current prospects for resolution.

**8. Customer References.** The Respondent will provide a customer reference list of no less than three (3) persons or entities for which the Respondent has developed and managed real property within the past seven (7) years of a type and scope similar to Respondent's Proposed Use of the Property. The Respondent will include in this reference list the person's or entity's company name, contact person, telephone number, project description, length of business relationship, and a description of the services provided by the Respondent.

**Concept for Renovation or Redevelopment of the Property**

**9. Proposed Uses.** The Respondent must indicate the Respondent's proposed plan and approach for the uses, development, and marketing of the Property, together with the proposed time-schedule for such. Respondent must provide this information for each type of use. Depending on whether Respondent's Proposal addresses both tracts or either individual portions of the Property, the Respondent's proposed plan should address any of the following:



- The 2.640-acre tract with proposed renovation or redevelopment plans or improvements, if applicable
- The 0.560-acre tract with proposed renovation or redevelopment plans or improvements, if applicable
- Both the 2.640-acre tract and the 0.560-acre tract with proposed renovation or redevelopment plans or improvements

**10. Benefits to the University.** The Respondent must describe the benefits to the University arising from the Respondent's proposed development and use of the Property.

**11. Community Relations.** The Respondent's Proposal should (i) specify and describe any planned interaction with the surrounding community related to its Proposed Use of the Property, and (ii) highlight examples of similar projects in which Respondent has successfully interacted with the community and has integrated community input and/or benefits into projects.

**12. Identification of Difficulties.** Respondent will describe any difficulties it anticipates in performing its duties under a Lease with the University and how Respondent plans to manage these difficulties. Respondent will describe the assistance it will require from the University, if any.

#### **Basic Business Terms Proposed for the Lease**

**13. Term of the Lease.** The Respondent must indicate its proposed length of the initial term of the Lease and its proposed number and length of any desired extension terms. University desires to keep the term of the Lease as short as possible, balanced with Respondent's financing requirements and access to low-cost capital. The following proposal requirements propose a 40 year lease term, however University will also consider alternative term proposals.

**14. Rent and Other Consideration:** The Respondent must clearly state all consideration (whether, fixed, variable or contingent) that that Respondent proposes to pay the University for the use and occupancy of the Property under a Lease. If Respondent wishes to include a component of variable rent, Respondent may elect to share gross revenues with University. University will not agree to a rental structure that includes a share of Respondent's net income or net profits. If A Respondent proposes a variable component of rent, then Respondent must state how it is calculated, and provide an annual schedule of cash flows showing the estimated percentage rent over the term of the lease. The Respondent will also provide a list of any additional services or benefits not otherwise identified in this RFP that the Respondent would propose to provide to the University in connection with the Respondent's development and use of the Property.

Respondent's Proposal should provide rent quotes:

- a. A 40 year lease term. Base rent subject to no less than annual 2% escalations and no % rent component. This structure includes resets to a market rent every 15 years. Such resets will be based on the value of the land, considering all permitted and legal uses; the value will not be limited to the uses or improvements on the Property as developed by the Respondent.
- b. A 40 year lease term. Base rent subject to no less than annual 2% escalations with a % rent component. This structure includes resets to a market rent every 15 years. Such resets will be

based on the value of the land, considering all permitted and legal uses; the value will not be limited to the uses or improvements on the Property as developed by the Respondent.

- c. Prepaid rent with a 40 year lease term (if Respondent is willing to make this offer).
- d. At least one other rent quote, with a rent structure and term of Respondent's choice. (Respondents are notified that it is important to the University that, over time, the rent payment continues to reflect the value of the land, whether through periodic market resets, sharing of gross income, or other mechanisms.)
- e. Rental of the existing improvements located on the Property without significant redevelopment (whether one or both of the discrete tracts), with periodic adjustments to reflect the value of the improved Property. A Respondent that proposes a Lease of one or both tracts with the existing improvements and without significant redevelopment should base its rent quote on a lease term of four consecutive 10-year terms.

**15. Approximate Rent Commencement Date.** No later than June 1, 2019.

**16. Construction of Improvements.** The Respondent must describe all improvements it proposes to construct on the Property and the time-frame for such construction, including gross and if available net square feet. The Respondent will describe how fluctuations in the market may affect Respondent's scope and timing for the development or redevelopment of all or part of the proposed improvements.

**17. Modifications to Lease form.** The Respondent must indicate with reasonable specificity the material changes and modifications Respondent would request to the terms of the sample Lease. Respondent will provide its comments in the text of an electronic version of the sample Lease document. Respondent need not submit lengthy comments or large proposed revisions at this time, but Respondent's comments should clearly indicate the concepts the Respondent desires to add, delete, or modify in the sample Lease. Under no circumstances will the University subordinate its fee interest in the land.

**18. Lease Preparation and Legal Fees.** University will prepare a draft Lease based on the Term Sheet provided by the selected Respondent(s). University will pay the fees of outside counsel up to \$10,000 for document preparation and review – up to the execution of a Lease Any outside legal counsel fees above \$10,000 will be reimbursed by the selected Respondent(s) until a Lease is executed or either party acknowledges a termination of the lease negotiations as they relate to this RFP.

#### **Respondent's Comparable Experience and Capabilities**

**19. Comparable Projects.** Respondent will describe two to four projects comparable to the Respondent's Proposed Use of the Property that, within the last five years, the Respondent has either constructed and operated, or is currently constructing and intends to operate, comparable to the Respondent's Proposed Use and development of the Property and which would evidence the Respondent's ability to complete the objectives of this RFP. Respondent should highlight any projects for complex organizations or institutions of higher education. Respondent must provide contacts for references and must include the principal's name, address, and telephone number.

**20. Financial Capability.** Respondent will identify its financial ability and access to capital in order to carry out its proposed project on the Property, including the proposed capital structure and financing sources. Respondent will specify its experience in the last three years in financing similar projects.

**21. Respondent's Background.** Respondent must describe the background and experience of its firm and of any major consultants and contractors the Respondent would anticipate using in its development and use of the Property. Without limiting the foregoing, the Respondent's Proposal should specifically identify the following information, with respect to both the Respondent itself and its major consultants and contractors:

- a. Its ability to operate and deliver a viable use or project of the type proposed;
- b. Its ability to understand the market dynamics for all of the uses proposed;
- c. Its past successes in working with interested local government and private concerns;
- d. Its experience in designing and building projects of the type proposed and in accommodating local design standards;
- e. Its experience in and an understanding of the development process, including development concepts, entitlements, financing, design and construction, marketing, leasing, and property management;
- f. Its ability to communicate with all stakeholders, reach consensus, and negotiate agreements; and
- g. Its experience and expertise in developing projects within the City of Austin's development processes.

#### **Miscellaneous**

**22. Relationships with University Personnel.** The Respondent must indicate whether any relationships exist (whether by family kinship, business association, capital funding agreement, or any other such relationship) between (i) the Respondent or its key personnel, consultants, or contractors; and (ii) any employee of the University or any other institution within The University of Texas System, or any member of the Board of Regents of The University of Texas System. If such a relationship exists, then the Respondent must describe the relationship in its Proposal.

#### **Description of the Respondent's Concept** **(Respondent will provide drawings on letter or ledger size paper)**

**23. Site and Building Plans.** Respondent will provide schematic or conceptual plans of its proposed redevelopment or renovations as follows:

- Site Plan
- Concept Plans of a typical floorplate for each component building
- Conceptual Sections of the Property.

**24. Renderings.** Respondent will provide schematic or conceptual renderings of the proposed redevelopment or renovations as follows:

- At least one rendering shall be provided from the perspective of a viewer on or near Exposition and Lake Austin Boulevard looking northeast towards Newman Drive
- At least one rendering should be provided from the perspective of a viewer on or near West 7<sup>th</sup> Street and Norwalk Lane looking south

Renderings should be sufficient to convey the proposed character of the proposed redevelopment or renovations.

**25. Proforma.** Respondent will provide a proforma income and expense statement of its stabilized project on the Property, and a project budget, confirming that Respondent estimates that the proposed redevelopment or renovations will be financially successful. Respondent will provide this information for each different approach proposed by Respondent, and for the Respondent's overall proposed redevelopment or renovation of one or both of the tracts in the Property. This analysis by Respondent will help the University understand the risks associated with the Respondent's proposed project on the Property.

**APPENDIX THREE**

**EXECUTION OF OFFER**

***THIS EXECUTION OF OFFER MUST BE COMPLETED, SIGNED AND RETURNED AS PART OF A RESPONDENT'S PROPOSAL. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF THE PROPOSAL.***

**Proposal of:** \_\_\_\_\_ (*Insert Respondent's Name*)

**To:** The University of Texas at Austin

**Ref.:** Lease of the **2.640 Acre Tract** and/or the **0.560 Acre Tract** (select one or both)

**RFP No.:**

Ladies and Gentlemen:

\_\_\_\_\_ hereby submits the enclosed Proposal in response to the Request for Proposal # \_\_\_\_\_ ("RFP") issued by The University of Texas at Austin ("University"). Capitalized terms not otherwise defined herein shall have the meaning set for such terms in the RFP.

- A. The undersigned hereby represents, warrants and certifies to University that the undersigned:
1. Is a reputable company that is lawfully and regularly engaged in the business of developing and operating real property of the nature described in the RFP;
  2. Has the necessary experience, knowledge, abilities, skills, and resources to perform the obligations required of it under the RFP and the Lease;
  3. Understands the terms, requirements and specifications set forth in the RFP and the Lease under which the undersigned would be required to operate if it were selected to be the tenant under the Lease;
  4. Is aware of, is fully informed about, and is in full compliance with all federal, state and local laws, rules, regulations and ordinances currently applicable to Respondent's performance under the RFP and the Lease; and
  5. If selected by the University, would not delegate any of its duties or responsibilities under the RFP or the Lease to any sub-operator, except as expressly provided and permitted in the Lease.
- B. The undersigned further represents, warrants and certifies to the University that:
1. All statements, representations, warranties and certifications submitted by the undersigned in its Proposal in response to the RFP are, in all material respects, current, true, accurate, and not misleading;

2. The undersigned acknowledges that the University will rely on such statements, information and representations in selecting a Respondent to be tenant under the Lease;
  3. If selected by the University to be tenant under the Lease, the undersigned will notify the University immediately of any material change in any matters with regard to which the undersigned has made a statement or representation or provided information in its Proposal; and
  4. The undersigned and the person signing on its behalf below are authorized to sign this Execution of Offer and deliver it to the University.
- C. The undersigned further represents, warrants and certifies to the University that:
1. All costs and risks relating to preparing and submitting a Proposal in response to the RFP are the sole responsibility of the Respondent;
  2. The undersigned accepts the University's process for selection of the successful Respondent set out in the RFP and recognizes that some subjective judgments must be made by the University as part of this RFP process;
  3. The Proposal submitted by the undersigned in response to this RFP evidences the undersigned's good faith intent to enter into the Lease with the University as specified herein if the undersigned's Proposal is selected, and that such intent is not contingent upon the University's acceptance or execution of any terms, conditions, or other documents attached to or referenced in the undersigned's Proposal other than those terms, conditions or documents expressly referenced in this RFP or agreed to in writing by the University.
  4. This Proposal and any other information submitted by the Respondent in response to this RFP become the property of the University upon submission, except as otherwise expressly agreed in writing by the University.
  5. That **(i)** no relationship, whether by blood, marriage, business association, capital funding agreement or by any other such kinship or connection exists between (a) on the one hand, the equity owner(s) of the undersigned if the undersigned is a sole proprietorship, the officers or directors of the undersigned if the undersigned is a corporation, the partners of the undersigned if the undersigned is a partnership, the joint venturers of the undersigned if the undersigned is a joint venture, or the members or managers of the undersigned if the undersigned is a limited liability company, and (b) on the other hand, an employee of any component of The University of Texas System or any member of the Board of Regents of The University of Texas System; save and except for those relationships that have been disclosed to the University in writing as part of this Proposal; **(ii)** the undersigned has not been an employee of any component institution of The University of Texas System within the immediate twelve (12) months prior to the Submittal Deadline (see Paragraph 3.1.3 of the RFP); and **(iii)** no person who, in the past four (4) years served as an executive of a state agency or a member of the Board of Regents of The University of Texas System was involved with or has any interest in the undersigned's Proposal or any Lease resulting from this RFP;

6. The undersigned has not given or offered to give, nor does the undersigned intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with its submitted Proposal.

Respectfully submitted,

Date: \_\_\_\_\_, 20\_\_\_\_

Respondent: \_\_\_\_\_

**APPENDIX FOUR**

**LEASE FORM**



**LEASE**

**between**

**Board of Regents of The University of Texas System, for the Use and Benefit of  
The University of Texas at Austin  
as Lessor,**

**and**

\_\_\_\_\_

**as Lessee**

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## LEASE

THIS LEASE ("**Lease**") is executed effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("**Effective Date**"), by and between the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, for the Use and Benefit of the University of Texas at Austin ("**Lessor**"), and \_\_\_\_\_ ("**Lessee**").

### 1. WORDS OF LEASING

**1.01. Granting Clause.** For and in consideration of Ten and No/100 Dollars (\$10.00), the covenants made by Lessee herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor hereby leases, and demises to Lessee and Lessee hereby leases and takes from Lessor the Premises (hereinafter defined). TO HAVE AND TO HOLD the Premises unto Lessee, its permitted successors and assigns, for and during the Term (hereinafter defined), subject to and on the terms and conditions set forth in this Lease.

**1.02. Covenant of Quiet Enjoyment.** Lessor covenants and warrants, to the extent permitted under the laws and Constitution of the State of Texas, that, so long as Lessee is not in default hereunder, Lessee shall and may peaceably and quietly have, hold, occupy, use and enjoy and shall have the full and unrestricted use and enjoyment of the Premises during the Term, subject to (1) any and all easements, prescriptive rights, rights-of-way, covenants, conditions, restrictions, and outstanding mineral interests, oil, gas and mineral leases, and royalty interests, if any, relating to the Premises, to the extent the same may be in force and effect and either shown of record in the Real Property Records of Travis County, Texas, or apparent on the Premises, (2) the approved Plans and Specifications (as hereinafter defined), (3) any unrecorded matters to the extent that Lessor has informed Lessee of such unrecorded matters prior to the Commencement Date, (4) all applicable laws, ordinances, and regulations, (5) grants of future mineral, oil and gas leases that do not permit use of the surface by the mineral lessee, and (6) grants or reservations by Lessor of future easements, licenses, or restrictions that would not materially and adversely affect Lessee's use of the Premises for the purposes permitted herein. Lessor shall receive all compensation, if any, from grantees of such mineral leases, easements, and licenses.

**1.03. Premises Condition.** Lessee accepts the Premises in their current condition AS IS, WHERE IS, and WITH ALL FAULTS and acknowledges that it has examined or will examine, in accordance with the provisions hereof, the Premises and the condition thereof, and that it has not relied on any representation or warranty by Lessor or Lessor's representatives, except as otherwise expressly stated herein, regarding the Premises, including (but not limited to) any warranty or representation relating to value, suitability, fitness for a particular purpose or condition of the Premises.

### 2. PREMISES

**2.01. Definition.** Except as expressly provided to the contrary in this Lease, reference to "**Premises**" is to the land described by metes and bounds on **Exhibit A** and shown on **Exhibit A-1**, which land contains approximately \_\_\_\_ acres of land area, more or less, in the City of Austin, Travis County, Texas, together with all rights, easements, privileges, and appurtenances thereto or in any way belonging; provided that no portion of the mineral estate is leased by this Lease..

### 3. TERM

**3.01. Primary Term.** Subject to the terms and conditions hereof, the initial term of this Lease is for a period of \_\_\_\_\_ (\_\_\_\_) years (the "**Primary Term**"), beginning on the Commencement Date

(hereafter defined) and ending at midnight on the day immediately preceding the \_\_\_\_\_ (\_\_\_\_) anniversary of the Commencement Date, unless sooner terminated as provided for in this Lease.

**3.02. Extension Terms.** Lessee shall have, and is hereby granted, the option to renew and extend the term of this Lease for \_\_\_\_\_ (\_\_\_\_) period(s) of \_\_\_\_\_ (\_\_\_\_) months each (the "**Extension Terms**"), provided that this Lease is in full force and effect and Lessee is not in default hereunder at the time the option is exercised. If Lessee elects to exercise its option, Lessee shall do so by written notice to Lessor not later than \_\_\_\_\_ days prior to the expiration of the Primary Term or the first Extension Term, if applicable. The Extension Term that is the subject of that notice shall begin on the expiration of the Primary Term or on the expiration of the first Extension Term, as applicable. All terms, covenants, and provisions of this Lease shall apply to each of the Extension Terms. "**Term**," as used herein, shall include all valid renewals or extensions of the term of this Lease unless the context clearly indicates to the contrary.

**3.03. Inspection Period.** This Lease is and shall be effective on the Effective Date. Lessee shall have the right, from and after the Effective Date through and including 5:00 p.m. local time \_\_\_\_\_ (\_\_\_\_) days following the Effective Date, to conduct, at Lessee's sole expense, such inspections, analyses, studies, and tests of the Premises and to make application and payment for such licenses, permits, and approvals as Lessee may deem, in Lessee's reasonable opinion, necessary or desirable in connection with the development of the Project Improvements (hereinafter defined). The date and time that the Inspection Period expires is called the "**Commencement Date**." **Lessee hereby agrees to indemnify, defend, and hold harmless Lessor and UT\_\_\_\_\_ and their respective regents, officers, employees, agents, representatives, successors and assigns (collectively, "**Lessor Parties**") from and against any and all loss, damage, claims, remedies, defenses, demands, suits, causes of action, liabilities, costs or expenses, of whatever kind or character, arising out of or in any way related to Lessee's examination of, or access to, the Premises.** Lessee's indemnification obligation shall survive the termination or expiration of this Lease, notwithstanding any provision of this Lease to the contrary. Lessee shall have the right and option to terminate this Lease at any time prior to the Commencement Date by providing written notice of such election to Lessor prior to the Commencement Date, whereupon this Lease shall terminate and be of no further force or effect.

The results of all studies, tests, and investigations of the Premises conducted by Lessee prior to the Commencement Date are referred to herein as "**Property Condition Reports**." Lessee shall deliver to Lessor copies of all Property Condition Reports promptly after the same are prepared or received by Lessee. Lessor acknowledges that Lessee does not represent or warrant the completeness or accuracy of the Property Condition Reports and Lessor shall not disclose any Property Condition Report to any third party without Lessee's prior written approval, unless Lessor is required by law to make such disclosure; provided, however that Lessor may, at Lessor's sole risk, use the Property Condition Reports for any purpose and distribute them as Lessor wishes following the expiration or earlier termination of this Lease. If this Lease is terminated for any reason on or before the Commencement Date, then Lessee shall provide to Lessor copies of any and all Property Condition Reports not later than ten (10) days after such termination.

#### 4. USES

**4.01. Use.** Lessee shall use the Premises solely for the construction, operation, maintenance, and repair of \_\_\_\_\_ (the "**Project**"). Lessee shall not at any time during the Term after the Commencement Date abandon the Premises. Upon substantial completion of the Project Improvements, Lessee shall continuously operate and conduct in 100% of the Premises the uses permitted by this section, with a full staff and full services, equipment and furnishings.

**4.02. Special Provisions Related to Use.** This Lease has been executed as a result of Lessor's Request for Proposal, RFP No. \_\_\_\_\_ (the "**RFP**") and Lessee's response thereto (the "**RFP Response**"). The RFP and the RFP Response address matters related to the operation of the Project, including, without limitation, \_\_\_\_\_ between the parties. Lessee's proposals in the RFP Response for operation of the Project are a material inducement to Lessor in entering into this Lease and are incorporated herein by this reference for all purposes.

**4.03. Signs.** Before erecting or placing any sign upon the Premises, Lessee shall submit the design and specifications of such sign to Lessor for approval, which approval shall not be withheld if such signage is consistent with The University of Texas at Austin's current signage policy or such signage was included in the Plans and Specifications.

**4.04. Compliance with Laws.** Lessee shall comply with all ordinances, laws and regulations of all governmental authorities applicable to and as are required for Lessee's use and operation of the Premises as such ordinances, laws, and regulations are enforced by any governmental authority having jurisdiction with respect to the Premises, including, without limitation, the Rules and Regulations of the Board of Regents of The University of Texas System and the institutional rules and policies of The University of Texas at Austin (collectively, "**Governmental Regulations**"). The Board of Regents of The University of Texas System and The University of Texas at Austin ("**UTAustin**") may enforce and apply Governmental Regulations on the Premises and to any person in or on the Premises, and may authorize UT Austin officers and commissioned peace officers to provide such enforcement, subject to the jurisdictional limitations provided by law.

**4.05. Limitation on Detrimental Uses**

a. Lessee shall not use the Premises for any unlawful purpose or cause, permit or suffer any waste, damages, or injury to, or nuisance upon, any portion of the Premises. Lessee shall not permit any use of the Premises that is unlawful or sexually explicit or that pertains to sexually oriented businesses.

b. Lessee shall comply with all regulations, ordinances, rules and laws regarding hazardous substances and wastes applicable to the Premises or to Lessee's or any Subtenant's occupancy and use of the Premises. Any hazardous substances or wastes located on the Premises and arising out of Lessee's or any Subtenant's, contractor's, employee's, or assignee's occupancy and use or activities on the Premises from and after the Effective Date and prior to expiration or earlier termination of this Lease shall be the responsibility of Lessee and Lessee shall be liable and responsible therefor, including, without limitation: (i) removal thereof from the Premises to the extent required by any governmental authority with jurisdiction of any such substances or wastes and the costs therefor; (ii) damages to persons, property and the Premises caused thereby; (iii) claims resulting therefrom; (iv) fines and costs imposed by any governmental agency in respect thereto; and (v) any other liability as provided by law relating thereto. **Lessee shall defend, indemnify, and hold harmless Lessor and other Lessor Parties from any and all such responsibilities, damages, claims, fines, and liabilities, including, without limitation, any costs, expenses and attorney's fees therefor.** This indemnification obligation shall survive the expiration or earlier termination of this Lease. No underground or other storage tanks storing hazardous substances shall be located or caused to be located by Lessee on the Premises. Lessee shall immediately disclose to Lessor any knowledge Lessee may have of any hazardous materials that have been stored, used, or disposed of on the Premises in violation of applicable laws.

**5. RENT**

**5.01. Minimum and Percentage Rent.** If this Lease has not theretofore been canceled by Lessee as provided hereinabove, then minimum and percentage rent shall begin to accrue as provided below.



a. Lease Year. The term "Lease Year" as used in this Lease means twelve (12) calendar months during the Term beginning on the Commencement Date if the Commencement Date falls on the first day of a calendar month. If the Commencement Date does not fall on the first day of a calendar month, then, for the purposes of this Lease, the first year of the Term shall consist of such initial partial month plus the twelve (12) immediately following calendar months. The second Lease Year and each succeeding Lease Year shall consist of the twelve (12) months immediately following the expiration of the immediately preceding Lease Year. Annual Minimum Rent and Annual Percentage Rent (defined below) shall be prorated for any fractional years.

b. Rent Start Dates. The first installment of Annual Minimum Rent shall be due and payable upon the earlier of (i) one hundred twenty (120) days following the Commencement Date; or (ii) the date upon which the City of Austin issues a Certificate of Occupancy showing approval of completion of the construction of the Project Improvements (the earlier of those dates is called the "**Annual Minimum Rent Start Date**"). Annual Percentage Rent shall begin upon the commencement of any activity on the Premises that is subject to payment of percentage rent (the "**Annual Percentage Rent Start Date**"). Annual Percentage Rent may be due and payable prior to the Annual Minimum Rent Start Date.

c. Annual Minimum Rent. Starting on the Annual Minimum Rent Start Date, Lessee shall pay to Lessor without setoff, demand, abatement or claim, as annual minimum rent ("**Annual Minimum Rent**"), \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) per year payable in advance, in equal monthly installments of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) each, on the first day of each calendar month for each Lease Year payable as hereinafter provided. Lessee shall pay monthly one-twelfth (1/12th) of the Annual Minimum Rent. Annual Percentage Rent as described below, may be paid in addition to Annual Minimum Rent.

d. Adjustment of Minimum Rent. [Specify here any scheduled increases ("**Adjusted Annual Minimum Rent**") in Annual Minimum Rent over the Lease Term.]

e. Annual Percentage Rent. From the Commencement Date forward, payment of Annual Percentage Rent shall commence upon the beginning of any activity that is subject to payment of Annual Percentage Rent. During any month when cumulative Annual Percentage Rent exceeds that month's cumulative Annual Minimum Rent, Lessee shall pay to Lessor Annual Percentage Rent ("**Annual Percentage Rent**") in addition to Annual Minimum Rent. Annual Percentage Rent shall be based upon the following percentages of the gross sales and rents of the operations and businesses conducted on or from the Premises as follows:

[Specify percentages.]

f. Annual Percentage Rent and Gross Parking Revenues Reporting. Unless otherwise agreed in writing by the parties, Lessee shall account to Lessor on an accrual basis. On or before the thirtieth (30th) day of each month, Lessee shall render to Lessor, in a form prescribed by Lessor, a detailed report of Gross Sales, Gross Rent and Gross Parking Revenues (defined below) for that portion of the Lease Year that ends with and includes the last day of the previous calendar month. Each report shall be signed by Lessee or its responsible agent under penalty of perjury and shall include the following:

i. Total Gross Sales, Gross Rent and Gross Parking Revenues for that portion of the Lease Year that ended with and included the last day of the previous calendar month. Gross Sales and Gross Rent shall be itemized as to each of the business categories for which a separate Annual Percentage Rent rate is established;

ii. The related itemized amounts of Annual Percentage Rent computed as herein provided and the total thereof;

iii. The total Annual Minimum Rent [*or Adjusted Annual Minimum Rent*] previously paid by Lessee for that portion of the Lease Year that ended with and included the last day of the previous calendar month.

g. Amount of Annual Percentage Rent Payment. Concurrently with the rendering of each monthly statement, Lessee shall pay the following amount:

The total Annual Percentage Rent computed for that portion of the Lease Year ending with and including the last day of the preceding month (Section 5.01.f.ii), less total Annual Minimum Rent [*or Adjusted Annual Minimum Rent*] previously paid for the Lease Year ending with and including the last day of the preceding month (Item 5.01.f.iii).

In the event that the cumulative Annual Minimum Rent [*or Adjusted Annual Minimum Rent*] previously paid for that portion of the Lease Year that ends with and includes the last day of the preceding month exceeds the cumulative Annual Percentage Rent due for the portion of the Lease Year ending with and including the last day of the preceding month, then, no payment of Annual Percentage Rent shall be due until the next month in which cumulative Annual Percentage Rent exceeds cumulative Annual Minimum Rent. Annual Minimum Rent shall always be due on the first day of each month.

#### **5.02. Records and Definitions of "Gross Sales" and "Gross Rent."**

a. Records. Lessee shall, at all times during the Term of this Lease, at Lessee's cost, keep accurate and complete records and books of account of all financial transactions in the operation of all business activities, of whatever nature, conducted pursuant to the rights granted herein. Lessee shall cause all subtenants, licensees, franchisees, concessionaires and other persons occupying, using, or conducting business from the Premises, the Parking Tract (defined below), or a portion thereof ("*Subtenants*") to comply with the terms of this paragraph as well. The records must be supported by source documents of original entries such as sales invoices, cash register tapes, purchase invoices, or other pertinent documents. All cash registers must be equipped with sales totalizer counters for all sales categories, as herein provided, and a sequential transaction counter. Counters must lock in, constantly accumulate, and must not allow resetting. Said registers shall further contain tapes upon which sales details and sequential transaction numbers are imprinted. Beginning and ending sales totalizer readings shall be made a matter of daily record or recorded by means approved by Lessor. Sales that are subject to the payment of Annual Percentage Rent may be recorded by a system other than cash registers, provided such system is approved in writing by Lessor.

All of Lessee's books of account, records and documentation (including all Subtenants') related to this Lease or to business operations conducted within or from the Premises and/or the Parking Tract shall be kept either at the Premises or at such other locations as are acceptable to Lessor, and Lessor shall have the right at any and all reasonable times to examine and audit said books and records without restriction for the purposes of determining the accuracy thereof and of the monthly statements of Gross Sales, Gross Rent, and Gross Parking Revenues submitted and of the Annual Percentage Rent and the Parking License Fee (defined below) paid to Lessor. Lessee's or Subtenant's failure to keep such books of account, records and documentation and make them available for inspection by Lessor is a breach of this Lease and an event of default. Lessor shall have the discretion to require the installation of any additional accounting method or controls as Lessor may deem necessary. In the event Lessee does not make available the original records and books of account at the Premises or within the geographic boundaries of Travis County, Texas, Lessee agrees to pay all necessary travel expenses incurred by Lessor in conducting an audit at the location where

said records and books of account are maintained. Otherwise, the cost of said audit shall be borne by Lessor unless (i) the audit reveals a discrepancy of more than five percent (5%) between the Rent due as reported by the Lessee in accordance with this Lease and the Rent due as determined by the audit and/or (ii) Lessee has failed to maintain complete and accurate books of account, records, and documentation in accordance with this subparagraph. In the event of a greater discrepancy and/or Lessee has failed to maintain complete and accurate books of account, records and documentation in accordance with this subparagraph, the cost of the audit, as determined by Lessor, shall be paid by Lessee.

b. Gross Sales and Gross Rent. The gross sales (the "**Gross Sales**") upon which the Annual Percentage Rent is to be based shall include all income resulting from the occupancy or uses of the Premises (uses specifically referenced above in Section 5.01.e. as producing "gross sales" rental) in any manner whether by Lessee, Subtenants or parties operating through Lessee or Subtenants, from whatever source derived and whether for cash or credit or in kind, except that all income from the sale of alcoholic beverages shall be excluded. Gross Sales shall include the entire amount of the sales price of all sales of merchandise (including gift and merchandise certificates), food, beverages, services and other receipts whatsoever of all business conducted (including, without limitation, interest, finance charges, service charges, and credit sales) in or from the Premises, including mail or telephone orders received or filled at the Premises whether or not delivered out of the Premises and even though said orders may be filled elsewhere, proceeds from rent loss insurance, deposits not refunded to purchasers, and sales to employees. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Lessee or Subtenant receives payment from the customer. No deduction shall be allowed for uncollected or uncollectible credit accounts. The gross rent (the "**Gross Rent**") upon which the Annual Percentage Rent is to be based shall include all rents, whether fixed, percentage or additional, revenues, and commissions received by Lessee from Subtenants for the use and occupancy of the Premises or a portion thereof. Gross Rent shall not include "pass through" payments, separately identified and billed as such, made to Lessee by Subtenants representing their share of common area maintenance and operation, real estate taxes, insurance, and Subtenant's utility expenses paid by Lessee. Gross Sales and Gross Rent shall not include any sales taxes payable by Lessee or Subtenants to any governmental agency as a direct result of operations under this Lease. The amount of such taxes shall be shown on the books and records elsewhere herein required to be maintained.

Lessee agrees to use its best efforts to maximize Gross Sales, Gross Rent and Gross Parking Revenues consistent with competitive practices in the industry and Lessee will abide by industry standards and exercise good faith in identifying items of revenue as "pass through" payments. Lessee shall have the right to deduct from Gross Rent any accrued unpaid rental over 60 days old due from Subtenants, the collection of which is diligently and aggressively pursued.

The terms Gross Sales and Gross Rent shall not include any proceeds attributable to a Capital Transaction or a Refinancing or insurance proceeds from casualty damage, but shall include any proceeds received by Lessee from rent loss insurance. "Capital Transaction" means the sale, assignment, condemnation or other disposition of all or part of Lessee's leasehold interest in the Premises. "Refinancing" means any loan to Lessee that is secured by all or any part of Lessee's leasehold interest.

c. Annual Statements and Payments. Lessee shall submit to Lessor on or before the last day of the third calendar month following the end of each Lease Year a complete statement certified by an independent Certified Public Accountant (reasonably approved by Lessor) and signed by Lessee or its designated agent showing (a) Gross Sales, Gross Rent and Gross Parking Revenues during the immediately preceding Lease Year, (b) the Minimum and Annual Percentage Rent paid, and (c) the Minimum and Annual Percentage Rent payable for said Lease Year. Concurrently with the delivery of the foregoing statement, Lessee shall deliver to Lessee payment statements derived from sales tax reports, as required by Section 2252.063 of the Texas Government Code, or as it may be amended from time to time. Any Rent due for said Lease Year exceeding total Rent previously paid shall be paid by Lessee with the submission

of this statement. Any overpayment of Rent disclosed by this statement may be deducted by Lessee from the subsequent installments of Annual Minimum Rent due. Each statement required by this section shall include and reflect all data necessary for an accurate computation of the Rent due under this Lease. Lessee shall retain all records reflecting the Gross Sales, Gross Rent and Gross Parking Revenues from the Premises or the Parking Tract for a period of four (4) years after the close of each Lease Year and shall make such records available for inspection by Lessor or an auditor or other representative designated by Lessor.

**\*\* ALTERNATE RENT PROVISIONS \*\***  
**(will require changes to rent terminology used below)**

**[5.01 Premises Rent.** If this Lease has not theretofore been canceled by Lessee as provided hereinabove, then within \_\_\_\_\_ (\_\_\_\_) business days following the Commencement Date, Lessee shall pay to Lessor the sum of \_\_\_\_\_ and NO/100 DOLLARS (\$\_\_\_\_\_) in cash, such sum being a prepayment of the total amount of Premises Rent due and to become due to Lessor for the entire [Primary] Term. Failure by Lessee to timely prepay the Premises Rent as aforesaid shall render this Lease void.]

**[5.01 Premises Rent.** If this Lease has not theretofore been canceled by Lessee as provided hereinabove, Lessee shall commence paying to Lessor the Premises Rent on the Commencement Date. For the first Lease Year, Lessor shall pay Premises Rent in the amount of \_\_\_\_\_ and NO/100 DOLLARS U.S. (\$\_\_\_\_\_ U.S.), payable in advance on the Commencement Date. Rental for each subsequent Lease Year of the [Primary] Term shall increase by \_\_\_\_\_% over the Premises Rent due for the immediately preceding Lease Year and shall be due and payable in advance on or before the expiration date of the immediately preceding Lease Year.

**\*\* END ALTERNATE PROVISIONS \*\***

**5.03. Parking [Maintenance] [License] Fee.** Lessee shall pay the [Parking Maintenance Fee] [Parking License Fee] described in Section 10.02 as stated therein. The [Parking Maintenance Fee] [Parking License Fee] shall be in addition to Annual Minimum Rent and Annual Percentage Rent and shall constitute "Additional Rent" (defined below).

**5.04. Late Charge.** If Lessor has not received at the address set forth in Section 21.01.b., any installment of Annual Minimum Rent, [*Adjusted Annual Minimum Rent,*] Annual Percentage Rent or Additional Rent within fifteen (15) days of the date due, Lessee shall be subject to a "Late Charge" of one and one-half percent (1.5%) of the installment due for each month or portion thereof for which the Rent is not paid. No late charge shall be applied to Annual Minimum Rent, Annual Percentage Rent, or Additional Rent concerning which the parties are in dispute. Any underpayment of Annual Minimum Rent, Annual Percentage Rent, or Additional Rent that has not been paid because of a dispute between Lessor and Lessee shall bear interest at ten percent (10%) per annum ("**Agreed Rate**") for the appropriate period between the date such underpayments were originally due and the date actually paid. Interest shall never exceed the maximum rate allowed by law.

**5.05. Additional Rent and Rent.** All amounts required to be paid by Lessee under this Lease other than Annual Minimum Rent[, *Adjusted Annual Minimum Rent,*] and Annual Percentage Rent are herein from time to time collectively referred to as "Additional Rent." Annual Minimum Rent[, *Adjusted Annual Minimum Rent,*] Annual Percentage Rent and Additional Rent are collectively called "Rent."

**5.06. Place of Payment and Form of Payment of Rent.** Rent shall be payable to Lessor at the original or changed address of Lessor as set forth in Section 21.01.b. or to such other persons or at such other

addresses as Lessor may designate from time to time in writing to Lessee. Rent shall be paid to Lessor by Lessee in lawful money of United States of America without notice or demand.

**5.07. No Abatement.** No happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder to pay Rent, or entitle Lessee to an abatement of Rent. Lessee waives any rights now or hereafter conferred upon it by statute, proclamation, decree, order, or otherwise, to any abatement, diminution, reduction, offset, or suspension of Rent because of any event, happening, occurrence, or situation whatsoever.

**5.08. Unrelated Business Income.** If Lessor is advised by its counsel or tax advisor at any time that any part of the payments by Lessee to Lessor under this Lease may be characterized under the Internal Revenue Code or its regulations as unrelated business taxable income or may not be excludable from unrelated business taxable income, then Lessee, at the option of Lessor, shall enter into an amendment of this Lease that will enable Lessor to avoid such income, so long as the amendment does not require Lessee to pay more to Lessor or accept fewer services from Lessor than this Lease provides.

## 6. TAXES

**6.01. On Real Property.** Lessee, with Lessor's reasonable cooperation, shall act diligently to cause the Premises to be recognized as a separate tract for real estate tax purposes. Lessee shall pay prior to delinquency any and all taxes, special assessments, impact fees, user fees, development fees, land use exactions, and any other fees, levies or charges pertaining to, affecting, or assessed against Lessee's leasehold estate and/or the Premises or the Improvements (defined herein), and any "gross receipts" or similar tax ever imposed on Lessor, which tax relates to the rentals due hereunder, made or approved by any governmental or public authority or entity, including, without limitation, the City of Austin, Travis County, or the State of Texas, levied, assessed, accrued, or payable on and after the Commencement Date and for periods during the Term (collectively, the "**Impositions**"). Lessee shall pay the Impositions before delinquency directly to the taxing authority or authorities concerned. **Lessee hereby agrees to defend and indemnify and hold harmless Lessor and other Lessor Parties from and against all claims and all costs, expenses, and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of or in any way related to the Impositions.** This indemnification obligation shall survive the expiration or earlier termination of this Lease.

**6.02. Accrual Date.** Lessee will not be in possession of the Premises prior to the Commencement Date (although Lessee shall have the right of entry thereon for the purpose of conducting its tests, studies, and analyses) and Lessor and Lessee do not anticipate that any Impositions will be levied, assessed, accrue or be payable with regard to the Premises between the Effective Date of this Lease and the Commencement Date. If any such amounts shall be levied, assessed, accrue or be payable prior to the Commencement Date due to the execution of this Lease or Lessee's activities on the Premises, Lessee shall pay the same in accordance with the provisions of the immediately preceding paragraph of this Lease.

**6.03. Other Taxes.** Lessee shall pay without abatement, deduction or offset all personal property taxes, general and special assessments and other charges of every description levied on or assessed against all personal property located on the Premises by Lessee and all business and other taxes levied or assessed because of Lessee's occupancy of the Premises, or on the business or income of Lessee or Lessee's Subtenants generated from the Premises (collectively referred to in this Section 6.03 as "**Taxes**"). Except for those Taxes being diligently contested in good faith by appropriate proceedings, Lessee shall make all such payments directly to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of such Taxes in installments (whether or not interest accrues on the unpaid balance), Lessee may, at Lessee's election, utilize the permitted installment method.



**6.04. Lessee's Right to Contest.** Lessee may contest the legal validity or amount of any Taxes or Impositions for which Lessee is responsible under this Lease, and may institute such proceedings as Lessee considers necessary. If Lessee contests any such Tax or Impositions, Lessee, to the extent permitted by applicable law, may withhold or defer payment or pay under protest; provided, however, that in no event shall Lessee permit the Premises, the Parking Tract, the Improvements or Lessee's leasehold estate to be forfeited to the taxing authority. Prior to the date any contested Taxes or Imposition shall become due, Lessee shall advise Lessor in writing that Lessee intends to contest the same. Lessee shall, immediately upon the request of Lessor and then only if Lessee is not required to deposit the same pursuant to the terms of any then outstanding Mortgage (hereinafter defined), deposit with Lessor or, at the election of Lessee, a bank or trust company having its principal place of business in Texas, selected by Lessee and reasonably satisfactory to Lessor, an amount sufficient to pay such contested item, together with any interest and penalties thereon and the estimated fees and expenses of the trustee holding such funds, which amount shall be applied to the payment of such Taxes or Impositions when the amount thereof shall be finally determined. Lessee shall provide Lessor notice if Lessee is obligated to make such deposit pursuant to the terms of any outstanding Mortgage and shall provide reasonable evidence that such deposit has been made when required. In lieu of such cash deposit, Lessee may deliver to Lessor a surety company bond in form and substance and issued by a company satisfactory to Lessor, or other security reasonably satisfactory to Lessor. Lessor may pay directly to the taxing authority or direct the application of amounts so deposited or so much thereof as may be required to pay any unpaid Taxes or Impositions, together with penalties and interest thereon, for the benefit of Lessee if Lessee is not in good faith pursuing a protest of such Taxes or Impositions or to prevent the sale of the Premises, the Parking Tract, the Improvements, or Lessee's leasehold estate by applicable taxing authorities as a consequence of Lessee's failure to pay Taxes accruing during the Term. Notwithstanding the foregoing, if Lessee is required by the taxing authority to post sufficient bond or indemnity with the taxing authority to pay such Taxes or Impositions, then Lessee shall not be required to make any such deposit with Lessor. If Lessor pays all or any portion of such Taxes or Impositions, Lessee shall immediately pay to Lessor, as Additional Rent hereunder, the amount so paid by Lessor, together with interest thereon from the date paid by Lessor until repaid by Lessee at the per annum rate (the "**Default Rate**") equal to the lesser of (x) the maximum non-usurious rate permitted by Texas law, or (y) the prime rate announced from time to time by \_\_\_\_\_, its successors or assigns, plus five percent (5%).

## 7. UTILITIES

**7.01. Utilities.** Lessee shall pay when due all bills for water, heat, gas, telephone, electricity, garbage disposal and collection, and other utilities used on the Premises and shall pay all connection charges, capital recovery fees, utility expansion charges, tap fees, sewer rents, sewer charges, and all other similar fees and charges associated therewith. Lessee shall obtain and pay for all infrastructure and utilities to serve the Premises and the facilities to be located thereon, including bringing all necessary utilities to the Premises.

## 8. NET LEASE

**8.01. Net Lease.** Lessor shall not be required to make any expenditure, incur any obligation (other than those expressly set forth in this Lease), or incur any liability of any kind whatsoever in connection with this Lease or Lessee's financing, ownership, construction, maintenance, operation, or repair of the Premises or the Improvements. It is expressly understood and agreed that this is a completely net lease intended to assure Lessor the Rent herein reserved on an absolute net basis.

## 9. IMPROVEMENTS

**9.01. Construction of Project.** The "**Project Improvements**" referred to in this Article 9 shall mean and refer to \_\_\_\_\_ with not less than \_\_\_\_\_ [specify minimum criteria for facility] and not less than \_\_\_\_\_ percent (\_\_\_\_%) masonry exterior (excluding roof

materials), all to be constructed on the Premises by Lessee in accordance with the plans and specifications approved by Lessor for the construction of the Project Improvements and for landscaping. "**Improvements**" shall mean the Project Improvements and any and all other improvements now existing or hereafter placed on the Premises by Lessee as permitted by this Lease. Any plans and specifications approved by Lessor for the construction of the Improvements shall be referred to herein as the "**Plans and Specifications.**"

**9.02. Plans and Specifications.** Not later than \_\_\_\_\_ (\_\_) days prior to the expiration of the Inspection Period, Lessee shall submit to Lessor for its approval the plans and specifications sufficient for the construction of the Project Improvements and prepared by architects and engineers registered in the State of Texas. Lessor shall respond to Lessee's request for approval of the plans and specifications within twenty-one (21) days after receipt by Lessor. If Lessor objects thereto, Lessee shall provide to Lessor for further review revised plans and specifications within fifteen (15) business days following receipt of Lessor's objections. This process of preparation, submittal, review, and resubmittal shall continue until the plans and specifications are approved by Lessor. *[If the parties are unable to agree on the plans and specifications within \_\_\_\_\_ (\_\_) days after the Commencement Date, this Lease shall terminate and neither party shall have any further obligations except for obligations that are stated to expressly survive termination of this Lease.]* No construction may begin until Lessor has approved the plans and specifications and the City of Austin has issued a building permit. The plans and specifications approved by Lessor shall be incorporated into this Lease by this reference for all intents and purposes.

**9.03. Additional Review Matters.** Lessor shall have the right to ensure that the proposed Improvements are compatible with the existing or permitted uses of property in and around the Premises, and that the architectural elements of the Improvements are sympathetic to buildings on adjoining parcels and are consistent with Lessor's then current design standards. To this end, Lessee shall provide to Lessor samples of actual materials (including color) for the following: (a) roofing, (b) masonry, and (c) exterior paint.

**9.04. Pre-Construction Requirements.** Prior to commencement of construction (or, after completion of the Improvements, prior to undertaking any Remodeling (defined below)), (1) Lessee shall deliver to Lessor a copy of the signed contract between Lessee and the general contractor for construction of the Improvements ("**Construction Contract**") or any contract between Lessee and the general contractor for Remodeling, as applicable; and (2) Lessee shall provide payment and performance bonds in an amount equal to the contract price set forth in the Construction Contract or the contract for Remodeling, as applicable, naming Lessee and Lessor as dual obligees, satisfactory in form and content to Lessor, and issued by a surety satisfactory to Lessor. Lessor shall note in writing any required changes or corrections to the payment bonds and performance bonds for work to be done pursuant to the Plans and Specifications or the Remodeling Plans (as defined in Section 9.10 below) within five (5) business days after receipt thereof.

**9.05. Completion of Project Improvements.** Lessee, at Lessee's sole cost, risk and expense, shall commence construction of the Project Improvements upon receipt of a building permit from the City of Austin and shall diligently pursue such construction to completion. In all events, Lessee shall commence construction of the Project Improvements within \_\_\_\_\_ (\_\_) days following the Effective Date and complete the same within \_\_\_\_\_ (\_\_) days following the Effective Date, subject to delays of not more than \_\_\_\_\_ (\_\_) days in the aggregate resulting from events of Force Majeure (as defined in Section 17.05 below). Lessee shall not make any change to the Project Improvements as shown in the plans and specifications approved by Lessor without the prior written consent of Lessor. 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 construction or Remodeling. During construction, the work shall be subject to inspection by Lessor's representatives and by the City of Austin inspectors and personnel in order to verify reports of construction, determine compliance with safety, fire and building codes and determine compliance with approved Plans and Specifications or Remodeling Plans or such other inspections as may be necessary in the reasonable opinion of the Lessor.

**9.06. Construction Standards.** Any and all Improvements shall be constructed, and any and all alteration, renovation, repair, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "**Construction Standards**" (herein so called):

a. All such work shall be performed without cost, expense or other liability to Lessor and in a good and worker-like manner in accordance with good industry practice for the type of work in question and in accordance with the Plans and Specifications or the Remodeling Plan, as applicable. All work shall be performed by Lessee's contractors, subcontractors or agents and at the sole cost and risk of Lessee. *[All contractors, subcontractors or agents must be reputable, hold active licenses if required by law, and are subject to Lessor's prior approval (such approval by Lessor not to be unreasonably withheld or delayed).]* Lessee shall pay all architectural and engineering fees, any permit or license fees, and all other costs and expenses associated with the work;

b. All such work shall be done in compliance with all applicable building codes, ordinances, deed restrictions, and other laws or regulations of governmental authorities having jurisdiction;

c. No such work shall be commenced until there shall have been first obtained all licenses, permits, and authorizations required by all governmental authorities having jurisdiction;

d. Lessee shall have obtained and shall maintain in force and effect the insurance coverage required in Article 14 with respect to the type of construction or work in question;

e. After commencement, such work shall be prosecuted with due diligence to its completion;

f. Lessee shall coordinate construction with UT Austin to minimize disruption;

g. Lessee shall provide as-built plans to Lessor after construction is completed;

h. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 (PB-89-66, 80 STATUTE 915; 16 U.S.C.A. §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN., IN EACH CASE AS MAY BE AMENDED FROM TIME TO TIME. BEFORE BREAKING GROUND AT THE PREMISES, LESSEE SHALL NOTIFY THE TEXAS HISTORICAL COMMISSION. AN ARCHEOLOGICAL SURVEY MIGHT BE REQUIRED BY THE COMMISSION BEFORE CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS CAN COMMENCE. FURTHER, IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS LEASE, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY LESSOR SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE. In the event Lessee is required to cease work, Lessor shall not be liable for any costs of Lessee, Lessee's contractors, subcontractors or any other person or entity as a result of any interruption of Lessee's use of the Premises; and

i. Lessee shall cause all Improvements and alterations to the Premises to be designed, constructed, maintained, and operated in accordance with (i) the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and the Texas Architectural Barriers Act (Government Code, Chapter 469) all amendments thereto, and all regulations promulgated thereunder, and (ii) the ordinances and codes of the City of Austin, Texas, notwithstanding the applicability of such ordinances and codes to construction located on property owned by the State of Texas. Lessee shall obtain a building permit from the City of Austin and shall cooperate fully with all inspectors and other officials of the City of Austin concerning



design, construction, maintenance, and operation of all Improvements; nothing herein shall be deemed or interpreted to impose upon the Premises City of Austin zoning, density, or other development requirements.

j. Lessee shall ensure that, during site preparation and construction of the Improvements, the Premises shall be maintained in a condition that is reasonably neat and clean, including without limitation the frequent removal and proper disposition of trash and debris.

**9.07. Protection of Lessor against Cost or Claim.** Lessee shall not permit to be foreclosed any mechanic's or materialman's lien or other statutory lien against the Premises or Improvements by reason of work, labor, services, or materials supplied to or at the request of Lessee pursuant to any construction on the Premises, or materials or labor supplied to or at the request of Lessee. Lessee shall pay and discharge, cause to be paid and discharged, or bond around any such mechanic's or materialman's lien filed against the Premises or Improvements within twenty (20) days after the filing thereof. Lessee may in good faith and at Lessee's own expense contest the validity of such asserted lien, claim or demand, in which event Lessee shall bond around such lien or claim. In no event shall Lessee have the right, authority or power to bind Lessor or any interest of Lessor in the Premises for any claim for labor or material or for any other charge or expense incurred in the construction or alteration of the Improvements.

**9.08. Maintenance.** Throughout the Term hereof, Lessee, at Lessee's sole cost and expense, shall continuously maintain the Premises and Improvements in good condition and repair (ordinary wear and tear excepted), obtain all janitorial, management and landscaping services reasonably necessary for use of the Premises as contemplated herein, and operate and maintain the Premises and Improvements in accordance with all applicable laws, rules, ordinances, orders and regulations of federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction over the Premises. Lessor shall have no obligation to maintain or repair the Premises or any Improvements.

**9.09. Ownership of Improvements.** Except as otherwise provided herein in respect to Lessee's right to remove certain personal property, all Improvements shall be owned by Lessee until the expiration or earlier termination of this Lease. Unless Lessor has exercised its option to require Lessee to demolish the Improvements, all Improvements on the Premises, at the expiration or earlier termination of this Lease shall, without compensation to Lessee, become Lessor's property free and clear of all claims to or against them by Lessee or anyone claiming by, through or under Lessee.

**9.10. Alterations.** At least sixty (60) days prior to undertaking any material structural alteration, renovation, or remodeling of the Improvements ("**Remodeling**"), Lessee shall submit plans for such Remodeling (the "**Remodeling Plans**") to Lessor for approval, which approval shall not be unreasonably withheld provided that such changes or alterations (i) are consistent with the Plans and Specifications approved by Lessor, and (ii) do not result in a substantial or material change in the character or the facade of the Improvements existing as of the date of such alterations. Lessor shall either approve or disapprove any such Remodeling Plans within thirty (30) days after receipt of such plans from Lessee.

**\*\* OPTIONAL PARKING PROVISIONS – MAY NOT BE REQUIRED \*\***

#### **10. PARKING LOT LICENSE**

**10.01. Parking Lot License.** On the Commencement Date of this Lease, the terms of this Article 10 shall constitute a Parking Lot License binding on the parties to this Lease. In addition to the parking located on the Premises in accordance with the approved Plans and Specifications, Lessee shall be entitled to parking under the terms of this Lease, said parking rights being solely for uses appurtenant to the use by Lessee of the Premises. Lessee shall be entitled to the appurtenant nonexclusive use of up to 2,000 parking spaces after 5:00 p.m. local time on weekdays and at any time on Saturdays, Sundays and official UT Austin holidays on the UT Austin surface parking lots located [*describe location*], as more particularly described in Exhibit C ("**Parking Tract**"). Lessee shall provide at least \_\_\_\_ days prior notice to Lessor's designated

representative of Lessee's intended use of the Parking Tract. From time to time, Lessor may substitute other UT parking lots or parking garages for those described in Exhibit C by giving ninety (90) days prior notice to Lessee. In no event, however, shall such substitute parking lot(s) consist of less than 2,000 parking spaces in the aggregate. Parking privileges under this Parking Lot License shall benefit Lessee and Lessee's employees, agents, customers, guests, visitors, invitees, licensees, tenants, subtenants, and concessionaires. Lessee shall not have any right to erect or display any signs, make any alterations, additions or modifications therein or thereto, or conduct any business or activity on the Parking Tract other than erecting temporary signs identifying the parking lots as available for event parking and charging parking fees as permitted herein.

**10.02. Parking License Fee.** During the entire Term, Lessee shall pay to Lessor on the first day of each calendar month a Parking License Fee (herein so called) equal to \_\_\_\_% [percentage must be at least 30%] of the gross revenues from all parking fees charged by Lessee for the use of the Parking Tract and all other income resulting from Lessee's use of the Parking Tract during the preceding month (the "**Gross Parking Revenues**"). The Gross Parking Revenues shall include the entire amount of parking fees and other receipts whatsoever from the Parking Tract (including, without limitation, that portion of event tickets or admission fees that is in lieu of a separate parking fee, interest, finance charges, service charges, credit sales, and charges to employees), but shall not include any sales taxes payable by Lessee to any governmental agency as a direct result of Lessee's operations under this Parking Lot License.

**\*\* OPTIONAL PARKING PROVISIONS \*\***  
**(will require revisions to terminology globally)**

## **10. SHARED PARKING AGREEMENT**

**10.01. Shared Parking.** On the Commencement Date of this Lease, the terms of this Article 10 shall constitute a Shared Parking Agreement binding on the parties to this Lease. In addition to the parking located on the Premises in accordance with the approved Plans and Specifications, Lessee shall be entitled to shared parking under the terms of this Lease, said shared parking rights being solely for uses appurtenant to the use by Lessee of the Premises. Lessee shall be entitled to the appurtenant nonexclusive use of up to \_\_\_\_\_ parking spaces located [*describe location*], as more particularly described in Exhibit C ("**Parking Tract**"). Parking privileges under this Shared Parking Agreement shall benefit Lessor, Lessee, and their respective employees, agents, customers, guests, visitors, invitees, licensees, tenants, subtenants, and concessionaires. Lessee shall not have any right to erect or display any signs, make any alterations, additions or modifications therein or thereto, or conduct any business or activity on the Parking Tract. UT\_\_\_\_ may require that persons desiring to park vehicles on the Parking Tract purchase a UT\_\_\_\_ campus parking permit.

**10.02. Maintenance.** During the entire Term, Lessee shall pay to Lessor quarterly within fifteen (15) days after receipt of an invoice, Lessee's prorata share of all costs incurred during the prior calendar quarter for the following maintenance of the Parking Tract: (i) cleaning and sweeping of parking areas; (ii) restriping of parking spaces; (iii) watering, mowing, pruning, pest control and fertilizing of trees, shrubs, flowers or grass within the defined boundaries of the parking area; (iv) electricity used in parking area lighting; (v) parking area security; (vi) repaving, if necessary, but not the initial paving or construction of parking area surfaces. Lessee's prorata share shall be based upon the ratio of the number of parking spaces provided to Lessee hereunder to the total number of parking places on the Parking Tract.

**10.03. First-Come-First-Serve Basis.** Lessee shall be obligated to share parking on a "first-come-first-serve basis" in the Parking Tract.

**10.03. Rules and Regulations.** Lessee and all parties permitted herein to use these parking privileges shall comply with all policies, rules and regulations of Lessor and UT\_\_\_\_ applicable to the Parking Tract

from time to time in effect and all ordinances, laws and regulations of any governmental authority having jurisdiction over the Parking Tract. Notice of any changes or amendments to Lessor's or UT\_\_\_\_'s rules and regulations shall be delivered to Lessee by Lessor.

**10.04. Indemnification and Insurance.** Lessee agrees to extend all commercial general liability and workers' compensation insurance coverage required under this Lease to the Parking Tract and to those portions of the UT\_\_\_\_ campus over which Lessee's employees, customers, guests, visitors, invitees, licensees, tenants, subtenants and concessionaires may pass between the Parking Tract and the arena and convocation center. Lessee further agrees to indemnify and hold harmless Lessor and UT\_\_\_\_, in regard to all liability, causes of action and other losses associated with Lessee's, or its employees', agents', customers', guests', visitors', invitees', licensees', tenants', subtenants' and concessionaires' use of the Parking Tract.

**10.05. Parking.** It is expressly understood and agreed that Lessor will not have any obligation to furnish any attendant to park or deliver cars nor have any liability for damage to or loss or theft of any cars parked in the Parking Tract or damage to or loss or theft of contents left in any such cars.

**10.06. No Assignment or Sublease.** Lessee may not at any time assign, transfer, mortgage, pledge or hypothecate this Parking Lot License or any of its rights hereunder, or sublet one or more spaces granted hereunder without the prior written consent of Lessor in each instance. The foregoing shall also apply to any assignment that occurs or would occur by operation of law.

**\*\* END ALTERNATE PROVISIONS \*\***

## **11. ACCESS**

**11.01. Access for Lessor.** Lessee shall permit Lessor's agents, representatives, and employees to enter on the Premises 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, and for other reasonable purposes.

**11.02. Access for Lessee.** Lessor hereby grants to Lessee, its agents, employees and contractors the non-exclusive right of ingress and egress over and upon all real property now or hereafter owned by Lessor adjacent to the Premises in order that Lessee, its agents, employees and contractors may have reasonable access from a dedicated public right-of-way to and from the Premises of sufficient size and area to facilitate the use and occupancy of the Premises and reasonable pedestrian and vehicular access from and between such public right-of-way and the Premises over the sidewalks, streets and drives, whether now existing or constructed in the future, located thereon. The right of ingress and egress granted hereby shall constitute a covenant running with the Premises and such other real property owned by Lessor and shall expire upon the expiration or earlier termination of this Lease. The right of ingress and egress granted hereby shall be subject to Lessor's restrictions, rules and regulations upon the sidewalks, streets and drives and subject to modification of the location of the sidewalks, streets and drives from time to time by Lessor. The right of ingress and egress granted herein shall in no way restrict Lessor from exercising any of its rights to develop, control, lease, sell, or encumber any of the real property owned by Lessor. Vehicular access from and between the Premises and any public right-of-way shall be restricted to the streets and drives intended for vehicular ingress and egress that are now or may hereafter be constructed on the real property owned by Lessor.

**\*\* ADD SECTION 11.03, IF APPLICABLE\*\***

**11.03. Security Services.** Lessor shall have the right, but not the obligation, to provide such security services in and around the Premises and/or the Parking Tract that Lessor considers necessary and reasonable, taking into consideration the use of the Premises, the Parking Tract and the degree of security

services required or provided at similar projects located upon campuses that are a part of The University of Texas System. Such security services, if any, shall be provided subject to the jurisdictional limitations of the campus police as peace officers under Texas law and policies of the Board of Regents of The University of Texas System. Should Lessor elect to provide such security services, Lessee shall pay to Lessor Lessee's reasonable allocable share of the cost to Lessor of providing such security services upon receipt of a monthly statement therefor, provided that Lessee's share of such costs shall not exceed the reasonable and customary costs Lessee would incur if similar security services were provided by an independent third party for typical \_\_\_\_\_ located in \_\_\_\_\_. Lessor may require that persons desiring to park vehicles on the Premises or the Parking Tract obtain a UT \_\_\_\_ campus parking permit.

## 12. ENCUMBRANCE; LESSOR'S RIGHT TO TRANSFER

**12.01. Encumbrance.** Lessee shall have the right to mortgage, pledge, hypothecate or otherwise transfer or assign the leasehold estate granted hereby as security for a debt or other obligation incurred for the construction, maintenance, operation, repair or refinancing of the Improvements (collectively, a "*Mortgage*") without the necessity of any consent thereto from Lessor. Lessor hereby consents to a Mortgage (whether one or more) becoming liens on the right, title, and interest of Lessee in and to the leasehold estate created pursuant to the Lease; provided, however, in no event shall any such Mortgage attach to or become a lien on the Premises or any interest other than Lessee's leasehold estate and other rights, title, and interests granted to Lessee hereunder.

Lessor agrees that upon the occurrence of any event of default under the documents, instruments or agreements executed by Lessee in connection with the Mortgage, the party to whom such Mortgage has been granted (herein called a "*Lender*") may (but shall not be obligated to) assume, or cause a new lessee or purchaser of the leasehold estate created hereby to assume, all the interests, rights, and obligations of Lessee thereafter arising under this Lease; provided, however, that any prior defaults by Lessee must be cured pursuant to this Lease within sixty (60) days, as such period may be extended as hereinafter provided, after the date of notice to Lender as herein provided. Lessor hereby agrees to provide written notice to each Lender whose name has been provided to it and is designated as a Lender pursuant to this Article 12 of any default by Lessee under this Lease whereupon such Lender shall have sixty (60) days to remedy such default prior to Lessor being entitled to exercise any remedies provided for herein on account thereof; provided, that, in respect to non-monetary defaults, if at the end of such sixty (60) day period Lender shall be actively engaged in acquiring or selling Lessee's interest in this Lease, such sixty (60) day period shall be extended for such further period as shall be reasonably necessary to enable Lender to acquire or sell Lessee's interests in this Lease and remedy such default so long as Lender is diligently pursuing the acquisition or sale of Lessee's interest in this Lease, curing or causing to be cured such default and, to the extent Lender is capable of complying, complying with all of the provisions of this Lease. No Lender shall be or become liable or responsible for the performance of Lessee's obligations hereunder until such time as such Lender acquires title to the interests of Lessee hereunder and, upon such Lender's assignment of such rights and interests to another, Lender shall be automatically relieved from all further obligations hereunder.

Each Lender must expressly agree in the loan documents that, subject to the rights of the Lender provided by this Lease, 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 Premises and the Improvements pursuant to the terms of this Lease.

For so long as there exists a Mortgage of which Lessor has been notified in writing by Lessee, Lessor agrees that it will not accept a voluntary surrender from, or a voluntary termination by, Lessee of the leasehold estate created hereby or any of the rights, titles and interests of Lessee in the Premises without the express

prior written consent of the Lender holding the same. Lessee shall promptly give written notice to Lessor of the release of any Mortgage.

Notwithstanding any contrary provision hereof, upon termination of this Lease for any reason (including, without limitation, bankruptcy of Lessee) other than by expiration of the Term or a Total Taking (defined below), Lender shall have the exclusive right and option, exercisable by delivery of written notice to Lessor within thirty (30) days following receipt by Lender of written notice from Lessor of the termination hereof, to elect to receive, in its own name or that of one of its affiliates, from Lessor a new lease for the Premises for the unexpired balance of the Term, such new lease to be on the same terms and conditions as herein provided; provided, however, that in such event Lender shall be entitled to receive such a new lease only if Lender shall cure any defaults by Lessee hereunder within thirty (30) days after entering into such new lease.

## **12.02. Lessor's Right to Transfer.**

a. Lessor may mortgage or grant a deed of trust lien or other lien (hereafter, whether one or more, "Lien") on Lessor's interest in the land contained in the description of the Premises (the "Fee Interest") or Lessor's interest under this Lease, subject to the terms and provisions of this Lease, without Lessee's prior written consent. Every lienholder to whom Lessor shall grant a Lien upon Lessor's Fee Interest or rights hereunder ("Fee Mortgagee") must expressly agree in the loan documents that (i) all notices to Lessor of any default or defaults of Lessor under such loan documents or in connection with such loan, including notice of acceleration of the maturity of the indebtedness, will be given to Lessee as well as to Lessor and shall not be effective until so given to Lessee, (ii) such Fee Mortgagee will accept a cure of any default under such loan documents by Lessee, but that Lessee shall not be required to cure any such default, and (iii) all payments so made and all things so done or performed by Lessee shall be 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 such Fee Mortgagee upon default by Lessor thereunder as the same would have been if paid, done or performed by Lessor instead of by Lessee. The rights of any Fee Mortgagee now or hereinafter shall attach only to the Fee Interest of the Lessor or the Lessor's rights under this Lease, and shall not attach to the estate of the Lessee under this Lease.

b. Within fifteen (15) days after a request by Lessor, Lessee will in writing subordinate its rights under this Lease to any Lien and all renewals, modifications, supplements and rearrangements thereof. Notwithstanding anything in the foregoing to the contrary, Lessee shall only be required to execute a subordination agreement if the recipient of the benefits of such subordination agreement executes a quiet enjoyment and non-disturbance agreement reasonably satisfactory to Lessee and such recipient and their respective counsel. Such non-disturbance agreement shall provide that in the event of a foreclosure under the deed of trust or other security agreement or a deed in lieu of foreclosure, this Lease shall continue in full force and effect, and Lessee shall have the right to continue the occupancy of the Premises, so long as Lessee is not in default hereunder.

c. Nothing contained in this Lease shall be deemed in any way to limit, restrict or otherwise affect Lessor's absolute right at any time and from time to time, once or more often, without Lessee's consent or approval, to sell, convey, assign or otherwise transfer its interest in the Premises or this Lease (or any part thereof), so long as Lessee's rights herein are not disturbed thereby. If Lessor markets the Premises for sale, Lessor will endeavor to notify Lessee that the Premises are listed for sale, excluding transfers of the Premises, in whole or in part, to a member institution of The University of Texas System, to an entity in which Lessor is a principal or has a beneficial interest, to any successor or assigns, or to any state agency or governmental entity.

## **13. ASSIGNMENT; SUBLETTING**



**13.01. Assignment and Sublease.** Following completion of the construction of the Project Improvements and provided Lessee is not then in default hereunder, Lessee shall have the right to assign or sublet or otherwise transfer Lessee's interest in this Lease or in the estate created by this Lease or any rights granted by this Lease to any person or entity with the prior written consent of Lessor, not to be unreasonably withheld or delayed. In electing whether to grant or deny such consent, Lessor may consider, among other factors, the proposed assignee's character, financial qualifications, business reputation, and experience in operating similar projects. Any sublease, assignment or other transfer of Lessee's interest in this Lease shall be made in writing and in a form reasonably acceptable to Lessor and such assignee or sublessee shall assume in writing all of Lessee's obligations and covenants hereunder.

#### **14. INSURANCE; INDEMNITY**

*[Article 14 is subject to review by UT System Office of Risk Management.]*

##### **14.01. Insurance.**

a. Lessee's Insurance. During the Term, Lessee will keep and maintain (or cause to be kept and maintained) in force all of the following policies:

i. cause of loss—special form property insurance (including flood and named wind coverage, if applicable, with a limit as close to the full replacement cost as is reasonably available) all-risk property insurance (also called special form insurance) on the Improvements or any replacements or substitutions therefor and Lessee's fixtures and personal property, with deductibles in an amount that Lessee may reasonably determine and Lessor approves, from and after commencement of construction of the Project Improvements, against Insurable Risks (hereinafter defined), and builder's risk completed value form during construction, in amounts not less than one hundred percent (100%) of actual replacement cost (exclusive of cost of excavation, foundations, footings below the surface of the ground and costs of underground flues, pipes and drains) and except provided otherwise above for flood and named wind coverage. The 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" means those risks covered by a cause of loss – special form property insurance 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. **In no event shall Lessor be liable for any damage to or loss of Improvements or any replacements or substitutions therefor or fixtures and personal property sustained by Lessee, whether or not insured, even if such loss is caused by the negligence of Lessor, its employees, officers, directors or agents. Lessee may, at its option, purchase business income, business interruption, extra expense or similar coverage as part of this property insurance, and in no event shall Lessor or Lessor's employees, officers, directors or agents be liable for any business interruption or other consequential loss sustained by Lessee, whether or not it is insured, even if such loss is caused by the negligence of Lessor or Lessor's employees, officers, directors, or agents;**

ii. commercial general liability insurance with the following coverages: (a) premises/operations; (b) independent contractors; (c) broad form contractual liability specifically in support of, but not limited to, the indemnification provisions contained in this Lease; (d) broad form property damage; (e) personal injury liability with employee and contractual exclusions removed; (f) liquor liability; and (g) a severability of interest endorsement, and with the following limits: limits of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence and not less than Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, sickness or death, and property damage; and umbrella excess liability insurance for bodily injury and property damage (occurrence basis) above the coverages described above and with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the aggregate. Lessor shall be named as an additional insured. The amounts of such insurance shall be reviewed on the fifth (5th) anniversary date of this Lease and each third (3rd) year thereafter and shall be

increased, if necessary, so that the amount of such coverage is at all times generally equal to the limits described herein measured in 20\_\_\_ dollars; and

iii. workers' compensation insurance with the statutory limits and employer's liability insurance with limits of not less than \$500,000 for each accident, \$500,000 for disease--policy limit, and \$500,000 for disease--each employee.

All such insurance shall be secured and maintained in a company or companies reasonably satisfactory to Lender and Lessor, and shall be carried in the name of Lessee. Lessee's insurance shall be primary and not contributory to that carried by Lessor or Lender. Lessee shall provide copies of insurance policies required hereunder to Lessor on or before the Commencement Date. The commercial general liability policy shall include the ISO Form 20 11 11 85 additional insured endorsement naming Lessor as an additional insured. The all-risk property insurance policy shall name Lessor as "an insured as its interest may appear."

b. Waiver of Subrogation. Lessee shall secure an appropriate clause in, or an endorsement upon, each policy of insurance required to be provided by it hereunder, except for the commercial general liability policy, pursuant to which the respective insurance companies waive subrogation and rights of recovery or permit the insured to agree with the other party hereto to waive any claim it might have against such party. The waiver of subrogation or permission for waiver of any claim herein before referred to shall extend to the agent of each party hereto and their respective contractors and employees and, in the case of Lessee, shall also extend to all the persons occupying or using all or any part of the Improvements or the Parking Tract from time to time.

To the extent permitted by law, Lessee hereby releases Lessor with respect to any claim (including a claim for negligence) that it might otherwise have against Lessor, its officers, agents or employees, for loss, damage or destruction with respect to its property or injury to persons by fire or other casualty or other occurrence, to the extent typically covered under policies of all-risk property insurance or workers' compensation or employer's liability insurance. THIS RELEASE SHALL APPLY EVEN IF THE LOSS OR DAMAGE SHALL HAVE BEEN CAUSED BY THE FAULT OR NEGLIGENCE OF LESSOR OR ANY PERSON FOR WHOM LESSOR MAY BE RESPONSIBLE.

**14.02. Performance Bond.** *[Use if needed.]* If required by law, throughout the Term, Lessee shall provide a performance bond in form and substance and issued by a company satisfactory to Lessor in an amount to be determined by Lessor, in accordance with the requirements of Section 2252.064 of the Texas Government Code, or as it may be amended from time to time.

**14.03. Indemnity.** Lessee hereby agrees to defend and indemnify and hold harmless Lessor from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of or in any way related to Lessee's, subtenants', and/or Lessee's assignees', employees', contractors', guests', and/or invitees' use or occupancy of the Premises or any of the activities of any such parties in or on the Premises, and/or the design or construction of the Improvements.

**14.04. Contractor's Insurance.** Lessee shall cause any contractor of Lessee performing work on the Premises to maintain insurance as follows, with such other terms, coverages and insurers as Lessor shall reasonably require from time to time:

a. commercial general liability insurance, including contractor's liability coverage, contractual liability coverage, completed operations coverage, broad form property damage endorsement, and contractor's protective liability coverage, to afford protection with limits, for each occurrence, of not less than One Million Dollars (\$1,000,000) with respect to personal injury, death or property damage; and

b. workers' compensation insurance in form and amounts required by law, and employer's liability insurance with not less than the following limits:

|                        |           |
|------------------------|-----------|
| Each Accident          | \$500,000 |
| Disease--Policy Limit  | \$500,000 |
| Disease--Each Employee | \$500,000 |

Such insurance shall contain a waiver of subrogation provision in favor of Lessor and its employees and agents.

Lessee's contractor's insurance shall be primary and not contributory to that carried by Lessee, Lessor, their agents or Lender. Lessee and Lessor shall be named as additional insureds on Lessee's contractor's insurance policies.

## 15. CASUALTY

**15.01. Damage to Improvements.** Should the Improvements or any other fixtures on the Premises be wholly or partially destroyed or damaged by fire, or any other casualty whatsoever during the Term, Lessee shall commence the work of repair, reconstruction or replacement of the damaged or destroyed Improvements and fixtures and prosecute the same with reasonable diligence to completion, so that the same shall, at the sole expense of Lessee, be restored to substantially the same size, function and value as existed prior to the damage.

**15.02. No Abatement of Rental.** In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent or other charges herein reserved.

## 16. CONDEMNATION

### 16.01. Condemnation.

a. Definitions. The following definitions apply in construing provisions of this Lease relating to a Taking (as hereinafter defined) of all or any part of the Premises or the Improvements or any interest in them by eminent domain or inverse condemnation:

i. **“Taking”** means any taking by eminent domain or by inverse condemnation or for any public or quasi-public use under any statute. The transfer of title may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning authority or entity under threat of condemnation in avoidance of an exercise of eminent domain. The Taking shall be considered to take place as of the later of (x) the date actual physical possession is taken by the condemnor or (y) the date on which the right to compensation and damages accrues under the law applicable to the Premises.

ii. **“Total Taking”** means the Taking of the fee title to all the Premises and the Improvements.

iii. **“Substantial Taking”** means the Taking of so much of the Premises or Improvements or both that the remaining Premises would not be economically and feasibly usable, in Lessee's reasonable opinion, by Lessee, or the Improvements would be, in Lessee's reasonable opinion, other than reasonably efficient or economic for Lessee's use.



iv. ***“Partial Taking”*** refers to a Taking deemed or treated as a Partial Taking as set forth in Subsection 16.01.d. below.

b. **Notice to Other Party.** The party receiving any notice of the kinds specified below shall promptly give the other party notice of the receipt, contents and date of the notice received:

- i. Notice of intended Taking.
- ii. Service of any legal process relating to condemnation of the Premises or Improvements.
- iii. Notice in connection with any proceedings or negotiations with respect to such condemnation.
- iv. Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.

c. **Representative of Each Party; Effectuation.** Lessor and Lessee shall each have the right to represent its respective interests in each proceeding or negotiation with respect to a Taking or intended Taking and to make full proof of his or its claims. Lessor and Lessee each agrees to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation.

d. **Total or Substantial Taking.** On a Total Taking, Lessee's obligation to pay Rent shall terminate on the day of Taking. If Lessee determines that the Taking is substantial under the definition appearing in Subsection 16.01.a.iii. above, Lessee may, by notice to Lessor given within one hundred twenty (120) days after Lessee receives notice of intended Taking, elect to treat the Taking as a Substantial Taking. If Lessee does not so notify Lessor, the Taking shall be deemed a Partial Taking. A Substantial Taking shall be treated as a Total Taking if (1) Lessee delivers notice to Lessor within one hundred twenty (120) days after Lessee receives notice of intended Taking, as provided above, and (2) Lessee is not in default under this Lease and has complied with all Lease provisions concerning apportionment of the award. If these conditions are not met, the Taking shall be treated as a Partial Taking.

e. **Delivery of Possession.** Lessee may continue to occupy the Premises and Project Improvements until the day of Taking.

f. **Award for Total Taking.** On a Total Taking, the award therefor shall be distributed and paid to Lessee and Lessor as their respective interests under this Lease (as if the same had not been terminated) may appear. In determining their respective interests:

- i. The interest of Lessor shall be based on the value of Lessor's reversionary interest in the Premises and Improvements taking into account the leasehold estate created by this Lease, the amount of rental paid by Lessee hereunder and all of the other terms and provisions of this Lease: and
- ii. The interest of Lessee shall be based on the value of Lessee's interest in the Premises and Improvements, including the value of the improvements for the Term and the value of Lessee's leasehold estate and interests under this Lease.

g. **Partial Taking.** In the event of a Partial Taking, Lessor shall be entitled to a portion of the award equal to the value of the fee simple title to the portion of the Premises taken, exclusive of the value of the Improvements and Lessee shall be entitled to the balance of the award. In such event, this Lease shall remain in full force and effect covering the remaining portion of the Premises. Lessee shall, subject

to the rights of each Lender, promptly commence reconstruction of the Improvements damaged by such Partial Taking to as near the condition as existed prior to such Taking as is reasonably practicable and diligently prosecute the same to completion.

h. Taking of Less than Fee Title. On any Taking of the temporary use of all or any part or parts of the Premises or Improvements or both for a period, or of any estate less than the fee, ending on or before the expiration date of the Term, neither the Term nor the Rent shall be reduced or affected in any way, and Lessee shall be entitled to any and all awards for the use or estate taken. If any such Taking is for a period extending beyond the expiration date of the Term, the Taking shall be treated under the foregoing provisions for Total, Substantial and Partial Takings.

## 17. DEFAULT; REMEDIES

**17.01. Lessee's Default.** Each of the following events shall be a default by Lessee and a breach of this Lease:

a. Failure to timely and fully perform Lessee's obligations under Article 9 of this Lease or under the \_\_\_\_\_.

b. Failure or refusal to pay when due the Rent as provided in Article 5 of this Lease.

c. Failure or refusal to pay when due any other sum required by this Lease to be paid by Lessee if such failure to pay is not cured within twenty (20) days after written notice thereof is provided to Lessee.

d. Failure by Lessee to perform as required any other covenant, agreement or obligation (other than the payment of a liquidated sum of money) of Lessee under this Lease and the same is not cured within thirty (30) days after notice of such failure from Lessor to Lessee; provided, that, if such default is of a nature that cannot reasonably be expected to be cured within said thirty (30) days, then for such longer time as may be reasonably necessary so long as Lessee commences the cure within said thirty (30) days and thereafter diligently prosecutes the same to completion.

e. The taking by execution of Lessee's leasehold estate for the benefit of any person other than a Lender or purchaser at a foreclosure under a Mortgage.

f. The filing of a petition for relief against Lessee, as debtor, under the Federal Bankruptcy Code (the "*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 over the Premises, appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Lessee or any substantial part of the properties of Lessee or ordering the winding up or liquidation of the affairs of Lessee, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.

g. The commencement by Lessee of a voluntary case under the Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the consent or acquiescence by Lessee to the commencement of a case under the Code or such law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for Lessee or any substantial part of the property of Lessee.

**17.02. Lessor's Remedies.** Upon default hereunder by Lessee, Lessor has the following remedies in addition to all other rights and remedies provided by law or equity or under other provisions of this Lease,

to which Lessor may resort cumulatively or in the alternative:

a. Lessor may, at Lessor's election, terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all of Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements and Lessor may reenter and take possession of the Premises and all Improvements and eject all parties in possession or eject some and not others or eject none. Termination under this Section 17.02.a. shall not relieve Lessee from the payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

b. Lessor may, at Lessor's election, reenter the Premises, and, without terminating this Lease, at any time and from time to time relet the Premises and Improvements or any part or parts of them for the account and in the name of Lessee or otherwise. Lessor may, at Lessor's election, eject all persons or eject some and not others or eject none. Lessor shall apply all rents from reletting, if any, first to the reasonable costs and expenses incurred by Lessor in reletting the Premises, then to the reasonable costs and expenses incurred by Lessor in operating and maintaining the Improvements, and then to rents and other sums payable by Lessee to Lessor, with the balance being paid to Lessee. Any reletting may be for the remainder of the Term or for a longer or shorter period. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name and shall be entitled to all rents from the use, operation or occupancy of the Premises or Improvements or both. No act by or on behalf of Lessor under this provision shall constitute a termination of this Lease unless Lessor gives notice of termination. Nothing contained herein shall be deemed to place any obligation on Lessor to relet the Premises.

**17.03. Mitigation of Damages.** If Lessee abandons the Premises or vacates the Premises, or if Lessor terminates Lessee's right to possession of the Premises as a result of a default by Lessee, Lessor shall not have any obligation to relet or attempt to relet the Premises, or any portion thereof, unless applicable law imposes such an obligation on Lessor and prohibits a waiver of that obligation. To the fullest extent allowed by law, Lessee hereby waives any obligation on the part of Lessor to mitigate damages. If applicable law requires Lessor to mitigate damages under any circumstances and prohibits a waiver by Lessee of that obligation, the parties hereby agree that Lessor shall have taken objectively reasonable efforts to so mitigate if Lessor has done the following within one hundred twenty (120) days after Lessee no longer occupies the Premises: (a) announce the availability of the Premises for lease in a suitable trade journal or \_\_\_\_\_, Texas newspaper once a month, or request proposals for lease of the Premises by a request for proposals process as determined by Lessor; and (b) show the Premises to prospective lessees. Lessee acknowledges the unique nature of the Premises and the permitted use and its significance to the mission of UT Austin and agrees that Lessor shall have no obligation to lease the Premises to any willing lessee. Rather, the lessee must be suitable under the circumstances and in Lessor's sole discretion, considering such factors, among others, as financial responsibility, the identity and business reputation of the proposed lessee, and the experience of the proposed lessee in operating similar projects, and the lease terms must be satisfactory to Lessor in its sole discretion.

**17.04. Notice of Lessor's Default.** Lessor shall not be considered to be in default under this Lease unless (a) Lessee has given written notice specifying the default and (b) Lessor has failed for thirty (30) days after receipt of such notice to cure the default or to commence cure within such time and then pursue the same diligently. The foregoing shall not apply, however, to Lessor's obligations in this Lease to respond to submittals of the Plans and Specifications; however, Lessor shall not be in default of that obligation until the expiration of five (5) business days following Lessee's notice to Lessor of Lessor's failure to have responded timely. To the extent permitted by applicable law, Lessee hereby waives the provisions of § 91.004(b) of the Texas Property Code (or any successor thereto) and any other laws that may grant to Lessee a lien on any of Lessor's property or on any rental due to Lessor. Upon default hereunder by Lessor, Lessee may exercise any rights and remedies available to Lessee at law or in equity, and Lessee agrees to look solely to Lessor's interest in the Premises for the recovery of any judgment against Lessor, it being intended that

neither Lessor nor any of its regents, officers, employees, agents and the component institutions shall be personally liable for any judgment or deficiency.

**17.05. Unavoidable Default or Delay; Waiver.** Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for the period of any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Lease for the payment of Rent, Additional Rent, Impositions, Taxes, insurance premiums, or obligations to pay money that are treated as Rent or Additional Rent. The causes referred to above are strikes, lockouts, labor disputes, failure of power, acts of God, acts of public enemies of this State or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls, casualties, or other causes beyond the reasonable control of the party obligated to perform (collectively, "*Force Majeure*").

No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. If either party brings any action or proceeding to enforce, protect or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees; provided, however, that Lessor shall be so obligated only to the extent permitted under the laws and Constitution of the State of Texas and Lessor's attorneys' fees for Lessor's attorneys shall be the actual amount paid or an amount calculated at a rate equal to the average rate charged by attorneys for comparable services in law firms offering similar services with at least twenty (20) partners, shareholders, or members with offices in Austin, Texas, whichever is greater.

**17.06. Payment on Default.** If Lessor is compelled or elects to pay any sum of money or do any acts that require the payment of money by reason of Lessee's failure or inability to perform any of the provisions of this Lease after passage of any notice and cure period provided under any other provisions of this Lease, which Lessor may elect in its sole discretion, Lessee shall promptly, upon demand, reimburse Lessor for such sums, and all such sums shall bear interest at the Default Rate from the date of expenditure until the date of such reimbursement. Other sums payable hereunder that are not paid by Lessee when due shall bear interest at the Default Rate from and after the date of demand therefor by Lessor until the date of payment thereof.

## **18. REPRESENTATIONS AND WARRANTIES**

**18.01. Lessee's Representations and Warranties.** Lessee represents and warrants that:

a. As of the execution date of this Lease, Lessee is a \_\_\_\_\_ duly organized, in good standing and validly existing under the laws of the State of \_\_\_\_\_ and is duly qualified to transact business under the laws of the State of Texas and has the power and authority to carry on its business as presently conducted and as contemplated to be conducted on the Premises by this Lease and to enter into and perform its obligations under this Lease; and the execution, delivery and performance by Lessee of this Lease has been duly authorized by all necessary \_\_\_\_\_ action.

b. As of the execution date of this Lease, the execution, delivery and performance of this Lease by Lessee will not violate any law or Lessee's organizational documents.

c. (i) Lessee is not a person and/or entity with whom the United States ("*U.S.*") persons or entities are restricted from doing business under U.S. law, executive power, or regulation promulgated thereunder by any regulatory body; (ii) no person or entity named on any U.S. list of specially designated nationals or blocked persons has any direct interest in Lessee such that the direct investment in Lessee is prohibited by any U.S. law; (iii) Lessee is not in violation of any U.S. money laundering law; and (iv) none

of Lessee's funds have been derived from unlawful activity such that the direct investment in Lessee is prohibited by U.S. law. The foregoing are ongoing covenants of Lessee. Lessee shall immediately advise Lessor of any change in the status or accuracy of such representations, and upon request Lessee shall recertify such representations and certify in writing the identity of all entities and individuals owning or controlling Lessee.

**18.02. Lessor's Representations and Warranties.** Lessor represents and warrants that:

a. Except as disclosed to Lessee, as of the execution date of this Lease, Lessor is the record owner of the Premises and Lessor has all power and authority necessary to enter into this Lease.

b. As of the execution date of this Lease, to Lessor's current actual knowledge, there is no pending or threatened condemnation action pertaining to the Premises. Lessor's "current actual knowledge" refers to the knowledge of \_\_\_\_\_ of UT Austin, without any duty to review any files or consult with other persons.

c. *[Except as disclosed to Lessee, Lessor has not executed any lease covering the Premises that has not been terminated or the term of which has not expired.]*

## **19. EXPIRATION; TERMINATION**

**19.01. Lessee's Duty to Surrender.** At the expiration or earlier termination of this Lease, Lessee shall surrender to Lessor possession of the Premises and the Improvements, together with all fixtures, trade fixtures, equipment, and personal property located on the Premises owned by Lessee, and used in connection with the operation of the Premises, but specifically excluding Lessee's inventory, computers, maintenance equipment, furniture, furnishings, and other office equipment, all of which Lessee shall have the right and option to remove, provided that Lessee shall, at its sole cost and expense, repair any damage caused to the Premises by reason of such removal. Lessee shall leave the surrendered Premises, the Improvements and any other property reasonably necessary to operate the Premises in good condition. All property that Lessee is required to surrender shall become Lessor's property at the expiration or earlier termination of this Lease without compensation to Lessee. All property that Lessee is not required to surrender but that remains on the Premises for thirty (30) days following the expiration or earlier termination of this Lease may, at Lessor's election, become Lessor's property at the expiration or earlier termination of this Lease without compensation to Lessee or may be removed by Lessor at Lessee's expense.

If Lessee fails to surrender the Premises at the expiration or sooner termination of this Lease, **Lessee shall defend and indemnify Lessor and other Lessor Parties from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding lessee founded on or resulting from Lessee's failure to surrender.** This indemnification obligation shall survive the expiration or earlier termination of this Lease.

**19.02. Lessor's Option to Require Demolition.** Provided that Lessor has not exercised its option to purchase Lessee's leasehold estate and its interest in the Improvements, Lessor shall have the option to require Lessee to demolish the Improvements and clear the Premises of all rubble and debris at Lessee's sole cost and expense upon the expiration or earlier termination of this Lease. All demolition work shall be performed in accordance with the Construction Standards in Section 9.06 to the extent they are applicable to demolition work. Lessor shall give Lessee notice of its exercise of this option no later than sixty (60) days before the expiration of the Term or thirty (30) days after the termination of this Lease for reasons other than the expiration of the Term. If Lessor exercises its option to require demolition of the Improvements, Lessee shall demolish the Improvements and clear the Premises within sixty (60) days after the expiration of the Term or, if this Lease is terminated before the expiration of the Term, within ninety (90) days after Lessor's notice exercising its option to require demolition. Notwithstanding that the Term

has expired or the Lease has terminated, Lessee's obligation to demolish the Improvements shall survive the expiration or termination of the Lease and all of the provisions of Article XIV of this Lease shall survive and shall be applicable during the demolition period.

**19.03. Holding Over.** This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension or give Lessee any rights in or to the Premises except as otherwise expressly provided in this Lease, and Lessee shall pay, as liquidated damages, the then current fair market rental value of the Premises and the Improvements calculated on a per diem basis, multiplied by two (2) for the period during which Lessee possesses the Premises beyond the expiration hereof.

## **20. PURCHASE OPTION; RIGHT OF FIRST REFUSAL**

**20.01. Lessor's Option to Purchase Leasehold and Improvements.** Lessor shall have the right to purchase Lessee's leasehold estate in the Premises and Lessee's interest in the Improvements at the following times for the following amounts to be paid in cash at the closing:

[Specify purchase terms.]

Lessor shall exercise its option by giving notice to Lessee. Lessee shall convey all such property and rights to Lessor free and clear of all liens, encumbrances, and other exceptions to title, except as may be approved by Lessor in its sole and absolute discretion, and by documents of conveyance and assignment as are reasonably necessary to consummate the purchase and in form and with substance satisfactory to Lessor and its legal counsel. The closing of the purchase shall occur on or before ninety (90) days after the date of Lessor's notice, on a date mutually agreed by the parties.

**20.02. Right of First Refusal.** Notwithstanding anything to the contrary herein, but subject to the last sentence of this section, should Lessee desire to assign or otherwise transfer its interest in this Lease to a third party other than an affiliate of Lessee, Lessee shall notify Lessor in writing of its intent to do so and the terms under which Lessee intends to offer the same. Notwithstanding any earlier closing date stated in Lessee's notice, Lessor shall have one hundred twenty (120) days thereafter to elect to purchase Lessee's leasehold interest hereunder on the terms stated in Lessee's notice (excluding any terms that the agreement or performance by which Lessor would constitute a violation of the Constitution and laws of the State of Texas). If Lessor timely elects to exercise its right of first refusal, the closing shall occur within sixty (60) days after Lessor gives notice of its election, on a date mutually agreed by Lessor and Lessee. In the event Lessor fails to make such election, Lessee may consummate the sale or assignment of its interest in this Lease on the terms stated in Lessee's notice within one hundred eighty (180) days after Lessee's original notice, provided that Lessee has obtained Lessor's prior written consent to the sale or assignment as required in Section 13.01. If the sale or assignment is not consummated within that time period, Lessee shall again comply with the notice provisions of this Section 20.02. If the sale or assignment is consummated, the provisions of this Section 20.02 shall continue to apply to any subsequent proposed sales or assignments. The provisions of this Section 20.02 shall not apply to a Mortgage, a conveyance in lieu thereof to the Lender holding the same, or the conduct of a foreclosure under such Mortgage, provided, however, that any other assignment or other transfer of any interest in the Lease or the Improvements by Lessee shall be subject to the requirements set forth in Section 13.03.

## **21. GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS**

**21.01. Transactions Between Parties.**

a. Approval of Ancillary Agreements. Lessor agrees that if it becomes necessary or desirable for Lessor to approve in writing any ancillary agreements or documents concerning the Premises or



concerning the construction, operation or maintenance of the Project Improvements or to alter or amend any such ancillary agreements between Lessor and Lessee or to give any approval or consent of Lessor required under the terms of this Lease, Lessor hereby authorizes, designates and empowers the following officers of The University of Texas at Austin to execute any such agreement, approvals or consents necessary or desirable: the President or the Senior Vice President for Finance and Administration of UT Austin or their successors in function, subject to required approvals (if any) by appropriate UT System officials.

b. Notice. As used in this Lease, notice includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver and appointment. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. All notices must be in writing. Notice is considered given either (a) when delivered in person or by facsimile or e-mail transmission (however, if a facsimile or e-mail transmission is received after 5:00 p.m. Central Time, it shall be deemed received the following business day) to the recipient named as below, or (b) three (3) days after deposit in the United States mail in a sealed envelope, wrapper or container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed by name and address to the party or person intended as follows:

Notice to Lessor:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

With a copy to:

The University of Texas System  
 OGC – Real Estate  
 210 W. 7th Street  
 Austin, Texas 78701  
 Attention: Executive Director of Real Estate  
 Telephone: (512) 499-4333  
 Fax: (512) 499-4523  
 Email: \_\_\_\_\_

Notice to Lessee:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attention: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

Facsimile and e-mail notices shall be followed by delivery by first class mail as provided above.

Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another person whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

c. Nonmerger of Fee and Leasehold Estates. Notwithstanding any other provision of this Lease to the contrary, if both Lessor's and Lessee's estates in the Premises or the Improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed or terminated by application of the doctrine of merger or any contrary provision of this Lease except at the express written election of the owner of both estates.

d. Estoppel Certificates. At any time and from time to time, within thirty (30) days after notice of request by Lessor or Lessee, the other party shall execute, acknowledge and deliver to the other or to such recipient as the notice shall direct, a statement certifying that this Lease is unmodified and in full force and effect, or, if there have been modifications, that it is in full force and effect as modified in the manner specified in the statement. The statement shall also state the dates to which the Rent and any other charges have been paid in advance and that there are no defaults hereunder, or if there are, specifying those defaults with particularity. The statement shall be such that it can be relied on by any auditor, creditor, commercial banker and investment banker and by any prospective purchaser or encumbrancer of the Premises or all or any part or parts of Lessor's or Lessee's respective interests under this Lease.

e. Joint and Several Obligations. If either Lessor or Lessee consists of more than one person, the obligation of all such persons is joint and several.

## **21.02. Interpretation of Lease.**

a. Captions, Table of Contents. The table of contents, if any, of the Lease and the captions of the various Articles, Sections and Subsections of this Lease are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Lease or of any part or parts of this Lease.

b. Gender. The neuter gender includes the feminine and masculine, the masculine includes the feminine and neuter, and the feminine includes the masculine and neuter, and each includes corporation, partnership or other legal entity when the context so requires.

c. Singular and Plural. The singular number includes the plural whenever the context so requires. References herein to "person" mean one or more persons, or one or more entities, or any combination of persons and entities.

d. Exhibits, Addenda. The following **Exhibits A-C** are incorporated herein for all purposes, whether or not they are actually attached, provided that any not attached have been signed or initialed by the parties:



- Exhibit A - Premises  
Exhibit A-1 - Map of Premises  
Exhibit B - Memorandum of Lease  
Exhibit C - Parking Tract

Reference to "this Lease" includes matters incorporated by reference.

e. Entire Agreement. This Lease, the RFP, the RFP Response, \_\_\_\_\_, and the \_\_\_\_\_ (collectively, the "**Lease Documents**") contain the entire agreement between the parties. In the event of a conflict between this Lease and one or more of the other Lease Documents, this Lease shall control. In the event of a conflict between the Lease Documents, interpretation will be in the following order of precedence:

1. Lease
2. \_\_\_\_\_
3. RFP
4. [RFP Response]
5. \_\_\_\_\_

No promise, representation, warranty or covenant not included in the Lease Documents has been or is relied on by either party. Each party has relied on its own examination of this Lease, the counsel of its own advisors and the warranties, representations and covenants in the Lease Documents. The failure or refusal of either party to inspect the Premises, to read the Lease Documents or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention or claim that might have been based on such reading, inspection or advice. This Lease may not be changed except by written instrument signed by both Lessor and Lessee.

f. Severability. The invalidity or illegality of any provision shall not affect the remainder of the Lease.

g. No Partnership, Joint Venture or Principal-Agent Relationship. Nothing in this Lease or any acts of the parties hereto shall be construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties.

h. Time of Essence. Time is of the essence with respect to the performance of each of the terms, provisions, covenants and conditions contained in this Lease.

i. 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 Travis County, Texas.

**21.03. Successors.** Each and all of the covenants and conditions of this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties. References herein to "Lessor" shall mean the person who is the owner at the time in question of the Premises, whether singular or plural in number, and whether named in this Lease as Lessor or having become the successor in interest of the named Lessor, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. References herein to "Lessee" shall mean the person named as Lessee in this Lease, whether singular or plural in number, or the person who at the time in question is the successor in interest of Lessee, or the successor of a successor, whether by assignment, foreclosure, or other transfer, and whether intentional or inadvertent or by operation of law. It does not, however, include any person claiming under any assignment or sublease or other transfer prohibited by this Lease, and this definition does not

alter the provisions of this Lease relating to assignment or subletting.

**21.04. Nondiscrimination.** Any impermissible discrimination by Lessee or its agents or employees on the basis of race, color, sex, age, religion, national origin, veteran's status, or disability in employment practices or in the performance of the terms, conditions, covenants and obligations of this Lease is prohibited. Lessee acknowledges the policy of The University of Texas System Board of Regents to provide practical opportunities for women-owned and minority-owned business enterprises to participate in contracts awarded by component institutions of The University of Texas System. Accordingly, Lessee will exercise its reasonable efforts in good faith, consistent with prudent business practices, to include women-owned and minority-owned small business enterprises as material suppliers, as contractors, and/or as subcontractors in planning, designing, developing, constructing, operating and maintaining the Premises during construction and following completion.

**21.05. 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 Lessee nor any person having an interest in this Lease by, through or under Lessee is an officer of Lessor.

**21.06. No Broker.** Lessor and Lessee each indemnifies and agrees to hold the other harmless from any claims for real estate, leasing commissions or finders fees in respect to the transaction entered into under this Lease alleged to be due because of any act of the indemnifying party and from any loss, liability, damage, cost or expense (including attorney's fees) of defending or settling such claims. Lessor's obligation to indemnify Lessee shall apply to the extent authorized by the Constitution and laws of the State of Texas. These indemnification obligations shall survive the expiration or earlier termination of this Lease.

**\*\* ADD SECTIONS 21.07 AND 21.08, IF APPLICABLE.\*\***

**21.07. Conditions Precedent.** Lessor's obligations to perform hereunder are conditioned upon approval of this Lease by the Board of Regents of The University of Texas System on or before \_\_\_\_\_, 20\_\_\_. If the Board of Regents of The University of Texas System does not approve this Lease, this Lease shall be null and void.

**21.08. Certificate of Interested Parties.** Pursuant to Texas Government Code §2252.908 and Chapter 46 of the rules of the Texas Ethics Commission, in each case, as amended from time to time, a state agency such as the Board of Regents of The University of Texas System may not enter into certain statutorily defined contracts with a business entity unless the business entity, in accordance with said statute and administrative rules, fills out and electronically files Texas Ethics Commission Form 1295 "Certificate of Interested Parties" with the Texas Ethics Commission at its website. The certification of filing and the completed disclosure of interested parties form generated by the commission's electronic filing application must be printed, signed by an authorized agent of the contracting business entity and submitted (either electronically or by hard copy) to the governmental entity or state agency that is the party to the contract for which the form is being filed. The state agency will then file notice of its receipt of both the completed disclosure of interested parties and the certification of filing with the Texas Ethics Commission not later than the 30<sup>th</sup> day after the date the agency receives the disclosure.

This Lease is subject to Texas Government Code §2252.908 and Chapter 46 of the rules of the Texas Ethics Commission, in each case, as amended from time to time. Accordingly, Lessee must comply with the foregoing requirements before Lessor may enter into this Lease. For this purpose, Lessee is advised that:

- (1) An electronic version of Form 1295 may be obtained and filed at the following website maintained by the Texas Ethics Commission:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm).

- (2) The current text of Texas Government Code §2252.908 may be reviewed at: <https://statutes.capitol.texas.gov/Docs/GV/htm/GV.2252.htm#2252.908>.
- (3) The current text of Texas Ethics Commission Chapter 46 may be reviewed at: [https://www.ethics.state.tx.us/rules/adopted\\_Nov\\_2015.html](https://www.ethics.state.tx.us/rules/adopted_Nov_2015.html).

**21.09. PROHIBITION ON VIOLATION OF STATE LAW AND CONSTITUTION BY LESSOR.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE (AS MAY BE AMENDED FROM TIME TO TIME), LESSOR AND LESSEE HEREBY AGREE THAT LESSOR SHALL NOT BE REQUIRED TO PERFORM ANY ACT OR REFRAIN FROM ANY ACT IF THAT PERFORMANCE OR NON-PERFORMANCE WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTION OR LAWS OF THE STATE OF TEXAS.

## **22. EXECUTION; MEMORANDUM OF LEASE**

**22.01. Execution in Counterparts.** This Lease, or the memorandum of this Lease, or both, are executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

**22.02. Recordation of Memorandum Only.** Only a memorandum of this Lease in the form attached hereto as **Exhibit B** shall be recorded (the "*Lease Memo*"). The Lease Memo shall be recorded only on or after the Commencement Date. Lessee's recordation of this Lease or any other memorandum of this Lease (other than the Lease Memo) shall be a default hereunder.

*[Remainder of this page is intentionally left blank. Signatures appear on the next page.]*

This Lease is executed on the dates shown below, to be effective for all purposes on the date first written above.

Date: \_\_\_\_\_, 20\_\_

BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Name: Kirk S. Tames  
Title: Executive Director of Real Estate  
The University of Texas System

Approved as to Content:

The University of Texas at Austin

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

[Insert LESSEE legal name here.]

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_

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

Exhibits

- A - Premises
- A-1 - Map of Premises
- B - Memorandum of Lease
- C - Parking Tract [if needed]

**EXHIBIT A**

**PREMISES**

**EXHIBIT A-1**  
**MAP OF PREMISES**

**EXHIBIT B****MEMORANDUM OF LEASE**

This is the Lease Memo referred to in Section 22.02 of that certain Lease dated effective \_\_\_\_\_, 20\_\_\_\_, between the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("*Lessor*") and \_\_\_\_\_ ("*Lessee*"), a \_\_\_\_\_, concerning the Premises described in **Exhibit A**, hereto attached and hereby made a part hereof.

For good and adequate consideration, Lessor leased the Premises and appurtenances to Lessee, and Lessee leased them from Lessor, for the term and on the provisions contained in the Lease, which is incorporated in this memorandum by reference.

The initial term is \_\_\_\_\_ (\_\_\_\_) years beginning \_\_\_\_\_, and ending \_\_\_\_\_. Lessee has the option to renew and extend the Lease for \_\_\_\_\_ (\_\_\_\_) periods of \_\_\_\_\_ (\_\_\_\_) years each in accordance with the terms of the Lease.

Any third party entering into a contract with Lessee for improvements to be located on the Premises, and any other party under said third party, is hereby put 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.

This memorandum is not a complete summary of the Lease. Provisions in this memorandum shall not be used in interpreting the Lease provisions. In the event of conflict between this memorandum and other parts of the Lease, the other parts of the Lease shall control.

EXECUTED effective as of \_\_\_\_\_, 20\_\_\_\_.

BOARD OF REGENTS OF THE  
UNIVERSITY OF TEXAS SYSTEM

By: \_\_\_\_\_  
Kirk S. Tames  
Executive Director of Real Estate  
The University of Texas System  
"Lessor"

[Insert LESSEE legal name here.]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
"Lessee"

Exhibit A - Premises  
(Add Acknowledgments)

[Use if needed.]

**EXHIBIT C**  
**PARKING TRACT**