**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**

**TABLE OF CONTENTS**

Page Number

1. WORDS OF LEASING 38

2. PREMISES 38

3. TERM 38

4. USES 39

5. RENT 40

6. TAXES 45

7. UTILITIES 46

8. NET LEASE 46

9. IMPROVEMENTS 46

10. PARKING LOT LICENSE 49

11. ACCESS 51

12. ENCUMBRANCE; LESSOR'S RIGHT TO TRANSFER 52

13. ASSIGNMENT; SUBLETTING 53

14. INSURANCE; INDEMNITY 54

15. CASUALTY 56

16. CONDEMNATION 56

17. DEFAULT; REMEDIES 58

18. REPRESENTATIONS AND WARRANTIES 60

19. EXPIRATION; TERMINATION 61

20. PURCHASE OPTION; RIGHT OF FIRST REFUSAL 62

21. GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS 62

22. EXECUTION; MEMORANDUM OF LEASE 67

**LIST OF**

**DEFINED TERMS**

Page Number

Additional Rent 12

Adjusted Annual Minimum Rent 8

Agreed Rate ……………………………………………………………………………………11

Annual Minimum Rent 8

Annual Minimum Rent Start Date 8

Annual Percentage Rent 8

Annual Percentage Rent Start Date 8

Capital Transaction 10

Code 26

Commencement Date 6

Construction Contract 14

Construction Standards 15

Default Rate 13

Effective Date 5

Extension Terms 6

Force Majeure 27

Governmental Regulations 7

Gross Parking Revenues 17

Gross Rent 10

Gross Sales 10

Impositions 12

Improvements 14

Insurable Risks 22

Late Charge 11

Lease 5

Lease Documents 32

Lease Memo 35

Lease Year 8

Lender 19

Lessee 5

Lessor 5

Mortgage 19

Parking License Fee 17

Parking Tract 17

Partial Taking 25

person 32

**Plans and Specifications** 14

Premises 5

Primary Term 5

Project 6

Project Improvements 14

Property Condition Reports 6

Refinancing 10

Remodeling 17

Remodeling Plans 17

Rent 12

RFP 7

RFP Response …………………………………………………………………………………………….7

Substantial Taking 24

Subtenants ……………………………………………………………………………………………..9

Taking ……………………………………………………………………………………………24

Taxes ……………………………………………………………………………………………13

Term ……………………………………………………………………………………………..6

Total Taking ……………………………………………………………………………………………24

UT Austin ……………………………………………………………………………………………..7

**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***").

# WORDS OF LEASING

* 1. **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.
  2. **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.
  3. **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.

# PREMISES

* 1. **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..

# TERM

* 1. **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.
  2. **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. **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 Premise**s. 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.

# USES

* 1. **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.
  2. **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.
  3. **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. **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.
  5. **Limitation on Detrimental Uses**
     1. 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.
     2. 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.

# RENT

* 1. **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.
     1. 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.
     2. 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.
     3. 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.
     4. Adjustment of Minimum Rent. [Specify here any scheduled increases ("***Adjusted Annual Minimum Rent***") in Annual Minimum Rent over the Lease Term.]
     5. 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*.]

* + 1. 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:
       1. 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;
       2. The related itemized amounts of Annual Percentage Rent computed as herein provided and the total thereof;
       3. 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.
    2. 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.

* 1. **Records and Definitions of "Gross Sales" and "Gross Rent."**
     1. 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.

* + 1. 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.

* + 1. 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 N0/100 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 \* \***

* 1. **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).
  2. **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.
  3. **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."
  4. **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. **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.
  6. **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.

# TAXES

* 1. **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.
  2. **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.
  3. **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.
  4. **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%).

# UTILITIES

* 1. **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.

# NET LEASE

* 1. **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.

# IMPROVEMENTS

* 1. **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***.”
  2. **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.
  3. **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.
  4. **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.
  5. **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.
  6. **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):
     1. 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;
     2. 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;
     3. 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;
     4. 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;
     5. After commencement, such work shall be prosecuted with due diligence to its completion;
     6. Lessee shall coordinate construction with UT Austin to minimize disruption;
     7. Lessee shall provide as-built plans to Lessor after construction is completed;
     8. 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
     9. 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.
     10. 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.
  7. **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.
  8. **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. **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.
  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 \* \***

# PARKING LOT LICENSE

* 1. **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.
  2. **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.

* 1. **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.
  2. **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.
  3. **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.
  4. **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 \* \***

# ACCESS

* 1. **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.
  2. **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\*\***

* 1. **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.

# ENCUMBRANCE; LESSOR’S RIGHT TO TRANSFER

* 1. **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.

* 1. **Lessor’s Right to Transfer**.
     1. 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.
     2. 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.
     3. 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.

# ASSIGNMENT; SUBLETTING

* 1. **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.

# INSURANCE; INDEMNITY

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

* 1. **Insurance**.
     1. 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:
        1. 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**;
        2. 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
        3. 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 2O 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."

* + 1. 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.

* 1. **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.
  2. **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.
  3. **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:
     1. 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
     2. 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.

# CASUALTY

* 1. **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.
  2. **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.

# CONDEMNATION

* 1. **Condemnation**.
     1. 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:
        1. “***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.
        2. “***Total Taking***” means the Taking of the fee title to all the Premises and the Improvements.
        3. “***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.
        4. “***Partial Taking***” refers to a Taking deemed or treated as a Partial Taking as set forth in Subsection 16.01.d. below.
     2. 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:
        1. Notice of intended Taking.
        2. Service of any legal process relating to condemnation of the Premises or Improvements.
        3. Notice in connection with any proceedings or negotiations with respect to such condemnation.
        4. Notice of intent or willingness to make or negotiate a private purchase, sale or transfer in lieu of condemnation.
     3. 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.
     4. 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.
     5. Delivery of Possession. Lessee may continue to occupy the Premises and Project Improvements until the day of Taking.
     6. 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:
        1. 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
        2. 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.
     7. 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.
     8. 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.

# DEFAULT; REMEDIES

* 1. **Lessee's Default.** Each of the following events shall be a default by Lessee and a breach of this Lease:
     1. Failure to timely and fully perform Lessee's obligations under Article 9 of this Lease or under the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
     2. Failure or refusal to pay when due the Rent as provided in Article 5 of this Lease.
     3. 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.
     4. 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.
     5. 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.
     6. 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.
     7. 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.
  2. **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:
     1. 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.
     2. 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.
  3. **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.
  4. **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.
  5. **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.

* 1. **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.

# REPRESENTATIONS AND WARRANTIES

* 1. **Lessee's Representations and Warranties**. Lessee represents and warrants that:
     1. 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.
     2. 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.
     3. (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.
  2. **Lessor's Representations and Warranties**. Lessor represents and warrants that:
     1. 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.
     2. 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.
     3. *[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.]*

# EXPIRATION; TERMINATION

* 1. **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.

* 1. **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.
  2. **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.

# PURCHASE OPTION; RIGHT OF FIRST REFUSAL

* 1. **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.

* 1. **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.

# GENERAL CONDITIONS; MISCELLANEOUS PROVISIONS

* 1. **Transactions Between Parties**.
     1. 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.
     2. 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.

* + 1. 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.
    2. 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.
    3. 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.
  1. **Interpretation of Lease.**
     1. 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.
     2. 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.
     3. 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.
     4. 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.

* + 1. 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.

* + 1. Severability. The invalidity or illegality of any provision shall not affect the remainder of the Lease.
    2. 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.
    3. 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.
    4. 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.
  1. **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.
  2. **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.
  3. **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.
  4. **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.\*\***

* 1. **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.
  2. **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 30th 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>.

1. 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>.

1. The current text of Texas Ethics Commission Chapter 46 may be reviewed at:

<https://www.ethics.state.tx.us/rules/adopted_Nov_2015.html>.

* 1. **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.

# EXECUTION; MEMORANDUM OF LEASE

* 1. **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.
  2. **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**