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# REQUEST FOR PROPOSALS

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## Lease of Property

Multiple Parcels  
for the development of a  
**Residential Multi-Family Housing**

Located in:  
**Memphis, Shelby County, Tennessee**

**RFP TRANSACTION NUMBER:  
16-10-017\_2**

**UNIVERSITY OF TENNESSEE**

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**RFP Release Date:  
October 29, 2017**

## 1. INTRODUCTION

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### 1.1. Statement of Procurement Purpose

The University of Tennessee, hereinafter referred to as the “University” or “Landlord,” is seeking proposals from qualified developers or development teams to plan, design, finance, construct, and operate a residential multi-family housing development. This residential multi-family housing development will be referred to as the “Development” and would be built on property leased from the University at 0 Jefferson Avenue, 0 Orleans Avenue, 0 N. Orleans Avenue, 0 Court Avenue, 951 Court Avenue, 740 Court Avenue, 22 N Orleans, 706 Madison Avenue, 710 Madison Avenue, 714 Madison Avenue and 0 Madison Avenue, Memphis, TN (“Leased Premises”). The Leased Premises will be used for the construction and operation of multi-family housing along with other such uses as may be related or incidental thereto such as the operation of cafes or coffee shops which shall not exceed five (5) % of the total square footage constructed, excluding garages.

The University has issued this Request for Proposals (“RFP”) to define the University’s leasing requirements; solicit proposals; detail proposal requirements; outline the University’s process for evaluating proposals and selecting a Proposer to enter into an agreement to lease the Leased Premises and design, construct, operate, and maintain the Development.

The RFP process will include three phases – Phase I will include an initial response from proposers providing information on qualifications, experience, financial capability, preliminary schedule, and conceptual design; Phase II will include the submittal of a more detailed program and site plan, refined schedule, and operating and financial plan including rent or other consideration to the University; Phase III will include finalist negotiation with the best evaluated proposer.

Throughout this RFP, the University seeks to lease the Leased Premises to the Proposer with the best proposal for the design, financing, construction, and operation of a residential multi-family housing development who will provide the highest financial benefit to the University and to give ALL qualified Proposers each individually, a “Proposer” and collectively, the “Proposers” including those that are or are owned by minorities, women, Tennessee service-disabled veterans, opportunity to do business with the University as Landlord.

As an agency of the State of Tennessee, there are certain terms and conditions The University of Tennessee cannot legally accept. PROPOSALS INCLUDING OR REFERENCING TERMS AND CONDITIONS OTHER THAN THOSE REFERENCED BY THE UNIVERSITY IN THIS RFP MAY BE REJECTED.

### 1.2. Disclaimer of Subjectivity

Proposers should understand and accept that by responding to this RFP they are willingly participating in a subjective evaluation process. Proposers should be aware that the proposal determined to best meet the needs of the State may not necessarily be the proposal offering the highest financial benefit.

### 1.3. Description of Development

The Development will serve as an enhancement to the existing University of Tennessee Health Science Center (UTHSC) academic, clinical, and research facilities in the area.

There is growing awareness of the need for residential housing in this area. With a student enrollment of approximately 2,900 and over 4,000 employees, UTHSC finds itself in a position where it desires to align with a talented and experienced partner utilizing a highly-desirable location on campus to meet demand for residential housing. A recent student housing survey estimates the demand for new housing from UTHSC students to be between 375 and 450 beds (or 185 to 225 apartment-style units). The housing will serve as an enhancement for students and faculty to

the existing UTHSC academic, clinical, and research facilities in the area. The housing would also be open to the general public

The Development should convey through its design a strong “sense of place” such as a safe, vibrant, walkable neighborhood for learning, living and playing while ensuring quality and functionality at a price matching student, faculty, and staff needs. The Development should have secure and functional linkages to the UTHSC and the Memphis Medical District. Access from the Development should be well lit and provide a safe environment.

Additional information on the UTHSC is available at <http://www.uthsc.edu>. The campus Master Plan can be found at <https://www.uthsc.edu/masterplan/>.

#### **1.4. Summary of Terms & Conditions**

Below is a summary of certain required terms and conditions associated with this opportunity. (See Attachment 6.4, Ground Lease Agreement, for additional terms and conditions). Notwithstanding the forgoing, the University and the best evaluated Proposer shall negotiate the final comprehensive development deal, and various terms and conditions of such are at this time unknown and should be offered by the Proposer.

##### **1.4.1. DEVELOPMENT OPPORTUNITY**

Finance, plan, design, develop, construct, manage and operate a residential multi-family housing development on the Leased Premises with the quality, amenities and pricing consistent with residential developments of similar size and pricing. The University believes it is desirable to allow a Proposer’s market study determine the configuration and number of units. The design of the facility is subject to University approval and will reflect a design and ambiance congruent with the campus educational and aesthetic objectives.

The Development should be recognized as offering quality and functionality at a competitive price and should project a positive image for the University. The Development should reflect the quality of the University as a leader in the region in a visible way.

##### **1.4.2. INITIAL TERM**

The University requests proposals for the lease of the Leased Premises for a period of thirty (30) years, with two (2) fifteen (15) year options for renewal. The first renewal option may be exercised by the Proposer by providing University with written notice of its desire to renew at least one (1) year prior to the expiration of the initial term. The second renewal option must be mutually agreed upon by the University and Proposer.

##### **1.4.3. TERM COMMENCEMENT**

The lease shall commence on the date the Lease Agreement is fully executed and the term will commence once the Development has received a certificate of occupancy.

##### **1.4.4. THE SITE**

###### **1.4.4.1 PARCEL**

The Leased Premises includes approximately 9.7 acres +/- on 22 parcels with these addresses: 0 Jefferson Avenue, 0 Orleans Avenue, 0 N. Orleans Avenue, 0 Court Avenue, 951 Court Avenue, 740 Court Avenue, 22 N Orleans, 706 Madison Avenue, 710 Madison Avenue, 714 Madison Avenue and 0 Madison Avenue.

###### **1.4.4.2 EXISTING CONDITIONS**

The Leased Premises is being leased as-is for development and long-term management without any representation regarding the environmental condition of the site. No representations or warranties whatsoever are made as to its condition, state or characteristics. Expressed warranties and implied warranties of fitness for a particular purpose or use and habitability are hereby disclaimed.

Existing improvements and facilities located on the Leased Premises that will not be retained as a part of the proposed Development are to be demolished by the Proposer. Proposers will have an opportunity to inspect the Leased Premises prior to taking possession and will acknowledge prior to submitting a proposal to have had full opportunity to inspect the Leased Premises and make an evaluation of the Leased Premises for any and all purposes. Failure or omission of Proposer to acquaint themselves of the existing conditions of the Leased Premises shall in no way relieve Proposer of any obligation with respect to the Lease. The Proposer shall be responsible for the removal or remediation of hazardous materials that are required by law to be removed or remediated for the Development, if any.

The existing buildings within the Leased Premises shall be demolished by the Proposer at the sole cost and expense of the Proposer.

Testing, audits, appraisals, inspections, or other non-invasive testing that is necessary or desired to submit a proposal, shall be at the sole expense of the prospective respondent.

1.4.5. FORM OF LEASE PAYMENT

The Development will be expected to provide a financial return to the University in the form of ground rent or other equally-attractive remuneration. Proposals shall offer lease rental, profit sharing, or other similar market revenue streams to the University as such may pertain to the Development. The successful Proposer, if any, will enter into a contract with the University that provides for the performance of all terms and conditions set forth in this RFP and a lease.

Meeting the housing demand by University student, faculty, and staff is a priority. Proposals should include terms and conditions to meet those needs. For example, proposals could include the number of beds that would be offered to students, faculty and staff on a priority basis; a rental rate range; and/or other considerations beneficial to the University.

1.4.6. OCCUPANCY

The University will not provide guarantees for minimal occupancy levels of the residential multi-family housing development or otherwise financially subsidize the Development.

1.4.7. LEASE AGREEMENT

The RFP Attachment 6.4, Ground Lease Agreement details the University's desired terms and conditions and substantially represents the lease terms that the successful Proposer must sign. If alternative lease terms and conditions are proposed, these shall be identified as a red-line document of the RFP Attachment 6.4, Ground Lease Agreement or in a separate lease document. While the University is willing to consider alternative terms and conditions, the University has no obligation to consider or to agree to any proposed alterations.

The State will take all reasonable suggested alternative or supplemental contract language changes by Proposers under advisement during the "Questions and Comments" period, subject to any mandates or restrictions imposed on the State by applicable state or federal law. The revised version of the Ground Lease Agreement will be released concurrently with the State's Response to "Questions and Comments".

*Note: When preparing the redline draft of the Ground Lease Agreement for submission during the Question & Comments period, DO NOT include any cost, revenue, or other financial information. If any financial information is included in any part of the redline*

*Ground Lease Agreement, the State may reject the redline entirely and/or consider it as unauthorized communication about the RFP, which may result in disqualification from consideration under this procurement process.*

1.4.8. QUALIFICATION OF PROPOSER

As evidence of its financial ability, each Proposer (no brokers or realtors) shall submit with its Phase II proposal, a copy of each of the Proposer's last three (3) fiscal years' annual financial statements reviewed or audited by a chartered accountant or certified public accountant. The proposal must include the financial statements of any and all relevant parties involved in this endeavor. Failure to conform to this section may be grounds for rejection of the proposal. The information provided shall be a public record under T.C.A. § 10-7-501 et seq.

1.4.9. EXPERIENCE

Respondents to this RFP must demonstrate experience in designing, constructing, operating and managing residential multi-family housing developments. Experience working with Higher Education entities is desirable.

1.4.10. SUBMITTAL OF PROPOSAL

Proposals must be made in the official name of a firm or individual (no lease brokers) under which the Development will occur showing official business address) and must be signed by a person or persons authorized to legally bind the person, partnership, company, or corporation submitting the proposal.

1.4.11. BID BINDER

Each Phase II proposal must be accompanied by a proposal binder in the form of a certified or cashier's check or bid bond in the amount of \$50,000.00 offered by Proposer (to be included in the sealed envelope marked "Bid Binder"). If the University accepts the Proposer's proposal and enters into a lease with the Proposer, the Bid Binder shall be returned to the Proposer or applied to the rental payment requirements of the lease, as appropriate. If the successful Proposer fails to or refuses to enter into the lease within the time allowed, then Proposer's Bid Binder shall be forfeited and the University shall be entitled to retain it. The checks and bonds of unsuccessful Proposers shall be returned promptly after a decision has been made not to proceed further with such Proposer.

1.4.12. UNIVERSITY BRANDING

The University shall have the right to approve all signs and materials used by Proposer in the promoting or marketing of space in the Leased Premises which contain a reference to UTHSC, which approval shall not be unreasonably withheld. Proposer and the University agree to negotiate and resolve in good faith any disputes relating to all such marketing materials.

1.4.13. UNIVERSITY PARTICIPATION

The University's participation in the Development is limited to the property to be leased, the Leased Premises, under negotiated terms and conditions. The University may assist the Proposer in obtaining the pertinent documentation for the financing of the Development contemplated by this RFP, as may be determined appropriate during negotiations. Proposals that are contingent on receiving financial assistance in any form from the University shall not be considered. The selected Proposer shall be required to provide all financing for the construction of the Development and operating expense and to provide deposits or surety to guarantee required performance.

1.4.14. RELATIONSHIP OF THIS RFP AND RESPONSE TO RFP TO LEASE

The terms and conditions described in this RFP shall survive the execution of the lease agreement between the parties (the "Lease Agreement"). The RFP and the response to

RFP that is selected will be incorporated by reference into the Lease Agreement. Where there is a conflict between the terms of the Lease Agreement and/or RFP and the terms of the response to the RFP, the terms of the Lease Agreement shall govern.

**1.5. Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a lease pursuant to this RFP or in the employment practices of the University under such lease, on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The successful Proposer pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

**1.6. RFP Communications**

1.6.1. The University has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP TRANSACTION NUMBER 16-10-017\_2**

1.6.2. **Unauthorized contact about this RFP with employees, officials, or consultants of the University of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.6.2.1. Potential Proposers must direct communications relating to this RFP to the following person designated as the RFP Coordinator during the proposal process:

University of Tennessee  
Office of Real Property and Space Administration  
Attn: Adam Foster  
5723 Middlebrook Pike  
Suite 201  
Knoxville, TN 37996-0045  
Phone: (865) 974-2441  
Fax: (865) 974-4814  
Email: afoste17@tennessee.edu

1.6.2.2. Intentionally Deleted.

1.6.2.3. Notwithstanding the foregoing, potential Proposers may contact:

a. Intentionally deleted

b. the following individual designated by the University to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

University of Tennessee  
Office of Real Property and Space Administration  
Attn: Adam Foster  
5723 Middlebrook Pike  
Suite 201

Knoxville, TN 37996-0045  
Phone: (865) 974-2441  
Fax: (865) 974-4814  
Email: afoste17@tennessee.edu

- 1.6.3. Only the University's official, written responses and communications will be binding with regard to this RFP. All oral communications of any type will be unofficial and non-binding.
  - 1.6.4. Proposers must ensure that the University receives all written comments, including questions and requests for clarification, no later than the Written Questions and Comments Deadline detailed in the RFP Section 2, Schedule of Events.
  - 1.6.5. Proposers must assume the risk of the method of dispatching any communication or proposal to the University. The University assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or digital "postmarking" of a communication or proposal to the University by a specified deadline date will not substitute for the University's actual receipt of a communication or proposal.
  - 1.6.6. The University will convey all official responses and communications related to this RFP to the potential Proposers from whom the University has received a Notice of Intent to Propose (RFP Section 1.10).
  - 1.6.7. The University reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the University.
  - 1.6.8. The University reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests related to this RFP. The University's official, written responses will constitute an amendment of this RFP.
  - 1.6.9. Any data or factual information provided by the University (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The University will make reasonable efforts to ensure the accuracy of such data or information; however it is within the discretion of Proposers to independently verify any information before relying thereon.
- 1.7. Assistance to Proposers with a Handicap or Disability**  
Potential Proposers with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Potential Proposers may contact the RFP Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.8. Proposer Required Review of Waiver of Objections**
- 1.8.1. Each Proposer must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.4., Form of Ground Lease Agreement, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively, "Questions and Comments").
  - 1.8.2. Any Proposer having Questions and Comments concerning this RFP must provide such in writing to the University no later than the Written Questions and Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.8.3. Protests based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the University, in writing, by the Written Questions and Comments Deadline.

**1.9. Pre-Proposal Conference**

A Pre-Proposal Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-Proposal Conference attendance is not mandatory, and potential Proposers may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

University of Tennessee Health Science Center  
Hyman Building, Room 101  
62 S. Dunlap Street  
Memphis, TN 38163

The purpose of the conference is to review the terms of the RFP and Lease. The University will entertain questions; however potential Proposers must understand that the University's response to any question at the Pre-Proposal Conference shall be tentative and non-binding. Potential Proposers should submit questions concerning the RFP in writing and must submit them prior to the Written Questions and Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The University will send the official response to questions to potential Proposers as indicated on the date detailed in the RFP Section 2, Schedule of Events.

**1.10. Notice of Intent to Propose**

Before the Notice of Intent to Propose Deadline detailed in the RFP Section 2, Schedule of Events, potential Proposers are required to submit to the RFP Coordinator a Notice of Intent to Propose (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address.

**A Notice of Intent to Propose creates no obligation for making a proposal relating to this RFP.**

**1.11. Proposal Deadline**

A Proposer must ensure that the University receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. The proposal must respond, as required, to this RFP (including its attachments), as may be amended. The University will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal. Proposals may be delivered in person, by United States mail, or other couriers. Facsimile and electronically transmitted (email) Proposals are not acceptable. It is the Proposer's responsibility to ensure that its proposal is mailed or delivered in sufficient time to arrive at the University's Purchasing Department by the submission deadline.

**1.12. Developer Selection Process**

This RFP includes a three-phase selection process. Proposers must propose a financing, development, management and operation plan, clearly identifying any third-party manager operator.

In Phase I, the University will accept proposals that address the Proposer's team composition, organizational approach to the project, financial capabilities, conceptual master plan with examples of comparable completed projects and a preliminary schedule.



Phase II will provide the University with the opportunity to receive additional materials from and to interview a select group of the most qualified Proposers from Phase I. In this phase, a group of selected finalists will be invited to submit and present detailed proposals.

The final phase of this process will be when the University and the best evaluated Proposer negotiate the terms of the Commitment Letter and lease, including any master plan and operations negotiations.

## 2. SCHEDULE OF EVENTS

### 2.1. RFP Schedule of Events

EVENT	TIME	DATE (all dates are University business days)
1. RFP Advertised		October 29, 2017 (Tennessean & Commercial Appeal) November 3, 2017 (Memphis Business Journal) November 5, 2017 (Tennessean & Commercial Appeal)
2. Disability Accommodation Request Deadline		November 8, 2017
3. Pre-proposal Conference	9:00 a.m. CST	November 14, 2017
4. Property Viewing/Inspection	10:00 a.m. CST (immediately following Pre-proposal conference)	November 14, 2017
5. Notice of Intent (NOI) to Propose		November 27, 2017

6. Written "Questions & Comments" Deadline		November 30, 2017
7. University Response to Written "Questions & Comments"		December 8, 2017
8. Proposers due diligence period including final request for property viewing/inspection		December 22, 2017
9. <b>Phase I Proposal Deadline</b>	3:00 p.m. CST	January 5, 2018
10. University Opening of Phase I Proposals	2:00 p.m. CST	January 8, 2018
11. University Completion of Phase I Evaluations and Notice of Proposers Selected for Phase II Evaluations and Interviews Issued		January 24, 2018
12. <b>Phase II Proposal Deadline</b>	3:00 p.m. CST	March 21, 2018
13. University Opening of Phase II Proposals	2:00 p.m. CST	March 22, 2018
14. Interviews of Phase II Proposers		March 26 – April 13, 2018
15. University Completion of Phase II Evaluations, Evaluation Notice Issued <u>and</u> RFP Files Opened for Proposer Inspection		April 30, 2018
16. If applicable, University Completion of Final Negotiations		May 18, 2018

17. University Notice of Intent to Award Issued		May 25, 2018
18. Executive Sub Committee of the State Building Commission Approval Sought		June 18, 2018
16. Lease Agreement is circulated to successful Proposer for signature		June 25, 2018
17. Lease Agreement is circulated to University and State for signature		July 2, 2018

**2.2. The University reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events prior to issuance of the Evaluation Notice shall constitute an RFP amendment, and the University will communicate such to potential Proposers from whom the University has received a Notice of Intent to Propose (refer to RFP Section 1.10).

### **3. GENERAL INFORMATION**

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#### **3.1. Statement of Financial Interests**

It is a requirement of Tennessee Code Annotated Section 12-2-114 that a statement listing the names of any and all persons financially interested in the available space be contained in the proposal response. This requirement includes the interests of the owner/agent, any lienholders or any known future purchasers or lienholders. This information is to be provided in RFP Attachment 6.3.

#### **3.2. Proposal & Proposer Prohibitions**

3.2.1. A Proposal must not result from any collusion between Proposers. The University will reject any Proposal that was not prepared independently without collusion, consultation, communication, or agreement with any other Proposer. Regardless of the time of detection, the University will consider any such actions to be grounds for proposal rejection or Lease Agreement termination.

3.2.2. A Proposer shall not provide, for consideration in this RFP process or subsequent lease negotiations, incorrect information that the Proposer knew or should have known was materially incorrect. If the University determines that a Proposer has provided such incorrect information, the University may deem the Proposer's proposal non-responsive and reject it or terminate the Lease Agreement.

3.2.3. The University shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee or someone deemed to have an unfair advantage. For purposes of this RFP:

3.2.3.1 An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.2.3.2 A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.2.3.3 A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been a State employee, shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

#### **3.3. Proposal Errors & Revisions**

A Proposer is liable for any and all proposal errors or omissions. A Proposer will not be allowed to alter or revise proposal documents after the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the University.

#### **3.4. Proposal Withdrawal**

A Proposer may withdraw a submitted proposal at any time before the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Proposer representative. After withdrawing a proposal, a Proposer may submit another proposal at any time before the Proposal Deadline.

#### **3.5. Proposal Preparation**

This RFP does not commit the University to award a lease or to pay any costs associated with the preparation, submittal, or presentation of any proposal incurred by any Proposer or Proposers.

## **4. GENERAL LEASING INFORMATION & REQUIREMENTS**

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### **4.1. RFP Amendment**

The University reserves the right to amend this RFP at any time prior to award, provided that it is amended in writing. However, prior to any such amendment, the University will consider whether it would negatively impact the ability of potential Proposers to meet the proposal deadline and will revise the RFP Section 2, Schedule of Events if deemed appropriate. If an RFP amendment is issued, the University will convey it to potential Proposers who submitted a Notice of Intent to Propose (RFP Section 1.810). A Proposer must respond, as required, to the RFP, including all attachments and amendments.

### **4.2. RFP Cancellation**

The University reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### **4.3. University Right of Rejection**

4.3.1. Subject to applicable laws and regulations, the University reserves the right to reject, at its sole discretion, any and all proposals.

4.3.2. The University may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP.

### **4.4. Disclosure of Proposal Contents**

4.4.1. Each proposal and all materials submitted to the University in response to this RFP become the property of the University of Tennessee. Selection or rejection of a proposal does not affect this ownership right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.

4.4.2. The University will hold all proposal information in confidence during the evaluation process.

4.4.3. Upon completion of proposal evaluations, indicated by public release of a Notice of Intent to Award, the proposals and associated materials will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

### **4.5. Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the University and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

### **4.6. Proposal Evaluation Team**

The Proposal Evaluation Team will be made up of five (5) or more State employees and will evaluate each proposal that meets the Mandatory Requirements (See RFP Attachment 6.2).

## **5. PROPOSAL REQUIREMENTS, EVALUATION & LEASE AWARD**

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### **5.1. Evaluation Process**

The proposal evaluation process is designed to award the Lease Agreement to the Responsive and Responsible Proposer offering the best combination of attributes based upon the evaluation criteria. The term "Responsive" means a person or entity which has submitted a proposal which conforms in all material respects to the RFP. The term "Responsible" means a person or entity which has the capacity in all material respects to perform fully the Lease Agreement requirements, and the integrity and reliability that will assure good faith performance.

### **5.2. Clarifications**

The University reserves the right, at its sole discretion, to request Proposer clarify information and/or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion will be limited to specific sections of the proposal identified by the University and shall be in accordance with all policies of the University and/or State of Tennessee

### **5.3 Phase I Requirements & Evaluation**

To be considered, a Phase I proposal must be received by the date specified in Section 2.1, RFP Schedule of Events. The University will not accept Phase I proposals received after the deadline. Phase I proposals should be submitted to the RFP Coordinator at the address listed on page 6. A cover letter (RFP Attachment 6.1), which will be considered an integral part of the Phase I proposal, must be signed by an individual who is authorized to bind the Proposer contractually and must certify that all statements in the proposal are true and correct. The letter must indicate the title or position that the individual holds in the firm and also must include the Proposer's federal tax I.D. number. RFP Attachment 6.2, Mandatory Requirements must be also completed.

Responses to Phase I of this RFP should be clear, concise and organized; meet the Mandatory Requirements; and be organized in the six major areas described below.

5.3.1. Mandatory Requirements. The RFP Coordinator will review each Phase I Proposal to determine compliance with RFP Attachment 6.2., Mandatory Requirements. If the RFP Coordinator determines that a proposal may have failed to meet one or more of the mandatory requirements, the RFP Coordinator shall seek the advice of an attorney on the staff of the University of Tennessee who will review the proposal and document his/her determination of whether:

- a. the proposal adequately meets requirements for further evaluation;
- b. the University will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the University will determine the proposal non-responsive to the RFP and reject it.

5.3.2. Organizational Qualifications/Experience. Proposers must provide detailed information that demonstrates their organizational ability to undertake a project of the magnitude described herein. At a minimum, the response to this RFP in Phase I must include the following:

5.3.2.1 Development Team: The proposed development team must be identified, including the legal nature of the business entity, all joint venture partners and the nature of their interests. The names and addresses of the principal members of the development team must be provided, including architects, engineering firm(s), space planners, construction manager(s), general contractor(s), major sub-contractor(s), financial consultants, and the residential multi-family development facility operator/manager. The roles and responsibilities of each member of the

development team must be clearly described and an organizational chart must be included.

5.3.2.2 Experience: A summary portfolio for each principal member of the development team must be provided. The summary should focus on the development of projects (if any) that are comparable in size, complexity, quality and scope, including a list of all such projects started and completed during the past five years and identification of any joint venture partners. The proposal must include photographs and brief descriptions of the projects, including the date of completion, location, concept, land uses, size and construction costs; the name of the current owner of the project and the date of sale should be included if applicable. The selected Proposer will be required to use architects and other team members who are familiar with the design and construction of multifamily residential developments. Describe experience working with similar clients (e.g., state colleges or universities).

5.3.2.3 Organizational Approach to the Project: Discuss approach to design for Higher Education entities. The community aspects of this project should be reflected in the proposal. These include coordination with the UTHSC Campus Master Plan, building siting, building massing, landscaping, site development, and any other general planning consideration normally associated with a project of this size and nature. The organizational and management approach utilized by the development team in prior projects of similar scope must be outlined, as well as the proposed relationship with the University during the design and construction of the Development.

5.3.3. Financial Capability. The response must demonstrate clearly the Proposer's financial capability to construct, operate and maintain the Development. Additionally, each proposal must detail previous experience in financing projects of similar nature and magnitude, bank and credit references, annual reports, percentage of ownership, statement of net worth and such other references as the Proposer deems relevant in response to this item.

5.3.4. Preliminary Schedule. In this phase, the Proposer must provide a schedule indicating at a minimum the preliminary dates for the following: completion of demolition of any existing structure(s); completion of design development and outline specifications; dates for review and approval by the University; start of construction of shell; completion of construction of shell; start of construction of interior improvements; and completion of the Development.

5.3.5. Management and Operating Plan. The Proposer must provide a summary of how the Development will be operated and managed once construction is complete. Provide examples of previous experience with developments of similar size, complexity, quality and scope. Also provide a copy of a sample tenant lease.

5.3.6 Conceptual Design. The proposal must provide a conceptual Master Plan for the site, listing required adjacencies, proposing a general design for the buildings (including a proposed number of floors) and gross square feet; bubble diagrams and the like should be used to illustrate the proposed conceptual plan. A site plan sketch must be included indicating possible density, site coverage, circulation patterns, service vehicle access, and provisions for parking, whether on-grade or in a parking structure.

5.3.7 Use by University Students, Faculty, and Staff. The Proposer is to conceptually provide terms and conditions to ensure the housing needs of University students, faculty, and staff

are met. For example, proposals could include the number of beds that would be offered to students, faculty and staff on a priority basis; a rental rate range; and/or other considerations beneficial to the University.

Proposal Evaluation Team members will independently evaluate each Phase I Proposal (that the RFP Coordinator has determined satisfies the Mandatory Requirements) and rank them in order from best evaluated to lowest evaluated providing a score for each proposal on a 1-100 point scale based on the evaluation criteria that has been determined prior to the release of this RFP and deposited with the University for safekeeping until the completion of the evaluation of the Phase I responses. The RFP Coordinator may call the references provided by the Proposer in response to RFP Attachment 6.2, Mandatory Requirements and will share all information provided by the references with the Proposal Evaluation Team for their consideration as part of the Phase I evaluation.

The Proposal Evaluation Team will then meet to discuss the results of their evaluations. At this meeting, of the Proposal Evaluation Team discuss their evaluations of the merits of each proposal based on the criteria listed above and will select no more than the five (5) highest evaluated proposals achieving an average minimum score of 70 points based on each member of the Proposal Evaluation Team's final scoring of each proposal to continue on to Phase II of the evaluation process. The selected proposals will then be notified that they have been chosen to continue on to Phase II of the evaluation process. No Proposer offering a proposal that the Proposal Evaluation Team determines does not set forth the basis for a Development that will be acceptable to the University will be selected to continue to Phase II of the evaluation process.

#### **5.4. Phase II Requirements & Evaluation**

To be considered, a Phase II proposal must be received by the date specified in Section 2.1, RFP Schedule of Events. The University will not accept Phase II proposals received after the deadline. Phase II proposals should be submitted to the RFP Coordinator at the address listed on page 6.

In this phase, each Proposer will make any updates (due to shifts in team composition, plans, fiscal abilities, etc.) to its Phase I proposal, and address the following issues in the Phase II proposal submittal. Proposers selected for Phase II evaluation will also participate in an interview with the Proposal Evaluation Team, its technical advisors and the RFP Coordinator. The purpose of the interview is to more fully understand the Proposer's plans for the Development. The RFP Coordinator will schedule Proposer interviews during the period indicated by the RFP Section 2, Schedule of Events. The University will maintain an accurate record of each Proposer's interview session. The record of the Proposer's interview shall be available for review when the University opens the procurement files for public inspection.

5.4.1. Functional and Space Program. Proposals must include a list of spaces indicating the configuration and number of units. An estimate of the parking requirements for residents, guests, employees and service vehicles must be provided and planned for. Total outside gross square footage for all components and the Development must be provided.

5.4.2. Refined Design. In this second phase, the Proposer will present a refined master plan design of the site that addresses key features. These features include, but are not limited to: traffic circulation, building heights, footprints, adjacencies, open and public spaces, amenities, a proposed structural system and construction methods, finish options, exterior appearance, and interior appearance of public spaces and typical units.

During the Phase II discussions, and in its sole discretion, the University may seek modifications to the plans and specifications. The plans and specifications submitted by the selected Proposer, and any modifications thereto, would become part of the lease between the University and the Proposer.



- 5.4.3. Schedule. Proposers must provide a refined schedule indicating at a minimum the dates for the following: site plan submittal; completion of design development and outline specifications; dates for review by the University; start of construction of shell; completion of construction of shell; start of construction of interior improvements; and completion of Development. The University shall have the right to modify this schedule, which would become a part of the lease or other agreement(s) between the University and the Proposer.
- 5.4.4. Capital Financing Plan. Proposals must include a complete and detailed plan for the financing of the Development. Data must include a preliminary (but itemized) cost schedule, including all soft or indirect costs, and the source and terms of the projected financing.
- 5.4.5. Operating and Financial Plan. Developers must identify clearly the planned management and organizational structure for the operation of the Development. This identification, in the form of an organizational chart and supporting materials, must indicate clearly the relationship of the operating organization to the Proposer, including any partnership or lease assignment arrangements. The Proposer must provide information on how maintenance and repair of the Development will be handled and a planned schedule for renewal of the Development.

Detailed financial pro formas for the project must be provided identifying projected volume, revenues, construction capital requirements, working capital requirements, operating costs, management fees, debt-service requirements and net income/profits. The pro forma must cover the first 10 years of operation. Additionally, a copy of the Proposer's last three fiscal year annual financial statements reviewed or audited by a chartered accountant or certified public accountant; similarly audited financial statements of members of the Proposer's partners, parent corporation or members; or other such evidence must be provided.

Proposals must specify: (1) proposed ground-rent amounts; (2) other proposed remuneration to the University; and (3) the proposed initial and future unit rate schedule.

Proposals should specify terms and conditions to ensure University student, faculty, and staff housing needs are met. For example, proposals could include the number of beds that would be offered to students, faculty and staff on a priority basis; a rental rate range; and/or other considerations beneficial to the University.

- 5.4.6. Lease Mark-Up. Proposers should submit a marked-up version of RFP Attachment 6.4, Form of Ground Lease Agreement for review by the Proposal Evaluation Team. The mark-up will serve as the basis for negotiations of a lease if the Proposer is selected as the best evaluated Proposer.
- 5.4.7. Additional Information. During the evaluation of the proposals, the University reserves the right to request additional information from Proposers.

Proposal Evaluation Team members will independently evaluate each Phase II Proposal and rank them in order from best evaluated to lowest evaluated. In performing such independent evaluation, Proposal Evaluation Team members will take into account the following criteria, among others: (1) a high-quality use of the site; (2) design, development, construction management, and operations capability and experience; (3) a functional and conceptual program and design; (4) proposed

business terms (land rent on ground lease and/or other remuneration); (5) ability to finance the project; and (6) quality of anticipated relationship between the Proposer and the University over the term of the lease, including terms to ensure University faculty, student and staff needs are met.

The Proposal Evaluation Team will then meet to discuss the results of their independent evaluations (the "Phase II Meeting"). At the Phase II Meeting, the Proposal Evaluation Team will discuss their evaluations of the merits of each proposal based on the criteria listed above, comparing the advantages and disadvantages of each proposal and will determine collectively the proposal deemed to be in the best interest of the University (the "Best Evaluated Proposal") and ranking in order the other proposals. The RFP Coordinator will attend the Phase II Meeting to take notes and the RFP Coordinator will place a written summary of the discussion of the Proposal Evaluation Team at the Phase II Meeting in the procurement file. Upon determination of the Best Evaluated Proposal, the University will issue an Evaluation Notice to all Proposers identifying the Proposer selected to proceed to Phase III of the evaluation process.

The University reserves the right to accept or reject any and all proposals, to waive any informalities in a proposal, and, unless otherwise specified in writing by the Proposer, to accept any items in the proposal.

**NOTICE: The Evaluation Notice shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.**

#### **5.5. Phase III – Finalist Negotiation**

In this final phase of the RFP, the Proposer having the Best Evaluated Proposal shall enter into negotiations with the University regarding the terms of the lease between the parties. The University may request that the Proposer make modifications to its proposal and the parties will act in good faith to reach a mutually acceptable agreement. If the University and the Proposer having the Best Evaluated Proposal cannot agree to terms, then the University may negotiate with the Proposer having the second best evaluated proposal and so on.

#### **5.6. Lease Award Process**

5.6.1. After completion of Phase III of the evaluation process, the RFP Coordinator will issue a Notice of Intent to Award to all Proposers naming the recommended Proposer and forward the lease to the proper officials of the University and/or State who will consider the same to determine whether an agreement between the parties should be forwarded to the Executive Sub-Committee of the State Building Commission (the "ESC") for approval. **The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the Proposer with the recommended proposal or any other Proposer.** After the determination of the University that the lease proposed by recommended Proposer is in the best interest of the University, the President of the University shall request approval of the documents by the ESC.

5.6.2. The Proposer identified in the Notice of Intent to Award must sign a lease drawn by the University pursuant to this RFP. The lease shall be substantially the same as the RFP Attachment 6.4., Form of Ground Lease Agreement except as modified by the University after taking into account the results of the negotiations, if any. The Proposer must sign the lease no later than Lease Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed lease by the deadline, the University may determine that the Proposer is non-responsive to this RFP and reject the proposal.

#### **5.7. RFP Files Open**

The University will make the RFP files available for public inspection on the date specified in the RFP Section 2, Schedule of Events. The files will remain open for public review from that date.

**5.8. Protest Process**

Any protests or appeals of protests pursuant to this RFP or the Notice of Intent to Award shall be handled in accordance with State Building Commission By-laws, Policy and Procedure Item 18.

**5.9. Lease Approval and Lease Payments**

5.9.1. This RFP and its Proposer selection processes do not obligate the University and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. University obligations pursuant to a lease award shall commence only after the lease is approved by University and State officials, including the ESC, as required by applicable laws and regulations and signed by the University/State and the Proposer.

5.9.2. No payment will be obligated or made until the relevant lease is approved as required by applicable statutes and rules of the State and University of Tennessee.

**RFP ATTACHMENT 6.1**

**PROPOSAL PACKAGE COVER SHEET**

**Lease of Property**

**22 parcels with these addresses:**

0 Jefferson Avenue, 0 Orleans Avenue, 0 N. Orleans Avenue, 0 Court Avenue, 951 Court Avenue, 740 Court Avenue, 22 N Orleans, 706 Madison Avenue, 710 Madison Avenue, 714 Madison Avenue and 0 Madison Avenue **for the development of a Residential Multi-Family Housing Development**

Located in:  
**Memphis, Shelby County, Tennessee**

**RFP TRANSACTION NUMBER: 16-10-017\_2**

**UNIVERSITY OF TENNESSEE**



***Any blank spaces may cause Proposal to be unacceptable and rejected.***

**Proposer Identification:**

Proposer \_\_\_\_\_

Address \_\_\_\_\_

**The Proposer received the following amendments to the RFP, and this Proposal reflects the Proposer's consideration of these amendments: [list amendments received, if any]**

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

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## RFP ATTACHMENT 6.1

### PROPOSAL STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Proposer must sign and complete the Proposal Statement of Certifications and Assurances below as required, and it must be included in the Proposal (as required by RFP Attachment 6.2., Proposal Evaluation Guide, Section A, Item A.1.).

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**The Proposer does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:**

1. The Proposer will comply with all of the provisions and requirements of the RFP.
2. The Proposer will perform pursuant to the terms of the lease agreed to by the parties, if applicable, for the total lease term.
3. The Proposer will comply with:
  - (a) the laws of the State of Tennessee;
  - (b) Title VI of the federal Civil Rights Act of 1964;
  - (c) Title IX of the federal Education Amendments Act of 1972;
  - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
  - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
4. To the knowledge of the undersigned, the information detailed within the proposal submitted in response to the RFP is accurate.
5. The proposal submitted in response to the RFP was independently prepared, without collusion, under penalty of perjury.
6. No amount shall be paid directly or indirectly to an employee or official of the University of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Proposer in connection with the RFP or any resulting lease.
7. The Phase I and Phase II proposals submitted in response to the RFP shall remain valid for at least 90 days subsequent to the date of the Phase II Proposal opening and thereafter in accordance with any lease entered into pursuant to the RFP.
8. By submission of this response, each Respondent and each person signing on behalf of any Respondent certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each Respondent is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**By signing this Proposal Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the proposing entity to the provisions of this RFP and any lease awarded pursuant to it. If the signatory is not the Proposer (if an individual) or the Proposer's company *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to bind the proposing entity.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE PROPOSING ENTITY**

**Signature:** \_\_\_\_\_

**PRINTED NAME AND TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PROPOSER LEGAL ENTITY NAME:** \_\_\_\_\_

**PROPOSER FEDERAL ID NUMBER OR SSN:** \_\_\_\_\_

## RFP ATTACHMENT 6.2

**SECTION A: MANDATORY REQUIREMENTS.** The Proposer must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Proposer must also detail the proposal page number for each item in the appropriate space below.

The RFP Coordinator will review the proposal to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the proposal and attach a written determination. In addition to the Mandatory Requirement Items, the RFP Coordinator will review each proposal for compliance with all RFP requirements.

<b>PROPOSER LEGAL ENTITY NAME AND MAILING ADDRESS:</b>			
<b>PROPOSER EMAIL ADDRESS &amp; PHONE NUMBER:</b>			
Proposal Page # (Proposer completes)	Item Ref.	Section A— Mandatory Requirements	Pass/Fail (University Use ONLY)
		The Phase I Proposal must be delivered to the University no later than the Phase I Proposal Deadline specified in the RFP Section 2, Schedule of Events.	
		The Phase I Proposal should NOT contain information regarding the ground rent, profit sharing or other financial remuneration that may be proposed to be paid to the University.	
		The Phase I Proposal must address all matters set forth in Section 5.3 of the RFP.	
	<b>A.1.</b>	<b>Cover Sheet &amp; Statement of Certifications and Assurances:</b> Provide the Cover Sheet and Proposal Statement of Certifications and Assurances (RFP Attachment 6.1) completed and signed by an individual empowered to bind the Proposer to the provisions of this RFP and any resulting lease. The document must be signed without exception or qualification.	
	<b>A.2.</b>	<b>Conflict of Interest:</b> Provide a statement, based upon reasonable inquiry, of whether the Proposer or any individual who shall perform work under the lease has a possible conflict of interest (e.g., employment by the University of Tennessee) and, if so, the nature of that conflict.  NOTE: Any questions of conflict of interest shall be solely within the discretion of the University, and the University reserves the right to cancel any award.	
	<b>A.3.</b>	<b>Financial Interested Parties:</b> Complete Attachment 6.3.	

	<b>A.4.</b>	<b><u>Prior Experience:</u></b> Proposer must provide contact information for references who can certify that Proposer has completed at least 3 residential multi-family unit housing development projects.	
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**University Use – RFP Coordinator Signature, Printed Name & Date:**

**RFP Attachment 6.3**

**A. Financial Interested Parties:** As required by T.C.A. Section 12-2-114, the names of any and all persons financially interested in the Lease are as follows:

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

**PLEASE NOTE: THIS SECTION MUST BE COMPLETED.**

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**RFP Attachment 6.4**  
**FORM OF GROUND LEASE AGREEMENT**  
**(see attached)**

**GROUND LEASE AGREEMENT**

This Ground Lease Agreement (the "Lease"), is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date"), by and between the **State of Tennessee on behalf of the University of Tennessee** ("Landlord"), and \_\_\_\_\_ ("Tenant").

**WITNESSETH:**

WHEREAS, Landlord owns certain parcels of land and improvements in 22 parcels located at 0 Jefferson Avenue, 0 Orleans Avenue, 0 N. Orleans Avenue, 0 Court Avenue, 951 Court Avenue, 740 Court Avenue, 22 N Orleans, 706 Madison Avenue, 710 Madison Avenue, 714 Madison Avenue and 0 Madison Avenue, Memphis, TN comprised of approximately 9.7 +/- acres more particularly described on Exhibit A attached hereto and incorporated herein by reference ("Leased Premises");

WHEREAS, Landlord through the University of Tennessee (the "University") operates the University of Tennessee Health Science Center ("UTHSC") on land owned by Landlord in the City of Memphis, Shelby County, Tennessee, which land includes the Leased Premises;

WHEREAS, Tenant desires to lease the Leased Premises for the design, construction, operation, and management of residential multi-family housing units and associated parking (the "Development"), all upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, Landlord and Tenant agree as follows:

- (1) **LEASED PREMISES:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Leased Premises.

The Request for Proposal dated \_\_\_\_\_ ("RFP") and the responses to RFP submitted by Tenant, attached as Exhibit B and C, respectively, are incorporated by reference into the Lease. Where there is a conflict between the terms of this Lease and the RFP, the terms of this Lease will govern. Where there is a conflict between the terms of this Lease and/or RFP and the terms of the response to the RFP, the terms of this Lease and the RFP shall govern.

- (2) **RENTAL:**

a. *The Development will be expected to provide a financial return to the University in the form of ground rent or other equally attractive remuneration. This section will be revised to reflect the lease rental, profit sharing, rental discounts or other similar market revenue streams to the University as such may pertain to the Development.*

*Meeting the housing demand by University student, faculty, and staff is a priority. The Lease should include terms and conditions to meet those needs. For example, the Lease could specify the number of beds that would be offered to students, faculty and staff on a priority basis; a rental rate range; and/or other considerations beneficial to the University.*

- b. If Tenant fails to pay any rent, when due, the same shall bear interest from the date due until paid at the lesser of eighteen percent (18%) per annum or the maximum rate permitted under Applicable Laws.
- c. Tenant's obligation to pay rent or other remuneration is an independent covenant, and Landlord's failure to perform any of its obligations or responsibilities under this Lease shall not result in an abatement of rent, entitle Tenant to withhold rent or otherwise affect Tenant's liability for the payment of rent. All rent shall be paid by Tenant to Landlord without deduction, demand, notice or offset. Except as otherwise expressly provided herein, Tenant shall not be entitled to any abatement or reduction of the rent. Tenant shall deliver all rent to Landlord at the address specified in Section 7 or such other place as Landlord may designate to Tenant by written notice.
- d. It is the intention of the parties that this Lease be a fully net lease. Accordingly, except as otherwise expressly provided herein, Tenant shall pay, when due, all costs, expenses and other liabilities related to the Leased Premises and the Development or the ownership, operation, use, improvement, maintenance, repair or replacement thereof, that are allocable to periods within the Term. In the event Landlord inadvertently pays any cost or expense that the Tenant is obligated to pay under the terms of this Lease, Tenant shall reimburse Landlord for such expense or cost within fifteen (15) days after its receipt of a written demand from Landlord.
- e. Tenant expressly agrees that nothing contained in this Lease shall require Landlord to furnish to Tenant or any other occupant of the Leased Premises any water, sewer, gas, heat, electricity, light, power, or any other utilities, labor, materials, or services of any kind whatsoever.

(3) **TERM:** The term of this Lease shall commence on \_\_\_\_\_ (the "Commencement Date") and shall continue for thirty (30) years (the "Term"), expiring on \_\_\_\_\_ (the "Expiration Date"), subject to terms set forth below and unless terminated earlier in accordance with the provisions of this Lease.

Tenant shall have the right to extend the Term for an additional period of fifteen (15) years (the "First Extension Option") by providing Landlord written notice of its desire to extend, as provided herein, not less than one (1) year prior to the Expiration Date. The rent due Landlord under the First Extension Option shall be the market rate for a lease of this type as determined by a MAI certified appraiser selected by Landlord. Market rate shall be defined as what an arm's-length, non-expansion, non-renewal, non-equity tenant would pay for space of comparable size, quality, utility, and location. Unless waived by Landlord, in writing, Tenant's right to exercise the First Extension Option is conditioned on: (i) there being no Event of Default at the time Tenant exercises such First Extension Option or at the start of the extension of the term of this Lease resulting from the exercise of a First Extension Option; and (ii) Tenant not having previously failed to comply with the provisions of this Lease more than eight (8) times. If any such condition is not satisfied, Landlord may, at its option and without limiting its other rights and remedies, nullify Tenant's exercise of the First Extension Option, in which event no extension of the term of this Lease shall result therefrom. In order to exercise any First Extension Option, Tenant must provide Landlord written notice that it is exercising the same at least one (1) year prior to the date the Term is then set to expire.

The Term may be extended for a final additional period of fifteen (15) years (the "Final Extension Option") with mutual consent of Tenant and Landlord. The Tenant shall give the

Landlord written notice of its desire to extend, as provided herein, not less than one (1) year prior to the Expiration Date. The rent due Landlord under the Final Extension Option shall be the market rate for a lease of this type as determined by a MAI certified appraiser selected by Landlord. Market rate shall be defined as what an arm's-length, non-expansion, non-renewal, non-equity tenant would pay for space of comparable size, quality, utility, and location. Unless waived by Landlord, in writing, Tenant's right to exercise the Final Extension Option is conditioned on: (i) there being no Event of Default at the time Tenant exercises such First Extension Option or at the start of the extension of the term of this Lease resulting from the exercise of a Final Extension Option; and (ii) Tenant not having previously failed to comply with the provisions of this Lease more than eight (8) times. If any such condition is not satisfied, Landlord may, at its option and without limiting its other rights and remedies, nullify Tenant's exercise of the Final Extension Option, in which event no extension of the term of this Lease shall result therefrom. In order to exercise any Final Extension Option, Tenant must provide Landlord written notice that it is exercising the same at least one (1) year prior to the date the Term is then set to expire.

(4) **AS-IS CONDITION:**

- a. Tenant accepts the Leased Premises in its current condition and is solely responsible for any and all demolition, construction, alterations, improvements, and repairs to meet all applicable federal, state, and local codes and regulations. All such demolition, construction, renovations, alterations, improvements, and repairs must be approved by the Landlord.
- b. Tenant acknowledges it has had full opportunity to inspect the Leased Premises and make an evaluation of the Leased Premises for any and all purposes. Failure or omission of Tenant to acquaint themselves of the existing conditions of the Leases Premises shall in no way relieve Tenant of any obligation with respect to this Lease.
- c. Tenant acknowledges and agrees that: (i) Landlord has not made, is not making and specifically disclaims any representation, warranty, guarantee or assurance to Tenant regarding the Leased Premises, express or implied, including, but not limited to, any representation, warranty, guaranty or assurance regarding title, physical condition, value, suitability, compliance with all applicable governmental constitutions, statutes, laws, orders, ordinances, codes, rulings, regulations and decrees, now in force or hereafter enacted (collectively, "Applicable Laws"), zoning, environmental matters or Hazardous Substances; (ii) the Leased Premises are being leased to Tenant "AS IS - WHERE IS" and with all faults; and (iii) except as specifically set forth herein, Tenant is responsible for all costs associated with placing the Leased Premises and the Development in a condition fit for its intended purpose, including, without limitation, the cost of all repairs, replacements, alterations, additions and improvements required to cause the Leased Premises and Development to comply with Applicable Laws.

(5) **TENANT OBLIGATIONS:**

- a. Repair and Maintenance. Throughout the Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Leased Premises and Development in good repair and condition in a manner consistent with similar residential developments of this size and quality and shall make all repairs, replacements and renewals, foreseen or unforeseen, ordinary or extraordinary, necessary to put or maintain the Leased Premises and Development in such state of repair and condition. Landlord shall not be required to maintain, repair or rebuild all or any part of the Leased Premises and Development or

Tenant parking pursuant to this Lease. Tenant waives the right to (i) require Landlord to maintain, repair or rebuild all or any part of the Leased Premises and Development pursuant to this Lease, or (ii) make repairs at the expense of Landlord pursuant to this Lease by reason of any Applicable Laws, contract, easement, covenant, condition, or restriction at any time in effect. In addition, Tenant shall keep the Leased Premises and Development in a safe and sanitary condition as required by all Applicable Laws.

- b. Compliance with Laws. Tenant shall comply, and cause the Leased Premises and Development to comply, with all Applicable Laws and the rules and regulations of the Board of Fire Insurance Underwriters or other similar body as amended, and Tenant shall not use the Leased Premises and Development, or permit anything to be done on or about the Leased Premises and Development, that will in any way conflict with or violate the same. During the Term, Tenant shall comply with and cause the Leased Premises and Development to be in compliance with (i) all Applicable Laws applicable to the Leased Premises and Development or the uses conducted on the Leased Premises and Development, (ii) the provisions of any insurance policies required to be maintained by Tenant with respect to the Leased Premises and Development, and (iii) the terms of any easements, covenants, conditions and restrictions affecting the Leased Premises which are permitted encumbrances or are created after the date of this Lease with Tenant's written approval. If any additions, alterations, changes, repairs or other work of any nature, structural or otherwise, shall be required or ordered or become necessary at any time during the Term because of any of these requirements, the entire expense of the same, irrespective of when the same shall be incurred or become due, shall be the sole liability of Tenant.

In case Tenant, after notice in writing from the Landlord requiring the Tenant to comply with the requirements of this paragraph in regard to a specified condition, shall fail, refuse or neglect to comply therewith, or in the event of an emergency constituting a hazard to the health or safety of the Leased Premises and Development, the Landlord may perform such maintenance or make such repair at its own cost and, in addition to any other remedy the Landlord may have, may add the amount thereof to the rent as additional rent that may then be or thereafter become due hereunder.

- c. Tenant, at its sole cost and expense, shall be responsible for and shall obtain all governmental permits and approvals necessary or appropriate for the construction of the Development and the related site improvements, including, but not limited to, (i) all approvals required under land use laws and ordinances, (ii) all required platting, subdivision and zoning approvals, (iii) all required building permits and approvals, and (iv) tap permits or connections for water and sanitary sewer services to the Leased Premises and Development. Landlord agrees, upon Tenant's request, and at no cost to Landlord, to cooperate and assist Tenant in Tenant's efforts to secure any necessary approvals or permits and to join in applications for zoning matters, building permits, certificates of occupancy, and all other applications for licenses, permits and approvals for which the signature of Landlord or the owner is required by applicable law.
- d. Tenant is responsible for providing all parking to support the construction, operation and use of the Development.
- e. The existing buildings within the Leased Premises shall be demolished by the Tenant at the sole cost and expense of the Tenant.

(6) **TERMINATION:**

- a. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Leased Premises and Development to Landlord in good order and repair, ordinary wear and tear excepted. If Tenant is not then in default under any of the covenants and conditions hereof, Tenant may remove all personal property and equipment of Tenant, other than permanent fixtures, from the Leased Premises prior to the date of any termination or expiration of this Lease; thereafter all such personal property and equipment not removed shall belong to Landlord without the payment of any consideration.
- b. On the Expiration Date or earlier termination of this Lease, any renovations, alterations, improvements, repairs and new structures constructed shall be surrendered to and become Landlord's property, owned by Landlord in fee simple, free and clear of all claims by Tenant or any third person, and all liens, security interests and encumbrances, other than the permitted encumbrances and any other encumbrances or liens created in accordance with this Lease or otherwise expressly agreed to by Landlord in writing and, upon Landlord's request, Tenant agrees to execute, acknowledge and deliver to Landlord a proper instrument in writing, releasing and quitclaiming to Landlord all right, title and interest of Tenant in and to the Leased Premises and Development and all other improvements thereon. However, the Landlord also reserves the right to require the Tenant, at its sole cost, to remove all additions, structures and other improvements from the Leased Premises upon the expiration or earlier termination of the Lease, or the Landlord reserves the right to remove the additions, structures, and other improvements and Tenant will reimburse Landlord for such costs. In the event that there are any warranties remaining on portions of the Development on the Expiration Date or the earlier termination of this Lease, Tenant shall cause such warranties to be promptly assigned to Landlord at no cost to Landlord.

(7) **NOTICES:** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage pre-paid, and addressed as follows:

**To Tenant:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**PHONE:**

\_\_\_\_\_

**To Landlord and the University:**

The University of Tennessee  
 301 Andy Holt Tower  
 Knoxville, Tennessee 37996

**PHONE:** (865) 974-2441

(8) **ASSIGNMENT/SUBLETTING:**

- a. Except in accordance with Section 22 below, neither Tenant nor any court or officer thereof nor any receiver or trustee in bankruptcy shall assign, sublease, license, sell, transfer or in any way mortgage, pledge or hypothecate (collectively "Assign") all or any of (i) its interest in this Lease or (ii) its interest in and to the Leased Premises and Development or any part thereof (an "Assignment"), without Landlord's prior written consent and approval of the process by which the interest is assigned in accordance with this Section. Landlord shall not unreasonably withhold its consent to an Assignment by Tenant, provided that Tenant shall cause Landlord to be provided with information regarding any proposed assignee, including audited financial statements and tax returns, credit-worthiness, intended use and other reasonable and relevant information requested by Landlord. Further, Tenant acknowledges that any assignee may be required to execute a new lease or an amendment to this Lease, incorporating other provisions including rent increases and include other provisions or changes deemed necessary by the Landlord.
- b. If Landlord consents to an Assignment (or if this Lease is assigned without Landlord's consent), the terms and conditions of this Lease will in no way be waived or modified by Tenant, including, without limitation, the use which Tenant or its assignee may make of the Leased Premises as set forth in Section 10 below. Further, any assignee shall expressly assume (and shall be deemed to have assumed) all of the Tenant's obligations under the Lease. Landlord's consent to an Assignment will not be deemed to consent to any further Assignment by either Tenant or an assignee.
- c. If Landlord or a court of competent jurisdiction should ever permit Tenant to assign its interest in this Lease, sell this Lease or sublet or license the Leased Premises, or a portion thereof, for rentals in excess of the rent and amortization of the cost of improvements, additions, and new structures as a result of this Lease, Tenant shall pay the sales price or all of such excess rent or any other excess revenue (which amount shall equal the difference between the rent provided for herein and the excess rent) to Landlord as Additional Rent.

(9) **INSPECTION:** Landlord reserves the right to enter the Leased Premises and Development, at reasonable times, in order to perform its obligations under this Lease or to inspect the Leased Premises and Development.

(10) **PERMITTED USE:**

- a. The Leased Premises shall be continuously used by Tenant throughout the Term only for the Development (the "Permitted Use") along with other such uses as may be related or incidental thereto such as the operation of cafes or coffee shops which shall not exceed five (5)% of total square footage constructed, excluding garages. Tenant shall not have the right to use the Leased Premises for any other purpose unless it obtains Landlord's prior written consent, which consent may be granted or withheld by Landlord in its sole and absolute discretion. Tenant shall not use or permit the Leased Premises and Development to be used in a manner that: (i) unreasonably disturbs any other person or entity; (ii) is illegal or immoral; (iii) damages the reputation of Landlord; (iv) constitutes a nuisance (public or private); or (v) violates or increases the cost of any insurance policy covering the Leased Premises.
- b. Parking at the Development shall be limited to guests and employees of the Development, and licensees, vendors and others providing services to the Development. In no event shall Tenant offer parking at the Development in a manner that competes

with the parking options offered by the Landlord to students, faculty and visitors of UTHSC.

- c. In no event shall the Leased Premises be used for any purpose which would constitute a public or private nuisance or waste or which would violate any of the provisions of any permitted encumbrances, any legal requirements or any covenants or restrictions applicable to the Leased Premises. Tenant agrees that with respect to the permitted encumbrances and any such covenants or restrictions existing as of the date of this Lease, Tenant shall observe, perform and comply with and carry out the provisions thereof required therein to be observed and performed by Landlord.
- d. Tenant shall not permit any unlawful occupation, business or trade to be conducted on the Leased Premises or any use to be made thereof contrary to applicable legal requirements. Tenant shall not use, occupy or permit any of the Leased Premises and Development to be used or occupied, nor do or permit anything to be done in or on any of the Leased Premises and Development, in a manner which would (i) make void or voidable any insurance which Tenant is required hereunder to maintain in force with respect to any of the Leased Premises and Development, (ii) affect the ability of Tenant to obtain any insurance which Tenant is required to furnish hereunder, or (iii) cause any injury or damage to any of the Development.
- e. The Development shall include at all times, but subject to a reasonable schedule of holidays and standard closures, the amenities and provide the service levels as set forth on the attached Schedule 1, subject to force majeure and renovations of a reasonable duration.

(11) **TAXES AND ASSESSMENTS:**

- a. Payment of Taxes. Tenant is responsible for payment of all federal, state, and local taxes levied against the Leased Premises and Development, leasehold improvements, personal property and all other taxable property and 1) assessed directly to Tenant, 2) assessed as a result of Landlord leasing Leased Premises to Tenant, 3) that result from any improvements made to the Leased Premises, and 4) that result from the operation of the Development.
- b. Subject to the provisions of Section 11.c hereof relating to contests, from and after the Effective Date, Tenant shall, at least fifteen (15) days before delinquent or interest or penalties are due thereon, pay and discharge all of the following (collectively, the "**Impositions**"): all taxes of every kind and nature (including real, ad valorem, personal property, gross income, franchise, withholding, profits and gross receipts taxes) on or with respect to the Leased Premises and Development; all charges and/or taxes imposed by any governmental body for any easement or agreement maintained for the benefit of the Leased Premises and Development; all general and special assessments (payable in installments if permitted), levies, permits, inspection and license fees on or with respect to the Leased Premises and Development; all water and sewer rents and other utility charges on or with respect to the Leased Premises and Development; and all other public charges and/or taxes whether of a like or different nature, even if unforeseen or extraordinary, imposed or assessed upon or with respect to the Leased Premises and Development, during (but not prior to) the Term, against Landlord, Tenant or any of the



Leased Premises and Development as a result of or arising in respect of the occupancy, leasing, use, maintenance, operation, management, repair or possession thereof, or any activity conducted on the Leased Premises, or the *Base Rental or Additional Rental*, including, without limitation, any gross income tax, sales tax, occupancy tax or excise tax levied by any governmental body on or with respect to such *Base Rental or Additional Rental*. If received by Landlord, Landlord shall promptly deliver to Tenant any bill or invoice with respect to any Imposition. No failure by Landlord to deliver any such bill or invoice shall relieve Tenant of its responsibility to pay the same in accordance with the terms of this section unless Landlord fails to deliver any such bill or invoice after the due date of such payments. If any assessment against any of the Leased Premises may be paid in installments, Tenant shall have the option to pay such assessment in installments; and, in such event, Tenant shall be liable only for those installments which become due and payable during the Term. Tenant shall prepare and file all tax reports required by governmental authorities which relate to the Impositions. Tenant shall deliver to Landlord copies of all settlements and notices pertaining to the Impositions which may be issued by any governmental authority and receipts for payments of all Impositions made during each calendar year of the Term, within ten (10) days after payment thereof.

- c. Tenant's Right to Contest. Tenant may in good faith and at its sole cost and expense contest the validity or amount of (i) the impositions, and (ii) any other taxes, charges, assessments, or other amounts, charged or assessed against the Leased Premises and Development, in which event the payment thereof may be deferred during the pendency of such contest. If requested by Tenant, Landlord will cooperate with Tenant as to any such contest; provided, that Landlord shall not be obligated to incur any expense in connection therewith. Nothing herein contained, however, shall be construed to authorize Tenant to allow or to permit the Leased Premises, or any part thereof, to be sold by any city, state, municipal, or other governmental authority for the non-payment of any impositions.

(12) **INDEMNITY/INSURANCE:**

- a. Tenant shall indemnify and hold the Landlord and the University harmless from any and all claims, costs, damages and judgments of whatsoever nature, including but not limited to costs and expenses incurred by the Landlord and the University in the defense of any action, arising wholly or in part by any act, omission, or negligence of Tenant, its agents, contractors, employees, servants, invitees, or licensees on the Leased Premises and Development pursuant to this lease, shall assume all responsibility and liability therefore and shall discharge any judgment that may be rendered therein.
- b. Throughout the Term, Tenant shall maintain, at its sole cost and expense, general liability insurance for personal injury, death and property damage with limits of said insurance to be no less than five million dollars (\$5,000,000.00) per claim and per occurrence. The Landlord and the University shall be named as additional insured under the liability insurance policy. Tenant's insurance shall provide primary coverage. In no event shall the amount of Tenant's insurance coverage limit the liability of the Tenant under this Lease.
- c. Tenant, at its sole expense, shall keep the Development insured against loss by fire and all of the risk and perils usually covered by an "all risk" endorsement to a policy of fire insurance upon property comparable to the Development, including vandalism and

malicious mischief endorsements, in an amount equal to at least one hundred percent (100%) of the replacement cost of the Development. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord and the University shall be named an additional insured under this policy. Notwithstanding anything to the contrary set forth herein, Tenant shall not be required to obtain and maintain the insurance described in this section until immediately prior to the termination of the builder's risk insurance on the Development described below.

- d. Until completion of construction of the Development, and during any period in which reconstruction, alteration or other construction activity is occurring on the Leased Premises, Tenant, at its sole expense, shall maintain builder's risk insurance in an amount not less than the full insurable value of the Development, and materials supplied in connection with the Development. Tenant shall furnish to Landlord evidence of coverage and any renewals or replacements of this insurance. Landlord and the University shall be named as an additional insured under this policy.
- e. Upon the issuance of a certificate of occupancy for the Development, Tenant, at its sole expense, shall maintain business interruption insurance insuring against loss of income derived from Tenant's operations on the Leased Premises due to the risks covered by the property insurance required above, in an amount not less than Tenant's net operating income from the Leased Premises (gross rental income, less operating expenses) for a twelve (12) month period.
- f. The insurance policy(s) that Tenant is required to obtain under this Lease (the "Required Policies") (i) shall be issued by licensed and reputable insurance companies reasonably acceptable to Landlord and rated A-VIII or better by A.M. Best, and (ii) shall contain a waiver of subrogation, and (iii) shall provide that they cannot be amended, cancelled, terminated or not renewed unless Landlord has been given thirty (30) days' prior written notice. Landlord shall have the right to require, from time to time, that Tenant increase the amount of its insurance coverage and/or obtain additional insurance coverage so long as Landlord is acting in a commercially reasonable manner. If Tenant fails to maintain any of the insurance required under this Lease, then, in addition to its other rights and remedies, Landlord may (but shall not be obligated to) purchase such insurance, on behalf of Tenant, in which event Tenant shall reimburse Landlord for the cost of such insurance, upon demand. On the Commencement Date and each anniversary thereof, Tenant shall provide Landlord with certificates evidencing that the insurance Tenant is required to maintain hereunder is in full force and effect. Upon request, Tenant shall furnish Landlord with the original (or a certified copy) of each policy of insurance required hereunder and evidence of the payment of all premiums for the same. Failure to comply will be deemed a material default of this Lease.
- g. Landlord and the University are to be covered as an insured as respects: liability arising out of the Leased Premises and Development occupied or used. Coverage shall contain no special limitations on the scope of protection afforded to Landlord.
- h. The insurance coverage of the policies required in this Section 12 shall be the primary insurance with respect to Landlord and the University. Any insurance or self-insurance maintained by Landlord shall be excess and not contributory to the insurance required in this Section 12.
- i. During the Term, Tenant shall cause the Leased Premises and Development, including all additions, structures and improvements located thereon and all contents and personalty located therein, to be insured (to the extent insurable) against all loss or

damage for the full insurable value thereof with the Landlord named as an additional insured. With regard to the obligations of Tenant, Tenant agrees to provide assurance of insurance coverage in types and amounts required by state law, regulation and/or policy.

- j. Landlord is further required to maintain the following insurance coverages: (i) until completion of construction of the Development, Tenant shall cause all designers and contractors conducting work at or on the Leased Premises to maintain such insurance coverages, and at such limits, as are required by Landlord for projects similar to the Development located on Landlord-owned property; (ii) workers' compensation and employer's liability insurance with limits of one hundred thousand dollars (\$100,000) per occurrence, a five hundred thousand dollars (\$500,000.00) disease-policy limit, and one hundred thousand (\$100,000.00) per employee; and (iii) automobile liability insurance with a one million dollars (\$1,000,000.00) combined single limit that covers owned, hired, and non-owned auto liability.

(13) **CASUALTY:**

- a. Damage or Destruction. If during the Term, the Leased Premises or Development are so damaged by fire, tornado, or other catastrophe or casualty as to render the same unusable for the Permitted Use, subject to the terms of Section 22, this Lease shall terminate. If the Leased Premises or Development are not rendered unusable for the Permitted Use, then Tenant shall promptly commence repairs and restoration of the Leased Premises and Development to put the Leased Premises and Development in a usable condition or do any work (e.g. demolition) necessary to remove all debris and the remaining portion of the Development and to place the Leased Premises in safe and proper condition reasonably acceptable to Landlord. If Tenant elects to repair and restore the Leased Premises and Development, Tenant shall, at its own cost and expense, promptly and diligently repair, restore and replace the Development substantially in compliance with the original Plans (as hereinafter defined) therefor or in compliance with such modified plans as shall be approved in writing by Landlord. Tenant shall commence such work of repair, restoration or replacement to the Development within sixty (60) days after the damage or loss occurs and shall complete such work no later than three hundred sixty five (365) days after commencement. Completion of the repairs, alterations, restorations, additions and replacements to the Development shall result in Development at least equal in value, aesthetic impact, quality, and function to the Development prior to the fire or other casualty, except as expressly provided to the contrary in this Lease. All insurance proceeds collected for such damage or destruction shall be applied to the cost of such repairs, restoration and replacement, and if there are no insurance proceeds or the available insurance proceeds shall be insufficient for said purpose, Tenant shall make up the deficiency out of its own funds. The Tenant shall submit plans for repairs and restoration to the Landlord for approval, which will not be unreasonably withheld.
- b. Landlord's Right to Terminate. If Tenant does not begin to repair, restore or replace the Development or begin any work (e.g. demolition) necessary to remove all debris and the remaining portion of the Development and to place the Leased Premises in safe and proper condition reasonably acceptable to Landlord within sixty (60) days after the occurrence of any casualty, subject to the terms of Section 22, Landlord shall have the right to terminate this Lease upon thirty (30) days written notice to Tenant; provided, however, that Landlord's notice shall be without effect if, during such thirty (30) days, Tenant commences (and thereafter diligently pursues) the repair, restoration or replacement of, or work to remove debris from, the Development. If Tenant does not

complete the repair, restoration or replacement, or removal of debris from, of the Development within three hundred sixty five (365) days after the occurrence of any casualty, Landlord shall have the right, subject to the terms of Section 22, to terminate this Lease upon thirty (30) days written notice to Tenant; provided, however, that Landlord's notice shall be without effect if, during such thirty (30) days, Tenant diligently pursues the repair, restoration or replacement and the Development are restored within one (1) year and thirty (30) days following the casualty.

(14) **PLANS AND IMPROVEMENT:**

- a. Site Plan Approvals. Tenant represents and warrants to Landlord that Tenant will promptly obtain approval of the site plan and conceptual design for the Development attached hereto as Exhibit D (the "Site Plan") by the University, the City of Memphis (the "City") and any other required regulatory body. Tenant represents and warrants to Landlord that the Site Plan attached hereto as Exhibit D is a true, correct and complete copy of the Site Plan for which approval will be sought from the City and any other required regulatory body and has not been amended or modified. Tenant agrees not to modify or amend the Site Plan without the University's prior written approval.
  
- b. Plans and Specifications. Tenant, at its sole cost and expense, shall cause the preparation of complete and final plans and complete detailed specifications covering each building trade concerned in the demolition of the existing structure and construction of the Development (collectively, the "**Plans**") by \_\_\_\_\_ ("**Tenant's Architect**"), and shall submit the same to the University for the University's approval no later than \_\_\_\_\_ days after the Effective Date. The Plans shall be full and complete in all respects as may be necessary for the demolition/construction and determination of the specific scope of the Development and shall be stamped by Tenant's Architect. Without limiting the generality of the foregoing, the Plans shall identify the basic materials for the exterior of the Development and shall include preliminary grading and drainage plans, utilities, sewer and utility services connections and locations, locations of ingress and egress to and from public thoroughfares or dedicated rights of way, curbs, gutters, parkways, street lighting, design and location for all outdoor signs, storage areas, landscaping, and parking areas, all sufficient to enable potential contractors and subcontractors to make a reasonably accurate bid and estimates and to enable Landlord and Tenant to make an informed judgment about the design and quality of construction of the Development. After Tenant submits the Plans to the University, the University will have sixty (60) days to approve or disapprove the Plans, and in the event the University does not approve the Plans, the University will advise Tenant in writing and in reasonable detail of the University's objections to the Plans. Failure by the University to approve or disapprove the Plans within such sixty (60) day period will constitute an approval by the University. In the event the University disapproves the Plans, Tenant will incorporate the University's objections and comments into the Plans within a reasonable period after Tenant's receipt of such objections and comments (except to the extent such objections and comments do not comport with Applicable Laws or good engineering practices), and in no event longer than sixty (60) days after receipt of such objections and comments, and resubmit the same to the University, who will then have sixty (60) days to approve or disapprove the revised Plans. In the event the University does not approve the revised Plans, the procedures set forth herein will be followed until such time as the University has approved the revised Plans.

Notwithstanding the foregoing, if, after good faith efforts, the Parties cannot resolve such objections and comments to the Plans within one hundred twenty (120) days after the Effective Date, then either Party may, by written notice to the other, terminate this Lease. The Plans will be approved by the University and Tenant by affixing thereon the signature of an authorized officer of each of such respective parties and after approval shall be incorporated by reference herein as Exhibit E. In the event Tenant desires to modify or change the Plans after the same have been approved in the manner provided above, Tenant shall submit such modifications or changes to the University for review and consideration and the procedures governing approval of the Plans will apply to any such modifications or changes. Any approval by the University of the Plans will not in any way be construed or deemed to constitute a representation or warranty of the University as to the adequacy or sufficiency of the Plans or the improvements to which they relate, for any reason, purpose or condition, but such approval will merely be the consent of the University as may be required hereunder.

c. Construction of Improvements.

1. Tenant covenants and agrees, at its sole cost and expense, to construct with all due diligence the Development in a good and workmanlike manner and substantially in accordance with the Plans. The Development shall be constructed by [ ] (the "**General Contractor**"), or such other general contractor licensed in the State of Tennessee. In addition to the other insurance requirements set forth in this Lease, from the commencement of construction until completion of the Development, Tenant shall maintain or cause its contractors to maintain, general liability and other types of insurance reasonably satisfactory in form and content to Landlord and insuring Landlord, University and Tenant against all hazards normally insured against in the construction of projects in Memphis, Tennessee similar to the Development.
2. Prior to commencing construction of the Development, subject to the assignment of such contracts to a Mortgagee (as hereinafter defined), Tenant shall cause the Architect and the General Contractor to agree in writing, in form and substance reasonably satisfactory to Landlord, that in the event of any uncured default by Tenant under this Lease or the loan documents securing such construction, Landlord may elect to succeed to Tenant's rights under any and all agreements with the Architect and the General Contractor at no additional charge, including, but not limited to, Tenant's rights to any and all plans, drawings, specification sheets, models, computer programs or other physical or electronic data or representations pertaining to the Development, so as to enable Landlord, if it so elects, but only if it so elects, to complete the construction of the Development.
3. In the event Tenant fails to commence construction of the Development with eighteen (18) months of the Effective Date, then Landlord may, by written notice to Tenant, at Landlord's option, subject to the terms of Section 22, terminate this Lease. Construction of the Development shall be deemed commenced when physical demolition of the existing buildings begin and/or the footings and foundations for the Development have been poured. The date on which construction is to be commenced shall be extended on a day-for-day basis by any delay due to unforeseeable causes beyond Tenant's control and without Tenant's fault or negligence, including, but not limited to, acts of God, fires, floods,

strikes, war, terrorist activity, changes in the Plans ordered by Landlord or any governmental authority, unreasonable delays caused by Landlord or any governmental authority, and unusually severe weather conditions not reasonably anticipatable, but excluding delays caused by the acts or omissions of Tenant's contractors, subcontractors, material or equipment suppliers, architects or engineers, or the failure or inability of Tenant to provide sufficient capital or borrow sufficient loan proceeds to fund costs of construction.

4. Tenant covenants and warrants to Landlord that (i) the Development will be constructed substantially in accordance with the Plans, with such change orders as shall be approved by the University, which approval shall not be unreasonably withheld, (ii) all materials and equipment furnished will be new, unless otherwise specified, (iii) the Development will be of good quality, free from faults and defects, and (iv) the Development will be in full compliance with all Applicable Laws. Without limiting the generality of the foregoing, if, after the date of completion of the, any of the Development or any part or element thereof is found to be defective or not in accordance with the Plans, Tenant shall correct the same promptly after receipt of written notice from Landlord to do so.
  5. In the event the Development is not completed substantially in accordance with the Plans with twenty-four (24) months from the date construction commences (the "Required Completion Date") (this is negotiable – the Landlord prefers completion as soon as possible), then Landlord may, upon thirty (30) days written notice to Tenant, at Landlord's option, subject to the terms of Section 22, terminate this Lease; provided, however, this right and option shall terminate if Tenant completes construction of the Development substantially in accordance with the Plans within thirty (30) days after delivery of such written notice to Tenant. The Development shall be complete when such improvements are completed substantially in accordance with the Plans, as evidenced by the delivery of an AIA Form G-704 Certificate of Substantial Completion executed by Tenant's Architect, the General Contractor and Tenant, and a final certificate of occupancy (or its local equivalent) for the Development by the appropriate governmental authority has been issued and a copy thereof has been delivered to Landlord, together with an as built survey of the Development. The Required Completion Date shall be extended on a day-for-day basis by any delay due to unforeseeable causes beyond Tenant's control and without Tenant's fault or negligence, including, but not limited to, acts of God, fires, floods, strikes, war, terrorist activity, changes in the Plans ordered by Landlord or any governmental authority, unreasonable delays caused by Landlord or any governmental authority, and unusually severe weather conditions not reasonably anticipatable, but excluding delays caused by the acts or omissions of Tenant's contractors, subcontractors, material or equipment suppliers, architects or engineers, or the failure or inability of Tenant to provide sufficient capital or borrow sufficient loan proceeds to fund costs of construction. Landlord may exercise the foregoing option by delivering written notice thereof after the Required Completion Date.
- d. Tenant shall require any contractor or subcontractor engaged for demolition or the construction of additions, improvements, or new structures on the Leased Premises to comply with the bonding and insurance requirements as may be required by Landlord.

e. Tenant will not create or permit to be created or to remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Leased Premises, any part thereof or upon Tenant's leasehold interest, which arises out of the use or occupancy of the Leased Premises by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, addition, alteration or repair of any part of the Leased Premises. If any such lien is filed against the Leased Premises, Tenant shall, within thirty (30) days after notice of the filing thereof, cause such lien to be released or discharged with respect to the Leased Premises by payment or bonding. Nothing contained in this Lease shall be construed as constituting the consent or request of Landlord, expressed or implied, to or for the performance by any contractor, laborer, materialman, or vendor of any labor or services or for the furnishing of any materials for any construction, alteration, addition, repair or demolition of or to the Leased Premises, or any part thereof. Notice is hereby given that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Leased Premises or any part thereof through or under Tenant, and that no mechanic's or other liens for any such labor, services or materials shall attach to or affect the interest of Landlord in and to the Leased Premises. After prior written notice to Landlord, Tenant shall not be required to discharge or remove any lien referred to in this Section so long as Tenant shall contest, in good faith and at its expense, the existence, the amount or the validity thereof or the amount of the damages caused thereby by appropriate proceedings which shall operate during the pendency thereof to prevent (i) the collection of, or other realization upon, the lien so contested, (ii) the sale, forfeiture or loss of any of the Leased Premises, any *Base Rental or any Additional Rental* to satisfy the same, (iii) any interference with the use or occupancy of any of the Leased Premises, and (iv) any interference with the payment of any *Base Rental or any Additional Rental*. In no event shall Tenant pursue any contest with respect to any lien that exposes Landlord to any material risk of defeasance of its interest in all or any part of the Leased Premises. Tenant agrees that each such contest shall be promptly and diligently prosecuted to a final conclusion, except that Tenant shall have the right to attempt to settle or compromise such contest through negotiations. Tenant shall indemnify and hold Landlord harmless against any and all losses, judgments, decrees and costs (including all attorneys' fees and expenses) in connection with any such contest and shall, promptly after the final determination of such contest, fully pay and discharge the amounts levied, assessed, charged or imposed or determined to be payable therein or in connection therewith, together with all penalties, fines, interest, costs and expenses thereof or in connection therewith, and perform all acts the performance of which shall be ordered or decreed as a result thereof

(15) **ALTERATIONS:** At any time during the Term, Tenant, at its sole expense, may make exterior and structural alterations and additions to any portion of the Development, provided that (i) with respect to exterior and structural alterations and additions, Tenant shall first obtain Landlord's prior written consent, which shall not be unreasonably withheld, and (ii) the additions and alterations shall be constructed expeditiously with good materials in a good and workmanlike manner and in accordance with all Applicable Laws. Tenant acknowledges that Landlord has an interest in assuring that the Development is architecturally and aesthetically harmonious with the UTHSC campus. Accordingly, in exercising its reasonable right of approval or disapproval with respect to any proposed exterior alterations or additions, Landlord shall be entitled to take into account any fact or factor which Landlord deems relevant to such decision, including, but not

necessarily limited to, the design, quality, materials, color, height, grade, finished elevation and appearance of the proposed alterations or additions. All alterations and additions made to the Development in accordance with this Section shall become part of the Development and shall remain the property of Tenant during the Term. Notwithstanding anything to the contrary contained herein, Tenant shall not make any alterations to the Development that may weaken or impair the structural strength of the Development or lessen the fair market value of all or any portion of the Development.

(16) **DEFAULT & REMEDIES:**

- a. Events of Default. The following shall each be deemed to be a default by Tenant under this Lease (an "Event of Default"):
  1. Tenant's failure to pay any rent or other remuneration when due, unless such failure is cured by Tenant within ten (10) days after it receives written notice from Landlord; or
  2. Tenant's failure to comply with any of the terms of this Lease related to assignment or subletting; or
  3. Tenant's failure to comply with any of the other terms of this Lease, unless such failure is cured within thirty (30) days after Tenant receives written notice from Landlord; provided Landlord shall not be required to send written notice of the same violation more than two (2) times in any calendar year. Notwithstanding the foregoing, if such failure cannot reasonably be cured within thirty (30) days, no Event of Default shall be deemed to have occurred so long as Tenant commences to cure such failure within thirty (30) days after receiving written notice from Landlord and completes such cure within a reasonable time thereafter, not to exceed ninety (90) days; or
  4. (i) the bankruptcy or insolvency of Tenant, (ii) the filing by or against Tenant of a petition seeking to have Tenant declared bankrupt or insolvent or seeking to reorganize Tenant, unless the petition is dismissed with sixty (60) days after its filing, (iii) the appointment of a receiver or trustee for all or a substantial portion of Tenant's assets, or (iv) the assignment of all or substantially all of Tenant's assets for the benefit of its creditors; or
  5. The abandonment by Tenant of the Leased Premises or Development.
- b. Remedies. Upon the occurrence of an Event of Default, Landlord may, in addition to other remedies available hereunder, at law or in equity, subject to the terms of Section 22:
  1. Terminate this Lease, in which event Tenant shall immediately surrender possession of the Leased Premises and Development, and Landlord shall have the right to recover its damages from Tenant. If Tenant fails to surrender the Leased Premises and Development to Landlord after the termination of this Lease, Landlord shall have the right, without notice, to retake possession of the Leased Premises and Development and to expel Tenant and its effects therefrom, without being liable for prosecution or any claim for damage.
  2. Enter upon the Leased Premises and Development and do whatever Tenant is obligated to do under the terms of this Lease, without being liable for prosecution or



any claim for damages, and Tenant agrees to reimburse Landlord for all costs and expenses that Landlord incurs in connection therewith.

3. Obtain specific performance of the terms of this Lease or injunctive relief.

The foregoing remedies are cumulative and non-exclusive, and the exercise by Landlord of any of its remedies under this Lease shall not prevent the subsequent exercise by Landlord of any other remedies provided herein or by Applicable Laws. All remedies provided for in this Lease may, at the election of Landlord, be exercised alternatively, successively or in any other manner. Landlord's acceptance of rent following any Event of Default shall not be construed as a waiver of such Event of Default. No custom or practice between the parties in connection with the terms of this Lease shall be construed to waive or lessen Landlord's right to insist upon strict performance of the terms hereof. No act by Landlord with respect to the Leased Premises shall be deemed to terminate this Lease, including, but not limited to, the acceptance of keys or the institution of dispossessory proceedings; it being understood that this Lease may only be terminated by express written notice from Landlord to Tenant.

(17) **MISCELLANEOUS:**

- a. Whenever the context may require, any pronoun used in this Lease shall include the masculine, feminine and neuter forms. All references to articles, sections and paragraphs shall be deemed references to the articles, sections and paragraphs of this Lease, unless the context shall indicate otherwise. The terms "hereof", "hereunder" and similar expressions refer to this Lease as a whole and not to any particular article, section or paragraph contained herein. The titles of the articles, sections and paragraphs of this Lease are for convenience only and shall not affect the meaning of any provision hereof. Landlord and Tenant have agreed to the particular language of this Lease, and any question regarding the meaning of this Lease shall not be resolved by any rule providing for interpretation against the party who caused the uncertainty to exist or against the draftsman. FOR PURPOSES OF THIS LEASE, TIME SHALL BE CONSIDERED OF THE ESSENCE.
- b. No Subordination of Fee. This Lease is an unsubordinated ground lease. Nothing contained in this Lease shall be or ever will be construed as a subordination of Landlord's fee interest in the Leased Premises or its reversionary interest in the Development to any Mortgage. Upon the expiration or termination of this Lease, any Mortgage of Tenant's interest in the Leased Premises shall be null and void.
- c. Unless Landlord expressly agrees otherwise, in writing, if Tenant remains in possession of the Leased Premises and Development after the expiration or earlier termination of this Lease, then Tenant shall be deemed a tenant at sufferance on all of the terms of this Lease, except the rent shall equal 200% of the fair rental value of the Leased Premises and Development, as determined by an MAI certified appraiser selected by Landlord. The foregoing sentence shall in no event be construed to permit Tenant to remain in possession of the Leased Premises and Development after the expiration or termination of this Lease. Tenant shall be liable to Landlord for all losses, costs, damages and expenses (including, without limitation, consequential damages, reasonable attorneys' fees, court costs and litigation expenses) that Landlord suffers or incurs because of any holding over by Tenant, and Tenant shall indemnify, defend and hold harmless Landlord from and against all claims, lawsuits, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation

expenses) arising from delays by Landlord in delivering possession of the Leased Premises and Development to any person or entity that are caused by Tenant's failure to comply with the terms of this Lease, including, but not limited to, Tenant's failure to timely surrender possession of the Leased Premises and Development to Landlord.

- d. Subject to Landlord's rights and remedies under this Lease, Tenant shall peaceably and quietly hold and enjoy the Leased Premises without hindrance or interruption by Landlord or anyone claiming by, through or under Landlord so long as Tenant complies with the terms hereof.
- e. No waiver by Landlord or Tenant of any provision of or default under this Lease shall be deemed to have been made, unless the same is in writing and signed by the party charged with making the waiver, and no waiver of any provision of or default under this Lease shall be deemed a waiver of any other provision or default. Landlord's or Tenant's consent to or approval of any act shall not be deemed to waive the requirement to obtain Landlord's or Tenant's consent to or approval of any subsequent act.
- f. This Lease shall be binding on the Landlord, Tenant and their respective successors and assigns; provided the foregoing shall not be construed to permit any assignment of this Lease by Tenant without Landlord's prior written consent. If any provision of this Lease is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected, and in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision will be added as a part of this Lease that is as similar to the illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. This Lease constitutes the entire agreement between the parties with respect to the Leased Premises, and all prior negotiations and understandings shall be deemed incorporated herein. This Lease may only be amended or modified by a written instrument signed by both Landlord and Tenant and approved by appropriate State officials, as required. All of Tenant's indemnification obligations and, to the extent not fully performed, all other obligations of Tenant under this Lease, shall survive the expiration or termination hereof.
- g. The parties shall execute and record a memorandum of this Lease in the form attached hereto as Exhibit F.

(18) **HAZARDOUS SUBSTANCES:**

- a. "Hazardous Substances" means all hazardous or toxic substances, materials, wastes, pollutants and contaminants that are listed, defined or regulated under Applicable Laws pertaining to health, safety or the environment, including, but not limited to, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., (B) the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. § 5101 et seq., (C) the Resource, Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq., (D) the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq., (E) the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., (F) the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (G) any so-called "superfund" or "superlien" law, and (H) the laws of the State of Tennessee. Without limiting the generality of the foregoing, Hazardous Substances shall specifically include medical waste, polychlorinated biphenyl (commonly known as PCBs), asbestos (friable and non-friable), radon, urea formaldehyde, gasoline, diesel fuel, oil and other petroleum products or derivatives.

- b. Except for Hazardous Substances and other toxic materials brought, kept or used in the Leased Premises by Tenant in commercial quantities similar to those quantities usually kept on similar premises by others in the same business or profession, and which are used and kept in strict compliance with all Applicable Laws, no Hazardous Substances or other toxic materials shall be used, stored, generated, handled, manufactured or released by Tenant or any of Tenant's employees, agents, contractors, representative, subtenants or invitees on or about the Leased Premises. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all damages, penalties, expenses, claims, losses and liabilities arising as a result of any violation of this section. The foregoing indemnity shall include, without limitation, an obligation on Tenant's part to reimburse Landlord for any and all costs, expenses and reasonable attorneys' fees incurred by Landlord as a result of Tenant's violation of this section.
- (19) **RIGHTS OF LANDLORD:** Landlord may sell, lease or transfer its fee interest in the Leased Premises without Tenant's consent; provided, however, that the sale, lease or transfer shall be made expressly subject to the terms of this Lease. Landlord may prepare, execute and record a declaration of easements, covenants and restrictions or other instrument, encumbering the Leased Premises (or a portion thereof) and governing the use and Development thereof; provided, however, that any such instrument shall be subject to the terms of this Lease.
- (20) **RECORDS RETENTION:** The books, records and documentation of Tenant, insofar as they relate to income and expenses used in the calculation of the rent due under this Lease shall be maintained in conformity with generally accepted accounting principles for a period of five (5) full years from the date of what amounts to the final payment under this Lease, and shall be subject to audit, at any reasonable time and upon reasonable notice by the Comptroller of the Treasury or his duly appointed representative or a licensed independent public accountant.
- (21) **PAYMENT & PERFORMACE BOND:** The Tenant will be required to furnish payment and performance bonds, in a form acceptable to Landlord, within ten (10) working days after receipt of request or prior to the Commencement Date, whichever occurs first, to guarantee that payment and performance of the contracted services will be properly secured. This will include 1) the contractor(s) to secure payment and performance of contracting services for those completing demolition, construction, renovations, alterations, improvements, or repairs and 2) Tenant to secure payment to the contractor for the work specified in the RFP response.

The penal sum of the bonds shall be equal to 100% of the contract price, covering and including labor and materials, and the Landlord must be a named obligee/beneficiary under such bond(s). The premium of the bonds shall be paid by the Tenant/contractor. The bond shall be executed on the Landlord "payment and performance bond" form, one copy of which is attached to this Lease. Personal checks are not acceptable in the place of performance bonds. However, bank cashier's checks payable to Landlord will be accepted for this purpose. An irrevocable letter of credit or a certificate of deposit, to be held by the Landlord, from either (a) a state or national bank or a state or federal savings and loan association having its principal office in Tennessee or (b) a state or national bank or a state or federal savings and loan association having its principal office located outside Tennessee and that maintains one or more branches in Tennessee which are authorized to accept federally insured deposits may also be accepted in lieu of a performance bond, subject to approval by the Landlord terms and conditions of said irrevocable letter of credit or certificate of deposit.

(22) **FINANCING:**

- a. Tenant shall have the right during the Term to subject Tenant's leasehold interest in the Leased Premises to one or more mortgages, deeds of trust, assignments of lease, security agreements, or other methods of financing or refinancing (a "Mortgage"); provided, that the beneficiary of the Mortgage (the "Mortgagee") under any Mortgage must be a bank, savings and loan association, trust or other similar institutional lender regularly engaged in the business of making loans secured by real estate. Upon the written approval of Landlord, to be granted or withheld in its sole discretion, the Mortgagee may be a non-traditional lender. Tenant shall immediately notify Landlord in writing of the name, the name and telephone number of a contact person and the address of any Mortgagee.
- b. Provided Mortgagee and Landlord have entered into the agreement provided in Section 22.h.2 hereof, then if Tenant shall be in default under this Lease, and the applicable grace period for cure by Tenant shall have expired, Landlord shall send a copy of the written notice of the default to Mortgagee at its address as provided in writing to Landlord by Tenant. Mortgagee shall have thirty (30) days after delivery of the written notice of the default from Landlord within which to cure or remove the default, and if the default cannot with diligence be cured within the thirty (30) day period, then Mortgagee shall have a reasonable time thereafter to effect such cure (not to exceed ninety (90) days), provided that Mortgagee has commenced to cure such default within the thirty (30) day period, and is actively, diligently and in good faith proceeding with continuity to cure such default, and provided further that any delay in curing such default shall not result in a material adverse effect on the value of the Leased Premises. Notwithstanding any other provision of this Lease, Landlord shall not have any right pursuant to this Lease or otherwise to terminate this Lease due to Tenant's default unless Landlord shall have first given a copy of the written notice of default to Mortgagee and unless Mortgagee shall have failed to cure or remove, or cause to be cured or removed, the default, within the time required by this Section.
- c. Landlord will accept performance by Mortgagee of any covenant, agreement or obligation of Tenant contained in the Lease with the same effect as though performed by Tenant.
- d. In the event of the rejection or disaffirmance of this Lease pursuant to any debtor relief laws, Landlord will enter into a new lease (the "New Lease") of the Leased Premises with any Mortgagee holding a lien that is a first and senior lien upon the leasehold estate of Tenant. The New Lease shall be identical to this Lease and be effective as of the date of rejection or disaffirmance of this Lease and shall be upon the same terms and provisions contained in this Lease (including the amount of the *Base Rental* and other sums due from Tenant hereunder) and shall have a term equal to the remaining portion of the Term hereof. In order to obtain a New Lease, Mortgagee must make a written request to Landlord for the New Lease within thirty (30) days after Mortgagee is notified of the effective date of rejection or disaffirmance of this Lease, as the case may be, and the written request must be accompanied by a copy of the New Lease, duly executed and acknowledged by Mortgagee or the entity designated by Mortgagee as tenant. In addition, Mortgagee must, within said thirty (30) day period, cure all defaults under this Lease that can be cured by the payment of money or performance of action and pay to Landlord all *Base Rental*, *Additional Rental* and other sums that would have been due and payable by Tenant under this Lease but for the rejection, disaffirmance or termination. Mortgagee's

rights under this Section are in addition to, and not limited by, Mortgagee's right to cure set forth above.

- e. If Landlord has given Mortgagee notice of Tenant's default and Mortgagee desires to cure Tenant's default but is unable to do so while Tenant is in possession of the Leased Premises, or during the period of time that Mortgagee's proceedings are stayed by reason of Tenant being subject to any debtor relief laws, or if Landlord has elected to terminate this Lease and Mortgagee desires to obtain a New Lease but has not yet acquired Tenant's leasehold interest in this Lease, then Mortgagee shall have the right to postpone the specified date for effecting a cure of this Lease or obtaining a New Lease for a period reasonably sufficient to enable Mortgagee or its designee to acquire Tenant's interest in this Lease by foreclosure of its Mortgage or otherwise, as long as (i) Mortgagee pays Landlord the *Base Rental*, *Additional Rental* and other sums due under this Lease during the postponement, (ii) Mortgagee shall have cured all other defaults not requiring possession to cure, (iii) during the postponement, all other obligations of Tenant under this Lease shall be duly performed, to the extent that Mortgagee can do so, and (iv) Mortgagee is actively, diligently and in good faith proceeding with continuity to obtain an appropriate release from any applicable court order or restraint and, upon such release, Mortgagee immediately commences and actively, diligently and in good faith proceeds with continuity to complete all steps and proceedings necessary for the consummation of such foreclosure or transfer in lieu of foreclosure. Mortgagee shall exercise the right to extend the cure period or the date for obtaining a New Lease by giving Landlord written notice prior to the last date that Mortgagee would otherwise be entitled to elect a cure or obtain a New Lease and by tendering to Landlord any *Base Rental*, *Additional Rental* and other charges then in default.
- f. If any Mortgage known to Landlord is in effect, Landlord will not accept a voluntary surrender of this Lease without the prior written consent of such Mortgagee, which consent shall not be unreasonably withheld; provided, however, that if any Mortgagee shall fail or refuse at any time to comply with any and all of the applicable provisions of this Section 22, then and thereafter Landlord shall, notwithstanding anything to the contrary contained in this Section 22, have the right to terminate this Lease without regard to the Mortgagee protections contained in this Section 22.
- g. The provisions of this Section 22 are for the benefit of a Mortgagee and may be relied upon and shall be enforceable by a Mortgagee. Neither a Mortgagee nor any other holder or owner of the indebtedness secured by a Mortgage or otherwise shall be liable upon the covenants, agreements or obligations of Tenant contained in this Lease, unless and until Mortgagee or that holder or owner acquires the interest of Tenant.
- h. Certain Conditions; Rights of Landlord.
  - 1. Notwithstanding anything contained herein to the contrary, any Mortgage executed by Tenant shall comply with the following requirements:
    - (i) the Mortgage and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, restrictions and provisions set forth in this Lease and the Declaration, and to all rights of Landlord hereunder and thereunder, except as herein otherwise expressly provided;

- (ii) no Mortgage shall encumber any interest in real property other than Tenant's leasehold interest in the Leased Premises and fee interest in the Improvements, or secure more than one debt or contain a cross-default provision or cross-collateralization provision;
  - (iii)(A) the aggregate amount of the loan secured by the Mortgage (including any refinancing of any such loan) shall not exceed eighty percent (80%) of the appraised fair market value of the Leased Premises as determined by an independent MAI appraiser reasonably satisfactory to the Mortgagee and Landlord, (B) for permanent loans secured by a Mortgage, interest shall be paid in regular monthly installments over the term of the loan at a thirty (30) year (or less) amortization rate from the date on which the financing takes effect, and (C) the loan secured by the Mortgage shall be due and payable in full no less than five (5) years before the expiration of the Term; and
  - (iv) no Mortgage or related loan documents shall contain a lockout or prohibition on prepayment of the outstanding principal balance under such Mortgage or related loan documents.
2. In order for any Mortgagee to be entitled to the benefits provided by this Section 22, the Mortgagee must agree in a written agreement with Landlord in recordable form substantially as follows:
- (i) that the Mortgagee will give Landlord notice of any default by Tenant under such Mortgage, and that Landlord will have the option, but not the obligation, to exercise either of the following rights within thirty (30) days after receipt of such notice: (A) Landlord may cure said default within such thirty (30) day period if it shall so choose, unless such default is of such a nature that it cannot be completely cured within such thirty (30) day period, in which event Landlord shall have such longer period as shall be reasonably necessary to cure such default if Landlord shall so choose, provided Landlord commences such cure with such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (B) Landlord may purchase the outstanding loan secured by the Mortgage (the "Loan") and all related documents by giving the Mortgagee written notice of its intent to do so within such thirty (30) day period; and
  - (ii) the purchase price for the Loan shall be the outstanding principal balance of the Loan plus all accrued but unpaid interest; provided, however, the purchase price shall not include any late fees, charges for default, prepayment penalties or other fees or premiums.
3. Tenant shall not unreasonably withhold its consent to any written agreement with Mortgagee that substantially achieves the objectives set forth in Section h above. Tenant hereby consents to any cure by Landlord of any default by Tenant under a Mortgage. Tenant shall reimburse Landlord for all payments made and any incidental costs and expenses incurred, together with interest thereon (which payments, costs, expenses and interest shall be considered *Additional Rental* hereunder), by Landlord in connection with the cure of any such default or the acquisition of any Loan by Landlord (but excluding the purchase price of any such Loan), including attorneys' fees, immediately upon receipt of Landlord's written

demand for reimbursement. No provision of this Lease shall be construed as preventing Landlord, following the acquisition of Landlord of any such Loan, from exercising all rights and remedies available to it on account of a default under the Mortgage.

(23) **OTHER:**

- a. No official of the Landlord who is authorized in such capacity and on the behalf of the Landlord to negotiate, make, accept, or approve, or take part in negotiating, making, accepting, or approving any engineering, inspection or material supply contract or any subcontract in connection with the with the furnishing of equipment and/or furnishing for the project, shall become directly or indirectly interested personally in this Lease or any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Landlord who is authorized in such capacity on behalf of the Landlord to exercise any legislative, executive, supervisory, or other similar functions in connection with the fabrication or in any part hereof any contract, subcontract, insurance contract, or any other contract pertaining thereto, shall become directly or indirectly interested personally in this Lease or in any part hereof. Violation of this section is grounds for termination of this Lease.
- b. All representations, warranties, and indemnities of Tenant under this Lease shall survive the expiration or sooner termination of this Lease.
- c. Landlord and Tenant represent each to the other that each has obtained all necessary approvals and authorizations from their respective Boards/governing entity for the execution of this Lease; provided further, Landlord shall not be bound by this Lease until all appropriate State officials have approved, as shown by the signatures below.
- d. Approval of Marketing Materials. Landlord shall have the right to approve all signs and materials used by Tenant in the promoting or marketing of space in the Leased Premises which contain a reference to UTHSC, which approval shall not be unreasonably withheld. Tenant and Landlord agree to negotiate and resolve in good faith any disputes relating to all such marketing materials.
- e. Conflicts of Interest. All representatives of Tenant and Landlord shall comply with Landlord policies and State of Tennessee laws applicable to conflicts of interest. Tenant warrants that no part of the Tenant's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Tenant in connection with any work contemplated or performed under this Lease.

Tenant acknowledges, understands, and agrees that this Lease shall be null and void if the Tenant is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Tenant is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- f. Competitive Procurements. Where practical, procurements efforts carried out by the Tenant pursuant to the terms of this Lease, including goods, materials, supplies,

equipment, and/or contracted services, shall be made on a competitive basis, including the use of competitive bidding procedures.

- (24) **LOBBYING**: Tenant certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Tenant, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Tenant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - c. Tenant shall require that the language of this certification be included in all Subleases and that all Subtenants shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

*(Signatures on following page)*



IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the date first above written.

**Landlord:**

**State of Tennessee**

By: \_\_\_\_\_  
Name: Robert E. Oglesby  
Title: Commissioner, General Services

**University of Tennessee**

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

**Tenant:**

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

APPROVED (For Form and Legality):

\_\_\_\_\_  
Herbert H. Slatery III, Attorney General & Reporter

\_\_\_\_\_  
Bill Haslam, Governor

**TENANT NOTARY**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Personally appeared before me, the undersigned, Notary Public for the Shelby County, DO  
HEREBY CERTIFY that \_\_\_\_\_, of Memphis, Tennessee with whom I  
am personally acquainted or proved to me on the basis of satisfactory evidence, to be the same person  
whose name is subscribed to the foregoing instrument appeared before me this day in person and  
acknowledged that he signed, sealed and delivered that said instrument as his free and voluntary act for  
the uses and purposes therein set forth.

Witness my hand and seal, at office in, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public.

My Commission Expires: \_\_\_\_\_

**LANDLORD NOTARY**

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Before me, \_\_\_\_\_, Notary Public in and for the County and State aforesaid, personally appeared Robert E. Oglesby, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Commissioner of the Department of General Services for the State of Tennessee, the within named Landlord, and that he as such representative, executed the foregoing instrument for the purposes therein contained and signed the name of the State of Tennessee, by himself as Commissioner, Department of General Services for the State of Tennessee.

Witness my hand and seal, at office in Nashville, Tennessee, this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public  
My Commission  
Expires: \_\_\_\_\_

UNIVERSITY OF TENNESSEE

COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, \_\_\_\_\_,  
\_\_\_\_\_ of the University of Tennessee, with whom I am personally acquainted (or proved to  
me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he/she is the  
\_\_\_\_\_ of the University of Tennessee, the within named Landlord and that he/she as  
\_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purpose therein  
contained by signing the name of the University of Tennessee by himself/herself as \_\_\_\_\_.

Witness my hand and seal, at office in, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public.

My Commission Expires:

\_\_\_\_\_

**Exhibit A**  
**Description of Leased Premises**

**Exhibit B**  
**Request for Proposal**

To be included in lease document when proposals have been evaluated and lease sent for review and signature.

**Exhibit C**  
**Responses to Request for Proposal**

To be included in lease document when proposals have been evaluated and lease sent for review and signature.

**Exhibit D**  
**Site Plan**



**Exhibit E**  
**Plans and Specifications**

**Exhibit F**  
**Memorandum of Lease**

PREPARED BY:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (the "Memorandum") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by and between the State of Tennessee on behalf of the University of Tennessee, as landlord ("Landlord"), and \_\_\_\_\_, a(n) \_\_\_\_\_, as tenant ("Tenant").

WITNESSETH:

Pursuant to that certain Ground Lease Agreement entered into by Landlord and Tenant, dated of even date herewith (the "Lease"), Landlord has leased (and hereby leases) to Tenant certain real property (the "Premises") located in Shelby County, Tennessee and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the Leased Premises subject to all the provisions and conditions contained in the Lease.

1. Defined Terms. Any capitalized terms used but not expressly defined in this Memorandum shall have the meaning ascribed to them in the Lease.

2. Landlord's Address. Office of the Treasurer, 711 Andy Holt Tower, Knoxville, TN 37996-0174.

3. Tenant's Address.

4. Initial Term of Lease. The term of the Lease commenced on \_\_\_\_\_ (the "Commencement Date") and expires on \_\_\_\_\_, unless the Lease is earlier terminated or extended in accordance with express terms thereof.

5. Renewal Options. The Lease grants Tenant \_\_\_\_\_ (\_\_\_) option to renew and extend the term of the Lease, which, if exercised and approved by Landlord, shall extend the term of the Lease for an additional period of \_\_\_\_\_ (\_\_\_) years.

6. Lease. The rent payable by Tenant for the Leased Premises and other terms and conditions governing Tenant's use and occupancy of the Leased Premises are set forth in the Lease, all of which are incorporated herein by reference.

7. Conflicts. The purpose of this Memorandum is to give notice of the terms and conditions of the Lease. This Memorandum shall not modify in any manner the terms and conditions of the Lease, and the parties agree that this Memorandum is not intended nor shall it be used to interpret the Lease or determine the intent of the parties under the Lease. In the event of any conflicts or

inconsistencies between the terms of the Lease and the terms of this Memorandum, the terms of the Lease shall control.

IN WITNESS WHEREOF, the Landlord and Tenant have executed this Memorandum as of the date first above written.

**LANDLORD:**

**State of Tennessee**

By: \_\_\_\_\_  
Name: Robert E. Oglesby  
Title: Commissioner, Department of General Services

**University of Tennessee**

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

**TENANT:** \_\_\_\_\_

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

**TENANT NOTARY**

STATE OF TENNESSEE  
COUNTY OF SHELBY

Personally appeared before me, the undersigned, Notary Public for the Shelby County, DO  
HEREBY CERTIFY that \_\_\_\_\_, of Memphis, Tennessee with whom I  
am personally acquainted or proved to me on the basis of satisfactory evidence, to be the same person  
whose name is subscribed to the foregoing instrument appeared before me this day in person and  
acknowledged that he signed, sealed and delivered that said instrument as his free and voluntary act for  
the uses and purposes therein set forth.

Witness my hand and seal, at office in, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**LANDLORD NOTARY**

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Before me, \_\_\_\_\_, Notary Public in and for the County and State aforesaid, personally appeared Robert E. Oglesby, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Commissioner of the Department of General Services for the State of Tennessee, the within named Landlord, and that he as such representative, executed the foregoing instrument for the purposes therein contained and signed the name of the State of Tennessee, by himself as Commissioner, Department of General Services for the State of Tennessee.

Witness my hand and seal, at office in Nashville, Tennessee, this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public  
My Commission  
Expires: \_\_\_\_\_

UNIVERSITY OF TENNESSEE

COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, \_\_\_\_\_,  
\_\_\_\_\_ of the University of Tennessee, with whom I am personally acquainted (or proved to  
me on the basis of satisfactory evidence), and who, upon oath, acknowledged that he/she is the  
\_\_\_\_\_ of the University of Tennessee, the within named Landlord and that he/she as  
\_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purpose therein  
contained by signing the name of the University of Tennessee by himself/herself as \_\_\_\_\_.

Witness my hand and seal, at office in, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public.

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**

**(OF MEMORANDUM OF LEASE)**

Description of Premises

Within Shelby County, Tennessee Deed Book xxx, Page xxxx and described below:

Schedule 1  
Amenities and Service Levels

To be added based on RFP responses and negotiations