

Meeting No. 858

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

VOLUME XXXIX - B

Pages 1 - 190

December 5, 1991

Houston, Texas

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 OF
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 HOUSTON, TEXAS

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MEETING NO. 858

THURSDAY, DECEMBER 5, 1991.--The members of the Board of Regents of The University of Texas System convened in regular session at 10:02 a.m. on Thursday, December 5, 1991, in Room 102A of the Reuel A. Stallones Building at The University of Texas School of Public Health at Houston, Houston, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Beecherl, presiding	
Vice-Chairman Ramirez	
Vice-Chairman Cruikshank	
Regent Barshop	
Regent Holmes	
Regent Loeffler	
Regent Moncrief	
Regent Rapoport	
Regent Temple	

Executive Secretary Dilly

Chancellor Mark
Executive Vice Chancellor Duncan
Executive Vice Chancellor Mullins
Executive Vice Chancellor Patrick

Chairman Beecherl announced a quorum present and called the meeting to order.

WELCOME BY M. DAVID LOW, M.D., PRESIDENT OF THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON.--Chairman Beecherl stated that the Board was pleased to be meeting at The University of Texas Health Science Center at Houston and then called on M. David Low, M.D., President of the U. T. Health Science Center - Houston, for any welcoming remarks on behalf of the host institution.

On behalf of the faculty, staff, and students of the U. T. Health Science Center - Houston, President Low welcomed the members of the Board and other guests to Houston.

U. T. SYSTEM: INTRODUCTION OF (1) REPRESENTATIVES FROM THE OFFICE OF THE STATE AUDITOR, (2) MR. MIKE MILLSAP, VICE CHANCELLOR FOR GOVERNMENTAL RELATIONS EFFECTIVE JANUARY 1, 1992, and (3) DR. EDWIN R. SHARPE, JR., INTERIM PRESIDENT OF THE UNIVERSITY OF TEXAS OF THE PERMIAN BASIN EFFECTIVE JANUARY 1, 1992.--Chairman Beecherl called on Chancellor Mark who introduced Mr. Charles Chaffin, Director of Audits for The University of Texas System.

Mr. Chaffin noted that as part of the management control audit being conducted by the Office of the State Auditor two representatives of that office were present: Mr. Will Hirsch, who will be conducting the audit for The University of Texas M.D. Anderson Cancer Center, and Mr. Bill Hastings who will be leading the audit for the U. T. System.

In addition, Chancellor Mark introduced the following:

Mr. Mike Millsap, Vice Chancellor for Governmental Relations effective January 1, 1992

Dr. Edwin R. Sharpe, Jr., Interim President of The University of Texas of the Permian Basin effective January 1, 1992.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON OCTOBER 11, 1991.--Upon motion of Regent Moncrief, seconded by Vice-Chairman Cruikshank, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on October 11, 1991, in Arlington, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XXXIX, Pages 1 - 510.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 10:05 a.m., the Board recessed for the meetings of the Standing Committees and Chairman Beecherl announced that at the conclusion of each committee meeting, the Board would reconvene to approve the report and recommendations of that committee.

The meetings of the Standing Committees were conducted in open session and the reports and recommendations of those committees are set forth on the following pages.

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Pages 3 - 62).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Beecherl reported to the Board for ratification and approval all actions taken by the Executive Committee since the last meeting. Unless otherwise indicated, the recommendations of the Executive Committee were in all things approved as set forth below:

1. U. T. System: Authorization to (a) Continue Comprehensive Crime Policy with Arkwright Mutual Insurance Company, Waltham, Massachusetts, (b) Replace Executive Liability and Indemnification Policy with National Union Fire Insurance Company, Pittsburgh, Pennsylvania, and (c) Renew Automobile Liability Insurance Policy with Commercial Lloyds Insurance Company, Austin, Texas, All Effective September 1, 1991 Through August 31, 1992 (Exec. Com. Letter 92-1).--With regard to certain insurance policies for The University of Texas System, the Board:
 - a. Continued the comprehensive crime policy (also known as employee bond coverage) with Arkwright Mutual Insurance Company, Waltham, Massachusetts, effective September 1, 1991 through August 31, 1992, at the current annual premium rate of \$43,000
 - b. Replaced the executive liability and indemnification policy with National Union Fire Insurance Company, Pittsburgh, Pennsylvania, effective September 1, 1991 through August 31, 1992, at an annual premium of \$75,000
 - c. Renewed the automobile liability insurance policy for officers' and employees' use and operation of University-owned and operated motor vehicles with the Commercial Lloyds Insurance Company, Austin, Texas, effective September 1, 1991 through August 31, 1992, at an annual premium of \$329,334.

The premiums charged for these policies are prorated among the component institutions of the U. T. System.

2. U. T. Austin - Texas Union Building - Renovation (Project No. 102-727): Award of Construction Contract to White Construction Company, Austin, Texas, and Approval to Increase Authorized Total Project Cost (Exec. Com. Letter 92-2).--The Board, upon recommendation of the Executive Committee:
 - a. Awarded a construction contract for the Texas Union Building - Renovation at The University of Texas at Austin to the lowest responsible bidder, White Construction Company, Austin, Texas, for the Base Bid and Alternate Bid No. 1 in the amount of \$7,448,688
 - b. Approved an increase in the authorized total project cost from \$8,000,000 to \$8,400,000 with an additional \$400,000 in funding from Texas Union Reserve Funds.

The revised total project cost is composed of the following elements:

Construction	\$7,448,688
Fees and Administrative Expenses	831,075
Miscellaneous Expenses	10,000
Project Contingency	<u>110,237</u>
Total Project Cost	\$8,400,000

Approval of this item amends the 1991 Capital Improvement Plan and the FY 1992 Capital Budget. Funding for this project is \$8,000,000 in Revenue Financing System Debt Proceeds to be repaid from Student Union fees and \$400,000 from Texas Union Reserve Funds.

This project was approved by the Texas Higher Education Coordinating Board in October 1990.

3. U. T. El Paso: Permission for Dr. Diana S. Natalicio to Serve on the Advisory Commission on Educational Excellence for Hispanic Americans [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)] (Exec. Com. Letter 92-1).-- Permission was granted for Dr. Diana S. Natalicio, President of The University of Texas at El Paso, to serve on the Advisory Commission on Educational Excellence for Hispanic Americans without compensation.

Dr. Natalicio's appointment to this Commission by President Bush is of benefit to the State of Texas, creates no conflict with her regular duties at U. T. El Paso, and is in accordance with approval requirements for positions of honor, trust, or profit provided in Article 6252-9a of Vernon's Texas Civil Statutes and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

4. U. T. El Paso - Burges Hall - Renovation for Institute for Manufacturing and Materials Management (Project No. 201-759): Approval to Increase Authorized Total Project Cost (Exec. Com. Letter 92-2).--At the October 1991 meeting, the U. T. Board of Regents awarded a construction contract for Burges Hall - Renovation for Institute for Manufacturing and Materials Management at The University of Texas at El Paso to the lowest responsible bidder, Croom Construction Company, El Paso, Texas, for the Base Bid in the amount of \$2,177,000. Croom Construction Company subsequently notified The University of Texas System that the mechanical subcontractor, Industrial Air Systems, Inc., El Paso, Texas, was unable to enter into a subcontract for the project due to the inability of Industrial Air Systems to fulfill its financial and bonding obligations. Croom Construction Company then rebid the mechanical phase of the work and requested that the mechanical subcontractor be changed from Industrial Air Systems, Inc. to Trinity Contractors, Inc., Grand Prairie, Texas, together with an increase of \$70,150 in the contract award amount, under the terms of the construction contract.

Based on this information, it was determined to be to U. T. System's benefit to accept the Croom Construction Company offer to change its mechanical subcontractor from Industrial Air Systems, Inc. to Trinity Contractors, Inc. together with an increase of \$70,150 in the contract award amount.

In order to cover the additional contract award amount of \$70,150 for the change in mechanical subcontractors and additional fees and administrative costs, the Board approved an increase in the authorized total project cost for Burges Hall - Renovation for Institute for Manufacturing and Materials Management at U. T. El Paso from \$2,500,000 to \$2,700,000 with an additional \$200,000 in funding from available federal grant funds.

The revised total project cost is composed of the following elements:

Construction	\$2,348,620
Fees and Administrative Expenses	246,764
Future Work	52,850
Miscellaneous Expenses	4,000
Project Contingency	<u>47,766</u>
Total Project Cost	\$2,700,000

The total funding for this project is available from federal grant funds. This action will amend the 1991 Capital Improvement Plan and the FY 1991 Capital Budget accordingly.

5. U. T. El Paso: Energy Conservation Program - Education Building and Engineering Building: Authorization for Project; Appointment of The National Energy Management Institute (NEMI), Austin, Texas, as Project Engineer to Prepare Final Plans; Authorization for U. T. El Paso Administration to Manage Project; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Appropriation Therefor (Exec. Com. Letter 92-1).--The Governor's Energy Management Center, through the Institutional Conservation Program, awarded The University of Texas at El Paso a 50/50 matching funds Energy Conservation Measures Grant in the amount of \$508,596 for energy conservation retrofit work in the Education Building and the Engineering Building.

Upon recommendation of the Executive Committee, the Board:

- a. Authorized a project to be known as the Energy Conservation Program at U. T. El Paso to include the Education Building and the Engineering Building at an estimated total project cost of \$1,017,192
- b. Appointed The National Energy Management Institute (NEMI), Austin, Texas, as project engineer to prepare final plans and specifications
- c. Authorized U. T. El Paso Administration to manage this project in consultation with The University of Texas System Office of Facilities Planning and Construction, and upon completion of final review, authorized

U. T. El Paso to advertise for bids and the Executive Committee to award all contracts related to this project within the authorized total project cost

- d. Appropriated \$508,596 from grants and \$508,596 from Permanent University Fund Bond Proceeds for total project funding of \$1,017,192.

Conservation efforts in these two buildings include installation of fluorescent lighting reflectors, energy efficient motors, and conversion of constant volume air handling units to variable air volume units in both the Education and the Engineering Buildings. Also, installation of independent HVAC system for the television broadcast area in the Education Building will allow the economizer unit to function in the rest of that building.

This project is included in the 1991 Capital Improvement Plan and the FY 1992 Capital Budget.

6. U. T. Tyler - On-Campus Housing, Student Apartment Complex (Phase I): Authorization to (a) Conclude Negotiations on Proposed Ground Lease with Century Development, a Texas Limited Partnership, Houston, Texas, as Limited Partner and Owner of General Partnership Entity in University Pines Housing Partnership I, Ltd., a Texas Limited Partnership, Houston, Texas, Proposed Lessee and (b) Execute Ground Lease (Exec. Com. Letter 92-3).--Pursuant to action in June 1991, the U. T. Board of Regents approved in concept initiation of a project for a student apartment complex on The University of Texas at Tyler campus and solicitation of proposals from developers to construct and possibly manage Phase I of the complex.

Proposals from four private developers were received on August 16, 1991. Following careful review of the proposals, it was determined that Century Development (Century) will provide the best total project package.

In accordance therewith, the Executive Committee recommended and the Board:

- a. Authorized U. T. Tyler, the Office of Academic Affairs, and the Office of General Counsel to conclude negotiations with Century Development, a Texas limited partnership, Houston, Texas, on a proposed Ground Lease with University Pines Housing Partnership I, Ltd., a Texas limited partnership, Houston, Texas, comprised of Century Development as sole limited partner and University Pines Housing Corp., Houston, Texas, a Texas for-profit corporation, and wholly owned subsidiary of Century Development, as sole general partner for a student apartment complex on the U. T. Tyler campus
- b. Authorized the Chairman of the U. T. Board of Regents to execute a Ground Lease in the form substantially similar to the Ground Lease set out on Pages 8 - 62 upon review and recommendation of the Executive Vice Chancellor for Academic Affairs, the Vice Chancellor for Business Affairs, and the Office of General Counsel.

While the U. T. Board of Regents approved a total project concept involving 17.2 acres and about 100 units to serve 200 students, the Century proposal will provide 120 units and require only approximately 6.0 acres. Plans for future development of the site include a second phase involving a total tract of up to 17.2 acres.

The apartments range from efficiency (approximately 325 square feet) to four-bedroom style suites (approximately 875 square feet). While the exact configuration has not been determined, the project should accommodate 304 residents and will include a commons building, laundry facility and parking lot. The exact number and style of each type of unit will be established during negotiations with Century.

U. T. Tyler seeks authority to conduct negotiations with Century Development, a Texas limited partnership, on behalf of University Pines Housing Corp., a wholly owned subsidiary of Century. Century owns a 99% interest in the partnership and is the sole limited partner, and University Pines Housing Corp. owns a 1% interest in the partnership and is the sole general partner. The partnership will build and manage the facility pursuant to a long-term Ground Lease and an operating agreement with Century Property Management Company, a wholly owned subsidiary of Century and a Texas for-profit corporation.

This project is consistent with "Guidelines for Private Development on Campus" of the Texas Higher Education Coordinating Board and is included in the Capital Improvement Plan approved at the June 1991 meeting.

This draft has been prepared solely to initiate discussion between the parties and does not constitute an offer or a commitment by either party.

11/8/91

DRAFT

GROUND LEASE AGREEMENT

by and between

THE BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM
FOR THE USE AND BENEFIT OF
THE UNIVERSITY OF TEXAS AT TYLER
(LESSOR)

and

UNIVERSITY PINES HOUSING PARTNERSHIP I, LTD.
(LESSEE)

Dated: As of _____

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GROUND LEASE AGREEMENT

**THE STATE OF TEXAS §
 §
COUNTY OF SMITH §**

This Ground Lease Agreement is made and entered into as of the _____ day of November, 1991, by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, FOR THE USE AND BENEFIT OF THE UNIVERSITY OF TEXAS AT TYLER, acting by and through its authorized officers, and UNIVERSITY PINES HOUSING PARTNERSHIP I, LTD., a Texas limited partnership, acting by and through _____, a Texas corporation, General Partner.

WITNESSETH

WHEREAS, Section 65.39 of the Texas Education Code provides that the Board of Regents of The University of Texas System (the "LESSOR") has the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, The University of Texas System;

WHEREAS, in order to assist in the development of campus housing facilities and related facilities for students, faculty, and staff at The University of Texas at Tyler ("The University" or "UTT"), the LESSOR deems it is best for the interest of The University of Texas System, that a portion of the campus at The University be leased to University Pines Housing Partnership I, LTD. (the "LESSEE") for the purpose of developing, constructing, operating, and leasing such campus housing facilities;

WHEREAS, the LESSOR and the LESSEE have determined to enter into this Ground Lease Agreement (the "Lease") whereby the LESSOR will lease a tract of approximately 6.0 acres of land on the campus to the LESSEE, and the LESSEE will develop, construct, operate, and lease improvements on such land for use by The University's students, faculty, and staff and only such other persons as LESSOR may agree, subject to the terms herein stated;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements which follow, the parties hereby agree:

ARTICLE ONE
LEASE OF PROPERTY - TERMS OF LEASE

Section 1.01. LEASE OF PREMISES. LESSOR, in consideration of the rents, covenants, agreements and conditions herein set forth, which LESSEE hereby agrees to cause to be paid, kept and performed, does hereby let, demise and rent exclusively unto LESSEE, and LESSEE does hereby rent and lease from LESSOR, the real property (the

"Land") more particularly described in EXHIBIT "A" attached hereto, being incorporated into this Lease and made a part hereof together with the Facilities, all improvements, alterations, additions, and attached fixtures located on the Land. LESSEE, by execution of this Lease, accepts the leasehold estate herein demised subject to all easements and other matters referred to in EXHIBIT "B".

Section 1.02. HABENDUM. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges, and appurtenances thereto attaching or anywise belonging, exclusively unto LESSEE, its successors and assigns, for the term set forth in Section 1.03, subject to termination as herein provided, and subject to the covenants, agreements, terms, provisions, and limitations herein set forth.

Section 1.03. TERM. Unless sooner terminated as herein provided, this Lease shall continue and remain in full force and effect for a term commencing on the date hereof and ending at midnight on August 31, 2032 (the "Term").

ARTICLE TWO DEFINITIONS

Section 2.01. DEFINITIONS. In addition to such other defined terms as may be set forth in this Lease, as used in this Lease, the following terms have the following respective meanings.

"Academic Year" - the period commencing on September 1 of each calendar year during the Term and ending on August 31 of the following calendar year.

"Affiliate" - with respect to a designated Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through ownership of voting securities or by contract or otherwise.

"Annual Expenses" - with respect to any Academic Year of LESSEE, all amounts (a) paid by LESSEE during such Academic Year for operating expenses related to the Premises (including real estate taxes and sales, personal property, rental, occupancy, use, gross receipts, and excise taxes), (b) paid by LESSEE during such Academic Year for capital expenditures for the Premises, (c) paid by LESSEE during such Academic Year for principal, interest, and make-whole amounts to any Permitted Mortgagee, (d) advanced by (or indemnification payments owed to) any Permitted Mortgagee pursuant to the Permitted Mortgage and related to the Facilities, and (e) for Reserve Amounts.

*Exhibits A and B not included herein.

"Applicable Laws" - all present and future statutes, regulations, ordinances, resolutions and orders of any Governmental Authority.

"Award" - any payment or other compensation received or receivable as a consequence of a Taking from or on behalf of any Governmental Authority or any other Person vested with the power of eminent domain.

"Business Day" - a day excluding Saturday, Sunday and any Holiday.

"Century Development" - a Texas limited partnership.

"Century Property Management Company" - a Texas for profit corporation.

"Commencement of Construction" - the date on which excavation or foundation work is begun for the Facilities.

"Coordinating Board" - The Texas Higher Education Coordinating Board.

"Date of Opening" - the date the Facilities are opened for occupancy or use.

"Event of Default" - any matter identified as an event of default under Section 13.01.

"Expiration Date" - the expiration date of this Lease.

"Facilities" - all improvements constructed on the Land, including the complex of ___ buildings which include approximately ___ apartment units and related facilities for use by students, faculty, and staff of the The University and others as permitted under this Lease or approved by UTT as participants in UTT sponsored activities.

"Facility Equipment" - all personal property including but not limited to furniture, furnishings, equipment, machinery, owned by LESSEE and used in connection with the operation of the Premises.

"Force Majeure" - an (a) act of God, landslide, lightning, earthquake, hurricane, tornado, blizzard and other adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, blockade, insurrection, riot, or civil disturbance; (b) labor dispute, strike, work slowdown, or work stoppage; (c) order or judgment of any Governmental Authority, if not the result of willful or negligent action of LESSEE; (d) adoption of or change in any Applicable Law after the date of execution of this Lease; or (e) any other similar cause of similar event beyond the reasonable control of LESSEE.

"Foreclosure" - a foreclosure of a Permitted Mortgage or a conveyance in lieu of foreclosure of a Permitted Mortgage.

"Governmental Authority" - any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise) whether now or hereafter in existence.

"Gross Rents" - with respect to any Academic Year, all Occupancy Rents actually received by LESSEE during such Academic Year on account of or as a result of the occupancy of the Facilities by occupants. Gross Rents shall not include any amounts received from occupants to cover any sale, use, transaction privilege, excise or gross receipts tax imposed by any Governmental Authority for or attributable to the Occupancy Rents paid by such occupants.

"Gross Revenues" - with respect to any Academic Year, all gross receipts of LESSEE from the Premises, computed on a cash basis and otherwise in a manner reasonably acceptable to LESSOR, including all rent, laundry and vending machine revenues, and interest earned on tenants' security deposits.

"Holiday" - any day which shall be a legal holiday in the State of Texas or a day on which banking institutions in the State of Texas are authorized or are required by law to close.

"Incipient Default" - any default by LESSEE hereunder which, after the giving of notice or the passage of time (or both), would result in an Event of Default.

"Land" - the tract of approximately 6.0 acres located on the campus of The University of Texas at Tyler and _____, more particularly described in Exhibit "A".

"LESSOR Representative" - one or more of the persons designated and authorized in writing from time to time by LESSOR to represent LESSOR in exercising LESSOR'S rights and performing LESSOR'S obligations under this Lease; the initial LESSOR Representatives shall be either the President of The University of Texas at Tyler or the Vice President for Administration of The University of Texas at Tyler.

"LESSOR'S Interest" - the fee simple title to the Land and the Facilities located on the Land and LESSOR'S interest under this Lease.

"Management Agreement" - the Management Agreement relating to the operation and management of the Premises.

"Net Cash Flow" - with respect to any Academic Year, the excess, if any, of Gross Revenues over Annual Expenses for such Academic Year.

"New Occupants" - any On-Campus Occupants who have not been On-Campus Occupants for previous Academic Years or who have not complied with the filing deadline for receiving "returning student priority benefits" in housing assignments by LESSOR.

"Occupancy Rents" - all rents and fees paid by occupants to occupy housing at the Facilities pursuant to the payment provisions of any Campus Housing Contracts or other leases.

"On-Campus Occupants" - those students, faculty, and staff associated with UTT who desire to occupy any housing on the campus of UTT.

"Permitted Assignee" - (a) any Permitted Mortgagee, any purchaser at a Foreclosure, any Affiliate of a Permitted Mortgagee, or any other Person selected by a Permitted Mortgagee (or its successors or assigns) subsequent to a Foreclosure of a Permitted Mortgage; (b) any Affiliate of LESSEE; or (c) Century Development (or any Affiliate of Century Development).

"Person" - an individual; a trust, an estate; a Governmental Authority; or a partnership, joint venture, corporation, company, firm or any other entity whatsoever.

"Plans and Specifications" - the plans and specifications for the construction of the Facilities described in EXHIBIT "C" as attached hereto, as such plans and specifications may be amended from time to time as permitted in Section 7.01.

"Premises" - the Land and the Facilities.

"Rent" - Base Rent and Percentage Rent.

"Reserve Amounts" - the amounts set forth in the Annual Budgets for debt service, operating, and capital reserves.

"Taking" or "Taken" - the actual or constructive condemnation, or the actual or constructive acquisition by condemnation, eminent domain or similar proceeding by or at the direction of any Governmental Authority or other Person with the power of eminent domain.

"UTT" and/or "University" - The University of Texas at Tyler, a component institution of The University of Texas System, located in Tyler, Smith County, Texas being an "institution of higher education" as defined in Section 61.003, Texas Education Code.

ARTICLE THREE
RENT

Section 3.01. **BASE RENT.** Commencing with the date hereof and continuing throughout the Term, LESSEE shall pay to LESSOR, as annual base rent ("Base Rent"), \$100.00 for each year or a portion thereof. The Base Rent shall be due and payable in advance, with the first such payment of Base Rent being due upon execution of the ground Lease and each subsequent payment due no later than forty-five (45) days after the close of each Academic Year.

Section 3.02. **PERCENTAGE RENT.** Subject to the limitations set forth in Section 8.03G, LESSEE shall pay to LESSOR, for the Academic Year commencing in 1992 and each Academic Year thereafter during the Term, percentage rent in an amount equal to the product of (a) 50% and (b) Net Cash Flow ("Percentage Rent"). Percentage Rent shall be paid to LESSOR no later than forty-five (45) days after the close of each Academic Year. If there is no Percentage Rent due for any such Academic Year, any net loss shall be borne solely by LESSEE and shall not be carried forward in determining Percentage Rent for the next Academic Year.

ARTICLE FOUR
USE OF PREMISES

Section 4.01. **PURPOSE AND USE OF LEASE.** LESSEE enters into this Lease for the purpose of developing and constructing and maintaining the Facilities in accordance with the Plans and Specifications and except as otherwise provided herein, the Premises are to be used for no other purpose.

LESSEE shall have the right to use the Premises solely for the development and operation of the Facilities and ancillary uses including uses now or hereafter customarily related to or connected with the ownership and operation of a multi-family residential development. LESSOR and LESSEE covenant and agree that except as set forth in Section 15.02 below, the Facilities shall be for the exclusive use and benefit of the students, faculty, staff and guests of The University and such other persons as The University and LESSEE shall mutually agree. LESSEE shall comply with all ordinances, laws and regulations of all Governmental Authorities applicable to and as are required for LESSEE'S use and operation of the Premises as such ordinances, laws, and regulations are enforced by any Governmental Authority having jurisdiction with respect to the Premises.

Section 4.02. **BENEFIT OF THE UNIVERSITY.** Subject to Sections 15.02 and 15.06, LESSEE shall lease and hold the Premises for the support, maintenance or benefit of The University and the Premises shall be leased for a purpose related to the performance of the duties and functions of UTT and shall not be leased to provide private residential housing to members of the public other than students, faculty and staff.

approved for residency by the Office of the Vice President for Administration and other persons approved by the LESSOR Representative as participants in university-related activities.

Section 4.03. **CAMPUS DATA NETWORK SYSTEMS.** LESSOR agrees to provide access to campus data network systems at no charge to LESSEE. LESSEE shall provide, maintain and repair computer cabling from each bedroom and livingroom to an environmentally controlled space designated as a switching room. Cabling from the central switching room to the campus data network will be provided by the LESSOR. LESSEE agrees to provide LESSOR with 24 hour access to the switching room.

ARTICLE FIVE
ACCEPTANCE AND CONDITION OF PREMISES

Section 5.01. **LESSEE'S INSPECTION.** LESSEE has had full opportunity to inspect and examine the Land. Except for the express representations and warranties of LESSOR set forth in this Lease, LESSEE'S execution of this Lease shall be conclusive evidence of LESSEE'S acceptance of the Land in an "AS IS" condition and, subject to LESSOR'S obligations set forth herein, LESSEE hereby accepts the Land in its present condition.

Section 5.02. **NO REPRESENTATIONS.** LESSEE agrees that no representations respecting the condition of the Premises and no promises to alter or improve the Premises have been made by LESSOR or its agents to LESSEE unless the same are contained herein or made a part hereof by specific reference.

ARTICLE SIX
ACCESS

Section 6.01. **ACCESS.** LESSEE shall permit LESSOR'S agents, representatives, or employees to enter on the Premises at reasonable times for the purposes of review and inspection as provided in this Lease, to determine whether LESSEE is in compliance with the terms of this Lease, or for other reasonable purposes. Subject to the rights of LESSOR and UTT to observe and enforce their applicable rules and policies, the LESSOR and UTT, their agents, representatives, and employees shall not disturb construction on the Land and shall use best efforts to not disturb occupants of subleased space.

ARTICLE SEVEN
CONSTRUCTION BY LESSEE

Section 7.01. **LESSEE TO PAY COSTS.** LESSEE will develop and construct the Facilities on the Land at its own cost and expense. LESSOR shall have no financial obligation or other obligation of any kind under this Lease except as specifically set forth herein.

- A. LESSEE shall furnish all supervision, tools, implements, machinery, labor materials, and accessories such as are necessary and proper for the construction of the Facilities, shall pay all permit and license fees, and shall construct, build, and complete the Facilities in a good, substantial and worker-like manner all in accordance with this Lease, the Plans and Specifications, and all documents executed pursuant hereto and thereto.
- B. LESSEE shall have the right to and shall provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Premises for the purpose of carrying out any of the activities provided for herein. LESSEE shall have sole control of the selection of construction professionals, construction design, means and methods and the final decision regarding operation of the Facilities, subject to the approval of LESSOR Representative which approval shall not be unreasonably withheld. The Plans and Specifications for the construction of the Facilities and for landscaping shall be prepared by architects and engineers registered in the State of Texas. The Plans and Specifications shall require the written approval of the LESSOR Representative before any construction or installation may be undertaken, which approval shall not be unreasonably withheld. All construction, alteration, renovation or additions to the Premises undertaken by the LESSEE shall be in conformance with all applicable codes, rules and regulations, including amendments thereto. LESSEE shall have the right to contest any such codes for reasonable grounds by ordinary and proper procedures.
- C. The LESSOR Representative shall review changes in work and materials in the Plans and Specifications and note in writing any required changes or corrections thereto no later than five (5) business days after receipt of the Plans and Specifications. Minor changes in work or materials, not affecting the general character of the Facilities may be made in the Plans and Specifications at any time without the approval of LESSOR Representative, but a copy of the altered Plans and Specifications shall promptly be furnished to the LESSOR Representative.
- D. After completion of the Facilities, at least 120 days prior to undertaking any material structural alteration, renovation, or remodeling of the Facilities during the Term, LESSEE shall submit plans for such renovation or remodeling to the LESSOR for approval, which approval shall not be unreasonably withheld. LESSOR shall either approve or disapprove any such alteration within sixty (60) days after receipt of such plans from LESSEE. If LESSOR fails to respond within such sixty (60) day period, it shall be deemed that LESSOR approves any such alteration, renovation, or remodeling.

- E. Subject to Force Majeure, LESSEE covenants that LESSEE shall substantially complete construction of the Facilities on or before August 15, 1992, with all units ready for occupancy. Subject to the provisions of Section 7.01.F below, if any unit in the Facilities is not ready and available for occupancy on August 15, 1992 (regardless of delays caused by Force Majeure), and such unit has been committed by LESSEE to an Assigned Occupant, LESSEE shall, at its sole cost and expense, provide each such Assigned Occupant comparable living quarters until such Assigned Occupant's unit is available for occupancy. In the event comparable living quarters are not available in a location the same or similar distance from UTT campus, LESSEE at its sole cost and expense shall furnish daily transportation, at reasonable times and intervals, for such Assigned Occupant to and from the UTT campus. If LESSEE provides such Assigned Occupants with comparable living quarters pursuant to this section, then LESSEE'S failure to complete the construction of the Facilities by August 15, 1992 shall not be an Event of Default.
- F. The obligations of LESSEE to provide substitute living quarters for Assigned Occupants pursuant to Section 7.01.E above is conditioned upon each such Assigned Occupant's Campus Housing Contract remaining in full force and effect and such Assigned Occupant paying Occupancy Rents under its Campus Housing Contract to LESSEE during the time LESSEE is providing such Assigned Occupant with substitute living quarters.
- G. Prior to Commencement of Construction, (1) LESSEE shall deliver to the LESSOR Representative a copy of the signed contract ("Construction Contract") between the LESSEE and the general contractor for the construction of the Facilities, and (2) LESSEE shall provide payment and performance bonds in an amount equal to the contract price set forth in the Construction Contract.
- H. The LESSOR Representative shall have the right to review and approve all payment bonds and performance bonds and shall note in writing any required changes or corrections within five (5) business days after receipt thereof; provided, however, LESSEE shall not be required by LESSOR to secure a change in the terms of such bond documents if the Permitted Mortgagee has previously approved such bonds.
- I. LESSEE shall, upon written request of LESSOR, make, in such detail as may reasonably be required, and forward to LESSOR, reports in writing as to the actual progress of the construction of the Facilities. During such period, the construction work shall be subject to inspection by the LESSOR's Representative and by authorized personnel of UTT in order to verify reports of construction, determine compliance with safety, fire and

building codes and determine compliance with approved construction plans or such other inspections as may be necessary in the reasonable opinion of the LESSOR Representative.

- J. LESSEE shall be responsible for obtaining all licenses, patents, registered or copyrighted machines, materials, methods, or processes necessary to construct and operate the Facilities and LESSEE will hold LESSOR free and harmless from any and all claims arising out of LESSEE'S failure to obtain such licenses, patents, registered or copyrighted machines, materials, methods, or processes.
- K. Before erecting or placing any sign upon the Premises, LESSEE shall submit the design and specifications of such sign to LESSOR for approval, which approval shall not be withheld if such signage is consistent with UTT's current signage policy or such signage was included in the Plans and Specifications.

Section 7.02. CONSTRUCTION STANDARDS AND LIENS. Any and all improvements to the Premises shall be constructed, and any and all alteration, renovation, repair, refurbishment, or other work with regard thereto shall be performed, in accordance with the following "Construction Standards" (herein so referenced):

- A. All such construction or work shall be performed in a good and worker-like manner in accordance with good industry practice for the type of work in question;
- B. All such construction or work shall be done in compliance with all applicable building codes, ordinances, and other laws or regulations of Governmental Authorities having jurisdiction (the "Building Regulations");
- C. No such construction or work shall be commenced until there shall have been first obtained all licenses, permits, and authorizations, if any, required by all Governmental Authorities having jurisdiction;
- D. LESSEE shall have obtained and shall maintain in force and effect the insurance coverage required in Section 12.03 with respect to the type of construction or work in question; and
- E. After commencement, such construction or work shall be prosecuted with due diligence to its completion.

Section 7.03. PERSONAL PROPERTY. All Facility Equipment shall be and remain the property of LESSEE, but shall remain subject to the terms of this Lease. Notwithstanding anything contained to the contrary in this Lease, LESSOR shall not have and does hereby expressly waive and relinquish any lien or claim for lien, whether granted by constitution, statute, rule of law, or contract relating to the Facility Equipment, whether located in or about the Premises, or otherwise, for any purpose whatsoever, including securing the payment of Rent.

ARTICLE EIGHT
ENCUMBRANCES

Section 8.01. MORTGAGE OF LEASEHOLD. At any time and from time to time, LESSEE may mortgage, grant a lien upon, and a security interest in (and assign as collateral) LESSEE'S leasehold estate in the Premises and LESSEE'S other rights hereunder to a Permitted Mortgagee (as defined in this Section 8.01) without the prior consent of LESSOR by the creation or execution of contractual liens, deeds of trusts, mortgages, assignments or similar instruments (individually, a "Permitted Mortgage" and collectively, the "Permitted Mortgages"); provided (a) the debt secured by any Permitted Mortgage is used for the operation, maintenance, repair, construction, or replacement of the Premises, (b) the debt secured by any Permitted Mortgage is used for the payment of sums due under this Lease or otherwise owed to LESSOR, or (c) the debt secured by any Permitted Mortgage is used by the LESSEE to repay the debt secured by prior Permitted Mortgages and other amounts advanced by (or indemnification payments owed to) the Permitted Mortgagee pursuant to the Permitted Mortgage and related to the Facilities. LESSOR recognizes and agrees that the mortgages or deeds of trust described in EXHIBIT "D"*shall constitute Permitted Mortgages and the beneficiaries under such Permitted Mortgages (and such beneficiaries' successors and assigns) shall constitute Permitted Mortgagees. Except as specified in the preceding sentence, the term "Permitted Mortgagee" as used in this Lease shall be limited to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, state or local governmental authority, real estate investment trust, pension fund, and other lenders of substance that are actively engaged in commercial real estate financing, and that have assets in excess of one hundred million dollars (\$100,000,000) at the time the Permitted Mortgage loan is made, and subsidiaries of any of the foregoing that are regularly engaged in the business of making real estate mortgage loans.

Section 8.02. PERMITTED MORTGAGE PROVISIONS. Every Permitted Mortgagee to whom LESSEE shall grant a mortgage, pledge, lien or other encumbrance upon LESSEE's leasehold estate hereunder must expressly agree in the loan documents that (i) such mortgage, pledge, lien or other encumbrance upon LESSEE's leasehold estate hereunder is second, inferior and subordinate to the rights of LESSOR in and to the Land and the Facilities pursuant to the terms of this Lease, (ii) all Notices to LESSEE of any default or defaults of LESSEE under such loan documents or in connection with such loan, including Notice of acceleration of the maturity of the indebtedness, will be given to LESSOR in the manner provided in Section 22.03 hereof as well as to LESSEE (to the extent such Notices are required under the provisions of the applicable Permitted Mortgage) and shall not be effective until so given to LESSOR, (iii) such Permitted Mortgagee will accept a cure of any default under such loan documents by LESSOR, except that LESSOR shall not be required to cure any such default and shall not have a cure period which extends beyond the applicable cure period, if any, as provided to LESSEE in such loan documents, and (iv) all payments so made and all things so done

*Exhibit D not included herein.

or performed by LESSOR shall be as effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies by such Permitted Mortgagee upon default by LESSEE thereunder as the same would have been if paid, done or performed by LESSEE instead of by LESSOR. LESSOR shall not be or become liable to any such Permitted Mortgagee as a result of the right and option to cure any such default or defaults by LESSEE.

Section 8.03. MORTGAGEE PROTECTIVE PROVISIONS. LESSOR hereby agrees to the following for the benefit of any holder or beneficiary (individually, a "Permitted Mortgagee" and collectively, the "Permitted Mortgagees") of a Permitted Mortgage:

- A. LESSOR shall not terminate this Lease (or LESSEE'S rights hereunder) for any Event of Default without first advising such Permitted Mortgagee, in writing, of such Event of Default and permitting such Permitted Mortgagee to cure such Event of Default on behalf of LESSEE within thirty (30) days after LESSOR has given Notice to such Permitted Mortgagee; provided that if, during such thirty (30) day period, Permitted Mortgagee takes action to cure such Event of Default but is unable, by reason of the nature of the remedial action involved, to cure such Event of Default within such period, LESSOR shall not terminate this Lease for so long as Permitted Mortgagee continues in good faith with due diligence and without unnecessary delays to cure such Event of Default. Further, if any Event of Default is not cured within such thirty (30) day period, or any extension thereof agreed to by the LESSOR, and (1) the Permitted Mortgagee shall have given the Notices necessary to commence Foreclosure of the liens of its Permitted Mortgage prior to the expiration of such thirty (30) day period (unless the Permitted Mortgagee is enjoined or stayed from giving such Notices or exercising its right of Foreclosure, in which event such thirty (30) day period shall be extended by the period of such injunction or stay, but such thirty (30) day period shall not be extended for a period of time in excess of 270 days), and (2) the purchaser at the Foreclosure fully cures any Event of Default reasonably susceptible of being cured by the purchaser at the Foreclosure within thirty (30) days after such Foreclosure, then LESSOR will not terminate this Lease (or LESSEE'S rights hereunder) because of the occurrence of such Event of Default provided that Foreclosure is diligently prosecuted. LESSOR shall accept amounts paid or actions taken by or on behalf of any Permitted Mortgagee to cure any Event of Default. Nothing under this Section 8.03.A shall be construed to obligate a Permitted Mortgagee to either cure any Event of Default or Foreclose the liens and security interests under its Permitted Mortgage as a consequence of an Event of Default or Incipient Default, regardless of whether such Event of Default or Incipient Default is subsequently cured. If the Permitted Mortgagee or the purchaser at Foreclosure cures all defaults reasonably

susceptible of being cured by such Permitted Mortgagee or purchaser, then all other defaults shall no longer be deemed to be defaults hereunder.

- B. Those Events of Default, which by their very nature, may not be cured by the Permitted Mortgagee (as, for example, the bankruptcy of LESSEE) shall not constitute grounds of enforcement of rights, recourse, or remedies hereunder by LESSOR including termination of the Lease, if a Permitted Mortgagee either before or after a Foreclosure of its Permitted Mortgage (1) makes all payments and performs all obligations hereunder capable of being performed by the Permitted Mortgagee and (2) thereafter continues to comply with those provisions of this Lease with which, by their very nature, the Permitted Mortgagee may comply. Notwithstanding anything to the contrary contained in this Lease, the Permitted Mortgagee shall not be responsible for or obligated to cure any Event of Default or Incipient Default of LESSEE for which the Permitted Mortgagee was not provided written Notice within 30 days from the occurrence of such Event of Default or Incipient Default (as the case may be).
- C. If a Permitted Mortgagee enforces the rights and remedies pursuant to the terms of its Permitted Mortgage (including Foreclosure of any liens or security interests encumbering the estates and rights of LESSEE under this Lease) such enforcement shall not constitute an Event of Default or an Incipient Default by LESSEE hereunder.
- D. In the event a Permitted Mortgagee should Foreclose the liens and security interests of its Permitted Mortgage and should, as a result of such Foreclosure, succeed to the rights of LESSEE hereunder, then such Permitted Mortgagee shall be subject to all the terms and conditions of this Lease and shall be entitled to all rights and benefits of this Lease; provided, however, that (1) such Permitted Mortgagee shall not be liable for any act or omission of LESSEE; (2) such Permitted Mortgagee shall not be subject to any offsets or defenses which LESSOR has or might have against LESSEE; (3) such Permitted Mortgagee shall not be bound by any amendment, modification, alteration, approval, consent, surrender, or waiver under the terms of this Lease made without the prior written consent of such Permitted Mortgagee; (4) such Permitted Mortgagee's obligations to pay Percentage Rent shall be limited as set forth in Section 8.02.G; and (5) upon the written request of such Permitted Mortgagee, LESSOR shall reaffirm, in writing, the validity of this Lease, and that this Lease is in full force and effect. LESSOR acknowledges and agrees for itself and its successors and assigns that this Lease does not constitute a waiver by any such Permitted Mortgagee of any of its rights under any Permitted Mortgage or in any way release LESSEE from its obligations to comply with the

terms, provisions, conditions, representations, warranties, agreements or clauses of such Permitted Mortgage or any other such security interest.

- E. LESSOR will not agree to a modification, alteration, amendment or the release or surrender of this Lease without the prior written consent of any Permitted Mortgagees.
- F. In the event of the termination of this Lease prior to the Expiration Date, except by a Taking pursuant to Article Seventeen hereof, LESSOR will serve upon any Permitted Mortgagees written Notice that this Lease has been terminated together with a statement of any and all sums which would have at that time been due under the Lease but for such termination and of all other Events of Default or Incipient Defaults, if any, under this Lease then known to LESSOR whereupon the Permitted Mortgagee holding the most senior Permitted Mortgage shall have the option to obtain a new lease of the Premises by giving Notice to LESSOR to such effect within sixty (60) days after receipt by such Permitted Mortgagee of Notice of such termination, which new lease shall be (1) effective as of the date of termination of this Lease, (2) for the remainder of the Term, and (3) at the same Rent and upon all of the agreements, terms, covenants and conditions hereof (subject, however, to any limitations on Percentage Rent applicable pursuant to Section 8.03.G). Upon the execution of such new lease, the lessee named therein shall pay any and all sums which at the time of the execution thereof would be due under this Lease but for such termination and shall pay all unpaid expenses, including reasonable attorney's fees, court costs and disbursements incurred by LESSOR in connection with the Event of Default and such termination, the recovery of possession of the Premises and the preparation, execution and delivery of such new lease.
- G. The Permitted Mortgagee or any other Person succeeding to the interests of LESSEE hereunder through a Foreclosure shall be not obligated to pay Percentage Rent from the effective date of Foreclosure until the Permitted Mortgagee has received Net Cash Flow and proceeds from the sale and financing of the Facilities in an amount equal to the Total Imputed Debt. As referenced herein, the "Total Imputed Debt" shall mean the total unpaid principal, interest, reasonable foreclosure costs and reasonable legal fees secured by the Permitted Mortgage, and other amounts which are related to the Facilities advanced by (or indemnification payments owed to) any Permitted Mortgagee pursuant to the Permitted Mortgage, together with interest accrued on such amounts (until such amounts are repaid out of Net Cash Flow or sale and finance proceeds) at the per annum rate of interest on the indebtedness secured by the Permitted Mortgage. If the Permitted Mortgagee or other Person succeeds to the interests of LESSEE hereunder

through a Foreclosure following a "Foreclosure and LESSOR Default Occurrence", the Total Imputed Debt shall include any make-whole amounts secured by the Permitted Mortgage. For purposes of this Lease, the term "Foreclosure and LESSOR Default Occurrence" shall mean a Foreclosure resulting from one or more defaults under the Permitted Mortgage so long as at least one such default shall have occurred by reason of a default by the LESSOR hereunder which shall not have been waived in writing by such Permitted Mortgagee.

- H. All Notices required to be given hereunder by LESSOR to LESSEE shall also be given concurrently to each Permitted Mortgagee, at the address designated in writing to LESSOR.
- I. The Permitted Mortgagee or any other Person succeeding to the interests of LESSEE hereunder through a Foreclosure shall be subject to all of the terms and conditions of this Lease except as otherwise expressly provided for herein.
- J. The liability of the Permitted Mortgagee under the Lease shall be limited to the period during which the Permitted Mortgagee may own the interest of the LESSEE hereunder. Upon the Permitted Mortgagee's assignment or transfer of its rights and interests in and to the Lease to a third party, the Permitted Mortgagee shall have no further liability for any obligations arising after such transfer date, which liability shall be borne by the assignee or transferee.

ARTICLE NINE MAINTENANCE AND REPAIR

Section 9.01. UTILITIES. LESSEE shall pay or cause to be paid any and all charges, including any connection fees, for water, heat, gas, electricity, sewers and any and all other utilities used on the Premises throughout the Term.

Section 9.02. USE OF AND REPAIRS TO PREMISES. Throughout the Term of the Lease, LESSEE shall keep all improvements hereafter situated upon the Land in good and safe condition and in reasonable repair, and LESSEE shall conform to and comply with all applicable ordinances, regulations and laws of all Governmental Authorities as the same may be enforced.

Section 9.03. CONDITION OF PREMISES. LESSEE shall maintain the Premises in a safe, clean, neat and sanitary condition, attractive in appearance, normal wear and tear, damage caused by casualty or condemnation, temporary destruction for renovation and Force Majeure excepted. LESSOR shall have the right, but not the obligation, at reasonable times to make inspections of the Premises.

Section 9.04. INSPECTION. LESSOR, at LESSOR'S option, shall cause to be made an annual inspection of the Premises to ascertain the quality of maintenance being observed by LESSEE, and shall notify LESSEE in writing within thirty (30) days after the end of each Academic Year of all items of repair or replacement deemed reasonably necessary to maintain the Premises in a presentable and operating condition, with a copy of such Notice being provided to each Permitted Mortgagee entitled to Notices under this Lease. Upon receipt of said Notice, LESSEE shall undertake reasonable corrective action within ninety (90) days.

Section 9.05. ALTERATIONS. LESSEE shall have the right, from time to time, to make additions, alterations and changes (hereinafter sometimes referred to collectively as "Alterations") in or to the Facilities (which term shall, when used in this Section 9.05, include any replacement or substitution therefor), provided that no Event of Default (as defined herein) shall exist by LESSEE in the performance of any of LESSEE's covenants or agreements in this Lease, subject, however, to the following:

- A. No structural Alterations of the original facade or exterior of the Facilities shall be commenced except after receipt of LESSOR's written approval of such Alterations no later than thirty (30) days after receipt of Notice of such proposed Alterations, which approval LESSOR agrees not to unreasonably withhold;
- B. No Alterations shall be made which would impair the structural soundness of the Facilities;
- C. No Alterations shall be undertaken until LESSEE shall have procured and paid for, so far as the same may be required from time to time, all applicable permits, licenses and authorizations of all Governmental Authorities having jurisdiction and all required consents of Permitted Mortgagees having a first priority interest in or lien upon the Premises. LESSOR shall join, but without expense to LESSOR, in the application for such applicable permits, licenses or authorizations whenever such action is necessary and is requested by LESSEE;
- D. Any Alterations shall be commenced and completed within a reasonable time (subject to Force Majeure) and in a good and worker-like manner and in substantial compliance with all applicable permits, licenses and authorizations and buildings laws and with all other applicable laws, ordinances, orders, rules, regulations and requirements of Governmental Authorities, as the same may be enforced;
- E. If any involuntary liens for labor and materials supplied or claimed to have been supplied to the Premises shall be filed, LESSEE shall pay or bond around such liens to LESSOR's reasonable satisfaction or otherwise obtain

the release or discharge thereof at least sixty (60) days prior to the time that any interest in the Land and/or Facilities may become subject to forced sale with respect to such involuntary liens;

- F. Workers' compensation insurance shall be maintained in force covering all persons employed in connection with the development and construction on the Premises with respect to whom death or bodily injury claims could be asserted against LESSOR, LESSEE or the Premises; and
- G. LESSEE will upon demand by LESSOR give reasonably satisfactory proof or assurances to LESSOR that the funds required to pay for the Alterations are or will be available to LESSEE for such purpose.

Section 9.06. DAMAGE TO IMPROVEMENTS. Subject to the other terms of this Lease, in the event any portion of the Facilities is damaged by fire or otherwise, regardless of the extent of such damage or destruction, within ninety (90) days following the date of such damage or destruction, LESSEE shall commence the work of repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the Facilities shall, at the sole expense of LESSEE, be restored to substantially the same size, function and value as the Facilities existing prior to the damage; provided, however, that if any available insurance proceeds (after payment of all or any portion of such insurance proceeds towards amounts owed under any Permitted Mortgage) are insufficient, in the reasonable judgment of LESSEE, to permit restoration in accordance with the terms of this Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, then the LESSOR shall grant an appropriate extension of the time for commencing repairs to allow LESSEE to obtain reasonable replacement financing or to obtain the insurance proceeds. If LESSEE shall in good faith be unable to (i) obtain reasonable replacement financing to restore the Facilities to substantially the same size, function, and value as the Facilities existing prior to the damage or (ii) obtain the insurance proceeds, then LESSEE may terminate this Lease by written Notice to LESSOR. In the event of termination under this Section 9.06, this Lease shall terminate ten (10) days after the date of such Notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term, and the Rent shall be apportioned and paid to the time of such termination. All or any portion of the insurance proceeds payable as a consequence of a casualty affecting the Facilities shall be deposited with and disbursed by the Permitted Mortgagee (holding the Permitted Mortgage with the most senior lien priority) in accordance with such Permitted Mortgagee's loan documents or contractual agreements with LESSEE pending the completion of repairs to the Facilities.

ARTICLE TEN
CERTAIN LIENS PROHIBITED

Section 10.01. **NO MECHANICS' LIENS.** Except as permitted in Section 10.02 hereof, LESSEE shall not suffer or permit any mechanics' liens or materialmen's liens to be enforced against LESSOR'S Interest nor against LESSEE'S leasehold interest in the Premises by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to LESSEE or to anyone holding the Premises or any part thereof through or under LESSEE.

Section 10.02. **RELEASE OF RECORDED LIENS.** If any such mechanics' liens or materialmen's liens shall be recorded against the Premises, LESSEE shall cause the same to be released of record or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and released prior to the execution of such judgment. In the event LESSOR reasonably should consider LESSOR'S interest endangered by any such liens and should so notify LESSEE and each Permitted Mortgagee and LESSEE or any Permitted Mortgagee should fail to provide adequate security for the payment of such liens, in the form of a surety bond, cash deposit or cash equivalent, or indemnity agreement reasonably satisfactory to LESSOR within thirty (30) days after such Notice, then LESSOR, at LESSOR'S sole discretion, may discharge such liens and recover from LESSEE immediately as net rent under this Lease the amounts to be paid, with interest thereon from the date paid by LESSOR until repaid by LESSEE at the rate of ten percent (10%) per annum.

Section 10.03. **MEMORANDUM RECITALS.** The Memorandum of Lease to be filed pursuant to Section 22.05 of this Lease shall state that any third party entering into a contract with LESSEE for improvements to be located on the Land, or any other party under said third party, shall be on notice that LESSOR shall have no liability for satisfaction of any claims of any nature in any way arising out of a contract with LESSEE.

ARTICLE ELEVEN
OPERATION AND MANAGEMENT OF FACILITIES

Section 11.01. **MANAGEMENT AGREEMENTS.** LESSEE shall be responsible for the operation of the Premises. LESSEE shall enter into a Management Agreement, satisfactory to the Committee, with a manager ("Manager") approved by the Committee. LESSOR hereby approves Century Property Management Company as the initial Manager of the Premises and agrees to the selection of subsequent Managers in accordance with the procedures set out in Section 11.02.D. Each such Management Agreement shall provide for the operation of the Premises without cost or expense to LESSOR in conformity with all applicable laws and rules, regulations and policies of LESSOR

applicable to all housing projects on UTT's campus. The Management Agreement shall permit the Manager to contract with LESSOR and LESSEE to provide certain services. LESSEE shall cause the Management Agreement to provide that (a) the Manager shall introduce all on-site managers to the Vice President for Administration and the _____ at UTT prior to hiring any such on-site manager, (b) LESSEE can require the Manager to reassign any of Manager's employees if LESSOR requests, provided that such requests shall be on the grounds that such employee is not performing the job, and (c) the Manager shall consider University students when hiring staff at the Premises.

Section 11.02. ADVISORY COMMITTEE.

A. The Annual Budget, the selection of the Manager, and the policies and operating procedures governing the Assigned Occupants, shall be subject to review and approval by the Advisory Committee composed of representatives of LESSOR and LESSEE (the "Committee"). The Committee shall at all times consist of six (6) members, three (3) of whom shall be selected by LESSOR Representative, and three (3) of whom shall be selected by LESSEE. LESSOR and LESSEE may appoint an alternate for each member appointed by it to the Committee who shall have all of the powers of the Committee member in the event of an absence or inability to serve. LESSOR and LESSEE shall notify the other in writing with respect to the name and address of the persons appointed by each to the Committee. All such Committee appointments shall be at the pleasure of the LESSOR or LESSEE making such appointment. The Committee members of each LESSOR and LESSEE shall be entitled to deal with the Committee members appointed by the other until receipt of written Notice of the appointment of a substitute or successor for such duly appointed Committee member. The Vice President for Administration and the _____ shall either serve on the Committee or designate members to represent them on the Committee as representatives of the LESSOR.

B. The Committee shall meet at least once each quarter at the Premises or at such other location as may be approved by the Committee, (unless such meeting shall be waived by all members thereof) or upon the call of any three (3) members upon five (5) business days' Notice to all members by telephone or telecopy. An agenda for each meeting shall be prepared in advance by the LESSOR and LESSEE in consultation with each other, and each member of the Committee shall receive a copy of the agenda prior to the scheduled time of the meeting. Four (4) members of the Committee shall constitute a quorum provided at least two members present were appointed by LESSEE and two members present were appointed by LESSOR. A concurring vote of at least four (4) members of the Committee shall govern all of its actions. The Committee may act without a meeting if the action is approved in advance in writing by all of the members of the Committee. The Committee shall cause written minutes to be prepared of all actions taken by the Committee and shall deliver a copy thereof to each member of the Committee within seven (7) days following the close of each meeting.

C. After completion of construction of the Facilities, LESSEE shall operate, and cause the Manager to operate, the Facilities under annual budgets (individually, an "Annual Budget" and collectively, the "Annual Budgets") which shall be prepared and submitted by LESSEE to the Committee for approval not later than sixty (60) days prior to the commencement of each Academic Year. Each Annual Budget shall set forth (1) the estimated receipts (including Occupancy Rents) and expenditures (capital, operating, and other) of the Facilities (including the estimated insurance premiums for the Premises), (2) the Reserve Amounts for the period covered thereby, and (3) the Occupancy Rents to be charged for the units in the Facilities (subject to the limitations in Section 15.03.A hereof). Each Annual Budget shall be in such detail as the Committee may reasonably require. If at any time during an Academic Year the amounts set forth in an Annual Budget require adjustment, LESSEE shall submit a revised annual budget to the Committee for approval in accordance with this Section 11.02.

D. If the Committee is unable to reach a decision regarding an Annual Budget (including the Occupancy Rents), then LESSEE shall resolve the deadlock by casting the deciding vote. If the Committee is unable to reach a decision regarding the approval of the Person (other than Century Property Management Company) proposed by LESSEE to be Manager (provided the members appointed by LESSOR have acted reasonably and in good faith), then LESSEE shall propose at least two other responsible Persons to manage the Premises. The Committee shall select one such Person to manage the Premises. If the Committee is unable to agree on the policies and procedures governing the Assigned Occupants, then LESSOR shall resolve the deadlock by casting the deciding vote.

E. The Committee may, by resolution, delegate its powers, but not its responsibilities, to employees of either LESSOR or LESSEE or to any other Person.

Section 11.03. BOOKS AND RECORDS. The LESSEE shall keep, or cause to be kept, accurate, full and complete books and accounts showing exclusively its assets and liabilities, operations, transactions and the financial condition of the Facilities. All financial statements shall be accurate in all material respects, shall present fairly the financial position and results of the Facilities' operations and shall be prepared in accordance with generally accepted accounting principles consistently applied. The books, accounts and records of the Facilities shall be maintained at the principal office of LESSEE.

Section 11.04. PROMOTION OF FACILITIES. UTT hereby agrees that it shall cooperate with LESSEE to promote the use of the Facilities by students, faculty, and staff of UTT as described more fully in Section 15.04, and shall take no action which could have an unreasonably adverse impact upon the use or operation of the Facilities. LESSEE agrees it will not use the name, logo, or seal of LESSOR or UTT without prior written permission of LESSOR Representative.

Section 11.05. AUDITS. LESSOR may, at its option and at its own expense, and during customary business hours, conduct internal audits of the books, records and accounts of the Facilities. Audits may be made on either a continuous or a periodic basis or both, and may be conducted by employees of LESSOR, or by independent auditors retained by the LESSOR, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs by the LESSEE. LESSOR covenants with LESSEE to keep the results of any such audits confidential, except as required by rules and regulations of LESSOR and by applicable law. If any audit by LESSOR pursuant to this Section 11.05 reveals that LESSEE underpaid RENT in an amount greater than five (5) percent, LESSEE shall pay the cost of such audit.

ARTICLE TWELVE INSURANCE AND INDEMNIFICATION

Section 12.01. INDEMNITY. LESSEE shall indemnify and hold harmless LESSOR and its successors (the "Indemnified Parties"), from all claims, suits, actions and proceedings ("Claims") whatsoever which may be brought or instituted on account of or growing out of any and all injuries or damages, including death, to persons or property relating to the use or occupancy of the Premises (including without limitation the construction, maintenance or operation of the Facilities), and all losses, costs, penalties, damages and expenses, including but not limited to attorneys' fees and other costs of defending against, investigating and settling the Claims; provided, however, that the indemnity shall not apply with respect to Claims arising from injuries or damages caused by the negligence or willful misconduct of LESSOR, its agents or employees. LESSEE shall assume on behalf of the Indemnified Parties and conduct with reasonable diligence and in good faith the defense of all Claims against the Indemnified Parties, whether or not LESSEE is joined therein; provided, however, without relieving LESSEE of its obligations under this Lease, the Indemnified Parties, at their election and upon Notice to LESSEE may defend or participate in the defense of any or all of the Claims with attorneys and representatives of their own choosing. Maintenance of the insurance referred to in this Lease shall not affect LESSEE's obligations under this Section 12.01 and the limits of such insurance shall not constitute a limit on LESSEE's liability under this Section 12.01; provided, however, that LESSEE shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of LESSEE (or recovered in respect of any insurance carried by LESSOR) and either (i) paid to LESSOR or (ii) paid for LESSOR's benefit in reduction of any liability, penalty, damage, expense or charge imposed upon LESSOR in connection with the Claims. LESSOR covenants and agrees that LESSEE shall have the right to contest the validity of any and all such Claims of any kind or character and by whomsoever claimed, in the name of LESSEE or LESSOR, as LESSEE may deem appropriate, provided that the expenses thereof shall be paid by LESSEE, or LESSEE shall cause the same to be paid by its insurer.

Section 12.02. LESSOR NOT LIABLE. LESSOR shall not be liable for any damage to either persons or property sustained by LESSEE or other persons and caused by any act or omission of any occupant of the Facility, except to the extent provided by the Texas Tort Claims Act.

Section 12.03. INSURANCE. LESSEE shall at all appropriate times maintain, with respect to the Premises, for the duration of this Lease and any extensions thereof, insurance issued by a company or companies qualified, permitted or admitted to do business in the State of Texas in the following types and amounts:

TYPE:	AMOUNT:
(1) Comprehensive General (Public) Liability - to include coverage for the following where the exposure exists: (A) Premises/Operations (B) Independent Contractors (C) Products/Completed Operations (D) Personal Injury (E) Contractual Liability (F) Explosion, collapse and underground property damage	Combined Single Limit for Bodily Injury and Property Damage in an amount acceptable to the LESSOR Representative, not to exceed \$5,000,000.
(2) Property Insurance - for physical damage to the property of the LESSEE including improvements and betterments to the Land.	Coverage being for 100% of the replacement cost of the Facilities
(3) Builder's Risk Insurance - all risk of physical loss during term of the construction contract and until the Facilities are substantially completed.	Coverage being for 100% of the replacement cost of the Facilities.
(4) Rental Abatement Insurance, if obtainable by LESSEE at reasonable cost.	

Section 12.04. LESSOR ADDITIONAL INSURED. LESSEE agrees that with respect to the above required insurance, LESSOR shall:

- A. Be named on the Property Insurance policy and Comprehensive General Liability policy as additional insured/or an insured, as its interest may appear (as long as being so named as a named insured on the Comprehensive General Liability Policy does not jeopardize the validity of such policy or cause an unreasonable increase in the cost thereof). LESSOR agrees to promptly endorse insurance checks or otherwise release insurance proceeds, provided no Event of Default is continuing hereunder. LESSOR shall, regardless of the existence of an Event of Default, promptly endorse insurance checks or otherwise release insurance proceeds payable to (or to be held by) a Permitted Mortgagee in accordance with its Permitted Mortgage.
- B. Be provided with sixty (60) days' advance Notice, in writing, of cancellation or material change in coverage. If any insurance policy provides that the insurer will give such Notice, then LESSEE shall not be obligated to do so with respect to such policy.
- C. Be provided with Certificates of Insurance evidencing the above required insurance at the time the policies are required to be obtained and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration or cancellation of any such policies.

Section 12.05. **ADDITIONAL INSURANCE.** LESSOR shall review LESSEE'S required insurance as stated herein at the time of renewal of the said policies or at the time of a material change, and LESSOR reserves the right to require reasonable additional limits or coverages. LESSEE agrees to comply with any such reasonable request by LESSOR.

Section 12.06. **BLANKET POLICIES.** If any blanket general insurance policy of LESSEE complies with the requirements of this Article Twelve, such insurance shall fulfill the requirements set forth herein. At the request of LESSEE, any Permitted Mortgagee may be named as an insured or an additional insured on any policies as its interest may appear.

Section 12.07. **CONTRIBUTORY ACTS.** Whenever in this Lease any party is obligated to pay an amount or perform an act because of its negligence or willful misconduct (or that of its agents, employees, contractors, guests, or invitees), such obligations shall be mitigated to the extent of any contributory negligence or willful misconduct of the other party (or that of its agents, employees, contractors, guests, or invitees), and in any disputes damages shall be apportioned based on the relative amounts of such negligence or willful misconduct.

ARTICLE THIRTEEN
TERMINATION, DEFAULT AND REMEDIES

Section 13.01. **EVENTS OF DEFAULT.** Any one of the following events shall be deemed to be an "Event of Default" by LESSEE under this Lease.

- A. LESSEE shall fail to pay any sum required to be paid under the terms and provisions of this Lease and such failure shall not be cured within thirty (30) days after receipt of written Notice from LESSOR of such failure.
- B. The Taking by execution of LESSEE'S leasehold estate for the benefit of any Person other than a Permitted Mortgagee or purchaser at a Foreclosure.
- C. LESSEE shall fail to perform any other covenant or agreement, other than the payment of money, to be performed by LESSEE under the terms and provisions of this Lease and such failure shall not be cured within thirty (30) days after receipt of written Notice from LESSOR of such failure; provided that if, during such thirty (30) day period, LESSEE takes action to cure such failure but is unable, by reason of the nature of the work involved, to cure such failure within such period and continues such work thereafter diligently and without unnecessary delays, such failure shall not constitute an Event of Default hereunder until the expiration of a period of time as may be reasonably necessary to cure such failure.
- D. The filing of a petition for relief against LESSEE, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the entry of a decree or order by a court having jurisdiction over the Premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for LESSEE or any substantial part of the properties of LESSEE or ordering the winding up or liquidation of the affairs of LESSEE, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days.
- E. The commencement by LESSEE of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the consent or acquiescence by LESSEE to the commencement of a case under such Code or law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for LESSEE or any substantial part of the properties of the LESSEE.

Section 13.02. COMPLETION BY PERMITTED MORTGAGEE. Except for delays caused by Force Majeure, if (a) the Commencement of Construction does not occur on or before _____, or (b) after the Commencement of Construction and prior to the substantial completion of the Facilities, LESSEE abandons (with no intent to continue) construction of the Facilities for a period of forty-five (45) consecutive days, then LESSOR may by written Notice to the Permitted Mortgagee require said Permitted Mortgagee to affirm by written Notice to LESSOR within thirty (30) days of receipt by said Permitted Mortgagee of such Notice from LESSOR that such Permitted Mortgagee intends to use its best efforts to pursue applicable remedies which will result in its causing the completion of the Facilities. If said Permitted Mortgagee fails to give such affirmation or thereafter by written Notice abandons such intent, the failure of the Commencement of Construction to occur or other ceasing of such construction for said forty-five (45) day period (as applicable) shall be an "Event of Default" by LESSEE hereunder and LESSOR may exercise its remedies under this Lease on account thereof. This provision is in addition to the payment and performance bond requirements set forth in this Lease.

Section 13.03. RIGHT TO EXPEL. The Permitted Mortgagee shall have the right to expel LESSEE upon the occurrence of an Event of Default and assume the position of LESSEE with all rights and duties under this Lease.

Section 13.04. LESSOR'S RIGHTS UPON DEFAULT. Subject to the rights of the Permitted Mortgagees under Article Eight, upon the occurrence and during the continuance of an Event of Default, LESSOR may at its option declare this Lease and all rights and interests created by it to be terminated, may seek any and all damages occasioned by the Event of Default, or may seek any other remedies available at law or in equity.

Section 13.05. RIGHT TO RELET PREMISES. Upon LESSOR'S exercise of the election to terminate this Lease, LESSOR may take possession of the Premises and relet the same for the remainder of the Term upon such terms as LESSOR is able to obtain for the account of LESSEE, who shall make good any deficiency as such occurs. Any termination of this Lease as herein provided shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable to LESSOR hereunder, or any claim for damages then or theretofore accruing against LESSEE hereunder, and any such termination shall not prevent LESSOR from enforcing the payment of any such sum or sums or from claiming damages by any remedy provided for by law, or from recovering damages from LESSEE for any Event of Default.

ARTICLE FOURTEEN IMPROVEMENTS

Section 14.01. TITLE TO IMPROVEMENTS. Upon the completion of construction of the Facilities, title to the Facilities (all buildings erected and all alterations, additions,

attached fixtures or improvements made upon the Land) shall vest completely in LESSOR, subject to LESSEE'S rights hereinafter set forth:

- A. Subject to subparagraph B hereof, all furniture, fixtures, equipment and furnishings permanently affixed to the Premises (other than Facility Equipment) shall become the property of LESSOR upon termination of this Lease whether such termination be by expiration of the Term or an earlier termination under any provision of this Lease.
- B. LESSEE shall have the right, within forty-five (45) days after the termination of this Lease, whether such termination be by the expiration of the Term or an earlier termination under any provision of this Lease, to remove from the Premises all of the Facility Equipment; provided that, if any of LESSEE'S property remains in or on the Premises after forty-five (45) days following termination of this Lease and no renewal agreement has been executed, the property that remains shall be deemed to have become the property of LESSOR, and may be disposed of as LESSOR sees fit without liability to account to LESSEE for the proceeds of any sale or other disposition thereof.

Section 14.02. LESSOR'S OPTION TO REQUIRE DEMOLITION. LESSOR shall have the option to require LESSEE to demolish the Facilities and clear the Land of all rubble and debris at LESSEE's sole cost and expense upon the occurrence of either (i) the "Abandonment" (as hereinafter defined) of the Facilities by LESSEE, or (ii) the expiration of the Term of this Lease, provided that:

- A. LESSOR has not exercised its option to purchase the LESSEE'S interest in the Premises after approval by the Texas Higher Education Coordinating Board, its successor in function, and any other agency of the State of Texas from which approval is then required, as provided in Section 14.03; or
- B. LESSEE has not donated its interest in the Premises to LESSOR (subject to LESSOR'S acceptance, after approval by the Texas Higher Education Coordinating Board, its successor in function and any other agency of the State of Texas from which approval is then required); or
- C. LESSEE and LESSOR have not entered into an extension or a renewal of this Lease or an amendment to this Lease upon terms and conditions acceptable to LESSEE and LESSOR which gives LESSEE the right to lease the Premises for a period of time beyond the expiration of the Term.

As used herein, the term "Abandonment" shall mean (i) LESSEE's voluntary surrender of the Premises to LESSOR prior to the expiration of the Term, or any extension or renewal thereof, which surrender, if there shall then be a Permitted Mortgage, shall have been

consented to by each such Permitted Mortgagee, including any termination of this Lease by LESSEE pursuant to Section 9.06 hereof or, (ii) LESSEE's failure to operate the Facilities as provided under Section 4.01 for a period of at least two (2) consecutive years measured from and after the last date permitted hereby for Commencement of Construction and disregarding periods of Force Majeure; provided, however, that LESSEE shall not be deemed to have Abandoned the Facilities for the purposes of this Section 14.02, if LESSOR shall have given each Permitted Mortgagee Notice of such Abandonment and thereafter if any holder of a Permitted Mortgagee exercises its rights under Section 8.03 hereof to succeed to LESSEE's leasehold interest created hereunder or to enter into a new lease of the Premises as if such Abandonment constituted an Event of Default hereunder.

LESSOR shall give LESSEE and each Permitted Mortgagee written Notice of its exercise of such option no later than (i) sixty (60) days after the Abandonment of the Facilities by the LESSEE as hereinabove defined, or (ii) the last day of the Fall Semester immediately preceding the expiration date of the Term if none of the events specified in Subparagraphs (A), (B) and (C) have occurred. If LESSOR fails to give such Notice within such time periods, LESSOR shall be deemed to have waived its option to have LESSEE demolish the Facilities. Provided Notice is given within the time periods required hereby, LESSEE shall demolish the Facilities and clear the Land within ninety (90) days after (x) receipt of Notice under (i) above, or (y) the expiration of the Term provided Notice was given under (ii) above.

The obligation of LESSEE to demolish the Facilities as set forth in this Section 14.02 constitutes a covenant running with the Premises and shall terminate with respect to LESSEE, upon the sale, transfer, or assignment of this Lease or any conveyance of the LESSEE'S interest in the Facilities. The obligation to demolish the Facilities shall be binding upon any transferee, assignee or purchaser of this Lease and LESSEE'S interest in the Premises.

Section 14.03. LESSOR'S OPTION TO PURCHASE FACILITIES. LESSOR shall have the right to purchase LESSEE'S leasehold estate in the Premises at any time for an amount ("Purchase Price") equal to the lesser of (a) the fair market value (as determined in accordance with the procedures set forth in Section 17.05 below) of LESSEE'S leasehold estate determined as though this Lease was in effect, but in no event less than the aggregate of all the debt and other amounts relating to the Premises secured by Permitted Mortgages or (b) the sum of (1) the aggregate of all outstanding debt secured by Permitted Mortgages and other amounts advanced by (or indemnification payments owed to) the Permitted Mortgagee pursuant to the Permitted Mortgage and related to the Facilities, (2) the sum of all monetary contributions of LESSEE for the operation, maintenance, repair, construction or replacement of the Facilities, and (3) the present value of the net distributable cash flow from the Facilities for the portion of the Term remaining after the closing of the purchase (the present value of the net distributable cash flow has been calculated based upon EXHIBIT "E" attached hereto and is represented in

the far right-hand column called "Purchase Price of Subsequent Cash Flows"). If LESSOR exercises its purchase option under this Section 14.03 subsequent to a Foreclosure of a Permitted Mortgage, the Total Imputed Debt shall be treated as "debt secured by a Permitted Mortgage" for purposes of calculating the Purchase Price. By way of illustration and without limitation, if LESSOR exercises its right to purchase in year seven (7) and if (1) the aggregate of all outstanding debt secured by Permitted Mortgages is equal to \$ _____, and (2) the sum of all monetary contributions of LESSEE is equal to \$ _____, then the Purchase Price pursuant to this Section 14.03 above shall be \$ _____ (i.e., the sum of \$ _____; \$ _____ and \$ _____). If LESSOR exercises its purchase option (x) within the first ten (10) years of the Term, then LESSOR must either assume all liabilities of LESSEE with respect to the debt secured by Permitted Mortgages at the time of the purchase or (to the extent the Permitted Mortgagee permits a prepayment of the debt) pay any amounts due on prepayment required to be paid in order to repay such debt or (y) after the first ten (10) years of the Term, then LESSOR must pay any amounts due on prepayment required to be paid to prepay any debt secured by Permitted Mortgages. If a Permitted Mortgage does not survive such purchase by LESSOR pursuant to the previous sentence, the purchase proceeds shall be applied first to discharge the Permitted Mortgage at the closing of the purchase, and the balance of the purchase price shall be paid to LESSEE. If such purchase by LESSOR is subject to approval of the Coordinating Board, such approval shall be obtained prior to the exercise by LESSOR of its purchase option. Such option to purchase must be exercised by LESSOR by providing written Notice to the LESSEE of LESSOR'S intent to exercise such option not later than seventy-five (75) days prior to the closing date of such purchase. At the closing of such purchase LESSOR shall pay the Purchase Price in cash to LESSEE (except any portion of the Purchase Price to be applied to discharge a Permitted Mortgage), and LESSEE and LESSOR shall execute, acknowledge and deliver to the other and to the Permitted Mortgagees such instruments of conveyance, bills of sale, assumption and release agreements and other instruments as are reasonably necessary to accomplish the purchase pursuant to this Section 14.03 (and as are reasonably satisfactory in form and substance to the Permitted Mortgagees). This Lease shall terminate upon the closing such purchase, on the condition that such termination does not adversely affect the rights of any Permitted Mortgagee under any Permitted Mortgage that survives LESSOR'S purchase in accordance with this Section 14.03. LESSOR may not exercise its rights under this Section 14.03 after LESSOR has received Notice from LESSEE of an Offer under Section 14.04, for so long as such Offer remains outstanding. Notwithstanding the preceding sentence, LESSOR'S right to exercise its option to purchase under this Section 14.03 shall be revived upon the expiration of one hundred and eighty (180) days after LESSOR'S receipt of Notice of an Offer under Section 14.04, unless one of the following events has occurred: (i) LESSOR has exercised its right of first refusal and elected to consummate a purchase on the terms described in the Offer, in accordance with Section 14.04; or (ii) LESSEE has consummated an Offer to purchase with a third party Offeror, in accordance with Section 14.04.

Section 14.04. LESSOR'S RIGHT OF FIRST REFUSAL.

A. In the event LESSEE shall receive from a third party (the "Offeror") other than a Permitted Assignee a bona fide offer (the "Offer") in writing, signed by the Offeror, and accompanied by a certified or bank cashier's check for ten percent (10%) of the purchase price offered as a deposit with respect thereto, for the purchase for cash, or partly in cash and partly by assumption of or subject to existing indebtedness, on a date not less than one hundred twenty (120) days, nor more than one hundred eighty (180) days, from the date of the Offer, of the LESSEE'S entire interest in the Premises and the Leasehold estate created hereby, then LESSEE shall, if it wishes to accept the Offer, promptly forward a true copy thereof to the LESSOR.

B. LESSOR shall notify LESSEE in writing, within thirty (30) days after its receipt of an Offer, whether the Chancellor of The University of Texas System will recommend that the Board of Regents of The University of Texas System approve the consummation by LESSOR of the purchase described in the Offer. Provided that the foregoing notice of intent to recommend approval is timely given, LESSOR shall, within ninety (90) days after its receipt of the Offer, notify LESSEE in writing whether LESSOR will recommend the consummation of the purchase described in the Offer to the Coordinating Board. If LESSOR determines that approval by the Coordinating Board is not required under then-current law, LESSOR shall so notify LESSEE and LESSOR may exercise its right of first refusal under this Section 14.04, notwithstanding any of the provisions herein concerning approval by the Coordinating Board. If LESSOR fails to provide timely notice as described above in this Subparagraph B, or if LESSOR notifies LESSEE that LESSOR will not recommend the consummation of such purchase to the Board of Regents and/or the Coordinating Board, LESSEE may (subject to the limitations set forth in Section 18.01 hereof) consummate such purchase on the same terms and conditions as set forth in the Offer. If LESSOR informs LESSEE that LESSOR will recommend the consummation of the purchase described in the Offer to the Coordinating Board, then LESSOR shall submit the Offer to the the Coordinating Board at the Coordinating Board's next scheduled meeting. If the Coordinating Board does not approve LESSOR'S consummation of the purchase described in the Offer at the next scheduled meeting held by the Coordinating Board, then LESSEE may (subject to the limitations set forth in Section 18.01 hereof) consummate such purchase on the same terms and conditions as set forth in the Offer. If the Coordinating Board approves the consummation of the purchase described in the Offer and if LESSOR does not elect to consummate the purchase described in the Offer by delivering written Notice thereof (hereinafter called "Election to Purchase") to LESSEE no later than ten (10) days after the Coordinating Board approval is granted, then LESSEE may (subject to the limitations set forth in Section 18.01 hereof), no later than one hundred-eighty (180) days after the deadline for delivery of Election to Purchase, consummate such purchase on the same terms and conditions as set forth in the Offer. If LESSOR elects not to consummate a purchase as set forth in an Offer, then LESSOR shall (at LESSEE'S request) execute and acknowledge a certificate indicating the waiver of the right of first refusal with respect to such Offer. If LESSOR timely exercises its right

of first refusal by delivering the Election to Purchase in accordance with this Section 14.04, then LESSOR shall, within one hundred twenty-five (125) days after delivery of the Election to Purchase, purchase LESSEE'S interest in the Premises and the leasehold estate created hereby in accordance with the terms and conditions set forth in the Offer. If LESSOR fails to consummate the Offer after delivering its Election to Purchase, LESSEE shall be entitled to a payment from LESSOR in an amount equal to three percent (3%) of the purchase price set forth in the Offer as liquidated damages and shall be entitled to sell LESSEE's interest in the Premises and assign its leasehold estate free of LESSOR'S right of first refusal thereafter at any time prior to the expiration of eighteen (18) months following the deadline for delivery of the Election to Purchase. If LESSEE does not consummate such a conveyance and assignment within such eighteen (18) month period, then LESSEE may not thereafter convey its interest in the Premises and/or assign its leasehold estate without again complying with the provisions of this Section 14.04.

C. Notwithstanding the foregoing provisions of this Section 14.04, LESSEE shall be entitled to convey its interests in the Premises and assign its rights under this Lease to any Permitted Assignee free of LESSOR'S right of first refusal and without complying with the requirements of this Section 14.04; however, such Permitted Assignee shall be bound by the requirements of this Section 14.04 and Section 18.01 regarding an assignment of its rights under this Lease except for a sale to another Permitted Assignee.

Section 14.05. LESSEE'S RIGHT OF FIRST REFUSAL FOR ADDITIONAL APARTMENT IMPROVEMENTS. For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by the LESSEE to LESSOR, the receipt and sufficiency of which are hereby acknowledged by LESSOR, LESSOR, for itself, its successors and assigns, does hereby covenant and agree with LESSEE, that if at any time and from time to time, prior to the expiration or earlier termination of this Lease and any renewal or extension thereof, LESSOR desires to have one or more additional apartments constructed, at the cost and expense of any lessee, on a tract of real property leased out of the campus of The University, which shall be subject to a lease with such lessee similar to this Lease, LESSOR shall be obligated to give LESSEE written Notice of such desire specifying therein the "Date of Opening of Additional Apartments" (which, in no event shall be less than eighteen (18) months after the date of such Notice) required by LESSOR for such additional apartment or apartments. Such Notice shall offer to LESSEE the right to obtain a lease from LESSOR of the additional premises on which such additional apartment or apartments are to be constructed by LESSEE, which lease shall be substantially on the same terms and subject to substantially the same provisions and requirements as this Lease, except as otherwise stated in this Section 14.05, with LESSOR or agreeing to discharge the same obligations with respect to each such additional apartment as LESSOR is obligated to provide hereunder or under any management agreement then in effect with respect to the original Facilities. Following receipt of such written Notice from LESSOR, LESSEE shall have one hundred eighty (180) days within which to accept LESSOR'S offer by giving written Notice of its acceptance of such offer within such period

of time. Thereafter, the lease of the additional premises shall be closed as promptly as practicable after acceptance by LESSEE. If LESSEE fails to timely exercise such right to lease the additional premises within the time period stated, LESSOR shall then have the right, at any time within one hundred eighty (180) days after expiration of such one hundred eighty (180) day period to lease such additional premises to any other person; however, any leasing of such additional premises after such date, as well as the leasing of any additional premises for apartment use while this Lease remains in effect must again be offered to LESSEE upon said terms and provisions as above stated. Any lease of an additional premises pursuant to this Section 14.05 (i) shall be for a term of years commencing no less than twelve (12) months (unless a shorter period shall have been agreed to by LESSEE) prior to the Date of Opening of Additional Apartments constructed thereon and expiring on the date which is thirty-five (35) calendar years from the Date of Opening of Additional Apartments; and (ii) the provisions of Section 14.03 shall be revised to provide LESSOR the right to purchase the facilities constructed on such additional premises for a purchase price determined in accordance with Section 14.03.

Section 14.06. APARTMENTS CONSTRUCTED BY LESSOR. Nothing in Section 14.05 or elsewhere in this Lease shall be construed to restrict or prohibit LESSOR from undertaking at any time at its own cost and expense the construction of one or more apartments on the campus of the The University of Texas at Tyler.

ARTICLE FIFTEEN OCCUPANCY AGREEMENT

Section 15.01. SEMESTER DEFINED. As referenced herein, (a) "Fall Semester" shall mean the fall academic term of UTSA commencing during the month of August and ending during the month of December, (b) "Spring Semester" shall mean the spring academic term of UTT commencing during the month of January and ending during the month of May, and (c) "Summer Session" shall mean the summer academic term of UTT commencing during the month of June and ending during the month of August. The Fall Semester, Spring Semester, and Summer Session are collectively referred to herein as "Semesters" and individually referred to herein as a "Semester".

Section 15.02. PRIORITY ASSIGNMENT OF ON-CAMPUS OCCUPANTS TO THE FACILITIES. UTT shall assign On-Campus Occupants to the Facilities as follows:

A. Each Semester, UTT shall assign the following types of On-Campus Occupants to the Facilities (but not to a specific unit) prior to assigning such occupants to any other housing facility on the UTT campus until the Facilities generate Gross Rentals meeting the Gross Rental Threshold: (i) students age 21 years or older, regardless of classification; (ii) graduate students; (iii) seniors; (iv) juniors; (v) married students; (vi) faculty and staff of UTT; (vii) students on full athletic scholarships, excluding freshmen; (viii) all other

students, excluding freshmen and sophomores under 21 years of age (collectively, the "Priority Occupants").

B. If UTT has not assigned to the Facilities, at least forty-five (45) days prior to the commencement of each Semester during the Term, a sufficient number of Priority Occupants for the Facilities to generate Gross Rentals meeting the Gross Rental Threshold, then, subject to subsection C below, UTT shall assign other On-Campus Occupants to the Facilities (in priority over other housing facilities) to the extent necessary for the Facilities to meet the Gross Rental Threshold for the applicable Academic Year.

C. Notwithstanding the foregoing provisions of this Section 15.02,

1. UTT shall not be obligated to require any On-Campus Occupant to lease a unit in the Facilities, and if any On-Campus Occupant rejects an assignment to the Facilities, then UTT may reassign such occupant to another housing facility on the UTT campus.
2. Until Chisholm Hall dormitory has achieved a one hundred percent (100%) occupancy rate for each Fall Semester, or a ninety-five percent (95%) occupancy rate for each Spring Semester and each Summer Session, UTT shall have no obligation to assign to the Facilities any On-Campus Occupants consisting of freshmen and sophomores under 21 years of age.

D. LESSEE shall notify UTT each Semester when the Facilities are sufficiently occupied to meet the Gross Rental Threshold for the applicable Academic Year. During each Semester, LESSEE shall periodically notify UTT of any vacancies that occur at the Facilities in order to give UTT an indication of the number of units that will need to be leased for the immediately succeeding Semester.

Section 15.03. OCCUPANCY RENTS; CAMPUS HOUSING CONTRACTS.

A. The LESSEE shall charge Occupancy Rents to Assigned Occupants for the Facilities at the rates set forth in the Annual Budget. Notwithstanding anything contained in this Lease to the contrary, LESSEE shall be entitled to adjust the Occupancy Rents to reasonably compete with rents (1) charged for other housing projects on UTT's campus, or (2) charged for other comparable housing projects located in Smith County. Any proposed increase in Occupancy Rents shall be submitted to the Committee as a part of an Annual Budget or a revised Annual Budget for approval, as set out in Section 11.02.C; provided, however, that no increase in the Occupancy Rents in excess of ten percent (10%) over the Occupancy Rents charged in the preceding Academic Year shall be effective without the prior written approval of LESSOR.

B. At least forty-five (45) days prior to the commencement of the first Academic Year during the Term, the Manager shall provide UTT with the form of housing contract (the "Campus Housing Contract") prepared by the Manager for execution by all On-Campus Occupants who have been assigned to and will occupy space in the Facilities (the "Assigned Occupants"). The Manager shall be entitled to amend the form of Campus Housing Contract from time to time, in which event the Manager shall deliver the amended form to The University.

C. When requested by LESSEE, but only to the extent authorized by applicable laws, the Rules and Regulations of the Board of Regents of The University of Texas System, and UTT's institutional policies, UTT shall assist LESSEE in collecting Occupancy Rentals and security deposits owed by the Assigned Occupants pursuant to the Campus Housing Contracts and shall exercise administrative actions as appropriate to assist LESSEE in such collections. UTT shall promptly deposit any Occupancy Rentals and security deposits which come into its possession in a bank account of LESSEE (or if required by a Permitted Mortgagee, in an account with a trustee appointed by such Permitted Mortgagee). Except as otherwise set forth in this Section 15.03.C, UTT will have no obligation to LESSEE if any Assigned Occupant fails to pay the Occupancy Rentals in accordance with the terms of a Campus Housing Contract. LESSEE shall be entitled to exercise all of its rights and remedies under the Campus Housing Contracts (or otherwise at law or in equity) against an Assigned Occupant as a consequence of a breach by such Assigned Occupant of its Project Housing Contract, and UTT shall cooperate with LESSEE in enforcing such rights and remedies.

Section 15.04. PROMOTION OF FACILITIES. LESSOR shall actively promote and market the Facilities as an integral part of the overall housing program of LESSOR, as described below in this Section.

A. LESSOR, on a one-time basis in connection with the pre-opening of the Facilities, shall:

1. Provide LESSEE with a convenient space on UTT campus at no cost to promote the Facilities to students during UTT's Spring Semester and Summer Session in 1992.
2. Provide at no cost to LESSEE six (6) campus housing information advertisements (each 1/2 page) in the _____, student sponsored newspaper, as published during the months of _____, _____ and _____, 1992.
3. When suitable model units are available, organize an "Open House" at the Facilities and invite all staff and faculty of UTT.

The LESSOR on an on-going basis shall:

1. Include information about the Facilities in the On-Campus Housing section of the _____ with a tear-away inquiry card.
2. Forward all eligible on-campus housing inquiries to LESSEE.
3. Provide LESSEE upon request with a roster of On-Campus Occupants, to the extent same is reasonably available or accessible to UTT, which includes, to the extent available and permissible, the first and last name, classification, age, mailing address and telephone number of each On-Campus Occupant.
4. Prepare and distribute, at UTT's cost, a promotional flyer to all faculty, administrators and student organizations.
5. Allow LESSEE to use a reasonable number of signs, flags and banners on the campus to market the Facilities, consistent with University posting policy.
6. Include housing information/referral on the LESSOR's toll-free voice response system.
7. Provide tours of the Facilities, in conjunction with LESSEE, for prospective new occupants via new student orientation.
8. Actively promote the Facilities in conjunction with UTT's promotional and recruiting efforts.
9. Incorporate information about the Facilities in each issue of the UTT class schedule and other appropriate University publications.
10. Permit all Assigned Occupants to participate in University-sponsored orientation programs and other similar programs and facilities of UTT.

B. LESSEE shall cooperate in promoting and marketing the Facilities by causing the following actions to be taken, all at LESSEE's cost:

1. Prepare a housing brochure which reflects the floor plans, amenities and benefits of the Facilities.
2. Maintain an on-site leasing office at the Premises.

3. Prepare four 20" by 30" color, mounted renderings of the Facilities for use by UTT in its promotion and marketing of the Facilities.

Section 15.05. **CAMPUS OCCUPANCY REPORTS.** Not more than twenty (20) days after the commencement of each Semester during the Term, LESSEE shall deliver to LESSOR the Campus Occupancy Report for such Semester, which shall set forth the following:

A. A reconciliation of all Assigned Occupants for the applicable Semester, including a listing of the name, age, and priority assignment of each Assigned Occupant, and a schedule showing the amounts of the prepaid Occupancy Rents and security deposits received by LESSEE from the Assigned Occupants, the Occupancy Rents to be paid by the Assigned Occupants for the remainder of the applicable Semester, and such other information regarding each Assigned Occupant reasonably requested by LESSOR or the Permitted Mortgagees; and

B. Such other information or documents as LESSOR (or the Permitted Mortgagees) shall reasonably request in order for LESSOR (and the Permitted Mortgagees) to certify the eligibility of the Assigned Occupants for assignment to the Facilities.

The LESSOR shall provide to the LESSEE, no later than the thirtieth day after the commencement of each Semester during the Term, a written certification of the eligibility of all those Assigned Occupants listed in the Campus Occupancy Report who are eligible for occupancy in the Facilities and LESSOR shall note any exceptions.

Section 15.06. **EXAMINATION AND AUDIT.** All of the books and records of the Facilities relating to the information included in each Campus Occupancy Report (the "Occupancy Records") shall be maintained in the administrative office in the Facilities located on The University's campus for a period of at least three (3) years after the end of the Academic Year to which the Occupancy Records pertain. LESSOR, the Permitted Mortgagees, and their representatives shall have the right to audit the Occupancy Records during business hours at the Facilities for the purpose of confirming the matters set forth in each Campus Occupancy Report. The cost of such audit shall be borne by the party requesting the audit.

Section 15.07. **LEASING TO OTHER PERSONS.** Notwithstanding any provisions of this Lease to the contrary but subject to Section 15.08 below, if any units in the Facilities (necessary for the Facilities to generate Gross Rentals to meet the Gross Rental Threshold for an applicable Academic Year) remain unleased upon the commencement of the Fall Semester (or become unleased at any subsequent time during the remainder of such Academic Year), then LESSEE shall be entitled to lease such unleased units to any Persons, including those not affiliated with UTT, provided that the term of any lease

entered into with a Person not affiliated with UTT shall be no longer than twelve (12) months and shall expire in any case on or before the date which is three (3) calendar days prior to the commencement of the University's Fall Semester.

Section 15.08. LEASING BY PERMITTED MORTGAGEE. Notwithstanding anything contained in Section 15.02 to the contrary, after a Foreclosure and LESSOR Default Occurrence, if any units in the Facilities remain unleased upon the commencement of the Fall Semester (or become unleased at any subsequent time during the remainder of such Academic Year), then the Permitted Mortgagee or other Person succeeding to the interests of LESSEE hereunder through a Foreclosure shall be entitled to lease such unleased units (for a term of no longer than 12 months) to any Persons, including those not affiliated with LESSOR, until the Permitted Mortgagee recovers its Total Imputed Debt (including any make-whole amounts) and the Permitted Mortgagee may charge whatever rent rates the Permitted Mortgagee desires for such unleased units; however, the rent rates charged to Persons not affiliated with LESSOR may not be any less than Occupancy rent being charged to On-Campus Occupants. After the Permitted Mortgagee recovers its Total Imputed Debt (including any make-whole amounts), this Section 15.08 shall no longer have any force or effect and the Permitted Mortgagee's or such other Person's right to lease unleased units to Persons not affiliated with LESSOR shall be governed by Section 15.07.

Section 15.09. GROSS RENTAL THRESHOLD. As referenced herein, the "Gross Rental Threshold" shall be \$ _____ for the 1992-1993 Academic Year, and shall be adjusted for each Academic Year subsequent to such Academic Year by an amount equal to the sum of (a) adjustments from the previous Academic Year in the Annual Expenses and Reserve Amounts (as set forth in the Annual Budget), and (b) adjustments in other categories of expenses set forth in the Annual Budget.

ARTICLE SIXTEEN DEFAULT BY LESSOR

Section 16.01. LESSOR DEFAULTS. If LESSOR fails to perform any of the obligations or covenants of LESSOR under this Lease, LESSEE shall be entitled to enforce any one or more of the following rights and remedies:

- A. LESSEE shall be entitled to cease paying all Rent and other amounts owed to LESSOR under this Lease;
- B. LESSEE shall be entitled to require LESSOR to specifically perform its obligations under this Lease or restrain or enjoin LESSOR from continuing the activities that constitute the default of LESSOR; and

- C. LESSEE shall be entitled to exercise all other rights and remedies available to LESSEE under this Lease or otherwise available to LESSEE at law or in equity as a consequence of the LESSOR'S default.

Section 16.02. RIGHTS OF LESSEE CUMULATIVE. All rights and remedies of LESSEE provided for in this Lease shall be construed and held to be cumulative, and no single right or remedy shall be exclusive of any other which is consistent with the former. LESSEE shall have the right to pursue any or all of the rights or remedies set forth herein, as well as any other consistent remedy or relief which may be available at law or in equity, but which is not set forth herein. No waiver by LESSEE of a breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition or restriction herein contained. The failure of LESSEE to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future breaches of such covenant or option.

ARTICLE SEVENTEEN CONDEMNATION

Section 17.01. CONDEMNATION OF ENTIRE PREMISES. Upon the permanent Taking of the entire Premises, this Lease shall terminate and expire as of the date of such Taking, and both LESSEE and LESSOR shall thereupon be released from any liability thereafter accruing hereunder. LESSEE and the Permitted Mortgagee shall each receive Notice of any proceedings relating to a Taking and shall each have the right to participate therein.

Section 17.02. PARTIAL CONDEMNATION. Upon a temporary Taking or a Taking of less than all of the Premises, LESSEE, at its election, may terminate this Lease by giving LESSOR Notice of its election to terminate at least sixty (60) days prior to the date of such termination if LESSEE reasonably determines that the Premises cannot be economically and feasibly used by LESSEE for its intended purposes. Upon any such termination, the Rent accrued and unpaid hereunder shall be apportioned to the date of termination.

Section 17.03. PAYMENT OF AWARDS. Upon the Taking of all or any portion of the Premises (a) LESSEE shall be entitled (free of any claim by LESSOR) to the Award for the value of its interest in the Premises and its rights under this Lease and damages to any of its other property together with any other compensation or benefits specifically awarded to LESSEE'S business; and (b) LESSOR shall be entitled (free of any claim by LESSEE) to the Award for the value of LESSOR'S Interest (such value to be determined as if this Lease were in effect and continuing to encumber LESSOR'S Interest).

Section 17.04. REPAIR AFTER CONDEMNATION. Should a Taking occur that does not result in termination as provided by Sections 17.01 or 17.02, LESSEE, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the Facilities to a complete architectural unit or units, including temporary repairs, changes and installation required to accommodate Assigned Occupants and all other work incidental to and in connection with all the foregoing. Any and all such repairs or reconstruction shall be subject to prior reasonable approval of The University. Notwithstanding the foregoing provisions of this Section 17.04, if the Award payable as a consequence of a Taking (after payment of all or any portion of such Award towards amounts owed under any Permitted Mortgage) is insufficient, in the reasonable judgment of LESSEE, to permit such restoration, then LESSEE, with the prior written approval of the Permitted Mortgagee a copy of which approval must be delivered to LESSOR, may terminate this Lease by written Notice to LESSOR. All or any portion of the Award payable to LESSEE as a consequence of a Taking affecting the Premises shall be deposited with and disbursed by the Permitted Mortgagee (holding the Permitted Mortgage with the most senior lien priority) pending the completion of the restoration of the Premises. In the event of termination under this Section 17.04, this Lease shall terminate ten (10) days after the date of such Notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term, and the Rent shall be apportioned and paid at the time of such termination.

Section 17.05. APPRAISAL. LESSEE and LESSOR shall each nominate one Person deemed by them, respectively, to be fit, reputable and impartial to appraise and determine the unresolved matter. The nomination must be in writing and must be given each party to the other within fifteen (15) days after the aforesaid thirty (30) day period. If only one party shall so nominate an appraiser within such fifteen (15) day period, the other party may then nominate an appraiser by written Notice to the other party given within ten (10) days after its receipt of the nomination of the other party. If only one party shall nominate an appraiser within the periods referred to above, then that appraiser shall have the power to act alone, and the appraiser's decision as to value or such other matters made in accordance with the provisions hereof shall be binding on both parties. The two Persons so nominated and appointed as appraisers by the parties shall be requested to appraise the Facilities or other matter submitted to them within thirty (30) days after the second of them shall be nominated. If the lower of the two values so determined by them is within ten percent (10%) less than the higher value, then such two appraisers shall appoint a fit, reputable and impartial person to be umpire between them, if they can agree upon such Person. However, if they cannot agree on an umpire within ten (10) days after the expiration of the aforesaid thirty (30) day period for agreement between them (as determined in accordance with the terms hereof), then either party may apply to the Chief District Judge of the United States District Court for the _____ District of Texas (or successor judge exercising similar functions) to appoint a fit, reputable and impartial Person, who shall then be umpire, but if such Chief Judge (or successor) shall fail or refuse to act within thirty (30) days of application to such Chief Judge then either party may apply to any court having jurisdiction for the appointment of such umpire. The

appraisers and any umpire shall be members of The Appraisal Institute. The following written decisions shall be conclusive and binding on the parties: the decision of one appraiser if either party shall fail to appoint its appraiser as hereinabove provided; the decision of the two appraisers prior to appointment of the umpire; and the decision of a majority of the two appraisers and the umpire. The two appraisers and umpire shall serve their written decision upon the parties hereto within sixty (60) days after the selection of such umpire, provided the two appraisers may extend that period once up to sixty (60) days by joint Notice to the parties hereto. Each party shall bear the expense of its own appraiser, but the fees and expenses of the umpire shall be shared equally. In no event shall the appraisers have the right or power to vary the terms of this Lease. In determining the value of LESSEE'S interest in the Premises, the appraisers and umpire (if any) shall assume that this Lease is in full force and effect and that LESSOR is obligated to continue performing its obligations under this Lease for the remainder of the Term, including its obligations under Article Fifteen.

ARTICLE EIGHTEEN

ASSIGNMENT, SUBLETTING, AND TRANSFERS OF LESSEE'S INTEREST

Section 18.01. ASSIGNMENT BY LESSEE

- A. At any time after the Date of Opening, LESSEE may sell or assign LESSEE'S leasehold estate created by this lease and the other rights of LESSEE hereunder to any Permitted Assignee without the consent of LESSOR.
- B. LESSEE is not authorized to sell or assign LESSEE'S leasehold estate in its entirety or for any portion of the unexpired Term (other than a sale or assignment to a Permitted Assignee) without first obtaining the consent of LESSOR, which consent will not be unreasonably withheld or delayed and any such assignment made or given without first obtaining LESSOR'S consent shall be null and void. LESSOR hereby agrees that its decision to approve or disapprove a proposed assignee or purchaser of the LESSEE'S interest in the Premises and leasehold estate created hereby shall be based solely upon the financial strength and business managerial capabilities of such proposed assignee or purchaser.

Section 18.02. SUBLETTING. Except for subleases to Assigned Occupants and except as otherwise set forth in this Lease, including Section 15.07, LESSEE is not authorized to sublet the leasehold estate without the LESSOR'S prior written consent. A sublease to any Person for the purpose of providing laundry services to the Facilities shall be deemed approved by LESSOR.

Section 18.03. APPLICATION TO PERMITTED MORTGAGES. Nothing contained in this Article Eighteen shall be construed to apply to or otherwise limit the rights of

LESSEE to mortgage (or assign for collateral) its leasehold estate and other rights under this Lease to a Permitted Mortgagee, as to which Article Eight shall govern.

Section 18.04. TRANSFERS OF MORTGAGES OF LESSOR'S INTEREST. Any and all mortgages, deeds of trust, or liens placed or suffered by LESSOR encumbering LESSOR'S Interest shall be expressly subject and subordinate to this Lease, to all obligations of LESSOR hereunder, and to all of the rights, titles, interests and estates of LESSEE created or arising hereunder. The obligations of LESSOR under this Lease shall survive any conveyance, Foreclosure or other transfer of LESSOR'S Interest, and LESSOR shall not be relieved of such obligations as a consequence of such conveyance, Foreclosure or other transfer. Furthermore, any Person succeeding to LESSOR'S Interest as a consequence of any such conveyance, Foreclosure or other transfer shall succeed to all of the obligations of LESSOR hereunder.

ARTICLE NINETEEN COMPLIANCE CERTIFICATES

Section 19.01. LESSOR'S COMPLIANCE. LESSEE agrees, at any time and from time to time upon not less than thirty (30) days prior written Notice by LESSOR, to execute, acknowledge and deliver to LESSOR or to such other party as LESSOR shall request, a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) to the best of its knowledge, whether or not there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of LESSEE to be performed (and if so specifying the same), (c) the dates to which the Rent and other charges have been paid, and (d) the dates of commencement and expiration of the Term, it being intended that any such statement delivered pursuant to this Section 19.01 may be relied upon by any prospective purchaser of the LESSOR'S Interest.

Section 19.02. LESSEE'S COMPLIANCE. LESSOR agrees, so far as permissible under the laws of the State of Texas, at any time and from time to time, upon not less than thirty (30) days prior written Notice by LESSEE, to execute, acknowledge and deliver to LESSEE a statement in writing addressed to LESSEE or to such other party as LESSEE shall request, certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) whether an Event of Default (or, to the best of its knowledge, an Incipient Default) has occurred and is continuing hereunder (and stating the nature of any such Event of Default or Incipient Default); and (d) the dates of commencement and expiration of the Term, it being intended that any such statement delivered pursuant to this Section 19.02 may be relied upon by any prospective assignee, sublessee, or Permitted Mortgagee of this Lease or by any assignee or prospective assignee of any

Permitted Mortgage or by any undertenant or prospective undertenant of the whole or any part of the Premises.

ARTICLE TWENTY
TAXES AND FEES

Section 20.01. PAYMENT OF TAXES. LESSEE shall pay, and, upon request by LESSOR, shall provide evidence of payment to the appropriate collecting authorities, all federal, state and local taxes and fees, which are now or may hereafter be, levied upon the Premises, or upon LESSEE, or upon the business conducted on the Premises, or upon any of LESSEE'S property used in connection therewith; and shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by LESSEE. LESSOR shall pay, and, upon request by LESSEE or a Permitted Mortgagee, shall provide evidence of payment to the appropriate collecting authorities, all federal, state and local taxes and fees, which are now or may hereafter be, levied upon LESSOR or LESSOR'S interest. LESSEE and LESSOR may pay any of the above items in installments if payment may be so made without penalty other than the payment of interest. The obligations of LESSOR and LESSEE to pay taxes and fees under this Section 20.01 shall apply only to the extent that LESSOR or LESSEE are not exempt from paying such taxes and fees and to the extent that such taxes and fees are not otherwise abated.

Section 20.02. CONTESTED TAX PAYMENTS. LESSEE shall not be required to pay, discharge or remove any such taxes or assessments so long as LESSEE is contesting the amount or validity thereof by appropriate proceeding which shall operate to prevent or stay the collection of the amount so contested. LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on any lien arising in respect to such contested amounts, cause the same to be discharged and removed prior to the execution of such judgment. LESSOR shall cooperate with LESSEE in completing such contest and LESSOR shall have no right to pay the amount contested during the contest. Upon the termination of such proceeding, LESSEE shall deliver to LESSOR proof of the amount due as finally determined and proof of payment thereof. LESSOR, at LESSEE'S expense, shall join in any such proceeding if any law shall so require.

Section 20.03. EXPENSES OF CONTEST. All costs and expenses of any contest of any tax or fee pursuant to this Article Twenty by LESSEE shall be paid by LESSEE.

ARTICLE TWENTY-ONE
FORCE MAJEURE

Section 21.01. DISCONTINUANCE DURING FORCE MAJEURE. Whenever a period of time is herein prescribed for action to be taken by LESSEE or a Permitted Mortgagee, LESSEE shall not be liable or responsible for, and there shall be excluded

from the computation for any such period of time, any delays due to FORCE MAJEURE. LESSOR shall not be obligated to recognize any delay caused by FORCE MAJEURE unless LESSEE shall, within ten (10) days after LESSEE is aware of the existence on an event of FORCE MAJEURE, notify LESSOR thereof in writing, certified mail, return receipt requested. One (1) Notice shall be sufficient per occurrence. The foregoing notwithstanding, if any such delay is caused by LESSOR there shall be no time limit on the period of enforced delay and LESSEE shall not be required to give Notice to LESSOR hereunder.

ARTICLE TWENTY-TWO
GENERAL

Section 22.01. NONDISCRIMINATION. Any impermissible discrimination by LESSEE or its agents or employees on the basis of race, color, sex, age, religion, national origin, veteran's status, or handicap in employment practices or in the performance of the terms, conditions, covenants and obligations of this Lease, is prohibited. LESSEE acknowledges the policy of The University of Texas System Board of Regents to provide practical opportunities for women-owned and minority-owned business enterprises to participate in contracts awarded by component institutions of The University of Texas System. Accordingly, LESSEE will exercise its reasonable efforts in good faith, consistent with prudent business practices, to include women-owned and minority-owned small business enterprises as material suppliers, as contractors, and/or as subcontractors in planning, designing, developing, constructing, managing, maintaining and operating the premises during construction and following completion.

Section 22.02. CONFLICT OF INTEREST. LESSEE acknowledges that it is informed that Texas law prohibits contracts between LESSOR and its officers, and that the prohibition extends to contracts with any partnership, corporation or other organization in which any such officer has an interest. LESSEE certifies (and this Lease is made in reliance thereon) that neither LESSEE nor any person having an interest in this Lease by, through or under LESSEE is an officer of LESSOR.

Section 22.03. NOTICES. Any Notice, communication, request, reply or advice or duplicate thereof (herein severally and collectively, for convenience called "Notice") in this instrument provided or permitted to be given, made or accepted by either party to any other party must be in writing and shall, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Lease, from and after the expiration of four (4) days after it is so deposited, regardless of whether or when same is actually received by the addressee, except that in all cases Notice given to the holder of any Permitted Mortgage must be received by

such Permitted Mortgage to be effective. Notice in any other manner shall be effective only if and when received by the party to be notified.

For purposes of Notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

IF TO LESSOR, TO: The University of Texas at Tyler
3900 University Blvd.
Tyler, Texas 75701-6699
Attn: Vice President for Administration

WITH A COPY TO: The Board of Regents of
The University of Texas System
601 Colorado Street
Austin, Texas 78701
Attn: Executive Vice Chancellor for Academic Affairs

AND A COPY TO: Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701
Attn: General Counsel

IF TO LESSEE, TO: University Pines Housing Partnership I, LTD.
Two Post Oak Central
1980 Post Oak Blvd., Suite 1200
Houston, Texas 77056
Attn: Mr. Wayne F. Sramek

IF TO PERMITTED
MORTGAGEE, TO:

However, the parties hereto, and their respective heirs, successors, legal representatives and assigns, shall have the right from time to time at any time to change their respective addresses and each shall have the right to specify as such party's address any other address within the United States of America by at least fifteen (15) days' written Notice to the other party; provided, however, that if at any one time more than one person or party owns an interest in the Premises, nevertheless such persons or parties may not designate more than two places and addresses to receive Notice pursuant to the terms

hereof (but with copies of Notices to not more than two additional addresses). Notices to any Permitted Mortgagees shall be given in the manner set forth above to the address furnished from time to time by such Permitted Mortgagees.

Section 22.04. RELATIONSHIP OF PARTIES. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of LESSOR and LESSEE.

Section 22.05. MEMORANDUM OF LEASE. Neither LESSOR nor LESSEE shall file this Lease for record in the Office of the County Clerk of Smith County, Texas, or in any public place without the written consent of the other. In lieu thereof, LESSOR and LESSEE agree to execute in recordable form a Memorandum of Lease. Such memorandum shall be filed for record in the Office of the County Clerk of Smith County.

Section 22.06. APPROVALS. Whenever approvals are required of either party hereunder, if no objection is made to a written proposal or request for approval within the time period specified for response herein, such approval shall be deemed to have been given. If no time period is specified for a response to a proposal or request for approval, a reasonable time not to exceed ten (10) business days from the date of such proposal or request shall apply unless the parties otherwise agree in writing.

Section 22.07. TEXAS LAW TO APPLY. This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Smith County, Texas.

Section 22.08. WARRANTY OF PEACEFUL POSSESSION. LESSOR covenants that LESSEE, on paying the Rent and performing and observing all of the covenants and agreements herein contained and provided to be performed by LESSEE, shall and may peaceably and quietly have, hold, occupy, use, and enjoy the Premises during the Term, and may exercise all of its rights hereunder; and LESSOR agrees to warrant and forever defend LESSEE's right to such occupancy, use, and enjoyment of the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof, by, under, or through LESSOR, subject only to the provisions of this Lease and the matters listed on EXHIBIT "B" attached hereto.

Section 22.09. APPROVAL OF ANCILLARY AGREEMENTS. LESSOR agrees that in the event it becomes necessary or desirable for LESSOR to approve in writing any ancillary agreements or documents concerning the Premises or concerning the construction, operation or maintenance of the Facilities or to alter or amend any such ancillary agreements between LESSOR and LESSEE or to give any approval or consent of LESSOR required under the terms of this Lease, LESSOR hereby authorizes,

designates and empowers the following officers of The University of Texas at San Antonio to execute any such agreement, approvals or consents necessary or desirable: The President or Vice President for Administration of UTT or their successors in function, subject to required approvals (if any) by appropriate UT System officials.

ARTICLE TWENTY-THREE
MISCELLANEOUS

Section 23.01. LESSOR'S RIGHTS CUMULATIVE. All rights, options, and remedies of LESSOR contained in this Lease shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and LESSOR shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity whether or not stated in this Lease.

Section 23.02. NONWAIVER BY LESSOR. No waiver by LESSOR of a breach of any of the covenants, conditions, or restrictions of this Lease shall constitute a waiver by LESSOR of any subsequent breach of any of the covenants, conditions or restrictions of this Lease. The failure of LESSOR to insist in any one or more cases upon the strict performance of any of the covenants of the Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option. A receipt of LESSOR or acceptance of payment by LESSOR of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by LESSOR of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

Section 23.03. TERMINOLOGY. Unless the context of this Lease clearly requires otherwise, (a) pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character; (b) the singular shall include the plural wherever and as often as may be appropriate; (c) the word "includes" or "including" shall mean "including without limitation"; and (d) the words "hereof," "herein," "hereunder," and similar terms in this Lease shall refer to this Lease as a whole and not to any particular section or article in which such words appear. The section, article and other headings in this Lease and the Table of Contents to this Lease are for reference purposes and shall not control or affect the construction of this Lease or the interpretation hereof in any respect. Article, section and subsection, and exhibit references are to this Lease unless otherwise specified. All exhibits attached to this Lease constitute a part of this Lease and are incorporated herein.

Section 23.04. COUNTERPARTS. This Lease may be executed in multiple counterparts, each of which shall be declared an original.

Section 23.05. SEVERABILITY. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this

Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

Section 23.06. ENTIRE AGREEMENT. This Lease, together with the authorized resolution of LESSOR, the Request for Proposals, and LESSEE's response, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written. In the event of any conflict of this Lease and the Request for Proposal, this Lease shall control.

Section 23.07. AMENDMENT. No amendment, modification, or alteration of the terms of this Lease shall be binding unless the same be in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

Section 23.08. SUCCESSORS AND ASSIGNS. All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors, heirs, executors and assigns.

Section 23.09. HAZARDOUS MATERIALS. Notwithstanding anything contained in this Lease to the contrary, if LESSEE finds any Hazardous Materials (hereinafter defined) on the Land prior to _____, 199__, then LESSEE shall have the right to terminate this Lease by delivering written Notice thereof to LESSOR no later than _____, 199__. If LESSEE terminates this Lease as a result of finding Hazardous Materials on the Land, then neither party hereto shall have any further rights, duties, or obligations hereunder.

As used in this Lease, "Hazardous Materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6091 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 6091 et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) polychlorinated biphenyls; (iv) underground storage tanks, whether empty, filled or partially filled with any substance, (v) any substance the presence of which on the Land is prohibited by any governmental requirements; and (vi) any other substance which by any governmental requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal.

LESSEE shall not use, occupy, or knowingly permit the Premises to be used or occupied, or do or knowingly permit anything to be done in or on the Premises in a manner which would in any way make void or voidable any insurance then in force with respect thereto, which would make it impossible to obtain the insurance required to be

furnished by LESSEE hereunder, which would constitute a public or private nuisance, or which would violate any present or future, ordinary or extraordinary laws, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction.

LESSEE shall not use the Premises or knowingly permit the Premises to be used to as to cause, suffer or allow any contamination of soils, ground water, surface water or natural resources on or adjacent to the Premises resulting from any cause, including but not limited to spills or leaks or oil, gasoline, hazardous materials, hazardous wastes or other chemical compounds. LESSEE shall at all times during the Term of this Lease comply with applicable state, federal and local laws, regulations and guidelines for the use, handling, storage and disposal of hazardous materials. LESSEE shall be solely responsible for cleanup of any contamination and for any fines or penalties resulting from violation of the provisions of this Section 23.09.

Section 23.10. INDEPENDENT CONTRACTOR. It is expressly understood and agreed that LESSEE is and shall be deemed to be an independent contractor and operator responsible to all parties for its respective acts or omissions and that LESSOR shall in no way be responsible therefor.

IN WITNESS WHEREOF, this Lease is executed by LESSOR and LESSEE as of the day and year first above written.

LESSOR:

THE BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM
FOR THE USE AND BENEFIT OF
THE UNIVERSITY OF TEXAS AT TYLER

ATTEST:

Arthur H. Dilly
Executive Secretary

By: _____
Louis A. Beecherl, Jr.
Chairman

LESSEE:

UNIVERSITY PINES HOUSING PARTNERSHIP I, LTD.

By: _____, General Partner

By: _____
Wayne F. Sramek
Executive Vice President

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

George F. Hamm
President, The University of
Texas at Tyler

Max J. Werkenthin
Office of General Counsel

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 63 - 120).--Committee Chairman Loeffler reported that the Business Affairs and Audit Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Business Affairs and Audit Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval of Chancellor's Docket No. 61 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 61 in the form distributed by the Executive Secretary. It is attached following Page 190 in the official copies of the Minutes and is made a part of the record of this meeting.

It was expressly authorized that any contracts or other documents or instruments approved therein had been or shall be executed by the appropriate officials of the respective institution involved.

It was ordered that any item included in the Docket that normally is published in the institutional catalog be reflected in the next appropriate catalog published by the respective institution.

2. U. T. System: Permission for Mr. R. D. (Dan) Burck to Serve on the Board of Directors of the Texas Life, Accident, Health, and Hospital Services Insurance Guaranty Association [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Mr. R. D. (Dan) Burck, Vice Chancellor for Business Affairs of The University of Texas System, to serve as a representative of the general public on the Board of Directors of the Texas Life, Accident, Health, and Hospital Services Insurance Guaranty Association as requested by the State Board of Insurance.

Board members are appointed by the State Board of Insurance for a six-year term and serve without remuneration but are entitled to reimbursement for actual expenses incurred in the performance of their duties.

Mr. Burck's appointment to this Board is of benefit to the State of Texas, creates no conflict with his regular duties at U. T. System, and is in accordance with approval requirements for positions of honor, trust, or profit provided in Article 6252-9a of Vernon's Texas Civil Statutes and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

3. U. T. System: Delegation of Authority for the Approval of Vouchers for Expenditures Effective September 1, 1991, and Authorization for the Chairman to Notify State Comptroller of this Delegation of Authority.--In compliance with Senate Bill 1095 of the 72nd Texas Legislature which requires a governing body to "authorize either its chairman or its executive director to designate an officer or employee to approve vouchers and to revoke those designations when necessary," the Board, upon recommendation of the Business Affairs and Audit Committee, authorized the chief administrative officers of The University of Texas System component institutions to designate officers or employees to approve vouchers for expenditures effective September 1, 1991. This authorization is consistent with the Regents' Rules and Regulations, Part Two, Chapter III, Section 5.1.

Further, the Chairman of the U. T. Board of Regents was authorized to notify the State Comptroller of this delegation of authority in writing.

4. U. T. System: Approval of the System-wide Internal Audit Plan for Fiscal Year 1991-92.--The Texas Internal Auditing Act passed by the 71st Texas Legislature requires in Section 4(1) that an annual audit plan, which identifies the individual audits to be conducted during the year, be prepared using risk assessment techniques. In addition, Section 6(2) specifies that the internal auditor shall develop an annual audit plan, which shall be approved by the governing board of the agency or its designee, or by the administrator of an agency without a governing board.

In accordance therewith and upon recommendation of the Business Affairs and Audit Committee, the Board approved The University of Texas System Internal Audit Plan for Fiscal Year 1991-92 as set forth on Pages 65 - 109. The implementation of the plan will be coordinated with the institutional internal auditors to ensure coverage without duplication of effort.

**THE UNIVERSITY OF TEXAS
SYSTEM AUDIT OFFICE**

**SYSTEM-WIDE
INTERNAL AUDIT PLAN
for
FISCAL YEAR 1991-92**

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OVERVIEW

OVERVIEW

The Texas Internal Auditing Act (HB 2728) passed by the Seventy-first Legislature established guidelines for a program of internal auditing. The intent was to assist agency administrators by furnishing independent analyses, appraisals, and recommendations concerning agency operations. The act also mandated that the internal audit program conform to the Standards for the Professional Practice of Internal Auditing as promulgated by the Institute of Internal Auditors (IIA).

IIA standards require that internal auditors develop an audit plan based on assignment of risk. Our office has conducted the risk assessment on all the areas considered auditable. Each area was rated on the following risk factors:

- Materiality
- Liquidity
- External Controls
- Internal Controls
- Visibility
- Complexity

The audit plan is a "system-wide" plan which was formulated in conjunction with a review of the risk assessments and audit plans of the fifteen component institutions of the system. After consultation with institutional internal auditors, a system-wide audit universe was developed which identified auditable areas within the System. Each audit area was assigned a risk level based on the aforementioned risk factors. The following fourteen areas are considered to have the highest risk level on a system-wide basis, and are to receive a system-wide audit over the next five years, as more thoroughly discussed below.

- Grants and Contracts
- Capital Equipment Inventory
- Cash
- MSRDP/PRS
- Bonds Payable
- Restricted Fund Expenditures
- Electronic Data Processing
- Sales and Service of Hospitals
- Controlled Substances
- Student Financial Aid
- Purchasing
- NCAA Audits-Athletics
- Payroll
- Investments

Three areas have been chosen for audit by the System Audit Office on a system-wide basis for the 1992 audit year. These areas were selected following review of risk assessments and audit plans submitted by component institutions:

- Capital Equipment Inventory
- Student Financial Aid
- Payroll

The remaining areas will receive audit coverage by the institutional internal auditors during FY 1992. If these areas are not covered by the institutional auditors during FY 1992, the System Audit Office will review the area at the component institution to determine the extent of audit coverage necessary based upon a system-wide risk assessment. Audit coverage then will be provided by System or institutional auditors. Attachment A to the system-wide plan is a summary of the approved audit plans issued by the component institutional auditors.

Over a five-year period, each of the fourteen areas mentioned above and any high-risk areas identified in the future will receive a System-wide audit under the direct supervision or review of the System Audit Office.

The Standards for the Professional Practice of Internal Auditing address the scope of work as follows:

The scope of the internal audit should encompass the examination and evaluation of the adequacy and effectiveness of the organization's system of internal control and the quality of performance in carrying out assigned responsibilities.

Internal auditors should:

- Review the *reliability and integrity* of financial and operating information and the means used to identify, measure, classify, and report such information.
- Review the systems established to ensure *compliance* with those policies, plans, procedures, laws, and regulations which could have a significant impact on operations and reports and determine whether the organization is in compliance.
- Review the means of *safeguarding assets* and, as appropriate, verify the existence of such assets.
- Appraise the *economy and efficiency* with which resources are employed.

- Review operations or programs to ascertain whether results are consistent with established objectives and goals and whether the operations or programs are being carried out as planned.

The audit plan generally follows the lines of responsibilities of the Audit Manager positions created in the FY 1989-90 budget: System Administration, Academic Components and Health Components.

Combined available audit hours are summarized as follows:

Total hours available	35360 hrs.
Administrative time*	<u>6240</u>
Total hours available for audit	<u>29120</u> hrs.
Hours allocated to selected audits:	
System Administration	4776 hrs.
Academic components	4868
Health components	3591
Hours allocated to required audits and management requests	10833
Hours allocated to EDP audits	1334
Hours available for future special requests	<u>3718</u>
Total hours available for audit	<u>29120</u> hrs.

* Includes vacation, sick leave, committee assignments, and continuing education.

The estimated time to perform the special audits requested by management by area follows:

• Minority and Female-owned Business Development Program	1232 hrs.
• Time and Effort Reporting	880
• Business and Administrative Services	1000
• Designated Fund Expenditures	440
• Foundations	1364
• Management Control Audits	840
• Performance State Aid	85
• Overall Financial Reviews	540
• Comparability of MSRDP Reporting Formats	<u>1775</u>
Total time to perform Management Requests	<u>8156</u> hrs.

LEGISLATIVE UPDATE

LEGISLATIVE UPDATE

With the recent amendment to the Texas Internal Auditing Act by Senate Bill 3, the internal auditor will be required to submit before November 1 of each year an annual report to the Governor, the Legislative Budget Board, the Sunset Commission, the State Auditor, the agency's governing board, and the agency's administrator. This report should contain the following:

- A copy of the annual audit plan,
- A list of audits completed,
- An explanation of any deviation from the approved annual audit plan,
- A narrative description of the most significant findings and recommendations for each audit,
- A narrative description of the management actions taken in response to the audit findings and recommendations,
- A table listing the auditors' audit recommendations and the five-year impact for each audit recommendation,
- A table of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation, and
- A statement of the last date on which an external peer review of the agency's internal audit program was conducted.

Additionally, Senate Bill 3 requires that internal audit conduct economy and efficiency audits and program results audits. As a result, approximately 17% of the audit time will be devoted to economy and efficiency and program goals auditing in FY 1992 (see Attachment B for a listing of audit areas covered).

The following component institutions are required to have an external peer review during the current fiscal year:

The University of Texas at El Paso
The University of Texas - Pan American
The University of Texas of the Permian Basin
The University of Texas at San Antonio
The University of Texas at Tyler

The University of Texas Health Science Center at Houston
The University of Texas Health Science Center at San Antonio
The University of Texas M.D. Anderson Cancer Center
The University of Texas Health Center at Tyler

The System Audit Office plans to have an external peer review conducted during the current fiscal year.

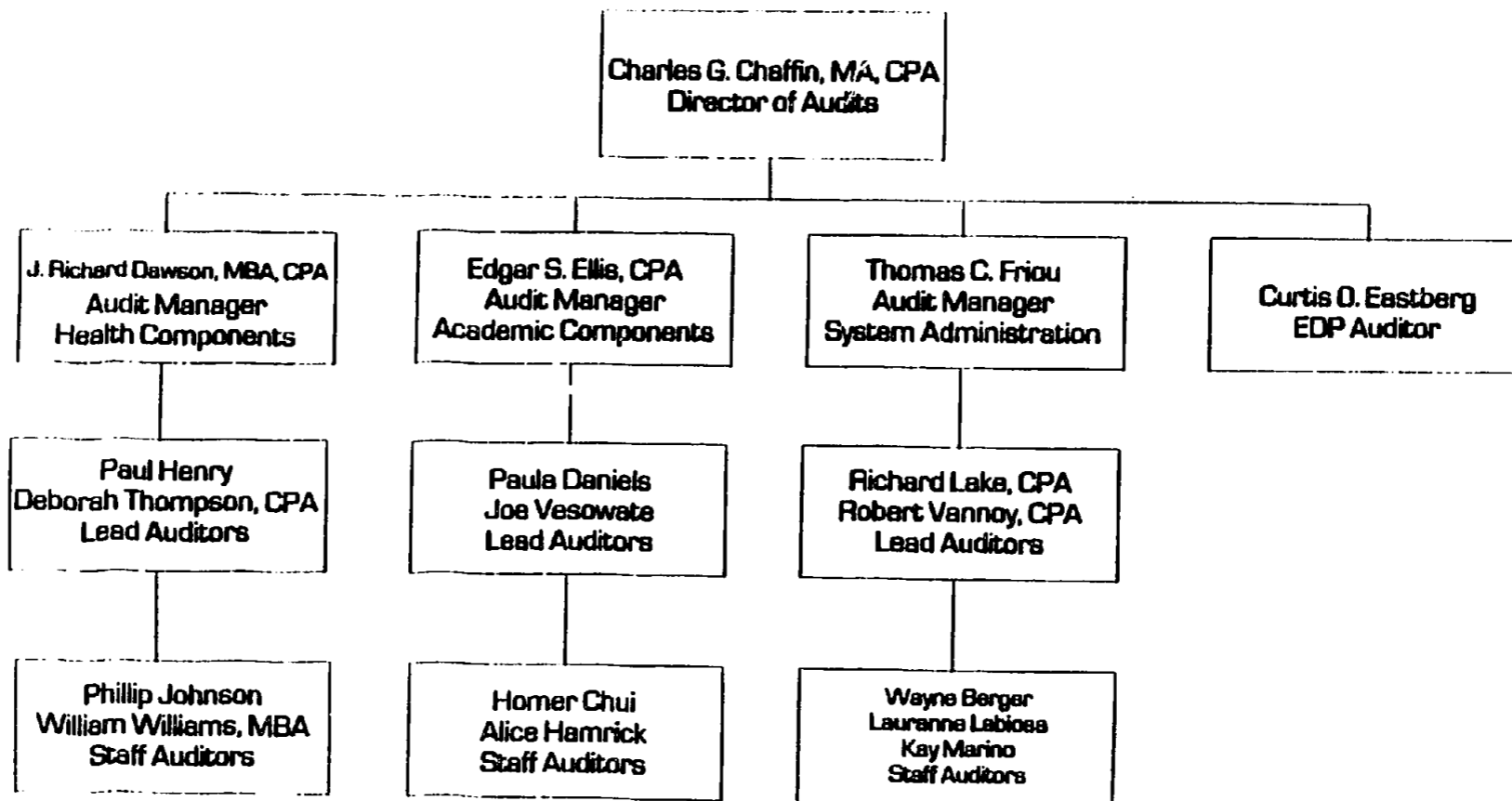
BUDGET AND STAFFING

BUDGET AND STAFFING

The proposed budget for the System Audit Office for FY 1992 totals \$ 897,000, of which \$ 678,000 is allocated to audits of component institutions and \$ 219,000 is allocated to audits of System Administration. The System Audit Office budget contains positions for a Director, 4 Audit Managers, 17 Staff Auditors, 1 EDP Auditor, and 1 Senior Secretary.

Current staffing includes a Director, 3 Audit Managers, 13 Staff Auditors and 1 EDP Auditor. Current personnel allocated to audits of component institutions include 2 Audit Managers and 8 Staff Auditors, while personnel allocated to audits of System Administration include 1 Audit Manager, and 5 Staff Auditors. The EDP Auditor will assist on audits of component institutions and audits of System Administration.

Degrees and certifications held by the staff includes 4 auditors with advanced degrees and 6 auditors with CPA certification. In addition, 3 auditors have passed all parts of the CPA examination and 1 auditor has passed all parts of the CIA examination. These auditors are currently working to meet the various experience and education requirements for full certification. Career development for the staff is a strategic goal of the System Audit Office, and additional professional certification and education is strongly encouraged and promoted.



**SYSTEM
ADMINISTRATION**

SYSTEM ADMINISTRATION AUDIT PLAN

The Audit Manager assigned to System Administration is primarily responsible for all functional areas within System Administration. A detailed summary indicating the number of hours budgeted for each audit area is shown in Attachment B. The primary areas of responsibility are Asset Management and Business Affairs. Audit areas for System Administration for FY 1992 are listed below.

SELECTED AUDITS

Bonds Payable

One auditor will be assigned to work with the State Auditors on their annual *financial/compliance* audit of bonds payable transactions. By assigning one of our internal auditors, the State Auditor's billing to the System should be reduced, and the auditor will gain valuable training and expertise in the area. Any computer applications pertaining to bonds payable will be reviewed by the EDP Auditor.

Capital Equipment Inventory

The audit of capital equipment will include *compliance* with policies and procedures, *safeguarding of assets, economy and efficiency of resources, and accomplishment of program goals*. Any computer applications and computer equipment will be reviewed by the EDP Auditor.

Designated Fund Expenditures

The scope of this audit includes *compliance* with policies, plans, procedures, laws, and regulations. Designated Fund expenditures will be reviewed for adequate supporting documentation and appropriateness of travel and entertainment. This audit was also suggested by management.

Investments

The scope of this audit includes *reliability and integrity* of data; *compliance* with policies, plans, procedures, laws, and regulations; *economy and efficiency of resources*; and *accomplishment of program goals*. Investment transactions will be tested for proper authorizations, accuracy of accounting, and conformance with investment policies. Investment performance will be measured and compared to management reporting. Any computer applications will be reviewed by the EDP Auditor.

Third Party Royalty Audits

Company accounting and production records will be examined to determine *compliance* with lease provisions and accuracy of royalties received. The following companies were selected from the top twenty producers on University Lands:

- Amoco Production Company
- Fina Oil and Chemical Company

Desk Audits of Test Gaugings

Results of test gaugings will be compared with documentation provided by companies to determine *compliance* with lease provisions. Leases operated by these companies were gauged by University Lands personnel and System Administration auditors in FY 1991:

- Bridge Oil Company, L.P.
- Sage Energy Company
- Oxy USA Inc.
- Staley Operating Company
- Graham Royalty Ltd.

West Texas Lands - Tank Gaugings

Inventory of oil stocks on selected University leases will be gauged in preparation for future comparison of results with documentation provided by companies. The scope of the audit is to measure the level of *compliance* with lease terms.

REQUIRED AUDITS AND MANAGEMENT REQUESTS

Hogg Foundation

The scope of this audit includes *reliability and integrity* of data; *compliance* with policies, plans, procedures, laws, and regulations; *economy and efficiency of resources*, and *accomplishment of program goals*. Activities and work flow will be reviewed, including review of grant proposals and award of funds.

Time and Effort Reporting

The scope of this audit includes *reliability and integrity* of data and *compliance* with policies, plans, procedures, laws, and regulations. Methods of accounting and reporting for vacation, sick leave, compensatory time, and time usage will be reviewed in selected departments, including Personnel, where centralized records are kept.

Any computer applications pertaining to Time and Effort Reporting will be reviewed by the EDP Auditor.

Business and Administrative Services

The scope of this audit includes *reliability and integrity* of data; *compliance* with policies, plans, procedures, laws, and regulations; and *economy and efficiency of resources*. Activities and work flow will be reviewed, including purchasing, accounts payable, account reconciliations, and income reporting to the Internal Revenue Service. Any computer applications will be reviewed by the EDP Auditor.

Management Control Audit

Auditors will be assigned to work with the State Auditors on their audit of the management control system at System Administration. The scope of this audit includes *economy and efficiency of resources* and *accomplishment of program goals*, and work will focus on the organizational structure of System Administration.

Follow-up Prior Year Findings

There will be follow-up audits conducted for significant findings from the prior year's audit reports. The follow-up will measure the level of *compliance* with recommendations and managements' responses.

**ACADEMIC AND HEALTH
COMPONENT INSTITUTIONS**

ACADEMIC AND HEALTH COMPONENT INSTITUTIONS AUDIT PLAN

The System Audit Office performs annual internal audits of component institutions, which are coordinated with the institutional internal auditors to accomplish the System-wide audit plan. Attachment A is a detailed summary indicating the audit areas, the number of auditors and number of hours budgeted for each component institution.

ACADEMIC COMPONENT INSTITUTIONS

Audit areas for academic component institutions for FY 1992 are listed below.

SELECTED AUDITS

Capital Equipment Inventory

The scope of this audit includes *compliance* with policies and procedures, *safeguarding of assets, economy and efficiency of resources*, and *accomplishment of program goals*. This area was selected for review based on the assessment of risk. Capital Equipment Inventory ranks high in the areas of materiality, visibility and internal control factors.

Payroll

The scope of this audit includes *reliability and integrity* of data and *compliance* with policies, plans, procedures, laws, and regulations. This area was selected for its materiality, visibility, internal controls and external controls. We have been requested by management to include income tax withholding for housing allowances, third party furnished automobiles, and timely depositing of withholdings. Work performed will depend on the amount of work completed by internal audit at each component.

Student Financial Aid

The scope of this audit includes *reliability and integrity* of data and *compliance* with policies, plans, procedures, laws, and regulations. This area was selected for its materiality, visibility, internal controls and external controls, and was requested by management. Work performed will depend on the amount of work completed by internal audit at each component.

Follow-up Prior Year Findings

There will be follow-up audits conducted for significant findings from the prior year's audit reports.

REQUIRED AUDITS AND MANAGEMENT REQUESTS

Intercollegiate Athletics

This is a required area. The NCAA requires an annual financial audit of intercollegiate athletics in order for the program to compete in the NCAA athletics. The University of Texas at Austin contracts with a CPA firm to meet the requirement. The following component institutions have requested the System Audit Office perform this audit annually:

- U.T. Arlington
- U.T. El Paso
- U.T. Pan American
- U.T. San Antonio

External Foundations

This is a request by the Executive Vice Chancellor for Academic Affairs. This audit will be conducted only at the University of Texas Pan American Foundation, but other external foundations will be audited in future years.

Minority and Female-Owned Business Development Program

This is a request from the Vice Chancellor for Business Affairs. This audit will ascertain the level of purchases requiring one bid or proposal that are made from minority or female-owned businesses.

Performance State Aid

This is a request from the Vice Chancellor for Business Affairs. This audit will be conducted to ascertain that the component institutions are achieving the performance levels established by the Texas Higher Education Coordinating Board.

Selected Overall Financial Reviews

The Vice Chancellor For Business Affairs has requested an overall financial review of The University of Texas at San Antonio and The University of Texas at Tyler. The review will include an analysis of financial trends, budgets, strategic objectives of the institution, and managements' plans to address deficits, increased spending trends, and development opportunities.

HEALTH COMPONENT INSTITUTIONS

Audit areas for health component institutions for FY 1992 are listed below.

SELECTED AUDITS

Capital Equipment Inventory

The scope of this audit includes *compliance* with policies and procedures, *safeguarding of assets, economy and efficiency of resources*, and *accomplishment of program goals*. This area was selected for review based on the assessment of risk. Capital Equipment Inventory ranks high in the areas of materiality, visibility and internal control factors.

Payroll

The scope of this audit includes *reliability and integrity* of data and *compliance* with policies, plans, procedures, laws, and regulations. This area was selected for its materiality, visibility, internal controls, and external controls. We have been requested by management to include income tax withholding for housing allowances, third party furnished automobiles, and timely depositing of withholdings in our review. Work performed will depend on the amount of work completed by internal audit at each component.

Student Financial Aid

The scope of this audit includes *reliability and integrity* of data and *compliance* with policies, plans, procedures, laws, and regulations. This area was selected for its materiality, visibility, internal controls and external controls, and because of a request from management. Work performed will depend on the amount of work completed by internal audit at each component.

REQUIRED AUDITS AND MANAGEMENT REQUESTS

Minority and Female-Owned Business Development Program

This is a request from the Vice Chancellor for Business Affairs. This audit will ascertain the level of purchases requiring one bid or proposal that are made from minority or female-owned businesses.

Performance State Aid

This is a request from the Vice Chancellor for Business Affairs. This audit will be conducted to ascertain that the component institutions are achieving the performance levels established by the Texas Higher Education Coordinating Board.

Internal Foundations

This is a request by the Vice Chancellor for Business Affairs. This audit will be conducted on the University Cancer Foundation at The University of Texas M. D. Anderson Cancer Center.

Selected Overall Financial Reviews

The Vice Chancellor For Business Affairs has requested an overall financial review of The University of Texas Health Center at Tyler. The review will include an analysis of financial trends, budgets, strategic objectives of the institution, and managements' plans to address deficits, increased spending trends, and development opportunities.

Follow-up Prior Year Findings

There will be follow-up audits conducted for significant findings from the prior year's audit reports.

Review for Comparability of MSRDP Reporting Formats

This is a request by the Executive Vice Chancellor for Health Affairs. This review is primarily a financial review to determine that each institution is reporting MSRDP account classifications in a consistent manner.

EDP AUDITOR

AUDIT PLAN FOR EDP AUDITOR

The audit of EDP related functions within the System Audit Office include but are not limited to:

- General (integrity) control reviews
- Application control reviews
- Tests of controls
- Data security/privacy reviews
- Risk analysis/contingency and disaster planning
- Coordinate training and education to maintain "State-of-the-Art" knowledge
- Software development and evaluation to support the System Audit Staff

During FY 1992, hours available for audit by the EDP Auditor will be utilized to assist both System Administration and component auditors in reviewing automated systems. Responsibility for providing these reviews is established by the U.S. General Accounting Office in their publication, Government Auditing Standards as follows:

"When computer-processed data are an important or integral part of the audit and the data's reliability is crucial to accomplishing the audit objectives, auditors need to satisfy themselves that the data are relevant and reliable."

Assistance or consultation will be given in conducting either system or limited reviews:

- **System Review** - assesses and tests all controls in a computer system for the full range of its application functions and products.
- **Limited Review** - pertinent controls are examined to the extent necessary to judge the level of data testing needed to determine data reliability.

System reviews will be performed for applications at U.T. System Administration in the areas of bonds payable and investments. Limited reviews will be performed for applications at U.T. System Administration in the areas of capital equipment inventory, time and effort reporting, and Business and Administrative Services, and at component institutions as necessary.

General Controls reviews will be conducted at U.T. El Paso and U.T. Permian Basin. These reviews will include the following areas:

- Physical Security - To determine if physical security controls are in place to reasonably guard against accidental or malicious destruction, or unauthorized use of data and equipment.
- Access Controls - To identify controls that are in place to prevent unauthorized use, damage, loss, or modification of data files.
- Backup and Recovery - To identify procedures used for the backup of critical data on a routine basis and the plan to recover data and programs if operations should be unexpectedly interrupted.

**COORDINATION WITH
STATE AUDITOR'S OFFICE**

The Texas State Auditor's Office performs the audit of The University of Texas System as part of the State-wide audit. Our office will assist the State Auditor's Office in the planning and fieldwork phases of several audits to be conducted by them during the 1992 fiscal year. The University of Texas System and the System Audit Office will benefit from participation with the State Auditors through building better relationships, improving communications, and gaining technical knowledge.

**CONTINUING
PROFESSIONAL
EDUCATION**

CONTINUING PROFESSIONAL EDUCATION

Our goal is to meet the requirements of Standard 270 from the Standards for the Professional Practice of Internal Auditing, which states:

"Internal auditors are responsible for continuing their education in order to maintain their proficiency. They should keep informed about improvements and current developments in internal auditing standards, procedures, and techniques. Continuing education may be obtained through membership and participation in professional societies; attendance at conferences, seminars, college courses, and in-house training programs; and participation in research projects."

The Texas State Board of Public Accountancy and the Institute of Internal Auditors, Inc. (IIA) require 40 hours of continuing professional education annually to maintain certification. The American Institute of Certified Public Accountants (AICPA) requires 40 hours of CPE for continued membership. Generally Accepted Governmental Auditing Standards require all auditors performing governmental audits to obtain 40 hours of CPE annually.

The training needs of each auditor are assessed annually and training objectives are established relevant to their assigned duties. Auditors will be provided the opportunity to attend training courses related to assessed needs within the constraints of the departmental budget.

The System Audit Office will attempt to provide the recommended training for auditors through in-house training or training through the following sources:

- Government
 - State Auditor's Office training seminars
 - Interagency Auditor Training Program (Graduate School, USDA)
- Industry
 - Association of College and University Auditors
 - Texas Association of College and University Auditors
 - Institute of Internal Auditors
 - National Association of College and University Business Officers
- Other Sources
 - Specialized training in fields such as Oil and Gas, Investments, Fraud, etc. from private groups such as Professional Development Institute

**COMPONENT AUDIT PLANS
FISCAL 1992**

ACADEMIC INSTITUTIONS

UNIVERSITY OF TEXAS AT ARLINGTON (5 Auditors; 7,075 hours available for audit)

- Campus-Wide Cash Funds
- Electronic Data Processing
- Federal Grants and Contracts
- Inventory
- State and Local Fund Expenditures
- Student Financial Aid
- Bookstore
- Deferred Revenue/Deposits
- Demand Account Reconciliation
- Ethics, Nepotism, Conflict of Interest
- Follow-Up Prior Year Findings
- Interfund Transfers
- Internal Control - Update
- Journal Vouchers/Code Sheets/Related Items
- Management Requests and Special Projects
- Parking Garage - Income
- Purchasing - Decentralized
- Registrar Records Quality
- Telecommunications
- Time Deposits, Local Investments & Interest
- Vacation/Sick Leave
- Vending Income
- Payroll and Benefits

UNIVERSITY OF TEXAS AT AUSTIN (10 full time auditors, 1 part-time auditor, 15,288 hours available for audit)

- Campus Wide Petty Cash
- Retail Operations: Housing and Food, Frank Erwin Center
- Office of Accounting
- Frank Erwin Center Concessions (carried fwd. from prev. yr.)
- Electronic Data Processing - New Applications
 - Other projects requiring EDP expertise performed on an as-needed basis
- Institute for Advanced Technology - Federal Compliance
- Special Projects (Unscheduled) - Various (Except EDP) as requested.
- Spot-Check Audits - Campus-wide short tests on payroll, inventory, purchasing, travel
- Follow-Up Work
- Texas Student Publications - Performance Audit

ATTACHMENT A

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UNIVERSITY OF TEXAS AT DALLAS (3 Auditors; 4100 hours available for audit)

Special Projects - as periodically assigned by management

Bursar's Office

Physical Inventory

Commission Income

Admissions Office, Records Office

Follow-Up Audits

Discretionary Funds

Development Office

Callier Center

Budget Office

Property Administration

Construction Projects

Administrative Computer Services

Academic Computing Services

Telephone Services

Cash Counts

Federal Fund Expenditures

Monitoring Grant Subrecipients

Student Newspaper

Student Health Services

Texas Public State Grant Program

Lena E. Callier Trust

Surprise Cash Counts

Disposal of Excess/Surplus Property

Bid Openings

Deposit Bag Verification

UNIVERSITY OF TEXAS AT EL PASO (3 auditors; 4,220 hours available for audit)

Petty cash and change funds

Food Services

Intercollegiate Athletics

Student Financial Assistance

Purchasing

Budget and Financial Services

General Accounting Services

EDP - General Control Review

Federal Audits - Ofc. of Sponsored Projects, State Auditors (Single Audit Act)

Special Projects and Management Advisory Services

Spot Check Audits - Payroll, Personnel, Development Office, Bursar's Office

Follow-Up Audits - FY 1991 Audits, State Audit Report, System Audit Report

Performance Review - Service Departments

ATTACHMENT A

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UNIVERSITY OF TEXAS OF THE PERMIAN BASIN

No Internal Auditor at this time; no Audit Plan has been submitted.

UNIVERSITY OF TEXAS PAN AMERICAN

No Director of Internal Audits at this time; no Audit Plan has been submitted.

UNIVERSITY OF TEXAS AT BROWNSVILLE

No Internal Auditor at this time; no Audit Plan has been submitted.

UNIVERSITY OF TEXAS AT SAN ANTONIO (3 Auditors; 5,424 hours available for audit)

- Cash Receipts Internal Control System
- Cash Disbursements Internal Control System
- Personnel Internal Control Systems
- Journal Voucher Internal Control System
- Office of Contract Administration
- Federal Student Financial Aid
- Cash and Cash Counts
- Federal Subrecipients
- Texas Folklife Festival
- Athletic Department
- Inventories
- Follow-Up Audits
- Fixed Assets
- University Police
- Payroll Internal Control System

UNIVERSITY OF TEXAS AT TYLER (1 Auditor; 1200 hours available for audit)

- Education & General Income
- Office of Admissions
- Student Fees
- Voucher Process
- Central Receiving
- Inventory - Other
- Inventory - Year End
- Inventory - Fixed Assets
- Inventory - Supplies Management
- Revenue Sharing - Vending Contracts
- Interdepartmental Charges
- Accounts Receivable - Other
- Eisenhower International Golf Tournament
- Petty Cash and Change Funds
- Petty Cash Expenditures
- Parking

HEALTH INSTITUTIONS

UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS (10 Auditors; 13,671 hours available for audit)

- MSRDP Accounts Receivable
- Physical Plant Inventory
- Human Resources
- Purchasing
- Medical School
- Grants Management
- Payroll
- Revenue and Cash Receipts
- Expenditures and Cash Disbursements
- EDP Audit of Cash Receipts, Check Disbursements and Inventories
- General Services - Gas Cylinders
- Service Departments - Duplicating and Print Shop
- Performance Audit of Administration Department
- Library

UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON (12 Auditors; 16,973 hours available for audit)

- Cash Receipts for Outlying Clinics
- Disbursements
- Hospital Revenues
- Family Practice Residency Program
- FYE Inventories
- Inventories Management
- Payroll - Reconciliations, Payable and Federal Compliance
- Fixed Assets
- Letter of Credit - Federal Compliance
- Systems Audit - Utilization Review, WCI Administration, Patient Registration and Group Purchasing
- Hospital Accounts Receivable
- Departmental Audits of Sterile Processing and Laundry
- Miscellaneous Receivables
- Revenues from County Contracts
- Auxiliary Enterprises - Field House and Cafeteria and Vending
- Service Departments - Biomedical E&E and Medical Instrumentation
- EDP Audits of System Development, Data Centers, Post Implementation, Application Review and Security
- MSRDP - Expenditures, Financial Statements, Department Charges and Collection Agency

ATTACHMENT A

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UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON (Continued)

MAS - Bookstore and General
Endowments - BPM 40 Compliance
Investments - Interest Allocation
Petty Cash
TDC Meals

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON (13 Auditors;
16,500 hours available for audit)

1991 Controlled Substances and Dangerous Drugs - Clinical
1991 Analysis of Human Subject Protocols
1991 and 1992 Payroll Operations Review
1991 and 1992 FYE Inventories and Inventory Adjustments
Nursing Services Operational Review
Travel and Entertainment
Indirect Cost
TMC Library
Survey of Outside Remuneration
Time Reports
Capital Assets Special Project
Review HCPC Medical Records, Clinical Social Work, Nursing Services
Follow-up on Prior Year Audits
EDP Audit of Activity Database Modifications
EDP Audit of BPPS Data Integrity Controls and Security
EDP Review of MSRDP MedTEC System Controls
MSRDP Financial Audit
1991 MSRDP Billing System Operational Review
MSRDP Operational Reviews of Surgery, OB/GYN, Neurology, Dermatology and
Community Affairs

UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO (6
Auditors; 8,880 hours available for audit)

Supplies for Resale Inventories
Appropriations
Endowments
Tuition and Fees
Deferred Revenue
Agency Funds
Budget and Payroll Services
Bursar - Cash, Investments and Petty Cash
Purchases and General Services
Grants and Contracts - Family Practice Residency Program,

ATTACHMENT A

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UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SAN ANTONIO
(Continued)

Federal Grants and Contracts
Human Resources
Computer Resources
Networking Resources
MSRDP
Physical Plant
Audiovisual Services
Graphic Services
Printing Services
Instrumentation
Financial Aid/Loan Funds
Registrar
DSRDP
Service Departments
South Texas Research Center
Nursing Continuing Education

THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER (17 Auditors;
23,573 hours available for audit)

Grants & Contracts -A-128 Federal Audit & Private Grants
Inventories for Linen Services, Pharmacy - Controlled Drugs and FYE Inventories
PRS Entertainment & Travel, Charge Capture & Annual Financial Audit
PRS Operational Reviews of Anesthesia, Head & Neck, Pathology, Diagnostic
Imaging, Station 55, General Surgery, Chroms Lab & Neuro
Oncology/Surgery
Purchasing - Operational and Contracts
Accounts Receivable - Patient
Patient Financial Qualification
Review of Indirect Cost and Medicare Cost Reports
Human Resources - Compensation & Benefits
Payroll - Time & Attendance Reports
Capital Acquisition Procedures & Approval
Drug Protocol - Clinical
Vacation and Sick Leave Records
Accounts Payable - Operation Review
Hazardous Waste
University Cancer Foundation
Effort Reports- Policies and Procedures
Treasury Services - Electronic Fund Transfers and Investments

THE UNIVERSITY OF TEXAS M.D. ANDERSON CANCER CENTER (Continued)

Billings for Clinic Operations, Diagnostic Imaging and Surgery
Clinic Credits
Patient Refunds
Annual Financial Report - Balance Sheet Support
Notes Receivable
Andy's Back Yard
General Accounting - Internal Control Review
Medical Records
Consulting Contracts - Performance Review
Follow-up on Prior Year Audits
EDP Audits of System Development Life Cycle, Payroll/Human Resources System,
General Ledger System and Data Center Operations

UNIVERSITY OF TEXAS HEALTH CENTER AT TYLER (2 Auditors; 2,606 hours available for audit)

Inventories of Consumable Supplies
Timekeeping - Evaluation of the time and attendance system
Payroll - Withholding for taxes, insurance, and retirement
Payroll - General Accounting
Accounts Payable - Financial accuracy and timeliness of payments
Hospital Revenues - Accuracy of patient charges
BPM # 31 - MSRDP
Capital Assets
Coordinating Board - Family Practice Grant accurate and appropriate reporting
Pharmacy - Controlled Substances

AUDIT PLAN FOR 1991-1992 SYSTEM ADMINISTRATION INTERNAL AUDITS

Audit Areas	Reason for Audit	Scope	Budgeted Hours Each Audit
U.T. System Administration			
Bonds Payable	Risk Assessment	Reliability & Integrity Compliance	240
Time and Effort Reporting	Requested	Reliability & Integrity Compliance	880
Capital Equipment Inventory	Risk Assessment	Compliance Safeguarding of Assets, Economy & Efficiency, Accomplishment of Program Goals	1,000
Business and Administrative Services	Requested	Reliability & Integrity, Compliance Economy & Efficiency	1,000
Designated Fund Expenditures	Risk Assessment Requested	Compliance	880
Investments	Risk Assessment	Reliability & Integrity, Compliance Economy & Efficiency, Accomplishment of Program Goals	1,000
Hogg Foundation	Requested	Reliability & Integrity, Compliance Economy & Efficiency, Accomplishment of Program Goals	880
Third Party Royalty Audits	Risk Assessment	Compliance	1,360
West Texas Lands - Tank Gaugings	Risk Assessment	Compliance	320
Follow-Up on Prior Year's Audits	Required	Compliance	480
Management Control Audit	Requested	Economy & Efficiency, Accomplishment of Program Goals	360
Desk Audits	Risk Assessment	Compliance	416
Total Hours Budgeted for U.T. System Administration			<u>8,916</u>

Component and Audit Areas	Reason for Audit	Scope	Budget Hours Each Component
U.T. Austin			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	392
Payroll	Risk Assessment and Requested	Compliance	140
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Management Control Audit	Requested	Operational - Assist State Auditors	80
		Total	704

U.T. Arlington			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	456
Payroll	Risk Assessment and Requested	Compliance	132
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Intercollegiate Athletics	Required	Financial	510
		Total	1190

AUDIT PLAN FOR 1991-1992 AUDIT OF ACADEMIC COMPONENTS

Component and Audit Areas	Reason for Audit	Scope	Budget Hours Each Component
U.T. Dallas			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	476
Payroll Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.	Risk Assessment and Requested	Compliance	136
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	<u>10</u>
		Total	704

U.T. Brownsville			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	120
Payroll Income Tax Withholding Housing or other allowances Autos furnished by 3rd parties, including income reported on W-2s.	Risk Assessment and Requested		40
Minority and Female-Owned Business Development Program	Requested	Compliance	40
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	<u>10</u>
		Total	212

Component and Audit Areas	Reason for Audit	Scope	Budget Hours Each Component
U.T. El Paso			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	456
Payroll	Risk Assessment and Requested	Compliance	132
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Intercollegiate Athletics	Required	Financial	510
		Total	1,190

U.T. Pan American			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	352
Payroll	Risk Assessment and Requested	Compliance	104
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Student Financial Aid	Risk Assessment & Requested	Compliance	104
Pan American University Foundation	Requested	Compliance	104
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Intercollegiate Athletics	Required	Financial	510
		Total	1266

Component and Audit Areas	Reason for Audit	Scope	Budget Hours Each Component
U.T. Permian Basin			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	396
Payroll	Risk Assessment and Requested	Compliance	116
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	60
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Student Financial Aid	Risk Assessment & Requested	Compliance	<u>120</u>
		Total	<u>704</u>
U.T. San Antonio			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	456
Payroll	Risk Assessment and Requested	Compliance	128
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Intercollegiate Athletics	Required	Financial	510
Overall Financial Review	Requested	Financial	<u>80</u>
		Total	<u>1,266</u>

AUDIT PLAN FOR 1991-1992 AUDIT OF ACADEMIC COMPONENTS

Component and Audit Areas	Reason for Audit	Scope	Budget Hours Each Component
U.T. Tyler			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	396
Payroll	Risk Assessment and Requested	Compliance	96
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	80
Performance State Aid	Requested	Compliance	2
Follow-Up on Prior Year's Audits	Required	Compliance	10
Student Financial Aid	Risk Assessment & Requested	Compliance	120
Overall Financial Review	Requested	Financial	<u>80</u>
		Total	<u>784</u>
Total Hours Budgeted for Academic Components			<u>8,020</u>

AUDIT PLAN FOR 1991-1992 AUDIT OF HEALTH COMPONENTS

Component and Audit Areas	Reason for Audit	Scope	Budgeted Hours Each Component
U.T. Medical Branch Galveston			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	380
Payroll	Risk Assessment and Requested	Compliance	190
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Student Financial Aid	Risk Assessment and Requested	Compliance	190
Minority and Female-Owned Business Development Program	Requested	Compliance	100
Performance State Aid	Requested	Compliance	11
Follow-up Prior Year Findings	Required	Compliance	11
Review for Comparability of MSRD P Reporting Formats	Requested	Compliance	300
Management Control	Requested	Operational-Assist State Auditor	<u>80</u>
		Total	1262
U.T. M.D. Anderson			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	250
Payroll	Risk Assessment and Requested	Compliance	128
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	100
Performance State Aid	Requested	Compliance	12
University Cancer Foundation	Requested	Compliance	380
Follow-up Prior Year Findings	Required	Compliance	12
Review for Comparability of MSRD P Reporting Formats	Requested	Compliance	300
Management Control	Requested	Operational-Assist State Auditor	<u>80</u>
		Total	1262

Component and Audit Areas	Reason for Audit	Scope	Budgeted Hours Each Component
U.T. HSC San Antonio			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	380
Payroll	Risk Assessment and Requested	Compliance	190
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, Including income reported on W-2s.			
Student Financial Aid	Risk Assessment and Requested	Compliance	190
Minority and Female-Owned Business Development Program	Requested	Compliance	100
Performance State Aid	Requested	Compliance	11
Follow-up Prior Year Findings	Required	Compliance	11
Review for Comparability of MSRDP Reporting Formats	Requested	Compliance	300
Management Control	Requested	Operational-Assist State Auditor	80
		Total	1262

U.T. HSC Houston			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	380
Payroll	Risk Assessment and Requested	Compliance	190
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, Including income reported on W-2s.			
Student Financial Aid	Risk Assessment and Requested	Compliance	190
Minority and Female-Owned Business Development Program	Requested	Compliance	100
Performance State Aid	Requested	Compliance	11
Follow-up Prior Year Findings	Required	Compliance	11
Review for Comparability of MSRDP Reporting Formats	Requested	Compliance	300
Management Control	Requested	Operational-Assist State Auditor	80
		Total	1262

Component and Audit Areas	Reason for Audit	Scope	Budgeted Hours Each Component
U.T. Health Center Tyler			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	250
Payroll	Risk Assessment and Requested	Compliance	128
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Minority and Female-Owned Business Development Program	Requested	Compliance	100
Performance State Aid	Requested	Compliance	12
Overall Financial Review	Requested	Financial	380
Follow-up Prior Year Findings	Required	Compliance	12
Review for Comparability of MSRD P Reporting Formats	Requested	Compliance	<u>380</u>
		Total	1262
U.T. Southwestern Medical Center			
Equipment Management	Risk Assessment	Operational, Safeguarding of Assets, Compliance Economy and Efficiency	275
Payroll	Risk Assessment and Requested	Compliance	140
Income tax withholding Housing or other allowances. Autos furnished by 3rd parties, including income reported on W-2s.			
Student Financial Aid	Risk Assessment & Requested	Compliance	140
Minority and Female-Owned Business Development Program	Requested	Compliance	72
Performance State Aid	Requested	Compliance	10
Follow-up Prior Year Findings	Required	Compliance	10
Review for Comparability of MSRD P Reporting Formats	Requested	Compliance	195
Management Control	Requested	Operational-Assist State Auditor	<u>80</u>
		Total	922
Total Hours Budgeted for Health Components			<u><u>7,232</u></u>

AUDIT PLAN FOR 1991-1992 EDP AUDITS

Component and Audit Areas	Reason for Audit	Scope	Budgeted Hours Each Audit
U.T. System Administration			
	Assist the System Administration Auditors in reviewing automated systems at U.T. System Administration		
Bonds Payable		Application Controls Review	88
Time and Effort Reporting		Application Controls Review	88
Capital Equipment Inventory		Application Controls Review	88
Business and Administrative Services		Application Controls Review	88
Investments		Application Controls Review	182
			<u>534</u>
U.T. Academic Components			
	Assist the Academic Component Auditors in reviewing automated systems at Academic Components		
UT Brownsville		Application Controls Review	40
UT Dallas		Application Controls Review	40
UT El Paso		General & Applications Controls Review	168
UT Pan American		Application Controls Review	40
UT Permian Basin		General & Applications Controls Review	168
UT San Antonio		Application Controls Review	40
UT Tyler		Application Controls Review	40
			<u>534</u>
U.T. Health Components			
	Assist the Health Component Auditors in reviewing automated systems at Academic Components		
UT Southwestern Medical Center		Application Controls Review	32
UT Medical Branch Galveston		Application Controls Review	32
UT Health Science Center Houston		Application Controls Review	32
UT Health Science Center San Antonio		Application Controls Review	72
UT MD Anderson		Application Controls Review	32
UT Health Center Tyler		Application Controls Review	66
			<u>266</u>
			<u>1,334</u>

5. U. T. System: Progress Report on the Policy on Contracting with Minority and Woman-Owned Small Business Firms.---
At the conclusion of the Business Affairs and Audit Committee meeting, Committee Chairman Loeffler reported that, as a follow-up to a request at the October 1991 meeting of the Board, Vice Chancellor for Business Affairs Dan Burck would brief the Board on the status of The University of Texas System program to increase the participation of minority and woman-owned businesses in procurement and contracting.

Committee Chairman Loeffler recognized Vice Chancellor Burck who presented the following report to the Board:

Presentation by R. D. Burck
Vice Chancellor for Business Affairs
Minority and Woman-Owned Business Development

Lessons Learned: The First Year

In August of 1990, the Board adopted its policy aimed at increasing the level of university purchases and contracts with minority and woman-owned small businesses.

This report today is of the actions the U. T. System has taken to implement this policy and the results of the first full fiscal year of this implementation effort.

Shortly after the policy was adopted, component institutions began designating personnel on each campus to assist minority and woman-owned firms in dealing with their purchasing policies and procedures. On each campus, there is at least one designated staff member to help these businesses with procedures for goods, services and construction contracts.

Components began outreach programs with vendor opportunity fairs that have been held throughout the state.

The U. T. System and some components hired consultants to assist in these efforts. Several consultants to U. T. System are with us today, including Mr. John Trevino, former Austin city councilman and Mayor Pro Tem; Representatives of Gold Line Services, Inc. of Houston, and Business Resource Consultants of Austin.

Early in 1991, U. T. System established the Office of Minority and Woman-Owned Business Development and began the UT BID 91 outreach program.

Using a videotaped presentation produced by U. T. System, brochures, news releases, group presentations and personal contacts, this program publicized a toll-free telephone number for these companies to call to begin getting involved with the U. T. System.

U. T. personnel across the state became involved with outreach efforts operated by chambers of commerce, including both Black and Hispanic, and other interested groups.

These efforts continue daily. In April, the Texas Department of Commerce, the lead agency for the state's efforts in promoting and developing disadvantaged businesses, commended the U. T. System for our outreach program.

As we operated and looked for ways to expand our outreach program, we began to find and deal with the barriers to increasing the number and value of minority contracts and purchases.

Our first obstacle was the decentralized nature of U. T. System component purchasing.

Each separate component maintains its own list of bidders and uses a unique bidder application. Vendors have complained--and justifiably--that doing business with each component institution demands duplicative paperwork to gain entry to each component's bidders list.

We began attacking this problem by working toward a centralized, universal bidder's application and system-wide bidders list to be shared by all components, giving each a readily available list of all qualified vendors who do business with any system component.

The U. T. Health Science Center - Houston has agreed to maintain this central list on its mainframe computer.

Depending on when the General Services Commission adopts its rules to govern this type of system, as required by legislation passed last summer, we hope to have it in place this fiscal year.

House Bill 799, the major piece of minority contracting legislation adopted this year, requires a "good faith effort" toward the goal of a 10 percent minority and woman-owned business share of purchases and contracts for each state institution beginning September 1, 1992.

More importantly, the bill also establishes a penalty for falsely representing one's status as a minority or woman-owned business.

This provision could go far toward eliminating another barrier we have encountered in our efforts to encourage minority participation.

In his report, Breaking the Mold, Comptroller John Sharp wrote: "The Texas Performance Review team determined that while the certification process creates extra steps for minority businesses to go through, the process does not give the businesses any extra advantage in obtaining state business....The certification process was originally intended to safeguard programs designed for minority business development from misuse by non-minority firms. A 1990 report issued by the United States Commission on Minority Business Development indicates that the process has since backfired, saddling minority businesses with cumbersome, duplicative and time-consuming procedures that are not demanded of other businesses." (TPR Vol. 2, Part II, GG 154.)

The alternative Sharp recommended, and what the Legislature had already adopted as part of House Bill 799, was the establishment of a penalty for falsely representing one's business as minority or woman-owned.

This penalty provision in House Bill 799 for falsely representing one's business as minority or woman-owned would allow a streamlined certification process letting a minority or woman-owned firm to make a simple declaration to the Commerce Department that it is indeed owned and controlled by a minority or woman.

There are somewhere around a half million businesses operating in the State of Texas today. As many as half of these businesses might very well be owned and operated by a minority or a woman. And yet most companies have not chosen to seek certification. There are only about 2,500 companies actually certified by the state.

Moving to a self certification program and implementing a universal bidder's application and vendor data file will go a long way toward providing opportunities to minority and woman-owned firms, opportunities that don't exist today.

In March, we began addressing the barriers that had kept minority and woman-owned businesses from participating in major System construction projects.

Simply put, most minority and woman-owned construction firms are too small to compete as prime contractors for these projects.

Under the provisions of City of Richmond v. Croson, the landmark U. S. Supreme Court case that governs minority and woman-owned business programs, we cannot set aside a specific percentage or dollar amount to be awarded to these firms.

But we can ask prospective prime contractors to tell us what percentage of each major project would go to minority and woman subcontractors if they receive the job.

And, once they tell us, we can then contractually bind them to award at least these percentages, try to persuade them to provide even more and closely monitor progress to insure at least the minimum percentages are delivered to minority firms. That is exactly what we have done.

The language of these contract provisions, which was carefully developed to satisfy the provisions of the Croson case, has been provided to the physical plant directors at each component for their own use.

The first page each prospective bidder on our construction projects sees in his/her information packet is a memorandum from me advising of our intent to afford maximum practical opportunity to minority and woman-owned firms. The designated coordinator for minority and woman-owned business development also hammers home this point at each bidder's conference.

We also now routinely list all construction projects on an electronic data base that is shared by minority procurement centers throughout Texas and have committed to increased advertising of coming construction projects in minority media outlets.

What impact have these efforts had? And what will we do next to continue developing this program?

As we recently reported to the Texas Higher Education Coordinating Board, system-wide, we spent a total of \$13.7 million with minority and woman-owned firms during fiscal 1991. In addition, the Office of Facilities Planning and Construction has received contractual commitments from prime contractors on \$33.8 million worth of major construction projects to award \$2.6 million, or 7.74 percent, to minority and woman-owned subcontractors since we implemented our new subcontracting policy last March. This includes a half-million dollar subcontract for asbestos removal by a minority-owned firm at the U. T. Austin Communications Building.

This means the average component made slightly more than 5 percent of its locally-controlled purchases with minority and woman-owned firms and that the system as a whole spent 3.16 percent of its delegated purchase funds with these firms.

We cannot compare these figures directly because they were never compiled on a system-wide basis before we created the Office of Minority and Woman-Owned Business Development.

However, we can compare the certified figures reported to the Commerce Department, although they are subject to the weaknesses in the certification program I mentioned earlier:

- Only about one percent of the total minority and woman-owned businesses in Texas are certified.
- The process is cumbersome and intrusive, requiring businesses seeking certification to reveal operating and financial information including their federal income tax returns to local program designees. Only after a local designee--usually a city or transit authority--has granted certification, can the business then seek state certification.

- Particularly in South Texas, where we routinely do business with a large number of Hispanic-owned firms, many qualified firms see little reason to seek certification.

In this artificially enclosed universe, then, we spent about \$1 million, or one half of one percent of total delegated purchases of about \$200 million with certified minority and woman-owned firms in the first half of calendar 1991. For comparison purposes, this is better than double the percentage spent with certified firms during same period last year, just before this policy was adopted.

The UT BID 91 program has paid off by identifying more than 350 new minority and woman-owned vendors to system components, sharing these new vendors throughout the system.

Many of these vendors are now supplying goods and services and one has landed a major vending contract for Jester Center at U. T. Austin.

U. T. Southwestern Medical Center - Dallas recently signed a \$1 million contract with a minority firm, pushing it out of the class of small business with the stroke of a pen.

What this report gives us then, is a benchmark against which we can judge the success of our future efforts in implementing this policy.

Now let me discuss the likely direction of those future efforts.

After seeking advice from Senator Barrientos, we have written to 20 legislators who represent minorities and areas where we operate components for their help in establishing a system-wide Minority Business Development Advisory Committee.

We are asking each legislator to suggest minority and female business people from among their constituents who would be willing to work with us in finding ways in each component community to broaden and deepen our efforts, to continue increasing minority and woman-owned business share of our spending.

We have received suggestions from several legislators and, when we have a complete list of nominees, we hope to bring these names to you for your selection of a committee early next year.

I have asked the system Internal Audit staff to conduct a detailed review of the components' practices in accordance with the policy.

We have also retained consultants to conduct an independent review of the implementation efforts of the U. T. System, of our Office of Facilities Planning and Construction and of U. T. Austin.

Our staff has uncovered areas where further management attention is called for.

Basically, what both the auditors and consultants have concluded is that advancement of this policy is not without budgetary impact.

As you know, the policy calls for minority and woman-owned businesses to be called on an alternating basis for small orders requiring only one bid. However, our purchasing departments have been trained to seek the lowest price on each purchase.

Our internal auditors have found that when the lowest price is offered by a minority or woman-owned firm, this policy is successful. But, when our purchasing people are aware there is a lower price available elsewhere, the minority vendor won't win the order, even if the purchaser is told to seek only one price.

The consultants recommend commitment of added personnel at both system and component levels, along with a major commitment to automation of the purchasing function system-wide.

I believe we can continue to sustain the progress we have made at our present pace toward the mandated purchasing goals within the resources available.

But, if we are to move faster, we will need to deal with the fiscal implications of the price differential problem identified by our auditors and the cost of added staff and automation recommended by our consultants.

I believe our good faith efforts are firmly in place and we will continue to build upon them during the coming fiscal year as we pursue and hope to surpass the 10 percent goal.

Summary

September 1991 marked the close of the first full year of implementation of the U. T. Board of Regents' policy for increasing contracts and purchases with minority and woman-owned businesses (MWBES). The progress made during this first year by the U. T. System, including establishment of programs to identify new minority and woman-owned vendors and contractors; increasing these firms' share of component institution purchases to \$13.7 million, or an average of 5 percent, and their share of construction subcontracts to \$2.6 million, or 7.7 percent -- a total of \$16.3 million, represents significant progress.

Accomplishments in 1991:

Establishment of U. T. System Office of Minority and Woman-Owned Business Development.

Operation of UT BID 91 toll-free hotline outreach program, which has identified 350 new minority and woman-owned firms as potential U. T. System vendors.

Designation of U. T. System MWBE coordinator for construction projects.

U. T. System construction office policy results in 7.74 percent minority and woman-owned subcontract participation.

Fifteen component average percentage of purchases with minority and woman-owned firms stands at 5 percent, a total of \$13.7 million worth of purchases from minority and woman-owned firms.

Goals for 1992:

Establish a statewide advisory committee composed of minority and woman business people in each community where U. T. component institutions operate.

Audit the performance of each U. T. System component in support of this policy.

Use every legal avenue to increase percentage to 10 percent and beyond.

Following Mr. Burck's presentation and in compliance with the Board's procedural rules, Committee Chairman Loeffler stated that the Black State Employees Association of Texas had requested time to comment on the minority and woman-owned business program within the U. T. System. Regent Loeffler recognized Dr. Darren Reagan, President of the Association, and reminded Dr. Reagan that the time allocation for his comments was not more than ten minutes.

Dr. Darren Reagan's comments are set forth below:

Comments by Dr. Darren Reagan

Thank you, Mr. Chairman, for allowing us this opportunity to speak today with regard to the aforementioned topic. It was less than a year ago when I appeared before the Board, and I spoke with respect of opening up the process of inclusion and allowing ethnic minorities, African-Americans in particular, in administrative positions and to development of innovative and significant ways and means by which African-Americans and other interested minorities would be allowed to compete in the procurement process.

I have been emotional in the last month or so. We have met with several U. T. System people on this particular project, including Mr. Dan Burck, Dr. Robert Rutford of U. T. Dallas, and others. I do want to thank Dr. Nedderman at U. T. Arlington for the work he has done in working with the coalition, LULAC, and other organizations. They are making a very heavy statement to allow African-Americans and other ethnic minorities full participation from the executive level to the bottom level. I want to recognize Dr. Nedderman and say that what you have done stands to be an example of what the other components should do. I want to thank you, Reverend Holmes, for everything that you have done with The University of Texas Southwestern Medical Center at Dallas plan and look forward to your presenting that to Dr. Wildenthal. Mr. Burck is to visit with Reverend Holmes with respect to the U. T. Southwestern Medical Center - Dallas plan and creating opportunities and allowing minorities full participation.

I have observed and researched and evaluated this process. I am a former state employee and I worked twelve years with the state. Today, Mr. Chairman, for this plan to be effective a serious message or mandate must be sent out to the Executive Committee, to the Executive Vice Chancellors, to the System components, and to the presidents of those institutions holding them accountable for ensuring that blacks and other ethnic minorities are allowed full participation.

I have been in two meetings that represent the organization here. Everyone goes through the motions. It's a David Duke mentality and it is still the same old ball game. This is 1991, not 1881, and it needs to change. I have been

in meetings with executives of major banks across the country and talked about business ventures. It is publicly funded institutions that will not or cannot allow blacks and other minorities full participation. I am a taxpayer and we deserve more and demand more.

Two meetings that I have been in have been the worst meetings I've ever attended. We bring some valid things to the table. I have submitted plans to the table and simple requests are ignored because you have a difference of opinion. In one instance, they would not offer black folks a ride from the airport and you are going to the same meeting. These are little issues but you need to be creatively doing some things in this System.

Blacks and other minorities deserve more and demand more. When I met with Dr. Rutford, it was a terrible experience. The man is schizophrenic and it was a bad experience with all the jumping up and down that was going on. He wouldn't even talk about business. It is the same thing that we are talking about today. Dr. Rutford asked us to leave. Thank you Dr. Nedderman for the leadership you provided and Reverend Holmes for your U. T. Southwestern Medical Center - Dallas efforts and finally working things out.

Regarding the \$85 million donated yesterday, we would like to see some serious commitments. We have some specific recommendations to make to increase minority participation in construction and general services and Mr. McGill will hand those out.* I hope the media will do something with this. This is a great institution and state taxpayers, including blacks and hispanics, have contributed greatly to this System and we should be allowed to participate. The presidents should hold the physical plant people accountable and should be monitoring projects without minority participation and find out why.

I challenge this Board today to demonstrate a serious commitment to minority participation. This is the kind of thing that causes people to rise up and have race riots and causes such as the Killeen tragedy and the postal tragedy because we won't allow them to participate. That kind of tragedy could happen here, today, at a meeting just like this. We should not allow it to go on any longer. We are committed to working with Mr. Burck and hope that he will be receptive and utilize standards to assure a better reception because we cannot allow this kind of thing to go on. There may be someone here that may have something to say to this. It is too important to brush over it.

Chairman Beecherl thanked Dr. Reagan for his comments.

*Copy of handout set out on Pages 119 - 120.



Black State Employees Association of Texas DALLAS CHAPTER

Darren L. Reagan
President

December 6, 1991

Glenda Jackson
1st Vice President

Allen McGill
2nd Vice President

Winnie Warren
Secretary

Linda Johnson
Assistant Secretary

Barbara Collier
Treasurer

Mr. Louis Beecherl
Chairperson
University of Texas Systems
Board of Regents
Austin, Texas

Dear Chairman Beecherl:

The Black State Employees Association of Texas thank the University of Texas at Arlington's President and staff for the leadership and vision in developing a culturally diverse workplan for the 21st Century.

This result has more than justified the faith and effort of all who were involved in this process.

We urge the Board of Regents to use the UT-Arlington agreement for minority contracting, as a working model that can be implemented throughout the UT-System.

Specifically, the Black State Employees Association of Texas recommend the following steps to immediately increase minority participation in construction, general services, and purchase of supplies contracts.

- (1) Target contracts of \$600,000 or less by requiring maximum participation by African-Americans and Hispanic vendors.
- (2) Retain African-Americans and Hispanic business consultants to work with staff to put together guidelines for implementation of the proposed plan.
- (3) Co-sponsor conferences for minority vendors in the Dallas/Ft Worth area to explain new contracting opportunities.
- (4) Encourage joint ventures of sub-contracting opportunities with other vendors where minority vendors need additional capabilities.

P.O. BOX 761564 • DALLAS, TEXAS 75376 • (214) 371-7710 • FAX (214) 371-1113

Mr Louis Beecherl
Chairperson
UT System

Page 2

- (5) Establish a monitoring and evaluation committee to insure timely progress is maintained.

This proposal offer the Regents an opportunity to establish a uniform minority contracting standard throughout the UT System.

We are encouraged by the Regents past recongition of contracting inequities within the UT System and its desire to correct them.

Sincerely,



Dr Darren L Reagan

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REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 121 - 136).--Committee Chairman Barshop reported that the Academic Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Academic Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Austin: Appointment of Dr. Marye Anne Fox as Initial Holder of the M. June and J. Virgil Waggoner Regents Chair in Chemistry in the College of Natural Sciences Effective January 16, 1992.--The Board appointed Dr. Marye Anne Fox, holder of the Rowland Pettit Centennial Professorship in Chemistry, as initial holder of the M. June and J. Virgil Waggoner Regents Chair in Chemistry in the College of Natural Sciences at The University of Texas at Austin effective January 16, 1992.

Dr. Fox will relinquish the Rowland Pettit Centennial Professorship in Chemistry effective January 15, 1992.

See Page 154 related to the establishment of this Chair.

2. U. T. Austin: Approval to Name Room 2.139 of Townes Hall in the School of Law in Honor of James M. Wilson and James M. Wilson, Jr. (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings, the Board, upon recommendation of the Academic Affairs Committee, named Room 2.139 of Townes Hall in the School of Law at The University of Texas at Austin in honor of James M. Wilson and James M. Wilson, Jr.

The naming of this classroom is in recognition of a bequest to the School of Law from the terms of the Settlement Agreement of the Estate of Jane Dunn Wilson, deceased.

See Page 154 related to the distribution of funds from the Estate of Jane Dunn Wilson.

3. U. T. Dallas: Establishment of a Bachelor of Science Degree in Cognitive Science and Authorization to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--Authorization was granted to establish a program leading to a Bachelor of Science degree in Cognitive Science at The University of Texas at Dallas and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action.

Cognitive science is a new interdisciplinary field for the study of the mind and brain utilizing approaches from experimental psychology, neuroscience, computer science, and linguistics. This Bachelor of Science degree program will prepare students for technical work in high-technology areas involving problems such as pattern recognition, problem solving, decision making, and biological signal

processing and for graduate study in areas such as experimental psychology and the U. T. Dallas master's program in Applied Cognition and Neuroscience.

The program will be administered by a program head responsible to the Dean of the School of Human Development. In addition to required general education courses and specified prerequisite courses, a major in cognitive science would be required to take five core courses and seven elective courses. At least three of the elective courses must be concentrated in one of three areas: psychology and neuroscience, language and speech, or engineering and computer science.

Faculty in the Ph.D. program in Human Development and Communication Sciences and the masters program in Applied Cognition and Neuroscience will be used to design and deliver the courses on basic cognitive science, neuroscience, and measurement and evaluation. Cooperation and coordination with the faculty in the School of Engineering and Computer Science are also anticipated. The Cecil and Ida Green Center for the Study of Science and Society at U. T. Dallas is well equipped for teaching and research in cognitive science, and the clinical and research facilities at the Callier Center for Communication Disorders will provide a setting for clinical experience with cognitive-behavioral and brain-imaging-based assessments of neurological disorders.

By building downward from the Ph.D. and master's degree programs, the School of Human Development has the quality in place to support the new bachelor's degree program. The supporting facilities and programs within the School of Human Development are state-of-the-art and will not require updating or expansion to aid the program, and no new organizational entity will be created. Only three additional courses will be required to offer the program. With some minor changes in the scheduling of existing courses, the current faculty is large enough to teach these new courses. No additional faculty members will be required to begin the program.

The current collection of the U. T. Dallas library has adequate journal subscriptions to support the related graduate programs and the undergraduate program. Equipment obtained through the Permanent University Fund for faculty and students in the master's program in Applied Cognition and Neuroscience will also be available for use by students in the bachelor's program. Grant funds may also be expected to provide for additional laboratory equipment in this area.

This degree program is consistent with the U. T. Dallas strategic plan and approved table of programs.

Upon Coordinating Board approval, the next appropriate catalog published at U. T. Dallas will be amended to reflect this action.

4. U. T. Permian Basin: Authorization to Increase the Compulsory Student Services Fee Effective with the Spring Semester 1992 (Catalog Change).--Pursuant to Senate Bill 1000, enacted by the 72nd Texas Legislature, Regular Session, which amended Section 54.503 of the Texas Education Code to authorize an increase in the maximum compulsory student services fee from \$90.00 per semester or summer session to \$150.00 per semester or summer session, the Board approved an increase in the Compulsory Student Services Fee at The University of Texas of the Permian Basin from \$7.50 per semester credit hour with a maximum of \$90.00 per semester or summer session to \$10.50 per semester credit hour with a maximum fee of \$126.00 per semester or summer session effective with the Spring Semester 1992.

This fee increase is contingent upon certification by the President of the institution that statutory requirements have been met by virtue of an affirmative vote of the student body or a majority vote of the student government and involvement of the student services fees committee in recommending uses for fee revenue. This increase will be used to expand services to students, to maintain the quality of existing programs, and to extend hours for which the library may be opened.

It was ordered that the next appropriate catalog published by U. T. Permian Basin be amended to conform to this action.

5. U. T. San Antonio: Approval of Teaming Agreement with Southwest Research Institute (SwRI), San Antonio, Texas.-- Upon recommendation of the Academic Affairs Committee, the Board approved the Teaming Agreement set out on Pages 124 - 135 by and between The University of Texas at San Antonio and Southwest Research Institute (SwRI), San Antonio, Texas.

The purpose of this agreement is to establish a working team relationship to prepare and submit a proposal to the U. S. Government for a program entitled "Design Engineering Program" and to carry out the work outlined in the agreement should a contract result from the proposal.

TEAMING AGREEMENT

THIS AGREEMENT made and entered into this 4th day of September, 1991, by and between SOUTHWEST RESEARCH INSTITUTE (hereinafter referred to as "SwRI") located at 6220 Culebra Road, San Antonio, Texas 78238, and The University of Texas System represented by The University of Texas at San Antonio, College of Sciences and Engineering (hereinafter referred to as the "Subcontractor") located at The University of Texas at San Antonio, San Antonio, Texas 78285-0661.

WHEREAS, SwRI intends to submit a proposal as prime contractor to the Government in response to RFP F41608-89-R-3339 concerning a program entitled "Design Engineering Program" (hereinafter referred to as "the Program"); and

WHEREAS, SwRI and the Subcontractor desire to combine their respective capabilities in a joint effort to submit said proposal for the Program and to complete the work required by any work statement in any contract (hereinafter referred to as "Contract") resulting from such proposal; and

WHEREAS, SwRI and the Subcontractor desire to define their mutual rights and obligations during the preparation and submittal of said proposal and under any subsequent contract resulting therefrom, consistent with federal/state laws governing restraint of trade or competition as applicable.

NOW THEREFORE, to effect the foregoing, SwRI and the Subcontractor in consideration of the mutual covenants hereinafter contained, agree as follows:

1. The proposal will be based on SwRI acting as the prime contractor to the Government for any resultant Contract, and The University of Texas at San Antonio acting as subcontractor to SwRI, furnishing of support to the Prime Contractor under the Program. Any resulting subcontract to the Subcontractor will involve, but may not be limited to, work set forth in exhibit "A" in Statement of Work attached hereto.

91-039

2. SwRI will prepare and submit its proposal to the Government with assistance from the Subcontractor in the following areas: inputs on selected Statement of Work tasks, related experience information, tailored resumes on key personnel, and appropriate costs information, all to be used in preparation of the SwRI proposal. Details and formats for these inputs will be provided separately.

3. SwRI will recognize and identify the Subcontractor in its proposal and use its diligent efforts to secure Government approval of the use of the Subcontractor in the Program. SwRI will keep the Subcontractor fully advised of any changes which affect its area of responsibility.

4. In the event SwRI is awarded the Contract contemplated by the Request for Proposal identified on Page One of this Agreement, to accomplish the work set forth in Exhibit "A" of this Agreement, it is agreed that SwRI and the Subcontractor will, in good faith, proceed in a timely manner to negotiate a mutually acceptable subcontract(s) for the selected portions of the work identified in Exhibit "A" and described in a responsible technical/cost proposal prepared by the Subcontractor, unless otherwise directed by the Government. The subcontract shall embody, among other provisions, those terms and conditions of the prime contract which must be passed on to the Subcontractor in order to comply with such prime contract. The subcontract will be negotiated at a fair and reasonable price(s) to be established after cost or price analysis in accordance with the requirements of the applicable Government procurement regulation. In the event that negotiations with the Government result in a substantial reduction of the Subcontractor's area of responsibility from that proposed by the Prime Contractor, the Subcontractor shall have prior opportunity to consult with the Prime Contractor and review the effect of and concur with such reduction or revision before settlement with the Government. It is understood between SwRI

and the Subcontractor that any such subcontract will be subject to the approval of the Contracting Officer of the procuring authority of the United States Government, regardless of the provisions hereof.

The subcontract shall include the following clause:

"In the event any cost negotiated in connection with the contract between the Government and SwRI or any cost that is reimbursable under such contract is reduced as a result of a formal demand by the Government Contracting Officer because cost or pricing data furnished and certified to by the Subcontractor is defective, the Subcontractor will reimburse SwRI for such cost. However, the Subcontractor shall not be liable for SwRI's profit on the Subcontractor's cost or pricing data.

For the purposes of administering this clause and interpreting the rights and obligations of the parties, the various rules and guidelines provided for in FAR 15.804 and 15.806 shall govern.

SwRI agrees that the Subcontractor shall have the right in accordance with the intent set forth in FAR 52.244-2, to proceed under SwRI's name (by asserting the prime contract) by entering appeal from any decision of the Contracting Officer concerning the alleged submission of defective cost or pricing data by the Subcontractor under the subcontract, and SwRI agrees that it will give the Subcontractor prompt notice of such decision in order that an appeal may be perfected."

Each party shall exert its diligent efforts toward the successful performance of the Contract contemplated by the Request for Proposal identified on Page One of this Agreement, assuming award of the prime contract and the subcontract to the parties hereto, and shall provide appropriate and high quality managerial, marketing, advisory, technical, and other personnel to perform and support such contracts.

5. LIMITATIONS ON USE OF DATA AND INFORMATION

- a. The parties anticipate that under this Agreement it may be necessary for either party to transfer to the other information of a proprietary nature. Proprietary information shall be clearly identified by the disclosing party at the time of disclosure by (i) appropriate stamp or markings on the document exchanged; or (ii) written notice,

with attached listings of all material, copies of all documents, and complete summaries of all oral disclosures (under prior assertion of the proprietary nature of the same) to which each notice relates, delivered within two (2) weeks of the disclosure to the other party.

b. Each of the parties agrees that it will use the same reasonable efforts to protect such information as are used to protect its own proprietary information. Disclosures of such information shall be restricted to those individuals who are directly participating in the proposal, contract and subcontract efforts identified in Articles 1, 2, 3, and 4 hereof.

c. Neither party shall make any reproduction, disclosure, or use of such proprietary information except as follows:

(1) Such information furnished by the Subcontractor may be used, reproduced and/or disclosed by SwRI in performing its obligations under this Agreement.

(2) Such information furnished by SwRI may be used, reproduced and/or disclosed by the Subcontractor in performing its obligations under this Agreement.

(3) Such information may be used, reproduced and/or disclosed for other purposes only in accordance with prior written authorization received from the disclosing party.

d. The limitations on reproduction, disclosure, or use of proprietary information shall not apply to, and neither party shall be liable for reproduction, disclosure, or use of proprietary information with respect to which any of the

following conditions exist:

- (1) If, prior to the receipt thereof under this Agreement, it has been developed or learned independently by the party receiving it, or has been lawfully received from other sources, including the Government, provided such other source did not receive it due to a breach of this Agreement or any other agreement.
 - (2) If, subsequent to the receipt thereof under this Agreement, (i) it is published by the party furnishing it or is disclosed, by the party furnishing it to others, including the Government, without restriction; or (ii) it has been lawfully obtained, by the party receiving it, from other sources including the Government, provided such other source did not receive it due to a breach of this or any other agreement; or (iii) such information otherwise comes within the public knowledge or becomes generally known to the public;
 - (3) If any part of the proprietary information has been or hereafter shall be disclosed in a United States patent issued to the party furnishing the proprietary information hereunder, the limitations on such proprietary information as is disclosed in the patent shall be only that afforded by the United States Patent Laws after the issuance of said patent.
- e. Neither the execution and delivery of this Agreement, nor the furnishing of any proprietary information by either party shall be construed as granting to the other party

either expressly, by implication, estoppel, or otherwise, any license under any invention or patent now or hereafter owned or controlled by the party furnishing the same.

f. Notwithstanding the expiration of the other portions of this Agreement, the obligations and provisions of this Article 5 shall continue for a period of three (3) years from the date of this Agreement, however, any resulting contract shall take precedence.

g. Each party will designate in writing one (1) or more individuals within its organization as the only point(s) for receiving proprietary or security information exchanged between the parties pursuant to this Agreement.

6. RIGHTS IN INVENTIONS

Inventions conceived or first reduced to practice during the course of work under the Contract contemplated by this Agreement shall remain the property of the originating party. In the event of joint inventions, the parties shall establish their respective rights by negotiations between them. In this regard, it is recognized and agreed that the parties may be required to and shall grant license or other rights to the Government to inventions, data and other information under such standard provisions which may be contained in the Government Contract contemplated by this Agreement, provided, however, such license or other rights shall not exceed those required by said Contract.

7. No publicity or advertising regarding any proposal or contract under the Program or relating to this Agreement shall be released by the Subcontractor without the prior written approval of SwRI. No advertising or publicity containing any reference to the Subcontractor or any of its employees, either directly or by implication, shall be made use of by SwRI or

on SwRI's behalf, without the Subcontractor's prior written approval.

8. All communication relating to this Agreement shall be directed only to the specific person designated to represent SwRI and the Subcontractor on this Program. Each of the parties to this Agreement shall appoint one (1) technical and one (1) administrative representative. These appointments shall be kept current during the period of this Agreement. Communications which are not properly directed to the persons designated to represent SwRI and the Subcontractor shall not be binding upon SwRI or the Subcontractor.

All technical notices shall be addressed to:

As to SwRI:

Mr. Roger L. Bessey
Manager, Structural Dynamics & Environmental Test Section
Mechanical & Fluids Engineering Division
Southwest Research Institute
P. O. Drawer 28510
San Antonio, Texas 78228-0510
512/522-2345

As to SUBCONTRACTOR:

Mr. William A. Alter, III
Research Coordinator
College of Sciences and Engineering
The University of Texas at San Antonio
San Antonio, Texas 78285-0661

All contractual notices shall be addressed to:

As to SwRI:

Robert E. Chatten, C.P.M.
Director, Contracts
Southwest Research Institute
P. O. Drawer 28510
San Antonio, Texas 78228-0510
512/522-2235

As to SUBCONTRACTOR:

Ms. Carol Hollingsworth
Contracts and Grants Office
The University of Texas at San Antonio
San Antonio, Texas 78285-0661

or

Mr. William A. Alter, III
Research Coordinator
College of Sciences and Engineering
The University of Texas at San Antonio
San Antonio, Texas 78285-0661

9. Except for the conditions expressed in Article 5 hereof, this Agreement, which is effective upon the date of its execution by the last of the signatory parties hereto, shall automatically expire and be deemed terminated effective upon the date of the happening or occurrence of any one of the following events or conditions, whichever shall first occur:

- a. Official Government announcement or notice of the cancellation of the Program.
- b. The receipt by SwRI of written notice from the Government that it will not award to it the Contract for the Program.
- c. The receipt of written notice from the Government that it has awarded the Contract for the Program to someone other than SwRI.
- d. The receipt of official Government notice that the Subcontractor will not be approved as a major subcontractor under the Contract to SwRI on the Program or that substantial areas of the Subcontractor's proposed responsibility have been eliminated from the requirements.
- e. Award of a subcontract to the Subcontractor by SwRI for its designated portion of the Program.
- f. Mutual agreement of the parties to terminate the Agreement.
- g. The expiration of a one (1) year period commencing on the effective date of this Agreement unless such period is

extended by mutual agreement of the parties.

10. This Agreement pertains only to the proposal relating to the Program and to no other joint or separate effort undertaken by SWRI or the Subcontractor. The parties hereto shall be deemed to be independent contractors and the employees of one (1) party shall not be deemed to be employees of the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership, agency relationship or formal business organization of any kind.

11. This Agreement may not be assigned or otherwise transferred by either party, in whole or in part, without the express prior written consent of the other party.

12. This Agreement shall not preclude either party from bidding or contracting independently from the other on any Government or industry program which may develop or arise in the general area of business related to this Agreement or in any other area.

13. Access to security information classified "Top Secret," "Secret," and "Confidential," shall be governed by the provisions of FAR 52.204-2. Should provisions be established by the Government for special access handling of selected information relating to this Program, access will be governed by such provisions.

14. This Agreement contains the entire agreement of the parties and cancels and supersedes any previous understanding or agreement related to the Program, whether written or oral. All changes or modifications to this Agreement must first be agreed to in writing between the parties.

15. Each party to this Agreement will bear its respective costs, risks, and liabilities incurred by it as a result of its obligations and efforts under this Agreement. Therefore, neither SWRI nor the Subcontractor

shall have any right to any reimbursement, payment, or compensation of any kind from each other during the period prior to the award and execution of any resulting subcontract between SwRI and the Subcontractor for the Program and work described in this Agreement.

16. To the extent permitted by law, during the effective term of this Agreement SwRI and the Subcontractor each agree that it will not participate in any manner in other teaming efforts on the unrestricted portion of RFP F41608-89-R-3339 that are competitive to this Teaming Agreement. Moreover, SwRI and the Subcontractor each agree that it will not compete independently (including the independent submission of a proposal to the Government) for the work specified in this Agreement. The term "participate" as used herein includes (but is not limited to) the interchange of technical data with competitors. Furthermore, the Subcontractor shall not perform the work described in this Agreement, under the resulting Contract, for any party other than SwRI.

17. Either party hereto is authorized to disclose the terms and conditions of this Agreement to appropriate Government officials upon their request.

18. In the event a Contract is not awarded to SwRI as a result of a proposal each party will, at the request of the other party, return all materials such as, but not limited to, those that are written, printed, drawn, or reproduced, to the originating party.

EXECUTED by the Board of Regents of The University of Texas System and Southwest Research Institute on the day and year first above written, in duplicate copies, each of which shall be deemed an original.

THE UNIVERSITY OF TEXAS AT
SAN ANTONIO

By: _____
M. Dan Williams
Title: Vice President for Business Affairs

SOUTHWEST RESEARCH INSTITUTE

By: 

Robert E. Chatten, C.P.M.

Title: Director, Contract

FORM APPROVED:

BOARD OF REGENTS OF THE UNIVERSITY
OF TEXAS SYSTEM

By: _____

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement has been approved by the Board of Regents of the University of Texas System on the ____ day of _____, 1991 and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Executive Secretary, Board of Regents
The University of Texas System

EXHIBIT A

TEAMING AGREEMENT BETWEEN SOUTHWEST RESEARCH INSTITUTE (SwRI)

AND

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

COLLEGE OF SCIENCES AND ENGINEERING (UTSA)

FOR THE SA-ALC DEP

1. Program Administration:

The Design Engineering Program (DEP) solicited by SA-ALC does not define specific work tasks. The RFP states general contract requirements only. The Statement of Work (SOW) and Contract Data Requirements List (CDRL) items attached to the RFP are also general requirements and cannot be assigned or distributed to a team member.

In the event of a contract award to the SwRI team, the government will place individual orders for each separate task including a specific SOW for the task. The individual task orders typically are placed by different Contracting Officers Representative (COR) at each ALC. The technical sponsor may be a designated officer from any ALC organization.

The formation of the SwRI/UTSA team is to provide the government an unmatched capability to pursue large technical programs involving diverse technologies. The availability of team members for each task order will be provided in a manner which best serves the government.

2. Contract:

The terms and conditions in the basic contract apply to team members including the Conflict of Organization Interest Terms.

3. Program Development and DEP Task Coordination:

All team members will coordinate program development and task order processing activities through the DEP program manager at SwRI.

4. Sub Task Responsibility:

In general for any task, SwRI as the prime contractor will be responsible for task management and the completion of requirements. UTSA, as a subcontractor, will be responsible for technical activities in supporting requirements, as appropriate in the following areas:

- a. Support of technical education and training requirements needed for DEP activities.
- b. Support through design engineering related expertise, especially in the mechanical engineering area.

6. U. T. Tyler - Development Board: Approval of Nominees Thereeto.--Seven nominees for membership to the Development Board at The University of Texas at Tyler were approved for three-year terms to expire in 1994.

The names of the nominees will be reported for the record after they have been contacted and their acceptances have been received.

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE
(Pages 137 - 140).--Committee Chairman Ramirez reported
that the Health Affairs Committee had met in open session to
consider those matters on its agenda and to formulate recom-
mendations for the U. T. Board of Regents. Unless otherwise
indicated, the actions set forth in the Minute Orders which
follow were recommended by the Health Affairs Committee and
approved in open session and without objection by the U. T.
Board of Regents:

1. U. T. System: Adoption of Policy Regarding Immuniza-
tion of Students Against Hepatitis B.--The 72nd Legis-
lature adopted Senate Bill 1517 which amended the Texas
Education Code, Sections 2.09 and 2.09a, and updated
required immunization of certain students. The amend-
ment allows institutions of higher education to require
persons applying for admission to be immunized against
diphtheria, rubeola, rubella, mumps, tetanus, and polio-
myelitis, except as provided in the Code. The Code
further allows the Texas Board of Health to require
immunization against these and additional diseases for
those who are pursuing a course of study in any of the
human or animal health professions.

The Board, upon recommendation of the Academic Affairs
and Health Affairs Committees, adopted the following
policy regarding immunization of students within The
University of Texas System against hepatitis B:

Not later than January 1, 1992, all medical
students, dental students, residents, interns,
nursing students, and certain allied health
students and graduate students, specifically
those students having direct patient care
assignments or those students who come in con-
tact with human biological fluids or tissue,
will be required to certify serologic immunity
to hepatitis B virus or to certify immuniza-
tion with a complete series of hepatitis B
vaccine.

While the Texas Board of Health exempted all other stu-
dents from this requirement unless specified by the
individual institution of higher education, all students
are strongly encouraged to ensure their individual pro-
tection against immunizable diseases.

2. U. T. Southwestern Medical Center - Dallas: Appoint-
ment of David Waller, M.D., as Initial Holder of the
Sarah M. and Charles E. Seay Chair in Child Psychiatry
Effective Immediately.--Approval was granted to appoint
David Waller, M.D., Associate Professor of Psychiatry
and Pediatrics and Chief of the Division of Child and
Adolescent Psychiatry, as initial holder of the Sarah M.
and Charles E. Seay Chair in Child Psychiatry at The
University of Texas Southwestern Medical Center at Dallas
effective immediately.

See Page 163 related to the establishment of this Chair.

3. U. T. Southwestern Medical Center - Dallas: Center for Genetic Diseases Redesignated as the Erik Jonsson Center for Research in Molecular Genetics and Human Disease.-- Upon recommendation of the Health Affairs Committee, the Center for Genetic Diseases at The University of Texas Southwestern Medical Center at Dallas was redesignated as the Erik Jonsson Center for Research in Molecular Genetics and Human Disease.

This redesignation honors Mr. Erik Jonsson's founding and long-time leadership of the Excellence in Education Foundation, and also recognizes his numerous personal contributions to the U. T. Southwestern Medical Center - Dallas and other University of Texas System components.

See Page 161 related to the receipt of a research grant from the Excellence in Education Foundation.

4. U. T. Medical Branch - Galveston: Permission for Dr. Mary V. Fenton to Serve on the Texas State Board of Nurse Examiners [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Dr. Mary V. Fenton, Dean of the U. T. Nursing School - Galveston of The University of Texas Medical Branch at Galveston, to serve on the Texas State Board of Nurse Examiners. Dr. Fenton's service in this capacity will be without remuneration.

Governor Richards' appointment of Dr. Fenton to this Board is of benefit to the State of Texas, creates no conflict with her regular duties at the U. T. Medical Branch - Galveston, and is in accordance with approval requirements for positions of honor, trust, or profit provided in Article 6252-9a of Vernon's Texas Civil Statutes and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

5. U. T. Health Science Center - Houston: Kenneth K. Wu, M.D., Appointed Initial Holder of the Roy M. and Phyllis Gough Huffington Chair in Gerontology Effective Immediately.--The Board appointed Kenneth K. Wu, M.D., Professor of Medicine and Pathology, Director of the Division of Hematology and Oncology in the Department of Internal Medicine, and Director of the Vascular Disease Research Center, as initial holder of the Roy M. and Phyllis Gough Huffington Chair in Gerontology at The University of Texas Health Science Center at Houston effective immediately.
6. U. T. Health Science Center - Houston: Appointment of (a) John C. Ribble, M.D., (b) Ronald C. Merrell, M.D., and (c) James D. Hefner, M.D., to the Board of Directors of The University of Texas System Medical Foundation, Inc. Effective January 1, 1992 [Regents' Rules and Regulations, Part One, Chapter VII, Section 6, Subsection 6.1 (Internal Corporations)].--In accordance with the Regents' Rules and Regulations, Part One, Chapter VII, Section 6, Subsection 6.1, relating to appointments to the Board of Directors of internal corporations, the Board

approved the following appointments to the Board of Directors of The University of Texas System Medical Foundation, Inc. for The University of Texas Health Science Center at Houston effective January 1, 1992, for terms to expire on December 31, 1992:

- a. John C. Ribble, M.D.
6431 Fannin
Houston, Texas 77030
- b. Ronald C. Merrell, M.D.
6431 Fannin
Houston, Texas 77030
- c. James D. Hefner, M.D.
5656 Kelley
Houston, Texas 77026.

The University of Texas System Medical Foundation, Inc. was issued its Certificate of Incorporation on October 5, 1973. According to the Bylaws of the Foundation, which were approved by the U. T. Board of Regents in February 1974, each member of the Board of Directors must be licensed by the Texas State Board of Medical Examiners and must have been actively engaged in the practice of medicine within the State of Texas for at least five years preceding their appointment.

The Foundation functions within the framework of the U. T. Health Science Center - Houston for the purpose of training graduate medical students.

7. U. T. M.D. Anderson Cancer Center: Report on the M.D. Anderson Cancer Center Outreach Corporation/Orlando Cancer Center and Other Planned Outreach Programs for Cancer Care.--Committee Chairman Ramirez called on President Charles A. LeMaistre of The University of Texas M.D. Anderson Cancer Center for a brief report on the M.D. Anderson Cancer Center Outreach Corporation/Orlando Cancer Center and other planned outreach programs for cancer care.

President LeMaistre noted that the Board authorized the creation of the M.D. Anderson Cancer Center Outreach Corporation in 1990 to develop ambulatory programs with major health care providers. U. T. M.D. Anderson Cancer Center then joined with the Orlando Regional Medical Center to set up an outpatient cancer unit in Central Florida to improve access to optimal cancer services for Florida residents. The Orlando Cancer Center was built adjacent to the Orlando Regional Medical Center and began its operations on January 14, 1991. Dr. LeMaistre reported that, as of October 31, 1991, the Orlando Cancer Center has seen 2,500 patients, employs 83 full-time equivalent employees, and a total of 23 physicians from the local area are participating in the clinical care programs. He stated that this outreach program is estimated to generate \$2 million in local income in 1992 and that those resources will be used to fund high priority research and patient care programs at U. T. M.D. Anderson Cancer Center.

Dr. LeMaistre briefly commented on the funds that had been committed by the Physicians Referral Service (by the physicians in that plan) to ten separate outreach projects. He stated that one project which is most in demand and active is the Rio Grande Valley cervical

cancer screening program in which Vice-Chairman Ramirez is involved. The plan is to screen between 8,000 - 10,000 indigent patients who otherwise would not have this diagnostic opportunity. He pointed out that the key to the success of this program is the cooperation of all the family practitioners in the Valley. It is a two-year program and U. T. M.D. Anderson Cancer Center would like to consider another two-year program in breast cancer, prostate, and intestinal cancer screening. President LeMaistre also commented on the training for radiotherapy technicians, implementation of electromagnetic imaging to find a way to speed up the diagnosis by having the analysis referred to the Cancer Center so that patients do not have to move from the original site, and melanoma and skin cancer programs.

Following Dr. LeMaistre's report, Vice-Chairman Ramirez complimented the members of the Physicians Referral Service for their willingness to fund these important programs and thanked President LeMaistre for his efforts to establish the cervical cancer screening project in the Valley.

8. U. T. Medical Branch - Galveston: Report on Conclusion of Centennial Activities.--Committee Chairman Ramirez noted that on December 11, 1991, The University of Texas Medical Branch at Galveston will celebrate the conclusion of its centennial activities. He then called on President Thomas N. James for a report on those activities.

President James reported that it had been a very busy year at the institution and within the community. The centennial celebration began in January 1991 with an opening ceremony to raise the centennial flag and will end on December 11 with the mirrored image of lowering the flag. Dr. James thanked the faculty, students, and staff of U. T. Medical Branch - Galveston for providing great morale for the centennial celebration and noted that the institution had many visitors during the last year including the Board of Regents in April 1991.

Dr. James stated that one of the criteria for the success of the centennial was the private fund development program. U. T. Medical Branch - Galveston is now at the \$217 million mark of the \$254 million campaign goal and the institution is very optimistic that it will raise that amount in the next few years. He expressed appreciation for the continued generosity of The Sealy & Smith Foundation, Moody Foundation, Kempner Foundation, and other similar organizations that have been supportive of the U. T. Medical Branch - Galveston. In closing, Dr. James noted that it had been a great year and expressed appreciation to the Board and others for the ongoing support rendered to U. T. Medical Branch - Galveston.

Regent Temple recognized the U. T. Medical Branch - Galveston's assistance in opening two outpatient health centers in the East Texas area during the past year and pointed out that both had been very successful.

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 141 - 147).--Committee Chairman Moncrief reported that the Facilities Planning and Construction Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Facilities Planning and Construction Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Arlington: Approval to Waive the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1 (Naming of Buildings) and to Rename Engineering Building II as Nedderman Hall.--Upon recommendation of the Academic Affairs and Facilities Planning and Construction Committees, the Board waived the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.1, which requires that the person honored by the naming of a building "shall have been deceased at least five years," and renamed Engineering Building II at The University of Texas at Arlington as Nedderman Hall in honor of President Wendell H. Nedderman.

This action is subject to any statutory requirements related to the naming of public buildings as may be appropriate.

The renaming of this building is to recognize Dr. Nedderman's remarkable record of accomplishment during his nearly thirty year tenure as president and to record for future generations the vision and leadership which he brought to the academic and research programs at U. T. Arlington. President Nedderman is scheduled to retire from that official position on December 31, 1991.

Dr. Nedderman expressed his sincere appreciation for this honor and remarked that he was especially pleased to have this important engineering facility named for him.

2. U. T. Arlington - Thermal Energy Plant Boiler: Authorization for Project; Appointment of Friberg & Associates, Inc., Fort Worth, Texas, as Project Engineer to Prepare Final Plans; Approval for Submission of the Project to the Coordinating Board; and Appropriation Therefor.--The Board, upon recommendation of the Facilities Planning and Construction Committee:
 - a. Authorized a project for the purchase and installation of a Thermal Energy Plant Boiler at The University of Texas at Arlington for an estimated total project cost of \$1,054,720
 - b. Appointed the firm of Friberg & Associates, Inc., Fort Worth, Texas, as Project Engineer to prepare final plans and specifications to be submitted to the U. T. Board of Regents for consideration at a future meeting
 - c. Authorized submission of the project to the Texas Higher Education Coordinating Board as required

- d. Allocated \$98,000 from the U. T. Arlington Permanent University Fund Bond Proceeds Reserve Allocations for Repairs and Equipment Projects for fees and administrative expenses through preparation of final plans and specifications.

The Thermal Energy Plant at U. T. Arlington currently serves the twenty-nine building campus with three boilers. Those three boilers were originally installed in 1968 in the Central Utility Plant and were relocated to the new Thermal Energy Plant in 1985.

Although the three boilers were sized to allow for future campus growth, that capacity will be fully utilized with the addition of the Science Building, Phase I. With the addition of a fourth boiler, the campus will have capacity for further expansion, such as Phase II of the Science Building, and will have reserve capacity to meet anticipated operating requirements.

During periods of natural gas curtailment, the boilers must be operated on oil. When operated on oil, they produce less heat and, consequently, may not be able to meet the full campus heating requirements. In addition, when burning oil, a boiler must occasionally shut down for maintenance. Periods of natural gas curtailments usually coincide with the coldest weather. Consequently, lower heat production from operating on oil is likely to occur when campus heating requirements are the greatest. A fourth boiler will provide the reserve capacity needed for these situations.

This project is included in the 1991 Capital Improvement Plan and the FY 1992 Capital Budget Reserve Allocations for Repairs and Equipment Projects. Project funding is \$98,000 from Permanent University Fund Bond Proceeds and \$956,720 from sources yet to be determined for \$1,054,720 in total project funding.

3. U. T. Austin - Balcones Research Center - Microelectronics and Engineering Research Building Equipment Fit-Up: Authorization for Project; Appointment of Graeber, Simmons & Cowan, Austin, Texas, as Project Architect to Prepare Final Plans; Authorization for U. T. Austin Administration to Manage Project; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Appropriation Therefor.--The Facilities Planning and Construction Committee recommended and the Board:
 - a. Authorized a project for the Microelectronics and Engineering Research Building Equipment Fit-Up for The University of Texas at Austin Balcones Research Center at an estimated total project cost of \$9,200,000
 - b. Appointed the firm of Graeber, Simmons & Cowan, Austin, Texas, as Project Architect to prepare final plans and specifications

- c. Authorized U. T. Austin Administration to manage this project in consultation with the Office of Facilities Planning and Construction and upon completion of final review, authorized U. T. Austin to advertise for bids and the Executive Committee to award all contracts related to this project within the authorized total project cost
- d. Appropriated \$4,200,000 from General Fee Balances and reappropriated \$5,000,000 from Permanent University Fund Bond Proceeds previously appropriated to other U. T. Austin projects. These previously appropriated funds will be replaced with General Fee Balances. The total project funding is \$9,200,000.

In February 1989, the U. T. Board of Regents awarded the construction contract for the Microelectronics and Engineering Research Building at the U. T. Austin Balcones Research Center for a total project cost of \$22,500,000, exclusive of institutional equipment. The building is now complete and partially occupied. However, the building cannot be fully used for the intended research until the additional equipment and utility systems that were deferred during design and construction are installed. New equipment must be installed in the cleanrooms and laboratories and existing equipment, valued at approximately \$11,000,000, must be relocated from other buildings on campus.

The approval of this project will amend the 1991 Capital Improvement Plan and the FY 1992 Capital Budget.

- 4. U. T. Medical Branch - Galveston - Installation of Chilled Water Lines: Authorization for Project; Appointment of Lockwood, Andrews & Newnam, Inc., Houston, Texas, as Project Engineer to Prepare Final Plans; Approval for Submission of the Project to the Coordinating Board; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; and Appropriation Therefor.--In order to accommodate considerable additional chilled water demand which will be imposed on the entire chilled water distribution system in the future, the Board:
 - a. Authorized a project to install chilled water lines from the Thermal Energy Plant to the Graves Building at The University of Texas Medical Branch at Galveston at an estimated total project cost of \$1,000,000
 - b. Appointed the firm of Lockwood, Andrews & Newnam, Inc., Houston, Texas, as Project Engineer to prepare final plans and specifications
 - c. Authorized submission of the project to the Texas Higher Education Coordinating Board as required
 - d. Subject to approval by the Coordinating Board, authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts related to this project within the authorized total project cost
 - e. Appropriated \$1,000,000 from U. T. Medical Branch - Galveston Unexpended Plant Funds.

This project entails installation of 24" chilled water supply and return mains from the existing Thermal Energy Plant west to a location east of the Graves Building. The piping will be installed on the existing overhead stanchions running east to west along the north side of the campus. Changes will not be made to the existing chilled water piping.

An engineering study by the firm of Lockwood, Andrews & Newnam, Inc., Houston, Texas, resulted in a computer model of the existing chilled water distribution system serving the campus. The model indicated that the existing system is experiencing some distress due to a pressure drop from the present chilled water demand.

Approval of this item will amend the 1991 Capital Improvement Plan and the FY 1992 Capital Budget.

5. U. T. M.D. Anderson Cancer Center - Holcombe Boulevard Linear Park Plaza - Master Plan and Phase I Project: Authorization for Project; Appointment of Clark/Condon Associates, Inc., Bellaire, Texas, as Project Landscape Architect to Prepare Master Plan and Phase I Project Final Plans; Authorization for Submission of the Project to the Coordinating Board; Authorization to Advertise Phase I Project for Bids and for Executive Committee to Award Contracts; and Appropriation Therefor.--The Board, upon recommendation of the Facilities Planning and Construction Committee:
- a. Authorized a project for Phase I of the Holcombe Boulevard Linear Park Plaza at The University of Texas M.D. Anderson Cancer Center at an estimated total project cost of \$525,000
 - b. Appointed the firm of Clark/Condon Associates, Inc., Bellaire, Texas, as Project Landscape Architect to prepare a Master Plan for the Holcombe Boulevard Linear Park Plaza and final plans and specifications for the Phase I project
 - c. Authorized submission of the project to the Texas Higher Education Coordinating Board as required
 - d. Subject to approval by the Coordinating Board, authorized the Office of Facilities Planning and Construction to advertise the Phase I project for bids upon completion of final review and the Executive Committee to award all contracts related to this project within the authorized total project cost
 - e. Appropriated \$75,000 from the U. T. M.D. Anderson Cancer Center Capital Reserves and \$450,000 from gifts and grants for funding of the Phase I project.

The Holcombe Boulevard Linear Park Plaza project at the U. T. M.D. Anderson Cancer Center will extend along the south side of Holcombe Boulevard from Fannin Street on the west to Braes Bayou on the east, a distance of about 3,000 linear feet. The Linear Park is planned to be developed in four phases. The preparation of a Master Plan will guide development of all four phases of the Linear Park. It is important that the Phase I project, consisting of about three and three-quarters acres, be completed at the same time as the Jesse H. Jones Rotary House International project which is scheduled for completion in late 1992. The landscaping of the site for the Rotary House International is planned to be a part of the Linear Park. Approval of this item allows the coordination of both projects to be maintained.

The 1991 Capital Improvement Plan and the FY 1992 Capital Budget include the Holcombe Boulevard Linear Park Plaza project at a total project cost of \$2,100,000. This action is for authorization of the Linear Park Master Plan with completion of Phase I for an estimated total cost of \$525,000. Project funding will be \$75,000 from U. T. M.D. Anderson Cancer Center Capital Reserves and \$450,000 from gifts and grants. Approval of this item amends the 1991 Capital Improvement Plan and the FY 1992 Capital Budget for the Holcombe Boulevard Linear Park Plaza Project.

6. U. T. M.D. Anderson Cancer Center - R. E. "Bob" Smith Research Building - Addition: Authorization for Project; Appointment of Watkins Carter Hamilton, Houston, Texas, as Project Architect to Prepare Preliminary Plans; and Approval for Submission of the Project to the Coordinating Board.--The University of Texas M.D. Anderson Cancer Center's ability to adequately support existing research programs, to develop new programs, and to attract and retain capable research scientists is critical to the future of the institution. Currently, all existing research laboratories at the institution are fully utilized. Renovations to accommodate new research equipment must occur in occupied laboratories which creates safety hazards.

Therefore, upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Authorized a project for an Addition to the R. E. "Bob" Smith Research Building at the U. T. M.D. Anderson Cancer Center at an estimated total project cost of \$21,400,000
- b. Appointed the firm of Watkins Carter Hamilton, Houston, Texas, as Project Architect to prepare preliminary plans and a detailed cost estimate to be presented to the U. T. Board of Regents for consideration at a future meeting
- c. Authorized submission of the project to the Texas Higher Education Coordinating Board.

This addition to the R. E. "Bob" Smith Research Building will add approximately 69,000 gross square feet of needed research laboratory space. In addition to basic research laboratories, the project will house support facilities including a conference room planned to seat about 200, a cafeteria, an expanded library, and a biohazard and radiation storage area.

The U. T. Board of Regents authorized the Bertner Complex project in June 1991, which will significantly expand the research capability of U. T. M.D. Anderson Cancer Center. However, the Bertner Complex is not scheduled to be completed until 1996, and the Addition to the Smith Research Building can be completed by 1994 and add critically needed laboratory research space for the departments of Cell Biology, Immunology, Experimental Surgery, Experimental Pediatrics, Biochemistry and Molecular Biology, Experimental Medicine, Tumor Biology and Genetics. While certain of these departments are currently located in the Smith Research Building, others are located in the main hospital complex and cannot be expanded due to a lack of space. The experimental clinical departments will move from the Smith Research Building into the Bertner Complex when completed, and free space in the Smith Research Building for new programs, the expansion of existing programs, and provide space for the relocation of departments to permit needed mechanical upgrades in the Anderson Center Core or Gimbel Wing.

This project is included in the 1991 Capital Improvement Plan and the FY 1992 Capital Budget. The total project cost is \$11,400,000 in Educational and General Funds and \$10,000,000 in gifts and grants.

7. U. T. Health Center - Tyler - Ambulatory Care Center Addition and Renovation: Authorization for Project and Appointment of Simons-Burch-Clark, Tyler, Texas, as Project Architect to Prepare Preliminary Plans.--

In 1971, The University of Texas Health Center at Tyler built an outpatient clinic designed primarily for pulmonary patients with a projected outpatient capacity of 10,000 visits. A six-story hospital inpatient tower was completed a decade later. Although hospital admissions have remained relatively steady, outpatient volume has doubled since 1985 to more than 57,000 visits annually.

During the 1980s, the U. T. Health Center - Tyler added new medical services for heart patients, pediatric services, and occupational medicine all of which require additional outpatient clinic space. Today there are eight outpatient clinics dispersed throughout the hospital complex. Most have sprung up in areas that are not conducive to efficient and convenient patient care.

In order to accommodate growth in ambulatory care services, medical education and training, and clinical research programs, the Board:

- a. Authorized a project for an Ambulatory Care Center Addition and Renovation at the U. T. Health Center - Tyler at an estimated total project cost of \$11,300,000
- b. Appointed the firm of Simons-Burch-Clark, Tyler, Texas, as Project Architect to prepare preliminary plans and cost estimates to be presented to the U. T. Board of Regents at a future meeting.

This project will be approximately 60,000 gross square feet of new and renovated space at an estimated total project cost of \$11,300,000. Funding for the project will be \$4,000,000 from patient income, \$2,300,000 from private gifts and grants, and \$5,000,000 from Permanent University Fund Bond Proceeds.

Approval of this item will amend the 1991 Capital Improvement Plan and the FY 1992 Capital Budget with regard to the source of funds.

REPORT AND RECOMMENDATIONS OF THE ASSET MANAGEMENT COMMITTEE (Pages 147 - 183).--Committee Chairman Cruikshank reported that the Asset Management Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Asset Management Committee and approved in open session and without objection by the U. T. Board of Regents.

I. PERMANENT UNIVERSITY FUND

INVESTMENT MATTERS

1. Report on Clearance of Monies to the Permanent University Fund for September and October 1991 and Report on Oil and Gas Development as of October 31, 1991.--The following reports with respect to (a) certain monies cleared to the Permanent University Fund for September and October 1991 and (b) Oil and Gas Development as of October 31, 1991, were submitted by the Vice Chancellor for Business Affairs:

	<u>September 1991</u>	<u>October 1991</u>	<u>Cumulative Through October of this Fiscal Year (1991-1992)</u>	<u>Cumulative Through October of Preceding Fiscal Year (1990-1991)</u>	<u>Per Cent Change</u>
Permanent University Fund					
Royalty					
Oil	\$ 4,098,987.31	\$ 4,441,442.74	\$ 8,540,430.05	\$10,581,528.63	-19.29%
Gas	954,710.60	1,076,592.58	2,031,303.18	3,591,230.53	-43.44%
Sulphur	0.00	0.00	0.00	0.00	--
Water	77,394.62	43,447.51	120,842.13	142,126.73	-14.98%
Brine	3,415.40	8,702.69	12,118.09	11,235.53	7.86%
Trace Minerals	0.00	0.00	0.00	0.00	--
Rental					
Oil and Gas Leases	42,927.17	132,324.13	175,251.30	168,219.82	4.18%
Other	(1,148.00)	100.00	(1,048.00)	900.00	-216.44%
Sale of Sand, Gravel, Etc.	0.00	0.00	0.00	6,389.75	-100.00%
Total University Lands Receipts Before Bonuses	<u>5,176,287.10</u>	<u>5,702,609.65</u>	<u>10,878,896.75</u>	<u>14,501,630.99</u>	<u>-24.98%</u>
Bonuses					
Oil and Gas Lease Sales	0.00	0.00	0.00	0.00	--
Amendments and Extensions to Mineral Leases	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>23,106.44</u>	<u>--</u>
Total University Lands Receipts	5,176,287.10	5,702,609.65	10,878,896.75	14,524,737.43	-25.10%
Gain or (Loss) on Sale of Securities	<u>13,313,537.23</u>	<u>(2,343,596.28)</u>	<u>10,969,940.95</u>	<u>(31,727,390.04)</u>	<u>134.58%</u>
TOTAL CLEARANCES	<u>\$18,489,824.33</u>	<u>\$ 3,359,013.37</u>	<u>\$21,848,837.70</u>	<u>\$(17,202,652.61)</u>	<u>227.01%</u>

Oil and Gas Development - October 31, 1991

Acreage Under Lease - 666,714

Number of Producing Acres - 536,563

Number of Producing Leases - 2,138

2. Permanent University Fund: Report on Investments for the Fiscal Year Ended August 31, 1991.--Prior to the meeting, each member of the U. T. Board of Regents received a report on Permanent University Fund investments for the fiscal year ended August 31, 1991. The Board, upon recommendation of the Asset Management Committee, approved this report and directed its distribution to the Governor, members of the Legislature, and other State Officials as required by Section 66.05 of the Texas Education Code.

The Permanent University Fund book value of assets and earnings during the year is shown below:

	<u>Fiscal Year Ended 8/31</u>		<u>Increase (Decrease)</u>	
	<u>1990</u>	<u>1991</u>	<u>Amount</u>	<u>%</u>
Book Value	\$3,435,080,203	\$3,526,480,946	\$91,400,743	2.66%
Investment Income	266,119,332	257,659,365	(8,459,967)	(3.18%)

3. Permanent University Fund: Reappointment of Mr. J. Luther King, Jr., Fort Worth, Texas, to the Investment Advisory Committee for a Three-Year Term Ending August 31, 1994.--Approval was given to reappoint Mr. J. Luther King, Jr., Fort Worth, Texas, chief shareholder of Luther King Capital Management, to the Investment Advisory Committee for the Permanent University Fund of The University of Texas System for a three-year term which will expire August 31, 1994.

With this action, the membership of the Investment Advisory Committee is as follows:

	<u>Term Expires</u>
J. Luther King, Jr.	8/31/94
L. Lowry Mays	8/31/93
Edward Randall III	8/31/92
Michael J. C. Roth	8/31/93
John T. Stuart III	8/31/92
Unfilled	8/31/94

II. TRUST AND SPECIAL FUNDS

Gifts, Bequests and Estates

1. U. T. Arlington, U. T. Austin, U. T. El Paso, and U. T. Tyler: Authorization to Transfer Nonendowed Loan Funds Held as the Ella Kate and Wallace Ralston Medical and Nursing Students Loan Fund; Establishment of the Ella Kate and Wallace Ralston Nursing Students Scholarship Fund; and Modification of Administration of the Fund.--Upon recommendation of the Asset Management Committee, the Board transferred nonendowed loan funds held at each of the following component institutions as the Ella Kate and Wallace Ralston Medical and Nursing Students Loan Fund (Ralston Loan Fund) and established a quasi-endowment at each respective institution to be named the Ella Kate and Wallace Ralston Nursing Students Scholarship Fund:

<u>Institution</u>	<u>Amount Transferred</u>
The University of Texas at Arlington	\$105,000.00
The University of Texas at Austin	130,263.47
The University of Texas at El Paso	72,303.39
The University of Texas at Tyler	72,303.39

The administration of each respective Fund was modified to allow it to operate as a scholarship program rather than as a loan fund based upon an Office of General Counsel opinion that these changes are permissible under Section 65.36(f) of the Texas Education Code.

Income earned from each respective endowment will be used to award scholarships to nursing students at the respective component institutions.

2. U. T. Austin: Acceptance of Gift from Mr. Harry W. Atwood, Tucson, Arizona, and Establishment of the Harry W. Atwood Collection Endowment Fund for the General Libraries.--The Board accepted a \$10,000 gift from Mr. Harry W. Atwood, Tucson, Arizona, and established the Harry W. Atwood Collection Endowment Fund for the General Libraries at The University of Texas at Austin.

Ninety percent of the income earned from the endowment will be used to provide funding for the storage and preservation of the original films, prints of films, video masters, similar visual communication items, and related documentation previously donated by Mr. Atwood to the General Libraries; to provide funding for the ongoing documentation of the donated items; and for the active offering of the items for scholarly use. Any income remaining may be awarded as scholarships or internships to students who have demonstrated a substantial interest in the study of filmmaking. Ten percent of the income earned will be reinvested in the corpus of the endowment.

3. U. T. Austin: Acceptance of Gift and Pledge from Metro Fuel, Inc., Round Rock, Texas, and Establishment of the Citgo Petroleum Corporation Endowed Presidential Scholarship in Education in the College of Education.--Approval was given to accept a \$10,000 gift and a \$15,000 pledge, payable by December 31, 1992, from Metro Fuel, Inc., Round Rock, Texas, for a total of \$25,000 and to establish the Citgo Petroleum Corporation Endowed Presidential Scholarship in Education in the College of Education at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to outstanding students who intend to pursue careers in the field of education, with preference given to students who are graduates of the Drug Abuse Resistance Education (DARE) and Peer Assistance and Leadership (PAL) anti-drug programs in Texas high schools.

4. U. T. Austin: Acceptance of Gift from Mrs. Fred H. Moore, Austin, Texas, and Establishment of the Thomas A. Loomis Endowed Presidential Scholarship in the College of Business Administration and the Graduate School of Business.--The Asset Management Committee recommended and the Board accepted a gift of 750 shares of Mobil Oil Corporation common stock valued at \$50,812.50 from Mrs. Fred H. Moore, Austin, Texas, and established the Thomas A. Loomis Endowed Presidential Scholarship in the College of Business Administration and the Graduate School of Business at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to full-time students based on need and merit.

5. U. T. Austin: Approval to Accept Gift from Mr. and Mrs. Gilbert A. Herrera, Houston, Texas, and Corporate Matching Funds from The McGraw-Hill Foundation, Inc., New York, New York, and to Establish the James L. and Emily D. Musgrove Endowed Scholarship in the Department of Intercollegiate Athletics for Women.--Upon recommendation of the Asset Management Committee, the Board accepted a \$5,000 gift from Mr. and Mrs. Gilbert A. Herrera, Houston, Texas, and \$5,000 in corporate matching funds from The McGraw-Hill Foundation, Inc., New York, New York, for a total of \$10,000 and established the James L. and Emily D. Musgrove Endowed Scholarship in the Department of Intercollegiate Athletics for Women at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to student-athletes who display high character, integrity, and leadership, with preference given to those students who have completed their athletic eligibility and require financial assistance to complete their degree and who are majoring in Engineering or Business.

6. U. T. Austin: Acceptance of Gift and Pledges from Price Waterhouse Partners and Professional Staff and The Price Waterhouse Foundation, New York, New York, and Establishment of the Price Waterhouse Endowed Faculty Fellowship in Accounting in the College of Business Administration and Graduate School of Business.--The Board accepted a \$24,700 gift and \$41,965 in pledges, payable by December 31, 1993, from Price Waterhouse partners and professional staff and from The Price Waterhouse Foundation, New York, New York, for a total of \$66,665 and established the Price Waterhouse Endowed Faculty Fellowship in Accounting in the Department of Accounting, College of Business Administration and Graduate School of Business, at The University of Texas at Austin.

Income earned from the endowment will be used as a salary or expense supplement for any member of the faculty in the Department of Accounting.

7. U. T. Austin: Acceptance of Gifts from Dr. Augusto L. Podio, Austin, Texas, and Others for Addition to the Aaron Schaffer Memorial Scholarship Fund in the College of Liberal Arts and Authorization to Redesignate as the Aaron Schaffer-Giovanni Podio-Jason Sokolosky Scholarship in French and Italian Studies in the College of Liberal Arts.--Approval was given to accept funds totaling \$3,108.76, comprised of a gift from Dr. Augusto L. Podio, Austin, Texas, and reinvested income, and \$3,142 in gifts given in memory of Mr. Jason Sokolosky for a total of \$6,250.76 for addition to the Aaron Schaffer Memorial Scholarship Fund in the Department of French and Italian, College of Liberal Arts, at The University of Texas at Austin for a total endowment of \$12,229.45 and to redesignate the endowment as the Aaron Schaffer-Giovanni Podio-Jason Sokolosky Scholarship in French and Italian Studies.

Income earned from the endowment will be used to provide scholarship support to students of French and Italian in appropriate recognition of the three honorees of these funds. Scholarships shall benefit undergraduate or graduate students of French literature (to honor Professor Schaffer), students of Italian (to honor Mr. Podio), and/or students of French for purposes of studying in France (to honor Mr. Sokolosky), either in a combination generally proportional to the original gifts or in alternating years. The modification related to selection of the recipients follows current selection procedures at U. T. Austin and is a more practical approach to the award administration. The U. T. System Office of General Counsel rendered an opinion that the changes are permissible under Section 65.36(f) of the Texas Education Code.

8. U. T. Austin: Approval to Accept Gift from Dr. and Mrs. A. Donald Sellstrom, Austin, Texas, and to Establish the A. Donald and Eleanor Sellstrom Fund for Excellence in French and Italian in the College of Liberal Arts.--The Asset Management Committee recommended and the Board accepted a \$15,000 gift from Dr. and Mrs. A. Donald Sellstrom, Austin, Texas, and established the A. Donald and Eleanor Sellstrom Fund for Excellence in French and Italian in the Department of French and Italian, College of Liberal Arts, at The University of Texas at Austin.

Approximately two-thirds of the income earned from the endowment will be used to offer financial assistance to an undergraduate student majoring in French at U. T. Austin or abroad in a French-speaking country in a program approved by the Study-Abroad Committee of the Department of French and Italian. Approximately one-third of the income earned from the endowment will be used to purchase book prizes honoring undergraduate achievement in both French and Italian.

9. U. T. Austin: Authorization to Accept Gift from Mr. and Mrs. Crockett Slover, Austin, Texas, and to Establish the Jody and Crockett Slover Endowed Scholarship in the Department of Intercollegiate Athletics for Women.--The Board, upon recommendation of the Asset Management Committee, accepted a \$10,000 gift from Mr. and Mrs. Crockett Slover, Austin, Texas, and established the Jody and Crockett Slover Endowed Scholarship in the Department of Intercollegiate Athletics for Women at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to student-athletes who require financial assistance to complete their undergraduate or graduate degree at U. T. Austin.

10. U. T. Austin: Acceptance of Gift of Real Property Located in the N. Boyce Survey, Abstract No. 103, in Bastrop County, Texas, from Lorraine I. Stengl, M.D., Wimberley, Texas.--Authorization was granted to accept a gift of a 200-acre tract of land and improvements located in the N. Boyce Survey, Abstract No. 103, Bastrop County, Texas, with an appraised value of \$270,000, from Lorraine I. Stengl, M.D., Wimberley, Texas, for the benefit of The University of Texas at Austin.

This property will be used for research and teaching purposes in the Departments of Zoology, Biology, and Botany within the College of Natural Sciences at U. T. Austin. The College of Natural Sciences will pay the utilities and maintenance expenses for the property.

In the event that the use of this property ceases to be reasonably practical, the U. T. Board of Regents may sell the property. If the property is sold, net sale proceeds will be used to establish the Lorraine I. Stengl Biological Sciences Endowment Fund in the College of Natural Sciences at U. T. Austin. A request to establish the endowment will be made at a later date if the property is sold.

11. U. T. Austin: Acceptance of Gifts from Various Donors and Establishment of the Texas Distinguished Faculty Fellowship in the College of Engineering.--Upon recommendation of the Asset Management Committee, the Board accepted \$72,190.84 in gifts from various donors and established the Texas Distinguished Faculty Fellowship in the Department of Chemical Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to provide fellowship assistance to faculty, outstanding lecturers, or engineers in the Department of Chemical Engineering.

12. U. T. Austin: Approval to Accept Gift from Mr. and Mrs. J. Virgil Waggoner, Houston, Texas, and to Establish the M. June and J. Virgil Waggoner Regents Chair in Chemistry in the College of Natural Sciences.--
Approval was given to accept a gift of 135,000 shares of Sterling Chemicals, Inc. common stock valued at \$675,000 from Mr. and Mrs. J. Virgil Waggoner, Houston, Texas, and to establish the M. June and J. Virgil Waggoner Regents Chair in Chemistry in the Department of Chemistry, College of Natural Sciences, at The University of Texas at Austin.

Income earned from the endowment will be used to support the Chair.

See Page 121 related to an appointment to this Chair.

13. U. T. Austin: Approval to Accept Gift from Mr. and Mrs. Richard E. Wakeland, Austin, Texas, and Corporate Matching Funds from Exxon Education Foundation, Irving, Texas, and to Establish the Maureen M. and Richard E. Wakeland Endowed Scholarship in Engineering in the College of Engineering.--The Asset Management Committee recommended and the Board accepted a \$2,500 gift from Mr. and Mrs. Richard E. Wakeland, Austin, Texas, and \$7,500 in corporate matching funds from the Exxon Education Foundation, Irving, Texas, for a total of \$10,000 and established the Maureen M. and Richard E. Wakeland Endowed Scholarship in Engineering in the College of Engineering at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to junior or senior students based on academic merit, good character, and interest in and potential for a successful career in engineering. Preference shall be given to dependents of current or retired employees of the Texas Department of Transportation.

14. U. T. Austin: Acceptance of Bequest from the Estate of Jane Dunn Wilson, Corpus Christi, Texas, for Addition to Eighteen Endowed Academic Positions and Establishment of the Jane Dunn Wilson Endowment in the School of Law.--
The Board accepted a bequest, comprised of cash totaling \$603,024.56 and mineral interests valued at \$15,877.50 for a total of \$618,902.06, from the Estate of Jane Dunn Wilson, Corpus Christi, Texas, pursuant to a settlement agreement executed in 1989, for the benefit of the School of Law at The University of Texas at Austin.

Further, accumulated cash and royalty payments, as received, together with an amount of reinvested earnings, if any, needed to total \$622,000, will be used to increase the endowment principal of eighteen existing academic positions in the School of Law at U. T. Austin as follows:

<u>Endowment</u>	<u>Amount</u>
Hines H. Baker and Thelma Kelley Baker Chair in Law	\$82,000
Anne Green Regents Chair	\$45,500
The Ben H. and Kitty King Powell Chair in Business and Commercial Law	\$32,000

<u>Endowment</u>	<u>Amount</u>
G. Rollie White Teaching Excellence Chair in Law	\$35,000
Fred and Emily Marshall Wulff Centennial Chair in Law	\$ 5,000
Baker and Botts Professorship in Law	\$18,000
Rex G. Baker and Edna Heflin Baker Professorship in Law	\$55,000
Leroy G. Denman, Jr. Regents Professor- ship in Real Property Law	\$78,000
The Fulbright & Jaworski Professorship in Law	\$ 5,250
H. O. Head Centennial Professorship in Real Property Law	\$ 6,000
Joseph C. Hutcheson Professorship in Law	\$21,000
William C. Liedtke, Sr. Professorship in Law	\$21,000
Judge Benjamin Harrison Powell Profes- sorship in Law	\$ 5,250
Cooper K. Ragan Regents Professorship in Law	\$48,000
Ben Gardner Sewell Professorship in Civil Trial Advocacy	\$24,000
Raybourne Thompson Centennial Profes- sorship in Law	\$54,750
Robert F. Windfohr and Anne Burnett Windfohr Professorship in Oil, Gas and Mineral Law	\$28,500
Joe A. Worsham Centennial Professorship in Law	\$57,750

In addition, any assets remaining after the \$622,000 is distributed as provided above, including accumulated earnings, will be used to establish a quasi-endowment in the School of Law at U. T. Austin to be named the Jane Dunn Wilson Endowment. Endowment principal and income will be used to increase the endowment principal of existing academic positions at the discretion of the Dean of the School of Law.

See Page 121 related to naming a classroom in Townes Hall in the School of Law.

15. U. T. Austin: Authorization to Establish Fifteen Endowments and Acceptance of Gifts, Pledges, and Corporate Matching Funds from Various Donors to Establish Three Endowments in the School of Law.--Authorization was given to establish eighteen endowments in the School of Law at The University of Texas at Austin as set out below:
- a. Funds for the fifteen endowments set out on Pages 156 - 158 will be held and administered by The University of Texas Law School Foundation (an external foundation) in accordance

with the Regents' Rules and Regulations.
When matching funds become available under
The Regents' Endowed Student Fellowship and
Scholarship Program, the Law School Founda-
tion will transfer funds held for the endow-
ments to the U. T. Board of Regents.

ENDOWMENT: *David J. Beck Endowed Presidential
Scholarship in Law
Donor: Mr. David J. Beck, Houston, Texas
Pledge Amount: \$12,500
Law School
Fnd. (LSF)
Matching: \$12,500
Total Endowment: \$25,000

ENDOWMENT: Israel Dreeben Endowed Presidential
Scholarship in Law
Donor: The University of Texas Law School
Foundation, Austin, Texas
Gift Amount: \$12,561
LSF Matching: \$12,500
Total Endowment: \$25,061

ENDOWMENT: Elton M. Hyder, Jr. Scholarship in
Law (an Endowed Presidential Scholar-
ship)
Donor: Mr. Elton M. Hyder, Jr., Fort Worth,
Texas
Gift Amount: \$25,233
LSF Matching: \$10,000
Total Endowment: \$35,233

ENDOWMENT: The Johnson & Gibbs, A Professional
Corporation, Endowed Presidential
Scholarship in Law
Donor: Johnson & Gibbs, A Professional
Corporation, Dallas, Texas
Pledge Amount: \$12,500, payable by January 1, 1992
LSF Matching: \$12,500
Total Endowment: \$25,000

ENDOWMENT: Carl Parker Endowed Presidential
Scholarship in Law
Donor: Mr. Gilbert I. Low, Beaumont, Texas,
and various donors
Gift Amount: \$12,000
Pledge Amount: \$ 1,000, payable by August 31, 1993
LSF Matching: \$12,500
Total Endowment: \$25,500

ENDOWMENT: Michael W. Perrin Endowed Presiden-
tial Scholarship in Law
Donor: Mr. Michael W. Perrin, Houston, Texas
Gift Amount: \$ 4,166
Pledge Amount: \$ 8,334, payable by August 31, 1993
LSF Matching: \$12,500
Total Endowment: \$25,000

*Special recognition is given to the David J. Beck Endowed
Presidential Scholarship in Law which is the 100th Endowed
Presidential Scholarship established for the benefit of the
School of Law at U. T. Austin.

ENDOWMENT: Oscar and Ethel Schwartz Endowed
 Presidential Scholarship in Law
 Donor: Mr. and Mrs. Leonard Schwartz,
 Austin, Texas
 Pledge Amount: \$25,000, payable by August 31, 1993
 LSF Matching: \$12,500
 Total Endowment: \$37,500

ENDOWMENT: The Charles S. Sharp Endowed Presiden-
 tial Scholarship in Law
 Donor: Mr. A. Frank Smith, Jr., Houston,
 Texas
 Gift Amount: \$10,000
 Pledge Amount: \$15,000, payable by August 31, 1993
 LSF Matching: \$25,000
 Total Endowment: \$50,000

ENDOWMENT: Terry and Sue Tottenham Endowed
 Presidential Scholarship in Law
 Donor: Mr. and Mrs. Terry O. Tottenham,
 Austin, Texas
 Gift Amount: \$ 820.77
 Pledge Amount: \$11,679.33, payable by August 30, 1994
 LSF Matching: \$12,500
 Total Endowment: \$25,000.10

ENDOWMENT: Thomas C. Unis Endowed Presidential
 Scholarship in Law
 Donor: Mr. Thomas C. Unis, Dallas, Texas
 Gift Amount: \$12,500
 Pledge Amount: \$ 4,500, payable by August 31, 1992
 LSF Matching: \$17,000
 Total Endowment: \$34,000

ENDOWMENT: Beirne, Maynard & Parsons Endowed
 Presidential Scholarship in Law
 Donor: Beirne, Maynard & Parsons, Houston,
 Texas
 Gift Amount: \$12,500
 Pledge Amount: \$ 9,500, payable by August 31, 1993
 LSF Matching: \$22,000
 Total Endowment: \$44,000
 Recipient
 Criteria: Student member of Texas Law Review
 editorial board, based on merit or
 financial need

ENDOWMENT: Campbell A. Griffin, Jr. Endowed
 Presidential Scholarship in Law
 Donor: Mr. and Mrs. Campbell A. Griffin, Jr.,
 Houston, Texas
 Gift Amount: \$25,000
 LSF Matching: \$25,000
 Total Endowment: \$50,000
 Recipient
 Criteria: Preference for minority students,
 based on merit or financial need

ENDOWMENT: State Bar of Texas Construction Law
 Section Endowed Presidential Scholar-
 ship in Law
 Donor: The University of Texas Law School
 Foundation, Austin, Texas
 Pledge Amount: \$30,000, payable by August 31, 1993
 Total Endowment: \$30,000
 Recipient
 Criteria: Preference for student who is Black
 or Hispanic, based on financial need

ENDOWMENT: Charles and Elizabeth Tigar Endowed
Presidential Scholarship in Law
Donor: Anonymous
Gift Amount: \$12,500
LSF Matching: \$12,500
Total Endowment: \$25,000
Recipient
Criteria: Student with demonstrated concern
for the rights of working people,
racial and ethnic minorities, health
care issues, protection of the
environment, civil liberties, and/or
international human rights

ENDOWMENT: Jesse and Peggy Vaughter Endowed
Presidential Scholarship in Law
Donor: Mr. James G. Vaughter,
Washington, D. C.
Gift Amount: \$ 3,125
Pledge Amount: \$ 9,375, payable by August 31, 1993
LSF Matching: \$12,500
Total Endowment: \$25,000
Recipient
Criteria: Student member of Texas International
Law Journal editorial staff

Income earned from the first ten endowments will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, based on merit or financial need. Income earned from the next five endowments will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, taking into consideration special criteria requested by the donors, as indicated above for each endowment, respectively.

- b. Further, gifts, a pledge, corporate matching funds and pledge, and pledges of Law School Foundation matching funds were accepted and the following three endowments were established in the School of Law at U. T. Austin:

ENDOWMENT: The Franklin Myers Endowed
Presidential Scholarship in Law
Donor: Mr. Franklin Myers, Houston, Texas
Gift Amount: \$ 4,200
Pledge Amount: \$ 2,100, payable by August 31, 1993
Donor: R. C. Baker Foundation,
Orange, California
Pledge Amount: \$ 6,300, payable by August 31, 1993
LSF Matching: \$12,600
Total Endowment: \$25,200

ENDOWMENT: The Cary and Kenneth Roberts Endowed
Presidential Scholarship in Law
Donor: Mr. Kenneth Roberts, Houston, Texas
Gift Amount: \$ 5,000
Pledge Amount: \$ 5,000, payable by December 31, 1992
Donor: Exxon Education Foundation, Irving,
Texas
Gift Amount: \$15,000
Pledge Amount: \$15,000, payable by August 31, 1993
LSF Matching: \$40,000
Total Endowment: \$80,000

Income earned from these two endowments will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, based on merit or financial need.

ENDOWMENT: Dean Leon Green Endowed Presidential Scholarship in Law
Donor: Texas Law Review Association, Austin, Texas
Gift Amount: \$12,500
LSF Matching: \$12,500
Total Endowment: \$25,000
Recipient
Criteria: Student member of Texas Law Review editorial board

Income earned from this endowment will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee, taking into consideration special criteria requested by the donor as indicated above for this endowment.

16. U. T. Dallas: Acceptance of Gifts from Dr. and Mrs. John W. Van Ness, Richardson, Texas, and Various Donors and Establishment of the Julia Williams Van Ness Merit Scholarship.--Upon recommendation of the Asset Management Committee, the Board accepted a \$3,000 gift from Dr. and Mrs. John W. Van Ness, Richardson, Texas, and \$8,000 in gifts from various donors for a total of \$11,000 and established the Julia Williams Van Ness Merit Scholarship at The University of Texas at Dallas.

Eighty percent of the income earned from the endowment will be used to award merit scholarships to students seeking degrees in the fine arts, liberal arts, natural sciences, or mathematical sciences. The remaining twenty percent of income earned will be reinvested in the corpus of the endowment.

17. U. T. El Paso: Approval to Accept Gift from the Rio Grande Section of The American Society for Quality Control, El Paso, Texas, and to Establish The American Society for Quality Control/Rio Grande Section Scholarship Fund.--Approval was given to accept a \$10,000 gift from the Rio Grande Section of The American Society for Quality Control, El Paso, Texas, and to establish The American Society for Quality Control/Rio Grande Section Scholarship Fund at The University of Texas at El Paso.

Income earned from the endowment will be used to provide a scholarship for the winner of The American Society for Quality Control's annual essay competition on total quality control, held by the Society's Rio Grande Section in El Paso, Texas, and open only to students at U. T. El Paso. In the event the essay competition should cease, the income from the endowment will be used to award scholarships in Engineering, Business Administration, or Science (including mathematics) to students whose educational objectives are professional positions in the field of total quality assurance.

18. U. T. El Paso: Acceptance of Gift from Mr. and Mrs. Julian Bernat, El Paso, Texas, and Establishment of the Elayne and Julian Bernat Endowed Presidential Scholarship Fund.--The Board, upon recommendation of the Asset Management Committee, accepted a gift comprised of \$15,247.70 cash and two life insurance policies with a total cash surrender value of \$9,752.30 from Mr. and Mrs. Julian Bernat, El Paso, Texas, for a total of \$25,000 and established the Elayne and Julian Bernat Endowed Presidential Scholarship Fund at The University of Texas at El Paso.

Income earned from the endowment will be used to award an annual scholarship to an undergraduate or graduate student who meets the requirements of the Presidential Scholarship Program at U. T. El Paso.

19. U. T. El Paso: Acceptance of Transfer of Funds and Establishment of the Dr. John M. Hills Memorial Fund in Geology.--The Asset Management Committee recommended and the Board accepted a \$10,490.91 transfer of unrestricted funds from the Department of Geological Sciences at The University of Texas at El Paso and established a quasi-endowment to be named the Dr. John M. Hills Memorial Fund in Geology at U. T. El Paso.

Income earned from the endowment will be for the unrestricted use of the Department of Geological Sciences.

20. U. T. El Paso: Acceptance of Gift from Mrs. J. Leighton (Virginia P.) Green, El Paso, Texas, for Addition to the U. T. System Pooled Income Fund.--Authorization was given to accept a \$100,000 gift from Mrs. J. Leighton (Virginia P.) Green, El Paso, Texas, for addition to The University of Texas System Pooled Income Fund.

Mrs. Green will receive the income generated by this gift during her lifetime. Upon her death, the remainder interest in this gift will be used to establish the J. Leighton and Virginia Green Endowed Scholarship Fund for Health-Related Professionals at U. T. El Paso. A request to establish the endowment will be made at a later date.

21. U. T. Tyler: Approval to Accept Gift from Mr. and Mrs. John E. (Jack) White, Jr., Tyler, Texas, and Corporate Matching Funds from ARCO Foundation, Inc., Los Angeles, California, and to Establish The Jack and Dorothy Fay White Endowed Presidential Scholarship (V).--The Board accepted a \$12,500 gift from Mr. and Mrs. John E. (Jack) White, Jr., Tyler, Texas, and \$12,500 in corporate matching funds from the ARCO Foundation, Inc., Los Angeles, California, for a total of \$25,000 and established The Jack and Dorothy Fay White Endowed Presidential Scholarship (V) at The University of Texas at Tyler.

Income earned from the endowment will be used to award scholarships according to the criteria of the Presidential Scholarship Program at U. T. Tyler.

22. U. T. Southwestern Medical Center - Dallas: Report of Receipt of a Research Grant from the Excellence in Education Foundation, Dallas, Texas, and Establishment of the Excellence in Education Foundation Endowment; Establishment of (a) Cecil H. Green Distinguished Chair in Cellular and Molecular Biology and (b) Eugene McDermott Distinguished Chair in Molecular Genetics; Authorization to Conduct a Special Private Fund Development Campaign (Regents' Rules and Regulations, Part One, Chapter VII, Section 2.4, Subsection 2.44); Acceptance of Gifts and Pledge from an Anonymous Donor, Pledge from Southwestern Medical Foundation, Dallas, Texas, and Transfer of Funds to Establish a Challenge Fund Related to That Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--In accordance with authorization given by the U. T. Board of Regents at the October 1991 meeting, Chairman Beecherl reported that the Excellence in Education Foundation, Dallas, Texas, has contributed and delivered \$30,000,000 to The University of Texas Southwestern Medical Center at Dallas to establish the Excellence in Education Foundation Endowment for the support of research by faculty in the area of molecular genetics as it relates to cancer, developmental biology, neurological and brain diseases, and other biomedical problems.

As a result of this extraordinary contribution by the Excellence in Education Foundation to the U. T. Southwestern Medical Center - Dallas, the Board, upon recommendation of the Asset Management Committee:

- a. Certified the eligible actual income that will be earned on the \$30,000,000 gift from the Excellence in Education Foundation to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act
- b. Established the Cecil H. Green Distinguished Chair in Cellular and Molecular Biology to be funded with \$1,000,000 of the \$30,000,000 gift from the Excellence in Education Foundation
- c. Established the Eugene McDermott Distinguished Chair in Molecular Genetics to be funded with \$1,000,000 of the \$30,000,000 gift from the Excellence in Education Foundation.

Further, to maximize the potential of the magnificent gift to enhance biomedical research programs at the U. T. Southwestern Medical Center - Dallas and in accordance with the Regents' Rules and Regulations, Part One, Chapter VII, Section 2.4, Subsection 2.44, the U. T. Southwestern Medical Center - Dallas was authorized to conduct a special private fund development campaign with a goal of \$150,000,000 to be raised by December 31, 1994. Pursuant to this special campaign, the Board:

- a. Accepted gifts of \$10,000,000 and a pledge of an additional \$15,000,000, for a total of \$25,000,000, from an anonymous donor to serve as a challenge fund for matching endowment contributions for the support of research by faculty in the area of basic

biomedical research as it relates to cancer, neuroscience, developmental biology and genetics, and directed that the eligible actual income which will be earned on the gift and pledge, as received, be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act

- b. Accepted a pledge of \$7,500,000 from the Southwestern Medical Foundation, Dallas, Texas, to be held as an endowment trust at the Foundation to serve as a challenge fund for matching endowment contributions to support faculty research
- c. Authorized the transfer of \$12,500,000 from MSRDP funds at the U. T. Southwestern Medical Center - Dallas to irrevocable endowment funds to serve as a challenge fund for matching endowment contributions to support faculty research
- d. Recognized that the above three amounts comprised of the gift, pledge, and transfer of funds together with the \$30,000,000 gift from the Excellence in Education Foundation for a total of \$75,000,000 should be considered as advance gifts toward the campaign goal of \$150,000,000.

For further recognition of the Excellence in Education Foundation contribution, see Page 138 related to the designation of the Erik Jonsson Center for Research in Molecular Genetics and Human Disease.

The Excellence in Education Foundation, Dallas, Texas, was established by Mr. Erik Jonsson, Mr. Cecil H. Green, and the late Mr. Eugene McDermott. These individuals, who were business partners and co-founders of Texas Instruments, Inc., Dallas, Texas, have been major supporters of the U. T. Southwestern Medical Center - Dallas, U. T. Dallas, and other components of the U. T. System for many years. All three have been recipients of the Santa Rita Award.

The Southwestern Medical Foundation established Southwestern Medical School in 1943 and gave the School to The University of Texas System in 1949, having provided its sole support in the interim. Since that time, the Foundation has served as the Development Board of The University of Texas Southwestern Medical Center at Dallas and has been a regular and major contributor to the Center.

On behalf of the Board, Committee Chairman Cruikshank commended U. T. Southwestern Medical Center - Dallas and President Wildenthal for this significant accomplishment.

23. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift from The Sarah M. and Charles E. Seay Charitable Trust, Dallas, Texas, and a Transfer of Funds; Establishment of the Sarah M. and Charles E. Seay Chair in Child Psychiatry; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Upon recommendation of the Asset Management Committee, the Board accepted a \$250,000 gift from The Sarah M. and Charles E. Seay Charitable Trust, Dallas, Texas, and a \$250,000 transfer of unrestricted funds from the Department of Psychiatry at The University of Texas Southwestern Medical Center at Dallas for a total of \$500,000 and established the Sarah M. and Charles E. Seay Chair in Child Psychiatry at the U. T. Southwestern Medical Center - Dallas.

Further, the actual income that will be earned on all qualifying gifts will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

See Page 137 related to an appointment to this Chair.

24. U. T. Southwestern Medical Center - Dallas: Acceptance of Gifts from Mr. and Mrs. Walter Lorenz, Jacksonville, Florida, Biological Humanics Foundation, Dallas, Texas, and Alumni of the Oral Surgery Residency Program for Addition to The Robert V. Walker D.D.S. Distinguished Professorship in Oral Surgery; Redesignation as the Robert V. Walker, D.D.S. Chair in Oral and Maxillofacial Surgery; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Approval was given to accept a \$50,000 gift from Mr. and Mrs. Walter Lorenz, Jacksonville, Florida, a \$50,000 gift from the Biological Humanics Foundation, Dallas, Texas, and \$150,000 in gifts from alumni of the oral surgery residency program at The University of Texas Southwestern Medical Center at Dallas, for a total of \$250,000, for addition to The Robert V. Walker D.D.S. Distinguished Professorship in Oral Surgery for a total endowment of \$503,728.23 and the Distinguished Professorship was redesignated as the Robert V. Walker, D.D.S. Chair in Oral and Maxillofacial Surgery at the U. T. Southwestern Medical Center - Dallas.

Further, the actual income which will be earned on \$250,000 in additional gifts will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

25. U. T. Medical Branch - Galveston: Acceptance of Bequest from the Estate of Dr. Julian Cox Barton, Bexar County, Texas, and Transfer of Funds and Establishment of The Julian Cox Barton Scholarships.--The Board, upon recommendation of the Asset Management Committee, accepted a \$75,000 specific bequest from the Estate of Dr. Julian Cox Barton, Bexar County, Texas, and a \$75,000 transfer of institutional development funds for a total of \$150,000 and established a quasi-endowment at The University of Texas Medical Branch at Galveston to be named The Julian Cox Barton Scholarships.

Income earned from the endowment will be used to award scholarships to medical students, based on financial need.

26. U. T. Medical Branch - Galveston: Acceptance of Bequest from the Estate of Beulah Thompson Hall, Georgetown, Texas, and Establishment of the Dr. James D. Hall Scholarship Fund.--Upon recommendation of the Asset Management Committee, the Board accepted a fourteen percent interest in the residue of the Estate of Beulah Thompson Hall, Georgetown, Texas, totalling \$15,103.64 and established the Dr. James D. Hall Scholarship Fund at The University of Texas Medical Branch at Galveston.

Income earned from the endowment will be used to award scholarships.

27. U. T. Medical Branch - Galveston: Acceptance of Gift from Mr. and Mrs. Ralph Spence, Tyler, Texas, and Transfer of Funds and Establishment of The Gleaves T. James Centennial Rose Garden Endowment.--The Asset Management Committee recommended and the Board accepted a \$25,000 gift from Mr. and Mrs. Ralph Spence, Tyler, Texas, and a \$25,000 transfer of institutional development funds for a total of \$50,000 and established a term endowment at The University of Texas Medical Branch at Galveston to be named The Gleaves T. James Centennial Rose Garden Endowment.

Income earned from the endowment will be used for the maintenance of The Gleaves T. James Centennial Rose Garden.

28. U. T. Medical Branch - Galveston: Authorization to Accept Gift from The Brown Foundation, Inc., Houston, Texas; Establishment of The William C. Levin Chair in Environmental Toxicology; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Authorization was given to accept a \$500,000 gift from The Brown Foundation, Inc., Houston, Texas, and to establish The William C. Levin Chair in Environmental Toxicology at The University of Texas Medical Branch at Galveston.

Further, the actual income that will be earned on the \$500,000 gift will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

Income earned from the endowment will be used to support the Chair.

29. U. T. Medical Branch - Galveston: Approval to Accept Income Interest in the Harry and Maxine Rogers Charitable Trust.--The Board accepted an income interest in the Harry and Maxine Rogers Charitable Trust (held in trust by others) to be used to provide financial assistance to patients at The University of Texas Medical Branch at Galveston who are residents of Galveston County, Texas.

The charitable lead trust, which was created by the Last Will and Testament of Maxine R. Rogers, was initially funded with approximately \$1,500,000. The trust provides for the distribution of all of the net income to the U. T. Medical Branch - Galveston for a period of fifty years, and the University's interest will terminate in the year 2038.

30. U. T. Health Science Center - Houston: Acceptance of Gift from Mrs. Lynn R. Wolfson, Miami Beach, Florida, and Establishment of the Raul G. Caffesse, D.D.S., M.S. Endowed Scholarship Fund.--Upon recommendation of the Asset Management Committee, the Board accepted a \$50,000 gift from Mrs. Lynn R. Wolfson, Miami Beach, Florida, and established the Raul G. Caffesse, D.D.S., M.S. Endowed Scholarship Fund at The University of Texas Health Science Center at Houston.

Income earned from the endowment will be used to provide scholarships for periodontal graduate students in the Department of Periodontics at the U. T. Dental Branch - Houston.

31. U. T. Health Science Center - Houston: Acceptance of Gifts from Mr. and Mrs. Robert O. Dierks, Spring, Texas, and Corporate Matching Funds from Amoco Foundation, Inc., Chicago, Illinois, and Establishment of The Dierks Surgical Scholarship Fund.--The Asset Management Committee recommended and the Board accepted \$5,500 in gifts from Mr. and Mrs. Robert O. Dierks, Spring, Texas, and \$6,300 in corporate matching funds from Amoco Foundation, Inc., Chicago, Illinois, for a total of \$11,800, with \$11,000 to be used to establish The Dierks Surgical Scholarship Fund at The University of Texas Health Science Center at Houston and \$800 to be used to award an outright scholarship in the Fall of 1991 in the name of The Dierks Surgical Scholarship Fund.

Eighty-five percent of the income earned from the endowment will be used to award scholarships to students who wish to specialize in surgery at the U. T. Medical School - Houston. Recipients will be selected on a financial need basis. The remaining fifteen percent of income earned will be reinvested in the corpus of the endowment.

32. U. T. M.D. Anderson Cancer Center: Approval to Accept Bequest from the Estate of E. N. Cobb, Longview, Texas.--Approval was given to accept a bequest of fifty percent of the residue of the Estate of E. N. Cobb, Longview, Texas, totalling \$893,500, to be used for general cancer research at The University of Texas M.D. Anderson Cancer Center.
33. U. T. M.D. Anderson Cancer Center: Acceptance of Bequest from the Estate of Elizabeth R. McComb, Lexington, Missouri.--The Board, upon recommendation of the Asset Management Committee, accepted a bequest of forty percent of the residue of the Estate of Elizabeth R. McComb, Lexington, Missouri, totalling \$129,973.38, to be used for cancer research at The University of Texas M.D. Anderson Cancer Center.
34. U. T. M.D. Anderson Cancer Center: Authorization to Accept Bequest from the Estate of Cecil P. Overstreet, College Station, Texas.--Authorization was given to accept a specific bequest of \$30,000 from the Estate of Cecil P. Overstreet, College Station, Texas, to be used for unrestricted purposes at The University of Texas M.D. Anderson Cancer Center.

35. U. T. M.D. Anderson Cancer Center: Acceptance of Bequest from the Estate of Mira Liles Riley, Houston, Texas.--Upon recommendation of the Asset Management Committee, the Board accepted a bequest of a one-fifth interest in the proceeds from the sale of decedent's residence and fifty percent of the residue of the Estate of Mira Liles Riley, Houston, Texas, for a total distribution of \$63,000 for cancer research at The University of Texas M.D. Anderson Cancer Center.
36. U. T. M.D. Anderson Cancer Center: Estate of Dorothy Kuhlman Theisinger, Houston, Texas, and the Dorothy Kuhlman Theisinger Marital Trust, Houston, Texas - Final Report.--It was reported that the final distributions from the Estate of Dorothy Kuhlman Theisinger, Houston, Texas, and the Dorothy Kuhlman Theisinger Marital Trust, Houston, Texas, comprised of cash and real estate, had been received for a total bequest of \$1,654,000 for cancer research at The University of Texas M.D. Anderson Cancer Center.

III. INTELLECTUAL PROPERTY

U. T. Austin: Approval of a Patent and Technology License Agreement with GJL & Associates Limited, Austin, Texas; and Authorization for Professor Gerald John Lipovski to Acquire Equity in GJL & Associates Limited, Austin, Texas.--The Asset Management Committee recommended and the Board:

- a. Approved the Patent and Technology License Agreement set out on Pages 167 - 181 between the U. T. Board of Regents, for and on behalf of The University of Texas at Austin, and GJL & Associates Limited, Austin, Texas, for the licensing of inventions and technology relating to computer hardware and software and semiconductor chip designs and architecture created by Professor Gerald John Lipovski, Professor in the Department of Electrical and Computer Engineering at U. T. Austin
- b. Approved Professor Lipovski's acquisition of equity in GJL & Associates Limited.

GJL & Associates Limited (GJLA) is a Texas limited liability corporation with principal offices in Austin, Texas. Under the Patent and Technology License Agreement, GJLA is granted a royalty-bearing, exclusive, worldwide license to make, have made, use or sell computer hardware, software and semiconductor chip designs developed by Professor Gerald John Lipovski.

GJLA will assign to Professor Lipovski 492.8 shares of its common stock (999.4 shares have been authorized and issued), will appoint him a director and chairman of GJLA's board of directors, and will retain him as a consultant. With appropriate institutional approval by U. T. Austin, Professor Lipovski will be an employee of GJLA during summer release time.

PATENT AND TECHNOLOGY LICENSE AGREEMENT

THIS AGREEMENT is made by and between the BOARD OF REGENTS (BOARD) OF THE UNIVERSITY OF TEXAS SYSTEM (SYSTEM), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, on behalf of THE UNIVERSITY OF TEXAS AT AUSTIN, and GJL & Associates Limited (LICENSEE), a Texas limited liability company having a principal place of business located at 1401 S. Meadows Drive, Austin, Texas 78758.

W I T N E S S E T H:

Whereas BOARD owns certain PATENT RIGHTS and TECHNOLOGY RIGHTS related to LICENSED SUBJECT MATTER, which were developed at The University of Texas at Austin, a component institution of The University of Texas System; and

Whereas BOARD desires to have the LICENSED SUBJECT MATTER developed and used for the benefit of LICENSEE, the inventor, BOARD, and the public as outlined in the Intellectual Property Policy promulgated by the BOARD; and

Whereas LICENSEE wishes to obtain a license from BOARD to practice LICENSED SUBJECT MATTER;

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

I. EFFECTIVE DATE

This agreement shall be effective as of October 7, 1991, subject to approval by the BOARD.

II. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings indicated:

2.1 LICENSED SUBJECT MATTER shall mean inventions and discoveries covered by PATENT RIGHTS, DISCLOSED INVENTIONS or TECHNOLOGY RIGHTS.

2.2 PATENT RIGHTS shall mean BOARD'S rights in presently existing information or discoveries covered by patents and/or patent applications whether domestic or foreign, Improvements, and all divisions, continuations, continuations-in-part,

reissues, reexaminations or extensions thereof, and any letters patent that issue thereon, ("PATENTS"), which presently existing PATENTS are listed in Section I of Schedule A appended hereto and incorporated herein, and which name Professor Gerald John Lipovski as either sole or joint inventor and which relate to the manufacture, use or sale of computer hardware, software, semi-conductor chip design or architecture (the "TECHNOLOGY").

2.3 DISCLOSED INVENTIONS shall mean BOARD'S rights in presently existing information or discoveries described in Intellectual Property Disclosure documents, whether or not patentable, which presently existing DISCLOSED INVENTIONS are listed in Section II of Schedule A appended hereto and incorporated herein, and which name Professor Gerald John Lipovski as sole or joint inventor or developer and which relate to the TECHNOLOGY.

2.4 TECHNOLOGY RIGHTS shall mean BOARD'S rights in any presently existing technical information, know-how, process, procedure, composition, device, method, formula, concept, plan, protocol, technique, software, design, drawing or data relating to the TECHNOLOGY which are not covered by PATENT RIGHTS or DISCLOSED INVENTIONS but which are directly related to or necessary for practicing the invention at any time covered by PATENT RIGHTS or DISCLOSED INVENTIONS.

2.5 LICENSED PRODUCT shall mean any product SOLD by LICENSEE comprising LICENSED SUBJECT MATTER pursuant to this Agreement.

2.6 SALE or SOLD shall mean the transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a SUBSIDIARY.

2.7 SUBSIDIARY shall mean any business entity more than 50% owned by LICENSEE, any business entity which owns more than 50% of LICENSEE, or any business entity that is more than 50% owned by a business entity that owns more than 50% of LICENSEE.

2.8 NET SALES shall mean the gross revenues received by LICENSEE from the SALE of LICENSED PRODUCTS less sales and/or use taxes actually paid, import and/or export duties actually paid, outbound transportation prepaid or allowed, and amounts allowed or credited due to returns (not to exceed the original billing or invoice amount).

2.9 IMPROVEMENTS shall mean any modifications, variations, revisions and/or new models of LICENSED PRODUCTS and/or TECHNOLOGY, provided such modification, variation, revision and/or new model, if unlicensed, would infringe one or more claims covered by BOARD'S PATENT RIGHTS.

III. WARRANTY: SUPERIOR-RIGHTS

3.1 Except for the future rights, if any, of the Government of the United States, as set forth below, BOARD represents and warrants its belief that it is the owner of the entire right, title, and interest in and to LICENSED SUBJECT MATTER, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder except as stated herein.

3.2 LICENSEE understands that future LICENSED SUBJECT MATTER may be developed under a funding agreement with the Government of the United States of America and, if so, that the Government may have certain rights relative thereto. This Agreement is explicitly made subject to the Government's rights under any such agreement and any applicable law or regulation. To the extent that there is a conflict between any such agreement, applicable law or regulation, and this Agreement, the terms of such Government agreement, applicable law or regulation shall prevail.

3.3 BOARD makes no representations other than those expressly stated in this Agreement, and specifically, BOARD MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IV. LICENSE

4.1 BOARD hereby grants to LICENSEE a royalty-bearing, exclusive license of the LICENSED SUBJECT MATTER to manufacture, have manufactured, and/or sell LICENSED PRODUCTS throughout the world. This grant shall be subject to the payment by LICENSEE to BOARD of all consideration as provided in this Agreement, and shall be further subject to rights retained by BOARD, to:

(a) Publish the general scientific findings from research related to LICENSED SUBJECT MATTER; and

(b) Use any information contained in LICENSED SUBJECT MATTER for research, teaching and other educationally-related purposes.

4.2 The rights retained by BOARD above shall be subject to LICENSEE being provided a copy of any proposed publication or the text or summary of any other public dissemination of LICENSED SUBJECT MATTER and matter disclosed relating to PATENTS and/or TECHNOLOGY no less than ninety (90) days prior to the date of the proposed publication or other

dissemination. In the event that LICENSEE believes that either the proposed publication or public dissemination could materially affect the value of the PATENTS and/or TECHNOLOGY, or that patent applications should be filed on the subject matter to be disclosed therein, the parties shall enter into good faith discussions to resolve the extent and timing of disclosure in the proposed publication or other dissemination or the filing of U.S. patent applications, as the case may be, and such resolution shall be achieved prior to the publication or other dissemination. LICENSEE will respond within sixty (60) days to author with proposed changes to wording so as to enable the author to publish as strong a technical paper as possible without disclosing information that would dilute LICENSEE's technology in this Agreement.

4.3 LICENSEE shall have the right to extend the license granted herein to any SUBSIDIARY provided that such SUBSIDIARY consents to be bound by this Agreement to the same extent as LICENSEE.

4.4 LICENSEE shall have the right to grant sublicenses consistent with this Agreement provided that LICENSEE shall be responsible for the operations of its sublicensees relevant to this Agreement as if such operations were carried out by LICENSEE, including the payment of royalties whether or not paid to LICENSEE by a sublicensee, except to the extent any such nonpayment results from a dispute over the validity of any LICENSED SUBJECT MATTER, provided that upon the BOARD's request LICENSEE establishes to BOARD's reasonable satisfaction that there is a bona fide commercial dispute relating to the validity of any LICENSED SUBJECT MATTER. LICENSEE further agrees to deliver to BOARD a true and correct copy of each sublicense granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, modification, or termination. Upon termination of this Agreement, any and all existing sublicenses granted by LICENSEE shall be assigned to BOARD.

4.5 BOARD shall have the right at any time after two (2) years from the date of this Agreement, to terminate the exclusivity of the license granted herein if LICENSEE, within ninety (90) days after written notice from BOARD as to such intended termination of exclusivity, fails to provide written evidence that it has commercialized or is actively attempting to commercialize the LICENSED SUBJECT MATTER. BOARD agrees to negotiate in good faith with LICENSEE for adjusting terms under such a non-exclusive arrangement. BOARD shall have the right at any time after three (3) years from the date of this Agreement to terminate the license completely in any national political jurisdiction if LICENSEE, within ninety days (90) after written notice from BOARD of such intended termination,

fails to provide written evidence that it has commercialized or is actively attempting to commercialize an invention licensed hereunder within such jurisdiction. Evidence provided by LICENSEE that it has an ongoing and active research, development, manufacturing, marketing or licensing program as appropriate, directed toward the production and sale of products based on the invention disclosed and claimed in PATENTS or incorporating TECHNOLOGY within such jurisdiction shall be deemed satisfactory evidence.

V. PAYMENTS AND REPORTS

5.1 In consideration of rights granted by BOARD to LICENSEE under this Agreement, LICENSEE agrees to pay BOARD the following:

(a) A nonrefundable license documentation fee in the amount of \$41,298.91 representing the fees and expenses of counsel that the BOARD has incurred through July 10, 1991, plus any fees and expenses similarly incurred by BOARD through the date of execution of this Agreement by BOARD, which shall be due and payable when this Agreement is executed by LICENSEE and BOARD; and

(b) A running royalty equal to two percent (2%) of NET SALES of LICENSED PRODUCTS, less any royalties paid to BOARD under paragraph (c), with respect to such SALES; and

(c) Eight percent (8%) of the gross revenues received by LICENSEE from any sublicensee, less the expenses provided for in paragraph 5.1(d).

(d) In determining the NET SALES base and/or the gross revenues base to use under paragraphs 5.1(b) and 5.1(c), LICENSEE shall be entitled to deduct the costs and expenses that it incurs after the date of this Agreement (i) in defending PATENTS or TECHNOLOGY RIGHTS against infringement claims of third parties, and (ii) in asserting infringement of such rights by third parties; provided, however, that all applicable deductions will be reduced by the amount of monies specifically awarded to LICENSEE by a court, arbitrator, or in settlement to cover attorneys' fees and/or other legal costs.

5.2 In accord with Section III of this Agreement, BOARD does not warrant that exercise by LICENSEE of the rights herein granted do not infringe patent rights and/or technology rights of other parties. In the event, however, that such exercise is alleged to infringe on the patent rights and/or technology rights of third parties, and LICENSEE is required to pay a

royalty to such third party in order to continue to exercise the rights herein granted, BOARD and LICENSEE agree to negotiate in good faith to adjust the royalties otherwise due BOARD. In the event the parties are unable to agree, within six (6) months after LICENSEE notifies BOARD in writing that it wishes an adjustment, the parties shall submit the dispute to non-binding mediation, pursuant to which the parties shall endeavor in good faith to agree upon a reasonable adjustment.

5.3 During the Term of this Agreement and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its and its sublicensees' SALES and NET SALES of LICENSED PRODUCTS under the license granted in this Agreement in sufficient detail to enable the royalties payable hereunder to be determined. LICENSEE shall permit BOARD, at BOARD'S expense, to periodically examine its books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any report required under this Agreement. In the event that the amounts due to BOARD are determined to have been underpaid, LICENSEE shall pay the amount due and accrued interest thereon at the rate of eight percent (8%) per annum. In the event that the amounts due to BOARD are determined to have been underpaid by 5% or more, LICENSEE shall pay the cost of such examination.

5.4 Within thirty (30) days after March 31, June 30, September 30 and December 31, beginning March 31, 1992, LICENSEE shall deliver to BOARD at the address listed in paragraph 5.6 below, a true and accurate report, giving such particulars of the business conducted by LICENSEE and its sublicensees, if any exist, during the preceding three (3) calendar months under this Agreement as are pertinent to an account for payments hereunder. Such report shall include at least (a) the quantities of LICENSED SUBJECT MATTER that it has produced; (b) the total SALES; (c) the calculation of royalties thereon; and (d) the total royalties so computed and due BOARD. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period of such report. If no payments are due, it shall be so reported.

5.5 Upon the request of BOARD but not more than once per calendar year, LICENSEE shall deliver to BOARD a written report as to LICENSEE's efforts and accomplishments during the preceding year in commercializing LICENSED SUBJECT MATTER in various parts of the LICENSED TERRITORY and its commercialization plans for the upcoming year.

5.6 All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind, other than

withholding taxes imposed by a foreign jurisdiction. Checks shall be made payable to The University of Texas at Austin and mailed to: Executive Vice President and Provost, The University of Texas at Austin, Main Building 201, Austin, Texas, 78712-1111, Attention: Patricia C. Ohlendorf.

VI. TERM AND TERMINATION

6.1 The term of this Agreement shall extend from the Effective Date set forth hereinabove to the full end of the term or terms for which PATENT RIGHTS have not expired.

6.2 This agreement will earlier terminate:

(a) automatically if LICENSEE shall become bankrupt or insolvent and/or if the business of LICENSEE shall be placed in the hands of a receiver, assignee, or trustee, whether by voluntary act of LICENSEE or otherwise;

(b) Upon ninety (90) days written notice if LICENSEE shall breach or default on any obligation under this License Agreement; provided, however, LICENSEE may avoid such termination if before the end of such period LICENSEE notifies BOARD that such breach has been cured and states the manner of such cure.

(c) Under the provisions of Paragraph 4.5, if invoked.

(d) Upon the mutual written agreement of the parties.

6.3 Upon termination of this Agreement for any cause, nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination. LICENSEE may, after the effective date of such termination, sell all LICENSED PRODUCT and parts therefor that it may have on hand at the date of termination, provided that it pays earned royalty thereon as provided in this Agreement.

6.4 Upon and effective as of the date of termination of this Agreement pursuant to Paragraph 4.4 above, LICENSEE grants to BOARD a nonexclusive license with the right to sublicense others with respect to improvements made by LICENSEE in the LICENSED SUBJECT MATTER. BOARD'S right to sublicense others hereunder shall be solely for purposes of permitting others to develop and commercialize the entire technology package.

VII. INFRINGEMENT BY THIRD PARTIES

7.1 LICENSEE shall have the obligation of enforcing at its expense any patent exclusively licensed hereunder against any substantial and continuing infringement by third parties, to the extent such enforcement is commercially reasonable, and shall be entitled to retain recovery from such enforcement. LICENSEE shall pay BOARD a royalty on any excess monetary recovery to the extent that such monetary recovery is held to be damages or a reasonable royalty in lieu thereof, over expenses (specifically, out-of-pocket expenses, costs and attorneys' fees) not otherwise awarded to LICENSEE. In the event that LICENSEE does not file suit against and/or begin settlement negotiations with a substantial infringer, as provided above, within six (6) months of knowledge thereof, then BOARD shall have the right, after thirty (30) days written notice to LICENSEE, to enforce any patent licensed hereunder on behalf of itself and LICENSEE (BOARD retaining all recoveries from such enforcement) and, in the event the BOARD undertakes such enforcement, to negotiate new royalty percentages to reflect the value created by the BOARD's action. In the event the parties are unable to agree, within six (6) months after BOARD notifies LICENSEE in writing that it wishes an adjustment, the parties shall submit the dispute to non-binding mediation, pursuant to which the parties shall endeavor in good faith to agree upon a reasonable adjustment.

7.2 In any suit or dispute involving an infringer, the parties shall cooperate fully, and upon the request and at the expense of the party bringing suit, the other party shall make available to the party bringing suit at reasonable times and under appropriate conditions all relevant personnel, records, papers, information, samples, specimens, and the like which are in its possession.

VIII. ASSIGNMENT

This Agreement may not be assigned by LICENSEE without the prior written consent of BOARD. BOARD may assign its right to receive payments hereunder.

IX. PATENT MARKING

LICENSEE agrees to use its best efforts to mark permanently and legibly all products and documentation manufactured or sold by it under this Agreement with such patent notice as may be permitted or required under Title 35, United States Code.

X. INDEMNIFICATION

LICENSEE shall hold harmless and indemnify BOARD, SYSTEM, UNIVERSITY, its Regents, officers, employees and agents from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of any injury or death of persons or damage to property caused by, or arising out of, or resulting from, the actions or omissions of LICENSEE, Sublicensees or the officers, employees, agents or representatives of LICENSEE or Sublicensees in exercising or practicing the LICENSED SUBJECT MATTER.

XI. USE OF BOARD AND COMPONENT'S NAME

LICENSEE shall not use the name of The University of Texas at Austin, SYSTEM, BOARD, or Regents without express written consent.

XII. CONFIDENTIAL INFORMATION

12.1 BOARD and LICENSEE each agree that all information contained in documents marked "confidential" which are forwarded to one by the other shall be received in strict confidence, used only for the purposes of this Agreement, and not disclosed by the recipient party (except as required by law or court order), its agents or employees without the prior written consent of the other party, unless such information (a) was in the public domain at the time of disclosure, (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns, (c) was lawfully disclosed to the recipient party by a third party having the right to disclose it, (d) was already known by the recipient party at the time of disclosure, (e) was independently developed or (f) is required to be submitted to a government agency pursuant to any preexisting obligation.

12.2 Each party's obligation of confidentiality hereunder shall be fulfilled by using at least the same degree of care with the other party's confidential information as it uses to protect its own confidential information. This obligation shall exist while this Agreement is in force and for a period of three (3) years thereafter.

12.3 Except as otherwise required by law, BOARD shall use its best efforts to keep the terms of this agreement in strict confidence.

13.1 LICENSEE shall reimburse BOARD for all expenses incurred by BOARD thus far in searching, preparing, filing, prosecuting and maintaining patent applications and patents relating to PATENT RIGHTS. LICENSEE shall be responsible, at its own expense, for completing the prosecution of pending patent applications and continuations-in-part relating to PATENT RIGHTS. If after consultation it is agreed by LICENSEE (which agreement shall not be unreasonably withheld) that a patent application should be filed for LICENSED SUBJECT MATTER, LICENSEE will prepare and file appropriate patent applications. However, if LICENSEE notifies BOARD that it does not intend to pay the cost of an application then BOARD may file such application at its own expense and LICENSEE shall have no rights to such invention. Should LICENSEE, however, within three (3) months after BOARD files such application desire to regain rights to such LICENSED SUBJECT MATTER, LICENSEE may reimburse BOARD for any incurred patent related expenses and upon reimbursement shall regain all rights to such LICENSED SUBJECT MATTER as provided for under this Agreement.

13.2 If during the term of this Agreement, any items and/or inventions are disclosed to BOARD naming Professor Gerald John Lipovski as the inventor (solely or jointly), which are not covered under PATENT RIGHTS, DISCLOSED INVENTIONS and/or TECHNOLOGY RIGHTS, and which may be useful in the manufacture and sale or use of LICENSED PRODUCTS, BOARD will offer LICENSEE an exclusive license to practice the subject matter of the item and/or invention, except to the extent restricted by any funding agreement with a third party. Any license agreement reached between the parties shall substantially reflect the terms of this Agreement with a royalty rate reasonable under the circumstances. In setting such a royalty rate, the parties shall take into account the expectation that the LICENSED SUBJECT MATTER will be used in applications of the types described on Schedule B attached hereto and incorporated herein, and that items that would be subject to Paragraph 13.2 may be developed in connection with such applications. To the extent such items are useful primarily in such applications, the parties anticipate that reasonable royalty rates would be the rates set forth in Paragraph 5.1, but acknowledge that future market conditions may affect the reasonableness of those rates.

13.3 LICENSEE shall have the responsibility of filing and prosecuting any patent applications associated with any license granted to it pursuant to the procedure followed in Paragraph 13.2 herein.

13.4 If an item subject to Paragraph 13.2 has more than one inventor and all inventors are not subject to assignment to BOARD, then:

(a) If 50% or more of the number of inventors, but not all, are subject to assignment to the BOARD under its patent policy, then the item shall be subject to Paragraph 13.2 (subject to any rights retained by any assignee of the co-inventor(s) that are not subject to assignment to the BOARD), but the negotiable royalty payment shall be reduced proportionately; and

(b) If less than 50% of the number of inventors are subject to assignment under the BOARD's patent policy, then the item shall be assigned to BOARD only by those inventors who are so subject, and BOARD and the other co-inventors/assignees of the item shall be considered joint owners of the intellectual property rights encompassed by the item. Further, BOARD's negotiated royalties shall be reduced in proportion to the number of inventors who are subject to assignment under the BOARD's patent policy.

XIV. GENERAL

14.1 This Agreement constitutes the entire and only agreement between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

14.2 Any notice required by this License Agreement shall be given by prepaid, first class, certified mail, return receipt requested, effective upon receipt and addressed in the case of BOARD to:

BOARD OF REGENTS
The University of Texas System
201 West 7th Street
Austin, Texas 78701
ATTENTION: System Intellectual Property Office

with a copy to:

Executive Vice President and Provost
The University of Texas at Austin
Main Building 201
Austin, Texas 78712-1111
ATTENTION: Patricia C. Ohlendorf

or in the case of LICENSEE to:

Chairman
GJL & Associates Limited
1401 S. Meadows Drive
Austin, Texas 78758

ATTENTION: Prof. Gerald John Lipovski

with copies to:

President
GJL & Associates Limited
c/o Hayes & Griffith
190 S. LaSalle Street
Chicago, IL 60603
ATTENTION: Lewis G. Larsen

and

Priscilla A. Walter
Gardner, Carton & Douglas
321 N. Clark Street
Chicago, IL 60610

or such other address as may be given from time to time under the terms of this notice provision.

14.3 LICENSEE shall comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement.

14.4 This License Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.

14.5 Failure of BOARD to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

14.6 Headings included herein are for convenience only and shall not be used to construe this Agreement.

14.7 If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of the remainder of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this AGREEMENT.

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

GJL & ASSOCIATES LIMITED

By *Michael E. Patrick*
Michael E. Patrick
Executive Vice Chancellor
for Asset Management

By *Gerald John Lipovski*
Gerald John Lipovski
Chairman

Date: *October 31, 1991*

Date: *October 17, 1991*

APPROVED AS TO CONTENT:

By *Gerhard J. Fonken*
Gerhard J. Fonken
Executive Vice President
and Provost
The University of Texas
at Austin

By *Lewis G. Larsen*
Lewis G. Larsen
President

Date: *October 17, 1991*

Date: *10/28/91*

APPROVED AS TO FORM:

By *Dudley R. Bobie, Jr.*
Dudley R. Bobie, Jr.
Office of General Counsel

Date: *10/30/91*

3781W

SCHEDULE A
I. PATENTS

UTSB:352 - Federal Serial #359-075 - U.S. filing date
May 30, 1989 - Entitled
"Synchronization Circuit for Parallel Processing"

UTSB:353 - U.S. Patent #4,989,180 -
Issued January 29, 1991
Entitled "Dynamic Memory with Logic-In-Refresh"

UTSB:461 - (CIP of UTSB:353) - Federal Serial #577,991 -
U.S. filing date September 5, 1990 -
Entitled - "Dynamic Associative Memory with
Logic-In-Refresh"

II. DISCLOSED INVENTIONS

1. Full-text retrieval computer systems and software.
2. Two-level Banyan Network
3. Digital Neural Network
4. Linda Resource Management System
5. CD-ROM Accelerator

SCHEDULE A, Section II, inventions #1 through and in-
cluding #5 were disclosed by Professor Gerald John
Lipovski to The University of Texas at Austin in
October of 1991).

SCHEDULE B

Anticipated Applications

1. Rule-Based Evaluation

Application of DAAM chips to artificial intelligence and rule-based searches may require development of related support chips. Possible patents on support chips and software.

2. Fuzzy Logic Evaluation

Use of DAAM chips in evaluation of Fuzzy Logic Expressions. Applications in industrial controls.

3. Polygon Rendering

Application of DAAM and support chips in accelerating rendering of graphics displays.

4. Speech Recognition

The SIMD processing power of the associative memory has applications in digital filtering and convolution, and the search capability in phonetic dictionaries, in speech recognition.

5. Optimal Shopping

The problem--given a list of items to be purchased, identify the store having all of them which has the lowest total price--is essentially the same as the inner product query for full-text database retrieval and could employ the Tony nodes.

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IV. OTHER MATTERS

1. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Amendments to Chapter IX, Section 1.2 (Authority to Assign and Transfer Securities Owned by the PUF and the Board).--In order to reflect a recent realignment of staff responsibilities within The University of Texas System Office of Asset Management, the Board amended the Regents' Rules and Regulations, Part Two, Chapter IX, Section 1.2, regarding the authority to assign and transfer securities owned by the Permanent University Fund and the Board, to read as set forth below:

- 1.2 Authority to Assign and Transfer Securities Owned by the PUF and the Board.--The Chancellor, or his or her delegate, the Executive Vice Chancellor for Asset Management, the Executive Director for Endowment Management and Administration, and the Director of the Office of Budget and Fiscal Policy may each assign and transfer any and all securities of any description whatever and execute any and all documents necessary to the consummation of any sale, assignment, or transfer of any securities registered in the name of the PUF or the Board, or in any other form of registration of such securities held for the account of the PUF or the Board in whatever manner, including all fiduciary capacities and including those registered in the names of trusts or foundations managed and controlled by said Board. In addition, custodian banks appointed by the Executive Vice Chancellor for Asset Management may assign and transfer securities and execute any and all documents necessary to the consummation of any sale, assignment, or transfer of any security owned by the Board.

2. Permanent University Fund: Approval to Extend Commitment of a Maximum \$10 Million Permanent University Fund Investment in the Texas Growth Fund to June 30, 1992.--At the conclusion of the meeting of the Asset Management Committee, Committee Chairman Cruikshank called on Executive Vice Chancellor for Asset Management Mike Patrick for comments regarding the Texas Growth Fund.

Executive Vice Chancellor Patrick reported that the Texas Growth Fund was established on November 8, 1988, by amendment to the Texas Constitution to achieve long-term growth of investment capital and income by purchasing securities of businesses creating, retaining, or expanding employment opportunity and economic growth in the State of Texas. He stated that, at its December 1990 meeting, the U. T. Board of Regents agreed to invest up to \$10 million of the Permanent University Fund in the Texas Growth Fund subject to satisfaction of the following conditions:

- a. Review and approval of final terms and documentation by the Office of Asset Management

- b. Review and approval of the Fund offering by the Attorney General of the State of Texas
- c. Approval of the appointment of the Executive Director of the Fund by the Office of Asset Management
- d. Receipt by the Fund of minimum aggregate subscriptions of \$50 million.

Noting that three of the four conditions set out above had been met, Mr. Patrick pointed out that the Board's commitment of \$10 million of the Permanent University Fund expired in June 1991 and requested that the Board renew its \$10 million commitment and extend it to June 30, 1992.

Upon motion of Regent Barshop, seconded by Regent Loeffler, approval was given to extend the commitment to invest up to \$10 million of the Permanent University Fund in the Texas Growth Fund to June 30, 1992.

Regent Barshop noted that Mr. Patrick had been the driving force behind the Texas Growth Fund and expressed appreciation for his dedicated stewardship and wise counsel in this prudent investment of the Permanent University Fund.

RECONVENE.--At 11:17 a.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regent Ramirez, Vice-Chairman of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

Report

At its meeting on August 8, 1991, the Board for Lease of University Lands requested nominations for a sealed bid oil and gas lease sale to be held on May 6, 1992, in Midland, Texas.

Nominations for the lease sale were due on November 15, 1991. The Board for Lease has received nominations covering approximately 57,000 acres of Permanent University Fund lands located in 10 West Texas counties.

Approximately forty percent of the acreage that will be leased has been involved in litigation since 1983 and has not been available for oil and gas leasing. This acreage should bring good bonuses to the Permanent University Fund at the forthcoming oil and gas lease sale.

OTHER MATTERS

1. U. T. Board of Regents: Certificate of Appreciation to Dr. Wendell H. Nedderman, President of The University of Texas at Arlington.--Chairman Beecherl recognized Regent Barshop who noted that it was his personal pleasure to express the gratitude and appreciation of the Board of Regents to President Wendell H. Nedderman of The University of Texas at Arlington who will retire from that administrative position effective December 31, 1991.

Regent Barshop pointed out that for over thirty years Dr. Nedderman had presided over U. T. Arlington with diligence, wisdom, dedication, and a vision for the future. During those important years in the maturation of that institution, Dr. Nedderman has provided the leadership, challenge, spirit, and sense of academic progress which has moved that campus to an important place in the Dallas/Fort Worth metroplex.

In recognition of President Nedderman's many years of devoted service to The University of Texas System, Regent Barshop read and presented the following Certificate of Appreciation:

CERTIFICATE OF APPRECIATION

The Board of Regents

Expresses to

WENDELL H. NEDDERMAN, Ph.D.

Its Deep Appreciation for His More than
Three Decades of Distinguished Service

to

The University of Texas System

and

In Particular, the Board is especially grateful for his wise counsel, exceptional leadership, and thoughtful vision as

Acting President and President
of
The University of Texas at Arlington
1972 - 1991

Adopted by unanimous vote this 5th day of December 1991

(signed by all members of the Board)

President Nedderman graciously accepted this accolade and expressed his sincere appreciation to the Board for the opportunity to serve The University of Texas System.

2. U. T. Board of Regents: Certificate of Appreciation to Dr. Duane M. Leach, President of The University of Texas of the Permian Basin.--On behalf of the Board of Regents, Regent Temple stated that she was pleased to present a Certificate of Appreciation to Dr. Duane M. Leach which recognizes his distinguished service as President of The University of Texas of the Permian Basin since 1983, and his decision to retire from that presidency at the end of this year.

Regent Temple noted that among Dr. Leach's many accomplishments none has been more important, nor offered more potential for the future, than the improved community and business relationships from which U. T. Permian Basin now benefits. Aside from Dr. Leach's community relationships, his tenure as President will be recognized for at least two major efforts. First, the successful campaign to fund, build, and program the Center for Energy and Economic Diversification with all of its promise for the economic and business development for the Permian Basin. Second, his leadership and dedication to the successful political and community

effort to permit U. T. Permian Basin to accept freshman and sophomore students. The approval of four-year status will, hopefully, initiate a new era in the importance of U. T. Permian Basin to the higher education resources of West Texas.

Regent Temple expressed sincere appreciation for Dr. Leach's presidential service and offered the Board's best wishes as he prepares for a new faculty role at the campus where his leadership has indeed made a difference.

Regent Temple then read and presented the following Certificate of Appreciation:

CERTIFICATE OF APPRECIATION

The Board of Regents

Expresses to

Duane M. Leach, Ph.D.

Its Deep Appreciation for His

Distinguished Service

to

The University of Texas System

as

President

The University of Texas of the Permian Basin

1983 - 1991

Adopted by unanimous vote this 5th day of December 1991

(signed by all members of the Board)

President Leach expressed his sincere appreciation to the Board for the opportunity to serve The University of Texas System and wished his presidential colleagues well. He noted that he would continue to watch the steady progress of the U. T. System and would expect the same impressive record to be maintained.

3. U. T. Board of Regents: Certificate of Appreciation to Dr. Homer J. Pena, President of The University of Texas at Brownsville.--On behalf of the U. T. Board of Regents, Vice-Chairman Ramirez acknowledged Dr. Homer J. Pena's more than ten years of dedicated and distinguished service as President of what is now proudly called The University of Texas at Brownsville. Formerly Pan American University - Brownsville and The University of Texas - Pan American at Brownsville, Dr. Pena's remarkable academic leadership has expanded the availability of higher education in that area of the Valley and has provided a firm foundation for the Board's partnership with Texas Southmost College.

Dr. Ramirez noted that, as Dr. Pena leaves the presidency, the Board was very pleased that he had agreed to remain as a special advisor to his successor, Dr. Juliet Garcia. Of equal importance is Dr. Pena's acceptance of a position as Executive Director for South Texas Program Development which will permit his academic experience and expertise to be used in the enhanced development of educational and service programs at The University of Texas System institutions in South Texas and other border areas.

Vice-Chairman Ramirez then read and presented the following Certificate of Appreciation to Dr. Pena:

CERTIFICATE OF APPRECIATION

The Board of Regents
Expresses to
Homer J. Pena, Ed.D.
Its Deep Appreciation for His
Distinguished Service
to
The University of Texas System
as
President
of
The University of Texas - Pan American at Brownsville
(formerly Pan American University - Brownsville)
1980 - 1991
and
Founding President
of
The University of Texas at Brownsville
1991

Adopted by unanimous vote this 5th day of December 1991
(signed by all members of the Board)

Dr. Ramirez stated that the Board was grateful for Dr. Pena's presidential service and wished him well in his new responsibilities.

Dr. Pena thanked the Board for the opportunity to serve the U. T. System and stated that he looked forward to his new role as Executive Director for South Texas Program Development.

4. U. T. Board of Regents: Certificate of Appreciation to Mr. Michael E. Patrick, Executive Vice Chancellor for Asset Management.--On behalf of the U. T. Board of Regents, Vice-Chairman Cruikshank stated that it was his privilege to present a Certificate of Appreciation to Executive Vice Chancellor for Asset Management Michael E. Patrick as he prepares to accept new responsibilities in the private sector.

Vice-Chairman Cruikshank pointed out that Mr. Patrick joined The University of Texas System in October 1984, and since that date has fulfilled his asset management responsibilities with dedication, courage, vision, and exceptional ability. In short, Mr. Patrick brought a new and active philosophy to the U. T. System's asset management program and initiated an in-house personnel and technological capacity to manage the demands of an aggressive portfolio management program.

The measures of his leadership and success during his seven-year tenure are well recognized:

- The value of the Permanent University Fund increased from \$2.1 to \$3.9 billion and the Common Trust Fund from \$222 million to \$763 million
- The U. T. share of the Available University Fund has totalled nearly \$1.2 billion and over \$800 million of the PUF increase has resulted from gains on investment sales.

Of equal importance are Mr. Patrick's many program and managerial improvements which will continue to bring benefits to the U. T. System for many years:

- The active and effective management of endowment real estate to the increased benefit of the components -- of which the Brackenridge Tract Development Agreement is a prime example
- The consolidation of several component revenue debt programs into a single U. T. System Revenue Financing System with a bond rating of AA+
- The initiation of short-term commercial paper financing for both PUF and Revenue System projects with substantial interest savings, and
- The completion of six advanced refundings of U. T. System debt and four escrow restructurings to generate cumulative debt service savings of over \$70 million.

While many other accomplishments could appropriately be credited to Mr. Patrick, Vice-Chairman Cruikshank concluded with only two. First, Mr. Patrick introduced the Board to the thrills and chills of private placements and admitted that the Board would not have missed the debate that surrounded the introduction of this asset allocation, which now totals about \$230 million. Second, and perhaps Mr. Patrick's most historic accomplishment, he out-negotiated the representatives of Tin Pan Alley and procured the unrestricted rights to "The Eyes of Texas" in the name of the Board of Regents.

In recognition of Executive Vice Chancellor Patrick's devoted service to The University of Texas System, Vice-Chairman Cruikshank read and presented the following Certificate of Appreciation:

CERTIFICATE OF APPRECIATION

The Board of Regents
of
The University of Texas System

Expresses to

MICHAEL E. PATRICK

Deep and Sincere Appreciation for His Leadership,
Distinguished Service and Wise Counsel

as

Executive Vice Chancellor for Asset Management
The University of Texas System

1984 - 1991

Adopted by unanimous vote this 5th day of December 1991

(signed by all members of the Board)

Mr. Cruikshank noted that the U. T. System has benefitted in extraordinary ways from Mr. Patrick's seven years of dedicated stewardship and wise counsel and wished him every success as he accepts new challenges and responsibilities in the private sector.

Mr. Patrick graciously accepted this accolade and expressed his sincere appreciation for the opportunity to serve The University of Texas System.

RECESS TO EXECUTIVE SESSION.--At 11:30 a.m., the Board recessed to convene in Executive Session pursuant to Vernon's Texas Civil Statutes, Article 6252-17, Sections 2(e), (f) and (g) to consider those matters set out in the Material Supporting the Agenda.

RECONVENE.--At 2:35 p.m., the Board reconvened in open session.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Beecherl reported that the Board had met in Executive Session in Room 112 of the Reuel A. Stallones Building to discuss matters in accordance with Article 6252-17, Sections 2(e), (f), and (g) of Vernon's Texas Civil Statutes. In response to Chairman Beecherl's inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. M.D. Anderson Cancer Center: Settlement of Medical Liability Claim - Kenworth Carrington.--Regent Moncrief moved that the Chancellor and the Office of General Counsel be authorized to settle on behalf of The University of Texas M.D. Anderson Cancer Center the medical liability claim filed by Kenworth Carrington in accordance with the proposal presented in Executive Session.

Regent Loeffler seconded the motion which prevailed without objection.

2. U. T. Austin: Approval of the Findings and Recommendations of a Faculty Hearing Tribunal Regarding the Termination of Dr. Donald M. Stadtner, a Tenured Faculty Member.--Chairman Beecherl reported that in Executive Session the Board had heard oral arguments from counsel for Dr. Donald M. Stadtner and for The University of Texas at Austin. Chairman Beecherl then called on Regent Barshop.

Regent Barshop moved that the Board approve the findings of fact and recommendations of the faculty hearing tribunal regarding the termination of Dr. Donald M. Stadtner as a tenured member of the faculty at U. T. Austin. The findings and recommendations are supported by the record of the proceedings before the hearing tribunal.

Regent Barshop further moved that the termination of Dr. Stadtner be effective December 5, 1991.

Regent Loeffler seconded the motions which carried by unanimous vote.

SCHEDULED MEETING.--Chairman Beecherl announced that the next meeting of the U. T. Board of Regents would be held on February 13, 1992, at The University of Texas at Tyler.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 2:38 p.m.


Arthur H. Dilly
Executive Secretary.

December 12, 1991