

Meeting No. 814

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

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February 13-14, 1986

Houston, Texas

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 OF
 THE UNIVERSITY OF TEXAS SYSTEM
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 HOUSTON, TEXAS

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MEETING NO. 814

THURSDAY, FEBRUARY 13, 1986.--The members of the Board of Regents of The University of Texas System convened in regular session at 1:00 p.m. on Thursday, February 13, 1986, in the Conference Room on the tenth floor of The University of Texas Houston - Main Building, Houston, Texas, with the following in attendance:

ATTENDANCE.--

Present

Chairman Hay, presiding
Vice-Chairman Baldwin
Vice-Chairman Ratliff
Regent Blanton
Regent (Mrs.) Briscoe
Regent (Mrs.) Milburn
Regent Rhodes
Regent Roden

Absent

*Regent Yzaguirre

Executive Secretary Dilly

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

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

WELCOME BY ROGER J. BULGER, M.D., PRESIDENT OF THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT HOUSTON.--Chairman Hay stated that the Board was pleased to be meeting in Houston and then called on Roger J. Bulger, M.D., President of The University of Texas Health Science Center at Houston (the host institution).

On behalf of the faculty, staff and students of the U. T. Health Science Center - Houston, President Bulger welcomed the members of the Board and other guests to Houston. In view of the Regents' full agenda, President Bulger elected to forego the usual institutional presentation.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON DECEMBER 5-6, 1985.--Upon motion of Vice-Chairman Ratliff, seconded by Vice-Chairman Baldwin, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on December 5-6, 1985, in Odessa, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XXXIII, Pages 853 - 1913.

*Regent Yzaguirre was excused due to illness.

INTRODUCTION OF FACULTY AND STUDENT REPRESENTATIVES AND DR. LOU LASHER, ASSISTANT TO THE EXECUTIVE VICE CHANCELLOR FOR ACADEMIC AFFAIRS.--Chairman Hay called on the chief administrative officers of the component institutions to introduce their respective faculty and student representatives and other guests:

U. T. Arlington

President Nedderman introduced:

Faculty Representative:	Dr. Pedro Lecca, Chairman Faculty Senate
Student Representatives:	Mr. Walter Price, President Student Congress Mr. Noel Bustamante, Parlia- mentarian, Student Congress Mr. Mike Rupe, General Reporter, <u>The Shorthorn</u>

U. T. Austin

President Cunningham introduced:

Faculty Representative:	Dr. Reuben R. McDaniel, Jr. Chairman, Faculty Senate
Student Representatives:	Ms. Martha Ashe, General Reporter, <u>The Daily Texan</u> Ms. Paula Blesner, General Reporter, <u>The Daily Texan</u>

U. T. Dallas

President Rutford introduced:

Faculty Representative:	Dr. Cy Cantrell, Speaker of the Faculty
Student Representative:	Ms. Maxine Maxfield, Representing the Student Senate

U. T. San Antonio

President Wagener introduced:

Faculty Representative:	Dr. Daphne Sipes, Assistant Professor, Division of Economics and Finance
Student Representative:	Mr. Kevin Gutchess, Senior Criminal Justice Major and President, Inter- fraternity Council

U. T. Tyler

President Hamm introduced:

Faculty Representative:	Dr. Patricia A. Gajda President, Faculty Senate
Student Representative:	Miss Kay Buchanan, President Student Association

U. T. Medical Branch - Galveston

President Levin introduced:

Faculty Representative:

Virginia Rahr, R.N., Ed.D.
Associate Professor
Undergraduate Nursing
Program Director, U. T.
Nursing School - Galveston

Student Representative:

Ms. Cynthia Hoyler, Graduate
Student, U. T. Nursing
School - Galveston

U. T. Health Science Center - Houston

President Bulger introduced:

Faculty Representative:

Denis Lynch, D.D.S., Assis-
tant Professor, Depart-
ment of Pathology and
Radiology, U. T. Dental
Branch - Houston

Student Representative:

Ms. Andrea Biddle, President
Student Intercouncil
and Second Year Student,
U. T. Public Health
School - Houston

U. T. Health Science Center - San Antonio

President Howe introduced:

Faculty Representative:

Dr. Pamela Stanton, Program
Director, Physical Therapy

Student Representative:

Mr. Robert Garcia
Third Year Medical Student

U. T. Cancer Center

President LeMaistre introduced:

Faculty Representative:

Joseph T. Ainsworth, M.D.,
Vice President for Patient
Care

Following these introductions, Chairman Hay recognized Executive Vice Chancellor Duncan who introduced Dr. Lou Lasher, Assistant to the Executive Vice Chancellor for Academic Affairs, and noted her fifteen years of administrative and teaching experience in higher education.

SPECIAL ITEMS

1. U. T. System: Permission for Dr. Robert D. Mettlen, Dr. Rodolfo O. de la Garza and Mr. James L. Crowson to Serve on the City of Austin's Comprehensive Plan Steering Committee [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Dr. Robert D. Mettlen, Vice President for Planning and Special Projects at The University of Texas at Austin, Dr. Rodolfo O. de la Garza, Executive Assistant to the Chancellor, and Mr. James L. Crowson, Vice Chancellor and General Counsel at The University of Texas System, to serve on the City of Austin's Comprehensive Plan Steering Committee. The panel members will serve without remuneration.

These appointments are of benefit to the State of Texas, create no conflict with the regular duties of these individuals and are 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.

On behalf of the Board, Chairman Hay expressed appreciation to the Austin City Council at the opportunity for these distinguished members of the U. T. family to participate in this important planning process.

2. U. T. System: Approval for Advance Refunding or Cash Defeasance of Certain Non-Permanent University Fund Bond Issues.--Chairman Hay called on Executive Vice Chancellor for Asset Management Patrick to make a presentation on the fiscal implications to The University of Texas System associated with the advance refunding or cash defeasance of certain non-Permanent University Fund indebtedness.

Following Executive Vice Chancellor Patrick's presentation, the Board authorized the Office of Asset Management and the Office of General Counsel to take all actions necessary to bring to the U. T. Board of Regents at its next meeting a firm recommendation concerning advance refunding or cash defeasance of certain non-Permanent University Fund indebtedness, including specifically the following actions, subject to final ratification by the Board:

- a. Appoint underwriters for the advance refundings
- b. Concur in the appointment of underwriters' counsel
- c. Appoint bond and/or tax counsel
- d. Appoint escrow agents for the investment of proceeds from refunding bonds and fund withdrawals with which to service existing bond indebtedness
- e. Designate a Pricing Committee to work with the managing underwriters to agree on the pricing terms
- f. Authorize the Office of Asset Management to select, through the appropriate procedures, a Paying Agent and Registrar

Further, the Office of Asset Management was authorized to establish from the proceeds of the advance refundings or cash defeasances any necessary accounts to receive and disburse monies related to the cost of advance refundings or cash defeasances.

The bond issues that would be involved in the transactions include, but are not limited to, the following issues:

The University of Texas System
General Tuition Revenue Bonds
Series 1971, 1972, 1972-A and 1978

The University of Texas at Austin
Building Revenue Bonds, Series 1974 and 1978
Building Revenue Bonds, Series 1969 and 1983

The University of Texas at Arlington
Combined Fee Revenue Bonds, Series 1971-A,
1973, 1973-A, 1974, 1978 and 1985
Student Fee Revenue Bonds, Series 1964,
1966, and 1968

The University of Texas Medical Branch
at Galveston
Endowment and Hospital Revenue Bonds,
Series 1973

The University of Texas M. D. Anderson
Hospital and Tumor Institute at Houston
Endowment and Hospital Revenue Bonds,
Series 1972 and 1976
Hospital Revenue Bonds, Subordinate Lien,
Series 1976

3. U. T. System: Report from the Executive Vice Chancellor for Asset Management on Investments in Companies Doing Business in South Africa Pursuant to Considerations at the October 1985 Meeting of the U. T. Board of Regents and Adoption of Policy Statement Related Thereto.--

Chairman Hay reported that in December 1984 and again in October 1985, the U. T. Board of Regents expressed its position on investments in corporations doing business in or with South Africa.

As a follow-up to the Board's last consideration of this matter in October 1985, Chairman Hay called on Executive Vice Chancellor for Asset Management Patrick for a further report on his review of the investment implications of eliminating in total or part U. S. companies doing business in South Africa. A copy of Executive Vice Chancellor Patrick's report is on file in the Office of the Board of Regents.

After Executive Vice Chancellor Patrick's report, Chairman Hay presented the following proposed policy statement:

POLICY STATEMENT

The Board of Regents of The University of Texas System unequivocally denounces the appalling and repugnant system of apartheid in South Africa. In seeking ways to dismantle the grip of this system on the majority of the population in South Africa, we reject the claim that investing in U. S. corporations with holdings or operations in South Africa constitutes de facto indirect

support of racism. Through compliance with the spirit of and execution of the Sullivan Principles, U. S. firms operating in South Africa are opening enriched economic and social opportunities to blacks and other non-whites. Through these actions such corporations can advance the cause of the elimination of apartheid and strengthen the skills required to implement a real democratic society in South Africa. Consequently, we strongly endorse the six key elements contained in the Sullivan Principles as of this date which, in summary, require:

- ° Non-segregation of the races in all eating, comfort and work facilities.
- ° Equal and fair employment practices for all employees.
- ° Equal pay for all employees doing equal or comparable work for the same period of time.

(Regent Milburn noted her personal objection to the equal pay for comparable work concept expressed in this item of the Sullivan Principles.)

- ° Initiation of and development of training programs that will prepare, in substantial numbers, blacks and other non-whites for supervisory, administrative, clerical and technical jobs.
- ° Increasing the number of blacks and non-whites in management and supervisory positions.
- ° Improving the quality of employee's lives outside the work environment in such areas as housing, transportation, schooling and recreation and health facilities.

As a shareholder, The University of Texas System has a right to a voice in corporate affairs and in the future as in the past will support appropriate resolutions mandating a reasonable code of corporate conduct in South Africa such as that defined by the six key elements of the Sullivan Principles.

Beyond this legitimate and reasonable participation in the corporate governance process, however, the Board rejects the investment or use of the economic power of U. T.'s funds to advance social or political causes or to achieve benefits for any purpose beyond the support of higher education. The Board has a commitment to donors and to the people of the State of Texas that its best efforts will be used to maximize the total return on its endowment funds so as to enhance to the fullest extent possible the educational and research missions of the System's component institutions. The Board believes that to act otherwise would be a breach of its fiduciary responsibilities.

Finally, since The University of Texas System is an educational institution, our primary response to apartheid should be encompassed within our educational role.

In light of our position on this issue, the Board of Regents directs the following actions of the staff of The University of Texas System:

- a. Investment policies of all funds managed by The University of Texas System shall incorporate a prohibition on investments in securities of the South African government, government agencies, or firms.

b. The Office of Asset Management shall continue to monitor our holdings of U. S. companies with substantial investments or operations in South Africa for effective compliance with the spirit of the six key elements expressed in the Sullivan Principles. The staff shall report the status of such investments to the Land and Investment Committee semi-annually. This status review should consider formal signing of the Sullivan Principles as a factor but not as an absolute standard for judging a corporation's compliance with the spirit of such standards. This assignment recognizes the limitations that will be faced by the staff in obtaining accurate and current information, and requires only that the staff exercise reasonable care in assembling the requisite data and in making the mandated status assessment.

c. The Office of Asset Management shall vote proxies consistently in support of resolutions that reflect our position on investment in South Africa. Specifically, the following votes would be appropriate:

- ° Vote for shareholder proxy resolutions recommending adherence to a reasonable code of conduct in South Africa such as the Sullivan Principles.
- ° Vote for shareholder resolutions against sales to the military and police in South Africa.
- ° Vote for shareholder resolutions to prohibit lending institutions from making, renewing, or extending loans to the South African government or state-owned companies until such time as genuine reform of the apartheid system shall have been implemented.

The Executive Vice Chancellor for Asset Management, in voting such proxies, may ask for clarification of the Board's position from the Land and Investment Committee. All proxy votes on South African investment are to be reported to the Land and Investment Committee.

d. The University of Texas System will join and participate actively in the South Africa Research Consortium, a group of about 40 universities -- including such schools as Amherst, Brown, Colgate, Columbia, Cornell, Dartmouth, Harvard, Notre Dame, University of Pennsylvania, University of Pittsburgh, Princeton, Rutgers, Stanford, Wesleyan and Yale -- which has been formed for the purpose of improving the information base on American corporate activities in South Africa and exploring alternative ways the university community -- consistent with its prime educational mission -- can contribute to the improvement of working and social conditions of Black South Africans. The current research agenda of the Consortium includes a study of specific actions universities can take to bring about peaceful change in South Africa through educational and exchange programs involving both faculty and students.

- e. Finally, each of the general academic institutions in The University of Texas System is encouraged to determine whether it should participate in the South African Educational Program. This program is sponsored by the Institute for International Studies in Washington and is designed to assist in the development of Black South Africans by providing educational benefits for South African Blacks directly. This program has already taken meaningful steps to increase the educational opportunities of Black South African students by offering scholarships to study at American institutions. The National Council of the South African Educational Program includes over 168 institutions which have sponsored scholarships for approximately 400 students.

Upon motion of Regent Briscoe, seconded by Regent Roden, the Board unanimously adopted the foregoing Policy Statement.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 1:50 p.m., the Board recessed for the meetings of the Standing Committees and Chairman Hay 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 thereof are set forth on the following pages.

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Pages 9 - 191).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Hay 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. Permanent University Fund: Endowment Fund for Conservation and Land Utilization Programs Renamed The Billy Carr - Permanent University Fund Lands Endowment for Conservation and Land Utilization (Exec. Com. Letter 86-10).--Upon recommendation of the Executive Committee, the Endowment Fund for Conservation and Land Utilization Programs which was authorized at the U. T. Board of Regents' meeting in December 1985 was renamed The Billy Carr - Permanent University Fund Lands Endowment for Conservation and Land Utilization in recognition of Mr. Carr's twenty-three years of dedication to the management of the nonmineral aspects of the Permanent University Fund Lands.

Regent Milburn stated that Mr. Carr's integrity, trustworthiness, understanding and experience in the development of the West Texas lands epitomized the U. T. System presence in that area.

In response to Regent Milburn's comments, Mr. Carr expressed appreciation to the Board for this honor and the support of the efforts in West Texas.

2. U. T. System: Approval of 1986-87 Budget Policies and Limitations for General Operating Budgets, Auxiliary Enterprises, Contracts and Grants, Restricted Current Funds, Designated Funds, and Service and Revolving Funds Activities and Calendar for Budget Operations (Exec. Com. Letter 86-7).--The Board, upon recommendation of the Executive Committee, approved the following Budget Policies and Limitations and Calendar for preparation of the 1986-87 Operating Budgets for The University of Texas System:

1986-87 Budget Policies and Limitations
for General Operating Budgets,
Auxiliary Enterprises, Contracts
and Grants, Restricted Current Funds,
Designated Funds, and Service and
Revolving Funds Activities.

In preparing the first draft of the Fiscal 1987 operating budget, the Chief Administrative Officer of each component institution should adhere to the following guidelines and policies:

- a. Overall budget totals, including reasonable reserves, must be limited to the funds available for the year from:
 - o General Revenue Appropriations
 - o Estimates of Local Income
 - o Limited Use of Institutional Unappropriated Balances

- ° An amount equal to 20% of the total library appropriation requested for each component in the System's "essential needs" request, which amount is expected to be appropriated from Permanent University Fund Bond Resources.
- b. Inasmuch as the ultimate legislative appropriations to U. T. Institutions were substantially as proposed by The Hobby Plan, subject to the availability of funds, each component's budget:
 - ° should provide for an aggregate increase in faculty salaries equal to 6% or more of Fiscal 1986's appropriation
 - ° should provide for an aggregate increase in academic support items equal to 3% or more of Fiscal 1986's appropriation
- c. The recommendations for salary increases for personnel are subject to the current regulations and directives included in the General Appropriations Bill as stated in Article III, Section 22 (amended for the mandated 3% increase provided for in Article V):

"Sec. 22. SALARY PROVISIONS. a. President/Chancellor Salaries: out of the funds appropriated to the general academic institutions, health centers, health science centers and medical education programs in the element of institutional cost General Administration and Student Services, an amount NTE \$58,000 in 1986 and \$59,700 in 1987 may be expended for the salary of a president or chancellor. All presidents or chancellors may receive in addition to the above amounts, a house, utilities, and/or supplement from private sources. If a university owned house is not available an amount NTE \$7,200 per year from the General Administration and Student Services appropriation, and additional funds from gifts and grants where required, may be provided in lieu of house and utilities.

b. It is expressly provided that institutional administrators may grant merit salary increases to employees whose job performance and productivity is consistently above that normally expected or required."

Article V, Sec. 94, further states in part that "the provisions of this act which relate to salaries authorize, generally, a salary increase of three (3) percent in fiscal year 1987. The Comptroller of Public Accounts shall adopt procedures necessary to administer these provisions."

- d. Selective merit salary increases may be provided for the faculty and professional staff. In the case of faculty, merit increases or advances in rank are to be on the basis of teaching effectiveness, research, and public service. This policy relating to faculty salary increases applies to all fund sources.
- e. New faculty positions are to be based on conservative estimates of enrollment increases. Total faculty staffing should be reviewed in terms of planned increases in work load.

- f. Merit salary increases for classified personnel in accordance with the Personnel Pay Plan policies approved by the U. T. Board of Regents may be given only to individuals who will have been employed by the institution for at least six months as of August 31, 1986.
- g. New classified positions are to be requested only when justified by increased work loads.
- h. Maintenance, Operation, and Equipment items can be increased only as justified by expanded work loads, inflation, or newly developing programs.
- i. Travel funds are to be shown as separate line items.

1986-87 OPERATING BUDGET CALENDAR

December 1985	U. T. Board of Regents' Approval of Policies (Executive Committee Letter)
March 21, 1986	<u>Five Draft Copies (bound)</u> of Budgets due to System Administration (including 5 copies of supplemental data)
April 14-25, 1986	Budget Hearings with System Administration
May 16, 1986	<u>Thirty copies of Budgets</u> (bound) due to System Administration (with 5 copies of adjusted supplemental data as applicable)
May 26, 1986	Budgets mailed to the U. T. Board of Regents
June 5-6, 1986	U. T. Board of Regents' Budget Meeting
June 16, 1986	<u>Fifty-five Copies of Budgets</u> (unbound) due to System Administration for binding

3. U. T. System: Approval of Employment of Financial Computer Services, Inc., Evanston, Illinois, as an Investment Counselor for The University of Texas System Professional Medical Malpractice Self-Insurance Plan and Authorization of Amount to be Managed by Investment Counselor and for Executive Vice Chancellor for Asset Management and the Office of General Counsel to Finalize and Execute an Investment Agreement (Exec. Com. Letter 86-10).--On October 10, 1985, the Office of the Executive Vice Chancellor for Asset Management received responsibility for the investment of funds constituting The University of Texas System Professional Medical Malpractice Self-Insurance Plan.

Upon recommendation of the Executive Committee, the Board approved the following actions with regard to investment of The University of Texas System Professional Medical Malpractice Self-Insurance Plan:

- a. Employment of Financial Computer Services, Inc., Evanston, Illinois, as an investment counselor
 - b. Authorization of an amount of \$5 million to be managed by Financial Computer Services, Inc. as investment counselor
 - c. Authorization for the Executive Vice Chancellor for Asset Management and the Office of General Counsel to finalize within the parameters of the existing investment counseling agreements an appropriate investment counseling agreement and for the Executive Vice Chancellor for Asset Management to execute such an agreement after it has been reviewed by the Chairman of the Land and Investment Committee and approved as to form by the Office of General Counsel.
4. U. T. Austin - College of Business Administration Building (Previously Named the Business Economics Office Building and the Business Economics Building) (Project No. 102-481): Award of Contracts for Furniture and Furnishings to Southwest Office Interiors, Austin, Texas; Disco Print Company, Houston, Texas; The Paul Anderson Company, San Antonio, Texas; Rockford Business Interiors, Austin, Texas; Business Products and Services, Inc., El Paso, Texas; Business Interiors, Arlington, Texas; Carpet Services, Inc., Austin, Texas; Dallas Drapery Inc., Dallas, Texas; NB Business Systems, Inc., Austin, Texas; and Lundia Division of MII, Inc., Jacksonville, Illinois; and Authorization for the Chancellor to Sign the Contracts (Exec. Com. Letter 86-5).--In accordance with authorization of the U. T. Board of Regents in December 1982, bids were called for and were received, opened and tabulated on October 29, 1985, for furniture and furnishings for the College of Business Administration (previously called the Business Economics Office Building and the Business Economics Building) at The University of Texas at Austin.

In compliance therewith, the Board, upon recommendation of the Executive Committee, awarded contracts for furniture and furnishings for the College of Business Administration Building to the following lowest responsible bidders:

Southwest Office Interiors
Austin, Texas

Base Proposal "A" (Faculty Conference & Lounge Furniture)	\$184,388.00
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Base Proposal "F" (Executive Chairs)	\$ 33,840.00
Base Proposal "H" (Stacking Chairs)	<u>42,079.00</u>
Total Contract Award to Southwest Office Interiors	\$260,307.00
Disco Print Company Houston, Texas	
Base Proposal "B" (Steel Office Furniture)	68,797.00
The Paul Anderson Company San Antonio, Texas	
Base Proposal "C" (Wood Office Furniture)	307,082.00
Rockford Business Interiors Austin, Texas	
Base Proposal "D" (Visitor Chairs)	53,450.60
Business Products and Services, Inc. El Paso, Texas	
Base Proposal "E" (Desk Chairs)	56,300.00
Business Interiors Arlington, Texas	
Base Proposal "G" (Tables)	61,386.92
Carpet Services, Inc. Austin, Texas	
Base Proposal "I" (Carpet)	31,308.00
Dallas Drapery Inc. Dallas, Texas	
Base Proposal "J" (Drapery)	4,587.00
NB Business Systems, Inc. Austin, Texas	
Base Proposal "K" (Power Files)	35,681.00
Lundia Division of MII, Inc. Jacksonville, Illinois	
Base Proposal "L" (Compact Shelving)	<u>30,267.00</u>
GRAND TOTAL CONTRACT AWARDS	\$909,166.52

Further, the Chancellor was authorized to sign the contracts awarding these bids based on the results of the Executive Committee circularization.

5. U. T. Austin: Authorization to Accept Invitation for Football Team to Participate in the Bluebonnet Bowl in Houston, Texas, on December 31, 1985, and Approval of Preliminary Budget Covering Expenses (Exec. Com. Letter 86-6).--The Board, upon recommendation of the Executive Committee, authorized acceptance by the Intercollegiate Athletics Council for Men of an invitation for the football team of The University of Texas at Austin to participate in the Bluebonnet Bowl in Houston, Texas, on December 31, 1985, and approved a preliminary budget to cover the expenses therefor as set forth below:

Budget
1985 Bluebonnet Bowl

INCOME:

Estimated Income from Bluebonnet Bowl	\$ 400,000
Less: Amount Due SWC per Conference Policy	(75,240)
Amount Available for Bowl Expenses	\$ 324,760
Less: Game Tickets Provided to Squad, Staff, Administration and Others	(22,880)
Net Available for Bowl Expenses	<u>\$ 301,880</u>

EXPENDITURES:

Awards/Official Functions	\$ 28,800
Employee Fringe Benefits	6,990
Photography (Film/Video)	4,500
Printing and Postage	2,500
Salary Supplements	87,380
Supplies-Player (Training and Equipment)	25,000
Team "NCAA" Incidental Allowance	10,500
Travel Official Party (Transportation and Meals)	78,200
Travel Official Party (Lodging)	32,600
Contingency	<u>7,200</u>
Total--Athletics Department	<u>\$ 283,670</u>
Band and Cheerleaders:	
Band (Travel, Meals, Lodging)	16,710
Cheerleaders	<u>1,500</u>
Total--Band and Cheerleaders	<u>18,210</u>
EXCESS INCOME OVER EXPENDITURES	<u>\$ -0-</u>

It was noted that the actual expenses will be reported in the next appropriate U. T. Austin docket.

6. U. T. Austin: Announcement of Purchase of the Carl H. Pforzheimer Library by Mr. H. R. Perot, Dallas, Texas, Approval of Loan of Library for One Year with Option to Purchase, Acceptance of Contribution from the Carl and Lilly Pforzheimer Foundation, Inc., New York City, New York, and Establishment of The Carl H. Pforzheimer Endowment (Exec. Com. Letter 86-9).--Pursuant to the action of the U. T. Board of Regents at its December 1985 meeting, negotiations for the purchase/acquisition of the Carl H. Pforzheimer Library by Mr. H. R. Perot, Dallas, Texas, and the loan of same to The University of Texas at Austin have been completed.

Accordingly, the Executive Committee recommended and the Board endorsed the agreement set out on Pages 16 - 25 for the loan of the Library to U. T. Austin for one year following its purchase on January 7, 1986. Under the terms of the loan agreement, U. T. Austin would have one year to use its best efforts to raise \$15,000,000 as the purchase price for the Library.

Further, the Board accepted a contribution of \$750,000 from the Carl and Lilly Pforzheimer Foundation, Inc., New York City, New York, and established The Carl H. Pforzheimer Endowment to be used exclusively for the maintenance, preservation and scholarly availability of the Collection so long as the Collection shall be at U. T. Austin. In the event the Collection shall be removed from this component, the endowment shall be retained and the income shall be applied to other educational and scholarly purposes at U. T. Austin as the U. T. Board of Regents may deem appropriate.

The Pforzheimer Foundation granted authority to U. T. Austin to publish a facsimile edition of the three volume catalog of the Carl H. Pforzheimer Library.

The Pforzheimer Library consists of over 1100 printed volumes and approximately 250 manuscript groupings of letters and documents covering the period 1475 (the year the first book was printed in the English language) to 1700. The 225-year period covered constitutes the foundational period of English culture as we know it today. It is the last major collection of foundational English books in private hands and the addition of the Pforzheimer Library to the collections of the Harry Ransom Humanities Research Center would add a dimension of depth now lacking in its collections regarding the early formative years of our English heritage.

LOAN AGREEMENT

This Loan Agreement is entered into as of the 7th day of January, 1986, by and between H. R. Perot (the "Lender") and The Board of Regents of The University of Texas System for and on behalf of The University of Texas at Austin ("UT").

Subject to the terms and conditions hereinafter expressed, Lender hereby loans to UT and UT hereby borrows from Lender that certain literary collection known as the Carl H. Pforzheimer Library of English Literature (1475 - 1700) and more specifically described in a three-volume catalog entitled The Carl H. Pforzheimer Library: English Literature 1475 - 1700 (New York Privately Printed 1940) (the "Catalog"), and is more specifically described in Schedules I and II to this Loan Agreement, hereinafter referred to as the "Pforzheimer Collection".

Section 1. Term of Loan. This loan shall begin January 7, 1986, the date of the physical transfer of possession of the Pforzheimer Collection to UT, and shall terminate December 31, 1986.

Section 2. Consideration. As consideration for the loan of the Pforzheimer Collection, UT agrees to perform the obligations under this Agreement for the duration of the loan.

Section 3. Location of the Property. UT shall take possession of the property directly from the Carl and Lily Pforzheimer Foundation, Inc. (the "Foundation") on January 7, 1986, the date of the acquisition of the Pforzheimer Collection by Lender. UT shall assume responsibility for making the necessary arrangements for shipping the Pforzheimer Collection from New York City to Austin, Texas, and for all risk of loss or damage, costs and expenses incurred in moving the Pforzheimer Collection. Once the Pforzheimer Collection arrives in Austin, Texas, UT shall take steps to store it at the Harry Ransom Humanities Research Center in a location suitable for the preservation and proper care of such collection. UT shall inform Lender of the location of the Pforzheimer Collection and shall not permit the Pforzheimer Collection to be moved without the written consent of the Lender.

Section 4. Care of Property. UT shall utilize and shall permit others to utilize the Pforzheimer Collection in a manner consistent with the proper care and preservation of the Collection and shall comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the property.

Section 5. Identification of Property. If, at any time during the term of this loan, Lender supplies UT with labels, plates, or other markings stating that the Pforzheimer Collection is owned by the Lender, UT shall affix and keep them in a prominent place agreed to by UT and Lender. Unless required by law, UT shall not disclose or publicize the identity of the owner of the Pforzheimer Collection without the prior written consent of the Lender. In any event, UT shall give the Lender 10 days written notice prior to such disclosure or publication.

Section 6. Alterations. UT agrees that no alterations shall be made to the Pforzheimer Collection without obtaining prior written permission from the Lender; however, the Lender agrees to permit UT to take steps necessary to preserve items which are part of the Pforzheimer Collection. Any additions or improvements of any kind to the Pforzheimer Collection shall immediately become property of the Lender and subject to the terms of this Agreement.

Section 7. Maintenance. UT, at its own cost and expense, shall keep the Pforzheimer Collection in good condition and take all reasonable action necessary to avoid damage, destruction, abuse, misuse, or deterioration of all or part of the Pforzheimer Collection.

Section 8. Endowment. UT acknowledges the receipt of a check from the Foundation in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) payable to the Board of Regents of The University of Texas System for the benefit of The University of Texas at Austin to serve as an endowment for the maintenance, preservation and scholarly availability of the Pforzheimer Collection. UT hereby agrees to execute and deliver to the Foundation such written confirmation as the Foundation may reasonably request confirming the acceptance of such endowment for the purposes stated therein.

Section 9. Lender's Right of Inspection. Lender shall at all times during business hours of UT have the right to enter on the premises where the Pforzheimer Collection may be located for the purpose of inspecting it or observing its use. UT shall give Lender immediate notice of any attachment or other judicial process affecting the Pforzheimer Collection and shall within a reasonable time, whenever requested by the Lender, advise the Lender of the exact location of every piece of property which is part of the Pforzheimer Collection.

Section 10. Return of Property. On expiration or earlier termination of this Loan Agreement, with respect to the Pforzheimer Collection, and unless UT has exercised its

option to purchase under Section 11 hereof, UT shall return the Pforzheimer Collection to the Lender in its original condition, normal wear excepted, by delivering the Pforzheimer Collection at UT's expense to such place as Lender shall specify.

Section 11. UT's Option to Purchase. Lender hereby grants to UT the option to purchase the Pforzheimer Collection loaned herein, at any time during the term of this Loan Agreement, for a purchase price of Fifteen Million and No/100 Dollars (\$15,000,000.00) (the "Purchase Price"). The exercise of the purchase option by UT will terminate this Agreement. UT may exercise the option granted herein by delivering to the Lender on or before December 31, 1986 a cashier's check in the amount of the Purchase Price and the Lender shall deliver to UT a Bill of Sale conveying the Pforzheimer Collection to UT. This option shall expire on December 31, 1986 if not exercised in the manner set forth herein. UT agrees to use best efforts to raise the Purchase Price during the term hereof. As UT receives funds to become a part of the Purchase Price, such funds shall be placed in an escrow account ("Escrow") and invested in such a manner as to earn interest while preserving the principal. If, at any time during the term of this Agreement, the amount of principal in Escrow reaches the Purchase Price, UT shall immediately exercise its option to purchase under this Section 11. If the amount in Escrow at the expiration of the term of this Agreement is less than the Purchase Price, the principal in Escrow shall be returned to UT and the interest in Escrow accrued during the term of this Agreement shall be paid to the Lender.

Section 12. Delivery and Acceptance of Pforzheimer Collection. UT has inspected and inventoried the Pforzheimer Collection and hereby acknowledges that the Pforzheimer Collection is in good condition and complete with the exception of any omissions described in Schedule I to this Loan Agreement.

Section 13. Risk of Loss or Damage. From and after the date hereof, UT hereby assumes all risk of loss or damage to the Pforzheimer Collection from any cause. No loss or damage to the Pforzheimer Collection will impair any obligation of UT under this Agreement, which shall continue in full force and effect. In the event of loss of or damage to all or part of the Pforzheimer Collection, at the option of the Lender, UT shall (a) place the same in good repair or (b) replace the same with like property in good repair which property shall thereupon become subject to this Loan Agreement or (c) pay the Lender therefor the fair market value of the item or items damaged or destroyed.

Section 14. Obligation to Insure. UT, at its own expense, shall keep the property insured for such risks and in such amounts as shall be agreed to by UT and Lender with carriers acceptable to the Lender. The amount of such coverage shall in no event be less

than Fifteen Million and No/100 Dollars (\$15,000,000.00). All such insurance shall name the Lender and UT as insured. The policies shall provide that they may not be cancelled or altered without at least 30 days prior written notice to the Lender, and the loss payable endorsement shall provide that all amounts payable by reason of loss of or damage to the property shall be payable only to the Lender. UT shall deliver to the Lender evidence satisfactory to the Lender of all such insurance. If loss or damage occurs under circumstances in which UT is not in violation of the terms of any policies and if UT has fulfilled its obligations under Section 13 of this Agreement and is not otherwise in default thereunder, the Lender will pay UT so much of any insurance proceeds received by the Lender as the result of such loss as will fully reimburse UT for the net expense it incurs in fulfilling its obligations under Section 13.

Section 15. Taxes and Fees. UT shall pay all license fees, assessments, and sales, use, property and other taxes now or hereafter imposed on the Pforzheimer Collection by reason of ownership, leasing, renting, purchase by Lender, sale, possession, or use, whether assessed to Lender or UT, together with any penalties or interest in connection therewith, excepting federal, state, or local government taxes or payments in lieu thereof, imposed on or measured by the income of the Lender. If any tax is, by law, to be assessed or billed to the Lender, UT, at its expense, will do anything required to be done by the Lender in connection with the levy, assessment, billing, or payment of such tax and is hereby authorized by the Lender to act on Lender's behalf in such respects; UT will cause all billings of such taxes to be made to the Lender in care of UT and will, from time to time, on request of the Lender, submit written evidence of the payment of all governmental obligations mentioned in this section. It is expressly agreed that UT will not, without obtaining prior written permission of the Lender, assert on its behalf, or on behalf of the Lender, any immunity from taxation based on the tax exempt status, if any, of the Lender.

Section 16. Indemnity of Lender. To the extent authorized by the Constitution and the laws of the State of Texas, UT shall indemnify the Lender against all claims, actions, proceedings, costs, damages, and liabilities, including attorney fees, arising out of, connected with or resulting from use of the Pforzheimer Collection including, without limitation, the inspection, delivery, possession, use, or return thereof.

Section 17. Events Constituting Default. The following events constitute default:

(a) The non-performance by UT of any term, covenant, or condition of this Agreement which is not cured within 20 days after notice thereof by the Lender;

(b) The non-performance by Lender of any term, covenant, or condition of this Agreement which is not cured within 20 days after notice thereof by UT;

(c) Expiration or cancellation of any insurance policy to be paid by UT as provided for under the terms of this Agreement;

(d) Involuntary transfer of UT's interest in this Agreement by operation of law;
or

(e) UT's assignment of any interest in this Agreement.

Section 18. Lender's Right to Prevent Default. Should UT fail to do any act as herein provided, the Lender shall have the right, but not the obligation, without notice to or demand on UT and without releasing UT from any obligation hereunder, to make or do the same and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of the Lender appears to affect the Pforzheimer Collection and in exercising any such rights incur any liability and expend whatever amounts in its discretion it may deem necessary therefor. Should UT fail to make any payment required to be made by this Agreement, all reasonable and necessary payments made by Lender pursuant to this Section 18 shall be, without demand, immediately due and payable by UT and shall bear interest at the rate of ten percent (10%) per annum thereafter until paid.

Section 19. Lender's Right on Default. On occurrence of any event of default defined in Section 17, the Lender may, without notice to or demand on UT, take possession of the Pforzheimer Collection and terminate this Agreement at will.

Section 20. Choice of Law. This Loan Agreement shall be governed by and construed under the laws of the State of Texas.

Section 21. Ownership of Property. The Pforzheimer Collection is and shall at all times during the term of this Loan Agreement remain the sole property of the Lender, and UT shall have no right, title, or interest therein except as expressly set forth in this Agreement.

Section 22. Assignment. UT shall not, during the term of this Loan Agreement, without the prior written consent of the Lender, (a) assign, transfer, pledge, or hypothecate this Agreement, the Pforzheimer Collection or any part thereof or any interest therein; (b) lease or lend the Pforzheimer Collection or any part thereof; or (c) permit the Pforzheimer Collection or any part thereof to be used by anyone other than UT, UT employees, or other qualified persons designated by UT. The Lender may assign its interest, or a part thereof, in this Agreement.

EXECUTED by the parties on this the 3rd day of January, 1986.

LENDER:

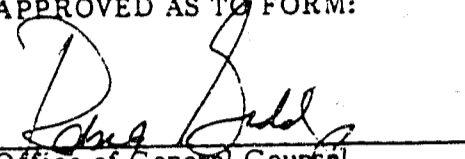


H. R. Perot

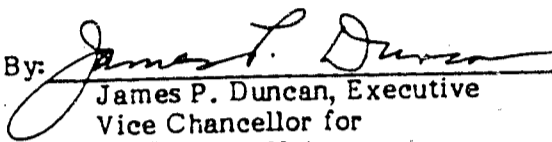
UT:

Board of Regents of The University
of Texas System on behalf of
The University of Texas at Austin

APPROVED AS TO FORM:




Office of General Counsel
The University of Texas System

By: 

James P. Duncan, Executive
Vice Chancellor for
Academic Affairs

APPROVED AS TO CONTENT:

By: 

G. Charles Franklin
Vice President for
Business Affairs
The University of
Texas at Austin

SCHEDULE I TO LOAN AGREEMENT

The Pforzheimer Collection consists of those items which are enumerated by catalogue number and described in the body (including the Appendix of Recent Acquisitions) of the Catalog.* The Pforzheimer Collection does not include any works in the library of the late Carl H. Pforzheimer that are referred to in his Introduction to the Catalog but are not enumerated by catalog number in the body (including the Appendix of Recent Acquisitions) of the Catalog. The Pforzheimer Collection does include certain items conveyed by the Foundation as part of the Pforzheimer Collection which the Foundation determined were so closely related to the Pforzheimer Collection that they were included in the sale to Purchaser and have been included in the delivery of the Pforzheimer Collection made herewith. Such additional items are set forth on Schedule II to this Loan Agreement, which may be replaced at a later date with consent of the parties. The failure to complete Schedule II shall not affect the validity of this Loan Agreement, which shall be deemed complete and effective for all purposes.

* Item 1097 of the Catalog was inadvertently omitted in loading the crates in which the Pforzheimer Collection has been packed, and is delivered separately herewith. Items 64 and 66 (bound in a single small volume) do not show on the Foundation's packing lists as having been loaded, but may be in a packed crate. If the latter items subsequently are delivered to Lender, they will be delivered to UT forthwith, but the Lender assumes no other responsibility for the same.

SCHEDULE II TO LOAN AGREEMENT

(Additional items not listed in Catalog but shelved with slips in their respective numerical positions: an asterisk signifies intention to include such items in Appendix.)

- | | | |
|------|---------------------|--|
| 17A | Ascham, Roger. | Toxophilus, . . . London, 1571. 2d ed. (STC 838) |
| 25A | Bacon, Francis. | Cases of treason. London, 1702. 1st ed. (*App. 41) |
| 25B | _____. | Certain miscellany works. London, 1629, 1st ed. L. H.
Silver copy (*App. 40) |
| 25C | _____. | The charge. . . touching duells. London, 1614. 1st ed.
(*App. 39) |
| 31A | _____. | The essayes. . . London, 1629. (*App. 30) |
| | _____. | <u>a.</u> The essayes. . . London, John Martyn, 1673. |
| | _____. | <u>b.</u> The essays. . . London, Humphrey Robinson,
1668. |
| | _____. | <u>c.</u> The essays. . . London, John Beale, 1639. |
| | _____. | <u>d.</u> The essays. . . (same as above). |
| | _____. | <u>e.</u> The essays. . . London, James Knapton, 1691. |
| | _____. | <u>f.</u> The essays. . . London, Sam. Smith, and Benj.
Walford, 1701. |
| | _____. | <u>g.</u> Sylva Sylvarum. . . London, William Lee, 1635.
4th ed. |
| | _____. | <u>h.</u> Essays moral, economicall, and political.
Boston, Joseph Greenleaf, 1807. (1st Amer.) |
| | _____. | <u>i.</u> Essays. . . (same as above). |
| 34A | _____. | Resuscitatio. . . Together with his Lordships life by
William Rawley. . . London, Printed by Sarah Griffin for
William Lee, 1657. 1st ed. (*App. 33) |
| 36.1 | _____. | Three speeches. . . London, Richard Badger, . . . 1641.
1st ed. (2nd state) (*App. 37) |
| 119D | Burton, Robert. | The anatomy of melancholy. . . Oxford, 1638. 5th ed.
(*App. 38) |
| 142A | Chapman, George. | Al Fooles a comody. . . 1605. (bound last in a volume
with 667A and 426A, <u>g. v.</u>) (*App. 12) |
| 222A | Cotton, Sir Robert. | Diverse choice pieces. . . 1679 (ed. by James Howel) |
| 351A | [Edwards, Henry]. | A preparative to studie: or, The vertue of sack.
London, 1641 (Britwell) (*App. 22) |

- 426A Greene, Robert
[or, Henry
Chettle]. Greenes groatsworth of witt. London, 1607. (bound
second in a volume with 142A and 667A, g. v.)
- 442A [Guicciardiniana]. A briefe inference upon Gvicciardines digression, . . . of
his Historie. . . London, Edward Blovnt, 1613.
- 451.1 [Harvey, Gabriel]. Ciceronianus. . . 1577. (*App. 27) (STC 12899)
- 451.2 _____ . Smithus, vel musarum lachrymae. . . 1578. (*App. 28)
- 469A Heywood, John. A dialogue. . . of all the proverbes in the English tongue.
London [1550] 2nd ed., (*App. 14)
- 506B Howard, Henry,
earl of Surrey. Songes and sonnettes [London] R. Tottell, 1559.
- 574A Alcoran. First complete English version. London, 1649. First
American edition. Worcester, 1806 (the two items in
one slipcase)
- 574B Lacy, John Sr. Hercules buffoon. . . London, J. Hindmarsh, 1684.
- 595.1 Linschoten,
J. H. van. His discours of voyages. . . London, John Wolfe [1691]
(*App. 25)
- 604A Locke, J. A letter concerning toleration. London [1740]
(*App. 23)
- 627.1 Lowndes, W. A report containing an essay for the amendment of the
silver coins. London, 1695. (*App. 26)
- CHP/STC
17068 Lyly, John. Euphues and his England. London, 1580.
- 647A [Marprelate]. Oh read over Dr. John Bridges. . . [1588] (*App. 36)
- 647B _____ . These martiniane. . . [Wolston, J. Hodgkins. . .] 1589.
(*App. 31)
- 647C _____ . A dialogue wherin is plainly layd open the tyranicall
dealing of Lord Bishops against Gods
children. . . [?London] 1640 (*App. 32)
- 647D _____ . The protestatyon of Martin Marprelate. . . [1589]
(*App. 34)
- 667A Martin, Saint. Seneca moralissmus. . . [London, de Worde, 1516]
(bound in with 426A and 142A, g. v.) (*App. 15)
- 736A _____ . Mirror for Magistrates. 1578 (*App. 16) (bound in with
749A, g. v.)

- 743A Munday, Anthony. A discoverie of Edmund Campion. . . London [John Charlewood] for Edward White, 1582. (*App. 17)
- 749A _____ . Mirrour of mutabilitie. 1579 (bound in with 736A) (*App. 18)
- 856A Seignior, Geroge. Moses and Aaron: a sermon. . . Cambridge, 1670. (bound in is Misc. Ms. 738, a letter by unidentified writer, from Newmarket, addressed "MyLord," after 1700)
- 859A Selden, John. Table-talk. . . Second edition. . . 1696.
- 940A Skelton, John. . . . Certaine bookes. . . London, by John Kynge and Thomas Marche [circa 1560?] (*App. 24)
- 943A _____ . Phyllyp Sparrowe. [London] Rychard Kele [c. 1545] (*App. 19)
- 1014A Tyrwhitt, W. Essayes. . . London, Printed [by Thomas Harper] for William Sheares. . . 1636. (*App. 20)
- Misc. Ms. 814 (bound in with Bulstrode MSs, containing Will of Sophia Bulstrode, 1803, and six other pieces, all post-1700)
- Misc. Ms. 735 (bound in copy of CHP 819, A declaration of the demeanor and cariage of Sir Walter Raleigh, London, 1618)

Additional ms. and pictorial material, contained in the extra-illustrated three volumes of P. F. Tytler's Life of Sir Walter Raleigh, Edinburgh [1833].

7. U. T. Austin: Dr. Karl H. Borch Appointed Initial Holder of the Gus Wortham Memorial Chair in Risk Management and Insurance in the College of Business Administration and the Graduate School of Business Effective January 16, 1986 (Exec. Com. Letter 86-9).--Upon recommendation of the Executive Committee, approval was given to appoint Dr. Karl H. Borch, Professor of Insurance, The Norwegian School of Economics and Business Administration, Bergen, Norway, and Visiting Professor in the Department of Finance at The University of Texas at Austin for the 1986 Spring Semester, as the initial holder of the Gus Wortham Memorial Chair in Risk Management and Insurance in the College of Business Administration and the Graduate School of Business effective January 16, 1986.

8. U. T. San Antonio: Authorization for Chancellor to Execute (a) Ground Lease Agreement with Mr. Clarence T. Bach, San Antonio, Texas, for Student Dormitory and Recreation Center, (b) Management Agreement with Sandalwood Management, Inc., San Antonio, Texas, and UTSA Phase I Dormitory Partnership, San Antonio, Texas, for Operation and Management of Student Dormitory, (c) Management Agreement with Sandalwood Management, Inc. and Mr. Clarence T. Bach for Operation and Management of Recreation Center, (d) Statement of Policy and Undertaking to be Delivered to Lloyds Bank Int. Ltd. and (e) Form of Consent to Sublease Portion of Leased Premises Between Mr. Clarence T. Bach as Landlord and UTSA Phase I Dormitory Partnership as Tenant (Exec. Com. Letter 86-8).--At its December 1985 meeting, the U. T. Board of Regents authorized the Office of the Chancellor and the Office of General Counsel to conclude negotiations for the provision of student housing on The University of Texas at San Antonio campus by a private entity.

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

- a. Authorized the Chancellor to execute a ground lease agreement, after approval by the Office of General Counsel, leasing a 5.865-acre tract of The University of Texas at San Antonio campus to Mr. Clarence T. Bach, San Antonio, Texas, as a site for a student dormitory and a recreation center in the form set out as Attachment 1
- b. Authorized the Chancellor, after approval by the Office of General Counsel, to execute a management agreement with Sandalwood Management, Inc., San Antonio, Texas, and "UTSA Phase I Dormitory Partnership," San Antonio, Texas, for the operation and management of the student dormitory in the form set out as Attachment 2
- c. Authorized the Chancellor, after approval by the Office of General Counsel, to execute a management agreement with Sandalwood Management, Inc., San Antonio, Texas, and Mr. Clarence T. Bach for the operation and management of a recreation center in the form set out as Attachment 3

- d. Authorized the Chancellor, after approval by the Office of General Counsel, to execute a Statement of Policy and Undertaking to be delivered to Lloyds Bank Int. Ltd., in the form set out as Attachment 4
- e. Authorized the Chancellor, after approval by the Office of General Counsel, to execute an appropriate form of consent (as provided in the terms of the Ground Lease Agreement) to a sublease of a portion of the leased premises between Mr. Clarence T. Bach as landlord and "UTSA Phase I Dormitory Partnership" as tenant.

THIS AGREEMENT IS SUBJECT TO ARBITRATION
UNDER THE TEXAS GENERAL ARBITRATION ACT,
TEX. REV. CIV. STAT. ART. 224 ET SEQ.

GROUND LEASE AGREEMENT

Dated as of December 1, 1985

By and Between

THE BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM, Lessor

and

CLARENCE T. BACH, Lessee

RELATING TO THE UNIVERSITY OF TEXAS
AT SAN ANTONIO
DORMITORY FACILITIES

BTJZ

SAOF&J
12/18/85

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(v)

THIS AGREEMENT IS SUBJECT TO ARBITRATION
UNDER THE TEXAS GENERAL ARBITRATION ACT,
TEX. REV. CIV. STAT. ART. 224 ET SEQ.

GROUND LEASE AGREEMENT

STATE OF TEXAS

COUNTY OF BEXAR

This Ground Lease Agreement is made and entered into by and between The Board of Regents of the University of Texas System, for the use and benefit of the University of Texas at San Antonio, acting by and through its authorized officers, and Clarence T. Bach, an individual who resides in Bexar County, Texas.

W I T N E S S E T H:

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

Whereas, such Section 65.39 provides further that the LESSOR may sell, lease, and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of The University of Texas System, not in conflict with the constitution;

Whereas, in order to assist in the development of campus housing facilities and related facilities for students at The University of Texas at San Antonio ("UTSA"), the LESSOR deems it is best for the interest of The University of Texas System, and particularly for UTSA and prudent in light of the unavailability of public funds for such development, that a portion of the campus of UTSA be leased to Clarence T. Bach, an individual who resides in Bexar County, Texas (the "LESSEE") for the purpose of

developing, constructing, owning and operating such student housing and related facilities;

Whereas, in furtherance of the aforesaid purposes, the LESSOR and the LESSEE have determined to enter into this Ground Lease Agreement (this "Lease") whereby the LESSOR will lease a tract of approximately 5.865 acres of land (the "Leased Premises") on the campus of UTSA to the LESSEE, and the LESSEE will develop, construct, own and operate on the leased premises a dormitory, for use by UTSA students and participants in university-sponsored events, and a recreation center for use by such students and participants and UTSA faculty and staff, subject to the terms herein stated;

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

[End of Recitals]

ARTICLE ONE

LEASE OF PROPERTY - TERMS OF LEASE

Section 1.01. *Lease of Premises.* LESSOR, in consideration of the rents, covenants, agreements and conditions herein set forth, which LESSEE hereby agrees shall be paid, kept and performed by LESSEE, does hereby let, demise and rent exclusively unto LESSEE, and LESSEE does hereby rent and lease from LESSOR, a 5.865 acre-tract of real property (the "Leased Premises") more particularly described in Exhibit A attached hereto, being incorporated into this Lease and made a part hereof with the same effect as if set forth herein.

Section 1.02. *Easements.* This lease is subject only to (i) the matters set forth in Exhibit B attached hereto, being incorporated into this Lease and made a part hereof with the same effect as if set forth herein, and (ii) all present and future laws, ordinances, resolutions, regulations and orders of all municipal, county, state, federal or other governmental bodies, boards, agencies or other authority now or hereafter having jurisdiction.

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LESSEE, by execution of this Lease, accepts the leasehold estate herein demised subject to all easements and other matters referred to on Exhibit B, including, without limiting the generality of the foregoing, any reserved rights of LESSOR to use those portions of the Leased Premises described or referred to in the instruments on such Exhibit B for the purposes therein stated.

Section 1.03. *Term.* TO HAVE AND TO HOLD the hereinabove described tract of land subject to the matters as aforesaid, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging unto LESSEE, his heirs and assigns, for a term of approximately thirty-five (35) years commencing on the date hereof and ending at midnight on December 31, 2020, subject to extension by the parties hereto for an additional five years until December 31, 2025, if such extension is required by the provisions of Section 103 of the Internal Revenue Code of 1954, as amended, and the regulations, rulings and court decisions thereunder to prevent The University of Texas System from being treated as a principal user of any of the Facilities, and subject to earlier termination as herein provided, and upon and subject to the covenants, agreements, terms, provisions and limitations hereafter set forth, all of which the LESSEE covenants to perform and observe.

ARTICLE TWO

DEFINITIONS

Section 2.01. *Definitions.* The terms defined in this ARTICLE shall for all purposes of this Lease, and all agreements supplemental hereto, have the meanings herein specified, unless the context otherwise requires.

"*Additional Dormitory or Dormitories*" means one or more of the Phase II, III and IV Dormitories.

"*Additional Leased Premises*" means any real property on the UTSA campus which is leased by the LESSOR to the LESSEE or to one or more Affiliated Entities pursuant to Section 12.01 hereof for the

purpose of the development and construction of developing Additional Dormitories thereon.

"*Affiliated Entity*" means any corporation, partnership or other entity in which Clarence T. Bach, his spouse and descendants, or any one or more of them, own fifty percent (50%) or more of the issued and outstanding stock, partnership interests or equitable interests, as the case may be.

"*Commencement of Construction*" means the date on which excavation or foundation work is begun for either the Phase I Dormitory or the Recreation Center.

"*Date of Opening*" means the date any Dormitory or the Recreation Center is opened for occupancy or use.

"*Dormitory*" means a residence hall providing rooms for students enrolled at and other participants in activities sponsored by The University of Texas at San Antonio as well as all modifications and replacements thereto.

"*Dormitory Facilities Area*" means the real property comprising 18.271 acres described in Section 12.02 and more particularly described in Exhibit D, together with all appurtenances thereto.

"*Expiration Date*" means the expiration date of this Lease, December 31, 2020, unless this Lease has been extended in accordance with Section 1.03, and in such event, December 31, 2025.

"*Facilities*" means a complex of buildings including four dormitories, referred to herein, respectively, as Phase I Dormitory, Phase II Dormitory, Phase III Dormitory, and Phase IV Dormitory and a Recreation Center, together with related facilities, each such building to be constructed from time to time on the Leased Premises or the Additional Leased Premises as well as all modifications and replacements thereto, for use by students of UTSA.

"*Force Majeure*" means those items enumerated in ARTICLE 21.

"Leased Premises" means the real property described in Section 1.01 and more particularly described in Exhibit A, together with all appurtenances thereto.

"LESSEE" means Clarence T. Bach, an individual who resides in Bexar County, Texas, and his heirs, devisees, executors and assigns.

"LESSOR" means The Board of Regents of The University of Texas System.

"LESSOR Representative" means any one of the persons designated and authorized in writing from time to time by the LESSOR to represent LESSOR in exercising its rights and performing its obligations under this Lease; the initial Lessor Representatives shall be the President of UTSA and the Vice President for Business Affairs of UTSA.

"OFPC" means the Office of Facilities Planning and Construction of The University of Texas System.

"Management Agreement or Agreements" means one or more of the agreements relating to the operation and management of any of the Dormitories or the Recreation Center.

"OFPC Representative" Means that person from the OFPC authorized in writing by LESSOR to represent LESSOR in certain matters pertaining to the construction of the facilities.

"Phase I Dormitory" means that Dormitory which is to be developed and constructed on the Leased Premises, in accordance with the Plans and Specifications.

"Phase I Dormitory Tract" means the real property comprising 4.623 acres of the Leased Premises described in Section and more particularly described in Exhibit E.

"Phase II Dormitory" means that Dormitory which is the first to be developed and constructed constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Phase III Dormitory" means that Dormitory which is the second to be developed and constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Phase IV Dormitory" means that Dormitory which is the third to be developed and constructed by LESSEE on the Additional Leased Premises, in accordance with the Plans and Specifications.

"Plans and Specifications" means the plans and specifications for the development and construction of the Facilities on file in the office of the LESSEE, as the same may be implemented and detailed from time to time by LESSEE, with the approval of the LESSOR.

"Recreation Center" means that building of the Facilities to be constructed by LESSEE on the Leased Premises in accordance with the Plans and Specifications, containing a swimming pool, a game room, dining facilities and other amenities, for use by students, faculty and staff of UTSA and by participants in UTSA-sponsored events.

"UTSA" means The University of Texas at San Antonio, a component institution of The University of Texas System, located in San Antonio, Bexar County, Texas, being an "institution of higher education" as defined in Section 53.02 and Section 61.003(7), Texas Education Code.

Section 2.02. *Table of Contents.* The Table of Contents preceding this Lease is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental hereto or amendatory hereof.

ARTICLE THREE

RENT

Section 3.01. *Rent.* LESSEE agrees to pay to LESSOR at the office of the LESSOR or to such other office as shall be designated to LESSEE in writing by LESSOR those sums, as rental for the use and occupancy

of the Leased Premises, set forth on Exhibit C attached hereto and incorporated herein for all purposes.

ARTICLE FOUR

USE OF LEASED PREMISES

Section 4.01. *Purpose of Lease.* LESSEE enters into this Lease for the purpose of developing and constructing and maintaining the Facilities in accordance with the Plans and Specifications and of operating and maintaining the Facilities in accordance with the Management Agreements. The Leased Premises are to be used for no other purpose.

Section 4.02. *Benefit of UTSA.* LESSEE shall lease and hold the Leased Premises for the support, maintenance or benefit of UTSA. The Leased Premises are not leased for a purpose not related to the performance of the duties and functions of the state or are not leased to provide private residential housing to members of the public other than students of UTSA and participants in UTSA-sponsored activities.

ARTICLE FIVE

ACCEPTANCE AND CONDITION OF PREMISES

Section 5.01. *LESSEE'S Inspection.* LESSEE has had full opportunity to inspect and examine the Leased Premises. LESSEE'S execution of this Lease shall be conclusive evidence of LESSEE'S acceptance thereof in an "AS IS" condition and, subject to LESSOR'S obligations set forth herein, LESSEE hereby accepts the Leased Premises in its present condition as suitable for the purpose for which leased.

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

Section 5.03. LESSOR'S Easements. LESSOR shall provide any easements reasonably required by LESSEE in connection with this Lease, including but not limited to, utility easements through the UTSA campus, and access to and between the Leased Premises and to the remaining portions of UTSA campus and to public streets, and shall execute any instruments reasonably requested by LESSEE evidencing such easements and access.

ARTICLE SIX

ACCESS

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

ARTICLE SEVEN

CONSTRUCTION BY LESSEE

Section 7.01. Local Conditions. LESSEE declares he is familiar with local conditions with respect to the development and construction to be undertaken by LESSEE.

Section 7.02. LESSEE to Pay Costs. LESSEE will develop and construct the Facilities on the Leased Premises at his own cost and expense. LESSOR shall have no financial obligation or other obligation of any kind under this Lease except as specifically set forth herein.

- A. LESSEE shall furnish all supervision, tools, implements, machinery, labor, materials and

accessories such as are necessary and proper for the construction of the Facilities, shall pay all permit and license fees, and shall construct, build, and complete in a good, substantial and workmanlike manner, the structures, work and improvements herein described to be constructed by LESSEE at his expense upon the Leased Premises, all in accordance with this Lease, the Plans and Specifications, and all documents executed pursuant hereto and thereto.

B. Contingent upon the issuance of any required building permits and other governmental approvals, LESSEE shall have the right to and shall provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Leased Premises for the purpose of carrying out any of the activities provided for herein. LESSEE shall have sole control of the selection of construction professionals, construction design, means and methods and the final decision regarding operation of the Facilities. The Plans and Specifications for the construction of the Facilities and for landscaping shall be prepared by registered architects and engineers. The Plans and Specifications shall require the written approval of the OFPC Representative and 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 Leased Premises undertaken by the LESSEE shall be in conformance with all applicable codes rules and regulations, including amendments thereto. LESSEE shall have the right to contest any such codes for reasonable grounds by ordinary and proper procedures.

C. The OFPC Representative and the LESSOR Representative shall review the Plans and Specifications and note in writing any required changes or corrections thereto within twenty-five (25) business days after receipt of the Plans and Specifications. Minor changes in

work or materials, not affecting the general character of the Facilities may be made in the Plans and Specifications at any time without the approval of the OFPC Representative and the LESSOR Representative, but a copy of the altered Plans and Specifications shall promptly be furnished to the OFPC Representative and the LESSOR Representative.

D. At least 120 days prior to undertaking any additional construction for the renovation or remodeling of any of the buildings of the Facilities during the term of this Lease, LESSEE shall submit plans for such renovation or remodeling to the LESSOR and the OFPC Representative for approval, which approval shall not be unreasonably withheld.

E. LESSEE covenants that, subject to Force Majeure, the Plans and Specifications for the Facilities, together with a copy of the building permit for the Phase I Dormitory and the Recreation Center shall be submitted to the OFPC Representative and the Commencement of Construction of such building shall be no later than six (6) months after the date hereof and that LESSEE shall complete its construction within twelve (12) months after the date of Commencement of Construction.

At the option of LESSOR, good faith extensions of time may be made pursuant to ARTICLE 21 hereof.

F. Prior to Commencement of Construction, (1) LESSEE shall deliver to the LESSOR Representative a copy of the signed contract between the LESSEE and the general contractor for the construction of the Facilities to be erected upon the Leased Premises, and (2) LESSEE shall provide payment bonds or payment guaranties or a combination of such bonds and guaranties, which may be from any combination of a financially responsible contractor, an affiliate or subcontractor of such contractor and financial institutions in the form of a letter of credit in favor of LESSOR in an amount adequate to provide for the substantial completion of the Facilities.

- G. The LESSOR Representative shall have the right of review and approval of all payment bonds and performance bonds or guaranties and shall note in writing any required changes or corrections within ten (10) business days after receipt thereof.
- H. At the request of LESSEE, LESSOR will assist or cooperate with LESSEE in obtaining all city, state, or federal approvals necessary for the construction and development contemplated herein and in obtaining any funding, financing or grants that may be available. This provision shall in no way imply that LESSOR will provide LESSEE with legal, tax or financial advice nor will LESSOR incur any liability for any such assistance, cooperation or lack thereof.
- I. LESSEE shall, upon written request of LESSOR, make, in such detail as may reasonably be required, and forward to LESSOR, reports in writing as to the actual progress of the LESSEE with respect to such construction. During such period, the work of the LESSEE shall be subject to inspection by the OFPC Representative and by authorized personnel of UTSA in order to verify reports of construction, determine compliance with safety, fire, and building codes, determine compliance with approved construction plans, or such other inspections as may be necessary in the opinion of the LESSOR Representative.
- J. LESSOR and LESSEE will provide each other with such construction easements as may be reasonably required or desired to effect the construction of the Facilities.
- K. LESSEE shall have the right to prohibit access of the public onto the Leased Premises at such times as the Leased Premises are not open to the public.
- L. LESSEE agrees to comply with all state, federal and local laws and regulations with regard to all construction procedures and materials and the treatment of any archeological or historical properties.

M. LESSEE agrees that it will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenances thereof; and that it will hold LESSOR free and harmless from any and all claims on account of the use of any machines, materials, methods or processes.

Section 7.03. *Personal Property.* All machinery, equipment and items of personal property of any kind owned by LESSEE and at any time placed or maintained by LESSEE on any part of the Leased Premises and all buildings erected and all alterations, additions, attached fixtures or improvements made upon the Leased Premises shall be and remain the property of LESSEE; provided, however, that all buildings erected and all alterations, additions, attached fixtures or improvements made upon the Leased Premises shall become the property of LESSOR upon the Expiration Date or upon termination of this Lease prior to the Expiration Date for any reason, as provided by Section 14.01.

ARTICLE EIGHT

ENCUMBRANCES

Section 8.01. *Mortgage of Leasehold.* LESSEE may with the prior approval of LESSOR, which shall not be unreasonably withheld, at any time and from time to time mortgage the LESSEE'S leasehold estate in the Leased Premises by the creation or execution of contractual liens, deeds of trusts, mortgages, assignments or similar instruments (herein called "Mortgages"). Such prior approval is hereby given to LESSEE for the granting of such Mortgages in connection with the financing of the construction costs of the Facilities, whether such financing be through the issuance of industrial development bonds or by a financial institution.

LESSOR and LESSEE hereby acknowledge that the leasehold estate granted by this instrument and the subleasehold estate granted by LESSEE to Phase I

Dormitory Partnership under the Sublease Agreement referenced in Section 18.03B shall, on the date hereof, be mortgaged pursuant to that certain leasehold Deed of Trust, Security Agreement, Assignment of Rents and Financing Statement of even date herewith in favor of Lloyds Bank International Limited, and LESSOR hereby consents to the granting of such instrument and the terms thereof.

Section 8.02. *LESSOR'S Agreements.* In the event any proposed mortgagee of a leasehold mortgage to be granted pursuant to this Article 8 should so require, then LESSOR shall execute and deliver to each such mortgagee a writing whereby LESSOR agrees in substance to the provisions set out below.

- A. LESSOR shall not terminate this Lease for any default of LESSEE hereunder without first advising the mortgagee, in writing, of such default and permitting the mortgagee to cure such default on behalf of such LESSEE within ninety (90) days after the giving of such notice. Further, if any default, other than a default in the payment of rent hereunder, is not cured within such ninety (90) day period, or any extension thereof agreed to by the LESSOR, (i) if the mortgagee has instituted foreclosure proceedings prior to the expiration of fifteen (15) days after the expiration of said ninety (90) day period (as the same may have been previously extended) and (ii) prosecutes such foreclosure diligently to conclusion, and (iii) the purchaser at the foreclosure sale fully cures the default within ninety (90) days after such foreclosure sale then LESSOR will not terminate this Lease because of the occurrence of such non-monetary default provided that such foreclosure proceedings are diligently prosecuted.
- B. In the event the mortgagee should foreclose upon the LESSEE'S leasehold interest hereunder and should, as a result of such foreclosure, succeed to such leasehold interest, then the mortgagee shall be subject to all the terms and conditions of this Lease and shall be entitled to all the rights and benefits of this Lease; provided, however, that (a) such mortgagee

shall not be liable for any act or omission of LESSEE; (b) such mortgagee shall not be subject to any offsets or defenses which LESSOR has or might have against LESSEE; (c) such 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 mortgagee; (d) upon the written request of such mortgagee, LESSOR shall reaffirm in writing the validity of this Lease and its existence in full force and effect; (e) LESSOR acknowledges and agrees for itself and its successors and assigns that this Lease does not constitute a waiver by any such mortgagee of any of its rights under any leasehold mortgage or in any way release LESSEE from its obligations to comply with the terms, provisions, conditions, representations, warranties, agreements, or clauses of such mortgage or any other such security interest; and (f) LESSOR shall not sell, convey, assign, pledge, hypothecate, or mortgage its interest in the Leased Premises or in this Lease without the prior express written consent of any such mortgagee.

- C. LESSOR will not agree to a modification, alteration, amendment or the release or surrender of this Lease without the consent of the mortgagee.
- D. In the event of the termination of this Lease prior to the Expiration Date, except by eminent domain or condemnation pursuant to Article 19 hereof, LESSOR will serve upon the mortgagee written notice that the Lease has been terminated together with a statement of any and all sums which would have at that time been due under the Lease but for such termination and of all other defaults, if any, under the lease then known to LESSOR whereupon the mortgagee shall have the option to obtain a new lease of the premises by giving notice to LESSOR to such effect within sixty (60) days after receipt by the mortgagee of notice of such termination, which new lease shall be entered into at the reasonable cost of the LESSEE thereunder, shall

be effective as of the date of termination of this Lease and shall be for the remainder of the term of this Lease and for the rent and upon all of the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal. Such new lease shall require the LESSEE to perform any unfulfilled obligation of LESSEE under this Lease which is reasonably susceptible of being performed by such LESSEE. Upon the execution of such new lease, the LESSEE named therein shall pay any and all sums which at the time of the execution thereof would be due under this Lease but for such termination and shall pay all expenses, including reasonable attorney's fees, court costs and disbursements incurred by LESSOR in connection with such defaults and termination, the recovery of possession of Leased Premises and the preparation, execution and delivery of such new lease.

- E. All notices required to be given hereunder by LESSOR to LESSEE shall also be given to each mortgagee, at the address designated in writing to LESSOR.

Section 8.03. *Modification.* LESSOR agrees to consider the execution of reasonable modification, agreements of or amendments to this Lease as may reasonably be requested from time to time by a leasehold mortgagee, provided that such modifications shall not vary the rental to be paid by LESSEE, nor subject the LESSOR'S fee title to any such mortgage, nor be detrimental to the welfare of students, faculty or staff of UTSA.

ARTICLE NINE

MAINTENANCE AND REPAIR

Section 9.01. *Utilities.* LESSEE shall pay or cause to be paid any and all charges, including any connection fees, for water, heat, gas, electricity, sewers and any and all other utilities used on the Leased Premises throughout the term of this Lease and any extension thereof.

Section 9.02. *Repairs.* LESSEE at LESSEE'S

sole cost and expense at all times during the term of this Lease agrees to keep and maintain, or cause to be kept and maintained, the Leased Premises and all buildings and improvements which may be erected on or become a part of the Leased Premises in a good state of appearance and repair, with reasonable wear and tear, damage caused by casualty or condemnation, temporary destruction for renovation and Force Majeure excepted.

Section 9.03. *Condition of Leased Premises.* LESSEE shall be strictly responsible for the condition of the Leased Premises and shall maintain the leased premises in a safe, clean, neat and sanitary condition, attractive in appearance, reasonable wear and tear, damage caused by casualty or condemnation, temporary destruction for renovation and force majeure excepted. LESSOR shall have the right at reasonable times to make reasonable inspections of the Leased Premises and make suggestions as to proper maintenance of the Leased Premises and to insure that fire, safety and sanitation regulations and other provisions contained in this Lease are adhered to by the LESSEE subject to the provisions in ARTICLE 13.

Section 9.04. *Inspection.* LESSOR, at LESSOR'S option, shall cause to be made an annual inspection of the Leased Premises and buildings to ascertain the quality of maintenance being observed by LESSEE, and shall notify LESSEE in writing of all items of repair or replacement deemed reasonably necessary to maintain the Leased Premises and buildings in a presentable and operating condition, with a copy of such notice being provided to each leasehold mortgagee entitled to notices under this Lease. Upon receipt of said notice, LESSEE shall undertake reasonable corrective maintenance or replacement of all items listed.

Section 9.05. *Renovation of Improvements.* LESSEE shall have the right at any time and from time to time to do such major or minor alterations, renovation or repair work to any building or portion of the Facilities as LESSEE determines is reasonably necessary in order to comply with the requirements of this Lease or the Management Agreements, and in connection with such work close one or more buildings of the Facilities for a consecutive period not to exceed twelve (12) months (subject to extension by Force Majeure) to

accomplish such work, during which period LESSEE shall pay the rental due hereunder, or, if it is not necessary to close an entire building, LESSEE may close the portion thereof undergoing such alteration, renovation or repair provided that LESSEE shall use his best efforts to ensure that as few rooms of the Phase I Dormitory are closed at any time as may be practicable under the circumstances.

Section 9.06. *Damage to Improvements.*
Subject to the other terms of this Lease, in the event any portion of the Facilities is damaged by fire or otherwise, regardless of the extent of such damage or destruction, LESSEE shall no later than 180 days following the date of such damage or destruction commence the work of repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the improvements shall, at the sole expense of LESSEE, be restored to substantially the same size, function and value as the improvements existing prior to the damage; provided, however, that if LESSEE'S leasehold mortgagee shall require that so much of the insurance proceeds be applied to such leasehold mortgagee's leasehold mortgage that the remaining proceeds are insufficient, in the reasonable judgment of LESSEE, to permit restoration in accordance with the terms of this Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, then the LESSOR shall grant an appropriate extension of the time for commencing repairs to allow LESSEE to obtain reasonable replacement financing or to obtain the insurance proceeds. If LESSEE shall in good faith be unable to obtain reasonable replacement financing or to obtain the insurance proceeds, then LESSEE may terminate this Lease by written notice to LESSOR. In the event of termination under this paragraph, this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the term, and the rent shall be apportioned and paid to the time of such termination.

Section 9.07. *Restoration and Replacement.*
If, during the last ten years of the term of this Lease, the improvements then on the Leased Premises shall be so damaged by fire or otherwise that the cost of

restoration shall exceed fifty percent (50%) of the replacement value thereof (exclusive of foundations) immediately prior to such damage, then within thirty (30) days after the date of such damage, LESSEE may terminate this Lease by written notice to LESSOR and this Lease shall terminate ten (10) days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the term, and the rent shall be apportioned and paid to the time of such termination. In such event LESSEE shall have no obligation to repair or rebuild, and the entire insurance proceeds, subject to the rights of any leasehold mortgage, shall be the property of LESSEE, provided, however, that at LESSOR'S request made in the manner provided in Section 11.09 above, and at LESSEE'S expense, LESSEE shall promptly demolish and clear any improvements (including foundations) remaining on the Leased Premises.

ARTICLE TEN

CERTAIN LIENS PROHIBITED

Section 10.01. *No Mechanics' Liens.* LESSEE shall not suffer or permit any mechanics' liens or other liens to be enforced against the fee interest of LESSOR in the Leased Premises nor against LESSEE'S leasehold interest in the land nor any buildings or improvements on the Leased Premises by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to LESSEE or to anyone holding the Leased Premises or any part thereof through or under LESSEE.

Section 10.02. *Release of Recorded Liens.* If any such mechanics' liens or materialmen's liens shall be recorded against the Leased Premises, or any improvements thereof, LESSEE shall cause the same to be released of record or, in the alternative, if LESSEE in good faith desires to contest the same, LESSEE shall be privileged to do so, but in such case LESSEE hereby agrees to indemnify and save LESSOR harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and released prior to the execution of such judgment. In

the event LESSOR reasonably should consider itself endangered by any such liens and should so notify the LESSEE and the leasehold mortgagee and the LESSEE should fail to provide adequate security for the payment of such liens, in the form of a surety bond, cash deposit or cash equivalent, within thirty (30) days after such notice, then LESSOR, at LESSOR'S sole discretion, may discharge such liens and recover from LESSEE immediately as net rent under this Lease the amounts to be paid, with interest thereon from the date paid by LESSOR until repaid by LESSEE at the rate of ten percent (10%) per annum.

Section 10.03. *Memorandum Recitals.* The Memorandum of Lease to be filed pursuant to Section 22.06 of this Lease shall state that any third party entering into a contract with LESSEE for improvements to be located on the Leased Premises, or any other party under said third party, shall be on notice that LESSOR shall have no liability for satisfaction of any claims of any nature in any way arising out of a contract with LESSEE.

Section 10.04. *LESSOR Review of Bonds and Guaranties.* Upon request, LESSEE shall provide to LESSOR evidence of adequate compliance under the terms of this Lease of all payment bonds and performance bonds or guaranties and LESSOR shall note in writing any required change or corrections within twenty-five (25) business days after receipt thereof.

ARTICLE ELEVEN

OPERATION AND MANAGEMENT OF FACILITIES

Section 11.01. *Management Agreements.* LESSEE shall be responsible for the operation of the Facilities. LESSEE and LESSOR shall enter into one or more Management Agreements with one or more managers, who shall be approved by LESSOR. Each such Management Agreement shall provide for the operation of the Facilities without cost or expense to LESSOR in conformity with all applicable law and with the rules, regulations and policies of LESSOR and UTSA. The Management Agreements shall permit the Manager to

contract with LESSOR and UTSA to provide certain services.

ARTICLE TWELVE

ADDITIONAL OBLIGATIONS OF LESSOR

Section 12.01. *Right of First Refusal for Additional Dormitories.*

- A. For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by the LESSEE to LESSOR, the receipt and sufficiency of which consideration are hereby confessed and acknowledged by LESSOR, LESSOR, for itself, its successors and assigns, does hereby covenant and agree with LESSEE, that if at any time and from time to time, prior to the expiration or earlier termination of this Lease, LESSOR desires to have one or more Additional Dormitories constructed, at the cost and expense of any lessee, on real property on the UTSA campus which shall be subject to a lease with such lessee similar to this Lease, LESSOR shall be obligated to give LESSEE written notice of such desire specifying therein the "Date of Opening" (which, in no event shall be less than eighteen (18) months after the date of such notice) required by LESSOR for such Additional Dormitory or Dormitories. Such notice shall offer to LESSEE the right to obtain a lease from LESSOR of the Additional Leased Premises on which such Additional Dormitory or Dormitories are to be constructed by LESSEE, which Lease shall be substantially on the same terms and subject to substantially the same provisions and requirements as this Lease, except as otherwise stated in this Section 12.01, with LESSOR agreeing to provide, or to authorize UTSA to provide, the same services with respect to each such Additional Dormitory as LESSOR is obligated to provide under the Management Agreement with respect to the Phase I Dormitory. Following receipt of such written notice from LESSOR, LESSEE shall have one

hundred eighty (180) days within which to accept LESSOR'S offer by giving written notice of its acceptance of such offer within such period of time. Thereafter, the lease of the Additional Leased Premises shall be closed as promptly as practicable after acceptance by LESSEE. If LESSEE fails to timely exercise such right to lease the Additional Leased Premises within the time period stated, LESSOR shall then have the right, at any time within one hundred eighty (180) days after expiration of such one hundred eighty (180) day period to lease such Additional Leased Premises to other persons; however, any leasing of such Additional Leased Premises after such date, as well as the leasing of any other Additional Leased Premises for dormitory use while this Lease remains in effect must again be offered to LESSEE upon said terms and provisions as above stated.

B. Any lease of an Additional Leased Premises pursuant to this Section 12.01, the provisions of paragraph 12.01A. notwithstanding, (i) shall be for a term of years commencing no less than twelve (12) months (unless a shorter period shall have been agreed to by LESSEE) prior to the Date of Opening for the Additional Dormitory or Dormitories constructed thereon and expiring on December 31, 2025; and (ii) the provisions of Section 15.02 shall be revised to provide LESSOR the right to purchase the Facilities constructed on such Additional Leased Premises for a purchase price determined in accordance with Section 15.02.

C. Attached hereto as Exhibit D and incorporated herein for all purposes, is the description of the Dormitory Facilities Area, being that 18.271 acre portion of the UTSA campus, which LESSOR currently contemplates as the location for dormitories and related facilities on such campus. The Leased Premises described on Exhibit A are included in this Dormitory Facilities Area. LESSOR and LESSEE currently contemplate that any Additional Dormitories will also be constructed on lands in the Dormitory Facilities Area; however, nothing in

this Lease shall be deemed or construed to limit LESSOR in its designation of the location on the UTSA campus (as now or hereafter constituted) of where it may desire Additional Dormitories to be built, nor to limit the rights of LESSEE under this Section 12.02 to obtaining leases of Additional Leased Premises only with respect to the Dormitory Facilities Area described in said Exhibit D, if LESSOR desires to grant a lease or leases on other lands for the purpose of having Additional Dormitories constructed, developed, operated and maintained on such other lands.

Section 12.02. Dormitories Constructed by LESSOR. Nothing in Section 12.01 or otherwise shall be construed to restrict or prohibit LESSOR from undertaking at any time at its own cost and expense the construction of one or more dormitories on the UTSA campus.

Section 12.03. Assistance for Tax Treatment. LESSOR will assist, upon request by LESSEE, in obtaining any favorable tax treatment with respect to the Facilities that is allowable under then current law. LESSOR shall not be obligated to provide LESSEE with legal or tax advice or invoke any liability whatsoever.

Section 12.04. Access. In addition to construction easements and access as set forth elsewhere in this Lease, LESSOR shall provide reasonable access to and from the Leased Premises and public streets as well as convenient access between the Leased Premises and the portion of the UTSA campus not subject to this Lease.

Section 12.05. Existence of UTSA. LESSOR will maintain the existence and operation of UTSA on its present campus and will not take or permit any action that would result in the loss of any accreditation of UTSA by accrediting organizations which UTSA presently holds or would otherwise impair its operation as an institution of higher education during the term of this Lease.

ARTICLE THIRTEEN

INSURANCE AND INDEMNIFICATION

Section 13.01. *Indemnification* by LESSEE. Excluding gross negligence or willful misconduct on the part of LESSOR, its employees, agents or contractors, LESSEE shall and will indemnify and save harmless LESSOR, its agents, officers, and employees, from and against any and all liability claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action of any and every kind and nature arising or growing out of or in any way connected with LESSEE'S use, occupancy, management, operation or control of the Leased Premises. This obligation to indemnify shall include the retention of outside legal counsel and third-party investigation costs and all other reasonable costs, expenses, and liabilities from the first notice that any claim or demand has been made.

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

Section 13.02. *LESSOR Not Liable.* LESSOR shall not be liable for any damage to either persons or property sustained by LESSEE or other persons and caused by any act or omission of students or other occupants of the Facilities.

Section 13.03. *Insurance.* LESSEE shall at all appropriate times maintain, with respect to the Leased Premises, for the duration of this Lease and any extensions thereof, insurance issued by a company or companies qualified, permitted or admitted to do business in the State of Texas in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
(1) Comprehensive General (Public) Liability--to include coverage for the following where the exposure exists:	Combined Single Limit for Bodily Injury and Property Damage in an amount acceptable to the LESSOR Representative.

- (A) Premises/ Operations
- (B) Independent Contractors
- (C) Products/Completed Operations
- (D) Personal Injury
- (E) Contractual Liability
- (F) Explosion, collapse and underground property damage

- | | |
|--|---|
| (2) Property Insurance--for physical damage to the property of the LESSEE including improvements and betterments to the Leased Premises. | Coverage for a minimum of 80% of the actual cash value of the property. |
| (3) Builder's Risk Insurance -all risk of physical loss during term of the construction contract and until work is completed | Coverage for a minimum 80% of the replacement cost of the property. |

Section 13.04. LESSOR *Additional Insured.*
 LESSEE agrees that with respect to the above required insurance, LESSOR shall:

- A. Be named on the Comprehensive General Liability policy as additional insured/or an insured, as its interest may appear. LESSOR agrees to promptly endorse insurance checks and/or otherwise release insurance proceeds.
- B. Be provided with sixty (60) days advance notice, in writing, of cancellation or material change in coverage. If any insurance policy provides that the insurer will give such notice, then LESSEE shall not be obligated to do so with respect to such policy.
- C. Be provided with Certificate of Insurance evidencing the above required insurance at the time the policies are required to be obtained and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

Section 13.05. *Additional Insurance.* LESSOR shall review LESSEE'S required insurance as stated

herein at the time of renewal of the said policies or at the time of a material change, and LESSOR reserves the right to require reasonable additional limits or coverages. LESSEE agrees to comply with any such request by LESSOR.

Section 13.06. *Blanket Policies.* If any blanket general insurance policy of LESSEE complies with these requirements, such insurance shall fulfill the requirements set forth herein. At the request of LESSEE, any leasehold mortgagee may be named as an insured or an additional insured on any policies as its interest may appear.

ARTICLE FOURTEEN

TERMINATION, DEFAULT AND REMEDIES

Section 14.01. *Events of Default.* The following events shall be deemed to be events of default by LESSEE under this agreement.

- A. The taking by execution of LESSEE'S leasehold interest set forth herein or of the improvements placed by LESSEE upon the Leased Premises for the benefit of any person other than the leasehold mortgagee.
- B. LESSEE shall fail to pay any sum required to be paid under the terms and provisions of this Lease and such failure shall not be cured within thirty (30) days after receipt of written notice from LESSOR of such failure.
- C. LESSEE shall fail to perform any other covenant or agreement, other than the payment of sums required to be paid, to be performed by LESSEE under the terms and provisions of this Lease and such failure shall not be cured within ninety (90) days after receipt of written notice from LESSOR of such failure; provided that if, during such ninety (90) day period, LESSEE takes action to cure such default but is unable, by reason of the nature of the work involved, to cure the same within such period and continues such work thereafter diligently

and without unnecessary delays, LESSEE shall not be in default hereunder until the expiration of a period of time as may be reasonably necessary to cure such default.

- D. The filing of a petition for relief against the LESSEE, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable Federal or State law of similar import, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for the LESSEE or any substantial part of the properties of the LESSEE or ordering the winding up or liquidation of the affairs of the LESSEE, and the continuance of any such decree or order unstayed and in effect for a period of forty-five (45) consecutive days.
- E. The commencement by the LESSEE of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable Federal or State law of similar import, or the consent or acquiescence by the LESSEE to the commencement of a case under such Code or law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for the LESSEE or any substantial part of the properties of the LESSEE, or the making by the LESSEE of an assignment for the benefit of creditors, or the admission by the LESSEE in writing of its inability to pay its debts generally as they become due.

Section 14.02. *Completion by Mortgagee.*
Subject to Force Majeure, if prior to the substantial completion of the improvements, the LESSEE ceases construction of the improvements for a period of thirty (30) consecutive days, LESSOR may by written notice to the leasehold mortgagee require said leasehold mortgagee to affirm by written notice to LESSOR within thirty (30) days of receipt by said leasehold mortgagee of such notice from LESSOR that such leasehold mortgagee intends to use its best efforts to pursue applicable remedies

which will result in its causing the completion of the improvements. If said leasehold mortgagee fails to give such affirmation or thereafter by written notice abandons such intent, the ceasing of such construction for said 30-day period shall be a default by LESSEE hereunder and LESSOR may exercise its remedies under the Lease on account thereof. This provision is in addition to the payment bond and performance bond or guaranty requirements set forth in this Lease.

Section 14.03. *Right to Expel.* The leasehold mortgagee or lender, who shall have been approved by LESSOR pursuant to Section 8.01, shall have the right to expel LESSEE in the event of an uncured default and assume the position of LESSEE with all rights and duties under this Lease.

Section 14.04. *LESSOR'S Rights Upon Default.* Upon the occurrence of an event of default not cured as heretofore provided, LESSOR may at its option declare this Lease and all rights and interests created by it to be terminated, may seek any and all damages occasioned by LESSEE'S default hereunder, or may seek any other remedies available at law or in equity.

Section 14.05. *Right to Relet Leased Premises.* Upon LESSOR'S exercise of the election to terminate this Lease, LESSOR, its agent or attorney, may take possession of the Leased Premises and relet the same for the remainder of the term upon such terms LESSOR, its agent or attorney, 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 default hereunder.

ARTICLE FIFTEEN

IMPROVEMENTS

Section 15.01. *Title to Improvements Upon Expiration or Termination.* Upon the Expiration Date, or upon the earlier termination of this Lease pursuant to any provision of this lease, title to the Facilities shall vest completely in LESSOR, subject to LESSEE'S rights hereinafter set forth.

- A. Subject to subparagraph B hereof, all furniture, fixtures, equipment and furnishings permanently affixed to the Leased Premises shall become the property of LESSOR upon termination of this Lease whether such termination be by expiration of the term herein granted or an earlier termination under any provision of this Lease.
- B. LESSEE shall have the right, within thirty (30) days after the termination of this Lease, whether such termination be by the expiration of the term or an earlier termination under any provision of this Lease, to remove from the Leased Premises all of its furniture, fixtures, equipment and furnishings which are not permanently affixed to the Leased Premises and with respect to any damage caused thereby shall have the obligation to restore the Leased Premises to a clean and safe condition, and provided that, if any of LESSEE'S property remains in or on the Leased Premises after thirty (30) days following termination of this Lease and no renewal agreement has been executed, such thereof as so remains shall be deemed to have become the property of LESSOR, and may be disposed of as LESSOR sees fit, without liability to account to LESSEE for the proceeds of any sale or other disposition thereof.
- C. LESSOR agrees to subordinate any statutory or other lien or right herein it might have on LESSEE'S furniture, fixtures, equipment and furnishings to any mortgage or other security interest executed or granted by LESSEE on the furniture, fixtures, equipment or furnishings,

and LESSOR will execute such agreements as may be reasonably required by any mortgagee or holder of a security interest in the furniture, fixtures, equipment or furnishings with respect thereto.

Section 15.02. *LESSOR'S Option to Purchase Improvements.* At any time on or after December 31, 1994, LESSOR shall have the option to purchase the Facilities at the purchase price (the "Purchase Price") determined by appraisal in accordance with Section 17.06. Such purchase by LESSOR shall be subject to approval of the Coordinating Board, Texas College and University System. Such option to purchase may be exercised by LESSOR by providing written notice to the LESSEE of LESSOR's intent to exercise such option not later than one hundred eighty (180) days prior to the closing date of such purchase. The LESSOR shall purchase all buildings of the Facilities, whether completed or under construction, at one time. This Lease shall terminate upon such closing date.

ARTICLE SIXTEEN

DEFAULT BY LESSOR

Section 16.01. *LESSEE'S Right to Cure.* Should LESSOR fail to perform any term or covenant of this Lease to be performed by LESSOR and such failure shall not be cured within ninety (90) days after receipt of written notice of said failure from LESSEE, in that event, LESSEE shall have the right to cure the default and offset the cost thereof against the next maturing rental installments under this Lease. Those costs will be limited only to those costs necessary and reasonably incurred by LESSEE to cure the default as presented to LESSOR by LESSEE in an itemized statement.

Section 16.02. *Rights of LESSEE Cumulative.* All rights and remedies of LESSEE provided for in this Lease shall be construed and held to be cumulative, and no single right or remedy shall be exclusive of any other which is consistent with the former. LESSEE shall have the right to pursue any or all of the rights or remedies set forth herein, as well as any other consistent remedy or relief which may be available at

law or in equity, but which is not set forth herein. No waiver by LESSEE of a breach of any of the covenants, conditions or restrictions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or of any other covenant, condition or restriction herein contained. The failure of LESSEE to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future breaches of such covenant or option.

ARTICLE SEVENTEEN

CONDEMNATION

Section 17.01. *Condemnation of Entire Leased Premises.* In the event the entire Leased Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate and expire as of the date of such taking, and both LESSEE and LESSOR shall thereupon be released from any liability thereafter accruing hereunder.

Section 17.02. *Partial Condemnation.* In case of taking of less than all of the Leased Premises and improvements thereon LESSOR and LESSEE mutually shall determine, within sixty (60) days after the date of taking, whether the remaining Leased Premises and improvements thereon after restoration can economically and feasibly be used by LESSEE. If LESSOR and LESSEE have not agreed upon such matter within said sixty (60) day period it shall be resolved by arbitration as provided herein.

If it is determined that the remaining Leased Premises and improvements thereon cannot be economically and feasibly used by LESSEE for the purposes stated in Article Four hereof, LESSEE, at his election, may terminate this Lease by giving LESSOR notice of his election to terminate at least sixty (60) days prior to the date of such termination. Upon any such termination, the rent accrued and unpaid hereunder shall be apportioned to the date of termination.

Section 17.03. *Temporary Taking.* Should a temporary taking occur which does not result in a termination of this Lease, then LESSEE shall remain in the Leased Premises upon the terms of this Lease without reduction or abatement in rent.

Section 17.04. *Division of Award.* The award in any condemnation proceeding shall be divided as follows:

- A. Provided LESSOR'S interest in the land is condemned, LESSOR first shall be entitled to an amount equal to the value, on the date of taking, of the land taken, such value and damages to be determined as if the land were vacant and unimproved and available for its current use, but as encumbered by this Lease. LESSOR and LESSEE shall agree upon such value notwithstanding any separate allocation of such value in the condemnation award, and if they cannot agree it shall be resolved by the method of appraisal provided in Section 17.06 below.
- B. LESSEE shall be entitled to the remainder of the award after the payment has been made to LESSOR as provided above, and LESSEE'S entitlement thereto shall be subject to the rights of the holder of any mortgage or deed of trust on LESSEE'S leasehold interest hereunder.

Section 17.05. *Repair After Condemnation.* Should either a partial taking occur that does not result in termination as provided by Section 17.02 or a temporary taking occur, LESSEE, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the buildings and improvements to a complete architectural unit or units, including without limitation, temporary repairs, changes and installation required to accommodate space subtenants and all other work incidental to and in connection with all the foregoing.

Section 17.06. *Appraisal.* In the event that LESSOR and LESSEE are unable to agree upon any value, price of any of the Facilities or other matter subject to appraisal pursuant to the terms of this Lease within thirty (30) days after the dispute or failure to agree arises, then such value or other matter shall be

established by appraisers chosen and who shall act in the following manner: LESSEE and LESSOR shall each nominate one person deemed by them, respectively, to be fit, reputable and impartial, to appraise and determine the unresolved matter. The nomination must be in writing and must be given by each party to the other within fifteen (15) days after the aforesaid thirty (30) day period. If only one party shall so nominate an appraiser within such fifteen (15) day period, the other party may then nominate an appraiser by written notice to the other party given within ten (10) days after its receipt of the nomination of the other party. If only one party shall nominate an appraiser within the periods referred to above, then that appraiser shall have the power to act alone, and his decision as to value or such other matters made in accordance with the provisions hereof shall be binding on both parties. The two persons so nominated and appointed as appraisers by the parties shall be requested to appraise the Facilities or other matter submitted to them within thirty (30) days after the second of them shall be nominated. If the lower of the two values so determined by them is within ten percent (10%) of the amount of the higher value, then the value of the Facility or other matter shall be determined to be the average of the two. If such lower value is more than ten percent (10%) less than the higher value, then such two appraisers 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 Western District of Texas (or successor judge exercising similar functions) to appoint a fit, reputable and impartial person, who shall then be umpire, but if such Chief Judge (or successor) shall fail or refuse to act 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 American Institute of Real Estate Appraisers. The following written decisions shall be conclusive and binding on the parties: the decision of one appraiser if either party shall fail to appoint its appraiser as hereinabove provided; the decision of the two appraisers prior to appointment of

the umpire; the decision of a majority of the two appraisers and the umpire. The two appraisers and umpire shall serve their written decision upon the parties within sixty (60) days after the selection of such umpire, provided the two appraisers may extend that period once up to sixty (60) days by joint notice to the parties. Each party shall bear the expense of its own appraiser, but the fees and expenses of the umpire shall be shared equally. In no event shall the appraisers have the right or power to vary the terms of this Lease.

ARTICLE EIGHTEEN

ASSIGNMENT AND SUBLETTING

Section 18.01. *Assignment by LESSEE.* LESSEE is hereby authorized to sell or assign LESSEE'S leasehold estate in its entirety or for any portion of the unexpired lease term thereof at any time. Any purchaser or assignee of LESSEE'S leasehold estate shall have like power of sale, assignment and transfer on the same conditions and subject to the same restrictions as those imposed herein on LESSEE and shall be subject to all terms and conditions of the Lease; provided however, that, subject to the provisions of Section 18.04, no sale or assignment under this ARTICLE shall relieve LESSEE of any liability under this Lease unless the assignment is made subsequent to the completion of the Dormitory Phase I and the Recreation Center and

- A. The assignee is either the original long-term first leasehold mortgagee or the construction lender leasehold mortgagee and is approved by the LESSOR, which approval shall not be unreasonably withheld, or such assignee is a purchaser at a foreclosure sale, or is the assignee of any of the foregoing, or
- B. The assignee is an Affiliated Entity, or
- C. The assignee has been approved by the LESSOR, which approval may not be unreasonably withheld.

The LESSOR'S decision as to approval will be based only upon the financial capabilities of the assignee and the managerial capabilities of the assignee or any person or

entity with whom the assignee has contracted for the management of the Facilities. Any dispute of the parties as to the reasonableness of withholding approval of an assignee will, at the choice of either party, be submitted for expedited arbitration in San Antonio, Texas, in accordance with the procedure then obtaining of the American Arbitration Association.

Section 18.02. *Notice of Assignment.* Except for any assignment to an Affiliated Entity, for which notice and consent as provided in this Section shall not be required, LESSEE shall give LESSOR sixty (60) days prior written notice that it proposes to enter into an assignment of this Lease, which notice shall include the identity of and reasonable financial history and data concerning the proposed assignee. LESSOR shall give LESSEE notice of his consent or refusal of consent within sixty (60) days after receipt of notice from LESSEE. If, however, the LESSOR should fail to give LESSEE notice of consent or refusal of consent within sixty (60) days after receipt of notice from LESSEE, such failure shall constitute approval of the assignment of this Lease provided that LESSEE shall give LESSOR written notice of the effective date of such assignment.

Section 18.03 *Subletting.*

- A. LESSEE is hereby authorized to sublet all or one or more portions of the Leased Premises for purposes consistent with the Lease and the Management Agreements, including but not limited to, space in the Recreation Center which may be sublet to concessionaires, it being expressly understood and agreed that any such subletting shall have no effect on the obligations and covenants imposed hereunder upon LESSEE and shall not release LESSEE from any liability under this Lease.
- B. LESSEE is hereby expressly authorized to sublet to Phase I Dormitory Partnership (the "Partnership") a Texas general partnership having Clarence T. Bach as its managing general partner and being an Affiliated Entity, that certain 4.623 acre portion (the "Phase I Dormitory Tract") of the Leased Premises, more particularly described on Exhibit E attached hereto and incorporated herein for all

purposes, for the purpose of developing, constructing and operating the Phase I Dormitory.

- C. LESSOR agrees to execute any instruments reasonably required by LESSEE evidencing LESSEE'S right to sublet under subsection A or B of this Section 18.03.

Section 18.04. *Nondisturbances.* Upon the written request of LESSEE, LESSOR will enter into an appropriate agreement (hereinafter called a "nondisturbance agreement") with any sublessee of a portion of the Leased Premises. Such nondisturbance agreement shall provide in substance that so long as the sublessee complies with all of the terms of its sublease, LESSOR, in the exercise of any of its rights or remedies under this Lease, shall not deprive the sublessee of possession, or the right of possession, of the property covered by the sublease during the term thereof, or join the sublessor as a party in any action or proceeding to obtain possession of the property leased pursuant to the sublease for any reason other than a breach by the sublessee of the terms of the sublease which would entitle the sublessor to dispossess the sublessee thereunder, provided that (a) the sublessee meets reasonable requirements of financial responsibility; (b) its business is of a character consistent with those in the Leased Premises; (c) such sublease does not cover any period beyond the term of this Lease; (d) concurrently with the execution of the nondisturbance agreement, the sublessee, at the request of LESSOR, will agree in writing that in the event of any termination of this Lease prior to the expiration of its term, the sublessee will attorn to LESSOR and will become a lessee of LESSOR under its sublease; and (e) the sublease shall be subject in all respects to the terms and conditions of this Lease (except to the extent that LESSOR and the sublessee may provide to the contrary in the nondisturbance agreement).

ARTICLE NINETEEN

COMPLIANCE CERTIFICATES

Section 19.01. *LESSOR Compliance.* LESSEE agrees, at any time and from time to time upon not less

than ten (10) days prior written notice by LESSOR, to execute, acknowledge and deliver to LESSOR or to such other party as LESSOR shall request, certifying (1) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (2) whether or not there are then existing any offsets or defenses against the enforcement of any of the terms, covenants or conditions hereof upon the part of LESSEE to be performed (and if so specifying the same), and (3) the dates to which the rent and other charges have been paid, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective purchaser of the fee interest in the Leased Premises.

Section 19.02. *LESSEE 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 ten (10) days prior written notice by LESSEE, to execute, acknowledge and deliver to LESSEE a statement in writing, addressed to LESSEE or to such other party as LESSEE shall request, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications), and the dates to which the rent and other charges have been paid, and stating whether or not LESSEE is in default in performance of any covenant, agreement or condition contained in this Lease and, if so, specifying each such default and stating whether any notice of default has been given under this Lease regarding a default which has not been remedied, and if so, stating the nature of said default and the date of the giving of said notice, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective assignee, sublessee or leasehold mortgagee or prospective assignee, sublessee or leasehold mortgagee of this Lease or by any assignee or prospective assignee of any such leasehold mortgage or by any undertenant or prospective undertenant of the whole or any part of the Leased Premises.

ARTICLE TWENTY

TAXES AND LICENSES

Section 20.01. *Payment of Taxes.* LESSEE shall pay, and, upon request by LESSOR, shall provide evidence of payment to the appropriate collecting authorities, all federal, State and local taxes and fees, which are now or may hereafter be levied upon the premises, or upon LESSEE, or upon the business conducted on the premises, or upon any of LESSEE'S property used in connection therewith; and shall maintain in current status all Federal, State and local licenses and permits required for the operation of the business conducted by LESSEE. LESSEE may pay any of the above items in installments if payment may be so made without penalty other than the payment of interest.

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

ARTICLE TWENTY-ONE

FORCE MAJEURE

Section 21.01. *Discontinuance During Force Majeure.* Whenever a period of time is herein prescribed for action to be taken by LESSEE, LESSEE shall not be liable or responsible for, and there shall be excluded from the computation for any such period of

time, any delays due to war, civil commotion, strikes, riots, acts of God, shortages of labor or materials, war, laws, regulations or restrictions of the federal government, fire or other casualty or any other causes of any kind whatsoever which are beyond the reasonable control and without the fault or negligence of LESSEE (all of such matters herein called "Force Majeure"). LESSOR shall not be obligated to recognize any delay caused by Force Majeure unless LESSEE shall, within thirty (30) days after LESSEE is aware of the existence of an event of Force Majeure, notify LESSOR thereof in writing, certified mail, return receipt requested. One (1) notice shall be sufficient per occurrence. The foregoing notwithstanding, if any such delay is caused by LESSOR there shall be no time limit on the period of enforced delay and LESSEE shall not be required to give notice to LESSOR hereunder.

Section 21.02. *Extension of Time.* In addition to the provisions of Section 21.01 above, the time periods herein provided to LESSEE shall be extended by LESSOR after the discontinuance of any Force Majeure if LESSEE is pursuing the development and construction of the Facilities in good faith, provided that each such good faith extension shall not exceed six (6) months and provided that each request for such extension shall be made in writing.

ARTICLE TWENTY-TWO

GENERAL

Section 22.01. *Nondiscrimination. Employment and Wages.* Any discrimination by LESSEE or its agents or employees on account of race, color, sex, age, religion, national origin or handicap, in employment practices or in the use of or admission to the leased premises, is prohibited.

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 he

nor any person having an interest in this Lease by, through or under LESSEE is an officer of LESSOR.

Section 22.03. *Notices.* Notices or communications to LESSOR or LESSEE required or appropriate under this Lease shall be deemed sufficient if in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) registered or certified United States mail, postage prepaid, or (d) prepaid telegram or telex if confirmed by expedited delivery service or by mail in the manner previously described, addressed as follows:

if to LESSOR:

The Board of Regents of The
University of Texas System
601 Colorado
Austin, Texas 78701
Attention: Executive Vice Chancellor
for Academic Affairs

with copies to:

Office of the General Counsel
The University of Texas System
201 W. Seventh Street
Austin, Texas 78701
Attention: General Counsel

The University of Texas at
San Antonio
San Antonio, Texas 78285
Attention: Vice President for
Business Affairs

if to LESSEE:

Clarence T. Bach
8702 Cinnamon Creek, #104
San Antonio, Texas 78240

with copy to:

Fulbright & Jaworski
2200 InterFirst Plaza
300 Convent Street
San Antonio, Texas 78205
Attention: Mary Q. Kelly, Esquire

or to such other address or to the attention of such other person as hereafter shall be designated in writing by such party. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of telegram or telex, upon receipt.

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. *Quiet Enjoyment.* LESSOR represents and warrants that it is the owner of the Leased Premises in fee simple, that the Leased Premises are free from encumbrances, that it has the right and power to make this Lease and that it will execute or procure any further assurances of title that may reasonably be required for the protection of LESSEE or to effectuate the Lease granted to LESSEE hereby. LESSOR covenants and agrees, subject to the provisions of this Lease, that LESSEE, upon paying the rent and all other charges in this Lease provided for and observing and performing the covenants, agreements and conditions of this Lease on its part to be observed and performed, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term without hindrance or molestation of any kind whatsoever.

Section 22.06. *Memorandum of Lease.* Neither LESSOR nor LESSEE shall file this Lease for record in the Office of the County Clerk of Bexar County, Texas, or in any other public place without the written consent of the other. In lieu thereof, LESSOR and LESSEE agree to execute in recordable form a memorandum of this Lease stating the parties, the Leased Premises covered thereby, the term of this Lease, the rights of LESSEE under Article Twelve, the rights of LESSOR under Section 15.02, the warning described in Section 10.03, and such other matters on which LESSOR and LESSEE agree. Such memorandum shall be filed for record in the

Office of the County Clerk of said County. At the request of either party, the other will execute a memorandum in recordable form acknowledging that the term has been extended in accordance with Section 1.03 hereof.

Section 22.07. *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 twenty five (25) days from the date of such proposal or request shall apply unless the parties otherwise agree in writing.

Section 22.08. *Texas Law to Apply.* This Lease shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

ARTICLE 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 of relinquishment for the future of such covenant or

option. A receipt by LESSOR or acceptance of payment by LESSOR of rent with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by LESSOR of any provision of this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

Section 23.03. *Gender.* Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular or plural number shall be held to include the other number, unless the context otherwise requires.

Section 23.04. *Captions.* The captions contained in this Lease are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Lease.

Section 23.05. *Counterparts.* This agreement may be executed in multiple counterparts, each of which shall be declared an original.

Section 23.06. *Severability.* If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease a clause or provision as may be possible and be legal, valid and enforceable.

Section 23.07. *Entire Agreement.* This Lease, together with the authorized resolution of LESSOR, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon, and no other agreements, oral or otherwise, regarding the subject matter of this Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representations not herein written.

Section 23.08. *Amendment.* No amendment, modification, or alteration of the terms of this Lease

shall be binding unless the same be in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

Section 23.09. *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.

This Lease EXECUTED in Austin, Texas this the 23rd day of December, 1985.

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

BY: Hans Mark
Dr. Hans Mark
Chancellor, The University
of Texas System

"LESSOR"

APPROVED AS TO CONTENT:

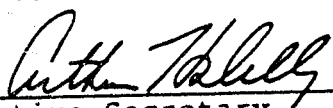
James P. Duncan
Executive Vice Chancellor
for Academic Affairs,
The University of Texas
System

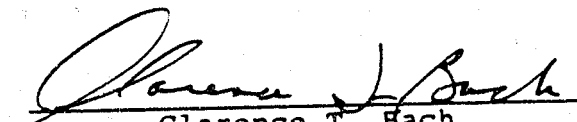
APPROVED AS TO FORM:

Mark W. [Signature]
Office of General Counsel,
The University of Texas
System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Ground Lease Agreement was approved by The Board of Regents of The University of Texas System on the 13rd day of December, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.


Executive Secretary
Board of Regents of The
University of Texas System


Clarence T. Bach

"LESSEE"

Attachments:

- Exhibit A - Description of Leased Premises
- Exhibit B - Easements
- Exhibit C - Lease Payments
- Exhibit D - Description of Dormitory Facilities Area
- Exhibit E - Description of Phase I Dormitory Tract

EXHIBIT A

(to Ground Lease Agreement)

FIELD NOTE DESCRIPTION
5.865-ACRE TRACT

BEING a 5.865-acre tract of land located within the Anselmo Pru Headright League Survey No. 20 County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;
S83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 697.44 feet to the

Engineers Station 86+52.56, then departing from F.M. Road 1604, S07°25'43"E, a distance of 667.33 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system on F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE, with the University of Texas at San Antonio coordinate system, S61°00'00"W, a distance of 253.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N29°00'00"W, a distance of 7.00 feet to a point;
THENCE S61°00'00"W, a distance of 407.00 feet to a point;
THENCE S29°00'00"E, a distance of 37.00 feet to a point;
THENCE S61°00'00"W, a distance of 123.00 feet to a point;
THENCE N29°00'00"W, a distance of 20.00 feet to a point;
THENCE S61°00'00"W, a distance of 220.00 feet to a point, said point being the Southwest corner of this tract;

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THENCE N29°00'00"W, a distance of 370.00 feet to a point, said point being the Northwest corner of this tract;

THENCE N61°00'00"E, a distance of 640.84 feet to a point, said point being the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 230.64 feet, a central angle of 03°11'08", a length of 12.82 feet and a chord which bears S83°09'11"E, a distance of 12.82 feet to a point;

THENCE S84°44'38"E, a distance of 111.02 feet to a point;
THENCE S61°00'00"W, a distance of 504.99 feet to a point;
THENCE S29°00'00"E, a distance of 132.00 feet to a point;
THENCE N61°00'00"E, a distance of 512.00 feet to a point;
THENCE N29°00'00"W, a distance of 60.00 feet to a point;
THENCE N61°00'00"E, a distance of 40.68 feet to a point;
THENCE N29°00'00"W, a distance of 39.53 feet to the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 208.28, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N87°16'24", a distance of 57.85 feet to a point;

THENCE N79°17'27"E, a distance of 97.70 feet to the P.C. of a curve;

THENCE, along the arc of a curve to the right, having a radius of 212.49 feet, a central angle of 20°56'10", a length of 77.65, and a chord which bears N89°45'31"E, a distance of 77.22 feet to a point, said point being the most Northerly point on the most Easterly line of this tract;

THENCE S29°00'00"E, a distance of 164.11 feet to the POINT OF BEGINNING, containing 5.865 acres (255,493.49 sq. ft.).

EXHIBIT B

(to Ground Lease Agreement)

EASEMENTS

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EXHIBIT C

(to Ground Lease Agreement)

LEASE PAYMENTS

The Lease payments shall be \$1000.00 per year, payable in advance, commencing on the date of execution hereof and thereafter on each anniversary of such execution date during the term hereof.

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EXHIBIT D

(to Ground Lease Agreement)

DESCRIPTION OF DORMITORY FACILITIES AREA

FIELD NOTE DESCRIPTION
18.271-ACRE TRACT

BEING an 18.271-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;
S83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 900.58 feet to the

Engineers Station 84+49.42, then departing from F.M. Road 1604, S07°25'43"E, a distance of 1,138.40 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system on F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE S61°00'00"W, a distance of 407.00 feet to a point;
THENCE N29°00'00"W, a distance of 195.00 feet to a point;
THENCE S85°34'32"W, a distance of 110.00 feet to a point;
THENCE N72°18'45"W, a distance of 222.99 feet to a point;
THENCE N29°00'00"W, a distance of 80.00 feet to a point;
THENCE S61°00'00"W, a distance of 123.00 feet to a point;
THENCE N29°00'00"W, a distance of 20.00 feet to a point;

THENCE S61°00'00":W, a distance of 220.00 feet to a point, said point being the Southwest corner of this tract;

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THENCE N29°00'00"W, a distance of 798.43 feet to the Northwest corner of this tract;

THENCE N72°00'00"E, a distance of 328.63 feet to the P.C. of a curve to the right;

THENCE along the arc of said curve having a radius of 274.87 feet, a central angle of 56°33'15", a length of 271.32 feet and a chord which bears S79°43'22"E, a distance of 260.43 feet to a point;

THENCE S51°26'45"E, a distance of 114.47 feet to the P.C. of a curve to the left;

THENCE along the arc of said curve having a radius of 230.64 feet, a central angle of 33°17'53", a length of 134.04, and a chord which bears S68°05'41"E, a distance of 132.16 feet to a point;

THENCE S84°44'38"E, a distance of 168.71 feet to the P.C. of a curve to the left;

THENCE along the arc of said curve having a radius of 208.28 feet, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N87°16'24"E, a distance of 57.85 feet to a point;

THENCE N79°17'27"E, a distance of 97.70 feet to the P.C. of a curve to the right;

THENCE along the arc of said curve having a radius of 212.49 feet, a central angle of 20°56'10", a length of 77.65 feet, and a chord which bears N89°45'31"E, a distance of 77.22 feet to the Northeast corner of this tract;

THENCE S29°00'00"E, a distance of 677.11 feet to the POINT OF BEGINNING, containing 18.271 acres, (795,901.79 sq. ft.).

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EXHIBIT E

(to Ground Lease Agreement)

DESCRIPTION OF PHASE I DORMITORY TRACT

FIELD NOTE DESCRIPTION
4.623-ACRE TRACT

BEING A 4.623-acre tract of land located within the Anselmo Pru Headright League Survey No. 20 County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;
S83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 632.46 feet to the Engineers Station 88+87.65, then departing from F.M. Road 1604, S07°25'43"E, a distance of 761.09 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system on F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE, with the University of Texas at San Antonio coordinate system, S61°00'00"W, a distance of 407.00 feet to a point;

THENCE S29°00'00"E, a distance of 37.00 feet to a point;
THENCE S61°00'00"W, a distance of 123.00 feet to a point;
THENCE N29°00'00"W, a distance of 20.00 feet to a point;
THENCE S61°00'00"W, a distance of 220.00 feet to a point being the Southwest corner of this tract;

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THENCE N29°00'00"W, a distance of 370.00 feet to a point being the Northwest corner of this tract;

THENCE N61°00'00"E, a distance of 640.84 feet to the most Easterly point of the most Northerly line of this tract and also being the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 230.64 feet, a central angle of 3°11'08", a length of 12.82, and a chord which bears S83°09'11"E, a distance of 12.82 feet to a point;

THENCE S84°44'38"E, a distance of 111.02 feet to a point;

THENCE S61°00'00"W, a distance of 504.99 feet to a point;

THENCE S29°00'00"E, a distance of 132.00 feet to a point;

THENCE N61°00'00"E, a distance of 512.00 feet to a point;

THENCE S29°00'00"E, a distance of 151.00 feet to the POINT OF BEGINNING, containing 4.623 acres (201,370.63 sq. ft.).

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- Attachment 2 -

MANAGEMENT AGREEMENT
UTSA PHASE I DORMITORY

Dated as of December 1, 1985

By and Among

THE BOARD OF REGENTS
OF THE
UNIVERSITY OF TEXAS SYSTEM,

PHASE I DORMITORY PARTNERSHIP

and

SANDALWOOD MANAGEMENT, INC.

SAOF&J

5782

12-18-85

1999

MANAGEMENT AGREEMENT
(Dormitory)

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MANAGEMENT AGREEMENT
UTSA PHASE I DORMITORY

THIS MANAGEMENT AGREEMENT (this "Management Agreement") is entered into as of this 1st day of December, 1985, by and among The Board of Regents of The University of Texas System, acting by and for the University of Texas at San Antonio (the "University"), Phase I Dormitory Partnership (the "Owner"), and Sandalwood Management, Inc. (the "Manager") under the terms and conditions hereinafter set forth.

W I T N E S S E T H

WHEREAS, the Owner intends to sublease a 4.623 acre parcel of real property located in San Antonio, Bexar County, Texas, more particularly described in Exhibit A attached hereto and made a part hereof (the "Leased Premises"), and to construct, maintain and operate thereon a four story dormitory to be known as UTSA Phase I Dormitory (the "Dormitory"), as more particularly described in Exhibit B attached hereto;

WHEREAS, the Leased Premises is subject to that certain Ground Lease Agreement (the "Ground Lease"), dated as of December 1, 1985, between the University as Lessor and Clarence T. Bach as Lessee, and is further subject to that certain Sublease Agreement dated as of even date therewith between the University as Master Landlord, Clarence T. Bach as Landlord and Owner as Tenant;

WHEREAS, the costs of acquisition, construction and equipping of the Dormitory is to be financed with the proceeds of \$7,300,000 City of San Antonio, Texas, Higher Education Authority, Inc. Variable Rate Demand Revenue Bonds (UTSA Phase I Dormitory Project) Series 1985 (the "Bonds");

WHEREAS, the Owner and the University desire to engage the services of Manager related to the management and operation of the Dormitory on behalf of Owner, upon the terms and conditions set forth herein, subsequent to its completion; and

WHEREAS, the Manager represents and warrants to the Owner and the University that it is qualified to render the services required of it hereunder and desires

to perform such services for the Owner in consideration of the compensation to be paid solely by Owner set forth herein;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, obligations and agreements contained herein, University, Owner and Manager do hereby covenant, stipulate and agree as follows:

ARTICLE 1
PROPERTIES

Section 1.1. Description of Dormitory. The Dormitory as described in Exhibit B attached hereto, shall be subject to the terms, provisions and conditions of this Management Agreement. No parcel of real property or improvements thereon shall be subject to the terms, provisions and conditions of this Management Agreement unless listed, described and identified in Exhibit A attached hereto.

Section 1.2. Termination of Ground Lease. This Management Agreement shall terminate automatically and immediately as to the Dormitory upon termination of the Ground Lease on the Leased Premises. Owner shall furnish written notice of any such proposed termination to Manager not less than thirty (30) days prior to such termination.

ARTICLE 2
TERM OF AGREEMENT

Section 2.1. Commencement Date. The term of this Management Agreement shall commence on the date upon which the Owner notifies Manager that construction of the Dormitory has been completed and the Dormitory is ready for operation (the "Commencement Date"). The term of this Management Agreement shall end at midnight on the day before the fifth (5th) anniversary of the Commencement Date.

Section 2.2. Cancellation Privilege. Notwithstanding the foregoing, Owner shall have the right to cancel this Management Agreement without penalty and without liability to the Manager (except for any accrued and unpaid Management Fee) as of midnight on

the day before the second (2nd) and the fourth (4th) anniversary of the Commencement Date upon ninety (90) days prior written notice to the Manager and the Lessor. In the event of cancellation by Owner, the Manager agrees that it shall, upon the request of Owner, continue to manage the Dormitory in accordance with the terms hereof on a month to month basis for a period not to exceed six (6) months until Owner has engaged a new manager for the Dormitory.

Section 2.3. Renewals. The Manager and Owner represent, warrant and agree that if any new operating agreement for the Dormitory is negotiated between them, its term (including any renewal options provided for in such agreement) shall not exceed five (5) years and the Owner shall have the right to cancel the agreement without penalty as of the end of each two year period of the term of such new agreement.

ARTICLE 3 MANAGER'S RESPONSIBILITIES

Section 3.1. Management. Manager shall manage, operate and maintain the Dormitory in an efficient and satisfactory manner. Manager shall act in a fiduciary capacity with respect to the proper protections of and accounting for Owner's assets subject to Manager's control and management under this Management Agreement. In this capacity, Manager shall deal at arm's length with all third parties.

Section 3.2. Standard of Care and Use of the Dormitory. In the performance of its duties and obligations under this Management Agreement, Manager shall diligently and in good faith seek to promote the best interests of the University and the Owner with respect to the management, operation, maintenance, and repair of the Dormitory. In operating the Dormitory, except during periods of restoration, renovation, refurbishing, casualty, condemnation and temporary destruction for renovation Manager will at all times provide good, prompt and efficient services adequate to meet all reasonable demands for such services at the Dormitory.

Manager agrees not to use or allow the use of the Dormitory or any part thereof, for any purpose in violation of any valid and applicable law, regulation,

ordinance of the United States, the State of Texas, or the City of San Antonio or of any rule of the University.

Section 3.3. Trash Removal. Manager shall be responsible for the sanitary gathering, handling and disposal of all trash, litter, and refuse from the Dormitory; provided, however, that this paragraph is not intended to in any way limit Manager's right to obtain and use trash disposal services on the same terms and conditions as such services are made available by the University to similar users on the campus at the time.

Manager shall provide and use suitable covered receptacles for all garbage, trash and other refuse. The facility for garbage storage shall be such as to hide from public view all garbage receptacles and to prevent permeation of odor, and shall be kept in a clean and sanitary condition. Manager shall not permit piling of boxes, cartons, barrels or other similar items, in an unsightly or unsafe manner, on or about the Dormitory. This Section is not intended to prohibit normal construction activities conducted in accordance with applicable municipal laws during any period of construction, renovation or similar activity.

Section 3.4. Employees; Independent Contractors. Subject to the provisions hereinafter, Manager shall have in its employ at all times a sufficient number of capable employees to enable it to properly and adequately manage, operate and maintain the Dormitory, and Manager shall engage such independent contractors as are necessary to supplement and complement Manager's employees in order to properly and adequately manage, operate and maintain the Dormitory.

Manager may contract with third parties and with the University for such services to be provided by them as are necessary and prudent to adequately manage, operate, and maintain the Dormitory.

Manager shall be responsible to Owner for all such employees and independent contractors. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Manager's employees and others engaged by Manager for the operation and maintenance of the Dormitory shall be the responsibility of Manager. Manager and all personnel of Manager who handle or who are responsible for handling of Owner's

moneys shall, without expense to Owner, be bonded in favor of Owner by a fidelity bond acceptable both to Manager and Owner, in an amount of not less than \$10,000 for each employee and with a company acceptable to Manager and Owner, a copy of which fidelity bond shall be furnished to Owner.

All salaries, wages and other compensation of personnel employed by Manager hereunder, including payment of such fringe benefits as medical and health insurance, deferred compensation, social security, and workers' compensation insurance, shall be Manager's expenses, and Owner and University shall have no liability therefor. Manager may negotiate with any union lawfully entitled to represent such employees and may execute in its own name, and not as agent for Owner, collective bargaining agreements or labor contracts resulting therefrom. Manager shall fully comply with all applicable laws and regulations relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employment matters in connection with the Dormitory. Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. Manager represents that it is and will continue to be an equal opportunity employer, and will advertise (to the extent Manager elects to advertise) as such.

This Management Agreement is not one of agency by Manager for University or Owner, but is a contract among Owner and University and a Manager which is engaged independently in the business of operating and managing properties on its own behalf, as an independent contractor. Manager understands and agrees that its relationship to Owner is that of independent contractor, and that Manager will not represent to anyone that its relationship to University and Owner is other than that of independent contractor.

Section 3.5. Schedule of Employees. Manager shall provide a schedule of employees by employment category (substantially in the format of Exhibit D attached hereto) to be employed in the direct management of the Dormitory, including, but not limited to the Director of Housing and Resident Assistants, who are to be selected by the University with the approval of the Owner and compensated by the Manager. Such schedule

shall include the number of employees and their title and salary range, and shall also indicate which employees are bonded and are covered under Manager's comprehensive crime insurance policy. Exhibit D may be amended from time to time by mutual agreement of Owner, University and Manager.

Section 3.6. Compliance with Legal Requirements. Manager shall be responsible for management, operation and maintenance of the Dormitory in compliance with federal, state, county and municipal laws, ordinances, regulations and orders and with the Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, management, operation, repair and maintenance of the Dormitory, and with the rules, regulations or orders of the local board of fire underwriters or other similar body.

Manager shall promptly remedy any violation of any such law, ordinance, rule, regulation or order that comes to its attention. Manager shall promptly, and in no event later than the close of the next business day following receipt, give notice to University and Owner by telephone, with confirmation in writing, of receipt by Manager of any information relating to violations of laws, ordinances, rules, regulations and orders. Manager shall cooperate with the University in its enforcement of the University's Rules and Policies applicable to Dormitory residents and others occupying or visiting the Dormitory.

Expenses incurred in remedying violations shall be paid from the Operating Account (defined below), provided such expenses do not exceed One Thousand and No/100 Dollars (\$1,000.00) in any one instance. When more than such amount is required or if the violation is one for which Owner might be subject to civil penalty or criminal liability, Manager shall notify Owner by the end of the next business day to the end that prompt arrangements may be made to remedy the violation.

Manager shall apply for, obtain, and maintain in the name of Owner, all licenses and permits required of Owner or Manager in connection with the management and operation of the Dormitory.

Manager shall obtain the prior approval of Owner and University for all forms of dormitory contracts to be entered into by residents and prospective residents of the Dormitory.

Manager shall execute and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel and the operation of the Dormitory. Notwithstanding anything to the contrary contained herein, Manager shall not be responsible for filing any tax returns for Owner.

Manager shall not knowingly commit any act or default under the terms and conditions contained in any ground lease, mortgage, deed of trust or other security instruments affecting the Dormitory, and shall promptly, and in no event later than the close of the next business day following receipt, notify Owner by telephone, with confirmation in writing, of any such default or notice of default that comes to the attention and knowledge of Manager.

Section 3.7. Approved Budgets. Manager shall prepare and submit to Owner and to University a proposed Operating Budget and a proposed Capital Budget for the operation, repair, improvement and maintenance of the Dormitory for the forthcoming academic year. The proposed budgets for the forthcoming academic year shall be delivered to Owner and University no later than March 1 prior to the beginning of each academic year.

The proposed budgets shall reflect the schedule of rents proposed for the forthcoming academic year and shall include income projections based upon anticipated occupancy levels and rentals. In addition, Manager shall provide supporting documentation, which shall be reasonably satisfactory to Owner and to University, for projections regarding expenditures for real property taxes, utility costs, repairs and maintenance, and anticipated capital expenditures, including, wherever reasonably practicable, a bid supporting the estimated budgeted costs for capital expenditures.

Owner and University will consider the proposed budgets and then will consult with Manager in the ensuing period prior to the commencement of the forthcoming academic year in order to mutually agree on (the "Approved Operating Budget") including the amount of room rent to be charged to residents and on a capital

budget (the "Approved Capital Budget"). The Approved Operating Budget and the Approved Capital Budget are sometimes collectively referred to herein as the "Approved Budgets."

Manager agrees to use diligence and to employ all reasonable efforts to ensure that the actual costs of maintaining and operating the Dormitory shall not exceed the Approved Budget pertaining thereto either in total or in any one accounting category. All expenses shall be charged to the proper account as specified in the Approved Budgets, and no expense may be classified or reclassified for the purpose of avoiding an excess in the annual budgeted amount of an accounting category. Manager shall secure Owner's prior approval for any expenditure that will result in an excess of 5% or more in any one accounting category in the Approved Budgets, however, if said expenditure is less than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), no such approval is necessary. Notwithstanding any provision contained herein to the contrary, for a period of one (1) year from and after the date hereof, in the event that the actual costs of maintaining and operating the Dormitory shall exceed the Approved Budget pertaining thereto, then the amount of any such excess shall be offset and credited, on a cumulative aggregate basis, against the Management Fee to be paid by Owner to Manager in accordance with the compensation schedule set forth in Exhibit B attached hereto such that the amount of such Management Fee shall be automatically reduced by such excess.

During each academic year, Manager agrees to inform University and Owner of any major increases or decreases in costs and expenses that were not foreseen during the budget preparation period, and thus were not reflected in either Approved Budget, and shall submit to University and Owner for approval a revised budget based upon said unforeseen increase or reduction of costs and expenses.

Section 3.8. Collection of Rents and Other Income. University shall collect rent each semester or other term in advance upon registration collect and remit to Owner (or to such other person as Owner may direct) all rents that may become due Owner at any time from any resident. Manager shall identify and collect any income due Owner from miscellaneous services

provided to residents including, but not limited to, any resident storage and coin operated machines of all types (e.g., vending machines and laundry machines). All monies so collected shall be deposited in accounts as directed by Owner. Manager cannot and may not terminate any dormitory contract which has been granted in consideration of payment of the fees and rents as stipulated therein and upon the resident's acceptance for admission to University, lock out a resident, institute suit for use and occupancy, or proceedings for recovery of possession, without the prior written approval of Owner, or of an authorized representative of University if such action involves a disciplinary proceeding against a resident. In connection with such suits or proceedings legal counsel designated by Owner shall be retained, and all such suits or proceedings shall be brought in the name of Owner and shall be handled in such manner as Owner directs. All legal expenses incurred in bringing such suits or proceedings shall be operating expenses.

Section 3.9. Repairs. Manager shall attend to the making and supervision of all ordinary and extraordinary repairs, decorations and alterations to the Dormitory; however, no single expenditure that is not included in the Approved Operating Budget or the Approved Capital Budget made for such purposes shall exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), without prior approval of the Owner and the University. Actual expenses for materials and labor for such purposes will be paid for from the Operating Account.

In case of emergency, Manager may make expenditures for repairs which exceed the aforementioned amount without prior written approval if Manager deems such expenditure to be necessary to prevent damage or injury. Manager will inform Owner and University of any such emergency expenditures before the end of the next business day.

Section 3.10. Capital Expenditures. The Approved Capital Budget shall constitute an authorization for Manager to expend funds in accordance with such budget only for amounts equal to, or less than, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Any capital expenditure must be specifically authorized in writing by Owner if for: (i)

items not included in the Approved Capital Budget; or, (ii) for amounts of more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

With respect to the purchase and installation of major items of new or replacement equipment (including, without limitation, heating or air-conditioning equipment, furniture and furnishings, carpets or other floor coverings), Manager shall recommend that Owner purchase such major items when Manager believes such purchase to be necessary or desirable. Owner may arrange to purchase and install the same itself or may authorize Manager to do so subject to such supervision and specification requirements and conditions as Owner may prescribe in any such approval. Unless Owner specifically waives such requirements, either by memorandum or as an amendment to this Management Agreement, or by approval in the Capital Budget, all new or replacement equipment exceeding One Thousand and No/100 Dollars (\$1,000.00) shall be awarded on the basis of competitive bidding, solicited in the following manner:

(a) A minimum of two (2) written bids shall be obtained for each purchase in excess of One Thousand and No/100 Dollars (\$1,000.00). A minimum of three (3) written bids will be obtained for each purchase in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

(b) Each bid shall be solicited in a form approved by Owner so that uniformity will exist in the bid quotes.

(c) Manager shall provide Owner with all bid responses accompanied by Manager's recommendations as to the most acceptable bid. If Manager advises acceptance of other than the lowest bidder, Manager shall adequately support, in writing, its recommendations.

(d) Owner shall approve or disapprove any and all bids and will communicate to Manager its approval or disapproval of bids within five (5) business days. If Owner does not communicate any response to Manager within five (5) business days, such bids shall be construed by Manager to be disapproved by Owner.

Owner may pay for capital expenses from its own resources or may authorize payment by Manager out of the Operating Account. At the option of Owner, such contracts shall be entered in Manager's name, by Manager as agent for Owner, or submitted to Owner for Owner to enter such contracts in Owner's own name.

Section 3.11. Service Contracts. Manager shall not enter into any contract for cleaning, maintaining, repairing, servicing and the providing of security services and utilities to the Dormitory or any of the constituent parts of the Dormitory, without the prior consent of Owner and University unless provided for in the Approved Operating Budget. As a condition to obtaining such consent, Manager shall supply Owner and University with a copy of the proposed contract and shall state to Owner and University the relationship, if any, between Manager (or the person or persons in control of Manager) and the party proposed to supply such goods or services, or both. Each such service contract shall: (a) be in the name of Manager, (b) be assignable, at Owner's option to Owner or Owner's nominee, (c) include a provision for cancellation thereof by Owner or Manager upon not less than 30 days' written notice, and (d) shall require that all contractors provide evidence of sufficient insurance. In the event of a termination of this Management Agreement, Owner shall be fully responsible for and shall thereupon assume all obligations of Manager under any approved contracts that were not terminated contemporaneously with the termination of this Management Agreement. If this Management Agreement is terminated pursuant to Article 14, Manager shall, at Owner's option and with the consent of the University, assign to Owner or Owner's nominee all service agreements pertaining to the Dormitory.

Subject to the availability of funds in the Approved Operating Budget, Manager shall purchase all necessary equipment, tools, appliances, materials, and supplies required for the proper management, rental, maintenance, repair, and operating of the Dormitory. Manager shall maintain, and provide to Owner upon request, an inventory of any such equipment, tools, appliances, materials, and supplies purchased by Manager for use at the Dormitory. Manager shall be under a duty to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchases.

Section 3.12. Available Funds. Notwithstanding the provisions of this Management Agreement, including the provisions relative to the making of repairs or maintenance of the Dormitory, Manager shall not incur any expenses in any semester or summer session in excess of the income from the Dormitory during such semester or summer session except to the extent funds are made available specifically for such purpose by Owner through the Operating Account or otherwise. In any case in which the Manager anticipates a shortfall of funds, Manager shall inform Owner of the situation so that Owner may have the opportunity of determining what action should be taken under the circumstances, and Owner shall promptly advise Manager of the action to be taken.

Section 3.13. Taxes; Mortgages. Manager shall, if requested by Owner to do so, obtain and verify statements for ad valorem taxes, improvement assessments and other like charges that are or may become liens against the Dormitory, and Manager shall recommend payment or appeal of same. Manager shall forward such bills to Owner for payment by Owner in such time to permit Owner to avoid penalty for late payment or to permit Owner to take advantage of discounts. If such amounts are included in the Approved Operating Budget, Manager shall pay such items. Manager shall make payments on account of any ground lease, mortgage, deed of trust or other security instrument, if any, affecting the Dormitory to the extent Owner directs that Manager make such payments, and accounts for such payments either in the Approved Budgets or otherwise.

Section 3.14. Advertising. The University shall prepare student mailings and promotional materials to be used to promote among its students and prospective students the availability of student housing in the Dormitory. Such plans and materials shall be subject to prior approval by Owner and Manager, and in conformance with such approval. University shall not use Owner's name in any advertising or promotional material without Owner's express prior approval in each instance. Advertising and promotional materials shall be prepared in full compliance with federal, state and municipal laws, ordinances, regulations and orders and with the rules and regulations of the University.

Section 3.15. Claims. Manager shall advise Owner and the University immediately by telephone, with confirmation in writing, of the service upon Manager of any summons, subpoenas, or other like legal document including any notices, letters, or other communications, setting out or claiming an actual or alleged potential liability of Owner or the Dormitory.

Section 3.16. Resident Complaints. Manager shall respond courteously and efficiently to service requests from residents. Routine service requests and complaints shall be received and entered in detail in a log book indicating the action taken with respect to each. Serious complaints shall, after thorough investigation, be reported to Owner and University with appropriate recommendations.

Section 3.17. Inspection. Manager shall make regular inspections of the common areas of the Dormitory. Manager and University shall make such inspections of residents' rooms as may be allowed by state and federal law and as may be necessary to perform their obligations under this Management Agreement and to confirm that the Dormitory is being maintained as may be required or contemplated under dormitory contracts. Manager shall report its inspection findings in writing to Owner and University at the end of each semester or summer session, unless other reports may be required by Owner or University at other times because of disciplinary proceedings against any resident or because of other legal action or for other reasons.

ARTICLE 4 INSURANCE

Section 4.1. Insurance. Upon written request by Owner and University, and specific written instructions as to the type and amount, Manager shall obtain and keep in effect such insurance coverage with respect to the Dormitory as Owner shall so request and specify. All insurance required to be obtained and maintained by Manager under this Management Agreement shall be of types issued by such insurance companies, in such amounts, in such form, and having such content, as may be instructed by Owner and University. Manager shall furnish to Owner, University, and each additional insured or co-insured, the following items: (a) copies of all current insurance policies, (b) certificates or

other evidence of insurance satisfactory to Owner evidencing the existence of such insurance, and (c) evidence satisfactory to Owner of the proper renewal of any policy of insurance 15 days prior to the expiration of any such policy. All policies of insurance shall contain a provision stating that each such policy cannot be cancelled without at least thirty (30) days prior written notice to the insured, each additional insured, and each co-insured. Manager shall promptly investigate and make a full written report as to all accidents or claims for damage relating to the ownership, operation, and maintenance of the Dormitory, including any damage or destruction to the Dormitory and the estimated cost of repair. All such reports shall be filed with Owner promptly, and in any event within one (1) day after the occurrence of any such accident, claim, damage or destruction. Manager shall cooperate with and make any and all reports required by any insurance company in connection therewith.

Manager shall furnish whatever information is requested by Owner and University for the purpose of establishing the placement of insurance coverages, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

Section 4.2. Additional Insurance to be Maintained by Manager. Manager shall provide and maintain additional insurance as specified in this Section 4.2, and shall not be entitled to reimbursement from University or Owner for any Costs of obtaining such insurance. Manager, at its expense, shall provide and maintain, so long as this Management Agreement is in force, the following additional insurance: (a) workers' compensation insurance in full compliance with all applicable state and federal laws and regulations, covering all employees of Manager performing work in respect to the Dormitory; (b) a blanket employee dishonesty policy in the minimum amount of \$10,000 per employee employed in connection with the Dormitory and per authorized signatory (except Owner) of any bank accounts kept pursuant to the provisions hereof or equivalent bonding of such employees and signatories. Such insurance shall have attached thereto an endorsement that Owner will be given at least thirty (30) days prior written notice of cancellation of or any material change in policy; (c) adequate insurance against physical damage and against liability for loss.

damage or injury to property or persons that might arise out of the use, operation or maintenance of any and all personal property owned by Manager and used in connection with the Dormitory, and Owner and University shall be identified and covered as an additional insured with respect to such insurance; and (d) errors and omissions (or like) insurance coverage, in an amount acceptable to Owner and University, with respect to any claim by Owner and persons or entities having interests in or rights in respect of the Dormitory, and third parties against Manager arising out of the provision of services with respect to the services to be performed under or pursuant to this Management Agreement. Such insurance may provide for a reasonable deductible amount.

The policies of such insurance shall be in form satisfactory to Owner and at all relevant times qualified to effect such insurance in the jurisdiction in which the Dormitory is situated. Manager shall provide Owner with a signed copy of each policy and any renewal thereof or replacement therefor. Such policy shall be signed by the company issuing such insurance; provided that at the option of Manager such insurance may be provided by a certificate of insurance issued under a group or blanket policy providing for such insurance coverage in which event such certificate of insurance shall be signed by the company issuing such group or blanket policy. Such policy or certificate shall be endorsed with specific reference to the services to be provided by Manager in connection with the Dormitory under this Management Agreement, and such policy shall not be cancelled except after at least thirty (30) days prior written notice to Owner and University. Owner will not reimburse Manager for Manager's cost of any of the foregoing insurance.

Section 4.3. Subcontractor's Insurance.
Manager shall require that any subcontractors brought onto the Dormitory have insurance coverage, at the subcontractor's expense, in the following minimum amounts:

- (a) Worker's Compensation - Statutory Amount
- (b) Liability - \$100,000 (Minimum)
 - i. \$100,000 Bodily Injury
 - \$100,000 Dormitory Damage, and

ii. \$300,000 Combined ~~Single~~ Limit

Manager must obtain Owner's permission to waive any of the above requirements. Manager shall obtain and keep on file appropriate certificates of insurance that shows that all such subcontractors are so insured.

ARTICLE 5
FINANCIAL REPORTING AND RECORDKEEPING

Section 5.1. Books of Accounts. Manager, in the conduct of its responsibilities to Owner and University, shall maintain correct, true, complete and separate books and records reflecting the operation of the Dormitory, the entries to which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded to the Dormitory. Such books and records at all times shall be and remain the property of Owner and shall be maintained by Manager at Manager's address set forth herein, or at such other location as may be mutually agreed upon in writing. Upon the termination of this Management Agreement, Manager shall deliver all such records, books and accounts to Owner. Manager shall ensure such control over accounting and financial transactions as is required to protect Owner's assets from theft, error or fraudulent activity on the part of Manager's employees. Losses arising from such theft, error or fraudulent activity on the part of Manager's employees are to be borne by Manager and shall include, but not be limited to:

- (a) Theft of assets by Manager's employees,
- (b) Overpayment or duplicate payment of invoices arising from either fraud or error,
- (c) Overpayment of labor costs arising from either fraud or error,
- (d) Unauthorized use of facilities or space at the Dormitory by Manager or Manager's employees,
- (e) Penalties, interest, or loss of vendor discounts due to delay in payment of invoices, bills or other like charges, excluding those that were beyond Manager's control,

(f) Payments from purveyors to Manager's employees, or from Manager to any of its affiliates, arising from the purchase of goods or services for the Dormitory, which have not been approved in advance in writing by Owner.

Section 5.2. Account Classification. Manager and Owner shall mutually agree upon a system of classification of accounting entries satisfactory to Owner.

Section 5.3. Financial Reports. Manager shall furnish periodic reports of all transactions occurring from the 1st day of the prior semester or summer session to the last day of the prior semester or summer session. These reports are to be delivered to Owner and University no later than 15 days after the end of the above described accounting period and must include, at a minimum, the following information:

- (a) An income schedule showing, for each resident, semester or summer session rental received, and details of all other payments or charges received.
- (b) A schedule of expenses (including the Management Fee described herein) incurred during the semester or summer session and any outstanding payable as of the end of the semester or summer session.
- (c) A comparison of income and expenses for the preceding semester or summer session to the income and expenses set out for such period in the Approved Budgets.
- (d) A reconciliation of cash accompanied by bank statements and cancelled checks.
- (e) An itemized list of all receivables representing amounts collectible under the installment payment plan provided for by dormitory contracts.
- (f) A current rent roll.
- (g) An itemized list of past due monies.

(h) A copy of the cash receipts journal, cash disbursements journal, and general journal.

(i) Any other detail of accounting-related items such as free rents given to Resident Assistants.

Without in any manner limiting the generality of the foregoing, the reports shall include the items listed on Exhibit E attached hereto, and also shall include a comparison of year-to-date actual income and expense with the Approved Budgets for the Dormitory.

As of the last day of any reporting term (including but not limited to, semester or summer session), Manager shall remit to Owner all unexpended funds in the Dormitory's Operating Account except for a reserve for contingencies which shall remain in the Dormitory's Operating Account in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), plus an amount for expenses that have been incurred but not paid. The remittance shall be net of the Management Fee. After one semester of actual operating experience, Owner, at its sole option, may elect to change the amount of such contingency reserve.

Manager, shall, on or before September 1 of each academic year during the term hereof, at Manager's expense, furnish to Owner and University an unaudited statement of income and expenses reflecting the operation of the Dormitory for the prior academic year, which statement shall be prepared in conformity with generally accepted accounting principles. If requested by Owner or University, such statement of income and expenses shall be certified by a firm of independent certified public accountants selected by Owner or University; provided, however, that the cost of having such statement of income and expenses certified by such a firm of accountants shall be borne by Owner.

Section 5.4. Supporting Documentation. As additional support to the term and annual financial statements, Manager shall provide to Owner and University on request copies of the following:

(a) Bank statements, bank deposit slips and bank reconciliations,

- (b) Detailed cash receipts and disbursement records,
- (c) Detailed trial balances,
- (d) Paid invoices,
- (e) Summaries of adjusting journal entries, and
- (f) Supporting documentation for payroll, payroll taxes and employee benefits.

Section 5.5. Accounting Principles. All semester or summer session and annual financial statements and reports required by Owner shall be prepared on the accrual basis in accordance with generally accepted accounting principles, consistently applied, unless otherwise directed or approved by Owner.

ARTICLE 6 INSPECTION AND AUDIT

Section 6.1. Right of Inspection and Audit. Owner and University, their accountants, attorneys, and agents, or any other designee, shall have the right to enter upon any part of the Dormitory at any time during the term of this Management Agreement for the purpose of examining or inspecting the Dormitory, examining or making extracts of or auditing the books and records of the Dormitory, or for any other purpose. Owner and University reserves the right for Owner's and University's accountants, attorneys, agents, employees or others appointed by Owner or University, to inspect, copy and audit, and conduct examinations, without notification, during reasonable business hours, of the books, records and accounts of the Dormitory maintained for Owner by Manager no matter where such books and records are located. Owner or University also reserves the right to perform any and all additional audit tests relating to Manager's activities, either at the Dormitory, or at any office of the Manager; provided that such audit tests are related to those activities performed by Manager for Owner or University.

Section 6.2. Corrections. Should Owner's and University's employees or agents discover either weaknesses or discrepancies in internal control or errors in recordkeeping, Manager shall correct such

weaknesses and discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing of the action taken to correct such audit or control weaknesses and discrepancies.

Section 6.3. Expenses. Such inspections or audits shall be at Owner's or University's expense, unless such inspections or audits disclose discrepancies which in the aggregate result in a five percent (5%) misstatement of net income or net loss, in which case the cost of such inspections or audits as well as the reimbursement of such error, shall be paid by Manager.

ARTICLE 7 BANK ACCOUNT

Section 7.1. Operating Account. Manager shall deposit on a daily basis all rents and other funds collected from the operation of the Dormitory, including any and all advance payments, except for room deposits which are subject to the provisions of Section 7.2 below, in a bank approved by Owner. Such amounts shall be deposited in a special account or accounts (the "Operating Account(s)") for the Dormitory. The Operating Account shall be separate from Manager's corporate account and any other bank accounts maintained by Manager. All funds in the Operating Account shall be and shall remain the property of Owner and shall be received, held, and disbursed by Manager as a trust fund in payment of obligations of Owner incurred in connection with the management, operation, maintenance and repair of the Dormitory, or remitted to Owner as provided herein. In no event shall the funds of anyone but Owner be deposited by Manager in the Operating Account, and Manager shall not commingle Owner's funds with the funds of any other person in any manner whatsoever. The bank shall be informed in writing that the funds are held in trust for Owner. Out of the Operating Account, Manager shall pay the operating expenses of the Dormitory provided for herein and any other payments relative to the Dormitory as required by the terms of this Management Agreement.

At any time that the Operating Account contains inadequate funds to meet current expenses and reasonable reserves, including all times prior to the commencement of rental income from the Dormitory, Owner shall provide the needed funds for the Operating Account.

Section 7.2. Room Deposits. Manager shall maintain detailed records of all room deposits and any other refundable fees or deposits collected from residents of the Dormitory, and such records will be open for inspection by Owner's or University's employees or agents. All refundable fees or deposits shall be collected from residents of the Dormitory by University and shall be deposited by University and held in a bank account (the "Room Deposit Account"), separate from any other bank accounts maintained by University. The Room Deposit Account shall be in the name of Owner. Manager and Owner shall comply with all applicable laws with respect to such fees and deposits and, unless so instructed by Owner, University shall not withdraw any sums from such Room Deposit Account except as required to comply with the provisions of dormitory contracts regarding the refunding of such deposits.

Section 7.3. Change of Banks. Owner may direct the Manager to change a depository bank or the depository arrangements.

Section 7.4. Access to Account. Through the use of signature cards, authorized representatives of Owner shall be permitted access to any and all funds in the bank accounts described in Section 7.1 and 7.2. Owner agrees to promptly notify Manager of any withdrawals from such bank accounts. Manager's authority to draw against such accounts may be terminated at any time by Owner upon five (5) days notice to Manager or the Bank.

ARTICLE 8 PAYMENT OF EXPENSES

Section 8.1. Costs Eligible for Payment from Operating Account. Manager shall pay all costs for items in the Approved Operating Budget in the first instance out of the Operating Account. In addition, other expenses provided in this Management Agreement to be paid out of the Operating Account shall be paid directly from the Operating Account, and the following expenses shall also be paid directly from the Operating Account, subject to the conditions outlined in Article 3:

- (a) Cost to correct any violation of federal, state, county and municipal laws, ordinances, regulations and orders, and Rules and

Regulations of the Board of Regents of The University of Texas System relative to the leasing, use, repair and maintenance of the Dormitory, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of Manager's negligence.

(b) Costs incurred by Manager in connection with all service agreements entered by Manager in accordance with authorizations in this Management Agreement or approved by Owner.

(c) Legal fees of attorneys provided such attorneys have been approved of by Owner in writing in advance of retention.

(d) Cost of outside audit as may be requested by Owner in writing.

If funds are not available in the Operating Account, Manager shall have no obligation to make any such payments. All payments may be made by Manager from the Operating Account in such order as Manager elects, and Manager shall pay all penalties or other charges for late payment of such items from the Operating Account.

ARTICLE 9
MANAGER'S COSTS NOT TO BE REIMBURSED

Section 9.1. Non-reimbursable Costs. Except to the extent that such costs and expenses (i) are in the Approved Operating Budget, (ii) are otherwise approved for payment by Owner, or (iii) are expressly reimbursable as provided for in Exhibit C attached hereto, all expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Dormitory shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner, including, specifically, without limitation, the following:

(a) Cost of gross salary and wages, payroll taxes, insurance, workers' compensation, and other benefits of Manager's employees.

(b) General accounting and reporting services that are considered to be within the reasonable scope of the Manager's responsibility to Owner.

(c) Cost of forms, papers, ledgers, and other supplies and equipment used in the Manager's office at any location off the Dormitory.

(d) Cost of electronic data processing equipment, or any pro rata charge thereon, whether located at the Dormitory or at Manager's office off the Dormitory.

(e) Cost of electronic data processing, or any pro rata charge thereof, for data processing provided by computer services companies.

(f) Cost attributable to losses arising from gross negligence or fraud on the part of Manager or Manager's employees. "Gross negligence" shall be deemed to include any and all monetary loss caused by the ordinary negligence of Manager or Manager's employees.

(g) Cost of all bonuses paid by Manager to Manager's employees unless such bonuses have prior written approval of Owner.

(h) Cost of comprehensive crime insurance, fidelity bonds, or other insurance purchased by Manager for its own account.

ARTICLE 10 INSUFFICIENT GROSS INCOME

Section 10.1. Statement of Unpaid Items.
After Manager has paid, to the extent of available funds in the Operating Account, all bills and charges that have been incurred with respect to the Dormitory, Manager shall submit to Owner a statement of all remaining unpaid bills. Owner shall promptly provide sufficient monies to pay any unpaid expenses.

ARTICLE 11 SALE OF PROJECT

Section 11.1. Cooperation with Sales Broker.
If Owner, with approval of the University, executes a

listing agreement with a broker for sale of the Dormitory, Manager shall cooperate with such broker to the end that the respective activities of Manager and broker may be carried on without interference with residents. Manager will permit the broker to exhibit the Dormitory during reasonable business hours provided the broker has secured Manager's permission in advance. Manager agrees that failure on its part to extend cooperation to a broker desiring to show the Dormitory shall constitute a default on its part under this Management Agreement, and is a ground for termination of this Management Agreement upon seven (7) days notice to Manager.

ARTICLE 12
COOPERATION

Section 12.1. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner that arise out of any of the matters relating to this Management Agreement, Manager shall give Owner all pertinent information and reasonable assistance in the defense or other disposition thereof.

ARTICLE 13
COMPENSATION

Section 13.1. Compensation. Manager shall receive compensation (the "Management Fee") for its services in managing the Dormitory pursuant to the terms and tenor of this Management Agreement in accordance with the compensation schedule set forth in Exhibit C attached hereto and made a part hereof for all purposes.

ARTICLE 14
TERMINATION

Section 14.1. Termination on 30-day Notice. In addition to the provisions of Sections 1.2 and 2.2, any party may terminate this Management Agreement without cause by giving the other two parties at least thirty (30) days notice in writing.

Section 14.2. Immediate Termination With Notice. In addition to the provisions of Section 14.1, Owner and University may immediately terminate this Management Agreement by the service of a written notice

to that effect on Manager and the University. In such case, if Manager is entitled to a Management Fee pursuant to Article 13, Owner shall pay Manager the Management Fee that would normally have accrued to Manager on a pro rata basis during the ensuing thirty (30) days immediately following the termination date. The foregoing provisions for payment in lieu of the actual Management Fee shall apply only in the case of immediate termination pursuant to this Section 14.2.

Section 14.3. Termination for Cause. This Management Agreement will terminate immediately without further action from Owner in the event Manager breaches any of its obligations to Owner under the terms of this Management Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

Section 14.4. Authority to Execute Termination Notices. Notice of termination or default for the purposes of Section 14.1, 14.2 or 14.3 must be signed by persons authorized to so act on behalf of Owner or Manager, as the case may be.

Section 14.5. Termination Without Notice. Dissolution or termination of the corporate or partnership existence of the Manager by merger, consolidation or otherwise; or death of the Manager, if an individual, or death of any general partner of Manager, if a partnership or cessation on the Manager's part to continue to do business; or bankruptcy, insolvency, or assignment for the benefit of the creditors of the Manager shall effect an immediate termination of the Management Agreement without notice. Action having for its purpose a reorganization or reconstitution of the Manager shall likewise effect an immediate termination of this Management Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

Section 14.6. Final Accounting. Termination of this Management Agreement under any of the foregoing provisions shall not release Manager from liability for failure to perform any of the duties or obligations of Manager, as expressed herein and required to be performed prior to such termination. Upon termination of this Management Agreement for any reason, Manager shall deliver to Owner and University the following with respect to the Dormitory:

(a) A final accounting, reflecting the summary of income and expenses on the Dormitory from the beginning of the current reporting period to the date of termination, to be delivered within ten (10) days after such termination;

(b) Any balance or monies of Owner or room deposits, or both, held by Manager with respect to such Dormitory, to be delivered immediately upon such termination;

(c) Any monies due Owner under this Agreement but received after such termination; and

(d) Checks, bank statements with cancelled checks, and other banking records; cash and all other property on hand, and all receipts and vouchers; all residence hall files, with original dormitory contracts and room deposit information; all applicable contracts, agreements, and service contracts relating to the Dormitory; all bills relating to the Dormitory, both paid and unpaid; all financial records relating to the Dormitory, including all books, journals, ledgers, and financial reports; all keys to the buildings and other component parts of the Dormitory; all employee records relating to the Dormitory; and all other books and records that pertain to the Dormitory.

Manager shall assign such existing contracts relating to the operating and maintenance of the Dormitory as Owner shall require, and Manager shall furnish all such information and take all such action as Owner shall require in order to effectuate an orderly and systematic ending of Manager's duties and activities hereunder.

ARTICLE 15 SUBSIDIARIES AND AFFILIATES

Section 15.1. List of Subsidiaries and Affiliates. On Exhibit F attached hereto, Manager has set forth all of its subsidiary corporations, if any, and all persons, corporations or other entities, if any, controlling Manager and all persons, corporations or

other entities, if any, owned or controlled by such persons, corporations or other persons, if any, which control Manager. During the continuance of this Management Agreement, Manager shall promptly notify Owner of any changes or additions to the information required to be set forth on Exhibit F. Any contract or lease of any kind whatsoever between Manager and any persons, corporation or other entity listed or to be listed on Exhibit F shall be subject to the prior written approval of Owner, and, at Owner's sole discretion, such approval may be withheld.

ARTICLE 16 NOTICES

Section 16.1. Notices. Any notice, demand or request that may be permitted, requested or desired to be given in connection herewith shall be in writing and directed to Owner, Manager and the University by certified mail, return receipt requested, postage prepaid, at their respective addresses stated on the signature page of this Management Agreement. In the event such notice or other communication is effected by personal delivery or by an overnight express delivery courier, the date and hour of actual delivery shall fix the time of notice. Absent a postal strike or other stoppage of the mails, in the event of delivery of notice by registered or certified United States mail, the date and hour following forty-eight (48) hours after the date and hour at which the sealed envelope containing the notice is deposited in the United States mail, properly addressed and with postage prepaid, shall fix the time of notice.

ARTICLE 17 ASSIGNMENTS

Section 17.1. Assignment of Agreement. Owner may, with the prior approval of University, which shall not be unreasonably withheld, at any time and from time to time collaterally assign the Owner's interest in this Agreement by the execution of one or more collateral assignments (herein called ("Assignment(s)"). Such prior approval is hereby given to Owner for the granting of such an Assignment in connection with the financing of the construction costs of the Phase I Dormitory and the Recreation Center, whether such financing be through the issuance of industrial development bonds or by a financial institution.

Owner and Manager hereby acknowledge that the Owner's rights and benefits under this Agreement shall, on the date hereof, be assigned pursuant to an Assignment of Management Agreements of even date herewith in favor of Lloyds Bank International Limited, and University hereby consents to such Assignment and the terms thereof.

Section 17.2. Manager's Agreements. In the event any proposed collateral assignee of this Agreement pursuant to this Article 17 should so require, then University shall execute and deliver to each such collateral assignee a writing whereby University agrees in substance to the provisions set out below.

A. University shall not terminate this Agreement for any default of Owner hereunder without first advising the assignee, in writing, of such default and permitting the assignee to cure such default on behalf of such Owner within ninety (90) days after the giving of such notice. Further, if any default, other than a default in the payment of fees hereunder, is not cured within such ninety (90) day period, or any extension thereof agreed to by the University, (i) if the assignee has instituted foreclosure proceedings pursuant to a deed of trust on the Leased Premises for the benefit of the assignee prior to the expiration of fifteen (15) days after the expiration of said ninety (90) day period (as the same may have been previously extended) and (ii) prosecutes such foreclosure diligently to conclusion, and (iii) the purchaser at the foreclosure sale fully cures the default within ninety (90) days after such foreclosure sale, then Manager will not terminate this Agreement because of the occurrence of such non-monetary default provided that such foreclosure proceedings are diligently prosecuted.

B. In the event the assignee should foreclose upon the Owner's leasehold interest and should, as a result of such foreclosure, succeed to such leasehold

interest, then the assignee shall be subject to all the terms and conditions of this Agreement and shall be entitled to all the rights and benefits of this Agreement; provided, however, that (a) such assignee shall not be liable for any act or omission of Owner; (b) such mortgagee shall not be subject to any offsets or defenses which Manager has or might have against Owner; (c) such assignee shall not be bound by any amendment, modification, alteration, approval, consent, surrender, or waiver under the terms of this Agreement made without the prior written consent of such assignee; (d) upon the written consent of such assignee, Manager shall reaffirm in writing the validity of this Agreement and its existence in full force and effect; (e) Manager acknowledges and agrees for itself and its successors and assigns that this Agreement does not constitute a waiver by any such assignee of any of its rights under any assignment or in any way release Owner from its obligations to comply with the terms, provisions, conditions, representations, warranties, agreements or clauses of such Assignment; and (f) Manager shall not assign its interest in this Agreement without the prior express written consent of any such assignee.

- C. Manager will not agree to a modification, alteration or amendment of this Agreement without the consent of the assignee.
- D. In the event of any termination of this Agreement, Manager will serve upon the mortgagee written notice that the Agreement has been terminated together with a statement of any and all sums which would have at that time been due under this Agreement but for such termination and of all other defaults, if any, under the Agreement then known to Manager, whereupon the assignee shall have the option to obtain a new management agreement for the Dormitory by

giving notice to Manager to such effect within ninety (90) days after receipt by the assignee of notice of such termination, which new management agreement shall be entered into at the reasonable cost of the Owner thereunder, shall be effective as of the date of termination of this Agreement and shall be for the remainder of the term of this Agreement and for the fees and upon all of the agreements, terms, and conditions hereof, including any applicable rights of renewal. Such new Management Agreement shall require the owner to perform any unfulfilled obligation of Owner under this Management Agreement which is reasonably susceptible of being performed by such owner. Upon the execution of such new management agreement, the owner named therein shall pay any and all sums which at the time of the execution thereof would be due under this Agreement but for such termination and shall pay all expenses, including reasonable attorney's fees, court costs and disbursements incurred by Manager in connection with such defaults and termination, and the preparation, execution and delivery of such new management agreement.

- E. All notices required to be given hereunder by Manager to Owner shall also be given to each assignee, at the address designated in writing to Manager.

Section 17.3. Modification. Manager agrees to consider the execution of reasonable modification, addenda or amendments to this Agreement as may reasonably be requested from time to time by a collateral assignee.

ARTICLE 18 MISCELLANEOUS

Section 18.1. Consent and Approvals. Owner's and University's consents or approvals may be given only by representatives of Owner or University, as the case may be, who will be designated in writing by Owner or

University, as the case may be, by notice pursuant to Section 16.1. All such consents or approvals shall be in writing to the extent set forth herein as requiring written approval.

Section 18.2. Entire Agreement. This Management Agreement represents the entire agreement by and between the parties hereto, and supersedes any and all prior agreements by and between the parties hereto relating to the subject matter hereof, and it may not be changed except by written agreement duly executed by the parties hereto.

Section 18.3. Captions. The headings in this Management Agreement have been used for administrative convenience only, and shall not be used in interpreting or construing the meaning of any provision in this Management Agreement.

Section 18.4. Representations. Manager represents and warrants that Manager is fully qualified and licensed, to the extent required by law, to perform all obligations assumed by Manager hereunder.

Section 18.5. Hold Harmless. Manager agrees to indemnify and defend Owner and University and hold Owner and University harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Manager of any provision of this Management Agreement or the negligent or improper performance by Manager of its duties hereunder or any action taken by Manager beyond the scope of Manager's authority as set forth in this Management Agreement, and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Manager, including, without limitation, any condition of the Dormitory, to the extent such condition should, in the diligent discharge of Manager's obligations of this Management Agreement, have been observed or detected and corrected by Manager, or Manager's agents, employees, or subcontractors, but not as to any such condition so observed and detected by Manager but not corrected by reason of Owner's or University's acts or omissions. Owner and University agree to indemnify and defend Manager and hold Manager harmless from any legal action, suit, debt, expense, claim, demand, judgment and

settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Owner or University, as the case may be, of any provision of this Management Agreement binding on Owner or University and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Owner or University with respect to the Dormitory.

Section 18.6. Subordination. This Management Agreement and the rights of Manager hereunder are and shall be subordinate to the Ground Lease between University and Owner. Manager agrees that this Management Agreement and all of Manager's rights, duties, and liabilities hereunder will be terminated upon any event of termination of the Ground Lease as defined therein.

Section 18.7. Time of the Essence. Owner and Manager agree and acknowledge that time is of the essence with respect to this Management Agreement, and the respective time periods and deadlines set forth in this Management Agreement. The time periods provided for herein are basic parts of this Management Agreement, and are not subject to extension unless upon written agreement of the parties hereto.

Section 18.8. Authority. All parties to this Management Agreement warrant and represent that they have the power and authority to enter into this Management Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person.

Section 18.9. Severability. If any provision of this Management Agreement shall, for any reason, be held by a court of competent jurisdiction violative of any applicable law, or is held by a court of competent jurisdiction to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

Section 18.10. No Assignment by Manager. Manager shall not have the right to assign its right, title, and interest under the terms of this Management Agreement to any third party whatsoever without first obtaining prior written consent of Owner and University.

Section 18.11. Parties Bound. Except as limited by Section 18.10 of this Management Agreement, the terms and provisions of this Management Agreement shall inure to, extend to and be for the benefit of the heirs, successors, assigns, and legal representatives of the respective parties hereto.

Section 18.12. Counterparts. This Management Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

Section 18.13. Governing Law. This Management Agreement shall be construed and interpreted under the laws of the state in which the Dormitory is located.

Section 18.14. Construction of Agreement. The terms and provisions of this Management Agreement represent the results of negotiations between Owner, University and Manager, each of which has been represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Management Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Owner and Manager hereby expressly waive and disclaim in connection with the interpretation and construction of this Management Agreement, any rule of law or procedure requiring otherwise, including without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Management Agreement shall be interpreted or construed against the party whose attorney prepared the Management Agreement or any earlier draft of this Management Agreement.

Section 18.15. Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement, or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition herein, nor shall any custom, practice, or course of dealings arising among the parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements, and conditions herein contained.

Section 18.16. No Joint Venture or Partnership. Owner and Manager hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager, University and Owner, or any combination of such persons, joint venturers or partners.

Section 18.17. Authorized Representative of University. For purposes of providing consents, approvals and waivers by the University that are required from time to time under this Agreement, the University hereby appoints and authorizes as its representatives the President of The University of Texas at San Antonio and the Vice President for Business Affairs of the University of Texas at San Antonio, each of whom may act on behalf of the University.

IN WITNESS WHEREOF, the parties hereto have executed this Management Agreement the date and year first above written.

OWNER:

Phase I Dormitory
Partnership

Date: DECEMBER 23, 1985

By: Clarence T. Bach

Name: CLARENCE T. BACH
Managing General Partner

Address for Notice
to Owner:

Clarence T. Bach
8702 Cinnamon Creek, #104
San Antonio, Texas 78240

with copy to:

Fulbright & Jaworski
2200 InterFirst Plaza
300 Convent Street
San Antonio, Texas 78205
Attention: Mary Q. Kelly,
Esquire

MANAGER:

Sandalwood Management, Inc.

Date: DECEMBER 23, 1985

By: Clarence T. Bach

Name: CLARENCE T. BACH
Title: PRESIDENT

Address for Notice
to Manager:

Sandalwood Management, Inc.
8702 Cinnamon Creek, #104
San Antonio, Texas 78240

with copy to:

Fulbright & Jaworski
2200 InterFirst Plaza
300 Convent Street
San Antonio, Texas 78205
Attention: Mary Q. Kelly,
Esquire

UNIVERSITY:

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

December 23, 1985

BY: *Hans Mark*
Dr. Hans Mark
Chancellor, The University
of Texas System

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

James S. Dunne
Executive Vice Chancellor
for Academic Affairs,
The University of Texas
System

Mark M. [unclear]
Office of General Counsel, The
University of Texas System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Management Agreement was approved by The Board of Regents of The University of Texas System on the 23rd day of December, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Pat [unclear]
Executive Secretary
Board of Regents of The
University of Texas System

Address for Notice to University:

The Board of Regents of The
University of Texas System
601 Colorado
Austin, Texas 78701
Attention: Executive Vice Chancellor
for Academic Affairs

with copies to:

Office of the General Counsel
The University of Texas System
201 W. Seventh Street
Austin, Texas 78701
Attention: General Counsel

The University of Texas at
San Antonio
San Antonio, Texas 78285
Attention: Vice President for
Business Affairs

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EXHIBIT A

(to Dormitory Management Agreement)

DESCRIPTION OF LEASED PREMISES

FIELD NOTE DESCRIPTION
4.623-ACRE TRACT

BEING A 4.623-acre tract of land located within the Anselmo Pru Headright League Survey No. 20 County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet; -
S83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 632.46 feet to the

Engineers Station 88+87.65, then departing from F.M. Road 1604, S07°25'43"E, a distance of 761.09 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system on F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE, with the University of Texas at San Antonio coordinate system, S61°00'00"W, a distance of 407.00 feet to a point;

THENCE S29°00'00"E, a distance of 37.00 feet to a point;
THENCE S61°00'00"W, a distance of 123.00 feet to a point;
THENCE N29°00'00"W, a distance of 20.00 feet to a point;
THENCE S61°00'00"W, a distance of 220.00 feet to a point being the Southwest corner of this tract;

THENCE N29°00'00"W, a distance of 370.00 feet to a point being the Northwest corner of this tract;

THENCE N61°00'00"E, a distance of 640.84 feet to the most Easterly point of the most Northerly line of this tract and also being the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 230.64 feet, a central angle of 3°11'08", a length of 12.82, and a chord which bears S83°09'11"E, a distance of 12.82 feet to a point;

THENCE S84°44'38"E, a distance of 111.02 feet to a point;

THENCE S61°00'00"W, a distance of 504.99 feet to a point;

THENCE S29°00'00"E, a distance of 132.00 feet to a point;

THENCE N61°00'00"E, a distance of 512.00 feet to a point;

THENCE S29°00'00"E, a distance of 151.00 feet to the POINT OF BEGINNING, containing 4.623 acres (201,370.63 sq. ft.).

EXHIBIT B

(to Dormitory Management Agreement)

DESCRIPTION OF PROJECT

The project is UTSA Phase I Dormitory, a 4-story dormitory having approximately 260 double rooms, and a total area of approximately 122,000 square feet, to be occupied by students of The University of Texas at San Antonio, San Antonio, Texas ("UTSA"). The project is to be located on a 4.623-acre tract of land owned by The University of Texas System and part of a 5.865 acre tract leased by the University of Texas System to the Owner, located in the Western portion of the campus of UTSA, which campus is at the southeastern corner of the intersection of FM 1604 and Babcock Road in San Antonio, Texas.

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EXHIBIT C

(to Dormitory Management Agreement)

COMPENSATION SCHEDULE

The sole compensation (the "Management Fee") which Manager shall be entitled to receive for all services performed under this Management Agreement shall be a fee in an amount determined by Owner no less than thirty days prior to the Commencement Date and each anniversary thereof for each twelve month period beginning on the Commencement Date and on each anniversary of the Commencement Date during the term hereof. Unless otherwise expressly provided below, said fee shall include the reimbursement to Manager for the salary and fringe benefits of all persons employed by Manager to carry out its duties hereunder.

The Management Fee for the period from the commencement of this Management Agreement, and, in the event the term hereof expires or is terminated on any date other than the end of a semester or other term, for such a period of less than a full semester or other term, shall be prorated on a daily basis. Except as provided in this Exhibit, no commission, fee, or other compensation shall be due and payable to Manager by Owner for any of Manager's services hereunder.

EXHIBIT D

(to Dormitory Management Agreement)

Form of

SCHEDULE OF EMPLOYEES

Dormitory Name:
UTSA Phase I Dormitory

Street Address: The University of Texas at San Antonio

City and State: San Antonio, Texas

<u>EMPLOYEE TITLE</u>	<u>NO. WITH TITLE</u>	<u>WAGE OR SALARY RANGE</u>	<u>FIDELITY BOND (YES OR NO)</u>
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ON SITE:

OFF SITE:

EXECUTED BY:

Manager: _____
By: _____
Date: _____

EXHIBIT E
(to Dormitory Management Agreement)
Form of
STATEMENT OF OPERATIONS
(Date)

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EXHIBIT F
(to Dormitory Management Agreement)

Form of
SCHEDULE OF SUBSIDIARIES & AFFILIATES OF MANAGER

Dormitory Name:
Street Address:
City and State:

EXECUTED BY:

Manager: _____
By: _____
Date: _____

- Attachment 3 -

MANAGEMENT AGREEMENT
UTSA RECREATION CENTER

Dated as of December 1, 1985

By and Among

THE BOARD OF REGENTS
OF THE
UNIVERSITY OF TEXAS SYSTEM,

CLARENCE T. BACH

and

SANDALWOOD MANAGEMENT, INC.

SAOF&J

6242
12-18-85

MANAGEMENT AGREEMENT
(Recreation Center)

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MANAGEMENT AGREEMENT
UTSA RECREATION CENTER

THIS MANAGEMENT AGREEMENT (this "Management Agreement") is entered into as of December 1, 1985, by and among The Board of Regents of The University of Texas System, acting by and for the University of Texas at San Antonio (the "University"), Clarence T. Bach (the "Owner"), and Sandalwood Management, Inc. (the "Manager") under the terms and conditions hereinafter set forth.

W I T N E S S E T H

WHEREAS, the Owner intends to lease a 5.865 acre parcel of real property (the "Leased Premises") located in San Antonio, Bexar County, Texas, more particularly described in Exhibit A attached hereto and made a part hereof, which Leased Premises are subject to the terms and provisions of that certain Ground Lease Agreement (the "Ground Lease"), dated as of even date herewith, between the University as Lessor and the Owner as Lessee;

WHEREAS, Owner intends to construct, maintain and operate on a 1.242 acre tract within such Leased Premises (the "Project Site"), which tract is more particularly described in Exhibit B attached hereto and made a part hereof, a Recreation Center to be known as UTSA Recreation Center (the "Project");

WHEREAS, Owner shall provide the costs of acquisition, construction and equipping of the Project from his own funds;

WHEREAS, the Owner and the University desire to engage the services of Manager for the management and operation of the Project on behalf of Owner, upon the terms and conditions set forth herein, subsequent to its completion; and

WHEREAS, the Manager represents and warrants to the Owner and the University that it is qualified to render the services required of it hereunder and desires to perform such services for the Owner in consideration of the compensation to be paid solely by Owner set forth herein;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, obligations and agreements contained herein, University, Owner and Manager do hereby covenant, stipulate and agree as follows:

ARTICLE 1
PROPERTIES

Section 1.1. Description of Project. The Project, as described in Exhibit C attached hereto, shall be subject to the terms, provisions and conditions of this Management Agreement. No parcel of real property or improvements thereon shall be subject to the terms, provisions and conditions of this Management Agreement unless listed, described and identified in Exhibit B attached hereto.

Section 1.2. Termination of Ground Lease. This Management Agreement shall terminate automatically and immediately as to the Project upon termination of the Ground Lease on the Leased Premises. Owner shall furnish written notice of any such proposed termination to Manager not less than thirty (30) days prior to such termination.

ARTICLE 2
TERM OF AGREEMENT

Section 2.1. Commencement Date. The term of this Management Agreement shall commence on the date upon which the Owner notifies Manager that construction of the Project has been completed and the Project is ready for operation (the "Commencement Date"). The term of this Management Agreement shall end at midnight on the day before the fifth (5th) anniversary of the Commencement Date.

Section 2.2. Cancellation Privilege. Notwithstanding the foregoing, Owner shall have the

right to cancel this Management Agreement without penalty and without liability to the Manager (except for any accrued and unpaid Management Fee) as of midnight on the day before the second (2nd) and the fourth (4th) anniversary of the Commencement Date upon ninety (90) days prior written notice to the Manager and the Lessor. In the event of cancellation by Owner, the Manager agrees that it shall, upon the request of Owner, continue to manage the Project in accordance with the terms hereof on a month to month basis for a period not to exceed six (6) months until Owner has engaged a new manager for the Project.

Section 2.3. Renewals. The Manager and Owner represent, warrant and agree that if any new operating agreement for the Project is negotiated between them, its term (including any renewal options provided for in such agreement) shall not exceed five (5) years and the Owner shall have the right to cancel the agreement without penalty as of the end of each two year period of the term of such new agreement.

ARTICLE 3 MANAGER'S RESPONSIBILITIES

Section 3.1. Management. Manager shall manage, operate and maintain the Project in an efficient and satisfactory manner. Manager shall act in a fiduciary capacity with respect to the proper protections of and accounting for Owner's assets subject to Manager's control and management under this Management Agreement. In this capacity, Manager shall deal at arm's length with all third parties.

Section 3.2. Standard of Care and Use of the Project. In the performance of its duties and obligations under this Management Agreement, Manager shall diligently and in good faith seek to promote the best interests of the University and the Owner with respect to the management, operation, maintenance, and repair of the Project. In operating the Project, except during periods of restoration, renovation, refurbishing, casualty, condemnation and temporary destruction for renovation Manager will at all times provide good, prompt and efficient services adequate to meet all reasonable demands for such services at the Project.

Manager agrees not to use or allow the use of the Project or any part thereof for any purpose in violation of any valid and applicable law, regulation, ordinance of the United States, the State of Texas, or the City of San Antonio or of any rule of the University.

Section 3.3. Related Facilities. Owner shall have the exclusive right to construct, and Manager shall have the exclusive right to maintain, operate and rent on the Project Site as part of the Project, related facilities in order to provide services incidental to a university Recreation Center including, but not restricted to, sundries and newsstands, bars, restaurants and other services which are now or which may hereafter become incidental to the operation of a university Recreation Center, including the obtaining of concessionaire and other tenant leases, with the approval of Owner and University; provided that any use or service which is not directly a part of those uses or services normally provided by a university Recreation Center shall also be permitted, except that if any such use or service shall not, in the reasonable judgment of University, be consistent with the standards of University, then University may require Owner to terminate such use or service.

Section 3.4. Sale of Food and Beverages. Manager shall have the right to prepare and sell, or cause to be prepared and sold, food and beverages (including beer and wine but no other alcoholic beverages) in the Project, provided that any alcoholic beverages shall be available only for consumption in the Project and not for consumption elsewhere. Manager shall obtain and maintain current all state or city licenses required by any of Manager's operations under this Management Agreement.

Section 3.5. Trash Removal. Manager shall be responsible for the sanitary gathering, handling and disposal of all trash, litter, and refuse from the Project; provided, however, that this paragraph is not intended to in any way limit Manager's right to obtain and use trash disposal services on the same terms and conditions as such services are made available by the University to similar users on the campus at the time.

Manager shall provide and use suitable covered receptacles for all garbage, trash and other refuse. The facility for garbage storage shall be such as to

hide from public view all garbage receptacles and to prevent permeation of odor, and shall be kept in a clean and sanitary condition. Manager shall not permit piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner, on or about the Project. This Section is not intended to prohibit normal construction activities conducted in accordance with applicable municipal laws during any period of construction, renovation or similar activity.

Section 3.6. Employees; Independent Contractors. Subject to the provisions hereinafter, Manager shall have in its employ at all times a sufficient number of capable employees to enable it to properly and adequately manage, operate and maintain the Project, and Manager shall engage such independent contractors as are necessary to supplement and complement Manager's employees in order to properly and adequately manage, operate and maintain the Project.

Manager may contract with third parties and with the University for such services to be provided by them as are necessary and prudent to adequately manage, operate, and maintain the Project.

Manager shall be responsible to Owner for all such employees and independent contractors. All matters pertaining to the employment, supervision, compensation, promotion and discharge of Manager's employees and others engaged by Manager for the operation and maintenance of the Project shall be the responsibility of Manager. Manager and all personnel of Manager who handle or who are responsible for handling of Owner's moneys shall, without expense to Owner, be bonded in favor of Owner by a fidelity bond acceptable both to Manager and Owner, in an amount of not less than \$10,000 for each employee and with a company acceptable to Manager and Owner, a copy of which fidelity bond shall be furnished to Owner.

All salaries, wages and other compensation of personnel employed by Manager hereunder, including payment of such fringe benefits as medical and health insurance, deferred compensation, social security, and workers' compensation insurance, shall be Manager's expenses, and Owner and University shall have no liability therefor. Manager may negotiate with any union lawfully entitled to represent such employees and

may execute in its own name, and not as agent for Owner, collective bargaining agreements or labor contracts resulting therefrom. Manager shall fully comply with all applicable laws and regulations relating to workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employment matters in connection with the Project. Manager shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. Manager represents that it is and will continue to be an equal opportunity employer, and will advertise (to the extent Manager elects to advertise) as such.

This Management Agreement is not one of agency by Manager for University or Owner, but is a contract among Owner and University and a Manager which is engaged independently in the business of operating and managing properties on its own behalf, as an independent contractor. Manager understands and agrees that its relationship to Owner is that of independent contractor, and that Manager will not represent to anyone that its relationship to University and Owner is other than that of independent contractor.

Section 3.7. Schedule of Employees. Manager shall provide a schedule of employees by employment category (substantially in the format of Exhibit E attached hereto) to be employed in the direct management of the Project. Such schedule shall include the number of employees and their title and salary range, and shall also indicate which employees are bonded and are covered under Manager's comprehensive crime insurance policy. Exhibit E may be amended from time to time by mutual agreement of Owner, University and Manager.

Section 3.8. Compliance with Legal Requirements. Manager shall be responsible for management, operation and maintenance of the Project in compliance with federal, state, county and municipal laws, ordinances, regulations and orders and with the Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, management, operation, repair and maintenance of the Project, and with the rules, regulations or orders of the local board of fire underwriters or other similar body.

Manager shall promptly remedy any violation of any such law, ordinance, rule, regulation or order that comes to its attention. Manager shall promptly, and in no event later than the close of the next business day following receipt, give notice to University and Owner by telephone, with confirmation in writing, of receipt by Manager of any information relating to violations of laws, ordinances, rules, regulations and orders.

Manager shall cooperate with the University in its enforcement of the University's Rules and Policies.

Expenses incurred in remedying violations shall be paid from the Operating Account (defined below), provided such expenses do not exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) in any one instance. When more than such amount is required or if the violation is one for which Owner might be subject to civil penalty or criminal liability, Manager shall notify Owner by the end of the next business day to the end that prompt arrangements may be made to remedy the violation.

Manager shall apply for, obtain, and maintain in the name of Owner, all licenses and permits required of Owner or Manager in connection with the management and operation of the Project.

Manager shall execute and file punctually when due all forms, reports, and returns required by law relating to the employment of personnel and the operation of the Project. Notwithstanding anything to the contrary contained herein, Manager shall not be responsible for filing any tax returns for Owner.

Manager shall not knowingly commit any act or default under the terms and conditions contained in any ground lease, mortgage, deed of trust or other security instruments affecting the Project, and shall promptly, and in no event later than the close of the next business day following receipt, notify Owner by telephone, with confirmation in writing, of any such default or notice of default that comes to the attention and knowledge of Manager.

Section 3.9. Approved Budgets. Manager shall prepare and submit to Owner and to University a proposed Operating Budget and a proposed Capital Budget for the

operation, repair, improvement and maintenance of the Project for the forthcoming academic year. The proposed budgets for the forthcoming academic year shall be delivered to Owner and University no later than the March 1 prior to the beginning of each academic year.

The proposed budgets shall include, but not be limited to, income projections based upon anticipated Project fees, service fees, concessions income, and rentals. In addition, Manager shall provide supporting documentation, which shall be reasonably satisfactory to Owner and to University, for projections regarding expenditures for real property taxes, utility costs, repairs and maintenance, and anticipated capital expenditures, including, wherever reasonably practicable, a bid supporting the estimated budgeted costs for capital expenditures.

Owner and University will consider the proposed budgets and then will consult with Manager in the ensuing period prior to the commencement of the forthcoming academic year in order to mutually agree on an operating budget (the "Approved Operating Budget") and on a capital budget (the "Approved Capital Budget"). The Approved Operating Budget and the Approved Capital Budget are sometimes collectively referred to herein as the "Approved Budgets."

Manager agrees to use diligence and to employ all reasonable efforts to ensure that the actual costs of maintaining and operating the Project shall not exceed the Approved Budget pertaining thereto either in total or in any one accounting category. All expenses shall be charged to the proper account as specified in the Approved Budgets, and no expense may be classified or reclassified for the purpose of avoiding an excess in the annual budgeted amount of an accounting category. Manager shall secure Owner's prior approval for any expenditure that will result in an excess of 5% or more in any one accounting category in the Approved Budgets, however, if said expenditure is less than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), no such approval is necessary. Notwithstanding any provision contained herein to the contrary, for a period of one (1) year from and after the date hereof, in the event that the actual costs of maintaining and operating the Project shall exceed the Approved Budget pertaining thereto, then the amount of any such excess shall be

offset and credited, on a cumulative aggregate basis, against the Management Fee to be paid by Owner to Manager in accordance with the compensation schedule set forth in Exhibit D attached hereto such that the amount of such Management Fee shall be automatically reduced by such excess.

During each academic year, Manager agrees to inform University and Owner of any major increases or decreases in costs and expenses that were not foreseen during the budget preparation period, and thus were not reflected in either Approved Budget, and shall submit to University and Owner for approval a revised budget based upon said unforeseen increase or reduction of costs and expenses.

Section 3.10. Collection of Project Fees and Other Income. Manager shall use diligent efforts to collect all Project fees that may become due Owner at any time from any student, faculty member, or other Project participant. Manager shall identify and collect any income due Owner from miscellaneous services provided to Project participants including, but not limited to, any storage and coin operated machines of all types (e.g., vending machines and pay telephones). All monies so collected shall be deposited on each business day during the periods which the Project is open for business in the Operating Account. Manager cannot and may not terminate any leasehold contracts with concessionaires or other tenants, lock out a tenant, institute suit for use and occupancy, or proceedings for recovery of possession, without the prior written approval of Owner and University. In connection with such suits or proceedings legal counsel designated by Owner shall be retained, and all such suits or proceedings shall be brought in the name of Owner and shall be handled in such manner as Owner directs. All legal expenses incurred in bringing such suits or proceedings shall be operating expenses.

Section 3.11. Repairs. Manager shall attend to the making and supervision of all ordinary and extraordinary repairs, decorations and alterations to the Project; however, no single expenditure that is not included in the Approved Operating Budget or the Approved Capital Budget made for such purposes shall exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), without prior approval of the Owner and the University. Actual expenses for materials and labor for

such purposes will be paid for from the Operating Account.

In case of emergency, Manager may make expenditures for repairs which exceed the aforementioned amount without prior written approval if Manager deems such expenditure to be necessary to prevent damage or injury. Manager will inform Owner and University of any such emergency expenditures before the end of the next business day.

Section 3.12. Capital Expenditures. The Approved Capital Budget shall constitute an authorization for Manager to expend funds in accordance with such budget only for amounts equal to, or less than, Two Thousand Five Hundred and No/100 Dollars (\$2,500.00). Any capital expenditure must be specifically authorized in writing by Owner if for: (i) items not included in the Approved Capital Budget; or, (ii) for amounts of more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

With respect to the purchase and installation of major items of new or replacement equipment (including, without limitation, heating or air-conditioning equipment, furniture and furnishings, carpets or other floor coverings), Manager shall recommend that Owner purchase such major items when Manager believes such purchase to be necessary or desirable. Owner may arrange to purchase and install the same itself or may authorize Manager to do so subject to such supervision and specification requirements and conditions as Owner may prescribe in any such approval. Unless Owner specifically waives such requirements, either by memorandum or as an amendment to this Management Agreement, or by approval in the Capital Budget, all new or replacement equipment exceeding One Thousand and No/100 Dollars (\$1,000.00) shall be awarded on the basis of competitive bidding, solicited in the following manner:

(a) A minimum of two (2) written bids shall be obtained for each purchase in excess of One Thousand and No/100 Dollars (\$1,000.00). A minimum of three (3) written bids will be obtained for each purchase in excess of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00).

(b) Each bid shall be solicited in a form approved by Owner so that uniformity will exist in the bid quotes.

(c) Manager shall provide Owner with all bid responses accompanied by Manager's recommendations as to the most acceptable bid. If Manager advises acceptance of other than the lowest bidder, Manager shall adequately support, in writing, its recommendations.

(d) Owner shall approve or disapprove any and all bids and will communicate to Manager its approval or disapproval of bids within five (5) business days. If Owner does not communicate any response to Manager within five (5) business days, such bids shall be construed by Manager to be disapproved by Owner.

Owner may pay for capital expenses from its own resources or may authorize payment by Manager out of the Operating Account. At the option of Owner, such contracts shall be entered in Manager's name, by Manager as agent for Owner, or submitted to Owner for Owner to enter such contracts in Owner's own name.

Section 3.13. Service Contracts. Manager shall not enter into any contract for cleaning, maintaining, repairing, servicing and the providing of security services and utilities to the Project or any of the constituent parts of the Project, without the prior consent of Owner and University unless provided for in the Approved Operating Budget. As a condition to obtaining such consent, Manager shall supply Owner and University with a copy of the proposed contract and shall state to Owner and University the relationship, if any, between Manager (or the person or persons in control of Manager) and the party proposed to supply such goods or services, or both. Each such service contract shall: (a) be in the name of Manager, (b) be assignable, at Owner's option to Owner or Owner's nominee, (c) include a provision for cancellation thereof by Owner or Manager upon not less than 30 days' written notice, and (d) shall require that all contractors provide evidence of sufficient insurance. In the event of a termination of this Management Agreement, Owner shall be fully responsible for and shall thereupon assume all obligations of Manager under

any approved contracts that were not terminated contemporaneously with the termination of this Management Agreement. If this Management Agreement is terminated pursuant to Article 14, Manager shall, at Owner's option and with the consent of the University, assign to Owner or Owner's nominee all service agreements pertaining to the Project.

Subject to the availability of funds in the Approved Operating Budget, Manager shall purchase all necessary equipment, tools, appliances, materials, and supplies required for the proper management, rental, maintenance, repair, and operating of the Project. Manager shall maintain, and provide to Owner upon request, an inventory of any such equipment, tools, appliances, materials, and supplies purchased by Manager for use at the Project. Manager shall be under a duty to secure for and credit to Owner any discounts, commissions, or rebates obtainable as a result of such purchases.

Section 3.14. Available Funds. Notwithstanding the provisions of this Management Agreement, including the provisions relative to the making of repairs or maintenance of the Project, Project Manager shall not incur any expenses in any semester, summer session or other term in excess of the income from the Project during such term except to the extent funds are made available specifically for such purpose by Owner through the Operating Account or otherwise. In any case in which the Manager anticipates a shortfall of funds, Manager shall inform Owner of the situation so that Owner may have the opportunity of determining what action should be taken under the circumstances, and Owner shall promptly advise Manager of the action to be taken.

Section 3.15. Taxes; Mortgages. Manager shall, if requested by Owner to do so, obtain and verify statements for ad valorem taxes, improvement assessments and other like charges that are or may become liens against the Project, and Manager shall recommend payment or appeal of same. Manager shall forward such bills to Owner for payment by Owner in such time to permit Owner to avoid penalty for late payment or to permit Owner to take advantage of discounts. If such amounts are included in the Approved Operating Budget, Manager shall pay such items. Manager shall make payments on account

of any ground lease, mortgage, deed of trust or other security instrument, if any, affecting the Project to the extent Owner directs that Manager make such payments, and accounts for such payments either in the Approved Budgets or otherwise.

Section 3.16. Claims. Manager shall advise Owner and the University immediately by telephone, with confirmation in writing, of the service upon Manager of any summons, subpoenas, or other like legal document including any notices, letters, or other communications, setting out or claiming an actual or alleged potential liability of Owner or the Project.

Section 3.17. Participant or Tenant Complaints. Manager shall respond courteously and efficiently to participant complaints and service requests from tenants. Routine service requests and complaints shall be received and entered in detail in a log book indicating the action taken with respect to each. Serious complaints shall, after thorough investigation, be reported to Owner and University with appropriate recommendations.

Section 3.18. Inspection. Manager and University shall make regular inspections of the Project, as may be necessary to perform their obligations under this Management Agreement and to confirm that the Project is being maintained as may be required or contemplated under leasehold contracts. Manager shall report its inspection findings in writing to Owner and University at the end of each semester or summer session, unless other reports may be required at other times because of disciplinary proceedings against any student participant or because of other legal action.

ARTICLE 4 INSURANCE

Section 4.1. Insurance. Upon written request by Owner and University, and specific written instructions as to the type and amount, Manager shall obtain and keep in effect such insurance coverage with respect to the Project as Owner shall so request and specify. All insurance required to be obtained and maintained by Manager under this Management Agreement shall be of types issued by such insurance companies, in

such amounts, in such form, and having such content, as may be instructed by Owner. Manager shall furnish to Owner, University, and each additional insured or co-insured, the following items: (a) copies of all current insurance policies, (b) certificates or other evidence of insurance satisfactory to Owner evidencing the existence of such insurance, and (c) evidence satisfactory to Owner of the proper renewal of any policy of insurance 15 days prior to the expiration of any such policy. All policies of insurance shall contain a provision stating that each such policy cannot be cancelled without at least thirty (30) days prior written notice to the insured, each additional insured, and each co-insured. Manager shall promptly investigate and make a full written report as to all accidents or claims for damage relating to the ownership, operation, and maintenance of the Project, including any damage or destruction to the Project and the estimated cost of repair. All such reports shall be filed with Owner promptly, and in any event within one (1) day after the occurrence of any such accident, claim, damage or destruction. Manager shall cooperate with and make any and all reports required by any insurance company in connection therewith.

Manager shall furnish whatever information is requested by Owner and University for the purpose of establishing the placement of insurance coverages, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss thereunder.

Section 4.2. Additional Insurance to be Maintained by Manager. Manager shall provide and maintain additional insurance as specified in this Section 4.2, and shall not be entitled to reimbursement from University or Owner for any cost of obtaining such insurance. Manager, at its expense, shall provide and maintain, so long as this Management Agreement is in force, the following additional insurance: (a) workers' compensation insurance in full compliance with all applicable state and federal laws and regulations, covering all employees of Manager performing work in respect to the Project; (b) a blanket employee dishonesty policy in the minimum amount of \$10,000 per employee employed in connection with the Project and per authorized signatory (except Owner) of any bank accounts kept pursuant to the provisions hereof or equivalent bonding of such employees and signatories. Such

insurance shall have attached thereto an endorsement that Owner will be given at least thirty (30) days prior written notice of cancellation of or any material change in policy; (c) adequate insurance against physical damage and against liability for loss, damage or injury to property or persons that might arise out of the use, operation or maintenance of any and all personal property owned by Manager and used in connection with the Project, and Owner shall be identified and covered as an additional insured with respect to such insurance; and (d) errors and omissions (or like) insurance coverage, in an amount acceptable to Owner and University, with respect to any claim by Owner and persons or entities having interests in or rights in respect of the Project, and third parties against Manager arising out of the provision of services with respect to the services to be performed under or pursuant to this Management Agreement. Such insurance may provide for a reasonable deductible amount.

The policies of such insurance shall be in form satisfactory to Owner and at all relevant times qualified to effect such insurance in the jurisdiction in which the Project is situated. Manager shall provide Owner with a signed copy of each policy and any renewal thereof or replacement therefor. Such policy shall be signed by the company issuing such insurance; provided that at the option of Manager such insurance may be provided by a certificate of insurance issued under a group or blanket policy providing for such insurance coverage in which event such certificate of insurance shall be signed by the company issuing such group or blanket policy. Such policy or certificate shall be endorsed with specific reference to the services to be provided by Manager in connection with the Project under this Management Agreement, and such policy shall not be cancelled except after at least thirty (30) days prior written notice to Owner and University. Owner will not reimburse Manager for Manager's cost of any of the foregoing insurance.

Section 4.3. Subcontractor's Insurance.
Manager shall require that any subcontractors brought onto the Project have insurance coverage, at the subcontractor's expense, in the following minimum amounts:

- (a) Worker's Compensation - Statutory Amount
- (b) Liability - \$100,000 (Minimum)
 - i. \$100,000 Bodily Injury
\$100,000 Project Damage, and
 - ii. \$300,000 Combined Single Limit

Manager must obtain Owner's permission to waive any of the above requirements. Manager shall obtain and keep on file appropriate certificates of insurance that shows that all such subcontractors are so insured.

ARTICLE 5
FINANCIAL REPORTING AND RECORDKEEPING

Section 5.1. Books of Accounts. Manager, in the conduct of its responsibilities to Owner and University, shall maintain correct, true, complete and separate books and records reflecting the operation of the Project, the entries to which shall be supported by sufficient documentation to ascertain that said entries are properly and accurately recorded to the Project. Such books and records at all times shall be and remain the property of Owner and shall be maintained by Manager at Manager's address set forth herein, or at such other location as may be mutually agreed upon in writing. Upon the termination of this Management Agreement, Manager shall deliver all such records, books and accounts to Owner. Manager shall ensure such control over accounting and financial transactions as is required to protect Owner's assets from theft, error or fraudulent activity on the part of Manager's employees. Losses arising from such theft, error or fraudulent activity on the part of Manager's employees are to be borne by Manager and shall include, but not be limited to:

- (a) Theft of assets by Manager's employees,
- (b) Overpayment or duplicate payment of invoices arising from either fraud or error,
- (c) Overpayment of labor costs arising from either fraud or error,

(d) Unauthorized use of facilities or space at the Project by Manager or Manager's employees,

(e) Penalties, interest, or loss of vendor discounts due to delay in payment of invoices, bills or other like charges, excluding those that were beyond Manager's control,

(f) Payments from purveyors to Manager's employees, or from Manager to any of its affiliates, arising from the purchase of goods or services for the Project, which have not been approved in advance in writing by Owner.

Section 5.2. Account Classification. Manager and Owner shall mutually agree upon a system of classification of accounting entries satisfactory to Owner.

Section 5.3.. Financial Reports. Manager shall furnish periodic reports of all transactions occurring from the 1st day of the prior semester or summer session to the last day of the prior semester or summer session. These reports are to be delivered to Owner and University no later than 15 days after the end of the above described accounting period and must include, at a minimum, the following information:

(a) An income schedule showing, for each Project participant or tenant, semester or summer session fees or rental received, and details of all other payments or charges received.

(b) A schedule of expenses (including the Management Fee described herein) incurred during the semester or summer session and any outstanding payable as of the end of the semester or summer session.

(c) A comparison of income and expenses for the preceding semester or summer session to the income and expenses set out for such period in the Approved Budgets.

(d) A reconciliation of cash accompanied by bank statements and cancelled checks.

(e) An itemized list of all receivables representing amounts currently due and collectible for services provided to Project participants or the University, or as provided for by leasehold and other agreements with concessionaires or other tenants, if any, or from any other sources.

(f) A current rent roll.

(g) An itemized list of past due monies.

(h) A copy of the cash receipts journal, cash disbursements journal, and general journal.

(i) Any other detail of accounting-related items.

Without in any manner limiting the generality of the foregoing, the reports shall include the items listed on Exhibit F attached hereto, and also shall include a comparison of year-to-date actual income and expense with the Approved Budgets for the Project.

As of the last day of the reporting semester or summer session, Manager shall remit to Owner all unexpended funds in the Project's Operating Account except for a reserve for contingencies which shall remain in the Project's Operating Account in the amount of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), plus an amount for expenses that have been incurred but not paid. The remittance shall be net of the Management Fee. After two semesters of actual operating experience, Owner, at its sole option, may elect to change the amount of such contingency reserve.

Manager, shall, on or before September 1 of each academic year during the term hereof, at Manager's expense, furnish to Owner and University an unaudited statement of income and expenses reflecting the operation of the Project for the prior academic year, which statement shall be in prepared in conformity with generally accepted accounting principles. If requested by Owner or University, such statement of income and expenses shall be certified by a firm of independent certified public accountants selected by Owner and University; provided, however, that the cost of having such statement of income and expenses certified by such a firm of accountants shall be borne by Owner.

Section 5.4. Supporting Documentation. As additional support to the term and annual financial statements, Manager shall provide to Owner and University on request copies of the following:

- (a) Bank statements, bank deposit slips and bank reconciliations,
- (b) Detailed cash receipts and disbursement records,
- (c) Detailed trial balances,
- (d) Paid invoices,
- (e) Summaries of adjusting journal entires, and
- (f) Supporting documentation for payroll, payroll taxes and employee benefits.

Section 5.5. Accounting Principles. All semester or summer session and annual financial statements and reports required by Owner shall be prepared on the accrual basis in accordance with generally accepted accounting principles, consistently applied, unless otherwise directed or approved by Owner.

ARTICLE 6 INSPECTION AND AUDIT

Section 6.1. Right of Inspection and Audit. Owner and University, their accountants, attorneys, and agents, or any other designee, shall have the right to enter upon any part of the Project at any time during the term of this Management Agreement for the purpose of examining or inspecting the Project, examining or making extracts of or auditing the books and records of the Project, or for any other purpose. Owner and University reserves the right for Owner's and University's accountants, attorneys, agents, employees or others appointed by Owner, to inspect, copy and audit, and conduct examinations, without notification, during reasonable business hours, of the books, records and accounts of the Project maintained for Owner by Manager no matter where such books and records are located. Owner and University also reserve the right to perform any and all additional audit tests relating to Manager's

activities, either at the Project, or at any office of the Manager; provided that such audit tests are related to those activities performed by Manager for Owner or University.

Section 6.2. Corrections. Should Owner's or University's employees or agents discover either weaknesses or discrepancies in internal control or errors in recordkeeping, Manager shall correct such weaknesses and discrepancies either upon discovery or within a reasonable period of time. Manager shall inform Owner in writing of the action taken to correct such audit or control weaknesses and discrepancies.

Section 6.3. Expenses. Such inspections or audits shall be at Owner's expense, unless such inspections or audits disclose discrepancies which in the aggregate result in a five percent (5%) misstatement of net income or net loss, in which case the cost of such inspections or audits as well as the reimbursement of such error, shall be paid by Manager.

ARTICLE 7 BANK ACCOUNTS

Section 7.1. Operating Account. Manager shall deposit on a daily basis all fees, rents and other funds collected from the operation of the Project, including any and all advance payments, except for security deposits which are subject to the provisions of Section 7.2 below, in a bank approved by Owner. Such amounts shall be deposited in a special account or accounts (the "Operating Account(s)") for the Project. The Operating Account shall be separate from any other bank accounts maintained by Manager. All funds in the Operating Account shall be and shall remain the property of Owner and shall be received, held, and disbursed by Manager as a trust fund in payment of obligations of Owner incurred in connection with the management, operation, maintenance and repair of the Project, or remitted to Owner as provided herein. In no event shall the funds of anyone but Owner be deposited by Manager in the Operating Account, and Manager shall not commingle Owner's funds with the funds of any other person in any manner whatsoever. The bank shall be informed in writing that the funds are held in trust for Owner. Out of the Operating Account, Manager shall pay the operating expenses of the Project provided for herein

and any other payments relative to the Project as required by the terms of this Management Agreement.

At any time that the Operating Account contains inadequate funds to meet current expenses and reasonable reserves, including all times prior to the commencement of fee and rental income from the Project, Owner shall provide the needed funds for the Operating Account.

Section 7.2. Security Deposits. Manager shall maintain detailed records of all security deposits and any other refundable fees or deposits collected from Project participants or tenants, and such records will be open for inspection by Owner's employees or agents. Unless expressly waived in writing by Owner, all refundable fees or deposits collected from Project participants or tenants, other than deposits made for short-term rental of sports equipment subject to return of the equipment and refunding of the deposit within a 24 hour period, shall be deposited by Manager and held in a bank account (the "Security Deposit Account"), separate from Manager's corporate account, the account maintained under Section 7.1 above, and any other bank accounts maintained by Manager. The Security Deposit Account shall be in the name of Owner with an account name and at a bank designated by Owner. Manager and Owner shall comply with all applicable laws with respect to such fees and deposits and, unless so instructed by Owner, Manager shall not withdraw any sums from such Security Deposit Account except as required to comply with the provisions of tenant contracts regarding the refunding of such deposits.

Section 7.3. Change of Banks. Owner may direct the Manager to change a depository bank or the depository arrangements.

Section 7.4. Access to Account. Through the use of signature cards, authorized representatives of Owner, shall be permitted access to any and all funds in the bank accounts described in Section 7.1 and 7.2. Owner agrees to promptly notify Manager of any withdrawals from such bank accounts. Manager's authority to draw against such accounts may be terminated at any time by Owner upon five (5) days notice to Manager or the Bank.

ARTICLE 8
PAYMENT OF EXPENSES

Section 8.1. Costs Eligible for Payment from Operating Account. Manager shall pay all costs for items in the Approved Operating Budget in the first instance out of the Operating Account. In addition, other expenses provided in this Management Agreement to be paid out of the Operating Account shall be paid directly from the Operating Account, and the following expenses shall also be paid directly from the Operating Account, subject to the conditions outlined in Article 3:

(a) Cost to correct any violation of federal, state, county and municipal laws, ordinances, regulations and orders, and Rules and Regulations of the Board of Regents of The University of Texas System relative to the leasing, use, repair and maintenance of the Project, or relative to the rules, regulations or orders of the local board of fire underwriters or other similar body, provided that such cost is not a result of Manager's negligence.

(b) Costs incurred by Manager in connection with all service agreements entered by Manager in accordance with authorizations in this Management Agreement or approved by Owner.

(c) Legal fees of attorneys provided such attorneys have been approved of by Owner in writing in advance of retention.

(d) Cost of outside audit as may be requested by Owner in writing.

If funds are not available in the Operating Account, Manager shall have no obligation to make any such payments. All payments may be made by Manager from the Operating Account in such order as Manager elects, and Manager shall pay all penalties or other charges for late payment of such items from the Operating Account.

ARTICLE 9
MANAGER'S COSTS NOT TO BE REIMBURSED

Section 9.1. Non-reimbursable Costs. Except to the extent that such costs and expenses (i) are in the Approved Operating Budget, (ii) are otherwise

approved for payment by Owner, or (iii) are expressly reimbursable as provided for in Exhibit D attached hereto, all expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Project shall be at the sole cost and expense of Manager and shall not be reimbursed by Owner, including, specifically, without limitation, the following:

(a) Cost of gross salary and wages, payroll taxes, insurance, workers' compensation, and other benefits of Manager's employees.

(b) General accounting and reporting services that are considered to be within the reasonable scope of the Manager's responsibility to Owner.

(c) Cost of forms, papers, ledgers, and other supplies and equipment used in the Manager's office at any location off the Project.

(d) Cost of electronic data processing equipment, or any pro rata charge thereon, whether located at the Project or at Manager's office off the Project.

(e) Cost of electronic data processing, or any pro rata charge thereof, for data processing provided by computer services companies.

(f) Cost attributable to losses arising from gross negligence or fraud on the part of Manager or Manager's employees. "Gross negligence" shall be deemed to include any and all monetary loss caused by the ordinary negligence of Manager or Manager's employees.

(g) Cost of all bonuses paid by Manager to Manager's employees unless such bonuses have prior written approval of Owner.

(h) Cost of comprehensive crime insurance, fidelity bonds, or other insurance purchased by Manager for its own account.

ARTICLE 10
INSUFFICIENT GROSS INCOME

Section 10.1. Statement of Unpaid Items.
After Manager has paid, to the extent of available funds in the Operating Account, all bills and charges that have been incurred with respect to the Project, Manager shall submit to Owner a statement of all remaining unpaid bills. Owner shall promptly provide sufficient monies to pay any unpaid expenses.

ARTICLE 11
SALE OF PROJECT

Section 11.1. Cooperation with Sales Broker.
If Owner, with approval of the University, executes a listing agreement with a broker for sale of the Project, Manager shall cooperate with such broker to the end that the respective activities of Manager and broker may be carried on without interference with operations of the Project. Manager will permit the broker to exhibit the Project during reasonable business hours provided the broker has secured Manager's permission in advance. Manager agrees that failure on its part to extend cooperation to a broker desiring to show the Project shall constitute a default on its part under this Management Agreement, and is a ground for termination of this Management Agreement upon seven (7) days notice to Manager.

ARTICLE 12
COOPERATION

Section 12.1. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against Owner that arise out of any of the matters relating to this Management Agreement, Manager shall give Owner all pertinent information and reasonable assistance in the defense or other disposition thereof.

ARTICLE 13
COMPENSATION

Section 13.1. Compensation. Manager shall receive compensation (the "Management Fee") for its services in managing the Project pursuant to the terms and tenor of this Management Agreement in accordance

with the compensation schedule set forth in Exhibit D attached hereto and made a part hereof for all purposes.

ARTICLE 14
TERMINATION

Section 14.1. Termination on 30-day Notice. In addition to the provisions of Sections 1.2 and 2.2, either party may terminate this Management Agreement without cause by giving the other party and the University at least thirty (30) days notice in writing.

Section 14.2. Immediate Termination With Notice. In addition to the provisions of Section 14.1, Owner and University may immediately terminate this Management Agreement by the service of a written notice to that effect on Manager and the University. In such case, if Manager is entitled to a Management Fee pursuant to Article 13, Owner shall pay Manager the Management Fee that would normally have accrued to Manager on a pro rata basis during the ensuing thirty (30) days immediately following the termination date. The foregoing provisions for payment in lieu of the actual Management Fee shall apply only in the case of immediate termination pursuant to this Section 14.2.

Section 14.3. Termination for Cause. This Management Agreement will terminate immediately without further action from Owner in the event Manager breaches any of its obligations to Owner under the terms of this Management Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

Section 14.4. Authority to Execute Termination Notices. Notice of termination or default for the purposes of Section 14.1, 14.2 or 14.3 must be signed by persons authorized to so act on behalf of Owner or Manager, as the case may be.

Section 14.5. Termination Without Notice. Dissolution or termination of the corporate or partnership existence of the Manager by merger, consolidation or otherwise; or death of the Manager, if an individual, or death of any general partner of Manager, if a partnership or cessation on the Manager's part to continue to do business; or bankruptcy, insolvency, or assignment for the benefit of the

creditors of the Manager shall effect an immediate termination of the Management Agreement without notice. Action having for its purpose a reorganization or reconstitution of the Manager shall likewise effect an immediate termination of this Management Agreement. Notice of such termination shall be given to the University, but shall not affect the time of termination.

Section 14.6. Final Accounting. Termination of this Management Agreement under any of the foregoing provisions shall not release Manager from liability for failure to perform any of the duties or obligations of Manager, as expressed herein and required to be performed prior to such termination. Upon termination of this Management Agreement for any reason, Manager shall deliver to Owner and University the following with respect to the Project:

(a) A final accounting, reflecting the summary of income and expenses on the Project from the beginning of the current reporting period to the date of termination, to be delivered within ten (10) days after such termination;

(b) Any balance or monies of Owner or security deposits, or both, held by Manager with respect to such Project, to be delivered immediately upon such termination;

(c) Any monies due Owner under this Management Agreement but received after such termination; and

(d) Checks, bank statements with cancelled checks, and other banking records; cash and all other property on hand, and all receipts and vouchers; all Project files, with original concessionaire and other leasehold contracts and participant rolls; all applicable contracts, agreements, and service contracts relating to the Project; all bills relating to the Project, both paid and unpaid; all financial records relating to the Project, including all books, journals, ledgers, and financial reports; all keys to the buildings and other component parts of the Project; all employee records relating to the Project; and all other books and records that pertain to the Project.

Manager shall assign such existing contracts relating to the operating and maintenance of the Project as Owner shall require, and Manager shall furnish all such information and take all such action as Owner shall require in order to effectuate an orderly and systematic ending of Manager's duties and activities hereunder.

ARTICLE 15
SUBSIDIARIES AND AFFILIATES

Section 15.1. List of Subsidiaries and Affiliates. On Exhibit G attached hereto, Manager has set forth all of its subsidiary corporations, if any, and all persons, corporations or other entities, if any, controlling Manager and all persons, corporations or other entities, if any, owned or controlled by such persons, corporations or other persons, if any, which control Manager. During the continuance of this Management Agreement, Manager shall promptly notify Owner of any changes or additions to the information required to be set forth on Exhibit G. Any contract or lease of any kind whatsoever between Manager and any persons, corporation or other entity listed or to be listed on Exhibit G shall be subject to the prior written approval of Owner, and, at Owner's sole discretion, such approval may be withheld.

ARTICLE 16
NOTICES

Section 16.1. Notices. Any notice, demand or request that may be permitted, requested or desired to be given in connection herewith shall be in writing and directed to Owner, Manager and the University by certified mail, return receipt requested, postage prepaid, at their respective addresses stated on the signature page of this Management Agreement. In the event such notice or other communication is effected by personal delivery or by an overnight express delivery courier, the date and hour of actual delivery shall fix the time of notice. Absent a postal strike or other stoppage of the mails, in the event of delivery of notice by registered or certified United States mail, the date and hour following forty-eight (48) hours after the date and hour at which the sealed envelope containing the notice is deposited in the United States mail, properly addressed and with postage prepaid, shall fix the time of notice.

ARTICLE 17
ASSIGNMENTS

Section 17.1. Assignment of Agreement. Owner may, with the prior approval of University, which shall not be unreasonably withheld, at any time and from time to time collaterally assign the Owner's interest in this Agreement by the execution of one or more collateral assignments (herein called ("Assignment(s)")). Such prior approval is hereby given to Owner for the granting of such an Assignment in connection with the financing of the construction costs of the Phase I Dormitory and the Recreation Center, whether such financing be through the issuance of industrial development bonds or by a financial institution.

Owner and Manager hereby acknowledge that the Owner's rights and benefits under this Agreement shall, on the date hereof, be assigned pursuant to an Assignment of Management Agreements of even date herewith in favor of Lloyds Bank International Limited, and University hereby consents to such Assignment and the terms thereof.

Section 17.2. Manager's Agreements. In the event any proposed collateral assignee of this Agreement pursuant to this Article 17 should so require, then University shall execute and deliver to each such collateral assignee a writing whereby University agrees in substance to the provisions set out below.

- A. University shall not terminate this Agreement for any default of Owner hereunder without first advising the assignee, in writing, of such default and permitting the assignee to cure such default on behalf of such Owner within ninety (90) days after the giving of such notice. Further, if any default, other than a default in the payment of fees hereunder, is not cured within such ninety (90) day period, or any extension thereof agreed to by the University, (i) if the assignee has instituted foreclosure proceedings pursuant to a deed of trust on the Leased Premises for the benefit of the assignee prior to the expiration of fifteen (15) days after the

expiration of said ninety (90) day period (as the same may have been previously extended) and (ii) prosecutes such foreclosure diligently to conclusion, and (iii) the purchaser at the foreclosure sale fully cures the default within ninety (90) days after such foreclosure sale, then Manager will not terminate this Agreement because of the occurrence of such non-monetary default provided that such foreclosure proceedings are diligently prosecuted.

- B. In the event the assignee should foreclose upon the Owner's leasehold interest and should, as a result of such foreclosure, succeed to such leasehold interest, then the assignee shall be subject to all the terms and conditions of this Agreement and shall be entitled to all the rights and benefits of this Agreement; provided, however, that (a) such assignee shall not be liable for any act or omission of Owner; (b) such mortgagee shall not be subject to any offsets or defenses which Manager has or might have against Owner; (c) such assignee shall not be bound by any amendment, modification, alteration, approval, consent, surrender, or waiver under the terms of this Agreement made without the prior written consent of such assignee; (d) upon the written consent of such assignee, Manager shall reaffirm in writing the validity of this Agreement and its existence in full force and effect; (e) Manager acknowledges and agrees for itself and its successors and assigns that this Agreement does not constitute a waiver by any such assignee of any of its rights under any assignment or in any way release Owner from its obligations to comply with the terms, provisions, conditions, representations, warranties, agreements or clauses of such Assignment; and (f) Manager shall not assign its interest in this Agreement without the prior express written consent of any such assignee.

- C. Manager will not agree to a modification, alteration or amendment of this Agreement without the consent of the assignee.
- D. In the event of any termination of this Agreement, Manager will serve upon the mortgagee written notice that the Agreement has been terminated together with a statement of any and all sums which would have at that time been due under this Agreement but for such termination and of all other defaults, if any, under the Agreement then known to Manager, whereupon the assignee shall have the option to obtain a new management agreement for the Dormitory by giving notice to Manager to such effect within ninety (90) days after receipt by the assignee of notice of such termination, which new management agreement shall be entered into at the reasonable cost of the Owner thereunder, shall be effective as of the date of termination of this Agreement and shall be for the remainder of the term of this Agreement and for the fees and upon all of the agreements, terms, and conditions hereof, including any applicable rights of renewal. Such new Management Agreement shall require the owner to perform any unfulfilled obligation of Owner under this Management Agreement which is reasonably susceptible of being performed by such owner. Upon the execution of such new management agreement, the owner named therein shall pay any and all sums which at the time of the execution thereof would be due under this Agreement but for such termination and shall pay all expenses, including reasonable attorney's fees, court costs and disbursements incurred by Manager in connection with such defaults and termination, and the preparation, execution and delivery of such new management agreement.

E. All notices required to be given hereunder by Manager to Owner shall also be given to each assignee, at the address designated in writing to Manager.

Section 17.3. Modification. Manager agrees to consider the execution of reasonable modification, addenda or amendments to this Agreement as may reasonably be requested from time to time by a collateral assignee.

ARTICLE 18
MISCELLANEOUS

Section 18.1. Consent and Approvals. Owner's and University's consents or approvals may be given only by representatives of Owner or University, as the case may be who will be designated in writing by Owner or University, as the case may be by notice pursuant to Section 16.1. All such consents or approvals shall be in writing to the extent set forth herein as requiring written approval.

Section 18.2. Entire Agreement. This Management Agreement represents the entire agreement by and between the parties hereto, and supersedes any and all prior agreements by and between the parties hereto relating to the subject matter hereof, and it may not be changed except by written agreement duly executed by the parties hereto.

Section 18.3. Captions. The headings in this Management Agreement have been used for administrative convenience only, and shall not be used in interpreting or construing the meaning of any provision in this Management Agreement.

Section 18.4. Representations. Manager represents and warrants that Manager is fully qualified and licensed, to the extent required by law, to perform all obligations assumed by Manager hereunder.

Section 18.5. Hold Harmless. Manager agrees to indemnify and defend Owner and University and hold Owner and University harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Manager of any provision of this Management

Agreement or the negligent or improper performance by Manager of its duties hereunder or any action taken by Manager beyond the scope of Manager's authority as set forth in this Management Agreement, and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Manager, including, without limitation, any condition of the Project, to the extent such condition should, in the diligent discharge of Manager's obligations of this Management Agreement, have been observed or detected and corrected by Manager, or Manager's agents, employees, or subcontractors, but not as to any such condition so observed and detected by Manager but not corrected by reason of Owner's or University's acts or omissions. Owner and University agree to indemnify and defend Manager and hold Manager harmless from any legal action, suit, debt, expense, claim, demand, judgment and settlement (including reasonable attorneys' fees and court costs) arising out of or in connection with any breach by Owner or University, as the case may be, of any provision of this Management Agreement binding on Owner or University and from any damage to property or injury to, or death of persons occasioned by or in connection with the acts or omissions of Owner or University with respect to the Project.

Section 18.6. Subordination. This Management Agreement and the rights of Manager hereunder are and shall be subordinate to the Ground Lease between University and Owner. Manager agrees that this Management Agreement and all of Manager's rights, duties, and liabilities hereunder will be terminated upon any event of termination of the Ground Lease as defined therein.

Section 18.7. Time of the Essence. Owner and Manager agree and acknowledge that time is of the essence with respect to this Management Agreement, and the respective time periods and deadlines set forth in this Management Agreement. The time periods provided for herein are basic parts of this Management Agreement, and are not subject to extension unless upon written agreement of the parties hereto.

Section 18.8. Authority. All parties to this Management Agreement warrant and represent that they have the power and authority to enter into this Management Agreement in the names, titles, and

capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such person.

Section 18.9. Severability. If any provision of this Management Agreement shall, for any reason, be held by a court of competent jurisdiction violative of any applicable law, or is held by a court of competent jurisdiction to be unenforceable, then the invalidity of such specific provision herein shall not be held to invalidate any other provision herein which shall remain in full force and effect.

Section 18.10. No Assignment by Manager. Manager shall not have the right to assign its right, title, and interest under the terms of this Management Agreement to any third party whatsoever without first obtaining prior written consent of Owner and University.

Section 18.11. Parties Bound. Except as limited by Section 18.10 of this Management Agreement, the terms and provisions of this Management Agreement shall inure to, extend to and be for the benefit of the heirs, successors, assigns, and legal representatives of the respective parties hereto.

Section 18.12. Counterparts. This Management Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes.

Section 18.13. Governing Law. This Management Agreement shall be construed and interpreted under the laws of the state in which the Project is located.

Section 18.14. Construction of Agreement. The terms and provisions of this Management Agreement represent the results of negotiations between Owner, University and Manager, each of which has been represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Management Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Owner, University and Manager hereby expressly waive and disclaim in connection with the interpretation and construction of this Management Agreement, any rule of law or procedure

requiring otherwise, including without limitation, any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Management Agreement shall be interpreted or construed against the party whose attorney prepared the Management Agreement or any earlier draft of this Management Agreement.

Section 18.15. Waiver. The waiver by any party hereto of the breach of any term, covenant, agreement, or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant, agreement, or condition herein, nor shall any custom, practice, or course of dealings arising among the parties hereto in the administration hereof be construed as a waiver or diminution of the right of any party hereto to insist upon the strict performance by any other party of the terms, covenants, agreements, and conditions herein contained.

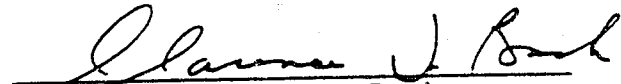
Section 18.16. No Joint Venture or Partnership. Owner and Manager hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Manager, University and Owner, or any two of such persons, joint venturers or partners.

Section 18.17. Authorized Representative of University. For purposes of providing consents, approvals and waivers by the University that are required from time to time under this Agreement, the University hereby appoints and authorizes as its representatives the President of The University of Texas at San Antonio and the Vice President for Business Affairs of the University of Texas at San Antonio, each of whom may act on behalf of the University.

IN WITNESS WHEREOF, the parties hereto have executed this Management Agreement the date and year first above written.

OWNER:

Date: DECEMBER 23, 1985


Clarence T. Bach

Address for Notice
to Owner:

Clarence T. Bach
8702 Cinnamon Creek, #104
San Antonio, Texas 78240

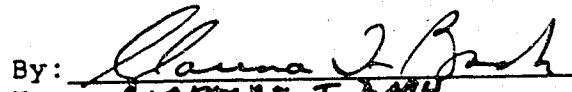
with copy to:

Fulbright & Jaworski
2200 InterFirst Plaza
300 Convent Street
San Antonio, Texas 78205
Attention: Mary Q. Kelly,
Esquire

MANAGER:

Sandalwood Management, Inc.

Date: DECEMBER 23, 1985

By: 
Name: CLARENCE T. BACH
Title: PRESIDENT

Address for Notice
to Manager:

Sandalwood Management, Inc.
8702 Cinnamon Creek, #104
San Antonio, Texas 78240

with copy to:

Fulbright & Jaworski
2200 InterFirst Plaza
300 Convent Street
San Antonio, Texas 78205
Attention: Mary Q. Kelly,
Esquire

UNIVERSITY:

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

Date: December 23, 1985

BY: Hans Mark
Dr. Hans Mark
Chancellor, The University
of Texas System

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

James L. Davis Executive Vice Chancellor
for Academic Affairs,
The University of Texas
System

Mark W. Martin Office of General Counsel, The
University of Texas System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Management Agreement was approved by The Board of Regents of The University of Texas System on the 23rd day of December, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Arthur Kelly
Executive Secretary
Board of Regents of The
University of Texas System

Address for Notice to University:

The Board of Regents of The
University of Texas System
601 Colorado
Austin, Texas 78701
Attention: Executive Vice Chancellor
for Academic Affairs

with copies to:

Office of the General Counsel
The University of Texas System
201 W. Seventh Street
Austin, Texas 78701
Attention: General Counsel

The University of Texas at
San Antonio
San Antonio, Texas 78285
Attention: Vice President for
Business Affairs

EXHIBIT A

(to Recreation Center Management Agreement)

FIELD NOTE DESCRIPTION
5.865-ACRE TRACT

DESCRIPTION OF LEASED PREMISES

BEING a 5.865-acre tract of land located within the Anselmo Pru Headright League Survey No. 20 County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;
S83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 697.44 feet to the Engineers Station 86+52.56, then departing from F.M. Road 1604, S07°25'43"E, a distance of 667.33 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system on F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE, with the University of Texas at San Antonio coordinate system, S61°00'00"W, a distance of 253.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N29°00'00"W, a distance of 7.00 feet to a point;
THENCE S61°00'00"W, a distance of 407.00 feet to a point;
THENCE S29°00'00"E, a distance of 37.00 feet to a point;
THENCE S61°00'00"W, a distance of 123.00 feet to a point;
THENCE N29°00'00"W, a distance of 20.00 feet to a point;
THENCE S61°00'00"W, a distance of 220.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N29°00'00"W, a distance of 370.00 feet to a point, said point being the Northwest corner of this tract;

THENCE N61°00'00"E, a distance of 640.84 feet to a point, said point being the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 230.64 feet, a central angle of 03°11'08", a length of 12.82 feet and a chord which bears S83°09'11"E, a distance of 12.82 feet to a point;

THENCE S84°44'38"E, a distance of 111.02 feet to a point;
THENCE S61°00'00"W, a distance of 504.99 feet to a point;
THENCE S29°00'00"E, a distance of 132.00 feet to a point;
THENCE N61°00'00"E, a distance of 512.00 feet to a point;
THENCE N29°00'00"W, a distance of 60.00 feet to a point;
THENCE N61°00'00"E, a distance of 40.68 feet to a point;
THENCE N29°00'00"W, a distance of 39.53 feet to the P.C. of a curve to the left;

THENCE along the arc of said curve, having a radius of 208.28, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N87°16'24", a distance of 57.85 feet to a point;

THENCE N79°17'27"E, a distance of 97.70 feet to the P.C. of a curve;

THENCE, along the arc of a curve to the right, having a radius of 212.49 feet, a central angle of 20°56'10", a length of 77.65, and a chord which bears N89°45'31"E, a distance of 77.22 feet to a point, said point being the most Northerly point on the most Easterly line of this tract;

THENCE S29°00'00"E, a distance of 164.11 feet to the POINT OF BEGINNING, containing 5.865 acres (255,493.49 sq. ft.).

EXHIBIT B

(to Recreation Center Management Agreement)

FIELD NOTE DESCRIPTION
1.242-ACRE TRACT

BEING a 1.242-acre tract of land located within the Anselmo Pru Headright League Survey No. 20, County Block 4766, said tract being approximately 12-1/2 miles N37°W of the Courthouse in San Antonio, Bexar County, Texas. Said tract being further described by metes and bounds as follows:

COMMENCING from the Northerly end of the cutback line at the intersection of the Easterly right-of-way of Babcock Road and the Southerly right-of-way of F.M. Road 1604, then proceeding along the South right-of-way line of F.M. Road 1604 the following calls:

N82°34'17"E, a distance of 275.00 feet;
N83°23'33"E, a distance of 103.08 feet;
N82°34'17"E, a distance of 400.00 feet;
N71°15'41"E, a distance of 356.93 feet;
N82°34'17"E, a distance of 697.44 feet to the Engineers Station 86+52.56, then departing from F.M. Road 1604, S07°25'43"E, a distance of 667.33 feet to the POINT OF BEGINNING and also being the Southeast corner of the herein described tract;

All bearings prior to the POINT OF BEGINNING conform to the Texas Highway Department bearing system of F.M. Road 1604. All subsequent bearings conform to the University of Texas at San Antonio bearing system, and are rotated 1°45'23" clockwise from said Texas Highway Department bearing system.

THENCE, with the University of Texas at San Antonio coordinate system, S61°00'00"W, a distance of 253.00 feet to a point, said point being the Southwest corner of this tract;

THENCE N29°00'00"W, a distance of 218.00 feet to a point;

THENCE N61°00'00"W, a distance of 40.68 feet to a point;

THENCE N29°00'00"W, a distance of 39.53 feet to the PC of a curve to the left, said point being the most northerly corner of this tract;

THENCE along the arc of said curve, having a radius of 208.28 feet, a central angle of 15°57'55", a length of 58.04 feet, and a chord which bears N87°16'24"E, a distance of 57.85 feet to a point;

THENCE N79°17'27"E, a distance of 97.70 feet to the P.C. of a curve;

THENCE, along the arc of said curve to the right having a radius of 212.49 feet, a central angle of 20°56'10", a length of 77.65 feet, and a chord which bears N89°45'31"E, a distance of 97.25 feet to a point;

THENCE S29°00'00"E, a distance of 164.11 feet to the POINT OF BEGINNING, containing 1.242 acres (54,122.86 sq. ft.).

EXHIBIT C

(to Recreation Center Management Agreement)

DESCRIPTION OF PROJECT

The Project is UTSA Recreation Center to be constructed by Owner containing a swimming pool, a game room, dining facilities and other amenities, to be used by students, faculty, staff, and guests of The University of Texas at San Antonio, San Antonio, Texas ("UTSA"). The project is to be located on a 1.242-acre tract of land owned by The University of Texas System and part of a 5.865 acre tract leased by the University of Texas System to the Owner, located in the Western portion of the campus of UTSA, which campus is at the southeastern corner of the intersection of FM 1604 and Babcock Road in San Antonio, Texas.

EXHIBIT D

(to Recreation Center Management Agreement)

COMPENSATION SCHEDULE

The sole compensation (the "Management Fee") which Manager shall be entitled to receive for all services performed under this Management Agreement shall be a fee in an amount determined by Owner no less than thirty days prior to the Commencement Date and each anniversary thereof for each twelve month period beginning on the Commencement Date and on each anniversary of the Commencement Date during the term hereof. Unless otherwise expressly provided below, said fee shall include the reimbursement to Manager for the salary and fringe benefits of all persons employed by Manager to carry out its duties hereunder.

The Management Fee for the period from the commencement of this Agreement, and, in the event the term hereof expires or is terminated on any date other than the end of a semester or summer session, for such a period of less than a full semester or summer session, shall be prorated on a daily basis. Except as provided in this Exhibit, no commission, fee, or other compensation shall be due and payable to Manager by Owner for any of Manager's services hereunder.

623Z

EXHIBIT E

(to Recreation Center Management Agreement)

Form of

SCHEDULE OF EMPLOYEES

Project Name: UTSA Recreation Center
Street Address: The University of Texas at San Antonio
City and State: San Antonio, Texas

<u>EMPLOYEE TITLE</u>	<u>NO. WITH TITLE</u>	<u>WAGE OR SALARY RANGE</u>	<u>FIDELITY BOND (YES OR NO)</u>
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ON SITE:

OFF SITE:

EXECUTED BY:

Manager: _____
By: _____
Date: _____

EXHIBIT F

(to Recreation Center Management Agreement)

Form of

STATEMENT OF OPERATIONS

(Date)

-44-

6232

- 184 -

2097

EXHIBIT G

(to Recreation Center Management Agreement)

Form of

SUBSIDIARIES & AFFILIATES OF MANAGER

Project Name:

Street Address:

City and State:

EXECUTED BY:

Manager: _____

By: _____

Date: _____

STATEMENT OF POLICY AND UNDERTAKING

To: Lloyds Bank International Limited

RE: The University of Texas at San Antonio Phase I
Dormitory and Recreation Center Financing by Lloyds
Bank, International

The Board of Regents of The University of Texas System (the "Board"), acting for and on behalf of The University of Texas at San Antonio, hereby confirms that the Lessor has entered into a Ground Lease Agreement dated December 1, 1985 (the "Lease Agreement") with Clarence T. Bach ("Lessee") pursuant to which the Lessor has leased to the Lessee approximately 5.865 acres of real property described in Exhibit A to the Lease Agreement as the Leased Premises, for a period of thirty-five years terminating on December 31, 2020, subject to extension as provided in the Lease Agreement.

The Lessee has entered into the Lease Agreement for the purpose of constructing, developing, operating and maintaining, by himself or through one or more affiliated entities, a dormitory referred to in the Lease Agreement as the Phase I Dormitory and a Recreation Center (collectively, the "Facilities"), all to be constructed in accordance with the plans and specifications and managed in accordance with the Management Agreement described below.

The Board also hereby confirms that it has consented to a Sublease Agreement dated December 1, 1985, between the Lessee as Landlord and Phase I Dormitory Partnership, an entity affiliated with the Lessee, as Tenant, pursuant to which the Landlord has leased to the Tenant a 4.623 acre portion of the lands leased under the Lease Agreement, which 4.623 acre tract is described in Exhibit A to such Sublease, for the purpose of the construction, development, operation and maintenance by the Tenant of the Phase I Dormitory.

The Facilities will be operated and maintained pursuant to a Dormitory Management Agreement for the Phase I Dormitory between the Tenant and a manager ("Manager") and a Recreation Center Management Agreement for the Recreation Center between the Lessee

and the Manager, each such Management Agreement being approved by the Board, pursuant to which the Manager shall be responsible for the maintenance and repair of the Leased Premises and the Facilities and the operation of the Facilities. The Dormitory Management Agreement in addition provides that the Tenant and the Manager, with the approval of UTSA, shall have full right to make reasonable adjustments to the rents payable by residents of the Phase I Dormitory in order to ensure that sufficient revenues are generated so as to enable the Tenant to meet promptly and in full its obligations under the terms of a Reimbursement Agreement dated December 1, 1985, (the "Reimbursement Agreement") between the Tenant and Lloyds Bank International Limited ("LBI"). Pursuant to the Reimbursement Agreement, LBI will provide an irrevocable direct pay letter of credit (the "Letter of Credit") on the Tenant's behalf, for the purpose of providing credit enhancement and liquidity support for tax-exempt variable rate demand bonds issued by the City of San Antonio, Texas, Higher Education Authority, Inc., the purpose of which bonds is to provide financing for the construction and development of the Phase I Dormitory.

In consideration for LBI issuing its Letter of Credit in this connection, the Board hereby acknowledges and consents to LBI securing a mortgage of the Lessee's leasehold estate and the Tenant's subleasehold estate.

The Board hereby agrees that upon receipt of written notification by LBI of an Event of Default as defined in the Reimbursement Agreement, or upon written notification by LBI that LBI, for whatever reason and in its sole discretion, shall have elected not to renew the Letter of Credit for a further period upon its Expiry Date as defined in the Reimbursement Agreement, the Board either (i) will exercise its option under the Lease Agreement to purchase the Phase I Dormitory or (ii) will cooperate with the Tenant and LBI (such choice to be made at sole discretion of the Board), to ensure that the Event of Default, if one has occurred, is remedied to the satisfaction of LBI, or will cooperate with the Tenant and LBI to secure suitable refinancing for the Tenant so that LBI may be released from its obligations under the Letter of Credit.

The Board further agrees that in the event of a default under the Lease Agreement, the Sublease Agreement, the Dormitory Management Agreement, or the Recreation Center Management Agreement providing grounds for a termination of any such agreement, the Board will not proceed to terminate without providing the Lessee or the Tenant, as the case may be, with a reasonable period of time in which to cure the default, or in the event that the default could not be remedied within a reasonable period of time, as specified in the applicable Agreement, the Board will not terminate such Agreement without first recognizing all rights of LBI under the Reimbursement Agreement.

In the event refinancing of the Dormitory or Recreation Center is required for any reason whatsoever, it is the full intention of the Board to pursue one or both (such choice to be made at the sole discretion of the Board) of the following courses of action:

- 1) Cooperate with LBI, the Lessee and the Tenant in securing alternative financing;
or
- 2) Exercise its option under the Lease Agreement to terminate the lease and to purchase the Facilities.

The above undertakings shall subsist until revoked by mutual agreement in writing between LBI and the Board. The Board acknowledges that LBI is issuing the Letter of Credit in reliance on this Statement.

Signed for and on behalf of The Board of Regents of The University of Texas System, this 23rd day of December, 1985.

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

BY: Hans Mark
Dr. Hans Mark
Chancellor, The University of Texas System

APPROVED AS TO CONTENT:

James S. Dunca
Executive Vice Chancellor
for Academic Affairs,
The University of Texas
System

APPROVED AS TO FORM:

John A. McWhorter, Jr.
Office of General Counsel,
The University of Texas
System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Ground Lease Agreement was approved by The Board of Regents of The University of Texas System on the 23rd day of December, 1985, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Arthur Talley
Executive Secretary
Board of Regents of The
University of Texas System

9. U. T. Medical Branch - Galveston - Remodeling of John Sealy Hospital (Old Building) - Remodeling of McCullough Building, Fourth, Fifth and Sixth Floors for the Departments of Internal Medicine and Surgery (Project No. 601-577): Award of Construction Contract to E. G. Lowry Co., Inc., Houston, Texas, and Approval of Revised Total Project Cost (Exec. Com. Letter 86-10).--The Board, upon recommendation of the Executive Committee:

a. Awarded a construction contract for the Remodeling of John Sealy Hospital (Old Building) - Remodeling of McCullough Building, Fourth, Fifth and Sixth Floors for the Departments of Internal Medicine and Surgery at The University of Texas Medical Branch at Galveston to the lowest responsible bidder, E. G. Lowry Co., Inc., Houston, Texas, as follows:

Base Bid	\$4,645,400
Alt. Bid No. 1 (Office Partitions and Work Surfaces)	65,000
Alt. Bid No. 2 (Hematology Office Suite, 4th Floor - John Sealy)	39,000
Alt. Bid No. 3 (Autopsy Support Suite, 5th Floor, Clinical Sciences)	40,000
Alt. Bid No. 4 (High-Density Shelving)	54,000
Alt. Bid No. 5 (Backup Hot Water Converter)	<u>47,000</u>
Total Contract Award	<u>\$4,890,400</u>

b. Approved a revised total project cost of \$5,895,500 to cover the contract award, fees, furniture and equipment, and related expenses. (The previously authorized total project cost was \$6,700,000 funded by a grant from The Sealy & Smith Foundation.)

10. U. T. Health Science Center - San Antonio: Authorization to Sell Property Located at 3643 Barrington (Lot 11, Block 3, NCB 13739 Mary Mont Addition), San Antonio, Bexar County, Texas (President's Residence), to Mr. Sergio Buentello and Mrs. Maria Esthela Buentello, San Antonio, Texas, and Approval for Executive Vice Chancellor for Asset Management to Execute Special Warranty Deed (Exec. Com. Letter 86-10).--Upon recommendation of the Executive Committee, authorization was granted to sell the property located at 3643 Barrington (Lot 11, Block 3, NCB 13739 Mary Mont Addition), San Antonio, Bexar County, Texas, to Mr. Sergio Buentello and Mrs. Maria Esthela Buentello, San Antonio, Texas, for a total cash price of \$278,000. The purchaser deposited \$10,000 as earnest money with the balance due at closing. A five percent commission will be split between the listing broker, Jones-King, and the buyer's broker, Hallmark-Bradfield Properties, Inc., both of San Antonio, Texas. Closing was to be on or before February 13, 1986.

Further, the Board authorized the Executive Vice Chancellor for Asset Management to execute the Special Warranty Deed for this transaction.

This property, which consists of a .557 acre tract of land with a 4,460 square foot single family dwelling that was purchased in 1974 for \$130,390.19 as the residence for the president of The University of Texas Health Science Center at San Antonio, is being sold because the house is no longer used as an official residence and the property is not needed by the institution.

REPORT AND RECOMMENDATIONS OF THE FINANCE AND AUDIT COMMITTEE (Page 192).--In the absence of Committee Chairman Yzaguirre, Committee Vice-Chairman Roden reported that the Finance 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 action set forth in the Minute Order which follows was recommended by the Finance and Audit Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. System: Approval of Docket No. 26 of the Office of the Chancellor (Catalog Change).--Upon recommendation of the Finance and Audit Committee, the Board approved Docket No. 26 of the Office of the Chancellor in the form distributed by the Executive Secretary. It is attached following Page 281 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 in the Docket that normally is published in the institutional catalog be reflected in the next appropriate catalog published by the respective institution.

Regents Hay and Ratliff abstained from voting on items within the Docket related to Exxon Corporation due to a possible conflict of interest.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 193 - 205).--Committee Chairman Baldwin 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. System: Approval of Policy for the Administration of Courses Offered in Shortened Format.--In accordance with the request of the Coordinating Board, Texas College and University System that institutional governing boards establish and file policies for short courses on their campuses, the Board approved the following System-wide policy for the administration of courses offered in a shortened format:

U. T. System Policy for the Administration of
Courses Offered in Shortened Format

Purpose: The purpose of this policy is to reemphasize the expectations of academic quality and rigor for courses offered by U. T. System component institutions in a shortened format and to provide parameter definitions, guidelines, and requirements for the development of individual institutional policies for the approval and administration of any such courses offered for academic credit within The University of Texas System.

Definition: A course offered in a shortened format is any course for which academic credit is given and for which the elapsed time from the first class meeting until the last class meeting or examination period is less than a normal semester or summer session term.

Administrative Responsibility: The President of each U. T. System component institution shall cause to be developed such additional institutional policies and procedures as are necessary to assure compliance with the intent and spirit of this U. T. System policy for the administration of courses offered in shortened formats. These additional requirements should address specific standards such as minimum class contact hours per credit hour and the minimum duration per credit hour among others. Such requirements will be published in the institution's Handbook of Operating Procedures following normal approval procedures.

Additionally, the President of each component institution shall designate an individual or individuals who shall have the authority to approve the scheduling of courses offered in shortened formats. Those so designated shall also be responsible for monitoring academic expectations and the scheduling of all such courses and shall maintain records of compliance with institutional standards for all such course requests considered and approved.

Minimum Policy Requirements:

- a. Any course meeting the definition of a course offered in shortened format must

have the advance approval of the individual(s) so designated by the President following institutionally established procedures.

b. In addition to standard approval requirements, additional written justification is to be considered prior to approval of any course offered in shortened format which does not meet the following criteria:

1. The total scheduled class contact hours are approximately the same as the hours which would have occurred in a normal semester or summer session term course with the same credit hours and similar content.
2. The elapsed time of the course and the duration of each class session would permit a typical student to spend approximately the same amount of time in independent study and classroom time as if the course were a normal semester or summer session term course.
3. The standards for admission, drop/withdrawal, and grading are substantially equivalent to similar courses taught in a normal semester or summer session term format.

2. U. T. Arlington: Authorization to Establish a Master of Science Degree in Marketing Research and a Master of Science Degree in Information Systems in the College of Business Administration and to Submit the Proposals to the Coordinating Board for Approval (Catalog Change).-- Authorization was granted to establish a Master of Science degree in Marketing Research and a Master of Science degree in Information Systems in the College of Business Administration at The University of Texas at Arlington and to submit the proposals to the Coordinating Board, Texas College and University System for approval.

It was noted that no new courses are required to offer these programs and, consequently, no new faculty or other resources are required to implement the proposals. The programs simply consist of alternate sequences of courses from among those currently offered at the graduate level in business administration. The majors in these programs will take fewer general business courses than those in the M.B.A. programs and more courses in their specialty.

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

3. U. T. Arlington: Status Report on Advanced Robotics Research Institute.--It was reported for the record that the Fort Worth Chamber Foundation, Inc. has reached its \$5 million fund goal on behalf of The University of Texas at Arlington's Advanced Robotics Research Institute with additional funds still anticipated.

With these funds, the Foundation is prepared to proceed with construction of a building, subject to review and approval by The University of Texas System Office of Facilities Planning and Construction, to house the Institute on land donated by Newell & Newell, Ltd. in September 1984. When construction is completed, the Fort Worth Chamber Foundation, Inc. will transfer the land, building, and improvements to the U. T. System. A gift of \$2,000,000 from the Foundation to establish an endowed chair for the Institute director and a fund to cover operational expenses will be presented to the U. T. Board of Regents in the near future.

Building cost, including landscaping and furnishings, is estimated to be \$3 million.

4. U. T. Arlington: Approval to Increase the Student Services Fee (Required) Effective with the Fall Semester 1986 (Catalog Change).--Upon recommendation of the Academic Affairs Committee, the Board approved an increase in the Student Services Fee (Required) at The University of Texas at Arlington from \$5 per semester credit hour, with a maximum of \$60, to \$6.50 per semester credit hour, with a maximum of \$78 for any one regular long session or eleven week summer session and from \$2.50 to \$3.25 per semester credit hour, with a maximum of \$39 for a summer short session, to be effective with the Fall Semester 1986.

This fee increase will provide funding to support the current level of activities financed from this revenue source and the Student Services Fee Advisory Committee of U. T. Arlington endorsed this increase.

It was ordered that the next appropriate catalog published at U. T. Arlington be amended to conform to this action.

5. U. T. Austin: Appointment of (a) Dr. Eric R. Pianka as Initial Holder of the Denton A. Cooley Centennial Professorship in Zoology in the College of Natural Sciences and (b) Dr. David M. Austin as Initial Holder of the Bert Kruger Smith Centennial Professorship in Social Work in the School of Social Work Effective September 1, 1986.--The Board approved the following appointments to endowed academic positions at The University of Texas at Austin to be effective September 1, 1986:

- a. Dr. Eric R. Pianka, Professor of Zoology, as initial holder of the Denton A. Cooley Centennial Professorship in Zoology in the College of Natural Sciences
- b. Professor David M. Austin as initial holder of the Bert Kruger Smith Centennial Professorship in Social Work in the School of Social Work.

6. U. T. Austin: Permission for Dr. Reuben R. McDaniel to Serve on the Texas Board of Licensure for Nursing Home Administrators [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Dr. Reuben R. McDaniel, Jesse H. Jones Professor in the Graduate School of Business at The University of Texas at Austin, to serve on the Texas Board of Licensure for Nursing Home Administrators. Dr. McDaniel's service on this Board will be without remuneration.

The holding of this office by Dr. McDaniel is of benefit to the State of Texas, creates no conflict with his regular duties, 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.

7. U. T. Austin: Approval to Grant a Third-Year Leave of Absence Without Pay to Professor Woodrow W. Bledsoe for the 1986-87 Academic Year (Part One, Chapter III, Section 16, Subsection 16.4, of the Regents' Rules and Regulations).--In accordance with Subsection 16.4, Section 16, Chapter III, Part One of the Regents' Rules and Regulations, the Board granted a third-year leave of absence without pay to Ashbel Smith Professor Woodrow W. Bledsoe, College of Natural Sciences at The University of Texas at Austin, for the 1986-87 academic year.

Professor Bledsoe will continue his work of the past two years as Vice President and Program Director of the Artificial Intelligence/Knowledge-Based Systems Program at Microelectronics and Computer Technology Corporation (MCC) in Austin, Texas. This extension will allow Dr. Bledsoe to complete several of the most important MCC research projects which show exceptional promise and maximize the likelihood of success of the MCC research program. It will also enhance the synergistic interactions that are occurring between the U. T. Austin computer sciences and mathematics communities and the high-technology research programs in the private sector.

8. U. T. Austin: Authorization to Establish a Ph.D. Degree in Child Development and Family Relationships and to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--In order to prepare scholars for research on the development of the individual within the context of the family, community, and culture, the Board authorized the establishment of a Ph.D. Degree in Child Development and Family Relationships in the College of Natural Sciences at The University of Texas at Austin and the submission of this proposal to the Coordinating Board, Texas College and University System for review and appropriate action.

It is anticipated that approximately three to five full-time students would enroll in the program during its first year of operation and that by its fifth year, ten students would be enrolled. Approximately eleven full-time faculty and five part-time faculty are available to be involved in the initial delivery of the program. The estimated additional cost to the institution during the first year of the program is \$6,936 increasing to \$8,431 by its fifth year and no additional funding will be requested from state appropriated funds. The program would be supported by reallocation of existing funds and federal funding from research grants. Current library holdings are more than sufficient and adequate equipment and facilities are available. No new positions are needed to initiate the program.

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

9. U. T. Austin: Approval of Amendments to Paragraphs 5, 11 and 19 of the Declaration of Trust with Board of Operating Trustees of Texas Student Publications (Formerly Texas Student Publications, Inc.).--Upon recommendation of the Academic Affairs Committee, the Board approved amendments to Paragraphs 5, 11 and 19 of the Declaration of Trust with the Board of Operating Trustees of Texas Student Publications (formerly Texas Student Publications, Inc.) at The University of Texas at Austin.

As a matter of information, the Declaration of Trust was adopted by the U. T. Board of Regents on September 8, 1971, as a vehicle for transferring assets of an incorporated entity (Texas Student Publications, Inc.) to U. T. Austin and subsequently amended on March 15, 1974, December 12, 1975, August 4, 1978, and February 9, 1979.

It was reported that the next appropriate Handbook of Operating Procedures published at U. T. Austin will be amended to reflect this action.

The Declaration of Trust, as amended, is set forth below in its entirety.

DECLARATION OF TRUST
with Board of Operating Trustees of
Texas Student Publications
(all amendments through February 1986)

Texas Student Publications, Inc., acting by and through the undersigned as officers and directors, and the undersigned as officers and directors hereby convey, assign and transfer all assets of Texas Student Publications, Inc., of every kind and character, including, but not limited to, cash, bank accounts, personal property and real property, to the Board of Regents of The University of Texas System (hereinafter referred to as "Trustees") in trust, subject to the terms and conditions of this instrument.

1.

There is hereby created an Operating Board of Trustees, hereinafter called "Operating Trustees," who shall operate as hereinafter provided.

2.

All assets of Texas Student Publications, Inc., are hereby delivered to the Trustees and recorded in the accounting records of The University of Texas at Austin, to be used solely for the maintenance and support of the Texas student publications described in Paragraph 4 below. The recording, budgeting and expenditure of these assets will be in accordance with the Trustees' Rules and Regulations for the management of this type of funds and account.

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3.

The operations of student publications on the campus of The University of Texas at Austin are under the control and jurisdiction of the Operating Trustees, constituted as hereinafter set out. All actions of the Operating Trustees and all business connected with student publications on the campus of The University of Texas at Austin conducted by them shall be pursuant to, subject to and in accord with Trustees' Rules and Regulations.

4.

The Operating Trustees are responsible for the issuance, publication and distribution of the student publications on the campus of The University of Texas at Austin. Such publications presently consist of The Daily Texan, The Summer Texan, The Texas Ranger Magazine, Cactus, Peregrinus, Texas Engineering and Science Magazine, and Riata. The Operating Trustees may authorize other publications.

5.

The Board of Operating Trustees is composed of eleven voting members, composed as follows:

- A. Four undergraduate students out of the Journalism or Advertising Department of The University of Texas at Austin, elected (two to be elected in even-numbered years and two to be elected in odd-numbered years after the initial election; at the initial election under these rules all four shall be elected with provision for staggered terms as hereinafter set out) by those students certified by the chairman of such department as being journalism or advertising majors, and those students with less than 60 hours who are registered in the School of Communication as certified by the Dean of that School. Said election is to be held concurrently with the Spring student government election each year pursuant to the rules established by the Operating Trustees. No student shall be eligible to be a candidate for a position on the Board of Operating Trustees unless he has completed or will have completed by the end of the Spring semester in which the election is held twelve hours of journalism or advertising courses, is in good standing (not on scholastic probation), and has completed at least one semester in residence in the long term at The University of Texas at Austin. The eligibility of a candidate must be certified to by the Chairman of the Department of Journalism or Advertising prior to the time of said election.
- B. Two students elected at-large from the student body of The University of Texas at Austin (one to be elected in even-numbered years and one to be elected in odd-numbered years after the initial election, at the first election under these rules both shall be elected with provision for staggered terms as hereinafter set out) at the same time as the editor of The Daily Texan, pursuant to Section 11 hereof.

If the President of the Students' Association is not one of the students elected at the election, then the President of the Students' Association shall serve as an ex-officio member of the Board of Operating Trustees without vote. A student who qualifies as a candidate under Section 5 A, shall be neither qualified as a candidate nor eligible to serve as an at-large member of the Board.

- C. Two members of the faculty out of the voting faculty of the Department of Journalism and one member of the faculty out of the voting faculty of the College of Business Administration, all three to be appointed directly by the President of The University of Texas at Austin.
- D. Two professional journalists appointed by the President of The University of Texas at Austin.

6.

Voting members of the Board of Operating Trustees shall serve a term of two years beginning June 1 of each calendar year. No voting member shall serve more than four years consecutively. However, in order to provide staggered terms, the following procedure shall be used concerning the first Board of Operating Trustees under this section, to take office June 1, 1972.

- A. The four journalism students elected from the Department of Journalism shall draw lots in the presence of a quorum of the Board of Operating Trustees to determine which two shall serve initial terms of one year and which two shall serve initial terms of two years.
- B. The two undergraduate students elected at-large from the student body of The University of Texas at Austin shall draw lots in the presence of a quorum of the Board of Operating Trustees to determine which one shall serve an initial term of one year and which one shall serve an initial term of two years.
- C. The President of The University of Texas at Austin shall appoint one of the faculty out of the Department of Journalism for an initial term of one year, and he shall appoint the other journalism faculty member for an initial term of two years. The President of The University of Texas at Austin shall appoint the remaining faculty member for an initial term of two years.
- D. The President of The University of Texas at Austin shall appoint one of the professional journalists for an initial term of one year, and shall appoint the other professional journalist for an initial term of two years.

7.

Should any voting member or members of the Board of Operating Trustees resign, become ineligible or for any other reason fail to serve, if such member be one who was appointed by the President of The University of Texas at Austin, such President, after consultation with the Operating Trustees, shall appoint a successor, and if such member be one who is otherwise selected, then a majority of the Operating Trustees, after consultation with the President, shall appoint a successor trustee, and in the event of a tie vote by the Operating Trustees, the President shall make such appointment. Each successor trustee shall possess the qualifications of his predecessor in office. If the vacancy occurs at least two weeks prior to the deadline for filing in the Spring student publications election during the first year of the member's term, the appointed successor trustee shall serve only until May 31. The remaining year of the term shall be filled by the election of a successor trustee in the Spring student publications election. If the vacancy occurs after two weeks prior to the deadline for filing in the Spring student publications election during the first year of the member's term, the appointed successor trustee shall serve the remainder of the term.

8.

In addition to the aforementioned voting members of the Board of Operating Trustees, the following persons shall serve as ex-officio, non-voting members: the Dean of Students or the Dean's representative; the Editorial Manager of The Daily Texan; the General Manager of the publications; the Editor and Managing Editor of The Daily Texan; and the student editors of all other publications published by the Operating Trustees.

9.

Until the selection of the initial eleven-member Board of Operating Trustees as set out under Paragraph 5 hereof, there shall be nine (9) Operating Trustees as follows:

<u>Name</u>	<u>Address</u>
Mr. Bob Binder	Students' Association Union Bldg. 323 The University of Texas at Austin Austin, Texas 78712
Dr. Norris Davis	3303 River Road Austin, Texas 78703
Dr. Charles Bonjean	Route 8, Box 428 Austin, Texas 78703
Dr. Eugene Sauls	5801 Westslope Austin, Texas 78731
Dr. Frank Pierce	4202 Venabo Austin, Texas 78731
Mr. David Stok	2208 Nueces Austin, Texas 78705
Mr. David Mincberg	2600 Rio Grande Austin, Texas 78705
Mr. Tim Donahue	3509 Cherry Lane Austin, Texas 78703
Mr. John Fox	401 West 38th Austin, Texas 78705

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10.

The officers of the Board of Operating Trustees shall be a President, a Vice-President and a Secretary, and such other officers as the Board of Operating Trustees may from time to time find necessary to carry on the business of the publications. Officers shall be elected from among the voting members of the Board of Operating Trustees at the first meeting after June 1 of each year. Officers' terms shall be for one year, but a person is eligible to serve an additional one year term.

11.

Concurrently with the student government elections, there shall be a student publications election on the campus of The University of Texas at Austin. At such election there shall be elected the Editor of The Daily Texan by the students of The University of Texas at Austin, but voting members of the Board of Operating Trustees shall appoint the Editor of The Daily Texan in the case of a vacancy. The eligibility of a candidate for Editor of The Daily Texan must be certified to by the Operating Trustees on standards set out in their Handbook prior to the time of said election. The Operating Trustees shall set out in its Handbook the conditions under which said elections may be held, including length of the campaign. The Editor of The Daily Texan shall serve for a term of one year beginning on June 1. There shall also be elected at this election the two student members of the Board of Operating Trustees (one student to be elected each year after the first Spring election) as provided in Section 5 B.

12.

Subject to the provisions of this instrument, in the performance of all of its duties and in the exercise of all of its powers, the Board of Operating Trustees shall be subject to the direction of the Regents' Rules and Regulations. The Board of Operating Trustees shall conduct its meetings in strict adherence to Roberts' Rules of Order.

13.

There shall be an Executive Committee of the Board of Operating Trustees to be composed of three faculty members and two students to be elected by the Board of Operating Trustees from its voting membership.

14.

The Executive Committee shall appoint a general manager who shall be selected annually during the month of May for the fiscal year beginning September 1. The Executive Committee shall determine the compensation of the General Manager. The duties of the General Manager shall be prescribed by the Executive Committee, subject to the basic policies set forth by the Operating Trustees. The Editorial Manager(s) will be appointed by the Executive Committee, subject to basic policies set forth by the Operating Trustees. The duties of the

Editorial Manager(s) shall be prescribed by the Executive Committee, subject to basic policies set forth by the Operating Trustees. The Editorial Manager of The Daily Texan shall be authorized to coordinate the activities between The Daily Texan and the Department of Journalism so as to secure the most effective use of the journalism laboratories and classes in the preparation of material for The Daily Texan. The Executive Committee shall fix the compensation of all editorial workers on student publications subject to the final approval of the Operating Trustees. The Executive Committee shall appoint and fill all vacancies for Editor and Managing Editor of every publication, except The Daily Texan, and shall fix their compensation subject to final approval of the Operating Trustees at their next regular meeting.

15.

The Executive Committee is authorized to implement and is responsible for implementation of the policies of the Operating Trustees between meetings of the Operating Trustees.

16.

A definitive relationship between the Department of Journalism of The University of Texas at Austin and The Daily Texan published by the Operating Trustees must exist. Accordingly, the President of The University of Texas at Austin shall promulgate an operating procedure to establish this relationship. The operating procedure may be amended from time to time by mutual agreement between the Department of Journalism, through its chairman, and the Operating Trustees, with the concurrence of the President of The University of Texas at Austin. In the event the Chairman of the Department and the Board of Operating Trustees are unable to agree on amendments, the President of The University of Texas at Austin shall make the final decision.

17.

There shall be established within the Board of Operating Trustees a Review Committee which shall be composed of one member of the journalism faculty, one journalism or advertising student, and one professional journalist. Such members are to be elected by the Operating Trustees out of the membership of the Board of Operating Trustees. All appeals on material withheld from publication by the Editorial Manager, or respective publications supervisors, shall be considered by the Review Committee within 24 hours of the action. A decision of the Review Committee may be appealed to the Operating Trustees, but seven affirmative votes of the Operating Trustees are required to overrule said decision of the Review Committee. In all such matters, the actions of the Operating Trustees shall be final and complete without review outside the Operating Trustees.

18.

It shall be the duty of the Board of Operating Trustees to furnish on request to the President of The University of Texas at Austin, the Chancellor of The University of Texas System and the Board of Regents of The University of Texas System, within two weeks of such request, any special reports requested by such officials.

19.

Copies of the minutes of all meetings of the Operating Trustees shall be delivered promptly to the President of The University of Texas at Austin for distribution to the Chancellor, the Executive Vice Chancellor for Academic Affairs, the Executive Secretary to the Board of Regents and such members of The University of Texas at Austin administration as the President of The University of Texas at Austin may direct. No action of the Operating Trustees shall have any force or effect unless included in the minutes and until it has been approved by the President of The University of Texas at Austin, except actions of the Operating Trustees pertaining to the decisions of the Review Committee, and except as to actions of the Operating Trustees with respect to the appointment, discipline or removal of editors, which actions need only be reported in the minutes for information, but are not reviewable outside the Board of Operating Trustees.

20.

No budget or budget amendment adopted by the Operating Trustees shall have any force or effect until such budget or budget amendment has been approved by the Board of Regents.

21.

No expenditure shall be made by the Operating Trustees unless it is made in accordance with and pursuant to a budget item that has been previously adopted by the Operating Trustees and approved by the Board of Regents.

22.

Within ninety days following the close of each fiscal year, the President of The University of Texas at Austin shall be furnished for distribution to the Chancellor and to the members of the Board of Regents, the Executive Secretary to the Board of Regents and to such members of The University of Texas at Austin administration as the President of The University of Texas at Austin may direct, at least fifteen copies of a complete audit of the fiscal year.

23.

All employees, editors, editorial workers and staff members employed to work on student publications under the control and jurisdiction of the Operating Trustees including all employees of the corporation known as Texas Student Publications, Inc. holding office or employed as of the effective date of this Declaration of Trust shall continue in office or employment (unless changed by the Operating Trustees in accordance with the Declaration of Trust).

24.

Subject to Section 23 of this Declaration of Trust, the Operating Trustees shall have the authority: (1) to appoint the Managing Editor of The Daily Texan from among qualified students; (2) to take disciplinary action against the employees, editors, editorial workers and staff members of student publications, including the removal from office after

due notice, for a violation of the policies of the Operating Trustees or for nonperformance of duties; such removal shall require a majority vote (action of the Operating Trustees in the matter of the appointment, discipline and removal of editors shall be final and complete); provided however, that no action taken by the Operating Trustees with respect to the employment, dismissal, salary or duties and responsibilities of either the General Manager or the Editorial Manager(s) shall have any force or effect until it has been approved by the Board of Regents; and (3) to determine the character and policies of all student publications.

25.

Since all funds utilized in the operations of student publications are under the direct control of an agency of the University, the Operating Trustees, the Vice President for Business Affairs of The University of Texas at Austin, and the Director of The University of Texas at Austin Personnel Office shall immediately make arrangements for assuring that all appropriate personnel are placed under the budgetary and personnel regulations applicable to other University of Texas at Austin employees.

26.

The Operating Trustees shall promulgate and implement a handbook which shall contain the operating policies of the Operating Trustees.

27.

The provisions of this instrument may be amended only with the concurrence of Trustees and a majority of the Operating Trustees.

28.

Trustees, by the execution of this instrument, accept the assets hereby conveyed and delivered subject to all of the terms and provisions of this instrument.

10. U. T. Austin: Approval to Name Room 4.110 in the Engineering Teaching Center as the Leonardt F. Kreisle Senior Design Project Teaching Laboratory (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, approval was given to name Room 4.110 in the Engineering Teaching Center at The University of Texas at Austin the Leonardt F. Kreisle Senior Design Project Teaching Laboratory.

The naming of this room is to recognize gifts from Mr. Stewart N. Campbell and others to support a senior design project teaching laboratory honoring a long-time and distinguished member of the mechanical engineering faculty.

See Page 256 related to establishment of the endowment fund.

11. U. T. Dallas: Approval to Increase the Diploma Fee Effective Immediately (Catalog Change).--In order to cover costs of the diploma and related expenses, the Board approved an increase in the Diploma Fee at The University of Texas at Dallas from \$6 to \$10 to be effective immediately.

It was reported that the new rate reasonably reflects the cost of the materials and services for which the fee is levied.

The next appropriate catalog published at U. T. Dallas will be amended to conform to this action.

12. U. T. Dallas: Establishment of a Requirement that International Students Maintain Hospitalization Insurance Effective Fall Semester 1986 (Catalog Change).--Upon recommendation of the Academic Affairs Committee, the Board:

- a. Approved the requirement that international students holding non-immigrant visas maintain hospitalization insurance while enrolled at The University of Texas at Dallas
- b. Authorized U. T. Dallas to assess the premium enumerated for the student health insurance plan where there is no evidence of insurance coverage by international students
- c. Authorized a catalog change to make this requirement effective for the Fall Semester 1986.

International students on non-immigrant visas are not eligible to receive free hospitalization but international students may purchase the student hospitalization insurance made available through U. T. Dallas or may show evidence of other insurance at registration.

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE
(Pages 206 - 238).--Committee Chairman Briscoe reported
that the Health Affairs Committee had met in open session to
consider those items 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. Health Science Center - Dallas: Approval of a Management and Facility Agreement with the North Texas Lithotripsy Center, Dallas, Texas, Involving the Housing of a Lithotripter and the Operation of the North Texas Lithotripsy Center in the Aston Ambulatory Care Center.---
Upon recommendation of the Health Affairs Committee, the Board approved the Management and Facility Agreement set forth on Pages 207 - 224 by and between The University of Texas Health Science Center at Dallas and the North Texas Lithotripsy Center, Dallas, Texas, a Texas non-profit corporation.

This agreement is the result of a series of meetings between officials of the U. T. Health Science Center - Dallas and members of the North Texas Lithotripsy Center, which is comprised of Parkland, St. Paul's, Baylor and Methodist Hospitals. These hospitals formed the North Texas Lithotripsy Center to cooperatively purchase the Extracorporeal Shock Wave Lithotripter Device which is an innovative, second generation kidney stone crushing machine. The machine is an experimental model which uses a laser as opposed to electric shock to break up kidney stones.

The consortium of hospitals approached the U. T. Health Science Center - Dallas in October 1985 and requested its participation in the project for two important reasons. First, the Health Science Center offered a neutral site for the lithotripter and, second, the medical school was the only institution in the area capable of providing the protocol and testing necessary for FDA approval of the device. The Health Science Center desired to participate in the plan because of the unique research opportunities that access to the lithotripter will provide and because such access will strengthen its medical education program.

Under this agreement, the Corporation will purchase and install the lithotripter in 1008 square feet of available space on the 7th floor of the Aston Ambulatory Care Center at the U. T. Health Science Center - Dallas and provide funds to operate the North Texas Lithotripsy Center. The Health Science Center will provide for the day-to-day operation of the Center.

MANAGEMENT AND FACILITY AGREEMENT

This Management and Facility Agreement ("Agreement") is entered into and effective upon the last execution below by the Board of Regents of The University of Texas System (the "University"), for and on behalf of its component institution, The University of Texas Health Science Center at Dallas (hereinafter referred to as "HSC") and the North Texas Lithotripsy Center (hereinafter referred to as "NTLC") a Texas non-profit corporation, in multiple counterparts, each of which shall be deemed an original.

WHEREAS, The NTLC, was organized to create the North Texas Lithotripsy Center (hereinafter referred to as the "Center") for the study, diagnosis and treatment of kidney stone disorders; and

WHEREAS, HSC desires to strengthen its program of medical education, research and patient care through the clinical evaluation and operation of the Extracorporeal Shock Wave Lithotripter Device (hereafter the "lithotripter") and research of related kidney stone disorders; and

WHEREAS, the University and NTLC propose to cooperate closely in the operation of the Center in the furtherance of each of their respective purposes:

IT IS, THEREFORE, MUTUALLY AGREED AS FOLLOWS:

Section I: Governance of the Center

- (A) The parties agree that the Board of Directors of NTLC shall be the governing body of the Center and shall be accountable and responsible for the development of policies with respect to the Center.
- (B) The parties further agree that the HSC shall operate the Center pursuant to the policies of NTLC and the terms of this Agreement.

Section II: Center Location

The Center shall be located in the Aston Ambulatory Care Center ("AACC") at The University of Texas Health Science Center, 5323 Harry Hines Blvd., Dallas, Texas 75235.

Section III: Patients

- (A) NTLC agrees that prior to FDA approval of the lithotripter, all patients of the NTLC shall participate in the Protocol for the Clinical Evaluation of the International Biomedics Non-Invasive Laser-Driven Extra Corporeal Lithotripsy Device for Fragmentation of Upper Urinary Tract Calculi.
- (B) NTLC agrees that after FDA approval of the lithotripter, all patients of the Center shall have the opportunity, but not the obligation,

to participate in research related to kidney stone disorders.

Section IV: Responsibilities of NTLC

For purposes of this Agreement NTLC agrees to:

(A) Purchase and install the above described lithotripter without cost to HSC or the University, at the above described location, which installation site shall be satisfactorily prepared by HSC in accordance with manufacturer's specifications, as provided for in Section (V) (A). Title to the Lithotripter shall remain with NTLC.

(B) Approve and fund an operating budget for the Center which is sufficient to allow HSC to staff, operate and maintain the Center, and to provide a level of care consistent with accepted medical standards. Such budget shall be for each state fiscal year beginning September 1 through August 31 and discussions between the HSC and NTLC concerning anticipated budget requirements for the fiscal year shall begin at least 120 days before September 1. The initial budget shall include a lump sum payment to HSC for start up costs of the Center, other than those costs and

expenses assumed by HSC pursuant to Section (IV) (C).

(IV) (C) Pay to HSC on a monthly basis, in advance of the first day of each month, a space utilization fee in the amount of \$1,322.16. In return for the payment of such fee, HSC shall make available for operation of Center during the term of this Agreement 1008 square feet of usable space on the 7th floor of the AACC for use as the North Texas Lithotripsy Center; and

- (1) all utilities, including electricity and water;
- (2) seasonably heated and refrigerated air conditioning;
- (3) elevator service;
- (4) all reasonable and necessary janitorial and maintenance service for the Center,
- (5) parking for patients and physicians utilizing the Center; and
- (6) security service.

Said fee shall be adjusted on an annual basis beginning September 1, 1986 so as to equal the amount per square foot per year that HSC charges to departments of HSC utilizing space in the AACC. HSC shall provide NTLC with

written notice of the adjusted fee 120 days prior to September 1 of each year this Agreement is in effect.

- (D) Appoint as Medical Director for the Center a full time faculty member of HSC, subject to approval by HSC which shall not be unreasonably withheld.
- (E) Pay to HSC on a monthly basis, after approval of the lithotripter by the FDA, a fee in an amount stated in the annual budget to supplement the salary of the Medical Director. Such supplement shall be reasonable and commensurate with the patient volume of the Center and paid in advance of the first day of each month.
- (F) Appoint a Medical Advisory Board pursuant to the By-Laws of NTLC.
- (G) Establish and enforce, after consultation with the Medical Advisory Board, the requirements and procedures for granting, maintaining and terminating privileges of physicians at the Center. Such requirements shall include, as conditions to the granting and maintaining of physician privileges at the Center:
 - (1) that all physicians with privileges at the Center shall have malpractice

insurance with per-occurrence limits which are at least equal to those provided for HSC physicians pursuant to The University of Texas System Professional Medical Malpractice Self-Insurance Plan. Such insurance shall cover their practice in the Center, which includes but is not limited to, their participation in the Protocol for the Clinical evaluation of the lithotripter;

- (IV) (G) (2) that all physicians have received training and are currently certified by NTLC as qualified to operate the device; and
- (3) that all physicians shall comply with the rules of the HSC and the Center with respect to the medical records.
- (H) Allow physicians on the faculty of the HSC, who have not been granted privileges by the NTLC, access to the Center for purposes of medical education, research and patient care provided that such physicians shall not operate the lithotripter.
- (I) Indemnify and hold harmless HSC and the University from any and all expenses, damages, judgments, court costs, litigation expenses

and attorneys' fees incurred because of any claim, demand, cause of action, lawsuit or judgment arising out of negligence of the North Texas Lithotripsy Center in use of the lithotripter.

Section V: Responsibilities of the HSC

For the purposes of this Agreement, HSC agrees:

- (A) To renovate and satisfactorily prepare the site in the "AACC" at its expense to accommodate the installation of the Lithotripter in accordance with manufacturer's specifications;
- (B) To comply with all local, state and federal laws governing the licensing, accreditation and operation of the lithotripter and the Center;
- (C) To comply with all policies established by the Board of Directors of NTLC and the Rules and Regulations of the Board of Regents of The University of Texas System provided, however, that in the event of a conflict, the Rules and Regulations of the Board of Regents shall control;
- (D) To the extent that funds have been budgeted, by NTLC, provide all the administrative and medical support services required or

appropriate for the day to day operation of the Center pursuant to the terms of this Agreement.

- (V) (E) To identify the Center by placing signs outside the entrance to the Center and at other locations deemed necessary for patient convenience and Center identification.
- (F) To use the above described space in the AACC only as the North Texas Lithotripsy Center except that HSC faculty shall have reasonable access to the Center for research and teaching purposes and patient care.
- (G) To allow designated representatives of NTLC access to the Center during business hours for purposes of inspection of the premises or business records.
- (H) To perform, in a business like manner, all the duties and functions necessary for efficient and effective operation of the Center pursuant to this Agreement including, without limitation, all the activities normally and customarily performed by management of a similar facility. These shall include but not be limited to the following:
 - (1) Within the funds budgeted by NTLC, HSC will hire, train, promote, assign, set

rates of compensation, suspend or terminate employees utilized in operation of the Center in accordance with the Rules and Regulations of the Board of Regents, HSC and state and federal laws. All Center employees shall be employees of and shall be carried on the payroll of HSC and shall not be considered employees of NTLC.

- (V) (H) (2) To secure, on behalf of and at the expense of NTLC, services required for the maintenance, operation or modification of the lithotripter device, in accordance with and as may be required by the FDA and/or the manufacturer of the device.
- (3) To determine the manner in which patients of the Center are scheduled for treatment at the Center. HSC shall also schedule use of the Center for other HSC medical education and research purposes; provided that such activities do not interfere with patient care.
- (4) To maintain a record concerning treatment of patients at the Center and insure the confidentiality of such records in

accordance with state and federal law. Such records shall be the property of NTLC except that copies shall be provided to HSC, the patient's hospital and attending physician.

- (V) (H) (5) To make available, until the expiration of four (4) years after the furnishing of services pursuant to this Agreement, upon request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, this Agreement, books, documents, and records of HSC that are necessary to certify the nature and extent of the cost claimed to Medicare with respect to the services provided under this Agreement.

If HSC carries out any of the duties of this Agreement through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve-month (12) period, with a related organization, until the expiration of four (4) years after the furnishing of such services pursuant to such

subcontract, HSC shall cause the related organizations to make available, upon written request to the Secretary of Health and Human Services, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, books, documents, and records of such related organization that are necessary to verify the nature and extent of the costs claimed to Medicare with respect to the services provided under this Agreement.

- (V) (H) (6) To negotiate for and procure on behalf of and at the expense of NTLC, as may be directed by NTLC, all supplies, equipment and contract services for the necessary and appropriate operation and maintenance of the Center.
- (7) To keep and maintain the Center in good condition and repair, consistent with the ordinary wear and tear of an outpatient clinic within the funds budgeted.
- (8) To bill patients in the name of NTLC for charges incurred for technical services and supplies provided by the Center and make reasonable efforts to collect

amounts due the Center. HSC shall deposit all monies or receipts generated from technical services and supplies provided by the Center into an account provided by NTLC.

- (V) (H) (9) To negotiate fee arrangements for technical services and supplies provided by the Center with the appropriate third party payors. Other laboratory fees incurred by Center patients will be billed by the facility performing the test. Each participating physician will bill for professional fees in his usual manner.
- (10) To maintain financial records normally kept by outpatient centers; and shall make monthly financial reports to NTLC by providing said statements to the President and Treasurer of NTLC.
- (11) To prepare a proposed annual budget for the fiscal year at least three months prior to the beginning of the fiscal year. This budget shall be prepared in a form designated by NTLC and shall include all revenues which are projected to be received and shall itemize projected

capital expenditures and operating expenses for the fiscal year. Following its approval by the Board of Directors of NTLC, this budget shall be the operating budget for the Center and shall control the expenditures which HSC has authority to make in its operation of the Center. Any non-budgeted expense in excess of \$5,000 shall not be expended without prior approval of NTLC.

- (V) (H) (12) To the extent allowed under the constitution and laws of the State of Texas, HSC agrees to indemnify and hold NTLC harmless from any and all expenses, damages, judgments, court costs, litigation expenses and attorneys' fees incurred because of any claim, demand, cause of action, lawsuit or judgment arising out of the negligence of any person who is an employee of the HSC at the Center.

Section VI: Cooperation between the North Texas
Lithotripsy Center and the UTHSC

NTLC and HSC recognize the interdependent relationship between them in carrying out the terms of this Agreement and agree to consult and cooperate in

good faith with all persons representing each of them in order to carry out the purposes of the Agreement.

Section VII: Liability

The Board of Regents, by entering into and performing these agreements shall not assume or become liable for any of the obligations, liabilities or debts of NTLC.

Section VIII: Term

(A) This Agreement shall continue until terminated by either party in accordance with the terms of the agreement, provided that NTLC shall obtain a Lithotripter device. If NTLC shall be unsuccessful in obtaining the Lithotripter, after reasonable and good faith efforts to do so, this Agreement shall become null and void.

(B) This Agreement may be terminated by either party as of August 31 of any calendar year upon prior written notice to the other party. Said notice must be received at least 90 days prior to September 1 of each year.

Section IX: Nonassignability

Neither party shall assign its interests under this Agreement without the prior written consent of the other party.

Section X: No Partnership or Joint Venture

No partnership or joint venture is intended or created by this Agreement.

Section XI: Notices

(A) All notices required or permitted to be given under this Agreement must be made in writing to be effective and shall be deemed to have been received on the earlier of (i) the date of actual receipt or (ii) five (5) days after the same are deposited in the U.S. mail, registered or certified, postage prepaid, return receipt requested, addressed as follows:

The University of Texas Health
Science Center at Dallas
5323 Harry Hines Boulevard
Dallas, Texas 75235
Attention: President

With Copy to:
Office of General Counsel
The University of Texas System
201 West 7th Street
Austin, Texas 78701

North Texas Lithotripsy Center

(XI) (B) The parties may from time to time and at any time change their respective addresses by written notice to the other party in the manner provided under this Section.

Section XII: Amendments and Modification

This Agreement embodies the entire Agreement between the parties concerning its subject matter, and no oral agreements or correspondence shall be held to vary its provisions. This Agreement may be amended only by written instrument executed by authorized signatories for NTLC and HSC.

Section XIII: Construction of Agreement

- (A) If any term or provision of this Agreement is found to be invalid for any reason, the remainder of this Agreement shall not be affected.
- (B) This Agreement shall be construed according to the laws of the State of Texas.
- (C) This Agreement shall be construed consistent with the Bylaws of NTLC, the Rules and Regulations of the Board of Regents of The

University of Texas System and the Handbook of
Operating Procedures of the HSC.

Section XIV: Default Remedy

In the event of any default in performance of any covenant contained in this Agreement, or as the same may be amended from time to time, the aggrieved party shall notify the defaulting party regarding the particulars of such default in writing, which shall designate a reasonable period of time for the cure of such default, or if the aggrieved party so chooses, for the accomplishment of an alternative proposal described therein which shall be acceptable to said party as grounds for waiver of default. If the defaulting party shall have failed to cure the default or to comply substantially with any such alternative proposal identified in such notice within such reasonable period following such notice, and such failure shall affect adversely the reasonable expectation of the aggrieved party as to a material right, benefit or protection under this Agreement then such aggrieved party may, in addition to and not in lieu of any other remedy otherwise available terminate this Agreement by giving written notice to the other party, in which case such

termination shall occur on the date stated in such notice.

North Texas Lithotripsy
Center
Dallas, Texas

J. Lee A. Green
Name:
Chairman
Board of Directors

Date: January 17, 1986

FORM APPROVED:

Susan D. Bradshaw
Office of General Counsel

CONTENT APPROVED:

Charles C. Sprague
Charles C. Sprague, M.D.

President
U.T. Health Science Center at Dallas
Title

U. T. SYSTEM AUTHORIZATION

Charles B. Mullins
Charles B. Mullins, M.D.

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement was approved by the Board of Regents of The University of Texas System on the 13th day of FEBRUARY, 1986, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

Alta Talley
Executive Secretary, Board of Regents
The University of Texas System

2. U. T. Medical Branch - Galveston: Permission for Andrew F. Payer, Ph.D., to Serve on the Anatomical Board of the State of Texas [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].-- Permission was granted for Andrew F. Payer, Ph.D., Associate Professor in the Department of Anatomy at The University of Texas Medical Branch at Galveston, to serve as a representative on the Anatomical Board of the State of Texas.

Dr. Payer's appointment is of benefit to the State of Texas, creates no conflict with his regular duties 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.

Dr. Payer will serve for the remainder of the late Dr. Glenn V. Russell's term (through August 31, 1987).

3. U. T. Medical Branch - Galveston: Appointment of William C. Levin, M.D., as Ashbel Smith Professor Effective Immediately.--The Board approved the appointment of William C. Levin, M.D., Professor, Department of Internal Medicine, and President of The University of Texas Medical Branch at Galveston, as Ashbel Smith Professor effective immediately.

This appointment is in recognition of the leadership and support Dr. Levin has provided to the U. T. Medical Branch - Galveston over the last forty years.

4. U. T. Medical Branch - Galveston (U. T. Medical School - Galveston): Authorization to Change the Name of the Department of Anatomy to the Department of Anatomy and Neurosciences and to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--Authorization was given to change the name of the Department of Anatomy to the Department of Anatomy and Neurosciences at the U. T. Medical School - Galveston of The University of Texas Medical Branch at Galveston and to submit the proposal to the Coordinating Board, Texas College and University System for approval as an administrative change.

It was reported that no additional funds will be required to implement this change nor will there be any change to the curriculum. The name change will more accurately reflect the academic and pedagogical responsibilities of the Department.

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

5. U. T. Medical Branch - Galveston: Approval for the Installation of a Permanent Plaque in the John Sealy Hospital, 1954 Sector.--Upon recommendation of the Health Affairs Committee, the Board approved the installation of a permanent plaque as set forth below in the John Sealy Hospital, 1954 Sector, at The University of Texas Medical Branch at Galveston in honor of The Sealy & Smith Foundation:

WITH APPRECIATION TO
THE SEALY & SMITH FOUNDATION FOR THE JOHN SEALY HOSPITAL
FOR SUSTAINED STEWARDSHIP AND ENLIGHTENED PHILANTHROPY
WHICH MADE POSSIBLE
THE MAJOR RENOVATIONS TO
THE JOHN SEALY HOSPITAL, 1954 SECTOR

2138

6. U. T. Medical Branch - Galveston (U. T. Allied Health Sciences School - Galveston): Approval of Affiliation Agreement with the Harris County Hospital District, Houston, Texas.--Approval was given to the affiliation agreement set out on Pages 226 - 235 by and between the U. T. Allied Health Sciences School - Galveston of The University of Texas Medical Branch at Galveston and the Harris County Hospital District, Houston, Texas.

This agreement, executed by the appropriate officials of the institution and facility to be effective upon approval by the U. T. Board of Regents, will provide training for students of the U. T. Allied Health Sciences School - Galveston in the areas of medical record administration, physical therapy, and occupational therapy.

AGREEMENT TO AFFILIATION BETWEEN
THE UNIVERSITY OF TEXAS
MEDICAL BRANCH AT GALVESTON
AND
HARRIS COUNTY HOSPITAL DISTRICT

THIS AGREEMENT made and entered into by and between the Harris County Hospital District, a political subdivision organized under the laws of the State of Texas, hereinafter referred to as the "District" and The University of Texas Medical Branch at Galveston, a component institution of The University of Texas System, on behalf of the School of Allied Health Sciences at Galveston, hereinafter referred to as the "University" for the purpose of providing training to students of the University in the areas of medical record administration, physical therapy and occupational therapy.

W I T N E S S E T H:

WHEREAS, the District is the owner and operator of two hospitals, Ben Taub General Hospital and Jefferson Davis Hospital (hereinafter called the "Hospitals"), and numerous neighborhood clinics, all situated in Harris County, Texas, providing medical and hospital care for the indigent and needy residents of Harris County, Texas; and

WHEREAS, University, through its School of Allied Health Sciences, provides an educational curriculum and program for its students with respect to the health care services of medical record administration, physical therapy and occupational therapy; and

WHEREAS, it is mutually recognized that District, and the University have certain objectives in common, namely, (a) providing health care personnel of the highest caliber which perform high quality professional care of patients, (b) educating and training health care personnel, (c) advancing knowledge in the field of health care, and (d) promoting personal and community health and education, through the training of highly qualified medical record administrators, physical therapists and occupational therapists and that each can accomplish these objectives in a larger measure and more effectively through affiliation operations; and

WHEREAS, it is mutually recognized that District's primary function is to provide the best possible medical and hospital care for the indigent citizens of Harris County; and

WHEREAS, District and University recognize that these objectives can be accomplished in a larger measure and more effectively through affiliation operations in order to (1) facilitate the overall educational program in University by providing its students in medical record administration, physical therapy and occupational therapy with unique opportunities for learning experiences, and (2) accomplish the fullest utilization of available teaching facilities and expertise with respect to health care services by increasing and expanding professional contacts between University's academic faculty members and District's professional personnel; and

WHEREAS, it is the desire of both parties, and it is for the benefit of the citizens of Harris County, that District maintain health care programs for its patients, and that it is essential, in order that District and University accomplish their common objectives, to establish and implement a program involving the association of said parties and their respective resources;

NOW, THEREFORE, for and in consideration of the premises and in further consideration of the matters hereinafter set forth, the District and the University, do hereby stipulate and agree as follows:

1. Separate Jurisdiction: The University will continue, as it has in the past, to operate its programs of the highest quality in health professional education and other areas and shall retain all jurisdictional powers incident to its separate ownership and operation, including plenary power to determine the general and fiscal policies of its educational programs and to appoint its administration, faculty and other personnel subject to the terms of the subsequent paragraphs of this Agreement.

The District shall retain over its hospitals and facilities all jurisdictional powers incident to its separate ownership and operation, including the plenary power to determine the general and fiscal policies relating to the operations of its facilities and to appoint its administration, professional staff and other personnel; provided, however, the Board of Managers of the District shall in any and all events retain final jurisdiction over the administration and supervision of its hospitals and facilities, including all patient services and the types of activities occurring within any of the facilities of District.

2. Responsibilities of District: The District will furnish the premises, facilities and equipment necessary for conducting the Medical Record Administration Educational Experience Program, Physical Therapy Educational Experience Program and the Occupational Therapy Educational Experience Program (hereinafter called "Programs").

Furthermore, in connection with such Programs, District agrees:

(a) To permit the authority or authorities responsible for accreditation of University's curriculum regarding Programs, to inspect all facilities, services and other things provided by District pursuant to this agreement, and to inspect all information to the extent permitted by law, maintained by District in connection with these Programs and the participants therein, at such reasonable times as may be requested by University.

(b) To comply with all federal, state and local laws, ordinances, rules and regulations applicable to performance by District of its obligations under this agreement.

(c) To provide equally to each student of University participating in the Programs emergency health care not to exceed the cost to District of One Hundred Dollars (\$100.00), with respect to injuries sustained in any of District's hospitals or facilities.

(d) To continue to operate its hospitals and other facilities in a manner and within such standards as are consistent with District's purpose of providing the highest quality patient care available, and, to such end, University shall assist District in such efforts to improve patient care by providing the necessary personnel herein specified for maintenance of Programs.

3. Responsibilities of University: University hereby agrees:

(a) To furnish to District, insofar as such information is reasonably available to University and to the extent permitted by law, the following:

1) The name and health status report of each student assigned by University to participate in Programs, at least four (4) weeks prior to the date such students are scheduled to begin participation in Programs; and

2) Any additional information with respect to such students as the District may require for proper operation of the Programs.

(b) To assign for participation in Programs only those students who have satisfactorily completed those portions of University's curriculum which are prerequisite to such participation, as determined by University. University shall be responsible for directing its Programs in accordance with the proper applications in the field of medical records administration, physical therapy and occupational therapy and such Programs shall meet all guidelines and/or licensing requirements for the Programs established by the appropriate state, local, or national associations for the profession.

(c) To designate a qualified professional member of University's faculty to be responsible for the learning assignment to be assumed by each student participating in Programs, and to furnish to District in writing the name(s) of such faculty member(s).

(d) To do all things reasonably necessary and proper to assure compliance by its students, who participate in Programs, with District's written regulations and policies.

(e) To advise students participating in Programs that they and not District or University are solely responsible for (1) providing for themselves any dress or garments required (but not provided by District to be worn by students participating in Programs), and transportation, housing, living arrangements and accommodations to the extent not voluntarily provided by University and District; and (2) reporting to District on time in accordance with Programs' schedules.

(f) In the event District should determine and advise the University that the presence of any faculty member or student shall no longer be permitted on District's premises, University shall immediately comply with such advisory, and may in its discretion conduct a review of such student's or faculty member's participation. University will advise such student or faculty member of the withdrawal of any rights to remain on District's premises.

4. Student Health Care Assignments: District and University shall annually determine the maximum number of students which shall be assigned to participate in the Programs. District shall pay no compensation for any services which may be rendered by students enrolled under the Programs, and under no circumstances shall any student be considered for any purpose to be an employee or agent of District.

The University agrees that it will furnish the District with evidence that each student has in effect professional liability insurance coverage in an amount not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000) per person, THREE HUNDRED THOUSAND DOLLARS (\$300,000) per single occurrence, and ONE HUNDRED THOUSAND DOLLARS (\$100,000) property damage per single occurrence, such coverage to continue in effect while such student is assigned to the District. The University agrees to inform the District immediately of each renewal, cancellation, or change in the content or amount of such coverage. The carrier and terms of such insurance shall be subject to the prior and continuing approval of the District, which approval shall not be unreasonably withheld. To the extent permitted by law, the University agrees to indemnify and hold harmless the District from and against any and all claims, demands, causes of action, liabilities, costs, damages, expenses, and attorneys' fees asserted or adjudged against or incurred by the District resulting from the breach by the University of any provisions of this paragraph. By entering into this Agreement, it is recognized that the University is not waiving any sovereign or governmental immunity the University, its agents or employees, have under state law.

5. University's Teaching Programs: The Programs specified herein shall be performed within the facilities of District; provided, however, District reserves the right to restrict students from the physical facilities of District which are not essential to learning experiences under Programs. University's faculty, staff and students shall not be permitted to make any use of District's facilities for any purpose which is not consistent with Programs under this Agreement.

6. Consultation Between Parties: The committee to be known as the "Joint Consultation Committee" shall be established in furtherance of the administration of Programs under this Agreement. Said committee shall be made up of an equal number of representatives from District and University, and shall have meetings whenever necessary or appropriate for (1) resolution of any problems which may arise between District and University, (2) educational purposes so that members of the committee will be familiar with the joint operations of District and University and with any problems incident to implementation of this agreement, and (3) review and evaluation of qualifications of medical record administration, occupational therapy and physical therapy students who may be assigned to participate in Programs.

7. Accreditation: University shall be required to maintain accreditation with the appropriate local, state or national accreditation organization or organizations as may be necessary and proper, and shall keep District informed of all actions taken with regard to such accreditation standings. If University should for any reason lose either or all of its local, state or national accreditation or accreditations, this Agreement will immediately become null and void, and all personnel and students of University taking part in Programs shall be removed immediately by University from District's facilities.

District shall be required to maintain accreditation with the appropriate local, state or national accreditation organization or organizations as may be necessary or proper, and shall keep University informed of all actions taken with respect to such accreditation standings. If District should for any reason lose either or all of its local, state or national accreditations, this agreement will immediately become null and void, and all personnel involved in programs shall be immediately removed by University.

8. Supervision: University's directors for medical record administration, occupational therapy and physical therapy training Programs or their designees and the District's administrator or designee shall have control over all students of University assigned to District's facilities under these Programs only, with respect to assuring compliance with administrative policies established for operation of District's facilities. University shall establish such administrative policies as are necessary or proper for operation of Programs so long as such policies are not inconsistent with District's policies, rules and regulations.

District's administrator may under this agreement at any time declare any student or faculty member of University to be outside the scope of these Programs, and, pursuant to subparagraph 3 (f), may require removal of such person or persons from Programs subject to this agreement. University shall take such action necessary to remove such student or faculty member from the District's facilities.

9. Grants, Research or Demonstration Projects: University shall submit to District any and all proposals for research or demonstration projects in which it is anticipated by University that District's facilities may be utilized. University recognizes and acknowledges District's policy that District shall not be committed to participate in any such grants, research or demonstration projects or similar activities, without having first had the plan for any such projects submitted to District for approval by District. In accordance with this policy, should University desire to initiate any such project which may commit District or any of District's facilities or personnel to such project, University shall first submit the plan and a completed application for such project to District for approval by District. In the event District does not approve such projects, University shall not proceed with any such project involving District to the extent of participation by District.

District shall submit to University any and all proposals for research or demonstration projects in which it is anticipated by District that personnel or students of University may be utilized. Should District desire to initiate any project which commits University or any of its personnel to such project, District shall first submit such plan and completed application to University for approval by University. If University does not approve same, District shall not proceed with any such project involving University.

10. Entirety of Agreement: This instrument contains the entire agreement between the parties on the subject matter hereof. No amendments shall be valid unless in writing and signed by the duly authorized representatives of the parties. No oral representations of any officer, agent or employee of District or of The University of Texas System or its component institutions (including, but not limited to, University) either before or after the effective date of this Agreement, shall affect or modify any obligations of either party hereunder.

11. Term; Termination: This agreement shall be effective upon execution by District and University; provided, however, said agreement shall become effective only on and after the date approved by the Board of Regents of The University of Texas System, as same is provided by specific date, stated hereinafter. If so approved and effective, this agreement shall thereafter be in effect on the date of such approval and thereafter for the term provided. Such term shall be until July 31, 1990, unless sooner terminated by mutual consent of the parties, or by either party hereto giving to the other party written notice of termination. Any written notice of termination shall specify the date of termination, but in no event shall such termination be effective until at least six (6) months after receipt of such notice by the other party, unless otherwise specified herein.

12. Miscellaneous Provision: This agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assignees; provided, however, no assignment by one party shall be effective except upon obtaining the written consent of the other party thirty (30) days prior to such assignment. It is specifically recognized that either party may enter into other agreements and affiliations so long as such are not inconsistent with the terms and provisions of this agreement.

This agreement shall be subject to all present and future valid laws, orders and regulations of the United States of America, the State of Texas, and any other governmental or regulatory authority having jurisdiction over the Programs or facilities.

13. Notices: Unless otherwise specifically provided in this agreement, any notice, communication, request, reply or advice (herein severally and collectively for convenience called "Notice") herein provided or permitted to be given, made, or accepted by either party to the other must be in writing and shall be given or served to the party to be notified, either by depositing the same in the United States Mail, postage prepaid and registered or certified, duly addressed to such party with return receipt requested, or by delivering the same to any designated officer or representative of such party to be notified, or by prepaid telegram, when appropriate, addressed to such representative to be notified. Notice in the manner heretofore described shall be deemed effective, as to the party to be notified, if by personal delivery, when received by such

party's designated representative, as provided hereinafter, or if by mailing, seven (7) days after same is so deposited in the United States Mail for mailing to such party's designated representative at the business address of such person. Notice given in any other manner shall be effective only if and when received by the other party to be notified. The addresses of the parties to receive Notice, until changed as provided hereinafter, shall be as follows:

1. For University: The University of Texas Medical Branch
at Galveston, School of Allied Health Sciences, Galveston,
Texas 77550.
2. For District: Harris County Hospital District, Post
Office Box 66769, Houston, Texas 77006.

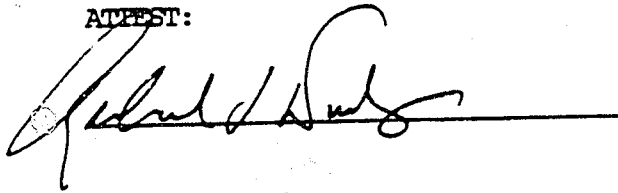
The parties have the right to change their respective addresses, and, in the event either party changes such address, written notice shall be given the other party within fifteen (15) days after such change.

IN WITNESS WHEREOF, this agreement is executed by District and University to be effective on the day and year first above written, in duplicate copies each of which shall be deemed an original of equal force, as follows:

1. It has on the 30th day of April, 1985, been executed on behalf of the Harris County Hospital District by the Chairman of the Board of Managers, pursuant to the order of the board of Manager; so authorized; and

2. It has on the 8th day of October, 1985, been executed on behalf of The University of Texas Medical Branch at Galveston by the President of said University, pursuant to approval by the President of The University of Texas System and by the Board of Regents of The University of Texas System.

WITNESSES:



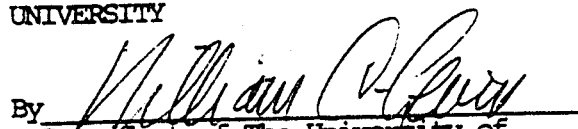
University Attorney

DISTRICT
HARRIS COUNTY HOSPITAL DISTRICT

By 

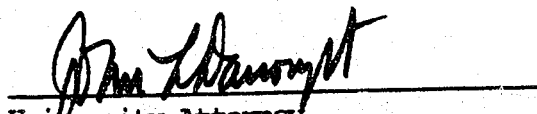
Chairman of the Board of Managers

UNIVERSITY

By 


President of The University of
Texas Medical Branch at Galveston

APPROVED AS TO FORM:



University Attorney

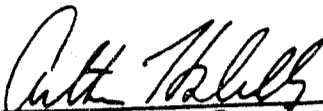
APPROVED AS TO CONTENT:



The University of Texas System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement was approved by the Board of Regents of The University of Texas System on the 13th day of February, 1986, 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
ARTHUR H. DILLY

7. U. T. Health Science Center - Houston: Appointment of Thomas E. Andreoli, M.D., as Initial Holder of the Edward Randall, III Professorship in Internal Medicine Effective Immediately.--Approval was given to appoint Thomas E. Andreoli, M.D., Professor and Chairman of the Department of Internal Medicine, as initial holder of the Edward Randall, III Professorship in Internal Medicine at The University of Texas Health Science Center at Houston effective immediately.

See Page 260 related to the redesignation of this professorship.

8. U. T. Health Science Center - Houston: Approval to Name the Pediatric Surgical Library in the Department of Pediatrics, Room 6.282 of the Medical School Building as the Benjy Brooks Surgical Library (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, approval was given to name the Pediatric Surgical Library in the Department of Pediatrics, Room 6.282 of the Medical School Building at The University of Texas Health Science Center at Houston as the Benjy Brooks Surgical Library.

The naming of this library is to recognize Dr. Brooks' distinguished service to the Division of Pediatric Surgery at the U. T. Health Science Center - Houston.

9. U. T. Health Science Center - Houston: Agreement in Principle to a Relationship with The Gamma Foundation, Houston, Texas, and Authorization for Executive Vice Chancellor for Health Affairs and the Office of General Counsel to Enter Into Negotiations, Within Certain Parameters, Concerning Support of a Neurosciences Institute.--The Board, upon recommendation of the Health Affairs Committee:

- a. Agreed in principle to the establishment of a formal relationship between The Gamma Foundation, Houston, Texas, and The University of Texas System, for and on behalf of The University of Texas Health Science Center at Houston, for the support of the operation of an institute to be called the Neurosciences Institute

b. Authorized the Executive Vice Chancellor for Health Affairs and the Office of General Counsel to negotiate a formal relationship, report back to the Board the progress of the negotiations, and present for the Board's future consideration and approval any necessary instruments showing the details of any agreements that may be reached within the following parameters on specified terms, with the only potential unreimbursed financial contribution to the Neurosciences Institute by the U. T. System being the possibility of provision of lease space at less than market rates:

- (1) that U. T. Health Science Center - Houston space be made available for the Institute
- (2) that faculty be made available
- (3) that U. T. Health Science Center - Houston equipment and facilities be made available
- (4) that graduate students be made available
- (5) that administrative and other services be available on a shared service basis

The general concept is that U. T. Health Science Center - Houston and The Gamma Foundation would, as a community-based project, endeavor to establish research activities and to attract to the Institute world-class scientists to conduct research activities on a permanent basis.

The financial contribution of U. T. Health Science Center - Houston would be the furnishing of appropriate facilities for the Institute, at a nominal cost. The Foundation proposes to raise the necessary funds to implement the research programs.

The Institute will be free-standing and its scientists will be responsible to the director of the Institute and the director responsible to the Board of Trustees. It is anticipated that the funding of the Institute's activities would come from sources other than U. T. System. It is estimated that the overall annual budget of the Institute for salaries and other direct operational costs would be approximately \$2 to \$5 million per year. These funds would be raised by the Institute on a permanent basis by annual commitments from various institutions and donors.

10. U. T. Health Science Center - Houston and U. T. Cancer Center: Agreement in Principle to a Relationship with American Medical International, Inc., Houston, Texas, and Authorization for Executive Vice Chancellor for Health Affairs and the Office of General Counsel to Enter Into Negotiations, Within Certain Parameters, Concerning Support of the Southwest Institute of Immunological and Infectious Disorders.--Upon recommendation of the Health Affairs Committee, the Board:

- a. Agreed in principle to the establishment of a formal relationship between American Medical International, Inc., Houston, Texas, and The University of Texas System, for and on behalf

of The University of Texas System Cancer Center and The University of Texas Health Science Center at Houston, for the support of the operation of the Southwest Institute of Immunological and Infectious Disorders

b. Authorized the Executive Vice Chancellor for Health Affairs and the Office of General Counsel to negotiate a formal relationship, report back to the Board the progress of the negotiations, and present for the Board's future consideration and approval any necessary instruments showing the details of any agreements that may be reached within the following parameters:

- (1) that U. T. System not be involved in any direct monetary outlays
- (2) that the operation of the Institute be supported by U. T. System providing a Medical Director and Chief of Staff, consulting physicians, and house staff through a nonstandard affiliation agreement
- (3) that U. T. System support the Institute and a proposed, separate, non-profit foundation by working with the foundation to obtain grants for necessary research
- (4) that U. T. System help the Institute establish necessary research protocols and patient screening processes

American Medical International, Inc. (AMI), recommended the establishment of a research, education, and treatment hospital to be called the Southwest Institute of Immunological and Infectious Disorders. The Citizens General Hospital, a 150-bed, AMI facility in Houston, Texas, would be converted to house the Institute and there would be no expense to U. T. System. The Institute's primary purpose would be to treat patients who have immunological, infectious and related disorders.

11. U. T. Cancer Center: Alando J. Ballantyne, M.D., Appointed Ashbel Smith Professor Effective March 1, 1986.--Approval was given to appoint Alando J. Ballantyne, M.D., Surgeon and Professor of Surgery, Department of Head and Neck Surgery at The University of Texas System Cancer Center, as an Ashbel Smith Professor effective March 1, 1986.

The appointment of Dr. Ballantyne as an Ashbel Smith Professor is an acknowledgement of his distinguished career as a physician and member of the U. T. Cancer Center staff.

12. U. T. Cancer Center: Appointment of (a) Bernard Levin, M.D., as Initial Holder of the Robert R. Herring Professorship in Clinical Research, (b) Louise C. Strong, M.D., to the Sue and Radcliffe Killam Professorship, (c) Dr. Stuart O. Zimmerman to the Kathryn O'Connor Research Professorship, (d) Dr. Isaiah J. Fidler as Initial Holder of the R. E. "Bob" Smith Chair in Cell Biology, (e) Dr. Margaret L. Kripke as Initial Holder of the Vivian L. Smith Chair in Immunology, and (f) Jose M. Trujillo, M.D., to the Olla S. Stribling Chair for Cancer Research Effective March 1, 1986.--
The Board approved the following appointments to the indicated endowed academic positions at The University of Texas System Cancer Center effective March 1, 1986:

- a. Bernard Levin, M.D., Chief of the Section of Digestive Diseases and Gastrointestinal Oncology and Professor of Medicine, as initial holder of the Robert R. Herring Professorship in Clinical Research
- b. Louise C. Strong, M.D., Associate Geneticist and Associate Professor of Genetics (Pediatrics), to the Sue and Radcliffe Killam Professorship for an additional five-year term
- c. Dr. Stuart O. Zimmerman, Head of the Division of Biomedical Information Resources, to the Kathryn O'Connor Research Professorship
- d. Dr. Isaiah J. Fidler, Chairman of the Department of Cell Biology, as initial holder of the R. E. "Bob" Smith Chair in Cell Biology

See Page 261 related to the establishment of this chair.

- e. Dr. Margaret L. Kripke, Chairman of the Department of Immunology, as initial holder of the Vivian L. Smith Chair in Immunology

See Page 261 related to the establishment of this chair.

- f. Jose M. Trujillo, M.D., Head of the Division of Laboratory Medicine, to the Olla S. Stribling Chair for Cancer Research

REPORT AND RECOMMENDATIONS OF THE BUILDINGS AND GROUNDS COMMITTEE (Pages 239 - 248).--Committee Chairman Rhodes reported that the Buildings and Grounds Committee had met in open session to consider those items 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 Buildings and Grounds Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Arlington - Engineering Building Addition and Renovation: Status Report on Location of the Aerospace Research Center.--At its October 1985 meeting, the U. T. Board of Regents authorized negotiations with the City of Arlington for a ground lease for the relocation of the Aerospace Research Center (a wind tunnel facility) at The University of Texas at Arlington to the Arlington Municipal Airport. These negotiations were unfruitful primarily because of the high cost of providing utilities to the airport site being considered. Therefore, the Aerospace Research Center will be constructed on the U. T. Arlington campus as a part of the Engineering Building Addition and Renovation project as originally approved by the U. T. Board of Regents in August 1982.
2. U. T. Austin - Lila B. Etter Alumni House (Alumni Center) - Remodeling and Expansion: Approval of Project in Principle and Renegotiation of Lease Agreement.--Upon recommendation of the Academic Affairs and Buildings and Grounds Committees, the Board approved in principle a project for the expansion and remodeling of the Lila B. Etter Alumni House (Alumni Center) at The University of Texas at Austin by The Ex-Students' Association and the renegotiation of the existing lease agreement with the understanding that preliminary plans, cost estimate, and the renegotiated lease be submitted to the U. T. Board of Regents for consideration at a future meeting.

The U. T. Austin Ex-Students' Association plans to expand and remodel their facilities on the U. T. Austin campus by constructing an addition of approximately 17,200 square feet on the north side of the existing 14,000 square foot building and providing underground parking for fifty vehicles.

The estimated total project cost for the remodeling, expansion and related expenses is approximately \$4,000,000 which will be raised by The Ex-Students' Association.

3. U. T. Austin: Approval of Lease of Land Adjacent to IH-35 at Intersection of East Campus Drive and Red River Street to the United States of America for the Establishment of the Low Level Wind Shear Alert System at Robert Mueller Airport in Austin, Texas.--Upon recommendation of the Buildings and Grounds Committee, the Board authorized Chancellor Mark to sign the lease agreement set out on Pages 240 - 245 between the United States of America and the U. T. Board of Regents, for and on behalf of The University of Texas at Austin. The leased land, which is to be used to locate a wind sensing device for the City of Austin's Robert Mueller Airport, is adjacent to IH-35 at the intersection of East Campus Drive and Red River Street. As suggested by Vice-Chairman Ratliff, an indemnification clause was successfully negotiated and made a part of the lease.

The terms of the lease are in compliance with the Regents' Rules and Regulations regarding underground utilities and provide for all maintenance to be performed by the Lessee. There will be no cost to the University nor will there be any rental income. The principal beneficiary of the lease is the City of Austin and the consideration realized by the University is the additional safety the City of Austin will be able to provide at the Robert Mueller Airport through the installation of the Low Level Wind Shear Alert System.

U.S. DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION
Southwest Region
P.O. Box 1689
Fort Worth, TX 76101

Lease No.: DTFA07-86-L-01074
Low Level Wind Shear Alert System (LLWSAS)
Site No. 5
Austin, Texas

LEASE

between

THE BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

and

THE UNITED STATES OF AMERICA

This LEASE, made and entered into this *13th* day of *February* in the year one thousand nine hundred and eighty *eight*, by and between THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM, whose address is Ashbel Smith Hall, 201 West 7th Street, Austin, Texas 78701, for itself, its successors and assigns, hereinafter called the Lessor and the UNITED STATES OF AMERICA, hereinafter called the Government:

WITNESSETH: The parties hereto in consideration of the mutual covenants and benefits described herein agree as follows:

1. For the term beginning January 1, 1986, and ending September 30, 1986, the Lessor hereby leases to the Government the following described property, hereinafter called the premises, VIZ:

LLWSAS SITE NO. 5

See Plat of Survey and Legal Description (Exhibit "A") for said site, attached hereto and made a part hereof.

a. Together with a right-of-way for ingress to and egress from the premises; a right-of-way or rights-of-way for establishing and maintaining a pole line or pole lines for extending electric power, and telecommunications facilities to the premises; and right-of-way for subsurface power, communication and water lines to the premises; all rights-of-way to be over the said lands and adjoining lands of the lessor, and unless herein described by metes and bounds, to be by routes reasonably determined to be the most convenient to the Lessor.

Lease No.: DTFA07-86-L-01074
Low Level Wind Shear Alert System (LLWSAS)
Site No. 5
Austin, Texas

b. And the right of grading, conditioning, and installing drainage facilities, and seeding the soil of the premises, and the removal of all obstructions from the premises which may constitute a hindrance to the establishment and maintenance of air navigation and telecommunications facilities.

c. And the right to make alterations, attach fixtures, and erect additions, structures, or signs, in or upon the premises hereby leased, which alterations, fixtures, additions, structures or signs so placed in or upon, or attached to the said premises shall be and remain the property of the Government, and may be removed upon the date of expiration or termination of this lease, or within ninety (90) days thereafter, by or on behalf of the Government, or its grantees, or purchasers of said alterations, fixtures, additions, structures, or signs.

2. RENEWAL OPTION:

This lease may, at the option of the Government, be renewed from year to year and otherwise upon the terms and conditions herein specified. The Government's options shall be deemed exercised and the lease renewed each year for one (1) year unless the Government gives the Lessor sixty (60) days' written notice that it will not exercise its option before this lease or any renewal thereof expires; PROVIDED that no renewal shall extend this lease beyond the 30th day of September 1996.

3. CANCELLATION BY LESSOR:

The Lessor may terminate this lease at any time by giving at least one (1) year's notice in writing to the Government. Said notice shall be sent by certified or registered mail.

4. CANCELLATION BY GOVERNMENT:

The Government may terminate this lease at any time by giving at least sixty (60) days' notice in writing to the Lessor. Said notice shall be sent by certified or registered mail.

5. OFFICIALS NOT TO BENEFIT:

No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease contract if made with a corporation for its general benefit.

6. LESSOR WARRANTY:

The Lessor warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, brokerage, percentage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Lessor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability, or in its discretion to deduct from amounts otherwise due under this lease or other consideration, the full amount of such commission, brokerage, percentage, or contingent fee.

Lease No.: DTFA07-86-L-01074
Low Level Wind Shear Alert System (LLWSAS)
Site No. 5
Austin, Texas

7. RESTORATION:

The Government shall surrender possession of the premises upon the expiration or termination of this lease. The Government shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, restore the premises to as good condition as that existing at the time of the Government's initial entry upon the premises under this lease or any preceding lease, ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted.

8. LIABILITY OF GOVERNMENT:

The Government shall indemnify and save harmless the Lessor for and against all claims for compensatory money, damages for injury, or loss of property, or personal injury, or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office of employment under circumstances where the Government, if a private person would be liable in accordance with the law of the place where the act or omission occurred. The foregoing indemnity shall not extend to claims based upon act or omissions of Government employees for which the Government would not be liable under the Federal Tort Claims Act of 1945 (28 U.S.C. 2671 et seq) as now or hereafter amended. The Lessor shall furnish the Government with reasonable notice of any claims made against the Government.

9. NOTICES:

All notices sent to the parties under the lease shall be addressed as follows:

To the Lessor: The Board of Regents of the University of Texas System, Ashbel Smith Hall, 201 West 7th Street, Austin, TX 78701

To the Government: Department of Transportation, Federal Aviation Administration, Southwest Region, P.O. Box 1689, ATTN: ASW-56, Fort Worth, TX 76101

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

As the holder of a mortgage, dated _____, recorded in volume _____, pages _____, against the above-described premises, the undersigned hereby consents to the foregoing lease and agrees that, if while the lease is in force the mortgage is foreclosed, the foreclosure shall not void the lease.

(See attached Signature Page)

(Mortgagee)

Lease No.: DTFA07-86-L-01074
Low Level Wind Shear Alert System (LLWSAS)
Site No. 5
Austin, Texas

ATTEST:

THE UNITED STATES OF AMERICA

By Lottie M. Kirsch
Lottie M. Kirsch
Title Contracting Officer

CONTENT APPROVED:

Hans Mark
Chancellor Mark

The University of Texas System

FORM APPROVED:

[Signature]
Office of General Counsel
The University of Texas System

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

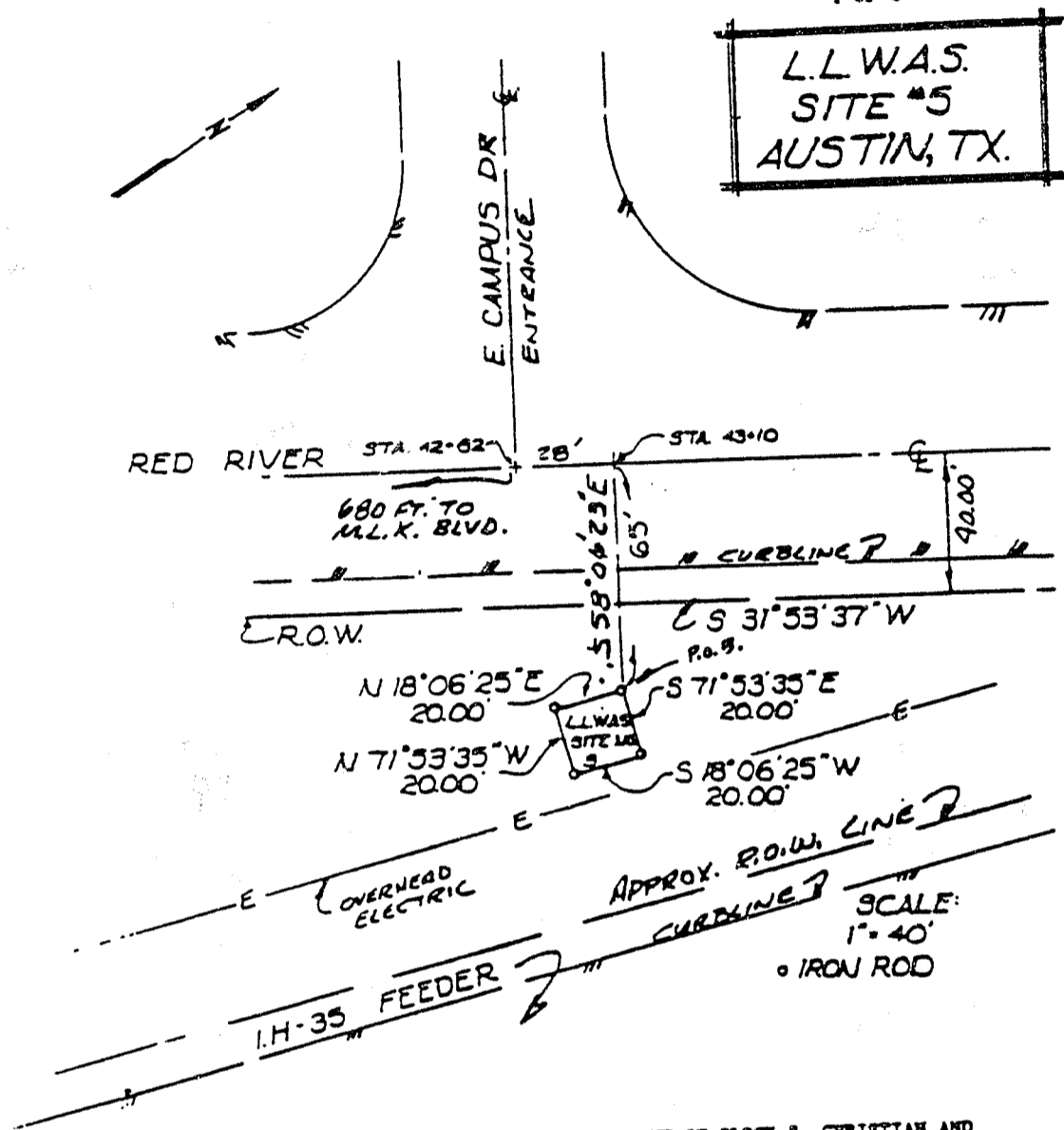
By [Signature]
Title CHAIRMAN

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing lease was approved by the Board of Regents of The University of Texas System on the 13th day of February, 1986, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

[Signature]
Executive Secretary, Board of Regents
The University of Texas System

ARTHUR H. DULLY



FIELD NOTES FOR 400 SQUARE FEET OF LAND OUT OF BLOCK 8, CHRISTIAN AND WELLMAN ADDITION IN AUSTIN, TRAVIS COUNTY, TEXAS, SAID 400 SQUARE FEET OF LAND BEING OUT OF THAT CERTAIN 11.8651 ACRE TRACT OWNED BY THE UNIVERSITY OF TEXAS AND DESCRIBED IN VOLUME 4589 AT PAGE 2338, DEED RECORDS, TRAVIS COUNTY, TEXAS; SAID 400 SQUARE FEET OF LAND BEING SITUATED IN THAT CERTAIN PARCEL OF LAND BOUNDED ON THE SOUTH BY MARTIN LUTHER KING, JR., BLVD., BOUNDED ON THE WEST BY RED RIVER STREET AS DEDICATED IN VOLUME 5077 AT PAGE 1758, DEED RECORDS, TRAVIS COUNTY, TEXAS, AND BOUNDED ON THE EAST BY INTERSTATE HIGHWAY 35, SAID 400 SQ. FEET OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at Red River Street centerline station 42+82 as shown on WIS/FORREST AND COTTON, INC., CONSULTING ENGINEERS plans titled "RELOCATION OF RED RIVER STREET" dated November 1974, sheet 6 of 35, File No. 400-09-05, said point being the intersection of the centerline of Red River St. and the East Campus Drive:

THENCE, with the centerline of Red River Street, N31°53'37"E 28 feet;

THENCE, in a direction perpendicular to said Red River St. centerline, S58°06'23"E, at 40 feet passing the east R.O.W. line of Red River St., to a total distance of 65 feet to a No. 5 rebar set for the northwest corner and POINT OF BEGINNING HEREOF:

THENCE, S71°53'35"E 20.00 feet to a No. 5 rebar set for the northeast corner hereof:

THENCE, S18°06'25"W 20.00 feet to a No. 5 rebar set for the southeast corner hereof:

EXHIBIT "A" TO
LEASE NO. DTF07-86-L-01074

cont.

L.L.W.A.S. SITE NO. 5

THENCE, N71°53'35" 20.00 feet to a No. 5 rebar set for the southwest corner hereof;

THENCE, N18°06'25"E 20.00 feet to the POINT OF BEGINNING.

Surveyed by S.A. GARZA ENGINEERS, INC., 401 W. 29th Street, Austin, Texas, 78705. Data recorded in field book #195.

Stephen Earl Cobb

STEPHEN EARL COBB
REGISTERED PUBLIC SURVEYOR
NO. 4297

10/8/85
DATE



4. U. T. Institute of Texan Cultures - San Antonio - Renovation of Public Areas: Authorization for Project; Preparation of Final Plans, Advertisement for Bids, and Award of Contracts by U. T. Institute of Texan Cultures Administration; and Appropriation Therefor.--The Buildings and Grounds Committee recommended and the Board:

- a. Authorized a project for the first segment of the Renovation of Public Areas at The University of Texas Institute of Texan Cultures at San Antonio at an estimated total project cost of \$250,000
- b. Authorized preparation of final plans and specifications, advertisement for bids, and award of contracts by the U. T. Institute of Texan Cultures Administration with its own forces or through contract services, as required, in consultation with the Office of Facilities Planning and Construction
- c. Appropriated \$250,000 from Permanent University Fund Bond Proceeds for total project funding

This project is the first segment of capital improvements totaling \$2,130,000 approved in principle by the U. T. Board of Regents in October 1985 for the U. T. Institute of Texan Cultures - San Antonio. Since making all of the improvements in one large project would interfere with the normal operation of the Institute, the project will be accomplished in several segments and will include (1) improving security by replacing an existing fence and providing security lighting of the grounds, (2) cleaning all exterior surfaces of the building, (3) remodeling public restrooms to improve accessibility for the handicapped, and (4) replacing an existing greenhouse.

5. U. T. Medical Branch - Galveston - Remodeling of John Sealy Hospital (Old Building) - Remodeling of Dietary Facilities, Stage III Cafeteria (Project No. 601-612): Approval of Final Plans; Authorization to Advertise for Bids and for the Executive Committee to Award Contracts; and Appropriation Therefor.--The Board, upon recommendation of the Finance and Audit and Buildings and Grounds Committees:

- a. Approved the final plans and specifications for the Remodeling of Dietary Facilities, Stage III Cafeteria, John Sealy Hospital (Old Building) at The University of Texas Medical Branch at Galveston at an estimated total project cost of \$3,000,000
- b. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review
- c. Authorized the Executive Committee to award all contracts associated with this project within the authorized total project cost
- d. Appropriated \$3,000,000 from Medical Branch Unappropriated Balances for total project funding

It was reported that the John Sealy Hospital Cafeteria presently operates from a metal building that was set up in 1975 as a temporary arrangement while major renovations were being made in the kitchen area. The cafeteria is an important Medical Branch hospital operation which provides service for employees, outpatients, and visitors. This project, which would move the cafeteria back into the main building and provide a modern and efficient setting for food service operations, along with a vending machine area and a sandwich shop, involves the remodeling of 20,200 square feet of space on the first floor of the hospital.

6. U. T. Medical Branch - Galveston - Remodeling of the 1700 Strand Building: Authorization for Project; Submission to Coordinating Board; Preparation of Final Plans, Advertisement for Bids, and Award of Construction Contract by U. T. Medical Branch - Galveston Administration; and Appropriation Therefor.--In order to correct serious Life Safety Code violations, the Board, upon recommendation of the Finance and Audit, Health Affairs and Buildings and Grounds Committees:

- a. Authorized the Remodeling of the 1700 Strand Building at The University of Texas Medical Branch at Galveston at an estimated total project cost of \$400,000
- b. Authorized submission of the project to the Coordinating Board, Texas College and University System
- c. Authorized preparation of final plans and specifications, advertisement for bids and award of a construction contract by U. T. Medical Branch - Galveston Administration with its own forces or through contract services, as required, in consultation with the Office of Facilities Planning and Construction
- d. Appropriated \$400,000 from Medical Branch Unappropriated Balances for total project funding

The 1700 Strand Building, which was acquired from the federal government in 1977, houses the Family Planning Clinic, Printing and Reproduction Department, Offices for the Department of Institutional Services, and the Book Bindery Division of the Medical Branch Library.

This project would involve enclosing the present stairways and providing properly designed exits, outside stairways at the dead-end wings, handicap ramps, and a fire alarm system as well as waterproofing and painting the exterior of the building.

7. U. T. Health Science Center - Houston (U. T. Dental Branch - Houston) - Facilities Improvements for the Dental Branch Building and Dental Science Institute (Project No. 701-393): Authorization to Advertise for Bids on Reduced Scope of Work and for Executive Committee to Award Contracts and Appropriation Therefor. --In August 1984, the U. T. Board of Regents approved final plans and specifications for the Facilities Improvements of the Dental Branch Building and Dental Science Institute at The University of Texas Health Science Center at Houston at an estimated total project cost of \$17,705,000. It has since been determined that the scope of the project will have to be reduced due to funding constraints.

Upon recommendation of the Buildings and Grounds Committee, the Board:

- a. Authorized the Office of Facilities Planning and Construction to advertise for bids for the Facilities Improvements for the Dental Branch Building and Dental Science Institute at the U. T. Health Science Center - Houston at an estimated total project cost of \$10,695,000
- b. Authorized the Executive Committee to award contracts within the authorized total project cost of \$10,695,000
- c. Appropriated \$8,000,000 from Permanent University Fund Bond Proceeds, \$1,000,000 from a grant from the M. D. Anderson Foundation and \$1,000,000 from Unexpended Plant Funds for total cost of the reduced scope project. Previous appropriations had been \$670,000 from Permanent University Fund Bond Proceeds and \$25,000 from Interest on Proceeds of Permanent University Fund Bonds.

The scope of the project has been reduced by deleting all furniture and equipment for the new addition, the remodeling of the existing basement for student laboratories, and the remodeling of the existing first, second and third floors. The reduced scope project will include construction of a new five-level, 92,500 square foot addition.

The limited scope project is within the scope of the Capital Improvement Program approved by the U. T. Board of Regents in October 1985.

8. U. T. Health Science Center - Houston: Approval to Name Courtyard Between the U. T. Medical School - Houston and the Jesse H. Jones Library Building in Memory of C. Frank Webber, M.D. --The Board, upon recommendation of the Buildings and Grounds Committee, named the courtyard between the U. T. Medical School - Houston of The University of Texas Health Science Center at Houston and the Jesse H. Jones Library Building in memory of the late C. Frank Webber, M.D.

Dr. Webber held several responsible positions in the U. T. Health Science Center - Houston and at the time of his unexpected death on December 12, 1985, was the Dean of the U. T. Medical School - Houston.

The courtyard is the joint property of the Health Science Center and the Houston Academy of Medicine, and the Academy is on record as favoring this memorial.

REPORT AND RECOMMENDATIONS OF THE LAND AND INVESTMENT COMMITTEE (Pages 249 - 274).--Committee Chairman Milburn reported that the Land and Investment 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 Land and Investment Committee and approved in open session and without objection by the U. T. Board of Regents:

The execution of documents authorized in this report will be in accordance with the Regents' Rules and Regulations, Part Two, Chapter IX, Section 1.3 as set forth below:

- 1.3 Authority to Execute Instruments Relating to Land and Mineral Interests.--The Chairman of the Board, the Vice-Chairmen, the Chancellor, or his delegate, and the Executive Vice Chancellor for Asset Management are each authorized to execute conveyances, deeds, surface and/or mineral leases, easements, rights-of-way, oil and gas division orders, and transfer orders, geophysical and material source permits, water contracts, pooling and unitization agreements, and any other instruments as may be necessary or appropriate from time to time, relating to the handling, management, control, and disposition of any real estate or mineral interest held or controlled by the Board as a part of the PUF or as a part of any trust or special fund.

I. PERMANENT UNIVERSITY FUND

A. INVESTMENT MATTERS

Report on Clearance of Monies to Permanent University Fund for November and December 1985, and Report on Oil and Gas Development as of December 31, 1985.--The following reports with respect to (a) certain monies cleared to the Permanent University Fund for November and December 1985, and (b) Oil and Gas Development as of December 31, 1985, were submitted by the Executive Director for Investments and Trusts:

	<u>November, 1985</u>	<u>December, 1985</u>	<u>Cumulative Through December of This Fiscal Year (1985-1986)</u>	<u>Cumulative Through December of Preceding Fiscal Year (1984-1985)</u>	<u>Per Cent Change</u>
<u>Permanent University Fund</u>					
Royalty					(9.43%)
Oil	\$ 7,820,751.62	\$ 8,874,733.10	\$ 32,395,854.46	\$35,767,233.28	5.34%
Gas	2,433,008.20	2,790,305.34	10,443,052.45	9,913,631.32	
Sulphur	10,000.00	10,000.00	128,183.55	82,907.76	
Water	40,402.73	43,222.78	217,238.96	150,508.56	
Brine	9,503.06	10,988.93	40,185.90	31,871.21	
Rental					
Oil and Gas Leases	18,602.61	74,003.75	376,427.40	320,489.55	
Other	300.00	400.00	1,000.00	731.96	
Sale of Sand, Gravel, Etc.	3,575.25	3,300.50	10,793.00	7,671.25	
Gain or (Loss) on Sale of Securities	21,072,089.86	20,066,043.80	76,415,843.39	3,829,954.06	
Sub-Total	<u>31,408,233.33</u>	<u>31,872,998.20</u>	<u>120,028,579.11</u>	<u>50,104,998.95</u>	<u>139.55%</u>
Bonuses					
Oil and Gas Lease Sales	-0-	-0-	5,913,600.00	-0-	
Amendments and Extensions to Mineral Leases	18,262.72	9,772.14	176,187.39	221,844.75	
Total Bonuses	<u>18,262.72</u>	<u>9,772.14</u>	<u>6,089,787.39</u>	<u>221,844.75</u>	
TOTAL CLEARANCES	<u>\$31,426,496.05</u>	<u>\$31,882,770.34</u>	<u>\$126,118,366.50</u>	<u>\$50,326,843.70</u>	<u>150.60%</u>

Oil and Gas Development - December 31, 1985
Acreage Under Lease - 840,647

Number of Producing Acres - 568,015

Number of Producing Leases - 2,279

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II. COMMON TRUST FUND

1. U. T. System: Approval of Amendments to The Charter of The University of Texas System Common Trust Fund, Article IV, Item 3.--In order to clarify the procedures for withdrawals from the Common Trust Fund as approved by the U. T. Board of Regents on December 5, 1985, the Board amended Item 3 of Article IV of The Charter of The University of Texas System Common Trust Fund to read as set forth below:
 3. Any withdrawals from the Fund require prior approval of the Board of Regents. Withdrawals shall be valued at the market value of the assigned units on the quarterly evaluation date following the approval by the Board of Regents. Withdrawals shall be paid in cash as soon as practicable after such valuation.

2. U. T. System: Establishment of the Income Reserve Quasi-Endowment Fund and the Amortization Income Reserve Quasi-Endowment Fund within the Common Trust Fund and Authorization for the Offices of the Comptroller and the Executive Vice Chancellor for Asset Management to Specify the Formula and Timing of Additions and Withdrawals from Such Quasi-Endowments.--Upon recommendation of the Land and Investment Committee, the Board:
 - a. Established an Income Reserve Quasi-Endowment Fund in the Common Trust Fund for the investment of funds to be retained in the "Income Reserve Account" as defined in The Charter of The University of Texas System Common Trust Fund. No units shall be assigned to this quasi-endowment.
 - b. Authorized the Offices of the Comptroller and the Executive Vice Chancellor for Asset Management to remove funds from the revenue account and to add funds to the Income Reserve Quasi-Endowment Fund as described in Article VI, Item 4, of The Charter of The University of Texas System Common Trust Fund. This authorization shall serve as approval of the U. T. Board of Regents for such transfers.
 - c. Authorized the Offices of the Comptroller and the Executive Vice Chancellor for Asset Management to add funds to the revenue account and to withdraw funds from the Income Reserve Quasi-Endowment Fund as described in Article VII, Item 1, of The Charter of The University of Texas System Common Trust Fund. This authorization shall serve as approval of the U. T. Board of Regents for such transfers.
 - d. Established an Amortization Income Reserve Quasi-Endowment Fund in the Common Trust Fund for the investment of funds recorded as amortization income but not included in "Gross Cash Income" or "Net Cash Income"

as defined in Article VI, Item 1, of The Charter of The University of Texas System Common Trust Fund. No units shall be assigned to this quasi-endowment.

- e. Authorized the Offices of the Comptroller and the Executive Vice Chancellor for Asset Management to remove funds from the revenue account and to add funds to the Amortization Income Reserve Quasi-Endowment Fund as the discount, net of premiums, of bonds held in the Common Trust Fund is amortized. This authorization shall serve as approval of the U. T. Board of Regents for such transfers.
- f. Authorized the Offices of the Comptroller and the Executive Vice Chancellor for Asset Management to recognize the amortized amount related to a bond in the revenue account and adjust the Amortization Income Reserve Quasi-Endowment Fund appropriately when a bond involving a discount or premium matures or is sold.

III. TRUST AND SPECIAL FUNDS

A. GIFTS, BEQUESTS AND ESTATES

1. U. T. Arlington: Acceptance of a Bequest from the Estate of Rudolf Hermanns, Arlington, Texas, and Establishment of the Rudolf Hermanns UTA Endowment Fund for Excellence and Authorization for the Executive Vice Chancellor for Asset Management to Invest the Assets of the Fund.--Approval was given to accept a bequest, estimated to be in excess of \$1,500,000, from the Estate of Rudolf Hermanns, Arlington, Texas, and to establish the Rudolf Hermanns UTA Endowment Fund for Excellence at The University of Texas at Arlington.

Further, the Executive Vice Chancellor for Asset Management was authorized to invest these funds and to execute all necessary instruments with the Executors and Trustees of the Hermanns Estate which are necessary to effectuate the management and investment of such endowment after approval of such instruments by the Office of General Counsel.

Income earned from the endowment will be used to recognize and reward graduate students, faculty, and research staff at U. T. Arlington who have exhibited academic excellence in the field of research and teaching potential.

2. U. T. Arlington: Approval to Accept Transfer of Funds and to Establish the Public Accounting Professorship and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board accepted a transfer of \$100,000 from U. T. Arlington restricted funds and established the Public Accounting Professorship at The University of Texas at Arlington.

Further, the actual income which will be earned on the \$100,000 transfer of previously reported gifts will be certified for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code.

The professorship will be awarded to an outstanding faculty member in the Department of Accounting at U. T. Arlington who has significant accomplishments in the areas of teaching, research, and service in the field of accounting.

3. U. T. Austin: Acceptance of Gift of Securities and Pledge from Mr. and Mrs. Robert M. Duffey, Jr., Brownsville, Texas, and Establishment of the Robert M. Duffey, Jr. Endowed Lectureship in the Graduate School and Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program.--Upon recommendation of the Land and Investment Committee, the Board accepted 700 shares of Texas Commerce Bancshares, Inc. common stock valued at approximately \$18,676 and a \$1,324 minimum pledge, payable prior to August 31, 1989, for a total of \$20,000 from Mr. and Mrs. Robert M. Duffey, Jr., Brownsville, Texas, and established the Robert M. Duffey, Jr. Endowed Lectureship in the Graduate School at The University of Texas at Austin.

Further, the gift of securities and pledge, as received, will be matched under The Regents' Endowed Teachers and Scholars Program and will be used to double the endowment.

4. U. T. Austin: W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law in the School of Law - Authorization for Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program for Addition to the Ellen Clayton Garwood Centennial Professorship in Creative Writing in the College of Liberal Arts.--Authorization was granted for a previously accepted pledge of \$200,000 for the W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair in Law in the School of Law at The University of Texas at Austin to be matched under The Regents' Endowed Teachers and Scholars Program and used to increase the endowment of the Ellen Clayton Garwood Centennial Professorship in Creative Writing in the College of Liberal Arts.

5. U. T. Austin: Acceptance of Gift and Pledge from Dr. George Hoffman, Austin, Texas, and Establishment of the Viola Smith Hoffman Lectureship in Liberal Arts and Fine Arts in the Colleges of Liberal Arts and Fine Arts and Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program.--The Land and Investment Committee recommended and the Board accepted a \$5,000 gift and a \$15,000 pledge, due prior to August 31, 1989, for a total of \$20,000 from Dr. George Hoffman, Austin, Texas, and established the Viola Smith Hoffman Lectureship in Liberal Arts and Fine Arts in the Colleges of Liberal Arts and Fine Arts at The University of Texas at Austin.

The gift and pledge, as received, will be matched under The Regents' Endowed Teachers and Scholars Program and will be used to double the endowment of the lectureship.

6. U. T. Austin: Approval to Accept a Bequest from the Estate of Annie Laurie Howard, Houston, Texas, and Establish the Iris Howard Regents Professorship in English Literature in the College of Liberal Arts and Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program to Establish the Annie Laurie Howard Regents Professorship in Fine Arts in the College of Fine Arts and Increase the Endowment of the Iris Howard Regents Professorship in English Literature.--The Board accepted a bequest, estimated to be in excess of \$279,202, from the Estate of Annie Laurie Howard, Houston, Texas, and established the Iris Howard Regents Professorship in English Literature in the College of Liberal Arts at The University of Texas at Austin.

Further, approval was given to match the bequest under The Regents' Endowed Teachers and Scholars Program to establish the Annie Laurie Howard Regents Professorship in Fine Arts in the College of Fine Arts with one-half of the matching funds and use the remaining one-half to increase the endowment of the Iris Howard Regents Professorship in English Literature in the College of Liberal Arts.

7. U. T. Austin: Acceptance of Gift and Pledges from Mrs. David Wechsler, New York, New York, and Harcourt Brace Jovanovich, Inc./The Psychological Corporation, Orlando, Florida, and Establishment of the David Wechsler Regents Chair in Psychology in the College of Liberal Arts and Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program.--Upon recommendation of the Land and Investment Committee, the Board accepted a \$100,000 gift and a \$150,000 pledge, payable prior to August 31, 1989, from Mrs. David Wechsler, New York, New York, and a \$250,000 pledge, payable prior to August 31, 1989, from Harcourt Brace Jovanovich, Inc./The Psychological Corporation, Orlando, Florida, for a total of \$500,000 and established the David Wechsler Regents Chair in Psychology in the Department of Psychology, College of Liberal Arts, at The University of Texas at Austin.

The gift and pledges, as received, will be matched under The Regents' Endowed Teachers and Scholars Program and will be used to double the endowment.

8. U. T. Austin: Acceptance of Gift from Wilson Oxygen & Supply Company, Inc., Austin, Texas, and Establishment of the Sonia Wolf Wilson Lectureship in Home Economics in the College of Natural Sciences and Eligibility for Matching Funds Under The Regents' Endowed Teachers and Scholars Program.--Approval was given to accept a \$25,000 gift from the Wilson Oxygen & Supply Company, Inc., Austin, Texas, and to establish the Sonia Wolf Wilson Lectureship in Home Economics in the Department of Home Economics, College of Natural Sciences, at The University of Texas at Austin.

Further, the gift will be matched under The Regents' Endowed Teachers and Scholars Program and will be used to double the endowment.

9. U. T. Austin: Acceptance of Gift from an Anonymous Donor and Establishment of the Center for High Performance Computing Endowment.--The Land and Investment Committee recommended and the Board accepted a \$1,000,000 gift from an anonymous donor and established the Center for High Performance Computing Endowment at The University of Texas at Austin.

Income earned from the endowment will be used to supplement the salary of the manager of the Center for High Performance Computing and for other professional activities of the Center.

10. U. T. Austin: Authorization to Accept a Gift from an Anonymous Donor and Establishment of the Equipment Endowment for the Department of Computer Sciences and the Curriculum Development for the Department of Computer Sciences Endowment in the College of Natural Sciences.--Authorization was granted to accept a \$300,000 gift from an anonymous donor and to establish the Equipment Endowment for the Department of Computer Sciences with \$100,000 and an endowment for Curriculum Development for the Department of Computer Sciences with \$200,000 in the College of Natural Sciences at The University of Texas at Austin.

11. U. T. Austin: Pharmacy Centennial Fellowship in Alcoholism Research in the College of Pharmacy - Approval to Redesignate as the Bergen Brunswig Corporation Centennial Fellowship in Pharmacy.--The Board, upon recommendation of the Land and Investment Committee, granted approval to redesignate the Pharmacy Centennial Fellowship in Alcoholism Research in the College of Pharmacy at The University of Texas at Austin as the Bergen Brunswig Corporation Centennial Fellowship in Pharmacy.

12. U. T. Austin: Acceptance of Transfer of Funds and Establishment of the Ben Davis Geeslin Endowed Presidential Scholarship in the College of Engineering.--Authorization was granted to accept a \$25,000 transfer of previously reported gifts from current restricted funds and to establish the Ben Davis Geeslin Endowed Presidential Scholarship in the Department of Civil Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to worthy students majoring in civil engineering with preference given to upperclassmen and graduate students expressing an interest in environmental and water resources engineering.

13. U. T. Austin: Acceptance of Gifts from Dr. Earnest F. Gloyna, Austin, Texas, and Mr. Joe C. Walter, Jr., Houston, Texas, and Establishment of the Earnest F. Gloyna Scholarship in Environmental and Water Resources Engineering in the College of Engineering.--The Board accepted a \$3,000 gift from Dr. Earnest F. Gloyna, Austin, Texas, and an \$8,000 gift from Mr. Joe C. Walter, Jr., Houston, Texas, for a total of \$11,000 and established the Earnest F. Gloyna Scholarship in Environmental and Water Resources Engineering in the Department of Civil Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to grant scholarships to outstanding and worthy undergraduate and graduate students in the Department of Civil Engineering who are interested in environmental and water resources engineering.

14. U. T. Austin: Acceptance of Gift from Mr. and Mrs. M. M. Hatcher, Dallas, Texas, and Establishment of the Robert Austin Hatcher Endowed Scholarship in the College of Business Administration.--Approval was granted to accept a \$10,000 gift from Mr. and Mrs. M. M. Hatcher, Dallas, Texas, and to establish the Robert Austin Hatcher Endowed Scholarship in the College of Business Administration at The University of Texas at Austin.

Income earned from the endowment will be administered by the Office of Student Financial Aid and used to grant a scholarship to students in the College of Business Administration.

15. U. T. Austin: Approval to Accept Gift from Mr. Stewart N. Campbell, Houston, Texas, and Establishment of the Leonardt F. Kreisle Senior Design Project Teaching Laboratory Endowment Fund in the College of Engineering.--The Board accepted a \$25,000 gift from Mr. Stewart N. Campbell, Houston, Texas, and \$400 in gifts from various donors for a total of \$25,400 and established the Leonardt F. Kreisle Senior Design Project Teaching Laboratory endowment fund in the College of Engineering at The University of Texas at Austin.

Income earned from the endowment will be used to maintain and improve equipment, and for activities and facilities necessary for the research and teaching functions of the room.

See Page 205 related to naming a room in recognition of these gifts.

16. U. T. Austin (Marine Science Institute): E. J. Lund Founder's Fund - Authorization to Redesignate the Use of Endowment Income.--Authorization was given to redesignate the use of the income from the E. J. Lund Founder's Fund at The University of Texas at Austin Marine Science Institute from research fellowships in electrophysiology and awards in biophysics to fellowships and scholarships for research in the general field of marine science.

At its meeting in July 1979, the U. T. Board of Regents established the E. J. Lund Founder's Fund and specified that the income from the endowment was to be used to establish the E. J. Lund Fellowship in Electrophysiology and the E. J. Lund Research Scholarship Awards in Biophysics for Graduate Students of Exceptional Merit. These areas are no longer a major focus of research at the Marine Science Institute. Since there is declining interest in these research areas, it has become increasingly impractical to make these awards. Therefore, a redesignation of the endowment income as provided in Section 65.36(f) of the Texas Education Code will allow the use of the Fund to further the disciplines of the Marine Science Institute and still carry out the intent and wishes of Mrs. Lund.

17. U. T. Austin: Acceptance of Gift from Mr. William E. Gipson, Houston, Texas, and Corporate Matching Funds from the Pennzoil Company and the Pogo Producing Company, Houston, Texas, and Establishment of the Pennzoil and Pogo Producing Companies - William E. Gipson Scholarships in the College of Natural Sciences.--Upon recommendation of the Land and Investment Committee, the Board accepted a \$5,000 gift from Mr. William E. Gipson and corporate matching funds of \$15,000 from the Pennzoil Company and \$10,000 from the Pogo Producing Company, all of Houston, Texas, for a total of \$30,000 and established the Pennzoil and Pogo Producing Companies - William E. Gipson Scholarships in the Department of Geological Sciences, College of Natural Sciences, at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to "University of Texas at Austin graduates who are working on their Masters Degree in Geological Sciences" and are U. S. citizens.

18. U. T. Austin: Authorization to Establish the David Proctor Scholarship Endowment in the School of Law.--At the request of the Law School Foundation (an external foundation), the David Proctor Scholarship Endowment was established in the School of Law at The University of Texas at Austin in accordance with the Regents' Rules and Regulations. The funding for this endowment (\$175,000) will be retained by the Law School Foundation and will be administered per the agreement between the Foundation and the U. T. Board of Regents.

19. U. T. Austin: Approval to Accept Gifts and Establishment of the Jewel Popham Raschke Memorial Scholarship for Mathematics Education in the College of Education.--The Board, upon recommendation of the Land and Investment Committee, accepted \$25,710 in gifts from various donors and established the Jewel Popham Raschke Memorial Scholarship for Mathematics Education in the Department of Curriculum and Instruction, College of Education at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to outstanding students majoring in mathematics education.

20. U. T. Austin: Acceptance of Gift from Mrs. Ina Riggs Brundrett, Tyler, Texas, and Corporate Matching Funds from the Exxon Education Foundation, New York, New York, and Establishment of The Pearl M. Riggs Endowed Scholarship in Education in the College of Education.--The Land and Investment Committee recommended and the Board accepted a \$5,000 gift from Mrs. Ina Riggs Brundrett, Tyler, Texas, and \$15,000 in corporate matching funds from the Exxon Education Foundation, New York, New York, for a total of \$20,000 and established The Pearl M. Riggs Endowed Scholarship in Education in the College of Education at The University of Texas at Austin.

Income earned from the endowment will be used to recognize and support outstanding students pursuing a degree in the College of Education.

21. U. T. Austin: John O. Rodgers Endowed Scholarship Fund in the College of Education - Authorization to Redesignate as the John O. and Cathryn Rodgers Endowed Scholarship Fund.--The Board authorized the redesignation of the John O. Rodgers Endowed Scholarship Fund in the College of Education at The University of Texas at Austin as the John O. and Cathryn Rodgers Endowed Scholarship Fund.

22. U. T. Austin: Approval to Accept Gifts from Mr. Mike Shapiro, Jacksonville, Texas, and Broadcasting-Taishoff Foundation, Inc., Washington, D.C., and Establishment of the Sol Taishoff Memorial Endowed Scholarship in Broadcasting in the College of Communication.--Approval was granted to accept a \$12,500 gift from Mr. Mike Shapiro, Jacksonville, Texas, and a \$12,500 gift from the Broadcasting-Taishoff Foundation, Inc., Washington, D.C., for a total of \$25,000 and to establish the Sol Taishoff Memorial Endowed Scholarship in Broadcasting in the College of Communication at The University of Texas at Austin.

Income earned from the endowment will be used to award a scholarship based on financial need and grade point average to an upperclassman in the Department of Radio-Television-Film who plans a career in broadcasting.

23. U. T. Austin: Acceptance of Gift from Mrs. Jo Alice Tomforde, Tyler, Texas, and Establishment of the Fleet and Chester Wynne Endowed Scholarship in the College of Education.--Upon recommendation of the Land and Investment Committee, the Board accepted a \$25,000 gift from Mrs. Jo Alice Tomforde, Tyler, Texas, and established the Fleet and Chester Wynne Endowed Scholarship in the College of Education at The University of Texas at Austin.

Income earned from the endowment will be used to provide financial assistance to worthy students who are committed to a career of teaching and education.

24. U. T. Dallas: Establishment of the George W. Jalonick III and Dorothy Cockrell Jalonick Memorial Distinguished Lecture in Aviation Advancement.--Approval was granted to accept gifts totalling \$42,000 from various donors and to establish the George W. Jalonick III and Dorothy Cockrell Jalonick Memorial Distinguished Lecture in Aviation Advancement at The University of Texas at Dallas in recognition of Mr. Jalonick's role in shaping local, state and national aviation policies.

25. U. T. El Paso: Authorization to Accept Transfer of Funds and Establishment of The Carl Hertzog Endowment Fund.--The Board, upon recommendation of the Land and Investment Committee, accepted a transfer from U. T. El Paso restricted funds of \$12,133.94 and established The Carl Hertzog Endowment Fund at The University of Texas at El Paso.

Income earned from the endowment will be used to develop the Hertzog Collection in the Special Collections section of the U. T. El Paso Library. These works constitute one of the finest collections of printing and design and are of considerable research value.

26. U. T. El Paso: Approval to Accept a Gift from Mr. and Mrs. John T. MacGuire, El Paso, Texas, and Establishment of the John T. MacGuire Professorship in Mechanical and Industrial Engineering and the Betty M. MacGuire Professorship in Business Administration and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.-- The Board accepted a \$250,000 cash gift from Mr. and Mrs. John T. MacGuire, El Paso, Texas, and established the John T. MacGuire Professorship in Mechanical and Industrial Engineering and the Betty M. MacGuire Professorship in Business Administration at The University of Texas at El Paso with \$125,000 each.

The actual income which will be earned on the \$250,000 will be certified for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code.

27. U. T. El Paso: Acceptance of Gift of Real Property Being All of Lot 2, Block 5 in Horizon City Estates, Unit 22, in El Paso County, Texas, from Mr. and Mrs. Thomas W. Cooley, Federal Way, Washington.--The Land and Investment Committee recommended and the Board accepted a gift of real property being all of Lot 2, Block 5 in Horizon City Estates, Unit 22, El Paso County, Texas, with a value of approximately \$350, from Mr. and Mrs. Thomas W. Cooley, Federal Way, Washington, for the unrestricted use of the President of The University of Texas at El Paso.

The U. T. Board of Regents currently holds title to 14 lots in Horizon City Estates and five lots in the surrounding area.

28. U. T. Permian Basin: Acceptance of Gift from Lissa and Cy Wagner, Jr., Midland, Texas, and Establishment of the Ellen and Bill Noel Distinguished Professorship for Energy Research and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Approval was granted to accept a \$250,000 gift from Lissa and Cy Wagner, Jr., Midland, Texas, and to establish the Ellen and Bill Noel Distinguished Professorship for Energy Research at The University of Texas of the Permian Basin.

Further, the actual income which will be earned on the \$250,000 gift will be certified for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code.

29. U. T. Tyler: Sam R. Greer and Laura Greer Ruggles-Gates Fund For Excellence in English and Literature - Acceptance of Additional Gift from Mrs. Laura Greer Ruggles-Gates, Tyler, Texas, and Authorization to Redesignate as the Sam R. Greer Endowed Presidential Scholarship.--The Board accepted an additional gift of \$15,000 from Mrs. Laura Greer Ruggles-Gates, Tyler, Texas, for addition to the Sam R. Greer and Laura Greer Ruggles-Gates Fund for Excellence in English and Literature at The University of Texas at Tyler for a total endowment of \$25,000 and redesignated the fund as the Sam R. Greer Endowed Presidential Scholarship.

Income from the endowment will be used to encourage and reward productive scholarship, research, and inquiry, as well as to provide scholarly opportunities for the advanced study of English and literature.

30. U. T. Tyler: Acceptance of Gift from Mr. and Mrs. John E. White, Jr., Tyler, Texas, and Corporate Matching Funds from the Atlantic Richfield Foundation and Establishment of the Jack and Dorothy Fay White Endowed Presidential Scholarship.--Upon recommendation of the Land and Investment Committee, the Board accepted a gift of \$8,350 from Mr. and Mrs. John E. White, Jr., Tyler, Texas, and a \$16,700 matching gift from the Atlantic Richfield Foundation, for a total of \$25,050 and established the Jack and Dorothy Fay White Endowed Presidential Scholarship at The University of Texas at Tyler.

Income earned from the endowment will be used to provide an annual scholarship to a student who is in need of financial assistance in order to attend U. T. Tyler.

31. U. T. Health Science Center - Dallas (U. T. Southwestern Medical School - Dallas): Gail Griffiths Hill Visiting Professorship in Cardiology - Acceptance of an Additional Gift from The Sweetheart Ball Committee, Dallas, Texas, and Authorization to Redesignate as the Gail Griffiths Hill Professorship in Cardiology and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board accepted an additional gift of \$45,000 from The Sweetheart Ball Committee, Dallas, Texas, for addition to the Gail Griffiths Hill Visiting Professorship in Cardiology for a total endowment of \$110,000 and redesignated it as the Gail Griffiths Hill Professorship in Cardiology at the U. T. Southwestern Medical School - Dallas of The University of Texas Health Science Center at Dallas.

Further, the actual income which will be earned on the \$45,000 gift will be certified for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code.

32. U. T. Health Science Center - Houston: Edward Randall, III Professorship in the Medical Sciences - Authorization to Redesignate as the Edward Randall, III Professorship in Internal Medicine.--The Land and Investment Committee recommended and the Board redesignated the Edward Randall, III Professorship in the Medical Sciences at The University of Texas Health Science Center at Houston as the Edward Randall, III Professorship in Internal Medicine.

See Page 235 related to an appointment to this professorship.

33. U. T. Health Science Center - San Antonio: Authorization to Accept Gift and Pledge from The Humana Foundation Inc., Louisville, Kentucky, and Establishment of The Humana Foundation Chair of Obstetrics and Gynecology and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Board, upon recommendation of the Land and Investment Committee, accepted a \$500,000 gift and a \$500,000 pledge, due prior to February 28, 1988, from The Humana Foundation Inc., Louisville, Kentucky, and established The Humana Foundation Chair of Obstetrics and Gynecology at The University of Texas Health Science Center at San Antonio.

The actual income which will be earned on the gift and pledge totaling \$1,000,000, as received, will be certified for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I, of the Texas Education Code.

34. U. T. Cancer Center (U. T. M.D. Anderson Hospital - Houston):
Acceptance of Gift from Mr. W. A. "Tex" Moncrief, Jr., Fort
Worth, Texas, and Transfer of Funds from the Anderson Clin-
ical Professorships Account and Establishment of the W. A.
"Tex" and Deborah Moncrief, Jr., Chair and Eligibility for
Matching Funds Under the Texas Eminent Scholars Program.--
The Board accepted a \$500,000 gift from Mr. W. A. "Tex"
Moncrief, Jr., Fort Worth, Texas, and a \$500,000 transfer
of funds from the Anderson Clinical Professorships Account,
for a total of \$1,000,000 and established the W. A. "Tex"
and Deborah Moncrief, Jr., Chair at the U. T. M.D. Anderson
Hospital - Houston of The University of Texas System Cancer
Center.

The actual income which will be earned on the \$500,000 gift
will be certified for matching under the Texas Eminent
Scholars Program as set out in Chapter 51, Subchapter I, of
the Texas Education Code.

35. U. T. Cancer Center (U. T. M.D. Anderson Hospital - Houston):
Approval to Accept a Gift from Mrs. Vivian L. Smith, Houston,
Texas, and Establishment of the R. E. "Bob" Smith Chair in
Cell Biology and Eligibility for Matching Funds Under the
Texas Eminent Scholars Program (No Publicity).--Upon recom-
mendation of the Land and Investment Committee, the Board
accepted a gift of \$1,000,000 from Mrs. Vivian L. Smith,
Houston, Texas, and established the R. E. "Bob" Smith Chair
in Cell Biology at the U. T. M.D. Anderson Hospital -
Houston of The University of Texas System Cancer Center.

Further, the actual income which will be earned on
the \$1,000,000 gift will be certified for matching under
the Texas Eminent Scholars Program as set out in Chap-
ter 51, Subchapter I, of the Texas Education Code.

See Page 238 related to an appointment to this chair.

It was requested that no publicity be given to this
matter.

36. U. T. Cancer Center (U. T. M.D. Anderson Hospital - Houston):
Acceptance of Gift from Mrs. Vivian L. Smith, Houston, Texas,
and Establishment of the Vivian L. Smith Chair in Immunology
and Eligibility for Matching Funds Under the Texas Eminent
Scholars Program (No Publicity).--Approval was granted to
accept a gift of \$1,000,000 from Mrs. Vivian L. Smith,
Houston, Texas, and to establish the Vivian L. Smith Chair
in Immunology at the U. T. M.D. Anderson Hospital - Houston
of The University of Texas System Cancer Center.

The actual income which will be earned on the \$1,000,000
gift will be certified for matching under the Texas Eminent
Scholars Program as set out in Chapter 51, Subchapter I, of
the Texas Education Code.

See Page 238 related to an appointment to this chair.

It was requested that no publicity be given to this
matter.

B. REAL ESTATE MATTERS

1. U. T. Austin - Balcones Research Center: Authorization to Grant a Ground Lease on Land Located at the Northeast Corner of U. S. 183 and Braker Lane, Austin, Travis County, Texas, to The Southland Corporation, Dallas, Texas, Effective June 1, 1986.--The Board authorized the lease of approximately 105,000 square feet of land located at the northeast corner of U. S. 183 and Braker Lane, Austin, Travis County, Texas (Balcones Research Center - The University of Texas at Austin), to The Southland Corporation of Dallas, Texas, effective June 1, 1986. The lease provides for a term of 20 years and for two five-year renewal options. Minimum guaranteed rentals would begin at \$7,500 per month and would be increased \$675 per month each five years during the initial term and each option period. Percentage rent in the amount by which 1-3/4% of gross sales on the site, excluding petroleum products, exceeds the minimum rent would also be paid.

The Southland Corporation will construct a standard 7-Eleven store on the premises and sublease a portion of the site to one or more restaurants or fast food operations with all plans, landscaping and subleases subject to approval by U. T. Austin.

2. U. T. Austin: Estate of Alice Jane Sheffield - Authorization to Sell a 68.5 Acre Tract of Land in Anderson County, Texas, and a 1/15 Undivided Interest in a 350 Acre Tract of Land in Fort Bend County, Texas, and for the Executive Vice Chancellor for Asset Management to Execute Deeds of Sale.--Upon recommendation of the Land and Investment Committee, the Board authorized the executors of the Estate of Alice Jane Sheffield to sell the real property interests which remain to be liquidated from Mrs. Sheffield's Estate for the use and benefit of The University of Texas at Austin at their appraised market value and authorized the Executive Vice Chancellor for Asset Management to execute the deeds of sale required for each transaction. The real property assets which remain are a 68.5 acre tract of land in Anderson County, Texas, and a 1/15 undivided interest in a 350 acre tract of land in Fort Bend County, Texas. The mineral interests in each tract will be retained where it is appropriate.

3. U. T. Tyler: Sam A. Lindsey Endowment Fund - Approval of Oil and Gas Lease Covering an Undivided Mineral Interest in 38.7 Acres Out of the W. H. Adams Survey, A-29, in Smith County, Texas, to MTA, Inc., Tyler, Texas.--The Board authorized an oil and gas lease covering an undivided interest in 38.7 acres out of the W. H. Adams Survey, A-29, Smith County, Texas, to MTA, Inc. of Tyler, Texas. This interest (7.2563 net mineral acres) is held in trust for The University of Texas at Tyler - Sam A. Lindsey Endowment Fund. The lease provides for a 3/16 royalty, a \$100 per net mineral acre bonus, a \$1.00 per net mineral acre annual rental, and a paid-up term of three years.

This mineral interest is among several non-producing mineral interests acquired through a bequest from the Estate of Louise Lindsey Merrick, which was accepted by the U. T. Board of Regents at its October 1982 meeting.

IV. INTELLECTUAL PROPERTY

1. U. T. Board of Regents - Regents' Rules and Regulations, Part Two: Amendments to Chapter V, Section 2, Subsection 2.4, Subdivisions 2.44 and 2.45 (Intellectual Property Policy).--Approval was given to amend Subsection 2.4 of Section 2 of Chapter V of Part Two of the Regents' Rules and Regulations (Intellectual Property Policy) as set forth below:

- a. Subdivision 2.44, Paragraph 2.442 was amended to read as follows:

2.442 The intellectual property is related to the individual's employment responsibility, or has resulted either from activities performed by the individual on System time, or with support by State funds, or from using System facilities.

- b. Subdivision 2.45, Paragraph 2.452 and Subparagraph 2.4521 were amended to read as follows:

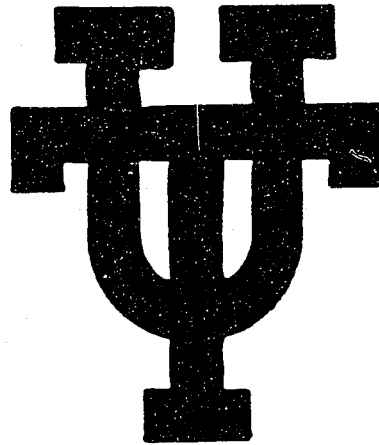
2.452 Intellectual property either related to the individual's employment responsibility, or resulting from activities performed on System time, or with support by State funds, or from using System facilities. (See 2.442.)

2.4521 Before publishing, a creator of intellectual property that the creator believes may be patentable and which (a) relates to the individual's employment responsibility, or (b) results from activities done on System time, or (c) is created with support by State funds, or (d) is created using System facilities, shall be submitted to the Institutional Patent Committee for determination of the System's interest. In those instances, however, where delay would jeopardize obtaining the appropriate protection for the property, the creator may, with the approval of the Chairman of the Institutional Patent Committee and the chief administrative officer, file a patent application or take other steps to obtain available protection prior to the Committee and administrative review provided in the following two subsections. If the request is granted, the creator may proceed with the filing of a patent application or other available protective measures pending the determination of the System's interest; provided, however, that the creator shall be reimbursed for expenses in filing the patent application or taking other steps to obtain protection if the decision of the System is

to assert and exploit its interests. The Chairman of the Institutional Patent Committee shall notify the System Intellectual Property Office of any such application.

These changes are intended to more clearly delineate those intellectual properties that belong to the U. T. Board of Regents and to more specifically designate those particular properties (inventions) that are required to be submitted to an Institutional Patent Committee.

2. U. T. Board of Regents: Approval of Concurrent Use Agreement with The University of Tennessee, Knoxville, Tennessee, for the Trademark, "UT and Design".--Upon recommendation of the Land and Investment Committee, the Board approved the Concurrent Use Agreement set out on Pages 265 - 274 between The University of Texas System Board of Regents and The University of Tennessee, Knoxville, Tennessee, for the trademark, "UT and Design." The term "UT and Design" has reference to the following mark:



For many years both The University of Texas at Austin and The University of Tennessee have concurrently used the trademark "UT and Design." The U. T. Board of Regents has been the owner of U. S. Registration No. 1,230,439 for the service mark "UT and Design" for educational and entertainment services since 1983.

This agreement will grant the exclusive right to the U. T. Board of Regents for use of the mark "UT and Design" in the geographic area of the United States falling west of the Mississippi River, with the exception of West Baton Rouge Parish, Louisiana, and limited use permitted in connection with bowl games and special events as specified in the agreement. The University of Tennessee shall have the exclusive right to the same mark in the geographic area of the United States falling east of the Mississippi River, together with West Baton Rouge Parish, Louisiana, and limited use permitted in connection with bowl games and special events. Filing of the Concurrent Use Agreement with the U. S. Patent and Trademark Office will allow prosecution of both universities' co-pending applications for the same trademark.

AGREEMENT

This Agreement is entered into by and between the BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM, a state agency of the State of Texas having an address of 201 West 7th Street, Austin, Texas 78701 (hereinafter referred to as "TEXAS"), and THE UNIVERSITY OF TENNESSEE, a public educational corporation of the State of Tennessee, whose address is 800 Andy Holt Tower, The University of Tennessee, Knoxville, Tennessee 37996 (hereinafter referred to as "TENNESSEE").

I. PARTIES/BACKGROUND

1:1 TEXAS has adopted and concurrently used the mark UT and Design for entertainment services and for various college imprinted goods. TEXAS is the owner of U.S. Registration No. 1,230,439 for the mark "UT" and Design for entertainment services. A copy of the registration illustrating the mark "UT" and Design is attached as ATTACHMENT A hereto.

1:2 TENNESSEE has adopted and concurrently used the mark UT and Design for entertainment services and for various college imprinted goods such as key chains; watches and bracelets; window and bumper stickers; general purpose gym bags and garment bags for travel; ceramic mugs, glass mugs, drinking glasses, goblets and insulating sleeve-holders for beverage cans; sweat shirts, sweat suits, socks, T-shirts, jackets and baby bibs. TENNESSEE has filed United States Application Serial No. 501,111 to register the

mark "UT" and Design for the above listed goods. An example of the "UT" and Design mark of TENNESSEE is attached as ATTACHMENT B hereto.

1:3 TEXAS and TENNESSEE are the parties to this Agreement.

II. OTHER MARKS

2.1 Each party also uses other marks in connection with its entertainment services and college imprinted goods.

2.2 TEXAS, for example, uses the marks "UNIVERSITY OF TEXAS", "TEXAS", "LONGHORNS" and "DESIGN OF LONGHORN" (and variations thereof) in connection with its entertainment services and college imprinted goods.

2.3 TENNESSEE, for example, uses the marks "UNIVERSITY OF TENNESSEE", "TENNESSEE", "VOLUNTEERS" and "VOLS" (and variations thereof) in connection with its entertainment services and college imprinted goods.

2.4 Often, the printed matter used in association with the entertainment services and the college imprinted goods of either of the parties bear more than one of that party's marks.

2.5 The parties believe that, when a "UT" mark is used in conjunction with another mark or marks of the same party, the indication of origin (TEXAS or TENNESSEE) is apparent, and no likelihood of confusion is caused by use of the "UT" mark under such conditions. Consequently, this agreement is not intended to

apply to printed matter for entertainment services or to college imprinted goods which bear another mark of either party in addition to a "UT" mark.

III. DEFINITIONS

3.1 "UT Mark(s)" means the letters "UT", whether or not in a design form, where such letters are used to designate either TEXAS or TENNESSEE, and where such letters are not used, on or in association with the goods/services, with another mark of the same party.

3.2 "Goods/services" means entertainment services and college imprinted goods.

3.3 "College imprinted goods" means items such as those listed in Section 1.2 above and similar items bearing a mark of one of the parties; such items are, for example novelties and articles of glassware or clothing, but this is not an exhaustive list.

IV. INTENT OF AGREEMENT

4:1 A controversy has arisen between the parties concerning the concurrent use and registration of the UT Marks for the goods/services. After due consideration and negotiation, the parties are entering into this Agreement as to their respective geographic trade territories for use of the UT Marks in order to avoid confusion, mistake or deception.

4.2 It is the opinion of the parties that, without this agreement, the UT Marks, if found in the same locality on or in association with the goods/services, would in all likelihood cause confusion or mistake or deceive consumers and potential consumers. To avoid this possibility of confusion, the parties feel that it is in the best interest of the public to pursue the agreement stated herein.

V. AGREEMENT

Based upon the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

5:1 TEXAS shall have the exclusive right to use the UT Mark for the goods/services in the geographic area of the United States falling west of the Mississippi River, with the exception of West Baton Rouge Parish, Louisiana. This is to be the exclusive territory of TEXAS, with the exception of limited use permitted in connection with bowl games and special events as set forth in Section 5:4 below.

5:2 TENNESSEE shall have the exclusive right to use the UT Mark for the goods/services in the geographic area of the United States falling east of the Mississippi, together with West Baton Rouge Parish, Louisiana. This is to be the exclusive territory of TENNESSEE, with the exception of limited use permitted in connection with bowl games and special events as set forth in Section 5:4 below.

5.3 Each party agrees not to use its UT Mark in the geographic territory designated as the exclusive territory of the other party, with the exception of bowl games or other special events as set forth in Section 5:4 below.

5:4 The parties recognize that because of the nature of collegiate athletic competition and academic exchange, there will be isolated events ("special events") in which, for example, a sports team from one party will be engaged in competition within the exclusive territory of the other. The parties agree that, should either party have a bowl game or other special event in the exclusive territory of the other party, the party having such a bowl game or other special event shall have the right to use its UT Mark within a fifty mile radius of the location of the bowl game or other special event for the week preceding the bowl game or other special event through the conclusion of the last day of the bowl game or other special event.

5:5 It is expressly understood that this Agreement is being entered into to avoid confusion, mistake or deception among consumers or potential consumers. To avoid a possibility of confusion, the parties feel it is in the best interest to be bound by the terms stated herein.

5:6 The parties agree to use their best efforts to avoid actual confusion, mistake or deception of the consuming public.

VI. REGISTRATIONS

6.1 The parties consent to the other party's registration in the United States Patent and Trademark Office of its UT Mark for the goods/services consistent with the scope of this Agreement. Each party will grant the other a consent to register consistent with this Agreement in a form presented to it by the other party and acceptable to the consenting party, if requested to do so.

6.2 It is contemplated that the parties will concurrently register the UT Marks in the United States Patent and Trademark Office for the geographic areas specified in Sections 5.1 and 5.2 above. Accordingly, TENNESSEE will amend its pending application Serial No. 501,111 to recite the area of its exclusive rights consistent with Section 5.2 above.

6.3 Each party may register its UT Mark in a state within its exclusive area specified in this Agreement. Neither party will register its UT Mark as a state registration in Louisiana.

6.4 Each party may register and use anywhere any of its marks which includes the letters "UT" so long as such mark falls outside the definition of "UT Mark" as recited in Section 3.1 above.

THE BOARD OF REGENTS, THE
UNIVERSITY OF TEXAS SYSTEM

DATE:

November 7, 1985

By: Hans Mark
Chancellor, The University
of Texas System

THE UNIVERSITY OF TENNESSEE

DATE:

November 13, 1985

By: [Signature]
President

Approved as to Form:

[Signature]
Office of General Counsel
The University of Texas System

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Agreement was approved by the Board of Regents of The University of Texas System on the 13th day of February, 1986, and that the person whose signature appears above is authorized to execute such agreement on behalf of the Board.

[Signature]
Executive Secretary, Board of Regents
The University of Texas System

Int. Cl.: 41

Prior U.S. Cl.: 107

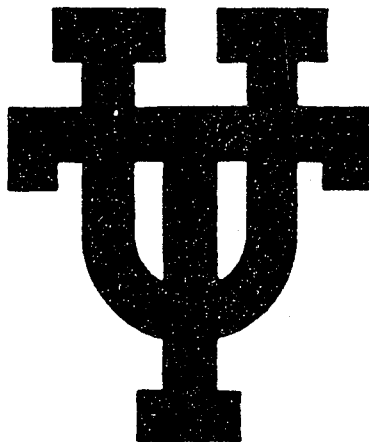
United States Patent and Trademark Office

Reg. No. 1,230,439

Registered Mar. 8, 1983

SERVICE MARK
Principal Register

UT



Board of Regents, The University of Texas System
(Texas governing body, University of Texas)
201 W. 7th St.
Austin, Tex. 78701

For: ENTERTAINMENT SERVICES—NAME-
LY, CONDUCTING AND SPONSORING COL-
LEGE ATHLETIC COMPETITIONS AND
ACTIVITIES, MUSICAL CONCERTS AND EN-
TERTAINMENT, in CLASS 41 (U.S. Cl. 107).

First use 1900; in commerce 1906

The mark consists of the fanciful representation of
the letters UT.

Ser. No. 321,788, filed Aug. 3, 1981.

CARLISLE WALTERS, Examining Attorney

ATTACHMENT A

SN 494,523 Fountain Industries, Inc., Albert Lea, Miss. Filed Aug. 13, 1984

SN 496,619 Northwestern University, Evanston, Ill. Filed Aug. 27, 1984



Owner of U.S. Reg. Nos. 954,991, 1,888,420 and others.
No claim is made to the exclusive right to use "Brand", apart from the mark as shown.

Class 9—Electrical and Scientific Apparatus
For Beverage Dispensing Machines (U.S. Cl. 23)
First use Jul. 18, 1984; in commerce Jul. 18, 1984.

Class 30—Staple Foods
For Coffee and Decaffeinated Coffee (U.S. Cl. 46)
First use Jun. 29, 1984; in commerce Jun. 29, 1984.

SN 495,485 Tenkoz, Inc., Macon, Ga. Filed Aug. 20, 1984.

TENKOZ

Class 1—Chemicals
For Chemical Products for Agriculture—Namely, Fertilizers (U.S. Cl. 6).
First use Mar. 26, 1984; in commerce Mar. 26, 1984.

Class 5—Pharmaceuticals
For Insecticides, Herbicides and Fungicides (U.S. Cl. 18).
First use Jun. 8, 1984; in commerce Jun. 8, 1984.

SN 495,661. Whole Oats Enterprises, New York, N.Y. Filed Aug. 20, 1984.

DARYL HALL JOHN OATES

Daryl Hall and John Oates are the names of living individuals, the two partners of applicant, both whom have consented to the use and registration of their names by signing this application.

Class 6—Metal Goods
For Key Chains (U.S. Cl. 13).
First use Mar. 1983; in commerce Mar. 1983.

Class 16—Paper Goods and Printed Matter
For Posters and Printed Concert Programs (U.S. Cl. 38).
First use 1976; in commerce 1976.

Class 20—Furniture and Articles Not Otherwise Classified
For Ornamental Novelty Buttons (U.S. Cl. 50).
First use 1971; in commerce 1971.

Class 25—Clothing
For Tee-Shirts, Sweat Shirts, Shorts, Hats and Visor Caps (U.S. Cl. 39).
First use 1976; in commerce 1976.

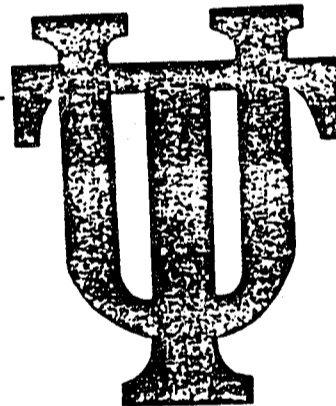


Class 16—Paper Goods and Printed Matter
For Writing Paper, Notebooks, Decals, and Booklets, Pamphlets, and Programs Dealing with Northwestern University (U.S. Cls. 37 and 38).
First use Sep. 1, 1981; in commerce Sep. 1, 1981.

Class 21—Housewares and Glass
For Mugs and Glass Beverageware (U.S. Cls. 30 and 33).
First use Aug. 15, 1983; in commerce Aug. 15, 1983.

Class 25—Clothing
For Clothing—Namely, Jackets, Caps, Belts, Sweatsuits, Shirts, Ties, Shorts, T-Shirts, Sweaters, Gym Shorts, and Sweatshirts (U.S. Cl. 39).
First use Sep. 1, 1981; in commerce Sep. 1, 1981.

SN 501,111. The University of Tennessee, Knoxville, Tenn. Filed Sep. 26, 1984.



Class 6—Metal Goods
For Key Chains (U.S. Cl. 13).
First use 1961; in commerce 1961.

Class 14—Jewelry
For Watches and Bracelets (U.S. Cls. 27 and 28).
First use 1971; in commerce 1971.

Class 16—Paper Goods and Printed Matter
For Window and Bumper Stickers (U.S. Cl. 38).
First use 1972; in commerce 1972.

Attachment B

Filed Aug

Class 18—Leather Goods
For General Purpose Gym Bags, and Garment Bags for Travel
(U.S. Cl. 3)
First use 1962; in commerce 1962

Class 21—Housewares and Glass
For Ceramic Mugs, Glass Mugs, Drinking Glasses, Goblets,
and Insulating Sleeve-Holders for Beverage Cans (U.S. Cls. 2, 30
and 33)
First use 1965; in commerce 1965.

Class 25—Clothing
For Sweat Shirts, Sweat Suits, Socks, T-Shirts, Jackets and
Baby Bibs (U.S. Cl. 39)
First use 1936; in commerce 1936

SN 503,138. Stewart Sandwiches International, Inc., Norfolk, Va.
Filed Oct. 9, 1984.

Super Stew



Owner of U.S. Reg. No. 1,225,550
No claim is made to the exclusive right to use the
representation of the goods, apart from the mark as shown.
The lining on the drawing is a feature of the mark.

Class 11—Environmental Control Apparatus
For Frozen Beverage Dispensing Machines (U.S. Cl. 31).
First use Jun. 1, 1984; in commerce Jun. 1, 1984.

Class 32—Light Beverages
For Semi-Frozen Slush Type Soft Drink for Consumption On
or Off the Premises (U.S. Cl. 45).
First use Jun. 1, 1984; in commerce Jun. 1, 1984.

• • • • •

Booklets
University

and 33)
1983.

Sweatsuits, Shirts,
and Sweatshirts

Tenn. Filed

ITEMS FOR THE RECORD

1. U. T. Tyler - Development Board: Acceptance of Membership.--At the December 1985 U. T. Board of Regents' meeting, Mr. Frank M. Burke, Jr., Dallas, Texas, was approved for membership on The University of Texas at Tyler Development Board for a three-year term to expire in 1988. Mr. Burke's acceptance of membership is herewith reported for the record.

2. U. T. Health Science Center - Houston: Acceptance of Membership to Development Board.--At the December 1985 U. T. Board of Regents' meeting, Mr. Robert R. Combs, Houston, Texas, was approved for membership on The University of Texas Health Science Center at Houston Development Board for a three-year term to expire in 1988. Mr. Combs' acceptance of membership is herewith reported for the record.

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regent Rhodes, Vice-Chairman of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

Report

The Board for Lease of University Lands has not met since the last Regents' meeting in December 1985.

The School Land Board has mailed the Notice for Bids on an oil and gas lease sale for April 1, 1986, and the University staff will be monitoring this sale to determine the feasibility of holding a University sale later on in the year. Two important factors to be considered will be the general response of bidders and the amount of bonus per acre received from this sale. The University received only \$80 per acre at the last lease sale in October. This was approximately the same amount received by the State at its last sale which was also held in October 1985.

Another item to call to the Board's attention is the filing of a bankruptcy reorganization by Mid-America Petroleum, Inc. on January 31, 1986. Mid-America is the operator of the Taylor-Link, West (San Andres) Field in Pecos County, Texas, which is adjacent to the University's experimental vineyards. Mid-America and other operators have spent approximately \$24 million on this waterflood project. The drastic decline in crude oil prices and disagreements with some of the partners have caused Mid-America to file a petition in the Federal Bankruptcy Court in Fort Worth to gain sufficient time for a reorganization of its assets.

Conversation with Mid-America by University staff indicates that Mid-America hopes to obtain additional funds so that this project can still be completed as scheduled.

OTHER MATTERS

1. U. T. Board of Regents: Report by Regent Beryl Buckley Milburn on Women in Administration in the U. T. System.---
As a follow-up to her report to the U. T. Board of Regents on August 8, 1985, Regent Milburn presented the following update on women in administration in The University of Texas System:

Update on Women in Administration in
The University of Texas System

You will recall that in October 1984 I expressed concern about underrepresentation of women in senior administrative positions throughout the U. T. System and Texas Higher Education generally. You are also aware that, through the Offices of Academic and Health Affairs, I have worked with the Presidents of our institutions to gather data on the numbers of women in administrative positions at U. T. component institutions. In addition, the Presidents have discussed ideas for enhancing opportunities for women in higher education administration.

Last September I shared with this Board data on the representation of women in U. T. institutions, particularly in academic administrative positions, along with projected reasons for their comparative underrepresentation and some suggestions to consider to improve the situation.

I am pleased to report that the Presidents of our component institutions have continued their efforts to address this historical inequity. Following discussions and actions from the November 1985 and the January 1986 meetings of the Council of Health Institutions and Council of Academic Institutions, I want to share with you a number of System-wide initiatives underway:

- a. Each component institution has or will formally assign this issue a top administrative priority. This includes stating or restating both the President's personal and the institutional commitments to the issue. Some institutions have already begun this process. For example, I participated recently with President Cunningham in a forum for women faculty and professional staff on the Austin campus addressing that institution's commitments.
- b. Building on the review of the current status of women in U. T. administrative positions prepared for me earlier, each component will review formal campus hiring and promotion practices and assess current activities and practices relevant to the advancement of qualified women. It's important to recognize that the purpose of this assessment is not to emphasize problems that have been years in the making. Rather it is a tool, a benchmark if you will, against which to measure future progress.
- c. In response to faculty members' suggestions and in an effort to ensure more consistent dissemination of information about administrative vacancies to interested women throughout the U. T. System, the component Presidents have also agreed

to a System-wide collection and dissemination of information regarding women interested in administrative positions.

d. Finally, the Presidents recognize that increasing the numbers of women in senior administrative positions will require more than a statement of commitment and an assessment of current status. Therefore, each component institution will refine and extend existent campus plans for increasing the participation of women in administrative positions. Campus plans will be tailored to the particular mission and history of the institution, but might include such things as:

- (1) Developing specific goals regarding appointment of women to key campus committees. As I mentioned last August, it is through these committees that faculty and other campus professionals gain the necessary experience to succeed in administrative positions.
- (2) Developing increased administrative opportunities for experienced women on campus. As I mentioned in my comments to the Board in September, my initial concern was with the paucity of women in senior administrative roles. It is important to encourage the young professional, particularly faculty women in the tenure track. However, it is from the ranks of the women on campus with an administrative track record that senior administrators will be drawn. Therefore, the institutional leadership will be paying particular attention to women in mid-management positions and supporting opportunities for their advancement.
- (3) Supporting the involvement of qualified and interested women in important community leadership opportunities. Such community involvements often introduce potential administrators to the networking so critical to success in upper-level administrative ranks. These involvements require a commitment from the institution of a professional's time. Programs such as Leadership Texas, designed to work with the individuals with a proven track record, also generally require a monetary commitment by the institution.

The steps outlined by the Presidents represent a concrete commitment to address this long-standing problem. I compliment the Presidents and other campus leadership on the soundness of their plans, and I continue to be pleased with the progress being made to enhance the opportunities for women. I also look forward to hearing reports through the Councils of Academic and Health Institutions on the institutional assessment and programs as well as on the System-wide survey.

I would like to note at this point that in my crusade I have chosen to focus on one underrepresented group, women. The Presidential discussions and institutional plans do and have included others who have been historically underrepresented in senior administrative positions. Future plans will continue to focus on the need to increase the involvement of ethnic minority professionals as well as women.

The promotion of women to key administrative positions on several of our campuses in the past year or so is perhaps the best reflection of the degree of commitment and the success of these efforts. But still it is not enough. The true measure of success will be the number of additional key appointments that can be reported in the next year and the years thereafter. In the long term it is these appointments which reflect a commitment to action, and the success of those appointments will signal The University of Texas System's leaders in appointing the best qualified and most talented administrators to guide us in the difficult years ahead.

2. U. T. System: Statement by Chairman Hay Related to Appropriations for 1986-87.--Chairman Hay reported that he had received communication from the Governor asking the Board, along with all other State agencies, to direct the Chief Executive Officer of The University of Texas System to develop a contingency plan to identify steps that the U. T. System might take to slow down the expenditure of its 1986-87 appropriations in view of the recent drop in the price of oil which has had a major negative impact on the anticipated flow of money in the months ahead.

Pursuant to the request, Chairman Hay asked the Chancellor and the Executive Vice Chancellors of the U. T. System to focus on this issue with a view to being prepared to respond if some sort of remedial action should be required of all State agencies.

SCHEDULED MEETING.--Chairman Hay announced that the next meeting of the U. T. Board of Regents would be hosted by The University of Texas Medical Branch at Galveston on April 10-11, 1986, and would be preceded by the rededication of Old Red with Governor White as principal speaker.

RECESS.--At 3:15 p.m., Chairman Hay announced that the Board would recess to convene in Executive Session to discuss matters pursuant to Vernon's Texas Civil Statutes, Article 6252-17, Sections 2(e), (f) and (g) and that the Executive Session would continue on Friday morning (February 14).

* * * * *

Friday, February 14, 1986

At 9:00 a.m. on Friday, February 14, 1986, the members of the Board, including Regent Yzaguirre, reconvened in Executive Session in Room 10.121 of The University of Texas Houston - Main Building to discuss matters in accordance with Article 6252-17, Sections 2(e), (f) and (g) of Vernon's Texas Civil Statutes: Litigation, Land Acquisition and Personnel Matters.

RECONVENE.--At 12:10 p.m., the Board reconvened in open session for the purpose of acting on items discussed in Executive Session.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Hay reported that the Board had met in Executive Session in Room 10.121 of The University of Texas Houston - Main Building on Thursday afternoon (February 13) following the meetings of the Standing Committees and continued its meeting on Friday morning (February 14) 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 Hay's inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Health Science Center - San Antonio: Authorization for Office of the Chancellor and Office of General Counsel to Conclude Negotiations on Gift of Real Estate in Lot 14, Block 1, New City Block 11640, Bowers, P.U.D. Subdivision, Unit 2-A (Commonly Known as 22 Parman Place), San Antonio, Bexar County, Texas.--Regent Briscoe moved that the Office of the Chancellor and the Office of General Counsel be authorized to conclude negotiations on behalf of The University of Texas Health Science Center at San Antonio on a gift of real estate located in Lot 14, Block 1, New City Block 11640, Bowers, P.U.D. Subdivision, Unit 2-A, (commonly known as 22 Parman Place), San Antonio, Bexar County, Texas, in accordance with the parameters discussed in Executive Session.

Vice-Chairman Ratliff seconded the motion which carried by unanimous vote.

2. U. T. San Antonio and U. T. Institute of Texan Cultures - San Antonio: Approval of Planned Program Initiatives and Authorization to Shift the Reporting and Budgetary Responsibility for the U. T. Institute of Texan Cultures - San Antonio from the Executive Vice Chancellor for Academic Affairs to the President of U. T. San Antonio and Statement by Chairman Hay.--Vice-Chairman Baldwin reported that in Executive Session, Chancellor Mark and Executive Vice Chancellor Duncan discussed with the Board personnel and organizational issues related to The University of Texas Institute of Texan Cultures at San Antonio and The University of Texas at San Antonio and sought Board concurrence

in program initiatives planned for these U. T. component institutions in San Antonio. The initiatives include:

- a. Identifying a more definitive higher education mission for the U. T. Institute of Texan Cultures within the U. T. System. This expanded mission is to include a better defined role in support of teacher training programs at U. T. System components involved with teacher preparation. Such a direct support role for System teacher training programs is a natural evolution from already well-articulated Institute programs in support of the State's elementary and secondary schools.

The Office of the Chancellor proposes establishment of a System-wide Committee which shall include representatives from the Development Board of the U. T. Institute of Texan Cultures - San Antonio to guide the accomplishment of this mission enhancement.

- b. Assigning the Executive Director for the U. T. Institute of Texan Cultures and the President of U. T. San Antonio, in consultation with the President of The University of Texas Health Science Center at San Antonio, responsibility for developing a long-range plan for establishment of a more unified University of Texas presence in San Antonio.

These assignments recognize the shared roles and responsibilities of all San Antonio area U. T. components in addressing the special higher education needs of San Antonio.

- c. Additionally, recognizing that shared program responsibilities by multiple institutions brings added need for closer administrative coordination, the proposed initiatives include directing the administrative leadership of these institutions to integrate, as appropriate, logistical support functions of the respective institutions to effect economic and operational efficiencies to the mutual benefit of the separate components, the U. T. System and the State of Texas. The Institute and U. T. San Antonio already have an established pattern of common and/or purchased support services and the shared use of adjacent downtown property.
- d. Finally, to provide for local coordination of the implementation of these program enhancements for the Institute and the administrative affiliation of logistical support units, the Office of the Chancellor recommends that the reporting and budgetary responsibility for the U. T. Institute of Texan Cultures be shifted from the Executive Vice Chancellor for Academic Affairs to the President of U. T. San Antonio.

Vice-Chairman Baldwin moved that the Board concur in the planned program initiatives by the Office of the Chancellor and approve the reassignment of reporting and budgetary responsibilities to the President of U. T. San Antonio.

Regent Yzaguirre seconded the motion which prevailed without objection.

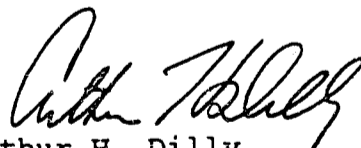
Following the foregoing action, Chairman Hay presented the statement set forth below:

Statement by Chairman Hay

In approving these plans, the Board wishes to underscore that this is an enhancement of the Institute of Texan Cultures' role within The University of Texas System, not a diminution or subordination. These initiatives will broaden the Institute's statewide role through involvement with the teacher preparation missions of seven other U. T. academic components. These actions also ask that the Institute share with U. T. San Antonio and the U. T. Health Science Center - San Antonio in a renewed commitment to addressing the special higher education needs of the San Antonio area, and in particular downtown San Antonio, through more coordinated use of U. T. System owned facilities and property in the HemisFair area.

To effect such enhancements in a time of shrinking State resources and increased demands for higher education to help stimulate the State's economy will require skillful administrative coordination of efforts and use of resources between the cooperating institutions. In addition to the management efficiencies and economies projected from the administrative affiliation of these institutions, increased understanding and support from the development boards and other advisory groups for these institutions will be critical. This Board calls upon the institutional leadership and the support groups related to these institutions to pledge the effort and commitments so vital to the success of this proposed enrichment of the Institute's statewide mission and the planned enhancement of the administrative relationship between these U. T. System components. In turn, the Board and the Office of the Chancellor pledge continued commitment to each of these institutions as viable components of a System of higher education dedicated to meet its share of the State's higher education needs.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 12:18 p.m.



Arthur H. Dilly
Executive Secretary

February 26, 1986