



*The* UNIVERSITY of OKLAHOMA

**GROUND LEASE**

**between**

**BOARD OF REGENTS  
OF THE  
UNIVERSITY OF OKLAHOMA**

**Landlord**

**and**

**THE NORMAN MUNICIPAL AUTHORITY**

**Tenant**

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

## Table of Contents

	Page
ARTICLE 1 LEASE OF LAND .....	1
1.1 <u>Lease of Land</u> .....	1
1.2 <u>Tenant’s Investigation</u> .....	1
1.3 <u>Mineral Rights</u> .....	1
ARTICLE 2 TERM.....	2
2.1 <u>Term</u> .....	2
2.2 <u>Acceptance of the Land</u> .....	2
2.3 <u>Certificate of Occupancy</u> .....	2
2.4 <u>Surrender of the Premises</u> .....	2
ARTICLE 3 OPTIONS TO EXTEND LEASE TERM.....	3
3.1 <u>Renewal Terms</u> .....	3
ARTICLE 4 BASE RENT/ADDITIONAL RENT.....	3
4.1 <u>Base Rent</u> .....	3
4.2 <u>Rent Payment</u> .....	3
4.3 <u>Failure to Pay Rent</u> .....	3
4.4 <u>Address for Payments</u> .....	3
ARTICLE 5 TAXES.....	3
5.1 <u>Taxes</u> .....	3
5.2 <u>Impact Fees</u> .....	4
ARTICLE 6 POSSESSION AND USE.....	4
6.1 <u>Permitted Uses</u> .....	4
6.2 <u>Duties and Prohibited Conduct</u> .....	5
6.3 <u>Environmental Requirements</u> .....	5
ARTICLE 7 UTILITIES AND SITE SERVICE.....	7
7.1 <u>Utilities</u> .....	7
7.2 <u>Trash Collection, Street Lighting, Storm Sewer, and Landscaping</u> .....	9
7.3 <u>Governmental Services and Oversight</u> .....	9
7.4 <u>No Liability</u> .....	10
7.5 <u>Future Easements</u> .....	10
ARTICLE 8 INSURANCE; LIABILITY .....	10
8.1 <u>Definitions</u> .....	10
8.2 <u>Tenant’s Insurance</u> .....	10
8.3 <u>Waiver of Subrogation</u> .....	11
8.5 <u>Scope of Indemnities and Waivers</u> .....	11

8.6	<u>Indemnity and Waiver</u> .....	11
ARTICLE 9 TITLE TO PREMISES .....		12
9.1	<u>Real Property</u> .....	12
9.2	<u>Ownership and Removal of Improvements</u> .....	12
9.3	<u>Title Insurance</u> .....	12
ARTICLE 10 CONSTRUCTION OF IMPROVEMENTS .....		12
10.1	<u>Improvements</u> .....	12
10.2	<u>Alterations of Improvements</u> .....	13
10.3	<u>Construction Requirements</u> .....	13
10.4	<u>Insurance for Improvements</u> .....	13
10.5	<u>Removal of Improvements upon Expiration of Lease Term</u> .....	13
ARTICLE 11 MECHANICS' LIENS .....		14
11.1	<u>Tenant's Covenants</u> .....	14
11.2	<u>Contest of Lien</u> .....	14
11.3	<u>Landlord's Right to Cure</u> .....	14
11.4	<u>Notice of Lien</u> .....	14
11.5	<u>Notice of Non-Responsibility</u> .....	14
ARTICLE 12 SIGNS AND ADVERTISING MEDIA .....		14
ARTICLE 13 PERSONAL PROPERTY .....		15
13.1	<u>Removal and Replacement</u> .....	15
13.2	<u>Improvements</u> .....	15
13.3	<u>Personal Property Taxes</u> .....	15
ARTICLE 14 ASSIGNMENT AND SUBLETTING.....		15
14.1	<u>Assignment and Subletting</u> .....	15
14.2	<u>Condition Precedent</u> .....	15
14.3	<u>Procedures</u> .....	15
14.4	<u>Documentation and Expenses</u> .....	15
14.5	<u>Assignment of Subrents</u> .....	15
14.6	<u>Nullity</u> .....	16
ARTICLE 15 TENANT'S CONDUCT OF OPERATIONS.....		16
15.1	<u>Operating Covenant</u> .....	16
ARTICLE 16 REPAIRS; MAINTENANCE.....		16
16.1	<u>Tenant's Obligations</u> .....	16
16.2	<u>Tenant's Failure to Maintain</u> .....	16
16.3	<u>Right to Enter</u> .....	17

ARTICLE 17 CASUALTY .....	18
17.1 <u>Obligations of Tenant</u> .....	18
17.2 <u>Conditions of Disbursement of Insurance Proceeds</u> .....	18
17.3 <u>[Reserved]</u> .....	18
17.4 <u>Termination of Lease</u> .....	18
ARTICLE 18 RULES AND REGULATIONS .....	19
18.1 <u>Rules and Regulations</u> .....	19
ARTICLE 19 NON-SUBORDINATION AND LEASEHOLD FINANCING .....	19
19.1 <u>Non-Subordination</u> .....	19
19.2 <u>Leasehold Mortgages</u> .....	19
ARTICLE 20 BANKRUPTCY; INVOLUNTARY TRANSFERS .....	22
20.1 <u>Right of Termination</u> .....	22
20.2 <u>Request for Information</u> .....	22
ARTICLE 21 DEFAULTS BY TENANT; REMEDIES .....	22
21.1 <u>Events of Default</u> .....	22
21.2 <u>Rights of Landlord</u> .....	22
21.3 <u>Landlord’s Right of Re-entry</u> .....	23
21.4 <u>No Waiver</u> .....	23
ARTICLE 22 DEFAULTS BY LANDLORD; REMEDIES .....	23
ARTICLE 23 CONDEMNATION .....	24
23.1 <u>Definitions</u> .....	24
23.2 <u>Total Taking</u> .....	24
23.3 <u>Partial Taking</u> .....	24
23.4 <u>Allocation of Award; Total Taking</u> .....	24
23.5 <u>Allocation of Award; Partial Taking</u> .....	25
23.6 <u>Temporary Taking</u> .....	25
23.7 <u>Settlement</u> .....	25
ARTICLE 24 ATTORNEY FEES .....	25
ARTICLE 25 SALE OR MORTGAGE BY LANDLORD .....	25
ARTICLE 26 MORTGAGE; SUBORDINATION; ATTORNMENT .....	26
ARTICLE 27 QUIET ENJOYMENT .....	26
ARTICLE 28 CAPTIONS AND TERMS .....	27
28.1 <u>Reference Only</u> .....	27
28.2 <u>Parties</u> .....	27

ARTICLE 29 NOTICES.....	27
ARTICLE 30 OBLIGATIONS OF SUCCESSORS .....	27
ARTICLE 31 RIGHTS AND PRIVILEGES OF LANDLORD.....	27
ARTICLE 32 MISCELLANEOUS .....	28
32.1 <u>Relationship of the Parties</u> .....	28
32.2 <u>Severability</u> .....	28
32.3 <u>[Reserved]</u> .....	28
32.4 <u>Entire Agreement</u> .....	28
32.5 <u>Equal Opportunity</u> .....	28
32.6 <u>Governing Law</u> .....	29
32.7 <u>Waiver or Consent Limitation</u> .....	29
32.8 <u>Force Majeure</u> .....	29
32.9 <u>Labor Disputes</u> .....	29
32.10 <u>Amendments</u> .....	30
32.11 <u>Time of Essence</u> .....	30
32.12 <u>Nonmerger of Fee and Leasehold Estates</u> .....	30
32.13 <u>Claims by Brokers</u> .....	30
32.14 <u>Business Days</u> .....	30
ARTICLE 33 REPORTS .....	30
33.1 <u>Reports</u> .....	30
ARTICLE 34 MAX WESTHEIMER RESEARCH PARK PROVISIONS .....	30
34.1 <u>Airport Administration; Rules and Regulations</u> .....	30
34.2 <u>Provisions Related to Federal Aviation Administration</u> .....	31
34.3 <u>Site Service</u> .....	31
34.4 <u>Rights and Privileges of Landlord</u> .....	32
34.5 <u>Signs</u> .....	32
34.6 <u>Interference</u> .....	32
34.7 <u>National Weather Service Development Guidelines</u> .....	33
ARTICLE 35 RIGHT OF FIRST REFUSAL.....	33
35.1 <u>Right of First Refusal</u> .....	33
35.2 <u>Reinstatement Following Waiver</u> .....	33
35.3 <u>Refusal Space Lease</u> .....	34
35.4 <u>Landlord Nominee</u> .....	34
ARTICLE 36 OPTIMIST CLUB LEASE .....	34

**BASIC LEASE INFORMATION**

**EFFECTIVE DATE:** \_\_\_\_\_, 20\_\_\_\_  
(Date both parties have signed)

**LANDLORD:** Board of Regents of the University of Oklahoma

**LANDLORD’S ADDRESS:** Board of Regents of the University of Oklahoma  
Attention: Real Estate Operations  
217 W. Boyd, Suite A  
Norman, OK 73069

With a copy to:

Board of Regents of the University of Oklahoma  
Attention: Office of Legal Counsel  
660 Parrington Oval  
Norman, OK 73069

**RENT PAYMENT ADDRESS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TENANT:** The Norman Municipal Authority

**TENANT’S ADDRESS:** Norman Municipal Authority  
Attention: Parks and Recreation Department 201 W.  
Gray  
Norman, OK 73069

With a copy to:

Norman Municipal Authority  
Attention: City Attorney’s Office  
201 W. Gray  
Norman, OK 73069

**PREMISES:** The Land (herein so called) that is depicted on the Site Plan (herein so called) attached hereto as Exhibit A and described in Exhibit B, located in the City of Norman, Cleveland County, Oklahoma, together with any Improvements (herein so called) now or hereafter located thereon.

**PERMITTED USE:** Multi-sport athletic facility, indoor aquatics facility, and/or senior citizens center, all subject to and in accordance with Applicable Laws and the Development Restrictions.

**DELIVERY DATE:** The date of Landlord’s delivery of the Land to Tenant, which shall be the Effective Date.

**FEASIBILITY PERIOD PERIOD:** Not applicable.

**COMMENCEMENT DATE:** The Commencement Date shall be the earlier of (i) the date on which a Certificate of Occupancy is issued for the Premises or any portion thereof or (ii) the date that is one (1) year after the Effective Date.

**LEASE TERM:** The Initial Term (herein so called) of this Lease shall begin on the Commencement Date and continue for a period of fifty (50) years. The “Lease Term” means the Initial Term and any Renewal Terms (defined below) that are exercised in accordance with this Lease, if any.

**RENEWAL OPTIONS:** As stated in **Section 3.1 below**.

**BASE RENT:** As stated in **Article 4**.

**DEVELOPMENT RESTRICTIONS:** As defined in **Section 9.1**.

**EXHIBITS:** EXHIBIT A - Site Plan  
EXHIBIT B - Description of the Land  
EXHIBIT C - Provisions Relating to the Design and Construction of Tenant’s Improvements  
EXHIBIT D - Statement of Tenant Regarding Lease

**CONTINGENCIES:** Not applicable.

**SPECIAL PROVISIONS:**

- (a) None

The Basic Lease Information is incorporated into and made a part of the Lease. All capitalized terms used but not otherwise defined in the Lease shall have the meanings respectively ascribed to such terms in the Basic Lease Information. In the event of any conflict between any Basic Lease Information and the Lease, the Lease shall control.

## **GROUND LEASE**

**THIS GROUND LEASE** (the "Lease"), is made and entered into as of the Effective Date by and between Landlord and Tenant.

### **RECITALS**

- A. Landlord is the fee owner of the Land.
- B. Landlord desires to lease the Land in order to enable Tenant to construct and operate the Improvements thereon on the terms and conditions contained herein.
- C. The University of Oklahoma is sometimes referred to herein as the "University" to the extent it provides or exercises certain services or authority in relation to the Premises but separately and independently from Landlord's capacity as "Landlord" under this Lease.

### **TERMS**

With reference to the foregoing Recitals and upon the terms and conditions contained herein, Landlord and Tenant hereby agree as follows:

### **ARTICLE 1** **LEASE OF LAND**

1.1 Lease of Land. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Land, together with all easements, rights and appurtenances relating thereto, including, without limitation, those easements and rights appurtenant to the Land for access, ingress, egress and utilities (and subject to the limitations and restrictions) set forth in the Development Restrictions (if any), for the consideration and subject to the terms and conditions hereinafter set forth. Tenant's leasehold interest in the Land and the terms of this Lease are subject to all Development Restrictions and the Optimist Lease (defined below).

1.2 Tenant's Investigation. Tenant accepts the Land "as is" without representation or warranty of Landlord except as expressly set forth in this Lease. Tenant acknowledges that it has had (or will have) the advice of such independent professional consultants and experts as it deems necessary in connection with its investigation and study of the Land; has (or shall), to the extent it has deemed (or shall deem) necessary, independently investigated the laws and regulations relating to the construction and operation of the Improvements on the Land, including environmental, zoning and other land use entitlement requirements and procedures, height restrictions, floor area coverage limitations and similar matters; and has not relied upon any statement, representation or warranty of Landlord of any kind or nature in connection with its decision to execute and deliver this Lease and its agreement to perform the obligations of Tenant hereunder, except as expressly set forth in this Lease.

1.3 Mineral Rights. All oil, gas, and mineral rights are expressly reserved from this Lease. Any lease of oil and gas interests shall provide that the tenant of such interests shall not impair the surface of the Premises demised herein but this prohibition shall not prevent such Tenant from utilizing directional drilling or other comparable technology to explore for oil, gas and other hydrocarbons under the surface of the Premises.



**ARTICLE 2**  
**TERM**

2.1 **Term.** The Term of this Lease shall be as stated in the Basic Lease Provisions. If the Commencement Date is the first day of a calendar month, then “**Lease Year**” means each twelve (12) month period commencing on the Commencement Date and each anniversary thereof. Otherwise, “**Lease Year**” means (i) with respect to the first Lease Year, the period commencing on the Commencement Date and ending on the last day of the twelfth full calendar month following the Commencement Date, and (ii) as to subsequent Lease Years, a twelve (12) month period commencing on each anniversary of the first of the first day of the first full calendar month following the Commencement Date.

2.2 **Acceptance of the Land.** On the Delivery Date, Landlord agrees to deliver to Tenant, and Tenant agrees to accept from Landlord, possession of the Land in “As-Is” condition.

2.3 **Certificate of Occupancy.** Within ten (10) days following Tenant’s occupancy of the Premises, Tenant shall deliver to Landlord (a) a copy of the Certificate of Occupancy for the Premises issued by the appropriate governmental agency, (b) copies of all mechanics’ lien releases or other lien releases on account of Tenant’s Work, notarized and unconditional, in such form as Landlord shall have reasonably approved (in this regard, Landlord acknowledges that Tenant shall have sixty (60) days after completion of Tenant’s Work to provide such lien releases), (c) copies of all building permits evidencing inspection and approval by the issuer of said permits, an architect’s certification that the Premises have been constructed substantially and materially in accordance with Tenant’s Plans (as such term is defined in **Exhibit C**), and (d) an “as built survey” of the Land and Improvements. The parties acknowledge that it is mutually contemplated that the Premises may include (i) an indoor multi-sport athletic facility, which may include, among other uses, an indoor aquatics facility, either as separate facilities or an integrated facility (on an approximately 11 acre portion of the Land), and (ii) a senior citizens center (on an approximately 2 acre portion of the Land), and that the construction of such Improvements may be undertaken as separate construction projects (each sometimes referred to herein as a “**Project**”), which may occur at different times. Accordingly, except to the extent otherwise provided in this Lease, the foregoing covenants and provisions in this **Section 2.3**, and any other covenants and provisions in this Lease relating to the construction and completion of the Improvements, shall be construed to apply to each of the Projects, as the context may require.

2.4 **Surrender of the Premises.** At the expiration of the Term or the earlier termination of this Lease, Tenant will surrender possession of the Premises and all Improvements located thereon and deliver the same to Landlord in broom-clean condition, except as otherwise provided herein. It is expressly agreed and understood by both Landlord and Tenant that the failure by Tenant to surrender possession of the Premises at the expiration of the Lease Term or earlier termination of this Lease shall result in substantial damages to Landlord and those damages are impossible or impracticable to measure. If Tenant does not surrender possession of the Premises to Landlord as set forth herein, Tenant shall be deemed a holdover tenant on a month-to-month basis and shall pay to Landlord, as liquidated damages, for each month or portion of a month in which Tenant holds over in the Premises, an amount equal to 150% of the portion of the Base Rent which was payable under this Lease during the last month of the Lease Term plus all Additional Rent (as hereinafter defined), payable in accordance with the terms of this Lease. Such amount shall be payable in advance on the first day of each and every calendar month. In no event shall any provision contained in this Lease be deemed to permit Tenant to retain possession of the Premises after the expiration of the Lease Term or earlier termination of this Lease.

**ARTICLE 3**  
**OPTIONS TO EXTEND LEASE TERM**

3.1 **Renewal Terms.** Provided no Event of Default (as hereinafter defined) has occurred and is continuing under this Lease and this Lease is then in full force and effect, Tenant shall, by delivery of written notice to Landlord no later than nine (9) months before the expiration of the Initial Term or then-current Renewal Term (defined below in this **Section 3.1**), have the right and option to extend the term of this Lease for two (2) consecutive renewal terms of ten (10) years each (the “**Renewal Term**” or “**Renewal Terms,**” as appropriate), on the same terms and conditions (other than rent) contained in this Lease, commencing on the expiration of the Initial Term or prior Renewal Term, as applicable. The Base Rent payable during each Renewal Term shall be in the amount set forth in **Article 4** of this Lease.

**ARTICLE 4**  
**BASE RENT/ADDITIONAL RENT**

4.1 **Base Rent.** Provided Beginning with the Commencement Date, Tenant shall pay Landlord \$1.00 as “**Base Rent**” during the Lease Term, in annual installments.

4.2 **Rent Payment.** The Base Rent set forth above shall be payable by Tenant to Landlord in advance in annual installments on the anniversary of the Commencement Date. All amounts due and payable hereunder other than Base Rent constitute “**Additional Rent**”. Base Rent and Additional Rent collectively constitute “**Rental**” or “**Rent**”. Tenant shall pay all Rent without setoff, deduction, prior notice or demand. Rent for any partial month or Lease Year shall be prorated on a per diem basis.

4.3 **Failure to Pay Rent.** If any Rent payments remain unpaid for five (5) days after the due date thereof, Landlord, in addition to all other rights and remedies available to it, may charge Tenant a fee equal to five percent (5%) of the delinquent payment to reimburse Landlord for its cost and inconvenience incurred as a consequence of Tenant’s delinquency. Additionally, if Tenant fails to pay any Rent within thirty (30) days after the same becomes due and payable, such unpaid amounts shall thereupon bear interest at the rate (the “**Default Rate**”) equal to the lesser of eighteen percent (18%) per annum or the maximum lawful rate existing from time to time from the date due to the date of payment, compounded monthly, based upon actual days elapsed compared to a 360-day year. In no event, however, shall the charges permitted under this Section or elsewhere in this Lease, to the extent they are considered to be interest under Applicable Law, exceed the maximum lawful rate of interest.

4.4 **Address for Payments.** Tenant shall pay all Rental to Landlord at the Rent Payment Address stated in the Basic Lease Information, or at such other place as may from time to time be designated by Landlord in writing at least thirty (30) days prior to the next ensuing payment date.

**ARTICLE 5**  
**TAXES**

5.1 **Taxes.** (a) To the extent, if at all, any Taxes (defined below) are assessed on the Premises, Tenant shall pay such Taxes to the applicable Governmental Agencies (defined below) before the same shall become delinquent. In no event shall Landlord be responsible for any Taxes assessed upon the Premises.

As used in this Lease, the term “Taxes” levied on the Premises shall mean any form of tax, assessment, lien, bond obligation, license fee, license tax, tax or excise on rent, possessory interest tax or any other levy, charge or expense, together with any statutory interest thereon, imposed or required at any time by any federal, state, county or city authority having jurisdiction, or any political subdivision thereof, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof (hereinafter individually and collectively referred to as “Governmental Agencies”), on any interest of Landlord or Tenant or both (including any legal or equitable interest of Landlord or its mortgagee, if any) in the Premises, including without limitation: (a) any impositions by Governmental Agencies (whether or not such impositions constitute tax receipts) or any other payments to Governmental Agencies (whether involuntarily imposed by any such Governmental Agencies or voluntarily agreed to by Landlord) in substitution, partially or totally, of any impositions now or previously included within the definition of real property taxes, including without limitation, those calculated to increase tax increments to Governmental Agencies and to pay for such services as fire protection, street, sidewalk and road maintenance, trash removal or other governmental services formerly provided without charge to property owners or occupants; (b) any impositions allocable to or measured by the area of the Premises, or any rental payable hereunder, or upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof; (c) any impositions upon this Lease or any document to which Tenant is a party, creating or transferring an interest or an estate in the Premises; and (d) any and all costs (including, without limitation, the fees of experts, tax consultants and attorneys) incurred by Landlord should Landlord elect to negotiate or contest the amount of said Taxes in formal or informal proceedings before the taxing Governmental Agency.

(c) Landlord may, at its option contest any Taxes or increase in Taxes pertaining to the Premises. Additionally, Tenant shall, at its sole cost and expense, have the right to contest any Taxes or the increase in any Taxes which Tenant is obligated to pay under this Lease, provided, however, Tenant shall (i) give Landlord written notice of any such intention to contest at least thirty (30) days before any delinquency could occur, (ii) indemnify and hold Landlord harmless from all liability on account of said contest, (iii) shall not allow any lien to attach to the Premises as a result of such contest, and in the event of the attachment of any such lien, immediately take such action as is necessary to remove the effect of any such lien which attaches to the Premises or the Improvements, and (iv) in the event of a final determination adverse to Tenant, prior to enforcement, foreclosure or sale, pay the amount involved together with all penalties, fines, interest, costs and expenses which may have accrued.

5.2 Impact Fees. Tenant shall pay any and all impact fees, if any, assessed against the Premises by the City of Norman, Cleveland County or any other Governmental Agency including, without limitation, any water and/or sewer capacity fees (collectively, the “Impact Fees”). Tenant shall pay such Impact Fees directly to the applicable Governmental Agency prior to delinquency, or reimburse Landlord for its payment of such Impact Fees, if Landlord elects to pay such Impact Fees directly to the applicable Governmental Agency, within fifteen (15) days of Landlord’s demand.

## **ARTICLE 6** **POSSESSION AND USE**

6.1 Permitted Uses. Tenant shall use the Premises solely for the Permitted Use. Tenant shall cause to be constructed an indoor multi-sport facility, an indoor aquatics facility and/or a senior citizens center, each as envisioned in the Norman Forward Sales Tax Proposal and each in accordance with Exhibit C. Tenant agrees to complete at least one (1) of the foregoing facilities on the Land within five (5) years from the effective date of this Agreement. Tenant

acknowledges that the foregoing covenant is a material term of this Agreement, and that its unexcused failure shall be considered a breach of this Lease. It is contemplated by the parties that the existing improvements on the Premises (collectively, the “Hangar”) will be demolished and removed. Subject to the Optimist Lease, when the Hangar is removed is left to the sole discretion of the Tenant. Removal of the Hangar shall be at the sole cost and expense of the Tenant.

At Tenant’s sole expense, Tenant shall procure, maintain and hold available for Landlord’s inspection of all governmental certificates, licenses and permits required for the proper and lawful conduct of Tenant’s operations at the Premises. To the extent, if at all, the Permitted Use includes retails sales, whether to the public or to Tenant’s invitees and employees, Tenant shall not permit the retail sale or marketing of products from or within the Premises that will violate any covenants of the University with third party contractors or vendors concerning the sale, distribution or marketing of products within the University, as the same may be in effect from time to time. Upon Tenant’s request, Landlord will inform Tenant of the extent and character of any such contractual obligations that are then currently applicable pursuant to the preceding sentence.

6.2 Duties and Prohibited Conduct. Tenant will use the Premises for the primary purpose of the Permitted Use. The Permitted Use shall include other purpose(s) that are incidental or related to the Premises’ use as an indoor multi-sport facility, an indoor aquatics facility and/or a senior citizens center within the limits of good taste, security, and safety. Tenant shall be allowed to contract with other groups or individuals for the use of the Premises. University groups shall be allowed to utilize the Premises upon request and reasonable notice to Tenant, and only to the extent any such use does not conflict with any anticipated or scheduled use by Tenant. Any such use by University groups shall be at the rate not to exceed the rate normally charged by Tenant to other users. University groups shall not be allowed to preempt scheduled events of Tenant but Tenant will make every reasonable effort to accommodate University groups for usage of the Leased Premises.

Tenant shall not use the Premises for any purpose or in any manner that violates any laws, statutes, regulations, rules, executive orders, codes, ordinances, orders, permits, and requirements of any federal, state, or local governmental authority having jurisdiction over the Premises or the University, as well as the orders of the fire marshal, and similar bodies affecting the Premises or the management, leasing, use, occupancy, construction, maintenance, repair, or reconstruction thereof, including, without limitation, building and life safety codes or standards from time to time promulgated by the University or the City of Norman (collectively, “Applicable Laws”), and Tenant shall at all times comply with, and cause the Premises to comply with, all Applicable Laws in relation to the condition, occupancy and use thereof. Tenant shall not cause or permit waste to occur in the Premises. Tenant shall keep the Premises, and every part thereof, in a clean condition, free from any objectionable noises, music volumes, odors or nuisances, and shall comply with all health and police regulations in all material respects. Unless otherwise permitted by this Lease, Tenant shall keep no live animals of any kind in the Premises (other than service animals). Without limitation of the generality of the foregoing, Tenant shall not in any event permit the use of the Premises to interfere with the use or operation of University properties or facilities by the University or its tenants, occupants, or students.

### 6.3 Environmental Requirements.

(a) Prohibition against Hazardous Materials. Except for Hazardous Materials contained in products used by Tenant in *de minimis* quantities for ordinary cleaning and office purposes in accordance with Environmental Requirements, Tenant shall not permit or cause any

party to bring any Hazardous Materials upon the Premises or transport, store, use, generate, manufacture, or Release (defined below) any Hazardous Materials on or from the Premises without Landlord's prior written consent. As used herein, "Release" means depositing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and all requirements of this Lease. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture, or Release of Hazardous Materials on the Premises, and Tenant shall promptly deliver to Landlord a copy of any notice of violation relating to the Premises of any Environmental Requirement.

(b) Environmental Requirements. The term "Environmental Requirements" means all Applicable Laws regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment including the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including nuisance or trespass. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant that is or could be regulated under any Environmental Requirement or that may adversely affect human health or the environment, including any solid or hazardous waste, hazardous substance, asbestos, petroleum (including crude oil or any fraction thereof), natural gas, synthetic gas, polychlorinated biphenyls (PCBs), radioactive material, lead, fungi, virus or bacterial matter, mold, mycotoxins and infectious waste. For purposes of Environmental Requirements, to the extent authorized by Law, Tenant is and shall be deemed to be the responsible party, including the "owner" and "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by a Tenant Party and the wastes, by-products, or residues generated, resulting, or produced therefrom.

(c) Removal of Hazardous Materials. Without derogation or limitation of the prohibition in **Section 6.3(a)**, Tenant, at its sole cost and expense, shall remove all Hazardous Materials stored or Released by a Tenant Party onto or from the Premises, in a manner and to a level satisfactory to Landlord in its sole discretion, but in no event to a level and in a manner less than that which complies with all Environmental Requirements and does not limit any future uses of the Premises or require the recording of any deed restriction or notice regarding the Premises. Tenant shall perform such work at any time during the period of this Lease upon written request by Landlord or, in the absence of a specific request by Landlord, before Tenant's right to possession of the Premises terminates or expires. If Tenant fails to perform such work within the time period specified by Landlord or before Tenant's right to possession terminates or expires (whichever is earlier), Landlord may at its discretion, and without waiving any other remedy available under this Lease or at law or equity (including an action to compel Tenant to perform such work), perform such work at Tenant's cost. Tenant shall pay all costs incurred by Landlord in performing such work within ten days after Landlord's request therefor. Such work performed by Landlord is on behalf of Tenant and Tenant remains the owner, generator, operator, transporter, and/or arranger of the Hazardous Materials for purposes of Environmental Requirements. Tenant agrees not to enter into any agreement with any person, including any governmental authority, regarding the removal of Hazardous Materials that have been Released onto or from the Premises without the written approval of the Landlord.

(d) Tenant's Indemnity. To the extent allowed by Applicable Law, Tenant shall indemnify, defend, and hold Landlord parties harmless from and against, and shall cause its contractors to indemnify, defend, and hold Landlord parties harmless from and against, any and all losses, claims, demands, actions, suits, damages (including punitive damages), expenses

(including remediation, removal, repair, corrective action, or cleanup expenses), and costs (including actual attorneys' fees, consultant fees or expert fees and including removal or management of any asbestos brought onto the Premises or disturbed in breach of the requirements of this **Section 6.3**, regardless of whether such removal or management is required by Law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any Release of Hazardous Materials or any breach of the requirements under this **Section 6.3** by a Tenant Party regardless of whether Tenant had knowledge of such noncompliance. This indemnity provision is intended to allocate responsibility between Landlord and Tenant under Environmental Requirements and shall survive expiration or termination of this Lease. The obligations of Tenant under this **Section 6.3** shall survive any expiration or termination of this Lease.

(e) Inspections and Tests. Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this **Section 6.3**, or the environmental condition of the Premises. Access to the Premises shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant. Tenant shall promptly notify Landlord of any communication or report that Tenant makes to any governmental authority regarding any possible violation of Environmental Requirements or Release or threat of Release of any Hazardous Materials onto or from the Premises. Tenant shall, within five (5) days of receipt thereof, provide Landlord with a copy of any documents or correspondence received from any governmental agency or other party relating to a possible violation of Environmental Requirements or claim or liability associated with the Release or threat of Release of any Hazardous Materials onto or from the Premises.

(f) Tenant's Financial Assurance in the Event of a Breach. In addition to all other rights and remedies available to Landlord under this Lease or otherwise, Landlord may, in the event of a breach of the requirements of this **Section 6.3** that is not cured within 30 days following notice of such breach by Landlord, require Tenant to provide financial assurance in an amount agreed upon between Tenant and Landlord based on a third-party estimate of remediation costs. If the actual costs of the remediation are less than the estimated costs, any excess funds shall be returned by the Landlord to the Tenant within thirty (30) days of completion of the remediation. The requirements of this **Section 6.3** are in addition to and not in lieu of any other provision in this Lease. Tenant's obligations under this **Section 6.3** shall also apply to the areas where any of Tenant's off-premises equipment may be located.

## **ARTICLE 7** **UTILITIES AND SITE SERVICE**

7.1 Utilities. Tenant shall pay or cause to be paid, beginning on the Delivery Date and continuing thereafter during the Lease Term, all charges for water, gas, electrical power, telephone, internet, cable television, data services, sewer, trash collection and all other utilities and services supplied to or for the Premises (collectively, "Utilities"), and Tenant agrees to hold Landlord harmless with respect to any charges for said Utilities. If any such charges are not paid when due, Landlord may, but shall not be required to, pay the same, and any amount so paid by Landlord shall immediately thereafter become due to Landlord from Tenant as Additional Rental.

(a) Throughout the Term, the University, at its option, either directly or through the Utility Contactor, as provided below, reserves the right to provide any or all Utilities services to the Premises. To the extent and so long as the University, either directly or through the Utility Contractor, assumes responsibility for rendition, operation and/or maintenance of any Utilities facilities serving the Premises, the University shall be responsible (at its sole cost and expense) for the construction, installation, operation, management, maintenance, repair and upgrade of all utility and network infrastructure, distribution systems, equipment and materials up to and including the connection point between the University's utility system and the Premises as identified in **Exhibit A** (the "Point of Demarcation"). The University shall deliver and responsible for the Utilities services for water, gas, electricity, telephone, cable television, data services and sanitary sewer to the Point of Demarcation. Tenant shall purchase and install all necessary metering at the Point of Demarcation. All such meters for which Tenant is responsible shall be revenue grade and shall be calibrated at regular intervals in accordance with manufacturer recommendations. Tenant shall be responsible for the construction, installation, operation, management, maintenance, repair and upgrade of all utility and network infrastructure, distribution systems, equipment and materials on Tenant's side of the Point of Demarcation. All new utilities shall be underground, unless otherwise approved by Landlord in writing. Notwithstanding anything to contrary herein, Tenant shall reimburse Landlord for reasonable costs associated with relocating any existing utility infrastructure running across the Premises, to the extent Landlord assumes responsibility for such relocation. To the extent, if at all, any Utilities services required by Tenant are not presently available to the Premises and are not provided by the University as provided above, Tenant shall be responsible for constructing and installing, or cause to be constructed and installed by the applicable utility provider, all Utilities facilities, both within and outside the Premises, that are necessary to provide such Utilities to the Premises, at Tenant's cost and in accordance with Applicable Laws and plans and specifications approved by Landlord. To the extent the University, either directly or through the Utilities Contractor, elects to provide Utilities services to the Premises, "utility provider" and words of similar import shall include the University, as applicable, and the rendition of such Utilities services, and the terms and conditions thereof, shall be separate and independent from Landlord's rights and obligations under this Lease and shall not be governed by this Lease.

(b) Tenant shall, at its cost, maintain all Utilities facilities exclusively serving the Premises (whether within or outside the Premises) in good condition and repair and in accordance with Applicable Laws and Standards prescribed by the University, subject to the following:

(i) To the extent Tenant causes any Utilities facilities to be installed pursuant to **Section 7.1(a)** for which the utility provider other than the University has accepted maintenance responsibility, maintenance obligations for such Utilities facilities shall be borne by the utility provider, provided that Tenant shall remain responsible for all charges and expenses assessed by the utility provider.

(ii) Tenant acknowledges that the University has contracted with a third party utility service provider (whether one or more, the "Utility Contractor", which is presently Corix Utilities) which provides operation and maintenance services for certain utility infrastructure and systems within University properties, which may or may not include the Premises. The University, in its sole discretion, may from time to time expand, modify or terminate the scope of services provided by the Utility Contractor. Notwithstanding any provision in this Lease to the contrary, to the extent and so long as the Utility Contractor assumes responsibility for rendition, operation and/or maintenance of any Utilities facilities serving the Premises, including, without limitation, central heat and chilled water facilities (collectively, "Utility Contractor Services"), whether within or

outside the Premises, then (A) such Utility Contractor Services for the Premises shall be rendered solely by the Utility Contractor, and (B) Tenant shall pay as Additional Rent, either to Landlord or the Utility Contractor (at Landlord's option), all charges for Utility Contractor Services within thirty (30) days after Tenant's receipt of an invoice therefor. The Utility Contractor shall at all times have access to the Premises to the extent necessary or appropriate for purposes of rendering Utility Contractor Services, and Tenant reasonably cooperate with Landlord and the Utility Contractor for purposes of facilitating such access. However, in no event will the University or the Utility Contractor be obligated to maintain, repair or replace any Utilities facilities that are situated within the Premises.

(c) Notwithstanding any provision herein to the contrary, in no event shall Landlord be obligated to provide any Utilities services that Landlord determines in its sole discretion, will or may subject the University or the Utility Contractor to regulation as a "public utility" under Applicable Laws.

(d) To the extent any University or other utility provider's Utilities facilities presently exist on the Premises within areas upon which Tenant intends to construct improvements, unless and to the extent Landlord elects to assume responsibility for such relocation, Tenant shall, at its cost, cause such Utilities facilities to be relocated to alternative locations and in accordance with specifications approved by the University or other utility provider, as applicable. Such relocation shall constitute part of "Tenant's Work" pursuant to **Exhibit C** and shall be included among the work described in Tenant's Plans.

7.2 Trash Collection, Street Lighting, Storm Sewer, and Landscaping. Tenant shall at all times provide and maintain trash receptacles for the Premises, and Tenant shall deposit all trash only in those receptacles. Tenant shall, at its cost, cause its trash receptacles to be emptied and trash removed at adequate frequencies. Landlord shall provide initial installation of all necessary street lighting and storm sewer infrastructure, but Tenant shall be solely responsible for all maintenance, repair and replacement of both the street lighting and storm sewer infrastructure. Tenant shall, at its cost, cause all unimproved and unpaved areas of the Premises to be properly grassed or landscaped (all in accordance with Tenant's Plans approved by Landlord pursuant to with **Exhibit C** or in connection with alterations approved by Landlord pursuant to **Section 10.2**) and properly mow, irrigate and maintain all grassed and landscaped areas in good condition and in accordance with University standards for MWRP (defined below).

7.3 Governmental Services and Oversight. The City of Norman will exclusively provide police services and fire protection services for the Premises. However, unless and until the University expressly relinquishes the same to the City of Norman, the University shall have exclusive jurisdiction, oversight and authority for all fire marshal and life safety services, inspections and reviews for the Premises (provided, however, that Landlord agrees that the Premises' compliance with City of Norman building and life safety codes shall be deemed to satisfy equivalent University codes and standards), and the University will provide such services to Tenant on the same terms as those services are made available to similar commercial tenants of University properties for so long as the University provides this service. Landlord agrees nothing in this paragraph shall be construed to obligate Landlord to pay for fire protection or police services for the Premises. Notwithstanding any provision herein to the contrary, to the extent the University assumes oversight and authority for fire marshal and/or life safety matters, such oversight and authority shall (i) be exercised by the University separately and independently from Landlord's capacity as "Landlord" under this Lease and Landlord's rights and obligations hereunder and (ii) not be governed by this Lease.



7.4 No Liability. Landlord shall not be liable in damages or otherwise for any discontinuance, failure or interruption of Utility service to the Premises. No such discontinuance, failure or interruption shall be deemed a constructive eviction of Tenant or entitle Tenant to terminate this Lease or withhold payment of any Rental due under this Lease.

7.5 Future Easements. Landlord reserves the unrestricted right to grant or impose (for benefit of either the University or third parties) any and all future easements under, over and across the Premises as needed for utilities, access or other services to any real property owned by Landlord that is not subject to this Lease. Such easements shall be granted or imposed in such a manner as not to unreasonably interfere with the improvements on the Premises and Tenant's leasehold interest in the Premises.

## **ARTICLE 8** **INSURANCE; LIABILITY**

8.1 Definitions. A "Beneficiary" is the intended recipient of the benefits of another party's Indemnity, Waiver or obligation to Defend. "Claims" means all damages, losses, injuries, penalties, disbursements, costs, charges, assessments, expenses (including legal, expert and consulting fees and expenses incurred in investigating, Defending or prosecuting any allegation, litigation or proceeding), demands, litigation, settlement payments, causes of action (whether in tort, contract, or under a theory of strict liability, or whether in law, equity, statutory or otherwise) or judgments. "Indemnify" means to protect and hold a party harmless from and against a potential Claim and/or to compensate a party for a Claim actually incurred. "Waive" means to knowingly and voluntarily relinquish a right and/or to release another party from liability. "Defend" means to provide a competent legal defense of a Beneficiary against a Claim with counsel reasonably acceptable (and at no cost) to the Beneficiary. "Landlord Parties" means Landlord, Landlord's mortgagee and any affiliates or subsidiaries of the foregoing, and all of their respective officers, employees, agents and contractors. "Tenant Parties" means Tenant and its shareholders, members, managers, partners, directors, officers, employees, agents, contractors, sublessees, licensees and invitees.

### 8.2 Tenant's Insurance.

(a) Required Policies. Subject to Tenant's right to self-insure as provided below, throughout the Lease Term, Tenant will, at its sole expense, procure and maintain the insurance coverages set forth in Exhibit D, and comply with all requirements set forth therein. In connection with the construction or alteration of the Improvements, Tenant shall also cause all of Tenant's contractors to comply with the insurance requirements set forth in Exhibit C-1.

(b) Minimum Requirements. The coverages set forth in Exhibit D are minimum requirements and not a determination as to all of the coverages and maximum limits that Tenant should carry. The failure of Landlord to demand full compliance by Tenant with respect to the minimum coverages outlined in Exhibit D will not constitute a waiver by Landlord with respect to Tenant's obligation to maintain such coverages unless otherwise expressly approved in writing by Landlord.

(c) Special Remedy. Tenant's failure to obtain and maintain the required insurance will constitute a material breach of, and default under, this Lease. If Tenant fails to remedy such breach within 5 days after notice from Landlord, Landlord may, at Landlord's option and without limitation of Landlord's remedies, purchase such insurance, at Tenant's expense. Tenant will be liable for any Claims against any Landlord Party arising from Tenant's failure to purchase and/or maintain the insurance coverages required by this Lease.

(d) Special Remedy. **Notwithstanding any provision herein to the contrary,** Tenant reserves the right to self-insure for the insurance required under **Section 8.2** of this Lease if and so long as Tenant satisfies the following requirements: (i) Tenant is The Norman Municipal Authority, and (ii) such self-insurance is not prohibited by law. If Tenant self-insures any of the risks to which coverage is required under this **Section 8.2**, then notwithstanding any provision in this Lease to the contrary, (a) the self-insurance protection shall be equivalent to the coverage required above and Tenant shall not be relieved from the indemnification obligations of this Lease, (b) all provisions of this Lease, including, without limitation, those relating to liability, indemnity, costs of repair and waiver of subrogation, shall apply and be interpreted as if Tenant had maintained policies of insurance against all such risks in accordance with the requirements of this **Section 8.2** with a commercial insurer, including any additional insured status, primary liability, waivers of rights of recovery, other insurance clauses, and any other extensions of coverages required herein, (c) the obligations of Tenant under any self-insurance program are independent and shall remain in full force and effect notwithstanding any breach of any provision of this Lease by Landlord, and (d) all deductibles, retentions and/or uninsured amounts shall be paid by, assumed by, for the account of, and at Tenant's sole risk.

8.3 Waiver of Subrogation. Tenant each waives any claim it might have against Landlord for any injury to or death of any person or persons or damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy that covers the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under this Lease, regardless of whether the same is caused by the negligence of Landlord.

8.5 Scope of Indemnities and Waivers. All Indemnities, Waivers and Obligations to Defend, wherever contained in this Lease, (i) are independent of, and will not be limited by, each other or any insurance obligations in this Lease (whether or not complied with), and (ii) will survive the expiration or termination of this Lease until all related Claims against the Beneficiaries are fully and finally barred by Applicable Law. **ALL INDEMNITIES, WAIVERS AND OBLIGATIONS TO DEFEND CONTAINED IN SECTION 8.6 WILL BE ENFORCED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW FOR THE BENEFIT OF THE APPLICABLE BENEFICIARY THEREOF, EVEN IF THE APPLICABLE CLAIM IS CAUSED BY THE ACTIVE OR PASSIVE NEGLIGENCE OR SOLE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH BENEFICIARY, AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST SUCH BENEFICIARY, BUT WILL NOT BE ENFORCED TO THE EXTENT THAT A COURT OF COMPETENT JURISDICTION HOLDS IN A FINAL JUDGMENT THAT A CLAIM IS CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH BENEFICIARY.**

8.6 Indemnity and Waiver. To the extent allowed by Applicable Law, Tenant Waives as to the Landlord Parties, and will Indemnify and Defend the Landlord Parties against, and will cause all sublessees, managers and operators of the Premises to Waive as to the Landlord Parties and Indemnify and Defend the Landlord Parties against, all Claims arising, or alleged to arise, from (A) Bodily Injury or Personal Injury suffered by any party and occurring in the Premises; (B) Bodily Injury or Personal Injury caused by a Tenant Party and occurring outside the Premises; and/or (C) Property Damage suffered by any party inside the Premises or caused or suffered by a Tenant Party outside the Premises. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death. "Property Damage" means damage to or loss of use of tangible property. "Personal Injury" means injury, including consequential bodily injury, arising from false arrest, detention or imprisonment; malicious prosecution; wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling, or

premises; oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; oral or written publication, in any manner, of material that violates a person's right of privacy; the use of another's advertising idea; or infringing upon another's copyright, trade dress or slogan.

## **ARTICLE 9** **TITLE TO PREMISES**

9.1 **Real Property.** Landlord warrants that as of the Commencement Date, Landlord shall own fee simple title to the Land subject to the following: (a) the effect of covenants, conditions, restrictions, easements, any rights-of-way of record, and any other matters or documents of record *and* the Development Covenants, Conditions and Restrictions for Max Westheimer Airpark and Swearingen Research Park attached hereto as **Exhibit F**, as they may be amended or supplemented from time to time (collectively, "**Development Restrictions**"); (b) the effect of any Applicable Laws; and (c) general and special Taxes not delinquent, if any. As to its leasehold estate, Tenant and all persons in possession of the Premises will conform to and will not violate the terms of Development Restrictions. Tenant acknowledges that this Lease is subordinate to the Development Restrictions and any amendments or modifications thereof, as well as any and all mortgages and bond indentures that may now or hereafter encumbering the Premises or any part thereof, and to all renewals, modifications, consolidations, replacements, and extensions thereof.

9.2 **Ownership and Removal of Improvements.** Tenant shall be the owner of all Improvements constructed upon the Premises, as the same may be altered, expanded and/or improved from time to time, and all fixtures and Personal Property (defined below) of Tenant located thereon. Tenant shall retain all rights to depreciation deductions and tax credits arising from its ownership of the Improvements. Upon expiration or earlier termination of this Lease, all such Improvements shall automatically vest in, revert to and become the property of Landlord without compensation to, or requirement of consent or other act of Tenant and without the necessity of executing a deed, bill of sale, conveyance or other act or agreement of Tenant, and without any payment of any kind or nature by Landlord to Tenant or to any other person, including any Leasehold Mortgagee (as hereinafter defined) or other lender who has a lien against all or any portion of Tenant's interest in this Lease. Tenant shall thereafter have no further rights thereto or interest therein. Tenant shall not, however, remove any Improvements from the Premises, nor waste, destroy or modify (except in accordance with **Article 10**) any Improvements. Upon or at any time after the date of the expiration or earlier termination of this Lease, if requested by Landlord, Tenant shall, without charge to Landlord, promptly execute, acknowledge and deliver to Landlord a deed and bill of sale which (i) conveys all of Tenant's right, title, and interest in and to the Premises; (ii) assigns all contracts designated by Landlord, relating to the operation, management or maintenance of the Premises or any part thereof; and (iii) conveys or assigns, as the case may be, all plans, records, registers, permits, and all other papers and documents which may be necessary or appropriate for the proper operation and management of the Premises.

9.3 **Title Insurance.** Tenant may, at its sole cost and expense, obtain a policy of leasehold title insurance insuring Tenant's leasehold interest in the Premises.

## **ARTICLE 10** **CONSTRUCTION OF IMPROVEMENTS**

10.1 **Improvements.** Tenant agrees, upon the terms and conditions set forth in this **Article 10** and in **Exhibit C** attached hereto, to construct upon the Land all Improvements necessary and

desirable for the operation and occupancy of the Premises for the Permitted Use, which Improvements shall include, but are not limited to, to the extent each Project is undertaken, a foundation, building shell, and all parking, lighting, landscaping, irrigation systems, curbs, gutters, sidewalks, handicapped access and other on-site improvements to be located upon the Premises and shall comply with all Applicable Laws and Development Restrictions. The entire cost of such work shall be borne by Tenant.

10.2 Alterations of Improvements. At Tenant's sole expense, after giving Landlord notice in writing of its intention to do so, and without limiting Tenant's right to remove and/or replace Personal Property in accordance with **Section 13.1**, Tenant may, from time to time make alterations, replacements, additions, changes and/or improvements to the Premises as Tenant may find necessary or convenient for its purposes, provided that the value of the Premises is not thereby diminished. In no event shall any alterations or changes be made to the exterior appearance or any exterior or structural elements or roof of the Premises, fire and life safety improvements, means of egress, fire access, utility (water, sewer, or gas) mechanical, electrical or plumbing systems, or which require issuance of a building permit, without obtaining the prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed.

10.3 Construction Requirements. All Improvements to be made to the Premises, and all alterations to the Improvements that require Landlord's approval pursuant to **Section 10.2**, shall be made under the supervision of a competent architect or licensed structural engineer when required by Applicable Laws and made in accordance with plans and specifications prepared in conformity with the structural, mechanical, electrical, design and quality standards, requirements and criteria specified in **Exhibit C** and submitted to Landlord for its approval prior to commencement of the work, in accordance with the procedures set forth in **Exhibit C** to this Lease and the Development Restrictions, respectively. If Tenant retains a contractor to construct its Improvements, Tenant shall comply with the provisions of **Exhibit C**. All work with respect to any Improvements must be performed in accordance with all Applicable Laws, in a good and workmanlike manner and diligently prosecuted to completion no later than five (5) years after the Delivery Date. Before commencing such work, Tenant shall obtain and deliver to Landlord a copy of the building permit with respect thereto if such permit is required by Applicable Laws. In performing the work for any such Improvements, Tenant shall have the work performed in such a manner as not to obstruct the use of or access to any properties adjacent to or near the Premises.

10.4 Insurance for Improvements. Subject to **Section 8.2(d)**, Tenant agrees to carry, or cause to be carried, the insurance required by **Section 8.2**, covering all Improvements constructed or altered by Tenant, it being expressly understood and agreed that such Improvements shall not be insured by Landlord, nor shall Landlord be required under the provisions of **Article 11** to reconstruct any such Improvements.

10.5 Removal of Improvements upon Expiration of Lease Term. If required by Landlord, as evidenced by written notice to Tenant, Tenant shall, at its cost and within ninety (90) days after the expiration of the Term, raze and remove all Improvements constructed or installed on the Premises by or on behalf of Tenant (or such lesser extent of the Improvements that may be selectively identified for removal by Landlord to Tenant), including grading of the site and installation of sod, all in accordance with Applicable Laws. Notice of Landlord's election to exercise the foregoing requirement shall be delivered to Tenant not less than one hundred eighty (180) days before the expiration of the Term, except that, in the event of Landlord's election to terminate this Lease as a result of an Event of Default, Landlord may deliver such notice at any time while such Event of Default exists.

**ARTICLE 11**  
**MECHANICS' LIENS**

11.1 Tenant's Covenants. Tenant agrees that it will pay, or cause to be paid, all costs of labor, services and/or materials supplied in the prosecution of any work, done, or caused to be done, on the Premises. Tenant will keep the Premises free and clear of construction, mechanic's, materialmen's and other liens to be placed upon the Premises in connection with construction, maintenance, alterations, modifications or otherwise.

11.2 Contest of Lien. If Tenant desires to contest any mechanics' lien claim it shall promptly pay or cause to be paid all sums awarded to the claimant in any suit.

11.3 Landlord's Right to Cure. If Tenant breaches any of its covenants in this **Article 11** by failing to provide security for or satisfaction of any mechanics' lien claim, then Landlord, in addition to any other rights or remedies it may have, may (but shall not be obligated to) discharge said lien by (a) paying the claimant an amount sufficient to settle and discharge the claim, (b) posting a mechanics' lien release bond, or (c) taking such action as Landlord shall deem appropriate, in which event Tenant shall pay, as additional Rental, on Landlord's demand, all reasonable costs (including reasonable attorney fees) incurred by Landlord in settling and discharging said lien together with interest thereon in accordance with **Section 4.3**, from the date of Landlord's payment of said costs. Landlord's payment of said costs shall not waive any default of Tenant under this **Article 11**.

11.4 Notice of Lien. Tenant shall forthwith notify Landlord in writing of any claim or lien filed against the Premises or the commencement of any action affecting the title thereto.

11.5 Notice of Non-Responsibility. Landlord or its representatives shall have the right to go upon and inspect the Premises at all reasonable times, and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Before the commencement of any work which might result in any such lien, Tenant shall give to Landlord written notice of its intention to do so in sufficient time to enable Landlord to post notices.

**ARTICLE 12**  
**SIGNS AND ADVERTISING MEDIA**

Tenant shall not place, affix or maintain any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items on any outside wall, window, or support column of the Premises, except such signs as comply with Development Restrictions and all Applicable Laws, and are approved in advance by Landlord.

Tenant shall utilize no advertising medium within the Premises which can be heard or experienced outside the Premises, including, without limitation, flashing lights, searchlights, loudspeakers or video or electronic visual displays. Tenant shall not display, paint or place, or cause to be displayed, painted or placed, any handbills, bumper stickers or other advertising devices on any vehicle parked in the parking area that is owned or controlled by the University whether belonging to Tenant, or to Tenant's agent, or to any other person, nor shall Tenant distribute, or cause to be distributed, within the University, any handbills or other advertising devices. Notwithstanding anything to the contrary in this Lease, Tenant shall not affix any signs to the roof of the Premises.

**ARTICLE 13**  
**PERSONAL PROPERTY**

13.1 Removal and Replacement. Subject to the provisions of **Section 13.2**, all of Tenant's trade fixtures, furniture, furnishings, signs and other personal property not permanently affixed to the Premises (hereinafter collectively referred to as "Personal Property") shall remain the property of Tenant. Provided Tenant is not in default under the terms of this Lease, Tenant shall have the right to remove any or all of its movable Personal Property which it may have stored or installed in the Premises. Tenant shall, at its expense, immediately repair any damage occasioned to the Premises by reason of the removal of any such Personal Property.

13.2 Improvements. Any of Tenant's trade fixtures, furniture, furnishings or other property that is permanently affixed to the Premises shall be deemed Improvements as defined in this Lease.

13.3 Personal Property Taxes. Tenant shall pay before delinquency all taxes (including sales and use taxes), assessments, license fees and public charges levied, assessed or imposed upon its business operation as well as upon its Improvements, merchandise and Personal Property.

**ARTICLE 14**  
**ASSIGNMENT AND SUBLETTING**

14.1 Assignment and Subletting. Tenant may not sublet or assign this Lease or any interest herein (hereinafter, a "Transfer") without the prior written consent of Landlord, which consent may be granted, withheld or conditioned in Landlord's sole and absolute discretion. Any consent by Landlord to one Transfer, whether by operation of law or otherwise, shall not be deemed to be a consent to any subsequent Transfer, and any such Transfer shall not release or otherwise affect Tenant's continuing liabilities and obligations under this Lease. Any assignment of a direct or indirect controlling ownership interest in Tenant shall constitute an assignment of this Lease for purposes of this **Article 14**.

14.2 Condition Precedent. The foregoing notwithstanding, Tenant shall not have the right to request or effect any Transfer if an Event of Default then exists under the provisions of **Article 21**.

14.3 Procedures. Should Tenant desire to effect a Transfer, Tenant shall give notice thereof to Landlord of such Transfer at least sixty (60) days before the effective date thereof and shall provide Landlord any and all information concerning the Transfer as Landlord may require.

14.4 Documentation and Expenses. Each Transfer Tenant effects shall be evidenced by an instrument and executed by Tenant and the transferee. By such instrument, the transferee shall assume and promise to perform the terms, covenants and conditions of this Lease which are obligations of Tenant. Tenant shall, on demand of Landlord, reimburse Landlord for Landlord's reasonable costs, including legal fees, incurred in obtaining advice and preparing or reviewing documentation for each Transfer. Tenant shall be entitled to retain all consideration paid by an assignee as a part of an assignment, including but not limited to remuneration for improvements, personality or goodwill.

14.5 Assignment of Subrents. If an Event of Default occurs while the Premises or any part thereof are subject to a subletting, then Landlord, in addition to its other remedies, may collect directly from such subtenant all rent becoming due to Tenant and apply such rents against

Tenant's Rental obligations hereunder. Tenant authorizes its subtenants to make payments of rent directly to Landlord upon receipt of notice from Landlord to do so.

14.6 Nullity. Any purported Transfer consummated in violation of the provisions of this **Article 16** shall be null and void and of no force or effect and shall constitute an Event of Default.

## **ARTICLE 15** **TENANT'S CONDUCT OF OPERATIONS**

15.1 Operating Covenant. Tenant covenants to (i) commence construction on at least one of the Projects within three (3) years after the Delivery Date open and (ii) commence its use of the Premises in accordance with the Permitted Use no later than five (5) years after the Delivery Date. In addition, if Tenant fails to timely satisfy the foregoing covenant, or if, at any time after Tenant's opening, the Premises ceases to be operated and occupied and remains so for a period of twelve (12) consecutive months (other than incident to any actively undertaken alterations, casualty or taking), Landlord shall have the option at any time thereafter (unless prior thereto the Premises shall, in fact, resume operations and occupancy within the Premises for the purposes permitted hereunder), by notice to Tenant (the "Landlord's Go Dark Notice"), to terminate this Lease effective as of a date specified in Landlord's Go Dark Notice which is no earlier than thirty (30) days after Landlord gives the Landlord's Go Dark Notice; provided, however, if prior to the effective date specified in Landlord's Go Dark Notice, Tenant notifies Landlord of Tenant's intention to resume operations and occupancy within the Premises and does so within thirty (30) days thereafter, for the purposes permitted hereunder, then such election to terminate shall be rendered null and void. In the event of such termination, the parties shall have no further obligations to each other hereunder, other than their respective indemnification obligations hereunder and any other obligations and liabilities which have accrued as of the date of termination.

## **ARTICLE 16** **REPAIRS; MAINTENANCE**

16.1 Tenant's Obligations. Tenant agrees at all times from and after delivery of the Premises, at its own cost and expense, to repair, maintain in good and tenantable condition and replace, as necessary, the Premises and every part thereof in a first class condition and consistent with the requirements of Development Restrictions and Applicable Laws, including, without limitation, the following: the roof and all of its ancillary components, all structural elements including foundation and exterior and load-bearing walls and columns; all fire and life safety systems, means of egress, fire/smoke barriers, portable fire extinguishers; all meters, pipes, conduits, equipment, components and facilities (whether or not within the Premises) that supply the Premises exclusively with Utilities (except to the extent the appropriate utility company has assumed these duties); all equipment installed in the Premises; all exterior and interior glass installed in the Premises; all signs, locks and closing devices; all window sashes, casements and frames; doors and door frames; floor coverings; and all such items of repair, maintenance, alteration, improvement or reconstruction as may be required at any time or from time to time by Development Restrictions or any governmental agency having jurisdiction thereof including, without limitation, compliance with the Americans With Disabilities Act. All replacements made by Tenant in accordance with this Section shall be of like size, kind and quality to the items replaced as they existed when originally installed.

16.2 Tenant's Failure to Maintain. If Tenant refuses or neglects to repair, replace, or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Landlord, Landlord shall

have the right, upon giving Tenant reasonable written notice of at least thirty (30) days of its election to do so, to make such repairs or perform such maintenance on behalf of and for the account of Tenant. In such event, Tenant shall pay the cost of such work as additional Rental promptly upon receipt of an invoice therefor.

16.3 Right to Enter and Inspection. Tenant agrees to permit Landlord, the University Fire Marshal or its designee, or their authorized representatives, to enter the Premises at all times during usual business hours to inspect the same and to perform any work therein (a) that may be necessary to comply with any Applicable Laws, (b) that Landlord may deem necessary to prevent waste or deterioration in connection with the Premises if Tenant does not make, or cause to be made, such repairs or perform, or cause to be performed, such work promptly after receipt of written demand from Landlord, (c) to inspect the Premises in order to determine safety of the occupants and whether Tenant is otherwise complying with its undertakings, duties, and obligations under this Lease, including inspection of fire and life-safety systems, fire alarms, sprinkler systems, vent hoods, inspection of exit-ways, portable fire extinguishers, and for general fire hazards or other life-safety deficiencies, (d) to enforce any current fire and safety codes and standards that are in effect. Tenant shall correct any noted deficiencies or hazards in a time frame acceptable to Landlord and the University Fire Marshal's Office. In the event of any emergency conditions, such entry by Landlord or its representatives may take place at any time without prior notice. Nothing herein contained shall imply any duty on the part of Landlord to do any such work which, under any provision of this Lease, Tenant may be required to do, nor shall Landlord's performance of any repairs on behalf of Tenant constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights herein reserved shall entitle Tenant to any compensation, damages or abatement of Rental from Landlord for any injury or inconvenience occasioned thereby. If Landlord makes or causes any such repairs to be made or performed, as provided for herein, Tenant shall pay the cost thereof to Landlord, as additional Rental, promptly upon receipt of an invoice therefor.



## ARTICLE 17 CASUALTY

17.1 Obligations of Tenant. Except as hereinafter otherwise provided and subject to the provisions of **Section 17.4** below, in case of damage to or destruction of the Improvements located on the Premises or any part thereof by fire or other cause, Tenant, at Tenant's sole cost and expense, whether or not the insurance proceeds, if any, shall be sufficient for the purpose, and irrespective of the amount of any loss, shall have the choice to restore, repair, replace, rebuild or alter the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction or to do so with any changes or alterations as Tenant may choose to make. Tenant also retains the option not to rebuild the improvements, for example, in the instance of a total loss, or if funds are not available for reconstruction. If the Tenant selects not to rebuild the Improvements, the Lease will terminate, and the Tenant will raze and remove all Improvements remaining on the Premises within ninety (90) after the decision not to rebuild is made by the Tenant. This will include grading of the site and installation of sod, all in accordance with Applicable Laws. Such restoration, repairs, replacements, rebuilding or alterations shall be commenced in a timely manner following the occurrence of such damage or destruction and prosecuted to completion with due diligence and in good faith. The Rental payable by Tenant hereunder shall not be abated during the period of Tenant's repairs and restoration. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises, Tenant's Personal Property and fixtures located on the Premises or for any inconvenience or annoyance occasioned by such damage.

17.2 Conditions of Disbursement of Insurance Proceeds. The insurance proceeds, if any, under insurance policies required to be carried under **Article 8**, shall be held for disbursement by Tenant or any Leasehold Mortgagee. Subject to the terms and conditions of any Development Restrictions, all insurance proceeds received on account of any damage or destruction, less the actual cost, fees and expenses, if any, incurred by Tenant and any Leasehold Mortgagee, as the case may be, in connection with the adjustment of the loss, which costs, fees and expenses shall be paid to Tenant and any Leasehold Mortgagee, shall be applied to the payment of the cost of the aforesaid restoration, including the cost of demolition and temporary repairs and for the protection of the Improvements located on the Premises pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs and protection of the Improvements located on the Premises and permanent restoration, repairs, replacement, rebuilding or alterations are hereinafter collectively referred to as "Restoration"), and shall be paid out from time to time to Tenant or in accordance with its directions, as such Restoration progresses, upon the written request of Tenant.

17.3 [Reserved].

17.4 Termination of Lease. Notwithstanding anything contained in this **Article 17** to the contrary, if Tenant fails to commence restoration of the Premises within one (1) year after a substantial portion of the Improvements located on the Premises shall be substantially damaged or destroyed by fire or any other cause and thereafter continuously prosecute such restoration to completion, then either Landlord or Tenant may (or if Tenant notifies Landlord of its election not to restore the Improvements), at any time thereafter upon thirty (30) days' written notice to the other party of its intention to do so, terminate this Lease. Such option may be exercised by serving such notice upon the other party, without any liability on the part of either party except for the payment of the Rental and all additional sums required to be paid by Tenant under the terms of this Lease up to the date of such termination and full performance by Tenant, at its sole cost and expense, of the work of demolition and removal of the remaining portions of the Improvements located on the Premises so damaged or destroyed and removal of all debris from

the Premises; provided, however, that any available insurance proceeds (if any) shall be applied, to the extent such funds are available for demolition and removal, to payment of the cost of such demolition and removal. For the purposes of this Section, the Improvements shall be deemed substantially damaged or destroyed if the estimated cost of restoring same as nearly as possible to their value, condition and character immediately prior to such damage or destruction is fifty percent (50%) or more of the estimated total replacement cost of the Improvements.

In the event this Lease shall be terminated pursuant to the provisions of this Section, the insurance proceeds (if any) recovered on account of such damage or destruction (after deducting all reasonable expenses incurred by Tenant in connection with the adjustment or collection of such loss and the costs of demolition and removal of the Improvements, as provided above) shall be allocated and distributed as follows:

(a) To Tenant, an amount equal to the unamortized cost of any Improvements installed on the Premises by or on behalf of Tenant (including Tenant's Work, but excluding any fixtures, equipment or Personal Property), assuming the straight line amortization of such costs over the Initial Term; and

(b) Landlord shall be entitled to receive and retain the balance of the insurance proceeds.

## **ARTICLE 18** **RULES AND REGULATIONS**

18.1 Rules and Regulations. Tenant shall comply with all Applicable Laws in connection with the operation, use and occupancy of the Premises. Tenant further acknowledges and agrees that this Lease shall be subject to the provisions of all existing or future agreements entered into between Landlord and the State of Oklahoma or the United States to obtain state or federal aid for the improvement or operation and maintenance of the Premises.

## **ARTICLE 19** **NON-SUBORDINATION AND LEASEHOLD FINANCING**

19.1 Non-Subordination. Landlord shall not be required to subject its leasehold interest in the Premises to the lien of any leasehold financing or mortgage sought or obtained by Tenant.

19.2 Leasehold Mortgages. (a) Tenant may, from time to time, mortgage Tenant's leasehold estate and interest in and to the Premises or any part thereof (each such leasehold mortgage or other financing instrument being herein referred to as a "Leasehold Mortgage" and the holder thereof as a "Leasehold Mortgagee"). If Tenant enters into any Leasehold Mortgage, it shall deliver to Landlord a true and complete copy thereof in accordance with **Article 29**, together with the name and address of the Leasehold Mortgagee and no Leasehold Mortgage shall be binding on Landlord until such delivery occurs.

(b) Tenant shall not encumber its leasehold estate with more than one (1) Leasehold Mortgage at one time without the prior written consent of Landlord. With respect to any Leasehold Mortgagee, the following shall apply notwithstanding any other provision of this Lease to the contrary:

(1) No voluntary termination by Tenant of this Lease shall be effective unless consented to in writing by such Leasehold Mortgagee; and any material amendment of this Lease or the exercise by Tenant of any option to terminate this Lease without the

written consent of the Leasehold Mortgagee shall not be binding upon the Leasehold Mortgagee. If any Leasehold Mortgagee fails to respond to any written consent under this **Section 19.2(b)(1)** within thirty (30) days after the receipt by the Leasehold Mortgagee of such written request (which written request shall make specific reference to this **Section 19.2(b)**), the Leasehold Mortgagee shall be deemed to have granted its consent to such request.

(2) Landlord shall deliver any and all notices of any default given to Tenant hereunder simultaneously to the Leasehold Mortgagee at the address of the Leasehold Mortgagee provided to Landlord, and no such notice shall be effective as to the Leasehold Mortgagee unless and until a copy thereof has been delivered to such Leasehold Mortgagee. If Landlord sends Tenant a notice of default, from and after the time that such notice has been delivered to such Leasehold Mortgagee, the Leasehold Mortgagee shall have a period equal to the period granted to the Tenant plus, with respect to monetary defaults, an additional ten (10) days, and with respect to non-monetary defaults only, an additional thirty (30) days, in which to effect a cure of any default by Tenant under this Lease (provided, however, if such cure is of a nature that it cannot be effected within such a period of time, no default shall have been deemed to have occurred hereunder as long as the Leasehold Mortgagee shall have commenced to cure such default within such period and shall thereafter be taking diligent steps to effect the same, provided further that in no event shall the Leasehold Mortgagee be entitled to more than ninety (90) days to complete such cure). Landlord shall accept performance of any and all of Tenant's obligations hereunder, including the obligations to pay rent, from any the Leasehold Mortgagee and the performance of such obligation by the Leasehold Mortgagee shall be deemed to have been a cure effected by Tenant. Landlord hereby consents to the entry into the Premises by any the Leasehold Mortgagee for the purpose of effecting the cure of any default by Tenant. In the event of a default by Tenant hereunder, the Leasehold Mortgagee may effect the cure of such default by foreclosing its Leasehold Mortgage, obtaining possession of the Premises and performing all of Tenant's obligations hereunder.

(3) If it shall be necessary for any the Leasehold Mortgagee to obtain possession of the Premises to effect any such cure of a non-monetary default by Tenant under this Lease, then Landlord shall not commence any proceeding or action to terminate this Lease on the basis of such non-monetary default if (i) the Leasehold Mortgagee shall have informed Landlord within the grace period applicable to the Leasehold Mortgagee that the Leasehold Mortgagee has taken steps to foreclose its Leasehold Mortgage necessary to obtain possession of the Demised Premises, (ii) all Rent shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Premises are so observed and performed while any such foreclosure, other action or other remedy is being prosecuted by any the Leasehold Mortgagee and for so long thereafter as the Leasehold Mortgagee shall have obtained possession of the Demised Premises, and (iii) the Leasehold Mortgagee shall be diligently prosecuting such foreclosure or cancellation and attempting to effect a cure of the default. Nothing herein contained shall be deemed to require the Leasehold Mortgagee to continue with any foreclosure or other proceedings, or, if the Leasehold Mortgagee shall otherwise acquire possession of the Demised Premises, to continue such possession, if the default in respect to which Landlord shall have given the notice shall be remedied.

(4) Landlord agrees that in the event of the termination of this Lease before the expiration of the Lease for any reason (including rejection of this Lease by a trustee in

bankruptcy, but excluding any termination to which Leasehold Mortgagee has consented or is deemed to have consented as provided herein), and if Landlord has prior to such termination been given written notice of the name and address of such Leasehold Mortgagee, Landlord shall enter into a new lease of the Premises with the Leasehold Mortgagee or its nominee for the remainder of the Lease Term, effective as of the date of such termination, at the Rent and upon the terms, options, provisions, covenants and agreements as herein contained, provided:

(A) The Leasehold Mortgagee makes written request upon Landlord for such new lease prior to or within ten (10) days after the date of such termination and such written request is accompanied by payment to Landlord of all sums then due to Landlord hereunder; and

(B) The Leasehold Mortgagee or its nominee pays to Landlord at the time of the execution and delivery of said new lease any and all sums which would at that time be due hereunder but for such termination, together with any costs and expenses, including reasonable attorneys' fees, incurred by Landlord as a result of such termination, as well as in the preparation, execution and delivery of such new lease.

(5) No Leasehold Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of the entire interest in this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or from any holder thereof, shall be subject to **Section 14** of this Lease, except that the assignor shall be relieved of any further liability which may accrue hereunder from and after the date of such assignment, provided that the assignee shall execute and deliver to Landlord a recordable instrument of assumption wherein such assignee assumes and agrees to perform and observe the covenants and conditions in this Lease contained on Tenant's part to be performed and observed, it being the intention of the parties that once the Leasehold Mortgagee or its nominee succeeds to Tenant's interest hereunder, any and all subsequent assignments (whether by such Leasehold Mortgagee, its nominee, or any purchaser at a foreclosure sale or other transferee or assignee from Leasehold Mortgagee or its nominee) shall upon the aforesaid assumption and agreement by the assignee, effect a release of the assignor's liability hereunder from and after the date of assignment.

(6) If at any time there shall be two (2) or more Leasehold Mortgages constituting a lien on the Tenant's interest in this Lease and the leasehold estate hereby created, the holder of the Leasehold Mortgage recorded prior in time shall be vested with the rights under **Section 19.2(b)(4)** of this Lease to the exclusion of the holder(s) of the other Leasehold Mortgages. All of the provisions contained in this Lease with respect to Leasehold Mortgages and the rights of Leasehold Mortgagees shall survive the termination of this Lease for such period of time as shall be necessary to effectuate the rights granted to all Leasehold Mortgagees by the provisions of this Lease.

(7) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default by Tenant hereunder. In no event shall any Leasehold Mortgage encumber Landlord's fee interest in the Premises.

**ARTICLE 20**  
**BANKRUPTCY; INVOLUNTARY TRANSFERS**

20.1 **Right of Termination.** Should any of the following events occur, Landlord may terminate this Lease and any interest of Tenant herein, effective with the commencement of the event:

(a) Proceedings are instituted whereby all, or substantially all, of Tenant's assets are placed in the hands of a receiver, trustee or assignee for the benefit of Tenant's creditors, and such proceedings continue for at least sixty (60) days;

(b) Any creditor of Tenant institutes judicial or administrative process to execute on, attach or otherwise seize any of Tenant's Improvements, merchandise or Personal Property located on the Premises and Tenant fails to discharge, set aside, exonerate by posting a bond, or otherwise obtain a release of such property within sixty (60) days; or

(c) Tenant becomes a debtor in any case filed under the Bankruptcy Code or similar law providing relief to bankrupt or insolvent debtors.

20.2 **Request for Information.** Within ten (10) days after Landlord's request therefor, Tenant shall provide Landlord such financial, legal and business information concerning any of the events described in **Section 20.1** as Landlord shall request.

**ARTICLE 21**  
**DEFAULTS BY TENANT; REMEDIES**

21.1 **Events of Default.** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (each, an "**Event of Default**"):

(a) Any failure by Tenant to pay Base Rent, Additional Rent or any other Rental or other payment required to be made by Tenant hereunder, within five (5) days after same becomes due; provided, however, Tenant shall be entitled to written notice from Landlord (not more than twice in any twelve (12) calendar month period) that such amounts are past due and an Event of Default shall not be deemed to have occurred so long as Tenant remits payment of said amount to Landlord within five (5) days after Tenant's receipt of said written notice;

(b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion (and in no event shall Tenant be permitted more than ninety (90) days to complete such cure);

(c) The occurrence of any of the events specified in **Section 20.1**; or

Any notice and cure periods provided for herein shall be in lieu of, and not in addition to, any applicable time periods prescribed by applicable state law as a condition precedent to the commencement of legal action against Tenant for possession of the Premises.

21.2 **Rights of Landlord.** Following an Event of Default by Tenant, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder by giving written notice of such

intention to terminate in the manner specified in **Article 29** hereof. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant Any unpaid Rental (including interest thereon at the Default Rate) which had been earned at the time of such termination.

21.3 Landlord's Right of Re-entry. Following an Event of Default by Tenant and termination of the Lease, Landlord shall also have the right to re-enter the Premises, eject all parties in possession therefrom and re-let the Premises, or any part or parts thereof, or prepare or alter the same for re-letting.

21.4 No Waiver. The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed a waiver of such term, covenant or condition of any subsequent breach thereof, or of any other term, covenant or condition contained in this Lease. Landlord's subsequent acceptance of partial Rental or performance by Tenant shall not be deemed to be an accord and satisfaction or a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease or of any right of Landlord to a forfeiture of this Lease by reason of such breach, regardless of Landlord's knowledge of such preceding breach at the time of Landlord's acceptance. No term, covenant or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

## **ARTICLE 22** **DEFAULTS BY LANDLORD; REMEDIES**

If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within ninety (90) days after written notice of default or, when more than ninety (90) days shall be required because of the nature of the default, if Landlord shall fail to proceed diligently to cure such default after written notice thereof, then Tenant shall be entitled to exercise all remedies available to it hereunder, at law or in equity; provided, however, it is expressly understood and agreed that (a) any money judgment resulting from any default or other claim arising under this Lease shall be satisfied only out of Landlord's equity in the Land or the current rents, issues, profits and other income Landlord receives from its operation of the Land, net of all current operating expenses, liabilities, reserves and debt service associated with said operation ("Recoverable Assets" for purposes of this **Article 22** only), (b) no other real, personal or mixed property of Landlord, wherever located, shall be subject to levy on any such judgment obtained against Landlord, (c) if such Recoverable Assets are insufficient to satisfy such judgment, Tenant will not institute any further action, suit, claim or demand, in law or in equity, against Landlord for or on the account of such deficiency, and (d) such neglect or failure shall not constitute consent by Landlord for Tenant to perform or observe such terms, covenants or conditions at Landlord's expense. Tenant hereby waives, to the extent permitted by law, any right to satisfy said money judgment against Landlord except from Recoverable Assets.

If the Premises or any part thereof are at any time subject to any mortgage or deed of trust and this Lease or the Rental due from Tenant hereunder are assigned to such mortgagee, trustee or beneficiary (called "Assignee" for purposes of this **Article 22** only) and Tenant is given written notice thereof, including the post office address of such Assignee, then Tenant shall give written notice to such Assignee, specifying the default in reasonable detail, and affording such Assignee a reasonable opportunity to cure such default for and on behalf of Landlord. If and when such Assignee has performed on behalf of Landlord, such default shall be deemed cured.

**ARTICLE 23**  
**CONDEMNATION**

23.1 **Definitions.** Whenever used in this Section, the following words shall have the following respective meanings:

(a) “**Condemnation**” or “**condemnation proceedings**” shall mean any action or proceeding brought by competent authority for the purpose of any taking of the Premises or any part thereof as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of or in lieu of condemnation or while such action or proceeding is pending.

(b) “**Taking**” shall mean the event of vesting of title to the Premises or any part thereof in such competent authority pursuant to condemnation.

(c) “**Vesting Date**” shall mean the date of the Taking.

23.2 **Total Taking.** In case of a Taking of all of the Premises, this Lease shall terminate as of the Vesting Date and the Rental under this Lease shall abate as of, and be apportioned to the date of termination.

23.3 **Partial Taking.** In case of a Taking of less than all of the Premises (other than for a temporary use), Landlord and Tenant shall mutually determine, within sixty (60) days after the Vesting Date, whether the remaining portion of the Premises after Restoration can economically and feasibly be used by Tenant.

If it is determined that the remaining portion of the Premises cannot be economically and feasibly used by Tenant, Tenant may, at its option, terminate this Lease by delivery of written notice to Landlord within thirty (30) days after such determination. Upon any such termination, the Rental shall be apportioned to the date of termination, which date, for purposes of apportioning Rental, shall be determined by mutual agreement of the parties.

If Tenant does not elect to terminate this Lease within the period aforementioned, it shall continue in full force and effect as to the remaining portion of the Premises subject to a reduction in the Base Rent proportionately with the degree to which Tenant’s use of the Premises is impaired, considering such factors as loss of Improvements, loss of access, loss of parking, loss of signage and loss of visibility.

23.4 **Allocation of Award; Total Taking.** If this Lease terminates pursuant to the provisions of **Sections 23.2 or 23.3**, the total award in the condemnation proceedings shall be paid by the condemning authority to the Tenant and Landlord as separately negotiated with the condemning authority in accordance with all Applicable Laws and the following:

(a) Landlord shall be entitled to the sum of: (i) the value of the Premises, exclusive of the Improvements, irrespective of its encumbrance by this Lease, and (ii) the value of Landlord’s reversionary interest in the Improvements, including infrastructure investments.

(b) Tenant shall be entitled to compensation for the unamortized value of Tenant’s Improvements, including infrastructure investments, and Personal Property. In no event shall Tenant be compensated for any deemed value of the leasehold estate created by this Lease (all of which shall be awarded to Landlord).

23.5 Allocation of Award; Partial Taking. If this Lease does not terminate as provided in **Section 23.3**, Tenant, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements to a complete architectural unit or units.

The total award in the condemnation proceedings, in the event of such partial taking, shall be paid by the condemning authority to the Tenant and Landlord as separately negotiated with the condemning authority in accordance with all Applicable Laws and the following:

(a) Tenant shall be entitled to an amount equal to the cost of the Restoration (provided, however, in no event shall Tenant be entitled to receive any award attributable to the Land or the leasehold estate created by this Lease).

(b) Landlord, Tenant and any Leasehold Mortgagee shall next be entitled to their expenses and charges, including, without limitation, reasonable attorneys' fees incurred in connection with the Taking.

(c) The balance of the award shall be paid to Landlord.

23.6 Temporary Taking. In the event of a Taking of all or any portion of the Premises for temporary use, the foregoing provisions of this Article shall be inapplicable thereto, this Lease shall continue in full force and effect without reduction or abatement of Rental and Tenant, alone, shall be entitled to make claim for, recover and retain any award recoverable in respect of such temporary use whether in the form of Rental or otherwise. If the award is made in a lump sum covering a period beyond the expiration of the Lease Term, Landlord also shall be entitled to make claim for and participate in the award proportionately.

23.7 Settlement. Landlord and Tenant shall both retain the option to agree to a any settlement with the condemning authority or convey any portion of the Premises or Improvements to such authority in lieu of condemnation or consent to any Taking separately from the other Party..

#### **ARTICLE 24** **ATTORNEY FEES**

Subject to **Section 21.2**, if either Landlord or Tenant institutes any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the non-prevailing party in such action or proceeding shall reimburse the prevailing party for the reasonable expenses of attorneys' fees and all costs and disbursements incurred therein by the prevailing party, including, without limitation, any such fees or costs incurred on any appeal from such action or proceeding, as and to the extent determined by a court of competent jurisdiction.

#### **ARTICLE 25** **SALE OR MORTGAGE BY LANDLORD**

Landlord may, at any time, without the consent of Tenant, contract to and/or perform any of the following transactions with respect to an interest in Landlord, this Lease or the Premises: sale, purchase, exchange, transfer, assignment, lease or conveyance (collectively referred to in this Error! Reference source not found. only as a "Transfer"). From and after a Transfer, Landlord shall be released from all liability toward Tenant and Tenant's successors and assigns arising from this Lease because of any act, occurrence or omission of Landlord occurring after such Transfer, although Landlord shall remain liable for all obligations arising prior to such Transfer.



**ARTICLE 26**  
**MORTGAGE; SUBORDINATION; ATTORNMENT**

As used in this Lease, all references to a “mortgage” shall be deemed to include a lease in an assignment and leaseback transaction, and all references to the “holder” of a mortgage or to a “mortgagee” shall be deemed to include the Landlord in an assignment and leaseback transaction. Upon written request of Landlord, or any first mortgagee, Tenant will subordinate, in writing, its rights hereunder to the lien of any mortgage or any amendments and supplements thereto, and upon any building hereafter placed upon the land of which the Premises are a part, and to all advances made or hereafter to be made upon the security thereof, subject, however, to the provisions of **Section 10.1** hereof.

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure, sale or lease termination and recognize such purchaser as landlord under this Lease, provided that the purchaser shall acquire and accept the Premises subject to this Lease.

Tenant agrees at any time and from time to time and within thirty (30) days after written request from Landlord, to execute, acknowledge and deliver to Landlord an estoppel certificate substantially in the form of **Exhibit E** hereto, (a) certifying that this Lease represents the entire agreement between Landlord and Tenant, and is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the Rental and other charges are paid in advance, if any; (b) certifying the commencement and termination dates of the Lease Term; (c) certifying that there has been no assignment or other transfer by Tenant of this Lease, or any interest therein; (d) acknowledging that there are not, to Tenant’s knowledge, any uncured defaults on the part of Landlord hereunder and that Tenant has no right of offset, counterclaim or deduction against Rental, or specifying such defaults if any are claimed together with the amount of any offset, counterclaim or deduction alleged by Tenant; and (e) certifying such other factual matters as Landlord may reasonably request. Tenant’s failure to deliver such statement within such time shall be conclusive and binding upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord’s performance and that Tenant has no right of offset, counterclaim or deduction against Rental and that no Rent has been paid in advance, it being understood, however, that such presumed certification shall not relieve Tenant from its obligations under this paragraph. If any such certification by Tenant shall allege nonperformance by Landlord, the nature and extent of such nonperformance shall, insofar as actually known by Tenant, be summarized therein.

**ARTICLE 27**  
**QUIET ENJOYMENT**

Landlord agrees that Tenant, upon paying the Rental and performing the terms, covenants and conditions of this Lease, may quietly have, hold and enjoy the Premises from and after Landlord’s delivery of the Premises to Tenant and until the end of the Lease Term, subject, however, to the provisions of this Lease.

**ARTICLE 28**  
**CAPTIONS AND TERMS**

28.1 Reference Only. The captions of the Articles and Sections of this Lease are for convenience only, are not operative parts of this Lease and do not in any way limit or amplify the terms and provisions of this Lease.

28.2 Parties. If two (2) or more persons or entities execute this Lease as Landlord or Tenant, then and in such event the words “Landlord” and “Tenant” as used in this Lease shall refer to all such persons or entities, and the liability of such persons or entities for compliance with and performance of all the terms, covenants and conditions of this Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter, as the case may be, and the use of the singular shall include the plural.

**ARTICLE 29**  
**NOTICES**

Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served in any manner expressly specified and also in writing forwarded by certified mail, return receipt requested (in which case such notice shall be deemed given three (3) business days after deposit in the U.S. Mail), or by overnight delivery with a nationally-recognized courier service (in which case such notice shall be deemed given one (1) business day after deposit with such courier service), addressed to the parties as provided in the Basic Lease Information. Either party may change such address by providing written notice to the other by any means permitted hereunder. The foregoing methods of service shall be exclusive and Landlord and Tenant hereby waive, to the fullest extent permitted under law, the right to any other method of service required by any statute or law now or hereafter in force.

**ARTICLE 30**  
**OBLIGATIONS OF SUCCESSORS**

All provisions of this Lease are to be construed as covenants and agreements and, except as otherwise specified, and such provisions shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**ARTICLE 31**  
**RIGHTS AND PRIVILEGES OF LANDLORD**

In addition to all rights and privileges of the Landlord set forth in other provisions of this Agreement, the Landlord retains all rights and privileges not specifically granted to the Tenant including without limitation the following:

(a) The right to further develop or improve the surrounding areas as it sees fit, regardless of the desires or view of the Tenant, and without interference or hindrance.

(b) The right, but not the obligation, to maintain and keep in repair the surrounding area and all publicly owned facilities of the Landlord.

**ARTICLE 32**  
**MISCELLANEOUS**

32.1 Relationship of the Parties. Nothing contained in this Lease shall be deemed or construed as creating a partnership, joint venture, principal-agent, or employer-employee relationship between Landlord and any other person or entity (including, without limitation, Tenant) or as causing Landlord to be responsible in any way for the debts or obligations of such other person or entity.

32.2 Severability. It is agreed that, if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that, if any provision of this Lease is capable of two (2) constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

32.3 [Reserved].

32.4 Entire Agreement. It is understood that there are no oral or written agreements or representations between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, representations, letters of intent, brochures, displays, projections, estimates, agreements and understandings, if any, made by or between Landlord and Tenant with respect to the subject matter thereof, and none shall be used to interpret, construe, supplement or contradict this Lease. This Lease, and all amendments thereto, is and shall be considered to be the only agreement between the parties hereto and their representatives and agents with respect to the subject matter hereof. All negotiations and oral agreements acceptable to both parties have been merged into and are included in this Lease. There are no other representations, covenants or warranties between the parties and all reliance with respect to representations is solely upon the express representations, covenants and warranties contained in this Lease. Although this Lease was initially drafted by Landlord, the parties hereto agree that this circumstance alone shall not create any presumption, canon of construction or implication favoring the position of either Landlord or Tenant. The parties agree that any deletion of language from this Lease prior to its mutual execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, canon of construction or implication, including, without limitation, any implication that the parties intended thereby to state the converse, obverse or opposite of the deleted language.

32.5 Equal Opportunity. Tenant agrees as follows:

(a) As applicable, the provisions of Exec. Order No. 11,246 (T22), as amended by Exec. Order No. 11,375 and Exec. Order No. 11,141 and as supplemented in Department of Labor regulations (41 CFR Part 60 et. seq.) are incorporated into this Lease. Tenant shall provide all services and employment rendered on or from the Premises in compliance with all Applicable Laws, without discrimination, and no person shall be from or denied the use of the Premises, on the basis of race, color, religion, political beliefs, national origin, age, sex, sexual orientation, genetic information, gender identity, gender expression, disability or veteran's status; Tenant shall not maintain nor provide for its employees any segregated facilities, nor will Tenant permit its employees to perform any services at any location where segregated facilities are maintained. In addition, Tenant shall comply with the applicable provisions of Section 504 of the Rehabilitation Act and the Vietnam Era Veteran's Assistance Act of 1974, 38 U.S.C.A. §4212.

(b) Tenant shall cause all services rendered for the Premises to be rendered on a fair, equal and not unjustly discriminatory basis to all users thereof, and Tenant shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided, that the Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(c) Tenant shall comply with the requirements of **Section 32.5(a)** in connection with the construction of any Improvements on the Premises.

(d) Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(e) Tenant acknowledges and agrees that Landlord may have legal obligations under Applicable Laws to investigate and remedy potential or alleged harassment or discriminatory actions taken against the University's students or employees. Tenant agrees to cooperate with Landlord in connection with any such investigations and remedial actions, including, without limitation, taking appropriate remedial actions to ensure that any discovered harassment or discriminatory actions cease.

(f) Breach of any of the preceding nondiscrimination covenants in this Section shall constitute an Event of Default.

**32.6 Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Oklahoma, without respect to conflicts of laws principles. Exclusive venue for any action brought in connection with this Lease shall lie in the judicial district in which the Premises is situated.

**32.7 Waiver or Consent Limitation.** A waiver of any given breach or default shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant.

**32.8 Force Majeure.** The occurrence of any of the following events shall excuse such obligations of Landlord or Tenant as are thereby rendered impossible or reasonably impracticable for so long as such event continues: strikes; lockouts; labor disputes; acts of God; inability to obtain labor, materials or reasonable substitutes therefor; governmental restrictions, regulations or controls; judicial orders; enemy or hostile governmental action; civil commotion; fire or other casualty; and other causes beyond the reasonable control of the party obligated to perform (but in no event shall such causes include the negligence or willful misconduct of the performing party or economic hardship).

**32.9 Labor Disputes.** Tenant shall construct, or cause Tenant's contractor to construct, Tenant's Work (as defined in **Exhibit C**) in such a manner as to avoid any labor dispute which causes or is likely to cause stoppage or impairment of work, deliveries or any other services in the University. Prior to contracting for the supply of any labor, services and/or materials for such construction, Tenant shall comply with the provisions of **Exhibit C**. In the event there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation, (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking a temporary restraining order and other injunctive relief with regard to illegal union activities or a breach of contract

between Tenant and Tenant's contractor, and (c) filing appropriate unfair labor practice charges. Should Landlord incur or sustain any Claims in connection with any such labor dispute or potential labor dispute, the provisions of **Section 8** shall apply regardless of whether Tenant has performed its duties under this **Section 32.9**.

32.10 Amendments. To be effective and binding on Landlord and Tenant, any amendment, modification, addition or deletion to the provisions of this Lease must be made in writing and executed by both parties in the same manner as this Lease.

32.11 Time of Essence. Time is of the essence in the performance of all covenants and conditions in this Lease for which time is a factor.

32.12 Nonmerger of Fee and Leasehold Estates. If under any circumstances both Landlord's and Tenant's estates in the Premises, or any portions thereof, become vested in the same owner, this Lease nevertheless shall not be extinguished by application of the doctrine of merger except at the express election of the owner and with the express written consent of the beneficiary or beneficiaries under all trust deeds affecting the Premises and Tenant's leasehold estate.

32.13 Claims by Brokers. Tenant represents to Landlord that there was no broker involved in consummating this Lease and that, to the best of Tenant's knowledge, there is no broker entitled to a commission in connection with this Lease.

32.14 Business Days. As used herein, "business day" means any day other than (i) a Saturday and a Sunday and (ii) a day on which federally insured depository institutions in the State of Oklahoma are authorized or obligated by law, governmental decree or executive order to be closed.

### **ARTICLE 33** **REPORTS**

33.1 Reports. Landlord agrees to provide, upon request from Tenant, any reports including, but not limited to, geotechnical, soil, or traffic reports, regarding the subject premises including in regards to the land to be leased or the current structures located thereon.

### **ARTICLE 34** **MAX WESTHEIMER RESEARCH PARK PROVISIONS**

Notwithstanding any provision in this Lease, the following provisions shall control:

34.1 Airport Administration; Rules and Regulations; Minimum Standards. In connection with the use and operation of the Premises, Tenant shall comply with all Applicable Laws governing the operation of Max Westheimer Airport (including the Minimum Standards for Commercial Activities for the University of Oklahoma-Max Westheimer Airport and the Rules and Regulations for the University of Oklahoma-Max Westheimer Airport from time to time published at [www.ou.edu/content/airport/general\\_info.html](http://www.ou.edu/content/airport/general_info.html)), and such Applicable Laws shall be deemed to be included in this Lease as though written out herein in full. Tenant further acknowledges and agrees that it shall be subject to the provisions of all existing or future agreements entered into between the University and the State of Oklahoma or the United States in order to obtain state or federal aid for the improvement or operation and maintenance of Max Westheimer Airport. If usage of the Premises, including, but not limited to, the streets, sewers, utilities, water systems therein, result in abnormal, extraordinary, or unusual wear and tear to the

Premises or any part of Max Westheimer Airport, the obligation and responsibility to repair and maintain the same shall be that of Tenant, and Tenant shall reimburse Landlord upon demand as Additional Rent any costs or expenses consequently incurred by Landlord.

#### 34.2 Provisions Related to Federal Aviation Administration.

(a) Tenant's right to construct or alter any Improvements on the Premises and engage in related construction activities are subject to the prior written approval of the Federal Aviation Administration ("FAA") and such construction or alterations may not commence until they have been so approved. Without limiting the generality of the foregoing and **Section 34.1**, the height of all Improvements on the Premises is expressly restricted pursuant to the Federal aviation regulations set forth in 14 CFR Part 77. FAA Form 7460-1, Notice of Proposed Construction or Alteration (as it may be hereafter amended or replaced), must be submitted for approval to the FAA SW Region by Tenant, and Tenant must obtain such approval before commencing any construction.

(b) Landlord reserves unto itself, its successors and assigns, for the use and benefit of Landlord and the public, a right of flight for the passage of aircraft in the airspace above the Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for the use of said airspace for landing on, taking off from or operation on Max Westheimer Airport.

(c) Landlord reserves unto itself, its successors and assigns, for the use and benefit of the Landlord and the public, a continuing right and easement over the Premises to take such action as may be necessary to restrict the height of structure, objects of natural growth, and other obstructions to air navigation to a height of not more than that permitted by Applicable Laws and rules and regulations of Max Westheimer Airport, unless otherwise expressly approved by the FAA and the Airport Director.

(d) Landlord reserves for itself, its successors and assigns the right to prevent any use of the Premises which would interfere with aircraft landing on or taking off from Max Westheimer Airport and the right to prevent any other use of the Premises that would constitute an airport hazard.

34.3 Site Service. (a) Landlord shall provide "site service" to the property line of the Premises as follows according to then prevailing standards established by the University from time to time for Max Westheimer Airport:

- (i) street lighting where applicable, maintenance and repair;
- (ii) storm sewerage; and
- (iii) landscaping.

(b) Water, sanitary sewerage disposal and treatment service and maintenance are not provided by Landlord.

(c) Communication services (*e.g.*, telephone, data, internet, etc.) are not provided by Landlord and are Tenant's sole responsibility.

(d) Tenant shall at all times provide and maintain trash receptacles for the Premises, and Tenant shall deposit all trash only in those receptacles. Tenant shall, at its cost, cause its trash receptacles to be emptied and trash removed at adequate frequencies.

(e) Without limitation of **Section 6.3**, Tenant shall provide approved containers for waste oil and any other Hazardous Materials (to the extent permitted under this Lease, if at all) (collectively, "Waste Materials") for its occupants. Tenant shall cause all Waste Materials to be properly stored, and cause all Waste Materials containers to be properly maintained in a clean and professional manner, all in accordance with all Applicable Laws and in a manner that prevents discharge of Waste Materials. Tenant shall cause, at Tenant's sole cost, the proper removal and disposal of Waste Materials not less than monthly or more often as required and in accordance with Applicable Laws.

34.4 Rights and Privileges of Landlord. In addition to all rights and privileges of the Landlord set forth in other provisions of this Lease, the Landlord retains all rights and privileges not specifically granted to the Tenant in relation to the Premises and the surrounding property owned by Landlord, including without limitation the following:

(a) The right to further develop or improve the landing areas, taxiways, ramps, common access points and other improvements and facilities of the airport as it sees fit, regardless of the desires or view of the Tenant, and without interference or hindrance.

(b) The right, but not the obligation, of Landlord and any governmental authority and any third party acting on their behalf, to maintain and keep in repair, or to cause or permit maintenance and repair by third parties or governmental authorities of, the landing area of the airport and all publicly owned facilities of the airport, together with the right to direct and control all activities of Tenant in this regard.

(c) The right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Tenant from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Landlord, would limit the usefulness of the airport or constitute a hazard to aircraft.

(d) The right to temporarily close the airport or any landing areas, taxiways, ramps, common access points or other improvements or facilities thereon for maintenance, improvement or for the safety of the public.

(e) The right to approve or deny any sublease of the Premises leased.

(f) All rights not specifically granted to the Tenant under this Lease.

34.5 Signs. Tenant shall not be permitted to maintain, erect or display any signs on the Premises without Landlord's prior express written consent. Landlord retains the right to specify sign(s) location, materials and design. Cost of acquiring, installing and maintaining approved signs shall be borne with Tenant.

34.6 Interference.

(a) All equipment of Tenant shall be designed, constructed, installed, operated, maintained, and repaired in compliance with all Applicable Laws and good engineering practices with particular regard to the possibility of interference to or from Landlord's current and future

operations on the Max Westheimer Research Park ("MWRP"), including the current and future operations of any existing or future entity operating on the MWRP.

(b) Any and all activities in which Tenant engages, performs, or conducts shall be designed so as not to objectionably interfere with Landlord's current and future operations on the MWRP, including the current and future operations of any existing or future entity operating on the MWRP.

(c) Landlord reserves the right to determine, in its sole discretion, whether any Tenant equipment or activity causes or will cause objectionable interference with Landlord's current and future operations on the MWRP, including the current and future operations of any existing or future entity operating on the MWRP.

(d) If Landlord determines that any Tenant equipment or activity causes, or will cause, objectionable interference, Landlord shall notify Tenant, whereupon Tenant shall immediately remove any equipment or cease any activity causing any such objectionable interference at Tenant's sole cost and expense.

(e) In no event shall any structure, fixture or improvement on the Premises exceed thirty feet (30') in height from grade level.

34.7 National Weather Service Development Guidelines. So long as the National Weather Service ("NWS") operates facilities within MWRP, all Improvements on the Premises and all alterations thereof shall comply with the NWS's development guidelines that may be promulgated from time to time concerning the development of improvements in the proximity of NWS facilities. NWS's current guidelines are attached hereto as Exhibit G.

### **ARTICLE 35** **RIGHT OF FIRST REFUSAL**

35.1 Right of First Refusal If and to the extent Tenant offers all or any portion of the Premises for lease to any third party, Landlord shall have the ongoing (as provided herein) right of first refusal (the "Right of First Refusal") with respect to all of such offered space within the Premises during the Term of this Lease (the "Refusal Space"). Landlord's Right of First Refusal shall be exercised as follows: when Tenant has a bona fide third party offer from prospective tenant (the "Prospect") interested in leasing all or any portion of the Refusal Space upon terms acceptable to Tenant, Tenant shall advise Landlord (the "Advice") of the terms and the form of lease agreement under which Landlord and such Prospect are prepared to lease the Refusal Space (or applicable portion thereof). Landlord may lease the Refusal Space described in the Advice under such terms, by providing Tenant with written notice of exercise (the "Notice of Exercise") within thirty (30) days after the date of the Advice.

35.2 Reinstatement Following Waiver. If (i) Landlord fails to timely exercise its Right of First Refusal with respect to any Advice presented to Landlord in accordance with Section (a) above and either (A) Tenant fails to enter into a Lease with the Prospect for the Refusal Space within 90 days of the Date of the Advice, (B) the terms under which Tenant proposes to lease the Refusal Space to the Prospect materially change from the terms contained in the Advice or the monetary terms change at all, or (C) Tenant leases the Refusal Space to the Prospect, such lease and all renewal options thereunder terminate or expire, and Tenant proposes to again lease the Refusal Space to a third party other than the Prospect or its successors, sublessees or assigns, then in any such instance Landlord's Right of First Refusal with respect to the Refusal Space shall once again apply and/or remain in effect.



35.3 Refusal Space Lease. If Landlord exercises its Right of First Refusal, Landlord and Tenant shall enter into a lease agreement (the "Refusal Space Lease") under which Tenant leases the Refusal Space to Landlord. The Refusal Space Lease shall constitute a sublease of the Refusal Space to Landlord.

35.4 Landlord Nominee. Landlord may, at its option, exercise its Right of First Refusal for the benefit of any affiliate or nominee of Landlord.

**ARTICLE 36**  
**OPTIMIST CLUB LEASE**

On the Effective Date, Landlord will assign to Tenant, and Tenant shall assume, the lease agreement (the "Optimist Lease") pursuant to which Landlord presently leases the Hangar to the Norman Optimist Club, pursuant to an assignment and assumption agreement mutually acceptable to Landlord and Tenant. If this Lease terminates for any reason while the Optimist Lease remains in effect, then the Optimist Lease shall thereupon be deemed automatically assigned to Landlord.

**ARTICLE 37**  
**CONTINGENCY**

Notwithstanding any provision herein to the contrary, the effect of this Lease and the parties' obligations hereunder are conditioned upon approval of this Lease by The Board of Regents of the University of Oklahoma at a regular or special meeting of the Board on or before \_\_\_\_\_ 201\_. If this Lease is not approved by The Board of Regents of the University of Oklahoma, on or before \_\_\_\_\_, 201\_, then either party may thereafter terminate this Lease by written notice to the other, in which even this Lease shall be of no further force and effect.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

**LANDLORD**

BOARD OF REGENTS OF THE UNIVERSITY  
OF OKLAHOMA, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: Chad Cochell, Director,  
Real Estate Operations

**TENANT**

THE NORMAN MUNICIPAL AUTHORITY

By: \_\_\_\_\_  
Name: Lynne Miller \_\_\_\_\_  
Title: Chairperson \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

Approved as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
City Attorney

**EXHIBIT A**  
**SITE PLAN**

*Items to be identified:*

*Utility Points of Demarcation – See Section 7.1(a)*

**EXHIBIT B**  
**DESCRIPTION OF THE LAND**

## EXHIBIT C

### PROVISIONS RELATING TO THE DESIGN AND CONSTRUCTION OF TENANT'S IMPROVEMENTS

#### I. GENERAL REQUIREMENTS

**A. Delivery of Land to Tenant.** Landlord shall deliver the Land to Tenant in "As IS" condition. Tenant shall be responsible for all other work relating to construction of the Improvements.

#### **B. Tenant's Plans.**

1. Prior to Tenant preparing architectural and engineering calculations, designs, drawings and other documents or the applicable governmental authorities (collectively, "Tenant's Plans"), which pertain to Tenant's Work described in **Section II**, Tenant's architect and engineer(s) shall thoroughly familiarize themselves with, and verify by physical inspection, the physical condition of the Premises, the Development Restrictions, this **Exhibit C**, all applicable local building codes and all existing job conditions. Tenant's Plans shall include, without limitation, the site plan, floor plan(s), elevations, facility and structures height, fire and life safety systems, means of egress, portable fire extinguishers locations, mechanical systems, electrical systems, plumbing systems, exterior and interior finishes and landscaping plans, preliminary grading and drainage plans, underground detention plan, sewer and service connections, soil tests, utilities plan (including water mains and fire hydrant locations), locations of ingress and egress to and from public thoroughfares, fire department access, curbs, gutters, parkways, street lighting, designs and locations of indoor signage, outdoor signs (if allowed), storage areas (if allowed), and any relocations of Utilities pursuant to **Section 7.1(d)**, all sufficient to enable potential contractors to make reasonably accurate bid estimates, and to enable Landlord to make an informed judgment about the quality of construction and any effect on the reversion. Tenant's Plans shall be prepared with full knowledge of and in compliance with Development Restrictions (if any), this **Exhibit C** and all Applicable Laws relating thereto including, without limitation, the energy conservation and handicap access requirements, if applicable, of the State of Oklahoma. Tenant's architect and engineer(s) shall be fully qualified and licensed in the State of Oklahoma.

2. Tenant shall submit to Landlord three (3) sets of Tenant's Plans Tenant shall promptly file all applications required for construction of the Improvements following Landlord's approval of Tenant's Plans, and thereafter Tenant shall diligently pursue the permits necessary to construct the Improvements. All building, fire & life safety systems, or any other permits, shall be obtained through the University Fire Marshal. The University Fire Marshal is the authority having jurisdiction (AHJ).

#### **C. Approval of Tenant's Plans.**

1. The design and quality of all work and installations undertaken by Tenant on the Premises shall be subject to, any adopted or referenced codes or standards, all city, county and state ordinances, rules and regulations applicable thereto (as applicable). Landlord shall endeavor to approve Tenant's Plans or provide comments thereto promptly after Landlord's receipt of a complete set of Tenant's Plans so as to enable Tenant to cause Tenant's Plans to be mutually acceptable to Landlord and Tenant. In addition, as with all projects funded by the Norman Forward sales tax initiative, the City of Norman will form a citizen ad hoc committee consisting of citizens with varied vested interests in the subject project to provide input and feedback into the development and design of the subject project. For this project, as the

University is both a community project and the Landlord, the University will select a University representative to serve on the ad hoc committee and provide input and feedback into the development and design of the multisport facility and represent the University's interests.

2. Landlord shall review Tenant's Plans for their conformance with the provisions contained within this **Exhibit C**. Where Tenant's Plans conflict with this **Exhibit C**, the provisions of this **Exhibit C** shall prevail. Landlord's approval shall not be deemed to certify that Tenant's Plans comply with the building codes and shall not relieve Tenant of Tenant's responsibility to verify all job conditions including, without limitation, dimensions, locations, clearances and property lines.

3. Any subsequent changes, modifications or alterations to Tenant's Plans requested by Tenant before completion of Tenant's Work shall be reviewed by Landlord and the University Fire Marshal, or designee (to the extent required by Applicable Law) and Tenant shall pay any additional costs and expenses incurred in connection with said processing, including any additional fees of Landlord. Landlord shall have the right to demand that Tenant pay such costs and expenses in advance of Landlord's processing such a request. No such changes, modifications or alterations in said approved Tenant's Plans shall be made without the prior consent of Landlord after written request therefor by Tenant.

**D. Building Permit for Tenant's Improvements.** Tenant shall be responsible for obtaining and purchasing a building permit for the construction of Tenant's Improvements from the City of Norman Planning and Community Development Department and the University Fire Marshal's Office as appropriate. Any building permit application shall include the submittal of building plans and/or fire and life safety plans to the University Fire Marshal and to Facilities Management. These governing agencies shall be responsible for plan review and approval, building inspections during all phases of construction, field acceptance testing and final approval for occupancy. The University Fire Marshal, Facilities Management and any other University assumes oversight and authority for building code and/or life safety compliance. This oversight and authority shall be entirely separate, independent from and in addition to Landlord's review of Tenant's Plans pursuant to **Section II(c)** above. If any such governing University authority rejects Tenant's Plans and thereby prevents the issuance of a building permit, Tenant shall immediately make all necessary corrections required by said authority. Upon said authority's approval of Tenant's Plans and permit application, Tenant or Tenant's contractor shall pick up the building permit from the University Fire Marshal's Office. Tenant shall pay for all plan review and permit fees required to obtain a building permit. Tenant shall apply for and obtain all approvals and permits from the local health department, as required.

**E. Construction of Tenant's Work.**

1. Tenant agrees, at its own expense, to construct diligently and continuously to completion of those Improvements described as "Tenant's Work" in **Section II**, such construction to be complete no later than five (5) years after the Delivery Date. Tenant shall construct Tenant's Work in a first class, professional workmanlike manner and in accordance with all Applicable Laws, Development Restrictions (if applicable), and generally accepted engineering practices, subject to approval by Landlord exercised in its reasonable judgment. Tenant's Work shall be constructed in accordance with Tenant's Plans, which shall have been approved by Landlord, the University Fire Marshal's Office, Facilities Management, and any other University representative group, and shall comply with all University Standards and Applicable Laws relating thereto. In the event that Tenant's Work has not been constructed in accordance with the approved Tenant's Plans in the reasonable judgment of Landlord's representative, then Tenant shall not be permitted to occupy the Improvements until a certificate of occupancy has been granted by the University Fire Marshal, or his designee, until the

Improvements do so comply, and Tenant shall not be excused from the performance of all other obligations under this Lease, including, without limitation, Base Rent and Additional Rent.

2. Landlord shall not be liable for any claim, demand, damage, loss, expense or cost of Tenant arising from work being performed by Landlord in connection with any adjacent or nearby properties (if any).

3. Tenant shall deliver a copy of the Certificate of Occupancy to Landlord within five (5) days after completion of Tenant's Work or initial occupancy, whichever occurs first.

**F. Temporary Construction Facilities.** During the performance of Tenant's Work or subsequent Improvements in accordance with **Article 10** of the Lease, Tenant shall be responsible for the removal from the Premises on a daily basis of all trash, construction debris and surplus construction materials, or the placement on a daily basis of such trash, debris and materials in designated receptacles.

## **II. DESCRIPTION OF TENANT'S WORK**

1. "Tenant's Work" shall include the purchase, construction and/or installation of all of the approved materials which are necessary to construct and complete construction of the Improvements.

2. If Tenant's Permitted Use as set forth in **Section 6.1** includes food preparation, grease traps located within the Improvements will be required for all food preparation areas having pot sinks or any grease-producing appliances that discharge into the waste system. Tenant shall be responsible for the proper care, cleaning and maintenance of the grease traps and any piping required therefor in accordance with all Applicable Laws. Tenant shall keep such grease traps in a clean and professional appearance at times, including causing the grease traps to be cleaned and maintained so as to prevent the discharge of any grease into the waste system.

3. Any cooking processes that emit a grease laden vapor shall be properly protected and ventilated per the governing codes and standards that are in effect as directed by the University Fire Marshal's Office. Any hood suppression system shall also be maintained as required by the governing codes and standards that are in effect.

## **III. TENANT'S USE OF A CONTRACTOR**

**A. Tenant's General Contractor.** Tenant shall enter into a written construction agreement with its selected general contractor which shall comply with the provisions of this Section III and provide for, among other things, (i) a one-year warranty for all defective work, (ii) a requirement that Tenant's contractor maintain policies of insurance in accordance with the requirements of **Exhibit C-1** attached hereto, and (iii) the Special Conditions described below.

### **B. Special Conditions.**

1. Tenant shall incorporate into the contract with its contractor the following items as "Special Conditions":

(a) Tenant's contractor shall diligently perform said work in a manner and at times which do not impede or delay Landlord in the operation or construction (if applicable) upon other properties owned by Landlord. Any delays in the completion of the Improvements caused by Tenant's contractor shall not relieve Tenant of any obligation under this Lease.

(b) Tenant's contractor shall be responsible for the repair, replacement or clean-up of any damage caused by Tenant's contractor to any other contractor's work in any other properties owned by Landlord or the City of Norman.

(c) Tenant and Tenant's contractor shall comply with all Development Restrictions and all Applicable Laws governing the performance of Tenant's Work, including all applicable safety regulations established by Landlord, its contractors, or the University Fire Marshal's Office.

(d) Any and all work performed by Tenant or Tenant's contractor shall be performed in a manner so as to avoid any labor dispute which results in a stoppage or impairment of work, deliveries or any other service in or operation of the University. If there shall be any such stoppage or impairment as the result of any such labor dispute, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation: (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking a temporary restraining order and other injunctive relief with regard to illegal union activities or a breach of contract between Tenant and Tenant's contractor, and (c) filing appropriate unfair labor practice charges.



**EXHIBIT C-1**

**CONTRACTOR INSURANCE REQUIREMENTS**

**1. Specific Requirements.**

<b>INSURANCE</b>	<b>COVERAGES</b>	<b>OTHER REQUIREMENTS</b>
Worker’s Compensation	Statutory Limits (if state has no statutory limit, \$1,000,000)	1. No “alternative” forms of coverage will be permitted.
Employer’s Liability	\$1,000,000 each accident for bodily injury by accident \$1,000,000 each employee for bodily injury by disease	
Commercial General Liability (Occurrence Basis)	\$1,000,000 per occurrence \$2,000,000 general aggregate \$2,000,000 product-completed operations aggregate limit \$1,000,000 personal and advertising injury limit	<b>1. ISO form CG 00 01.</b> 2. Separation of insured language will not be modified. 3. Aggregate limit per location endorsement. 4. Must include contractual liability coverage consistent with ISO form CG 00 01, without modification. 5. Defense will be provided as an additional benefit and not included within the limit of liability.
Business Automobile Liability (Occurrence Basis)	\$1,000,000 combined single limit	<b>1. ISO form CA 00 01.</b> 2. Includes liability arising out of operation of owned, hired and non-owned vehicles.

**2. General Insurance Requirements.**

**(a) Policies.** All policies must:

- (i) With respect to all liability policies except workers’ compensation/employer’s liability, be endorsed to include Landlord, as an “additional insured”;
- (ii) Contain a provision for 30 days’ prior written notice by insurance carrier to Landlord required for cancellation, nonrenewal, or substantial modification; and
- (iii) Not contain a deductible or self-insured retention in excess of \$10,000 without the prior written approval of Landlord.

**(b) Evidence of Insurance.** Insurance must be evidenced as follows:

- (i) ACORD Form 25 *Certificates of Liability Insurance* for liability coverages;

- (ii) ACORD forms must
  - (A) Specify the additional insured status and/or waivers of subrogation;
  - (B) State the amounts of all deductibles and self-insured retentions;
  - (C) List, or be accompanied by copies of, all required endorsements.

(c) **Minimum Amounts.** If the insured carries liability insurance coverage with limits higher than the limits required herein, the full amount of the insurance coverage actually carried by the insured will be available to respond to a covered loss or occurrence, and the coverage afforded to Landlord as additional insured under such policy or policies will not be limited by the minimum coverage limits specified herein but will be deemed increased to the amounts actually carried by the insured.

(d) **Changes in Coverages.** Landlord may annually (or such longer interval chosen by Landlord) review and modify the amounts and types of coverages and policy forms stated in this Exhibit as Landlord deems necessary or appropriate to reflect inflation or changes in the nature or degree of risks insured. Any such adjustments or modifications required by Landlord pursuant to the foregoing shall be effective and binding upon thirty (30) days written notice thereof from Landlord to Tenant.

## EXHIBIT D

### TENANT'S INSURANCE

#### 1. Specific Requirements.

#### 2. General Insurance Requirements.

##### (a) Policies. All policies must

(i) Be issued by carriers having a Best's Rating of A or better, and a Best's Financial Size Category of VIII, or better, and/or *Standard & Poor Insurance Solvency Review* A-, or better, and admitted to engage in the business of insurance in the State in which the Building is located;

(ii) Be endorsed to be primary with the policies of all Landlord Parties being excess, secondary and noncontributing;

(iii) Be endorsed to provide a waiver of subrogation in favor of the Landlord Parties;

(iv) With respect to all liability policies except workers' compensation/employer's liability, be endorsed to include the Landlord Parties as "additional insureds" (The additional insured status under the commercial general liability policy will be provided on ISO form CG 20 11 04 13); and

(v) Contain a provision for 30 days' prior written notice by insurance carrier to Landlord required for cancellation, nonrenewal, or substantial modification.

(vi) The following exclusions/limitations (or their equivalents) are not permitted:

(A) ISO CG 21 39 Contractual Liability Limitation.

(B) ISO CG 24 26 Amendment Of Insured Contract Definition.

(C) Any endorsement modifying or deleting the exception to the Employer's Liability exclusion.

(D) Any "Insured vs. Insured" exclusion.

(E) Any type of punitive, exemplary or multiplied damages exclusion.

##### (b) Limits, Deductibles and Retentions

(i) **Except as expressly provided above, no deductible or self-insured retention in excess of \$10,000 without the prior written approval of Landlord.**

(ii) No policy may include an endorsement restricting, limiting or excluding coverage in any manner without the prior written approval of Landlord.

(ii) If Tenant carries liability insurance coverage with limits higher than the limits required herein, the full amount of the insurance coverage actually carried by Tenant will be available to respond to a covered loss or occurrence, and the coverage afforded to Landlord as additional insured under such policy or policies will not be limited by the minimum coverage limits specified herein but will be deemed increased to the amounts actually carried by Tenant.

##### (c) Forms

(i) If the forms of policies, endorsements, certificates, or evidence of insurance required by this Exhibit are superseded or discontinued, Landlord will have the right to require other equivalent forms; and

(ii) Any policy or endorsement form other than a form specified in this Exhibit must be approved in advance by Landlord.

##### (d) Evidence of Insurance. Insurance must be evidenced as follows:

(i) ACORD Form 25 (or alternative form acceptable to Landlord) *Certificates of Liability Insurance* for liability coverages;

(ii) ACORD Form 28 (or alternative form acceptable to Landlord) *Evidence of Commercial Property Insurance* for property coverages;

(iii) Evidence to be delivered to Landlord prior to commencing operations at the Property and at least 30 days prior to the expiration of current policies; and

(iv) ACORD forms must

- (A) Specify the additional insured status and/or waivers of subrogation;
- (B) State the amounts of all deductibles and self-insured retentions;
- (C) **Be accompanied by copies of all required endorsements;** and
- (D) Be accompanied by insurer certified copy of notice of cancellation endorsement providing that 30 days' notice of cancellation and material change will be sent to the certificate holder.

(e) **Copies of Policies.** If requested in writing by Landlord, Tenant will provide to Landlord a certified copy of any or all insurance policies or endorsements required by this Contract.

(f) **Changes in Coverages.** Landlord may annually (or such longer interval chosen by Landlord) review and modify the amounts and types of coverages and policy forms stated in this Exhibit as Landlord deems necessary or appropriate to reflect inflation or changes in the nature or degree of risks insured. Any such adjustments or modifications required by Landlord pursuant to the foregoing shall be effective and binding upon thirty (30) days written notice thereof from Landlord to Tenant.

**EXHIBIT E**

**STATEMENT OF TENANT REGARDING LEASE**

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

Insert Name and Address of Mortgagee

RE: [Insert Premises Address]

Gentlemen:

It is our understanding that you have committed to place a mortgage upon the subject premises and as a condition precedent thereof have required this certification of the undersigned.

The undersigned, as Tenant under that certain lease dated \_\_\_\_\_, 2017 (“Lease”) hereby ratifies the Lease and certifies that:

- (1) The undersigned accepted the Land described in the Lease on \_\_\_\_\_, 2017;
- (2) The undersigned is presently open and conducting business with the public in the premises;
- (3) The current Base Rent in the annual amount of \$\_\_\_\_\_ was payable from \_\_\_\_\_, 2017;
- (4) The Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way (except by agreement[s] dated \_\_\_\_\_), and neither party thereto is in default thereunder;
- (5) The Lease represents the entire agreement between the parties as to this leasing;
- (6) The term of the Lease expires \_\_\_\_\_, 20\_\_;
- (7) All conditions under the Lease to be performed by Landlord have been satisfied, including, without limitation, all co-tenancy requirements thereunder;
- (8) All required contributions by Landlord to Tenant on account of Tenant’s improvements have been received;
- (9) On this date there are no existing defenses, offsets, counterclaims or deductions against rental which the undersigned has against the enforcement of the Lease by Landlord;
- (10) No rental has been paid more than one (1) month in advance and no security has been deposited with Landlord; and
- (11) The Base Rent and additional rent for \_\_\_\_\_, 200\_\_, has been paid.

Sincerely,

---

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT F**  
**MWA & SWEARINGEN PARK**  
**DEVELOPMENT COVENANTS, CONDITIONS AND RESTRICTIONS**  
**[attached]**

**EXHIBIT G**  
**NWS DEVELOPMENT GUIDELINES**  
**[attached]**