

Meeting No. 883

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

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February 9, 1995

Austin, Texas

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 OF
 THE UNIVERSITY OF TEXAS SYSTEM
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MEETING NO. 883

THURSDAY, FEBRUARY 9, 1995.--The members of the Board of Regents of The University of Texas System convened in regular session at 10:15 a.m. on Thursday, February 9, 1995, in the Dobie Room on the Fourth Floor of the Peter T. Flawn Academic Center at The University of Texas at Austin, Austin, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Rapoport, presiding	
Vice-Chairman Temple	
Vice-Chairman Lebermann	
Regent Cruikshank	
Regent Hicks	
Regent Holmes	
Regent Loeffler	
Regent Ramirez	
Regent Smiley	

Executive Secretary Dilly

Chancellor Cunningham
Executive Vice Chancellor Duncan
Executive Vice Chancellor Mullins
Executive Vice Chancellor Burck

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

RECESS TO BRIEFING AND EXECUTIVE SESSIONS.--Chairman Rapoport announced that the Board would recess to convene a briefing session and Executive Session pursuant to Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074 to consider those matters listed on the Executive Session agenda.

RECONVENE.--At 1:30 p.m., the Board reconvened in open session in the Knopf Room of the Peter T. Flawn Academic Center.

INTRODUCTION OF MR. DONALD L. EVANS, MIDLAND, TEXAS.--Chairman Rapoport introduced Mr. Donald L. Evans of Midland, Texas, a nominee to the U. T. Board of Regents by Governor Bush, and noted that, following his Senate confirmation, the Board looked forward to his counsel in the governance of The University of Texas System.

WELCOME BY DR. ROBERT M. BERDAHL, PRESIDENT OF THE UNIVERSITY OF TEXAS AT AUSTIN.--Chairman Rapoport stated that the Board was pleased to be meeting at The University of Texas at Austin and then called on Dr. Robert M. Berdahl, President of U. T. Austin, for any welcoming remarks on behalf of the host institution.

On behalf of the faculty, staff, and students of U. T. Austin, President Berdahl welcomed the members of the Board and other guests to the campus.

U. T. BOARD OF REGENTS: APPROVAL OF MINUTES OF REGULAR MEETING HELD ON DECEMBER 1, 1994, AND SPECIAL MEETING HELD ON JANUARY 27, 1995.--Upon motion of Vice-Chairman Temple, seconded by Regent Holmes, the Minutes of the regular meeting of the Board of Regents of The University of Texas System held on December 1, 1994, in Edinburg, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLIII, Pages 533 - 998.

Upon motion of Regent Cruikshank, seconded by Vice-Chairman Temple, the Minutes of the special meeting of the Board of Regents of The University of Texas System held on January 27, 1995, in Austin, Texas, were approved as distributed by the Executive Secretary. The official copy of these Minutes is recorded in the Permanent Minutes, Volume XLII, Pages 999 - 1065.

RECESS FOR COMMITTEE MEETINGS AND COMMITTEE REPORTS TO THE BOARD.--At 1:35 p.m., the Board recessed for the meetings of the Standing Committees, and Chairman Rapoport announced that at the conclusion of each committee meeting the Board would reconvene to approve the report and recommendations of that committee.

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

REPORTS AND RECOMMENDATIONS OF STANDING COMMITTEES

REPORT OF EXECUTIVE COMMITTEE (Pages 3 - 15).--In compliance with Section 7.14 of Chapter I of Part One of the Regents' Rules and Regulations, Chairman Rapoport reported to the Board for ratification and approval all actions taken by the Executive Committee since the last meeting. Unless otherwise indicated, the recommendations of the Executive Committee were in all things approved as set forth below:

1. U. T. System: Approval to Rescind the Current Policy Regarding the Use of Prevailing Wage Rates for Construction Projects; Adoption of Policy of Using Wage Surveys Determined by the General Services Commission for Construction Contracts Subject to Article 5159a, V.T.C.S.; and Authorization for Such Rates to be Supplemented When Necessary Because of Omissions of Applicable Classifications of Labor (Exec. Com. Letter 95-6).--At its June 1993 meeting, the U. T. Board of Regents adopted a policy which required that prevailing wage rates comparable to the rates promulgated under the federal Davis-Bacon Act be adopted for construction projects of The University of Texas System that are subject to Article 5159a of Vernon's Texas Civil Statutes.

When the Board took this action, Article 5159a of V.T.C.S. did not make any reference to the Davis-Bacon Act and did not state any method by which the public body should ascertain the general prevailing rate. Subsequently, on September 1, 1993, an amendment to Article 5159a became effective which required the public body to ascertain the prevailing wage either by conducting a survey or by adopting Davis-Bacon rates "if the survey on which the Davis-Bacon rate was founded was conducted within three years prior to the bidding of the project." This three-year requirement did not make it feasible for Davis-Bacon rates to be used on U. T. System construction contracts because, as the U. S. Department of Labor which promulgates those rates advised, fewer than ten Texas counties, and no counties where the U. T. System has active construction projects, have been surveyed within three years.

Under these circumstances, and upon recommendation of the Executive Committee, the Board:

- a. Rescinded the policy adopted on June 10, 1993, regarding prevailing wage rates to be utilized by the U. T. System in construction contracts
- b. Adopted a policy of using wage surveys for construction contracts, as authorized by Article 5159a, Vernon's Texas Civil Statutes, and provided by the General Services Commission
- c. Authorized such rates to be supplemented when necessary because of omissions of applicable classifications of labor.

Neither a court nor the Texas Attorney General has issued an opinion which interprets Article 5159a as amended to date. However, the Council on Competitive Government (the Council), comprised of the Governor, the Lieutenant Governor, the Comptroller, the Speaker of the House of Representatives, the Commissioner of the Texas Employment

Commission, and the presiding officer of the General Services Commission, has directed that for construction contracts subject to Article 5159a, all instrumentalities of the state utilize as prevailing wages those wages determined by surveys conducted by the General Services Commission (the Commission).

The U. T. System will follow the Council's direction, unless or until such direction is rescinded or otherwise invalidated, to utilize as prevailing wages those determined by the Commission, provided that, if and when necessary because of omissions of applicable classifications of labor from the Commission's surveys, the U. T. System may supplement the Commission's surveys by other available information sufficiently to repair such omissions. The above applies only to construction contracts subject to Article 5159a, whether the contract is administered by the Office of Facilities Planning and Construction or by a component institution's purchasing department or physical plant department. In situations where Article 5159a does not apply, such as labor-only contracts, there is no requirement for surveys or a reference to the Commission, and market forces will be relied on to determine labor rates.

2. U. T. Austin: Authorization to Establish a Master of Science in the Commercialization of Science and Technology Degree and to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change) (Exec. Com. Letter 95-6).--Authorization was granted to establish a Master of Science in the Commercialization of Science and Technology degree at The University of Texas at Austin and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The Master of Science in the Commercialization of Science and Technology degree is consistent with U. T. Austin's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs. The program will be offered off-campus in a weekend executive format at no cost to the State.

The Master of Science in the Commercialization of Science and Technology degree requires a minimum of 33 semester credit hours. The degree plan includes an 18 hour semester credit core, nine semester credit hours of electives in a concentration, and six additional semester credit hours, three of which are for a professional report. This interdisciplinary program will be administered by the IC² Institute and a graduate studies committee appointed by the Vice President and Dean of Graduate Studies at U. T. Austin.

First year enrollment will be thirty FTE students with 100% expected to graduate. Those accepted in the program will have full support of their employers. Similar support is expected for succeeding cohorts.

The University has structured the administration of this degree program to ensure that it meets the same quality standards as are required for regular on-campus master's degree programs. Students will be admitted to the program through the regular graduate school admissions process.

Although eight courses (24 semester credit hours) in the student's program will be taught off-campus in the executive format, all of those courses will be taught by scholars who have a full-time commitment to their field. Furthermore, each individual faculty member will hold an appointment either as a regular faculty member or as a lecturer in the appropriate U. T. Austin department. Of the faculty for the initial student cohort, three hold appointments to endowed chairs or professorships at U. T. Austin, three are full-time research scholars, and the balance are appointed Senior Research Fellows at the IC² Institute. One is a full-time faculty member at another institution and a research fellow at the IC² Institute. All have a long-term continuing relationship with U. T. Austin. None of the faculty in the program will be employed exclusively to teach in this program.

To ensure that the off-campus instructional format does not detract from the quality of the instruction, the IC² Institute will arrange for all students to have access to a local academic library and will supplement the collection of that library with IC² research monographs and other special materials directly related to the commercialization of science and technology. In addition, all students in the program will be given access to the U. T. Austin general libraries on-line catalog and other electronically accessible materials. Students will also have the ability to consult with their instructors by way of Internet e-mail.

All costs of the program including overload payments for the faculty and reimbursement of travel expenses will be covered by charges to the students. It is anticipated that the total fees for the degree will be approximately \$20,000 per student and will, in most if not all cases, be paid by the student's employer. No state funds will be used to offer this program.

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

3. U. T. Brownsville - Science and Engineering Technology Building - Construction of Thermal Energy Plant (Project No. 902-815): Award of Construction Contract to R.E.C. Industries, Inc., Bryan, Texas (Exec. Com. Letter 95-8).--The Executive Committee recommended and the Board awarded a construction contract for the Science and Engineering Technology Building - Construction of Thermal Energy Plant at The University of Texas at Brownsville to the lowest responsible bidder, R.E.C. Industries, Inc., Bryan, Texas, for the Base Bid in the amount of \$2,447,000.

R.E.C. Industries, Inc. stated in its proposal that it will have Historically Underutilized Business participation of 10% for minority-owned firms and 5% for women-owned firms in the contract.

The total project cost for this stage is comprised of the following elements:

General Construction Contract	\$2,447,000
Fees and Administrative Expenses	197,863
Future Work	40,000
Miscellaneous Expenses	20,000
Project Contingency	<u>45,137</u>

Total Cost for Construction of
Thermal Energy Plant \$2,750,000

The project will be the first stage of construction for the Science and Engineering Technology Building at U. T. Brownsville. The new Thermal Energy Plant will allow for the relocation of two existing 250-ton chillers and also expand the thermal energy distribution system to serve the new building. Included in this approximate 4,400 gross square foot building is a new 750-ton chiller and associated thermal related infrastructure.

This project was reviewed by the Texas Higher Education Coordinating Board in October 1994 and is included in the FY 1995 Capital Budget at a total project cost of \$23,875,000 to be funded with \$375,000 from Gifts and Grants from Texas Southmost College, as their share of the cost to relocate the existing plant and equipment, and \$23,500,000 from Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

4. U. T. El Paso: Authorization to Purchase All of Block 9, Alexander Addition, An Addition to the City of El Paso, and the Closed Alley within Block 9 (Stanton Medical Building), El Paso County, Texas, from The Leavell Company, El Paso, Texas; Approval for Executive Vice Chancellor for Business Affairs to Execute Documents Related to Transaction; Authorization to Submit the Purchase to the Coordinating Board; and Approval of Use of Revenue Financing System Parity Debt for the Purchase, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity (Exec. Com. Letter 95-7).--At its meeting on December 1, 1994, the U. T. Board of Regents was informed that The University of Texas at El Paso had received an unexpected opportunity to purchase a full city block and the Stanton Medical Building adjacent to its College of Nursing and Health Sciences. This property contains approximately 1.3 acres of land, an eight-story office building with approximately 67,600 gross square feet of space, a two-story parking garage with space for 270 cars, and surface parking for an additional twenty cars. Purchase of this facility will provide both short-term and future space for program expansion at only a fraction of the cost to construct new space on campus. Surplus space will be leased for income to defray the cost of operating the building until such time as it is needed for University purposes.

In accordance therewith, the Board, upon recommendation of the Executive Committee:

- a. Authorized U. T. El Paso to purchase all of Block 9, Alexander Addition, an addition to the City of El Paso, and the closed alley within Block 9 (Stanton Medical Building), El Paso County, Texas, from The Leavell Company, El Paso, Texas, for \$1,250,000 plus related closing costs
- b. Authorized the Executive Vice Chancellor for Business Affairs, or his designee, to execute all documents pertaining to the transaction
- c. Authorized U. T. El Paso to submit the transaction to the Texas Higher Education Coordinating Board for approval.

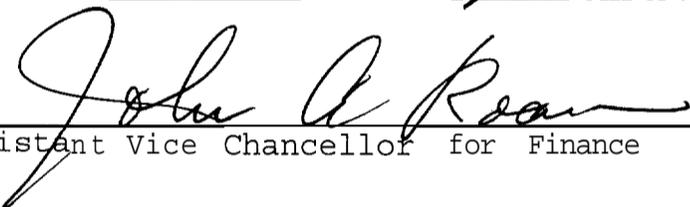
In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the Board on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 8, the Board resolved that:

- a. Parity Debt shall be issued to pay the purchase price including any costs related to the purchase paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the Board relating to the Financing System
- c. U. T. El Paso, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$1,250,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution"), do hereby execute this certificate for the benefit of the Board of Regents pursuant to Section 5 (a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution to finance the purchase of all of Block 9, Alexander Addition, an addition to the City of El Paso, and the closed alley within Block 9 (Stanton Medical Building) at U. T. El Paso, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this 23 day of December, 1994


Assistant Vice Chancellor for Finance

5. U. T. Pan American - Engineering Building (Project No. 901-809): Award of Construction Contract to BFW Construction Co., Inc., Temple, Texas; and Approval of Plaque Inscription (Exec. Com. Letter 95-8).--Upon recommendation of the Executive Committee, the Board:
- a. Awarded a construction contract for the Engineering Building at The University of Texas - Pan American to the lowest responsible bidder, BFW Construction Co., Inc., Temple, Texas, for the Base Bid and Alternate Bid Nos. 1, 2, 3, and 4 in the amount of \$14,771,000
 - b. Approved the inscription set out below for a plaque to be placed on the building in accordance with the standard pattern approved by the U. T. Board of Regents in June 1979.

ENGINEERING BUILDING
1995

BOARD OF REGENTS

Bernard Rapoport, Chairman	William H. Cunningham
Ellen Clarke Temple,	Chancellor, The University
Vice-Chairman	of Texas System
Lowell H. Lebermann, Jr.,	Miguel A. Nevarez
Vice-Chairman	President, The University
Robert J. Cruikshank	of Texas - Pan American
Thomas O. Hicks	
Zan W. Holmes, Jr.	Kell Muñoz Wigodsky
Tom Loeffler	Project Architect
Mario E. Ramirez, M.D.	BFW Construction Co., Inc.
Martha E. Smiley	Contractor

BFW Construction Co., Inc. stated in its proposal that it will have Historically Underutilized Business participation of 30% for minority-owned firms and .5% for women-owned firms in the contract.

This total project cost is comprised of the following elements:

General Construction Contract	\$14,771,000
Fees and Administrative Expenses	1,383,412
Furniture and Equipment	4,800,000
Institutional Project Items	775,000
Future Work	750,000
Miscellaneous Expenses	196,000
Project Contingency	<u>378,588</u>
 Total Project Cost	 \$23,054,000

This project, which was reviewed by the Texas Higher Education Coordinating Board in July 1994, is included in the FY 1995 Capital Budget. Approval to decrease the appropriation was approved in June 1994 at a total project cost of \$23,054,000 to be funded from Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

6. U. T. Pan American - Thermal Energy Plant Expansion for the Engineering Building (Project No. 901-821): Award of Construction Contract to BFW Construction Co., Inc., Temple, Texas (Exec. Com. Letter 95-8).--The Executive Committee recommended and the Board awarded a construction contract for the Thermal Energy Plant Expansion for the Engineering Building at The University of Texas - Pan American to the lowest responsible bidder, BFW Construction Co., Inc., Temple, Texas, for the Base Bid and Alternate Bid Nos. 1 and 3 in the amount of \$2,662,000.

BFW Construction Co., Inc. stated in its proposal that it will have Historically Underutilized Business participation of 9% for minority-owned firms and 1% for women-owned firms in the contract.

The total project cost is comprised of the following elements:

General Construction Contract	\$2,662,000
Chiller Prepurchase	370,200
Fees and Administrative Expenses	334,314
Institutional Project Items	273,486
Future Work	70,000
Miscellaneous Expenses	40,000
Project Contingency	<u>50,000</u>
Total Project Cost	\$3,800,000

This project will allow for replacement of an existing chiller, construction of new cooling towers, and upgrade of associated thermal energy plant infrastructure. The existing Thermal Energy Plant does not have adequate thermal capacity to serve the U. T. Pan American Engineering Building and these improvements will provide the Building with additional thermal capacity. Included in this project is the purchase of a 2,000 ton chiller.

This project was approved by the Texas Higher Education Coordinating Board in July 1994 and is included in the FY 1995 Capital Budget. An additional appropriation was approved in June 1994 for a total project cost of \$3,800,000 to be funded with \$154,000 in Higher Education Assistance Funds (HEAF), \$700,000 in Unexpended Plant Funds, and \$2,946,000 from Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

7. U. T. San Antonio: Establishment of a Doctor of Philosophy (Ph.D.) in Computer Science Degree and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change) (Exec. Com. Letter 95-6).--Approval was given to establish a Doctor of Philosophy (Ph.D.) in Computer Science degree at The University of Texas at San Antonio and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The Ph.D. in Computer Science degree is consistent with U. T. San Antonio's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs.

The Doctor of Philosophy in Computer Science degree will be administered through a Doctoral Studies Committee for the Computer Science Program of the Division of Mathematics, Computer Science and Statistics in the College of Sciences and Engineering at U. T. San Antonio.

This program will provide graduates with advanced academic training in computer science with an emphasis in the area of high-performance computing and prepare graduates for leadership positions in computer science research and development, including academic positions in higher education.

The program will require a minimum of 69 semester credit hours to include course work in a computer science core, designated electives in high-performance programming environments or in high-performance computational techniques, and a 30 semester credit hour component of research and doctoral dissertation. Upon Coordinating Board approval, U. T. San Antonio is prepared to admit the first students to the program in the summer session of 1995.

The Computer Science faculty has 13 members and anticipates adding one additional faculty member for each of the first three years of the program. The program also includes two part-time adjunct faculty members at present and with the beginning of the doctoral program two more adjunct faculty members are anticipated. A second technical support person will be hired in the second year and an additional half-time secretary will be added in the first year.

Library resources for the program have been increased significantly during the past three years. Additional annual funding of \$22,000 per year is projected for support of the program. Although facilities are currently adequate for beginning the program, additional computing facility expenditures of \$550,000 are expected in the first five years of the program.

Total additional costs of \$3,039,335 will be met by a combination of state appropriations from formula funds (beginning in the third year), South Texas/Border Initiative special item appropriations for program development, federal grants and contracts, and gifts and designated funds.

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

8. U. T. San Antonio - University Center Expansion (Project No. 401-800): Approval of Revised Total Project Cost and Appropriation of Additional Funds Therefor; Award of Construction Contract to J. T. Vaughn Construction Co., Inc., Houston, Texas; and Approval of Plaque Inscription (Exec. Com. Letter 95-8).--Upon recommendation of the Executive Committee, the Board:
 - a. Approved an increase in the total project cost from \$12,000,000 to \$13,200,000 for the University Center Expansion at The University of Texas at San Antonio
 - b. Appropriated an additional \$1,200,000 for the project from the following sources:
 1. \$185,000 from currently available Auxiliary Enterprise Balances (University Center Fees)

2. \$815,000 from Auxiliary Enterprise Balances (University Center Fees) additional accumulations through FY 1996
 3. \$200,000 from accrued interest on Revenue Financing System Bond Proceeds through FY 1996
- c. Awarded a construction contract for the University Center Expansion at U. T. San Antonio to the lowest responsible bidder, J. T. Vaughn Construction Co., Inc., Houston, Texas, for the Base Bid and Alternate Bid Nos. 1, 3, 4, and 7 in the amount of \$11,329,402
 - d. Approved the inscription set out below for a plaque to be placed on the building in accordance with the standard pattern approved by the U. T. Board of Regents in June 1979.

UNIVERSITY CENTER EXPANSION
1995

BOARD OF REGENTS

Bernard Rapoport, Chairman	William H. Cunningham
Ellen Clarke Temple,	Chancellor, The University
Vice-Chairman	of Texas System
Lowell H. Lebermann, Jr.,	Samuel A. Kirkpatrick
Vice-Chairman	President, The University
Robert J. Cruikshank	of Texas at San Antonio
Thomas O. Hicks	
Zan W. Holmes, Jr.	Phelps/Garza/Bomberger
Tom Loeffler	in association with
Mario E. Ramirez, M.D.	Chumney and Associates
Martha E. Smiley	Project Architect
	J. T. Vaughn
	Construction Co., Inc.
	Contractor

In approving this increase in total project cost, the Board noted that there are opportunities to recover some of the additional cost by selected reductions in project quality after a construction contract has been executed. Exploratory study of possibilities acceptable to the institution without sacrifices in project scope or intended function of space indicates that such cost reduction efforts could attain a construction cost savings of approximately \$300,000. The savings from these change orders will be retained in the project and allocated to permit the inclusion of applicable project alternates and other items essential to the project within the revised total project cost.

The J. T. Vaughn Construction Co., Inc. stated in its proposal that it will have Historically Underutilized Business participation of 10% for minority-owned firms and 5% for women-owned firms in the contract.

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

Construction Cost - Base Bid and Alternate Bid Nos. 1, 3, 4, and 7	\$11,329,402
Fees and Administrative Expenses	931,416
Furniture and Equipment	709,600
Future Work and Miscellaneous Expenses	150,130
Project Contingency	<u>79,452</u>
Revised Total Project Cost	\$13,200,000

Funding for the project will be from the following sources:

U. T. System Revenue Financing System Bond Proceeds	\$10,000,000
Auxiliary Enterprise Balances (University Center Fees) Currently Available Balances	2,185,000
Additional Accumulations through FY 1996	815,000
Accrued Interest on Revenue Financing System Bond Pro- ceeds through FY 1996	<u>200,000</u>
Revised Total Project Cost	\$13,200,000

Approval of this item amends the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget as detailed above. The revised total project cost remains within the limits approved for this project by the Texas Higher Education Coordinating Board in April 1994.

9. U. T. Health Science Center - San Antonio - Health Sciences Building Program - School of Nursing Addition and Renovation (Project No. 402-823): Award of Construction Contract to Stoddard Construction Company, San Antonio, Texas; and Approval of Plaque Inscription (Exec. Com. Letter 95-8).--The Executive Committee recommended and the Board:
- a. Awarded a construction contract for the Health Sciences Building Program - School of Nursing Addition and Renovation project at The University of Texas Health Science Center at San Antonio to the lowest responsible bidder, Stoddard Construction Company, San Antonio, Texas, for the Base Bid and Additive Alternate No. 1 in the amount of \$5,618,000
 - b. Approved the inscription set out on Page 14 for a plaque to be placed on the building in accordance with the standard pattern approved by the U. T. Board of Regents in June 1979.

SCHOOL OF NURSING
ADDITION AND RENOVATION
1995

BOARD OF REGENTS

Bernard Rapoport, Chairman	William H. Cunningham
Ellen Clarke Temple, Vice-Chairman	Chancellor, The University of Texas System
Lowell H. Lebermann, Jr., Vice-Chairman	John P. Howe, III, M.D. President, The University of Texas Health Science Center at San Antonio
Robert J. Cruikshank	
Thomas O. Hicks	
Zan W. Holmes, Jr.	
Tom Loeffler	Garza/Bomberger & Associates Project Architect
Mario E. Ramirez, M.D.	Stoddard Construction Company Contractor
Martha E. Smiley	

Stoddard Construction Company stated in its proposal that it will have Historically Underutilized Business participation of 12% for minority-owned firms in the contract.

The total project cost is comprised of the following elements:

General Construction Contract	\$5,618,000
Fees and Administrative Expenses	539,200
Furniture and Equipment	115,650
Future Work	43,150
Miscellaneous Expenses	80,000
Project Contingency	<u>104,000</u>
Total Project Cost	\$6,500,000

Institutional funds will be used as necessary to complete the purchase of furniture and equipment for this project.

The new addition and interior finish-out included in Additive Alternate No. 1 will contain approximately 50,000 gross square feet for student learning laboratory demonstration areas, faculty research space, and faculty and student computer expansion.

This project was approved by the Texas Higher Education Coordinating Board in July 1994 and is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget at a total project cost of \$6,500,000 to be funded with \$500,000 from Gifts and Grants and \$6,000,000 from Tuition Revenue Bond Proceeds as authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

10. U. T. Health Center - Tyler - Ambulatory Care Center Addition and Renovation (Project No. 801-789): Approval to Issue Change Order and Increase the Construction Contract with Boone & Boone Construction, Inc., Tyler, Texas; Additional Appropriation Therefor; and Approval of Plaque Inscription (Exec. Com. Letter 95-8).--The Board, upon recommendation of the Executive Committee:
 - a. Approved the issuance of a change order to Boone & Boone Construction, Inc., Tyler, Texas, and increased the general construction contract for the Ambulatory Care Center Addition and Renovation at The University of Texas Health Center at Tyler from \$9,505,700 to \$11,029,527

- b. Appropriated an additional \$1,500,000 from Educational and General Fund Balances for total project funding of \$12,800,000
- c. Approved the inscription set out below for a plaque to be placed on the building in accordance with the standard pattern approved by the U. T. Board of Regents in June 1979.

AMBULATORY CARE CENTER
1994

BOARD OF REGENTS

Bernard Rapoport, Chairman	William H. Cunningham
Ellen Clarke Temple, Vice-Chairman	Chancellor, The University of Texas System
Lowell H. Lebermann, Jr., Vice-Chairman	George A. Hurst, M.D.
Robert J. Cruikshank	Director, The University of Texas Health Center at Tyler
Thomas O. Hicks	
Zan W. Holmes, Jr.	
Tom Loeffler	Simons-Burch-Clark, Inc.
Mario E. Ramirez, M.D.	Project Architect
Martha E. Smiley	Boone & Boone Construction, Inc. Contractor

At the August 1994 meeting, the U. T. Board of Regents authorized an increase in the total project cost of the Ambulatory Care Center Addition and Renovation at the U. T. Health Center - Tyler from \$11,300,000 to a cost not to exceed \$12,800,000. Representatives of the U. T. Health Center - Tyler and the Office of Facilities Planning and Construction were authorized to negotiate a change order to the construction contract awarded in April 1994 to Boone & Boone Construction, Inc., Tyler, Texas.

The foundation of the construction project underway had been designed to accommodate two additional floors, and a study had demonstrated that it would be financially viable to construct the two additional floors as shelled space at this time, resulting in cost savings and minimizing disruption to ongoing activities on lower floors.

The negotiations have been successful, and it was recommended that a change order in the amount of \$1,523,827 be issued to Boone & Boone Construction, Inc., thereby increasing the construction contract from \$9,505,700 to \$11,029,527. The revised total project cost will remain \$12,800,000.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget. The revised total project cost of \$12,800,000 was approved in August 1994. Funding is \$5,000,000 from Permanent University Fund Bond Proceeds, \$6,300,000 from Educational and General Fund Balances, and \$1,500,000 from Private Gifts and Grants.

This project was originally approved by the Texas Higher Education Coordinating Board in October 1993, and the revised project cost approval was in October 1994.

REPORT AND RECOMMENDATIONS OF THE BUSINESS AFFAIRS AND AUDIT COMMITTEE (Pages 16 - 52).--Committee Chairman Loeffler reported that the Business Affairs and Audit Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Business Affairs and Audit Committee and approved in open session and without objection by the U. T. Board of Regents.

Prior to considering the items before the Business Affairs and Audit Committee, Chairman Rapoport reported that Regent Loeffler had been reappointed to another six-year term on the Board of Regents and noted that the Board looked forward to his continued wise counsel in the governance of The University of Texas System.

1. U. T. System: Approval of Chancellor's Docket No. 80 (Catalog Change).--Upon recommendation of the Business Affairs and Audit Committee, the Board approved Chancellor's Docket No. 80 in the form distributed by the Executive Secretary. It is attached following Page 242 in the official copies of the Minutes and is made a part of the record of this meeting.

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

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

2. U. T. System: Approval to Amend Section II (Scope of Grievance Policy) of the Grievance Policy and Procedures.--In order to provide for the processing of any discrimination complaints within the current policy and, therefore, to assure compliance with the Americans with Disabilities Act by providing a grievance procedure for such complaints, the Board, upon recommendation of the Business Affairs and Audit Committee, amended Section II (Scope of Grievance Policy) of The University of Texas System Grievance Policy and Procedures to read as set forth below:

II. SCOPE OF GRIEVANCE POLICY

Complaints concerning wages, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands, the interpretation or application of a rule, regulation or policy, unlawful discrimination on any basis, or allegations that the termination of a probationary or temporary employee or an hourly or per diem employee who works on an as needed basis was for an unlawfully discriminatory reason shall not be processed through the Discipline and Dismissal Appeal Procedure. Such complaints will be considered on an informal basis in order to allow prompt correction or explanation of the subject of the complaint.

This policy, as amended, is set forth in its entirety on Pages 17 - 18.

GRIEVANCE POLICY AND PROCEDURES

I. PURPOSE

It is the policy of The University of Texas [Name of Institution] to encourage fair, efficient and equitable solutions for problems arising out of the employment relationship and to meet the requirements of state and federal law.

II. SCOPE OF GRIEVANCE POLICY

Complaints concerning wages, hours of work, working conditions, performance evaluations, merit raises, job assignments, reprimands, the interpretation or application of a rule, regulation or policy, unlawful discrimination on any basis, or allegations that the termination of a probationary or temporary employee or an hourly or per diem employee who works on an as needed basis was for an unlawfully discriminatory reason shall not be processed through the Discipline and Dismissal Appeal Procedure. Such complaints will be considered on an informal basis in order to allow prompt correction or explanation of the subject of the complaint.

1. Probationary, Temporary, Hourly, and Per Diem Employees Included

The complaint of all employees (except faculty*) including probationary and temporary employees and those hourly or per diem employees who work on an as needed basis will be considered pursuant to the procedure provided below.

2. Retaliation Prohibited

No employee will be penalized, disciplined or prejudiced for exercising the right to make a complaint or for aiding another employee in the presentation of that complaint.

III. PROCEDURE FOR BRINGING A GRIEVANCE

1. The employee shall informally present the complaint to his or her supervisor or administrative equivalent for discussion, consideration and resolution within five (5) working days from the date of the action which is subject of the complaint. If the supervisor is the subject of the complaint, the employee may address the complaint to the appropriate department head or administrative equivalent.

* This phrase may be included by institutions with approved faculty grievance policies and procedures in compliance with the basic parameters of this policy.

2. If the complaint is not satisfactorily resolved by the supervisor or administrative equivalent within five (5) working days, the employee may present the complaint in writing within five (5) working days to the appropriate department head or administrative equivalent for consideration and action. A written decision will be mailed to the employee within five (5) working days of receipt of the complaint.
 3. If the employee is not satisfied with the decision of the department head or administrative equivalent, a written appeal stating why the appealed decision is incorrect may be made to the appropriate dean, director or administrative equivalent within five (5) working days of the date of the appealed decision. Within ten (10) working days of the date of the appeal a written decision will be mailed to the employee.
 4. Complaints not satisfactorily resolved by the dean, director or administrative equivalent may be appealed in writing to the appropriate vice president or administrative equivalent for the employee's department within five (5) working days of the date of the appealed decision. The appeal shall state why the appealed decision is not correct. Within a reasonable time, not to exceed thirty (30) days following receipt of the appeal, a written decision shall be mailed to the employee. This decision is final.
 5. The written complaint and all decisions or responses regarding such complaint shall be a part of the personnel file of the employee.
3. U. T. System: Approval of Optional Retirement Program (ORP) Vendors Effective April 1, 1995.--With regard to the proposed selection of vendors to offer products to The University of Texas System Optional Retirement Program (ORP) participants, Committee Chairman Loeffler made the following statement:

It has come to my attention that one of the applicant companies recommended is a client of my law firm. To this point I have not participated in the selection process in any way. Furthermore, I am recusing myself from any discussion and determination on this issue and will not vote on the matter. Please reflect my recusal in the Minutes.

Regent Loeffler then yielded his presiding responsibility as Committee Chairman for this item to Regent Cruikshank, a member of the Business Affairs and Audit Committee.

Regent Cruikshank reported that a list of the recommended companies to offer products to the U. T. System ORP participants effective April 1, 1995, was before the Board on yellow paper. He then called on Chancellor Cunningham to lead the discussion on this item.

Chancellor Cunningham commented that the procedure to select proposed vendors for the ORP participants was handled through a very professional and carefully monitored process. He then asked Executive Vice Chancellor for Business Affairs Burck to brief the Board on the proposed ORP enhancement process.

Executive Vice Chancellor Burck reported that all employees appointed to a position in public higher education in Texas for 20 hours per week or more for 4½ months or more must participate in the Texas Teacher Retirement System (TRS) or, if eligible, the Optional Retirement Program (ORP).

Unlike TRS, which has a centralized plan administration, each individual institution or system of higher education is responsible for the administration of its ORP, although the Texas Higher Education Coordinating Board has the legislative authority to monitor the ORP. The administration of ORP by the U. T. System is historically based upon a promulgation of a series of standards which a company interested in providing ORP service agreed to satisfy. This approach was limited to the assurance that vendors follow the U. T. System regulations and state and federal statutes.

By 1991, there were eighty-eight ORP vendors authorized to offer fixed and variable annuity and mutual fund products to U. T. System participants.

The large number of vendors offering ORP products was the focus of a statewide audit of ORP practices by the State Auditor. The audit report released on October 29, 1991, indicated a number of general concerns in the administration of the ORP, most of which were directly applicable to the U. T. System's program. The findings included the following:

- An excessive number of vendors
- A lack of auditing procedures for approved vendors
- The absence of a renewal process for vendor agreements
- The lack of a requirement that vendors provide product education programs for employees
- The lack of employee communications from vendors regarding product evaluation.

In order to address concerns identified by the State Auditor and rising concerns voiced by employees in the program, the U. T. System implemented an ORP enhancement process.

An Attorney General Opinion was obtained in September 1993 (Tex. Att'y Gen. Op. No. DM-271) regarding the U. T. Board of Regents' general authority to control the Optional Retirement Program. The Attorney General ruled that governing boards of institutions of higher education are specifically authorized to structure the ORP for its eligible faculty and staff members, to limit the number of vendors, and to scrutinize the quality of their products. Subsequently, the Executive Vice Chancellor for

Business Affairs appointed an ORP Recommendation Committee to work with the Office of Human Resources to create and publish a Request for Proposal for vendors seeking to offer ORP products.

Bids were received from 55 companies and reviewed by both the Committee and Hewitt Associates, Chicago, Illinois, a firm specializing in compensation and benefits issues, which was retained by the U. T. System for this process. The recommended companies have been determined to be in compliance with the Request for Proposal and will offer fixed and variable annuities and mutual fund investment options for ORP participants.

Mr. Burck noted that the immediate goals of the ORP enhancement process include:

- Reduction in the number of ORP vendors
- The negotiation of superior rates of return for fixed annuity products
- A reduction in administrative costs charged, fees, and surrender penalties
- The elimination of any loads or initial purchase charges.

Following Mr. Burck's comments, Chancellor Cunningham introduced Mr. William Hirsch, Supervising Auditor, Performance Audits Division in the State Auditor's Office, who presented a comprehensive report of the ORP vendor issue which was the subject of the previously cited statewide audit of ORP practices by the State Auditor in 1991. Mr. Hirsch reemphasized that a major recommendation of that report was to encourage a reduction in the number of authorized ORP vendors.

Upon conclusion of Mr. Hirsch's informative report, Chancellor Cunningham recognized Mr. Chuck Hempstead, Executive Director of the Texas Association of College Teachers, who had been granted permission by Chairman Rapoport to appear before the Board on the ORP issue. Mr. Hempstead filed the following report:

Good afternoon, Mr. Chairman, Regents and Chancellor. I am Chuck Hempstead, the Executive Director of the Texas Association of College Teachers (TACT) and a graduate of your LBJ School. Thank you for this opportunity.

TACT has been in existence for nearly 50 years. Governor Preston Smith (following in Governor Connally's footsteps) and Lt. Governor Ben Barnes wanted the University of Texas to become a world-class institution by recruiting and retaining the best faculty available. They arranged a meeting with Frank Erwin -- a U. T. Regent at that time -- and 30 or 40 TACT members from around the state. From that meeting, the Optional Retirement Program was born.

Educating faculty members about their retirement options has always been a primary mission for TACT. For the past

20 years we have published an annual report on ORP programs which includes, among other things, their recent investment performance. This report is recognized nationwide and we provide copies as a public service to many faculty members each year who are not TACT members. We want to work with you to expand its distribution.

When I was appointed to this position early last summer and learned of this ORP limitation issue, I was disappointed that organized faculty groups such as ours had not been part of the process. Since then, I have corresponded and met with you and many members of your staff. I have been treated graciously, particularly by Dr. Richard Rahr and staff who attended our Fall Conference to explain this procedure to our leadership.

Nevertheless, our position has not changed. We oppose limiting free market competition and entrance into the marketplace by new companies with better offerings for the faculty. Particularly at this time, when the Legislature is considering reducing the state contribution to ORP, we should be reinforcing and enhancing the personal responsibility of the individual rather than inferring that he/she needs to be protected from himself/herself.

Our compromise position would be that you set minimum quality criteria such as those listed in the Request for Proposal, then work with any company that meets those standards.

My final point is really more of a question. If this proposal is adopted, what is the procedure if a company on the approved list wants to market an improved product after these current ones are approved? I would hope we don't have to wait until the four-year review date to have a limited number of competitors compete among themselves for programs most advantageous to the faculty consumers.

We look forward to working with you during the legislative session and in distributing our Annual ORP Analysis. Like TACT, you and your staff are interested in making Texas universities the most attractive to the best faculty. That is why I urge you to disapprove the proposal limiting free choice by ORP consumers of an increasingly competitive, and improving, ORP market.

Following a detailed discussion and upon recommendation of the Business Affairs and Audit Committee, the Board, with Regent Loeffler's recusal recorded, approved the selection of the following vendors to offer products to the U. T. System ORP participants effective April 1, 1995:

Aetna Life Insurance and Annuity Company
Hartford, Connecticut

Fidelity Investments Tax-Exempt Services
Company, Boston, Massachusetts

Great-West Life & Annuity Insurance Company
Englewood, Colorado

Metropolitan Life Insurance Company
New York, New York

The Pioneer Group, Inc., Boston, Massachusetts

Scudder Investor Services, Inc.
Boston, Massachusetts

Teachers Insurance and Annuity Association-
College Retirement Equities Fund
New York, New York

Twentieth Century Investors, Inc.
Kansas City, Missouri

USAA Life Insurance Company
San Antonio, Texas

The Variable Annuity Life Insurance Company
Houston, Texas

These companies will offer fixed and variable annuities and mutual fund investment options for ORP participants.

Current employees will have the option of either continuing with their current vendor or choosing from the above approved vendors.

4. U. T. System: Adoption of Amended and Restated First Supplemental Resolution to the Master Resolution Establishing the Revenue Financing System Commercial Paper Program; Approval to Amend the Guidelines Governing Administration of the Revenue Financing System; and Authorization for Appropriate Officials to Execute Documents Relating Thereto.--In order to fund the construction cost of projects reflected in The University of Texas System Capital Improvement Plan including the projects authorized as part of the South Texas/Border Initiative, the Board:
 - a. Adopted an Amended and Restated First Supplemental Resolution to the Master Resolution Establishing the Revenue Financing System Commercial Paper Program substantially in the form set out on Pages 25 - 47 to increase the maximum amount of the interim financing program from \$150,000,000 to \$250,000,000 and to allow for book-entry securities

- b. Amended guideline #8 of the Guidelines Governing Administration of the Revenue Financing System to read as set forth below:

- 8. Provisions for Issuance of Unenhanced Variable Rate Notes

With regard to procedures relating to Notes purchased by the Board in the case of a failed remarketing of Variable Rate Notes issued by the Revenue Financing System, the following policies shall apply:

. . . .

- b. A credit agreement, as described in the First Supplemental Resolution to the Master Resolution, shall be obtained should the net asset value of the Short/Intermediate Term Fund decline to an amount less than \$875,000,000 and be expected to remain below that amount for a period of 30 days, the Revenue Financing System will obtain, within 60 days of notification from the Office of Asset Management, a substitute note purchase commitment from a third party for an amount that will limit the Short/Intermediate Term Fund's Purchase Commitment to \$150,000,000.

. . . .

- c. Authorized the appropriate officials of the Office of Business Affairs and the Office of Asset Management to take any and all steps necessary to carry out the intentions of the U. T. Board of Regents to complete the transaction.

To provide fixed rate financing and stay within the \$250 million limit, refunding of commercial paper will occur beginning in the summer of 1995 and at least annually thereafter upon completion of construction of projects. South Texas/Border Initiative Projects ("Tuition Revenue Bonds") will be sold to refund commercial paper and for construction expenditures, as needed, rather than on a completed project schedule. Flexibility is thereby retained in the program to allow for shifting construction schedules and budget limitations in the reimbursement of tuition. General revenue reimbursement for the use of tuition for these projects is submitted during the biennial budget process and becomes a part of the Appropriations Act.

Liquidity for the commercial paper is provided by the U. T. System Short/Intermediate Term Investment Fund. With the increase to \$250 million of commercial paper to be outstanding, the Fund has agreed to increase the liquidity commitment with the covenant that if the Fund's

net asset value should decline to an amount less than \$875 million for a period of 30 days, the Revenue Financing System would be obligated to obtain a substitute note purchase commitment from a third party so as to limit the Fund's purchase commitment to \$150 million.

The Guidelines Governing Administration of the Revenue Financing System, as amended, are set forth in their entirety on Pages 48 - 52.

AMENDED AND RESTATED FIRST SUPPLEMENTAL RESOLUTION TO THE
MASTER RESOLUTION ESTABLISHING THE REVENUE FINANCING **SYSTEM**
COMMERCIAL PAPER PROGRAM

AMENDED AND RESTATED **FIRST SUPPLEMENTAL** RESOLUTION TO THE
 MASTER RESOLUTION ESTABLISHING THE REVENUE FINANCING SYSTEM
COMMERCIAL PAPER PROGRAM

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AMENDED AND RESTATED FIRST SUPPLEMENTAL RESOLUTION TO THE MASTER
RESOLUTION ESTABLISHING THE REVENUE FINANCING SYSTEM
COMMERCIAL PAPER PROGRAM

WHEREAS, on April 12, 1990, the Board adopted a Master Resolution Establishing The University of Texas System Revenue Financing System, as amended and restated on February 14, 1991 and further amended on October 8, 1993 (referred to herein as the "Master Resolution"); and

WHEREAS, unless otherwise defined herein, terms used herein shall have the meaning given in the Master Resolution; and

WHEREAS, the Master Resolution establishes the Revenue Financing System (the "Financing System") comprised of the institutions now or hereafter constituting components of The University of Texas System which are designated "Members" of the Financing System by action of the Board and pledges the Pledged Revenues attributable to each Member of the Financing System to the payment of Parity Debt to be outstanding under the Master Resolution; and

WHEREAS, the First Supplemental Resolution to the Master Resolution Establishing The University of Texas System Revenue Financing System was adopted by the Board on April 12, 1990, and amended on October 8, 1993, to establish an interim financing program pursuant to which the Board has issued its Revenue Financing System Commercial Paper Notes, Series A to provide interim financing for capital improvements and to finance equipment purchases; and

WHEREAS, the Board deems it necessary to amend and restate the First Supplemental Resolution to increase the aggregate principal amount of Notes which may be outstanding, to provide for the issuance of Notes in book-entry only form, and to eliminate provisions no longer necessary and incorporate into one document all of the provisions thereof, and

WHEREAS, the Notes are and shall be issued pursuant to Chapter 55, Texas Education Code, and the Board hereby finds that the purposes for which it may issue Notes hereunder constitute a "public utility", as contemplated by Article 717q, Vernon's Texas Civil Statutes, as amended; and

WHEREAS, this Amended and Restated First Supplement (this "First Supplement") amends and restates the First Supplemental Resolution; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM THAT:

ARTICLE I
DEFINITIONS AND CONSTRUCTION OF TERMS

Section 1.01. Definitions. In addition to the definitions set forth in the preamble of this First Supplement, the terms used in this First Supplement and not otherwise defined shall have the meanings given in the Master Resolution or in Exhibit "A" to this First Supplement attached hereto and made a part hereof.

Section 1.02. Construction of Terms. If appropriate in the context of this First Supplement, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

ARTICLE II
AUTHORIZATION OF NOTES

Section 2.01. General Authorization. Pursuant to authority conferred by and in accordance with the provisions of the Constitution and laws of the State of Texas, particularly the Acts, Commercial Paper Notes shall be and are hereby authorized to be issued in an aggregate principal amount not to exceed Two Hundred Fifty Million Dollars (\$250,000,000) at any one time Outstanding for the purpose of financing Project Costs of Eligible Projects and to refinance, renew, or refund

Notes, Prior Encumbered Obligations, and Parity Debts, including interest thereon all in accordance with and subject to the terms, conditions, and limitations contained herein. For purposes of this Section 2.01, any portion of Outstanding Notes to be paid from money on deposit with the Issuing and Paying Agent and from the available proceeds of Parity Debt or other obligations of the Board issued on the day of calculation shall not be considered Outstanding. The authority to issue Commercial Paper Notes from time to time under the provisions of this Supplement shall exist until the Maximum Maturity Date, regardless of whether at any time prior to the Maximum Maturity Date there are any Commercial Paper Notes Outstanding.

Section 2.02. Commercial Paper Notes. Under and pursuant to the authority granted hereby and subject to the limitations contained herein, Commercial Paper Notes to be designated "Board of Regents of The University of Texas System Revenue Financing System Commercial Paper Notes, Series A" are hereby authorized to be issued and sold and delivered from time to time in such principal amounts as determined by a U.T. System Representative in denominations of \$100,000 or in integral multiples of \$1,000 in excess thereof, numbered in ascending consecutive numerical order in the order of their issuance, and shall mature and become due and payable on such dates as a U.T. System Representative shall determine at the time of sale; provided, however, that no Commercial Paper Note shall (i) mature after the Maximum Maturity Date or (ii) have a term in excess of 270 calendar days.

Subject to the limitations contained herein Commercial Paper Notes herein authorized shall be dated as of their date of issuance (the "Note Date") and shall bear no interest or bear interest at such rate or rates per annum or computed pursuant to such formula and on such basis (but in no event to exceed the **Maximum Interest Rate** in effect on the date of **issuance thereof**), as may be **determined** by a U.T. System Representative. Interest, if any, on Commercial Paper Notes shall be payable at maturity. Commercial Paper Notes may be payable to bearer, may be issued in registered form, without coupons, or may be issued in **book-entry only** form pursuant to Section 2.05(b) as determined by a U.T. System Representative. Both principal of and interest on the **Commercial Paper Notes** shall be payable **in** lawful money of the United States **of America, without** exchange or **collection charges** to the Holder thereof in the manner provided in the Form of Commercial Paper Note set **forth** in Exhibit B to this First **Supplement**.

Commercial Paper Notes issued hereunder may contain terms and provisions for the redemption or prepayment thereof **prior** to maturity, subject to any applicable limitations contained herein, as provided herein or otherwise as shall **be determined** by a U.T. System Representative.

Subject to **applicable terms, limitations, and procedures** contained herein, the Commercial Paper Notes may be sold in such manner at public or private sale and at par or at such discount or premium (within the interest rate and yield restrictions provided herein) as a U.T. System Representative shall approve at the time of the sale thereof.

Section 2.03. Form of Commercial Paper Notes. The Commercial Paper Notes and the **Certificate of Authentication to appear on each of the** Commercial Paper Notes shall be substantially in the form set forth in Exhibit B to this First Supplement with such appropriate insertions, omissions, substitutions, and other variations as are permitted or **required** by this First Supplement and may have **such** letters, numbers, or other marks of identification (including identifying numbers and **letters of the Committee on Uniform Securities Identification** Procedures of the American Bankers Association) ("CUSIP" numbers) and such legends and **endorsements** thereon as may, consistently herewith, be approved by a U.T. System Representative. Any portion **of the** text of any Commercial Paper Notes may be set forth on the reverse thereof, **with** an appropriate reference thereto on the face of the Commercial Paper Notes. If not issued in book-entry only form, the **Commercial Paper Notes** shall be printed, lithographed, or engraved or produced in any other similar manner, or typewritten, all as **determined** and approved by a U.T. System Representative.

Section 2.04. Execution • Authentication. The Notes shall be executed on behalf of the Board by the Chairman or **Vice Chairman of the Board under its seal reproduced or impressed thereon and attested by the Executive Secretary to the Board.** The signature of said officers on the Notes may be manual or facsimile. **Notes** bearing the manual or facsimile signatures of individuals **who** are or were the proper officers of the Board on the date of passage of this First **Supplement** shall be deemed to be **duly** executed on behalf of the Board, **notwithstanding** that such individuals or either of them shall cease to hold such offices at the time of the initial sale and delivery of Notes **authorized** to be issued hereunder and with

respect to Notes delivered in subsequent sales, exchanges, and transfers, all as authorized and provided in the Bond Procedures Act of 1981, Article 717k-6, Vernon's Texas Civil Statutes, as amended.

No Commercial Paper Note shall be entitled to any right or benefit under this First Supplement, or be valid or obligatory for any purpose, unless there appears on such Commercial Paper Note a certificate of authentication substantially in the form provided in Exhibit B to this First Supplement, executed by the Issuing and Paying Agent by manual signature, and such certificate upon any Commercial Paper Note shall be conclusive evidence, and the only evidence, that such Commercial Paper Note has been duly certified or registered and delivered.

section 2.05. Issuing and Paying Agent and Book-Entry Only System.

(a) Issuing and Paying Agent. The Issuing and Paying Agent for the Commercial Paper Notes may be the Board, if authorized by law, or the institution determined by the U.T. System Representative, to have submitted the lowest responsible bid for such services in response to requests for proposals. The Board covenants and agrees to keep and maintain the Registration Books at the office of the Issuing and Paying Agent, all as provided herein and pursuant to such reasonable rules and regulations as the Issuing and Paying Agent may prescribe. The Board covenants to maintain and provide an Issuing and Paying Agent at all times while the Commercial Paper Notes are outstanding, which, if it is not acting in such capacity, shall be a national or state banking association or corporation organized and doing business under the laws of the United States of America or of any State and authorized under such laws to exercise trust powers. Should a change in the Issuing and Paying Agent for the Commercial Paper Notes occur after the appointment of the initial Issuance and Paying Agent by the U.T. System Representative, the Board agrees to promptly cause a written notice thereof to be (i) sent to each Holder of the Commercial Paper Notes then outstanding by United States mail, first class, postage prepaid and (ii) published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two calendar weeks; provided however, that the publication of such notice shall not be required if notice is given to each Holder in accordance with clause (i) above. Such notice shall give the address of the successor Paying Agent/Registrar. A successor Issuing and Paying Agent may be appointed without the consent of the Holders.

The Board and the Issuing and Paying Agent may treat the bearer (in the case of Commercial Paper Notes so registered) or the Registered Owner of any Commercial Paper Note as the absolute owner thereof for the purpose of receiving payment thereof and for all purposes, and, to the extent permitted by law, the Board and the Issuing and Paying Agent shall not be affected by any notice or knowledge to the contrary.

A copy of the Registration Books and any change thereto shall be provided to the Board by the Issuing and Paying Agent, by means of telecommunications equipment or such other means as may be mutually agreeable thereto, within two Business Days of the opening thereof or any change therein, as the case may be.

(b) Book-Entry Only System. If a U.T. System Representative determines that it is possible and desirable to provide for a book-entry only system of Commercial Paper Note registration with DTC, such U.T. System Representative, acting for and on behalf of the Board, is hereby authorized to approve, execute and deliver Letters of Representations to DTC and to enter into such other agreements and execute such instruments as are necessary to implement such book-entry only system, such approval to be conclusively evidenced by the execution thereof by said U.T. System Representative. In which event, beneficial owners of Commercial Paper Notes will not receive physical delivery of Commercial Paper Note certificates except as provided hereinafter. For so long as DTC shall continue to serve as securities depository for the Commercial Paper Notes as provided herein all transfers of beneficial ownership interests therein will be made by book entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of the Commercial Paper Notes is to receive, hold, or deliver any Commercial Paper Note certificate.

With respect to Commercial Paper Notes registered in the name of DTC or its nominee, neither the Board nor the Issuing and Paying Agent shall have any responsibility or obligation to any DTC Participant or to any person on whose behalf a DTC Participant holds an interest in the Commercial Paper Notes. Without limiting the immediately preceding sentence, neither the Board nor the Issuing and Paying Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC or any DTC Participant with respect to any ownership interest in the Commercial Paper Notes, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown

on the Registration Books, of any notice with respect to the Commercial Paper Notes, including any notice of redemption, and (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Commercial Paper Notes, as shown in the Registration Books, of any amount with respect to principal of and premium, if any, or interest on the Commercial Paper Notes.

Whenever, during the term of the Commercial Paper Notes, the beneficial ownership thereof is determined by a book entry at DTC, the requirements in this First Supplement of holding, registering, delivering, exchanging, or transferring the Commercial Paper Notes shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to holding, registering, delivering, exchanging, or transferring the book entry to produce the same effect.

If at any time, DTC ceases to hold the Commercial Paper Notes, all references herein to DTC shall be of no further force or effect.

Whenever the beneficial ownership of the Commercial Paper Notes is determined by a book entry at DTC, delivery of Commercial Paper Notes for payment at maturity shall be made pursuant to DTC's payment procedures as are in effect from time to time and the DTC Participants shall transmit payment to beneficial owners whose Commercial Paper Notes have matured. The Board and each Issuing and Paying Agent, Bank, and Dealer are not responsible for transfer of payment to the DTC Participants a beneficial owners

Section 2.06. Negotiability, Registration, and Exchangeability. The Commercial Paper Notes shall be, and shall have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas, and each successive Holder, in accepting any of the obligations, shall be conclusively deemed to have agreed that such obligations shall be and have all of the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

Registration Books relating to the registration, payment, and transfer or exchange of the Commercial Paper Notes shall at all times be kept and maintained by the Board at the office of the Issuing and Paying Agent, and the Issuing and Paying Agent shall obtain, record, and maintain in the Registration Books the name, and to the extent provided by or on behalf of the Holder, the address of each Holder of the Commercial Paper Notes, except for Commercial Paper Notes registered to bearer. A copy of the Registration Books shall be provided to and held by the Board in the manner provided in Section 2.05 hereof. Any Commercial Paper Note may, in accordance with its terms and the terms hereof, be transferred or exchanged for Commercial Paper Notes of like tenor and character and of other authorized denominations upon the Registration Books by the Holder in person or by his duly authorized agent, upon surrender of such Commercial Paper Note to the Issuing and Paying Agent for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Registrar.

Upon surrender for transfer of any Commercial Paper Note at the designated office of the Registrar, the Issuing and Paying Agent shall register and deliver, in the name of the designated transferee or transferees, one or more new Commercial Paper Notes executed on behalf of, and furnished by, the Board of like tenor and character and of authorized denominations and having the same maturity, bearing interest at the same rate and of a like aggregate principal amount as the Commercial Paper Note or Commercial Paper Notes surrendered for transfer.

Furthermore, Commercial Paper Notes may be exchanged for other Commercial Paper Notes of like tenor and character and of authorized denominations and having the same maturity, bearing the same rate of interest and of like aggregate principal amount as the Commercial Paper Notes surrendered for exchange, upon surrender of the Commercial Paper Notes to be exchanged at the designated office of the Registrar. Whenever any Commercial Paper Notes are so surrendered for exchange, the Issuing and Paying Agent shall register and deliver new Commercial Paper Notes of like tenor and character as the Commercial Paper Notes exchanged, executed on behalf of and furnished by, the Board to the Holder requesting the exchange.

The Board and the Issuing and Paying Agent may charge the Holder a sum sufficient to reimburse them for any expenses incurred in making any exchange or transfer after the first such exchange or transfer. The Issuing and Paying Agent or the Board may also require payment from the Holder of a sum sufficient to cover any tax, fee, or other governmental

charge that may be imposed in relation thereto. Such charges and expenses shall be paid before any such new Commercial Paper Note shall be delivered.

The Board and the Issuing and Paying Agent shall not be required to transfer or exchange any Commercial Paper Note selected, called, or being called for redemption in whole or in part.

New Commercial Paper Notes delivered upon any transfer or exchange shall be valid special obligations of the Board, evidencing the same debt as the Commercial Paper Notes surrendered, shall be secured by this First Supplement and shall be entitled to all of the security and benefits hereof to the same extent as the Commercial Paper Notes surrendered.

The Board reserves the right to change the above registration and transferability provisions of the Commercial Paper Notes at any time on or prior to the delivery thereof in order to comply with applicable laws and regulations of the United States in effect at the time of issuance thereof. In addition, to the extent that the provisions of this Section conflict with or are inconsistent with the provisions of the Form of Commercial Paper Note set forth in Exhibit B, such other provisions shall control.

Section 2.07. Commercial Paper Notes Mutilated, Lost, Destroyed, or Stolen. If any Commercial Paper Note shall become mutilated, the Board, at the expense of the Holder of said Commercial Paper Note, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Note of like tenor and number in exchange and substitution for the Commercial Paper Note so mutilated, but only upon surrender to the Issuing and Paying Agent of the Commercial Paper Note so mutilated. If any Commercial Paper Note shall be lost, destroyed, or stolen, evidence of such loss, destruction, or theft may be submitted to the Board and the Issuing and Paying Agent. If such evidence be satisfactory to them and indemnity satisfactory to them shall be given, the Board, at the expense of the Holder, shall execute and the Issuing and Paying Agent shall authenticate and deliver a new Commercial Paper Note of like tenor in lieu of and in substitution for the Commercial Paper Note so lost, destroyed, or stolen. In the event any such Commercial Paper Note shall have matured, the Issuing and Paying Agent instead of issuing a duplicate Commercial Paper Note may pay the same without surrender thereof after making such requirement as it seems fit for its protection, including a lost instrument bond. Neither the Board nor the Issuing and Paying Agent shall be required to treat both the original Commercial Paper Note and any duplicate Commercial Paper Note as being outstanding for the purpose of determining the principal amount of Commercial Paper Notes which may be issued hereunder, but both the original and the duplicate Commercial Paper Note shall be treated as one and the same. The Board and the Issuing and Paying Agent may charge the Holder of such Commercial Paper Note with their reasonable fees and expenses for such service.

Section 2.08. Series A Credit Agreement. The Board reserves the right to enter into a Series A Credit Agreement to provide liquidity for a part or all of the Commercial Paper Notes to be outstanding under this First Supplement. Whenever the term "Series A Credit Agreement" is used in the First Supplement, it shall refer to the agreement referred to in this Section and the term "Advances" shall mean advances under such Agreement.

Section 2.09. Promissory Note. The Board reserves the right to authorize one or more promissory notes to evidence Advances under the Series A Credit Agreement and such promissory notes shall be on a parity and of equal dignity with the Commercial Paper Notes.

Section 2.10. Note Payment Fund. There is hereby created a fund at the Issuing and Paying Agent entitled the "Revenue Financing System Commercial Paper Note Payment Fund" (the "Note Payment Fund"). The proceeds from the sale of Parity Debt issued for the purpose of refunding and retiring Notes Outstanding under this First Supplement shall be paid to the Issuing and Paying Agent for deposit to the credit of the Note Payment Fund and used for such purpose. In addition, all amounts required to be paid to the Issuing and Paying Agent for deposit by the Board pursuant to Section 2.11 shall be paid to the Issuing and Paying Agent for deposit to the Note Payment Fund and shall be used to pay principal of, premium, if any, and interest on Notes at the respective interest payment, maturity or redemption of such Notes as provided herein, including the repayment of any amounts owed with respect to the Promissory Note in evidence of Advances under the Series A Credit Agreement.

Additionally, all Advances under the Series A Credit Agreement shall be paid to the Issuing and Paying Agent for the account of the Board and deposited into the Note Payment Fund and used to pay the principal of, premium, if any, and interest on the Commercial Paper Notes.

Sectkm2.11. Establishment of Financing System; Issuance of Parity Debt; Security and Pledge.

(a) By adoption of the Master Resolution, the Board has established the Financing System for the purpose of providing a financing structure for revenue supported indebtedness of the components of The University of Texas System which are from time to time included as Members of the Financing System. The Master Resolution is intended to establish a master plan under which revenue supported debt of the Financing System may be incurred. This First Supplement provides for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of the Notes which are a series of Parity Debt. The Master Resolution is incorporated herein by reference and as such made a part hereof for all purposes, except to the extent modified and supplemented hereby, and the Notes are hereby declared to be Parity Debt under the Master Resolution.

(b) The Notes are special obligations of the Board payable from and secured solely by the Pledged Revenues pursuant to the Master Resolution and this First Supplement. The Pledged Revenues are hereby pledged, subject to the liens securing the Prior Encumbered Obligations, to the payment of the principal of, premium, if any, and interest on the Notes as the same shall become due and payable. The Board agrees to pay the principal of, premium, if any, and the interest on the Notes when due, whether by reason of maturity or redemption.

(c) A U.T. System Representative shall implement the procedures necessary to make an Advance under the Series A Credit Agreement, if in effect, if there is not anticipated to be Pledged Revenues or other lawfully available funds in an amount sufficient and in ample time to pay the principal of and interest and any premium, if any, on the Commercial Paper Notes as such principal, interest and premium, respectively, come due, whether by reason of maturity or redemption. Amounts in the Note Payment Fund attributable to and derived either from Advances under and pursuant to the Series A Credit Agreement or from amounts provided pursuant to Section 4.03(b) shall be used only to pay the principal of, premium, if any, and interest on the Commercial Paper Notes.

Section 2.12. Cancellation. All Commercial Paper Notes which at maturity are surrendered to the Issuing and Paying Agent for the collection of the principal and interest thereof or are surrendered for transfer or exchange pursuant to the provisions hereof or are refunded through an Advance shall, upon payment or issuance of new Commercial Paper Notes, be cancelled by the Issuing and Paying Agent and forthwith transmitted to the Board, and thereafter the Board shall have custody of such cancelled Commercial Paper Notes.

Section 2.13. Fiscal and Other Agents. In furtherance of the purposes of this First Supplement, the Board may from time to time appoint and provide for the payment of such additional fiscal, paying, or other agents or trustees as it may deem necessary or appropriate in connection with the Notes.

ARTICLE III
ISSUANCE AND SALE OF NOTES

Section 3.01. Issuance and Sale of Notes.

(a) All Commercial Paper Notes shall be sold in the manner determined by the U.T. System Representative to be most economically advantageous to the Board.

(b) The terms of the Commercial Paper Notes shall be established and they shall be delivered by the Issuing and Paying Agent in accordance with telephonic, computer, or written instructions of any U.T. System Representative and in the manner specified below and in the Issuing and Paying Agent Agreement. To the extent such instructions are not written, they shall be confirmed in writing within 24 hours of the transmission or communication thereof. Said instructions shall

specify such principal amounts, dates of issue, maturities, rates of discount or interest, or the formula or method of calculating interest and the basis upon which it is to be computed, purchase price, and other terms and conditions which are hereby authorized and permitted to be fixed by any U.T. System Representative at the time of sale of the Commercial Paper Notes. Such instructions shall also contain provisions representing that all action on the part of the Board necessary for the valid issuance of the Commercial Paper Notes then to be issued, or the incurring of Advances under the Promissory Note then to be incurred, has been taken, that all provisions of Texas and federal law necessary for the valid issuance of such Commercial Paper Notes with provision for original issue discount and interest exclusion from federal income taxation have been complied with, and that such Commercial Paper Notes will be valid and enforceable special obligations of the Board according to their terms, subject to the exercise of judicial discretion in accordance with general principles of equity and bankruptcy, insolvency, reorganization, moratorium, and other similar laws affecting creditors' rights heretofore or hereafter enacted to the extent constitutionally applicable and that, based upon the advice of Bond Counsel, the earned original issue discount on the Commercial Paper Notes or stated interest on the Commercial Paper Notes, as the case may be, is, subject to the conditions set forth in the opinion of Bond Counsel delivered concurrently with the commencement of the issuance of Commercial Paper Notes, excludable from gross income of the owners thereof for federal income tax purposes. Such instructions shall also certify that, as of the date of such certificate:

- (i) the Board has been advised by Bond Counsel that the projects to be financed or refinanced by the Commercial Paper Notes will constitute Eligible Projects, and, further, that the proposed issuance will not cause the Board to be in violation of its covenants set forth in Section 4.04 hereof;
- (ii) the requirements of Section 5 of the Master Resolution have been complied with;
- (iii) the principal amount of Commercial Paper Notes to be Outstanding after the proposed issuance;
- (iv) after the proposed issuance, the total principal amount of Outstanding Commercial Paper Notes plus interest accrued or to accrue thereon for the following ninety (90) days shall not exceed available funds of the Board to be maintained pursuant to Section 4.03 plus the "Available Bank Loan Commitment" under the Series A Credit Agreement, if then in effect;
- (v) if the Series A Credit Agreement is then in effect, no "Event of Default" thereunder has occurred and is continuing;
- (vi) the Board is in compliance with the covenants set forth in Article IV as of the date of such instructions; and
- (vii) that the sum of the interest payable on such Commercial Paper Note issued and Outstanding or in the process of issuance and any discount established for such Commercial Paper Notes will not exceed a yield (calculated in the manner set forth) to the maturity date of such Commercial Paper Note in excess of the Maximum Interest Rate in effect on the date of issuance of such Commercial Paper Note.

(c) The Promissory Note shall be delivered to the Bank and thereafter Advances may be made thereunder in accordance with the terms of the Series A Credit Agreement.

Section 3.02. Proceeds of Sale of Commercial Paper Notes. The proceeds of the sale of any Commercial Paper Notes (net of all expenses and costs of sale and issuance) shall be applied for any or all of the following purposes as directed by a U.T. System Representative:

- (i) used for the payment and redemption or purchase of Outstanding Commercial Paper Notes, Parity Debt or Prior Encumbered Obligations at or before maturity and

the refunding of any Advances (evidenced by the Promissory Note) under the Series A credit Agreement; or

(ii) used for the purpose of financing Project Costs of Eligible Projects.

Section 3.03. Issuing and Paying Agent Agreement. The Issuing and Paying Agent Agreement relating to the Commercial Paper Notes is hereby approved as to form and content by the Board. A U.T. System Representative is hereby authorized and directed to approve, execute, and deliver to the Issuing and Paying Agent any such changes, additions, or amendments thereto as may be necessary and proper to carry out the purpose and intent of the Board in authorizing this First Supplement. A U.T. System Representative is hereby authorized to enter into any supplemental agreements with the Issuing and Paying Agent or with any successor Issuing and Paying Agent.

Section 3.04. Dealer Agreement. Agreement by and between the Board and Goldman, Sachs & Co. Inc. (the "Dealer") pertaining to the sale, from time to time, of Commercial Paper Notes or the purchase of Commercial Paper Notes from the Board, all for a fee as set forth in said Dealer Agreement, is hereby approved as to form and content. A U.T. System Representative is hereby authorized and directed to approve, execute, and deliver to the Dealer any instrument evidencing such changes, additions, or amendments to the Dealer Agreement as may be necessary and proper to carry out the purpose and intent of the Board in authorizing this First Supplement. A U.T. System Representative is hereby authorized to enter any supplemental agreements with the Dealer or with any successor Dealer.

ARTICLE IV COVENANTS OF THE BOARD

Section 4.01. Limitation on Issuance. Unless this First Supplement is amended and modified by the Board in accordance with the provisions of Section 6.01, the Board covenants that there will not be issued and Outstanding at any time more than \$250,000,000 in principal amount of Commercial Paper Notes. The Board, however, does reserve the right to increase said amount by an amendment to this First Supplement or to issue additional Parity Debt in excess of said amount, without limitation, by a Supplement duly adopted by the Board.

Section 4.02. Provisions For Liquidity. The Board covenants to maintain available funds plus the Available Bank Loan Commitment in an amount equal to the total principal amount of Outstanding Commercial Paper Notes plus interest to accrue thereon for the following ninety (90) days.

Section 4.03. Available Funds.

(a) To the extent Notes cannot be issued to renew or refund Outstanding Notes and Advances cannot be drawn on the Promissory Notes, if any, the Board shall provide funds or shall in good faith endeavor to sell a sufficient principal amount of Parity Debt or other obligations of the Board in order to have funds available, together with other moneys available therefor, to pay the Notes and the interest thereon, or any renewals thereof, as the same shall become due, and other amounts due under the Series A Credit Agreement

(b) Notwithstanding anything to the contrary contained herein, to the extent that the Dealer cannot sell Commercial Paper Notes to renew or refund Outstanding Notes on their maturity, the Board covenants to make Advances under the Promissory Notes, if any, or to use lawfully available funds to purchase Notes issued to renew and refund such maturing Notes and such payment, issuance, and purchase are not intended to constitute an extinguishment of the obligation represented by such maturing Notes and the Board may issue Notes to renew and refund the Notes held by it when the Dealer is again able to sell Notes. While such Notes are held by the Board they shall bear interest at the prevailing market rate for alternative taxable investments of similar maturity and credit rating.

Section 4.04. Commercial Paper Notes to Remain Tax Exempt. (a) The Board covenants (i) to refrain from any action which would adversely affect, and (ii) to take such action to ensure, the treatment of the Notes as obligations described in section 103 of the Internal Revenue Code of 1986 (the "Code"), the interest on which is not includable in the "gross income" of the holder for purposes of federal income taxation, In furtherance thereof, the Board covenants as follows:

(i) to take any action to assure that no more than ten percent (10%) of the aggregate proceeds of the Outstanding Notes are used for any "private business use," as defined in section 141(b)(6) of the Code or, if more than 10 percent of the proceeds are so used, that amounts, whether or not received by the Board, with respect to such private business use, do not, under the terms of this First Supplement or any underlying arrangement, directly or indirectly, secure or provide for the payment of more than 10 percent of the aggregate debt service on the Outstanding notes, in contravention of section 141(b)(2) of the Code;

(ii) to take any action to assure that in the event that the "private business use" described in subsection (i) hereof exceeds 5 percent of the aggregate proceeds of the Outstanding Notes then the amount in excess of 5 percent is used for a "private business use" which is "related" and not "disproportionate," within the meaning of section 141(b)(3) of the Code, to the governmental use;

(iii) to take any action to assure that no amount which is greater than the lesser of \$5,000,000, or 5 percent of the aggregate proceeds of the Outstanding Notes is directly or indirectly used to finance loans to persons, other than state or local governmental units, in contravention of section 141(c) of the Code;

(iv) to refrain from taking any action which would otherwise result in the Notes being treated as "private activity bonds" within the meaning of section 141(b) of the code; and

(v) to refrain from taking any action that would result in the Notes being "federally guaranteed" within the meaning of section 149(b) of the Code.

(b) The Board further covenants that it will execute and deliver to the Issuing and Paying Agent a No-Arbitrage Certificate in the form approved by Bond Counsel in connection with the original issuance of the Notes, and each issuance of Notes thereafter to pay Project Costs, and that in connection with any other issuance of Notes, it will execute and deliver to the Issuing and Paying Agent a confirmation that the facts, estimates, circumstances and reasonable expectations contained therein continue to be accurate as of such issue date. The Board represents and covenants that it will not expend, or permit to be expended, the proceeds of any Notes in any manner inconsistent with its reasonable expectations as certified in the No-Arbitrage Certificates to be executed from time to time with respect to the Notes; provided, however, that the Board may expend Note proceeds in any manner if the Board first obtains an unqualified opinion of Bond Counsel that such expenditure will not adversely affect the exemption from federal income taxation of interest paid on the Notes. The Board represents that it has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that it is an issuer whose arbitrage certifications may not be relied upon. The Board further covenants with the Holders of all Notes at any time Outstanding that no use of the proceeds of any of the Notes or any other funds of the Board will be made which will cause any of such Notes to be "arbitrage bonds" subject to federal income taxation by virtue of being described in section 148 of the Code. In particular, but not by way of limitation, so long as any of the Notes are Outstanding, the Board, with respect to such proceeds and other funds which may be treated as proceeds, will comply with all requirements of section 148 and the regulations of the United States Department of the Treasury issued thereunder, to the extent that such regulations are, at the time, applicable and in effect. In particular, but not by way of limitation, the Board covenants:

(i) to pay to the United States of America at least once during each five-year period (beginning on the date of delivery of the Notes to pay issued Project Costs) an amount that is at least equal to 90 percent of the "Excess Earnings," within the meaning of section 148(f) of the Code and to pay to the United States of America, not later than 60 days after the Notes have been paid in full, 100 percent of the amount then required to be paid as a result of Excess Earnings under section 148(f) of the Code; and

(ii) to maintain such records as will enable the Board to fulfill its responsibilities under this section and section 148 of the Code and to retain such records for at least six years following the final payment of principal and interest on the Notes.

(c) It is the understanding of the Board that the covenants contained in this Section 4.04 are intended to assure compliance with the Code and any regulations or rulings promulgated by the U.S. Department of the Treasury pursuant thereto. In the event that regulations or rulings are hereafter promulgated which modify, or expand provisions of the Code, as applicable to the Notes, the Board will not be required to comply with any covenant contained herein to the extent that such failure to comply, in the opinion of nationally-recognized bond counsel, will not adversely affect the exemption from federal income taxation of interest on the Notes under section 103 of the Code. In the event that regulations or rulings are hereafter promulgated which impose additional requirements which are applicable to the Notes, the Board agrees to comply with the additional requirements to the extent necessary, in the opinion of nationally-recognized bond counsel, to preserve the exemption from federal income taxation of interest on the Notes under section 103 of the Code.

Section 4.05. Opinion of Bond Counsel. The Board shall cause the legal opinion of Bond Counsel as to the validity of the Notes and as to the exclusion of interest on the Notes from gross income of the owners thereof for federal income tax purposes to be furnished to any Holder without cost. In addition, a copy of said opinion may be printed on each of the Commercial Paper Notes. In addition, in connection with the annual updating of the Offering Memorandum (as provided in accordance with Section 6.08 hereof) as required by the Dealer Agreement, there shall be provided an annual updated opinion of Bond Counsel, at the cost of the Board or the Dealer as agreed to in the Dealer Agreement.

ARTICLE v AMENDMENTS

section 5.01. Amendment of Supplement.

(a) Amendments Without Consent This First Supplement and the rights and obligations of the Board and of the owners of the Outstanding Commercial Paper Notes may be modified or amended at any time without notice to or the consent of any owner of the Commercial Paper Notes or any other Parity Debt, solely for any one or more of the following purposes:

(i) To add to the covenants and agreements of the Board contained in this First Supplement, other covenants and agreements thereafter to be observed, or to surrender any right or power reserved to or conferred upon the Board in this First Supplement;

(ii) To cure any ambiguity or inconsistency, or to cure or correct any defective provisions contained in this First Supplement, upon receipt by the Board of an opinion of Bond Counsel, that the same is needed for such purpose, and will more clearly express the intent of this First Supplement;

(iii) To supplement the security for the Outstanding Commercial Paper Notes issued hereunder, replace or provide additional credit facilities, or change the form of the Outstanding Commercial Paper Notes or make such other changes in the provisions hereof, including extending the Maximum Maturity Date, as the Board may deem necessary or desirable and which shall not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Commercial Paper Notes;

(iv) To make any changes or amendments requested by any bond rating agency then rating or requested to rate Commercial Paper Notes, as a condition to the

issuance or maintenance of a rating, which changes or amendments do not, in the judgment of the Board, materially adversely affect the interests of the owners of the Outstanding Commercial Paper Notes; or

(v) To increase the amount of Commercial Paper Notes which may be Outstanding pursuant to Section 4.01.

(b) **Amendments With Consent.** Subject to the other provisions of this First Supplement, the owners of Outstanding Commercial Paper Notes aggregating at least 51 percent in Outstanding Principal Amount shall have the right from time to time to approve any amendment, other than amendments described in Subsection (a) of this Section, to this First Supplement which may be deemed necessary or desirable by the Board, provided, however, that nothing herein contained shall permit or be construed to permit, without the approval of the owners of all of the Outstanding Commercial Paper Notes, the amendment of the terms and conditions in this First Supplement or in the Commercial Paper Notes so as to:

(i) Make any change in the maturity of the Outstanding Commercial Paper Notes;

(ii) Reduce the rate of interest borne by Outstanding Commercial Paper Notes;

(iii) Reduce the amount of the principal payable on Outstanding Commercial Paper Notes;

(iv) Modify the term of payment of principal of or interest on the Outstanding Commercial Paper Notes, or impose any conditions with respect to such payment;

(v) Affect the rights of the owners of less than all Commercial Paper Notes then outstanding or

(vi) Change the minimum percentage of the Outstanding Principal Amount of Commercial Paper Notes necessary for consent to such amendment.

(c) **Notice.** If at any time the Board shall desire to amend this First Supplement pursuant to Subsection (b), the Board shall cause notice of the proposed amendment to be published in a financial newspaper or journal of general circulation in The City of New York, New York, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of the Issuing and Paying Agent for inspection by all owners of Commercial Paper Notes issued hereunder. Such publication is not required, however, if the Board gives or causes to be given such notice in writing to each owner of Commercial Paper Notes. A copy of such Notice shall be provided in writing to (i) the Bank at the address shown in the Liquidity Agreement as the address to which notices to the Bank are to be sent and (ii) to each national rating agency maintaining a rating on the Commercial Paper Notes.

(d) **Receipt of Consents.** Whenever at any time not less than thirty (30) days, and within one year, from the date of the first publication of said notice or other service of written notice of the proposed amendment the Board shall receive an instrument or instruments executed by all of the owners or the owners of at least 51 percent in Outstanding Principal Amount of the Commercial Paper Notes, as appropriate, which instrument or instruments shall refer to the proposed amendment described in said notice and which specifically consent to and approve such amendment in substantially the form of the copy thereof on file as aforesaid, the Board may adopt the amendatory resolution in substantially the same form.

(e) **Effect of Amendments.** Upon the adoption by the Board of any resolution to amend this First Supplement pursuant to the provisions of this Section, this First Supplement shall be deemed to be amended in accordance with the amendatory resolution, and the respective rights, duties, and obligations of the Board and all the owners of then Outstanding

Commercial Paper Notes and all future Commercial Paper Notes shall thereafter be determined, exercised, and enforced under the Master Resolution and this First Supplement, as amended.

(f) **Consent Irrevocable.** Any consent given by any owner of Commercial Paper Notes pursuant to the provisions of this Section shall be irrevocable for a period of six months from the date of the First Supplement publication or other service of the notice provided for in this Section, and shall be conclusive and binding upon all future owners of the same Commercial Paper Notes during such period. Such consent may be revoked at any time after six months from the date of the first publication of such notice by the owner who gave such consent, or by a successor in title, by filing notice thereof with the Issuing and Paying Agent and the Board, but such revocation shall not be effective if the owners of at least 51 percent in Outstanding Principal Amount of Commercial Paper Notes prior to the attempted revocation consented to and approved the amendment.

(g) **Ownership.** For the purpose of this Section, the ownership and other matters relating to all Commercial Paper Notes registered as to ownership shall be determined from the registration books kept by the Issuing and Paying Agent therefor. The fact of the owning of Commercial Paper Notes issued hereunder not registered as to ownership by any Holder and the amount and the numbers of such Commercial Paper Notes and the date of the holding of the same may be proved by the affidavit of the person claiming to be such Holder if such affidavit shall be deemed by the Issuing and Paying Agent to be satisfactory, or by a certificate executed by any trust company, bank, banker or any other depository, wherever situated, if such certificate shall be deemed by Issuing and Paying Agent to be satisfactory, showing that at that date therein mentioned such person had on deposit with such trust company, bank, banker or other depository the Commercial Paper Notes described in such certificate. The Issuing and Paying Agent may conclusively assume that such ownership continues until written notice to the contrary is served upon the Issuing and Paying Agent.

(h) **Consent of Bank.** For so long as the Bank is not in default under the Liquidity Agreement, no amendment to this First Supplement shall become effective without the prior written consent of the Bank, which consent shall not be unreasonably withheld

ARTICLE VI MISCELLANEOUS

Section 6.01. **First Supplement to Constitute a Contract Equal Security.** In consideration of the acceptance of the Notes by those who shall hold the same from time to time, this First Supplement shall be deemed to be and shall constitute a contract between the Board and the Holders from time to time of the Notes and the pledge made in this First Supplement by the Board and the covenants and agreements set forth in this First Supplement to be performed by the Board shall be for the equal and proportionate benefit, security, and protection of all Holders of the Notes, without preference, priority, or distinction as to security or otherwise of any of the Notes over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this First Supplement or, with respect to the Promissory Note, the Series A Credit Agreement.

Section 6.02. **Individuals Not Liable.** All covenants, stipulations, obligations, and agreements of the Board contained in this First Supplement shall be deemed to be covenants, stipulations, obligations, and agreements of The University of Texas System and the Board to the full extent authorized or permitted by the Constitution and laws of the State of Texas. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the Board or agent or employee of the Board in his individual capacity and neither the members of the Board nor any officer thereof shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof,

Section 6.03. **Additional Actions.**

(a) The Chairman of the Board, the Vice Chairman of the Board, the Executive Secretary to the Board, the U.T. System Representatives, and the other officers, employees, and agents of the Board are hereby authorized and directed, jointly

and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale, and delivery of the Notes and otherwise to effectuate the purposes of this First Supplement, the Series A Credit Agreement, the Dealer Agreement, and the Issuing and Paying Agent Agreement. In addition, the Chairman of the Board, Vice Chairman of the Board Chancellor, Executive Vice Chancellor for Business Affairs, and the Assistant Vice Chancellor for Finance, and Bond Counsel are hereby authorized to approve, subsequent to the date of this adoption of this First Supplement, any amendments to the above named documents, and any technical amendments to this First Supplement as may be required by Fitch, Moody's, or Standard & Poor's as a condition to the granting or maintenance of a rating on the Commercial Paper Notes acceptable to a U.T. System Representative.

(b) A U.T. System Representative shall promptly give written notice to Fitch, Moody's, and Standard & Poor's, as appropriate, of any changes or amendments to this First Supplement, the Series A Credit Agreement (including the expiration or termination of the Series A Credit Agreement), or any other operative document used in connection with the issuance from time to time of the Notes.

Section 6.04. Severability of Invalid Provisions. If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

Section 6.05. Payment and Performance on Business Days. Whenever under the terms of this First Supplement or the Notes, the performance date of any provision hereof or thereof, including the payment of principal of or interest on the Notes, shall occur on a day other than a Business Day, then the performance thereof including the payment of principal of and interest on the Notes, need not be made on such day but may be performed or paid, as the case may be, on the next succeeding Business Day with the same force and effect as if made on the date of performance or payment is scheduled.

Section 6.06. Limitation of Benefits With Respect to the First Supplement. With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this First Supplement or the Notes is intended or should be construed to confer upon or give to any person other than the Board, the Holders, the Issuing and Paying Agent, the Bank, and the Dealer any legal or equitable right, remedy, or claim under or by reason of or in respect to this First Supplement or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This First Supplement and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Board, the Holders, the Issuing and Paying Agent, the Bank, and the Dealer as herein and in the Issuing and Paying Agent Agreement, the Series A Credit Agreement, and the Dealer Agreement provided.

Section 6.07. Approval of Attorney General. No Notes herein authorized to be issued shall be sold or delivered by a U.T. System Representative until the Attorney General of the State of Texas shall have approved this First Supplement, and other agreements and proceedings as may be required in connection therewith, all as is required by the Acts.

Section 6.08. Approval of Offering Memorandum. A U.T. System Representative is hereby authorized to approve the form of Offering Memorandum, to be used by the Dealer in the offering of the Commercial Paper Notes, and the use thereof by the Dealer in connection therewith and to cooperate with the Dealer in periodically updating and approving the Offering Memorandum.

Section 6.09. Amendment and Restatement. Except to the extent set forth herein, the First Supplemental Resolution and the Notes issued thereunder are hereby amended and restated, The provisions of the First Supplemental Resolution relating to the Notes, the agreements and certifications executed and delivered upon the delivery of the Notes, and all actions taken with respect to the Notes are hereby confirmed. after the receipt of the approval of the Attorney General of this First Supplement, Commercial Paper Notes may be issued hereunder and the provisions of this First Supplement shall govern such Commercial Paper Notes and no additional "Notes", as therein defined, may be issued under the First Supplement Resolution.

Section 6.10. Notice to Rating Agencies. Notice shall be given to each national rating agency which maintains a rating on the Commercial Paper Notes of the execution and delivery of the Series A Credit Agreement and any amendment, substitution or termination of such agreement and of any amendment or substitution of the Dealer Agreement or the Issuing and Paying Agent Agreement.

Section 6.11. Public Notice. It is hereby found and determined that each of the officers and members of the Board was duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of the Meeting at which this First Supplement was adopted, and that this First Supplement would be introduced and considered for adoption at said meeting; that said meeting was open to the public, and public notice of the time, place, and purpose of said meeting was given, all as required by Vernon's Ann. Civ. St Article 6252-17.

PASSED AND ADOPTED, this

ATTEST:

Executive Secretary

Chairman

(SEAL)

Exhibit A • Definitions

Exhibit B • Form of Commercial Paper Notes

EXHIBIT A
DEFINITIONS

As used in this Second Supplement, the terms below defined shall be construed, are used and are intended to have the following meanings, unless the text hereof specifically indicates otherwise:

"Acts" means collectively, Article 7 17q, Vernon's Texas Civil Statutes, as amended, and Chapter 55, Texas Education Code, as amended.

"Advances" means Advances or loans under the Promissory Note to refund Commercial Paper Notes pursuant to the Series A Credit Agreement

"U.T. System Representative" means one or more of the following officers or employees of The University of Texas System, to-wit: the Chancellor, the Executive Vice Chancellor for Business Affairs, the Assistant Vice Chancellor for Finance, and the Director of Finance, or such other officer or employee of The University of Texas System authorized by the Board to act as a U.T. System Representative.

"Bank" means any lender which becomes a party to the Series A Credit Agreement, or any other financial institution executing a Credit Agreement.

"Board of Regents", "Board", or "Issuer" means the Board of Regents of The University of Texas System, or any successor thereto.

"Business Day" means any day (a) when banks are open for business in Austin, Texas, and (b) when banks are not authorized to be closed in New York, New York.

"Code" means the Internal Revenue Code of 1986, as amended

"Commercial Paper Note" means a Note issued pursuant to the provisions of this Master Resolution, having the terms and characteristics specified in Section 2.02 and in the form described in Exhibit B to this First Supplement

"Costs" means all costs and expenses defined as "project costs" under the Acts incurred in relation to Eligible Projects and permitted by law to be paid with the proceeds of the Commercial Paper Notes, including without limitation design, planning, engineer & legal costs; acquisition costs of land, interests in land, right of way, and easements; construction costs, costs of machinery, equipment, and other capital assets incident and related to the operation, maintenance, and administration of the Eligible Projects; and financing costs, including interest during construction and thereafter, underwriter's discount, and/or legal, financial, and other professional services fees and expenses, and shall include reimbursement for Costs attributable to Eligible Projects incurred prior to the issuance of any Commercial Paper Notes.

"Dealer" means the Dealer as defined in Section 3.04.

"DTC" means The Depository Trust Company or any substitute securities depository appointed pursuant to this First Supplement, or any nominee of either.

"DTC Participant" means a member of, or the participant in, DTC that will act on behalf of a Holder

"Eligible Project" means the acquisition, purchase, construction, improvement, enlargement, and/or equipping of any property, buildings, structures, activities, services, operations, or other facilities, or any other project, program or improvement authorized by the laws of the State of Texas for and on behalf of the Financing System or any Member thereof.

"First Supplement" means this Amended and Restated First Supplemental Resolution to the Master Resolution

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December 27, 1994

(RCP/ky: 2535.039\1 supren. 1)

December 27, 1994

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"Fiscal Year" means the **12-month** operational **period** of The University of Texas System commencing on **September 1 of each year and ending on the following August 31.**

"Fitch" means Fitch Investors **Service or**, if such **corporation** is dissolved or liquidated or otherwise **ceases to perform securities ratings services**, such other nationally **recognized securities** rating agency as may be designated in writing by the Board.

"Holder" or "Noteholder" means the **Registered Owner or any person, firm, association, or corporation who is in possession of any Commercial Paper Note issued to bearer or in blank.**

"Issuing and Paying Agent" and "Registrar" means with respect to the **Commercial Paper Notes** the agent appointed pursuant to Section 2.05, or any **successor to such agent.**

"Master Resolution" means the **Master Resolution** establishing the **Financing** System adopted by the Board on **April 12, 1990, and amended and restated on February 14, 1991, and further amended on October 8, 1993.**

"Maximum Interest Rate" means the **greater** of the maximum net **effective** interest rate permitted by law to be paid on obligations issued or incurred by the Board in the exercise of its borrowing powers (prescribed by Article **717k-2**, Vernon's Texas Civil Statutes, as amended) on the **effective** date of the Series A Credit Agreement or such higher **rate as may be allowed as the maximum** net **effective interest** rate **permitted** by any future law to be **paid** on obligations issued or incurred by the Board in the exercise of its borrowing powers.

"Maximum Maturity Date" means **April 1, 2020.**

"Moody's" means Moody's Investors Service, Inc. or, if such corporation is dissolved or liquidated or **otherwise** ceases to **perform** securities rating **services**, such other nationally recognized securities rating agency as may be designated in writing by the Board

"Note" or "Notes" means the evidences of indebtedness **authorized** to be issued and at any time outstanding **pursuant** to this Second Supplement and shall include Commercial Paper Notes or **Promissory** Notes as appropriate.

"Note Date" shall have the meaning given in Section 2.10.

"Note Payment Fund" means that fund created pursuant to Section 2.11.

"Paying Agent" see Issuing and Paying Agent

"Promissory Note" shall **mean** the promissory note issued **pursuant** to the provisions of this First Supplement and the **Series A Credit Agreement in evidence of Advances made by the Bank to refund any** Commercial Paper Note, or the interest **thereon**, having the terms and characteristics contained in the Series A Credit Agreement and issued in **accordance** therewith, including any renewals or modifications thereof.

"Registered Owner" means the person or entity in whose name any Note is registered in the Registration Books.

"Registration Books" means the books or records relating to the registration, payment, and transfer or exchange of the Project Notes maintained by the Issuing and Paying Agent **pursuant to**Section 2.10.

"Series A Credit **Agreement**" means a Credit Agreement entered into **with** respect to Commercial Paper Notes as authorized by Section 2.08 of this First Supplement.

"Standard & Poor's" means Standard & Poor's Corporation or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Board.

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(RCP/ky: 2535.039\1supres.1)

EXHIBIT B
FORM OF COMMERCIAL PAPER NOTES

united states of America
State of Texas
BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM
REVENUE FINANCING SYSTEM
COMMERCIAL PAPER NOTE, SERIES A

Note Number _____ Interest Rate* _____ Note Date _____ \$ _____

On _____ (the "Maturity Date") for value received, THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM (the "Board")

Promises To Pay To The Order of _____
The Principal Sum Of _____
Payable At _____
(the "Issuing and Paying Agent").

on the Maturity Date, specified above, and to pay interest, if any, on said principal amount, specified above, on said Maturity Date!, from the above specified Note Date to said Maturity Date at the per annum Interest Rate specified above (computed on the basis of actual days elapsed and a 365day or 366-day year, as applicable, unless otherwise set forth in an exhibit attached to this Note) solely from the sources hereinafter identified and as hereinafter stated; both principal and interest on this Commercial Paper Note being payable in immediately available lawful money of the United States of America at the principal office of the Issuing and Paying Agent, specified above, or its successor. No interest will accrue on the principal amount hereof after said Maturity Date.

This Commercial Paper Note is one of an issue of commercial paper notes (the "Commercial Paper Notes") which, together with the below referenced Promissory Note (such Promissory Note and the Commercial Paper Notes being hereinafter collectively referred to as the "Notes"), has been duly authorized and issued in accordance with the provisions of a master resolution (the Master Resolution") and a first supplemental resolution thereto (the "Supplemental Resolution," the provisions of the Master Resolution are incorporated by reference in the Supplemental Resolution and the Master Resolution and the Supplemental Resolution shall hereinafter be referred to collectively as the "Supplemental Resolution") passed by the Board, an agency and political subdivision of the State of Texas, for the purpose of financing Costs of Eligible Projects (each as defined in the Supplemental Resolution) and to refinance, renew, and refund the Notes, other Parity Debt and Prior Encumbered Obligations; all in accordance ad in strict conformity with the provisions of the Constitution and laws of the State of Texas, including but not limited to, Article 7 17q, Vernon's Texas Civil Statutes, as amended, and Chapter 55, Texas Education Code, as amended. Capitalized terms used herein and not otherwise defined shall have the meaning given in the Supplemental Resolution

This Commercial Paper Note, together with the other Notes and other Parity Debt, is payable from and equally secured by the Pledged Revenues; provided, however, that the lien on and pledge of the Pledged Revenues is junior and subordinate to the lien and pledge securing the payment of the Prior Encumbered Obligations, all as further defined and described in the Supplemental Resolution. The Notes do not constitute a legal or equitable pledge. charge, lien, or encumbrance upon any property of the Board, except with respect to the Pledged Revenues as described in the Supplemental Resolution, and the Holder hereof shall never have the right to demand payment of this obligation from any sources or properties of the Board except as described in the Supplemental Resolution THE NOTES DO NOT CONSTITUTE OR CREATE A DEBT OR LIABILITY OF THE STATE OF TEXAS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING AUTHORITY OF THE STATE OF TEXAS IS IN ANY MANNER PLEDGED, GIVEN, OR LOANED TO THE PAYMENT OF THE NOTES.

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(ky: 2545.039\exh.b1)

Reference is hereby made to the Supplemental Resolution, copies of which may be obtained upon request to the Board, and by acceptance of this Commercial Paper Note the Holder hereof hereby assents to all of the terms and provisions of the Supplemental Resolution, including, but not limited to, provisions relating to definitions of terms; the description of and the nature of the security for the Notes and the Pledged Revenues; the conditions upon which the Supplemental Resolution may be amended or supplemented with or without the consent of the Holders of the Notes; and the right to issue obligations payable from and secured by the Pledged Revenues.

It is hereby certified and recited that all acts, conditions, and things required by law and the Supplemental Resolution to exist, to have happened, and to have been performed precedent to and in the issuance of this Commercial Paper Note, do exist, have happened, and have been performed in regular and in due time, form, and manner as required by law and that the issuance of this Commercial Paper Note, together with all other Notes, is not in excess of the principal amount of Notes permitted to be issued under the Supplemental Resolution.

This Commercial Paper Note has all the qualities and incidents of a negotiable instrument under the laws of the State of Texas.

This Commercial Paper Note may be registered to bearer to any designated payee. Title to any Commercial Paper Note registered to bearer shall pass by delivery. If not registered to bearer, this Commercial Paper Note may be transferred only on the books of the Board maintained at the designated office of the Issuing and Paying Agent. Upon surrender hereof at the designated office of the Issuing and Paying Agent, this Commercial Paper Note may be exchanged for a like aggregate principal amount of fully registered (which registration may be to bearer) Commercial Paper Notes of authorized denominations of like interest rate and maturity, but only in the manner, and subject to the limitations, and upon payment of the charges provided in the Supplemental Resolution and upon surrender and cancellation of this Commercial Paper Note.

This Commercial Paper Note shall not be entitled to any benefit under the Supplemental Resolution or be valid or become obligatory for any purpose until this Commercial Paper Note shall have been authenticated by the execution by the Issuing and Paying Agent of the Certificate of Authentication hereon.

IN WITNESS WHEREOF, the Board has authorized and caused this Commercial Paper Note to be executed and attested on its behalf by the manual or facsimile signatures of the Chairman of the Board and the Executive Secretary to the Board and its official seal impressed on a facsimile thereof to be printed hereon.

BOARD OF REGENTS OF THE UNIVERSITY
OF TEXAS SYSTEM

Chairman

ATTEST:

Executive Secretary

(SEAL)

- Formula or alternate method of calculating interest may be attached as an exhibit to this Note.

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CERTIFICATE OF AUTHENTICATION

This Commercial Paper Note is one of the Commercial Paper Notes delivered pursuant to the within mentioned Supplemental Resolution.

as Issuing and Paying **Agent**

By _____
Countersignature

December 27, 1994

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(/ky: 2545.039\exh.b1)

Guidelines Governing Administration of the Revenue Financing System

The purpose of the Revenue Financing System is to provide a Systemwide financing program with which to finance capital improvement projects using debt secured by resources other than the Permanent University Fund. The guiding principle underlying administration of the Revenue Financing System is that allocations of debt proceeds shall be contingent upon a Board determination that a component institution can prudently meet its proportionate share of debt service with its own financial resources. All decisions including Board actions shall be premised upon the observation of this principle.

Administration of the Revenue Financing System shall be the shared responsibility of the Office of Asset Management, Office of Business Affairs, and individual component institutions.

Component institutions are not automatically admitted as members of the Revenue Financing System. Admittance shall require approval of the Board. All component institutions constituting The University of Texas System as of April 12, 1990, shall be members of the Revenue Financing System.

1. Approval of Revenue Financing System Indebtedness for CIP Projects

All capital improvement projects to be funded in part or in whole with Revenue Financing System bond proceeds must receive a recommendation for allocation of debt proceeds from the Office of Business Affairs prior to being approved by the Board for inclusion in the capital budget. Each request for formal approval from the Board of Regents for the expenditure of funds for architectural or construction expenses shall be accompanied by a recommendation from the Office of Business Affairs concerning the use of Revenue Financing System bond proceeds. Recommendations of allocations of proceeds shall be given by the Office of Business Affairs upon the completion of a financing evaluation concluding that the individual component institution proposing the project may prudently service its proportionate share of debt with its own financial resources. The financing evaluation shall include:

- a. Three levels of debt capacity & repayment analysis:
 - project level
 - component level
 - System level; with emphasis on maintaining or improving the current debt rating

- b. Financial Statement analysis:
 - 5-year history
 - trend analysis
 - evaluation of basis for projections

 - 5-year projections
 - verification of assumptions
 - risk adjustment of revenues

- c. Sensitivity analysis:
 - worst, probable and best cases
- d. Application of tests:
 - debt service coverage
 - leverage

The Board shall determine the sequence of funding and the terms of Revenue Financing System debt issues.

2. Issuance of Revenue Financing System Debt

Revenue Financing System debt shall be issued pursuant to a resolution and supplements specifying the terms of each issue.

Subject to outstanding debt with overlapping revenue pledges, Revenue Financing System debt shall be secured by a first lien on member institution revenues and fund balances lawfully available to the Board for payments of debt service except revenues and fund balances comprising: (a) the Available University Fund, (b) Higher Education Assistance Funds, (c) State of Texas general revenue fund appropriations unless specifically appropriated for debt service, and (d) M.S.R.D.P. income; unless and to the extent specifically pledged with the consent of a member institution.

After the establishment of the Revenue Financing System, no additional debt may be issued at parity with any outstanding debt secured in whole or in part with the pledged revenues.

3. Allocation of Debt Proceeds to Members

Revenue Financing System debt proceeds shall be advanced to a member institution and repaid to the Board in accordance with a financing agreement.

Advances shall be made at the time that the Board issues Revenue Financing System debt to fund a member institution's project. Proceeds shall be held and invested at the direction of the Office of Business Affairs by the Office of Asset Management until disbursed to a member institution in reimbursement of project costs or directly to vendors to pay financing costs. Advances pursuant to each supplement shall be evidenced by a single promissory note payable to the order of the Board in a principal amount equal to the aggregate unpaid principal amount of the advances. Each advance shall bear interest at a rate equal to that rate paid by the Board on the Revenue Financing System debt issued to fund the advances.

4. Anticipated Payment Deficit by a Member

It is the intent of the Board that all debt service payments be made on a timely basis. In any circumstance where the Board determines that a member institution will be unable to satisfy its proportionate share of debt service, the Board may take any and all actions, including raising the general fee without limit at said institution or any other member institution.

5. Member Institution Duties

- a. Each member shall furnish the Office of Business Affairs five-year projections of its balance sheet, statement of changes in funds balances, and statement of current revenues and expenditures.
- b. Each member in establishing its annual budget shall provide for the payment of its proportionate share of Revenue Financing System debt service.
- c. Each member shall establish and use its reasonable efforts to collect fees and other charges for goods and services in order to generate revenue sufficient to meet all of its financial obligations.
- d. Each member shall make available its proportionate share of Revenue Financing System debt service at such time and places as directed by the Office of Business Affairs in order to enable the Board to pay Revenue Financing System debt service.
- e. Each member shall not incur additional debt (including leases) except as permitted by the Board.
- f. Each member shall inform the Office of Business Affairs of any material change in its financial condition which would have a negative impact on its five-year projection.
- g. Each member shall annually file a report with the Office of Business Affairs on any auxiliary enterprise project which shall have materially failed to meet its original projections and, during the previous fiscal year, did not produce sufficient revenues, along with dedicated supplemental revenues, after all expenditures, based on the originally proposed method of finance, to at least meet its required allocation of Revenue Financing System debt service.
- h. In forecasting revenues and expenditures in support of an application for the use of Revenue Financing System proceeds, a component shall be guided by historical facts and trends. An allocation for expected future repairs and maintenance shall be included and inflation should be considered where relevant.
- i. Whenever possible, a good faith effort should be made to obtain a portion of the total capital cost from private contributions.

6. Annual Report of Nonperforming Projects

The Office of Business Affairs shall annually submit to the Board a report of all projects which have failed to perform financially as originally approved by the Board.

7. Tuition Supported Projects

Projects authorized by the U. T. Board of Regents to be funded as provided in Section 55.172 of the Texas Education Code and Chapter 803, Seventy-Third Legislature, Regular Session, 1993, shall be funded under these Guidelines except for the provisions of Section 1 related to project and Member capacity. The General Tuition of each institution shall be allocated to debt service on these projects on a basis consistent with that institution's relative share of total U. T. System tuition, the amount of General Revenue appropriated to that institution in reimbursement thereof, and the provisions of the Texas Education Code.

8. Provisions for Issuance of Unenhanced Variable Rate Notes

With regard to procedures relating to Notes purchased by the Board in the case of a failed remarketing of Variable Rate Notes issued by the Revenue Financing System, the following policies shall apply:

- a. The maximum amount of Notes maturing on any one business day shall not exceed \$25,000,000 unless such date shall be the closing date of a Note refunding funded with proceeds from a Revenue Financing System bond issue covered by a bond purchase contract.
- b. A credit agreement, as described in the First Supplemental Resolution to the Master Resolution, shall be obtained should the net asset value of the Short/Intermediate Term Fund decline to an amount less than \$875,000,000 and be expected to remain below that amount for a period of 30 days, the Revenue Financing System will obtain, within 60 days of notification from the Office of Asset Management, a substitute note purchase commitment from a third party for an amount that will limit the Short/Intermediate Term Fund's Purchase Commitment to \$150,000,000.
- c. Fees and charges associated with the use of a credit agreement or note purchase agreement shall be allocated to Members accessing the use of Variable Rate Notes and expended for both internal and external liquidity support as provided in written agreements.

9. Equipment Purchases Funded Through the Revenue Financing System

Equipment purchases authorized by the U. T. Board of Regents to be funded through the Revenue Financing System will be approved in aggregate amount by component institution at the beginning of each fiscal year. The minimum aggregate amount is \$100,000 per component institution and allows for several smaller equipment purchases to be commingled to achieve the minimum amount. Each piece of equipment must have a useful life of not less than 3 years. The equipment will be purchased from the vendor by the component institution and Revenue Financing System debt will be issued on the first business day of each November, February, May, and August to reimburse the component institution for the equipment purchases. The debt will be amortized each February 15 and August 15 with full amortization not to exceed seven years.

REPORT AND RECOMMENDATIONS OF THE ACADEMIC AFFAIRS COMMITTEE (Pages 53 - 83).--Committee Chairman Holmes reported that the Academic Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Academic Affairs Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Arlington: Approval to Increase the Student Union Fee Effective with the Fall Semester 1995 (Catalog Change).--Upon recommendation of the Academic Affairs Committee, the Board approved an increase in the Student Union Fee at The University of Texas at Arlington from a maximum of \$18.50 per each summer session to a maximum of \$19.50 per each summer session to be effective with the Fall Semester 1995. The maximum fee of \$39 per semester during the long term will not change.

The increase is consistent with the statute authorizing the fee and is supported by the Student Congress.

The additional revenue will avoid a deficit situation in the University Center budget and will also allow for necessary improvements to the University Center.

It was ordered that the next appropriate catalog published at U. T. Arlington be amended to reflect this action.

2. U. T. Arlington: Authorization to Name the Central Services Complex as the J. D. Wetsel Services Center (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--In accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings, the central services complex at The University of Texas at Arlington was named the J. D. Wetsel Services Center in honor of Mr. J. Dudley Wetsel who will be retiring as Vice President for Business Affairs on March 31, 1995, after 23 years of distinguished service to that institution.

3. U. T. Austin: Initial Appointments to Endowed Academic Positions Effective with the Spring Semester 1995.--The Board approved the following initial appointments to endowed academic positions at The University of Texas at Austin effective with the Spring Semester 1995:

- a. Dr. Philip W. Tucker, Professor in the Department of Microbiology, to the Marie Betzner Morrow Centennial Chair in the Department of Microbiology in the College of Natural Sciences
- b. Professor Guillermo F. Margadant, Visiting Professor in the School of Law, to The Ben H. and Kitty King Powell Chair in Business and Commercial Law in the School of Law for the Spring Semester 1995 only

c. Mr. Tod Williams, Visiting Professor in the School of Architecture, to the Ruth Carter Stevenson Regents Chair in the Art of Architecture in the School of Architecture for the Spring Semester 1995 only.

4. U. T. Austin: Permission for Dr. George Kozmetsky to Serve on the Board of Directors of the Foundation for the National Medals of Science and Technology [Regents' Rules and Regulations, Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11)].--Permission was granted for Dr. George Kozmetsky, holder of the J. Marion West Chair Emeritus for Constructive Capitalism and the Murray S. Johnson Chair in Economics, Director of the IC² Institute at The University of Texas at Austin, and Executive Associate for Economic Affairs for the U. T. Board of Regents, to serve on the Board of Directors of the Foundation for the National Medals of Science and Technology for a three-year term beginning in 1995 and ending in 1997. Dr. Kozmetsky will serve on this Board without compensation.

Dr. Kozmetsky's service on this Board is of benefit to the State of Texas, creates no conflict with his position at U. T. Austin or the U. T. Board of Regents, and is in accordance with approval requirements for positions of honor, trust, or profit provided in Chapter 574 of the Texas Government Code and Part One, Chapter III, Section 13, Subsections 13.(10) and 13.(11) of the Regents' Rules and Regulations.

5. U. T. Austin: Authorization to Name 107-Inch Telescope at McDonald Observatory the Harlan J. Smith Telescope (Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, Naming of Facilities Other Than Buildings).--The 107-inch telescope at The University of Texas at Austin McDonald Observatory at Mount Locke was named the Harlan J. Smith Telescope in accordance with the Regents' Rules and Regulations, Part One, Chapter VIII, Section 1, Subsection 1.2, relating to the naming of facilities other than buildings.

The naming of this telescope is in honor of the late Dr. Harlan J. Smith's outstanding dedication and service to the U. T. Austin Department of Astronomy and McDonald Observatory and his key role in the acquisition of this telescope.

Concurrent with the action to name the telescope in honor of Dr. Smith, a development effort will be initiated to raise \$500,000 to allow capital improvements and maintenance of the telescope.

6. U. T. Austin: Approval of an Agreement on Shuttle Bus Service with the Capital Metropolitan Transportation Authority (Capital Metro), Austin, Texas, Effective for an Eight-Year Period Beginning September 1, 1995, and Authorization for the Executive Vice Chancellor for Academic Affairs to Execute the Agreement.--The Board, upon recommendation of the Academic Affairs Committee:

- a. Approved the agreement regarding shuttle bus service as set out on Pages 56 - 79 between The University of Texas at Austin and the Capital Metropolitan Transportation Authority (Capital Metro), Austin, Texas
- b. Upon concurrence by the Office of General Counsel and the Executive Vice Chancellor for Business Affairs, authorized the Executive Vice Chancellor for Academic Affairs to execute this agreement on behalf of the U. T. Board of Regents.

Regent Smiley abstained from this discussion and vote due to a possible conflict of interest.

Under this agreement, shuttle bus service will be based on performance standards and will provide 142,500 annual revenue hours of shuttle bus service beginning September 1, 1995 and ending August 31, 2003. Service will be provided on a total of thirteen routes, nine radial routes, three circulator routes, and one inter-campus shuttle/park-and-ride route serving the J. J. Pickle Research Campus at U. T. Austin.

The rates per service hour are as follows:

- a. Year One (September 1, 1995 to August 31, 1996): \$27.04
- b. Year Two (September 1, 1996 to August 31, 1997): \$28.12
- c. Year Three (September 1, 1997 to August 31, 1998): \$29.25
- d. Years Four through Eight (September 1, 1998 to August 31, 2003): Will be negotiated prior to August 31, 1997; however, the negotiated payment will not vary from the Consumer Price Index projection published by the United States Commerce Department by more than one percent (1%) in any given year. (The proposed negotiated rates will be submitted to the U. T. Board of Regents for approval via the institutional docket prior to August 31, 1997.)

Payment for 138,000 hours of service each year of the agreement will be from the Compulsory Student Services Fee and payment for 4,500 hours of service each year for the J. J. Pickle Research Campus will be from institutional funds. Of the \$101.64 Compulsory Student Services Fee paid each semester in FY 1994-95 by all full-time students, \$39.22 of the fee is allocated to cover shuttle bus costs.

**AGREEMENT BETWEEN THE BOARD OF REGENTS
OF THE UNIVERSITY OF TEXAS SYSTEM AND THE
CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

This Agreement is made by and between the BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM ("BOARD"), an agency of the State of Texas, on behalf of its component, The University of Texas at Austin, ("UNIVERSITY"), and the CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY, ("CAPITAL METRO"), a political subdivision of the State of Texas, created and exercising its authority in accordance with V.T.C.S. Article 1118x, acting by and through its duly authorized General Manager, or his designee.

WITNESSETH:

WHEREAS, an Agreement was entered into by the BOARD and CAPITAL METRO on September 1, 1988, for the provision of shuttle bus transportation service by CAPITAL METRO; and

WHEREAS, the BOARD and CAPITAL METRO have significantly benefited mobility in Austin through the cooperative provision of shuttle bus transportation service; and

WHEREAS, the BOARD and CAPITAL METRO desire to enter into a long term commitment to meet the mobility needs of the University community to the mutual benefit of UNIVERSITY and CAPITAL METRO; and

WHEREAS, BOARD and CAPITAL METRO intend to enter into this Agreement in accordance with the Interlocal Cooperation Act, Article 791 of the Texas Government Code;

NOW THEREFORE, in consideration of the mutual covenants and promises made by the parties hereto, it is agreed as follows;

ARTICLE I: SUBJECT OF AGREEMENT

CAPITAL METRO will provide 142,500 annual revenue hours of shuttle bus service for UNIVERSITY, utilizing equipment furnished by CAPITAL METRO, and operated in a manner consistent with performance standards agreed to herein.

CAPITAL METRO will provide all revenue vehicles required for scheduled service. CAPITAL METRO will directly or through contract provide required drivers, fuel, revenue vehicle maintenance, storage, supervisory and management services, and all other goods and services needed to provide the transportation services described herein.

ARTICLE II: TERM OF AGREEMENT

The term of this Agreement shall begin September 1, 1995, and end August 31, 2003.

ARTICLE III: DESCRIPTION OF THE SERVICE

The shuttle bus transportation to be provided under this Agreement is as follows:

- A total of thirteen routes; **nine** radial routes, three circulator routes and one **inter-campus shuttle/park-and-ride** route (the Pickle Research Campus Shuttle which comprises approximately 4,500 annual revenue hours of service).
- Approximately 225 days of service per year for a total of 142,500 hours of service. The 142,500 revenue hours of service breaks down to 138,000 revenue hours of radial and on-campus circulator service and 4,500 annual revenue hours of **inter-campus/park-and-ride** service.
- Nine service schedules per year corresponding to registration, regular class days and **finals** for each of the three semesters (Spring, Summer and Fall).
- Service hours **are** generally from **6:45** am. until **11:30** p.m.
- During Fall and Spring Class days there are 74 peak buses in the a.m. hours. At **5:00** p.m. there are approximately 53 vehicles in **service** and at **8:00** p.m. there are 12 vehicles in service.

Exhibit A is a map which summarizes the shuttle bus route structure. Changes in routing and scheduling will be made from time-to-time in order to better meet the needs of users. These changes in **service** will be made **utilizing** the service change process described in Article VI.

Special event service will be limited to official University sponsored academic events (e.g., freshman orientation, commencement).

ARTICLE IV: PERFORMANCE OF THE SERVICE

In order to assure the delivery of transit service in a quality manner, consistent with the objectives of UNIVERSITY and CAPITAL METRO, standards of performance have been agreed to by the parties, **as** detailed in Exhibit B. Failure of **CAPITAL METRO** to meet the quantitative standards established will result in financial penalties.

To receive full compensation, **CAPITAL METRO** is required to meet or exceed the following standards of performance on a monthly basis:

90% of trips operating on-time (an on-time trip is one which departs 0 minutes early and no more than 5 minutes late).

No more than 5 percent missed trips. A missed trip is one which **is not** completed in its entirety or is more than 15 minutes **late**.

No more than **.12** complaints per 1,000 passengers.

No more than 5.0 vehicle and passenger accidents per 100,000 miles.

A maximum passenger load standard of 150%; 125% for radial routes which operate on I-35 or MOPAC.

100 percent preventive maintenance inspections completed as scheduled (within **700 miles** of due date).

Failure to meet a performance standard for two or more consecutive months and/or three months out of any five consecutive months will result in a penalty equal to one percent of **the** monthly compensation for each consecutive month missed for each standard. Penalties will be deducted **from** the monthly invoice totals for the month in which the penalties were incurred. Liquidated damages **will** not be assessed for the above described occurrences if they are judged to be the result of events which are outside the control of CAPITAL METRO, as determined by mutual consent of the parties.

The performance standards specified **will** be reviewed by **UNIVERSITY** and CAPITAL METRO periodically throughout the life of the contract and are subject to revision by mutual consent of UNIVERSITY and **CAPITAL METRO**. Standards will be reviewed at the end of **the** first year, and subsequently, every third year through the end of the contract term.

ARTICLE V: VEHICLES

CAPITAL METRO shall **furnish** revenue vehicles as required to operate the services described in this Agreement, as well as any additional services agreed to by mutual consent of the parties.

All revenue vehicles will be equipped with air-conditioning, wheelchair lifts, or other means of wheelchair access front and rear loading doors, two-way radios, and destination signs. Vehicles **will** display graphics which readily identify the service for users while retaining a visual **link** to the **Capital** Metro system. **An** adequate number of vehicles **will** be made available to the shuttle **bus** service to assure a 20% spare ratio, with a 2% tolerance (plus or minus).

Revenue vehicles **will** be **maintained** in a quality manner to assure delivery of a safe, reliable and clean service for the passenger. Performance standards related to the quality of vehicle maintenance are included in Exhibit B.

No commercial advertising material will be displayed on the interior or exterior of vehicles used in the provision of service under this Agreement, with the exception of CAPITAL METRO's logo. Announcements regarding CAPITAL METRO's service may be displayed on the interior of the vehicles. Announcements regarding official UNIVERSITY events and policies also may be displayed, if they are approved in advance by the Vice President for Business Affairs and they meet uniform size requirements.

ARTICLE VI: CHANGES IN SERVICE

UNIVERSITY and **CAPITAL METRO** have cooperatively developed a Five Year Service Plan which details joint goals and objectives for the service, specifies performance and service standards and describes service development strategies which **UNIVERSITY** and **CAPITAL METRO** intend to implement for the overall improvement of the service.

CAPITAL METRO will implement an on-going data collection and service analysis program consistent with the Five Year Plan which will provide the basis for annual service change analysis. **It** is intended that the Five Year Plan will serve as general guidance to **UNIVERSITY** and **CAPITAL METRO** in evaluating possible changes in the shuttle service. Service changes will be analyzed in conformance with service standards attached as Exhibit C.

All service change and bus stop requests will be directed to **CAPITAL METRO** for evaluation. Results of the evaluation process will be presented to **UNIVERSITY**.

Major changes in service, those **which** impact more than twenty-five percent of the route structure or schedule, will **be** evaluated by **CAPITAL METRO** and presented to **UNIVERSITY** at least one month in advance of any public presentation on the change proposal. A typical service evaluation schedule is attached as Exhibit D.

Both major and minor changes in service require approval of **UNIVERSITY** and **CAPITAL METRO**. Major changes in service will require solicitation of input from student representatives, conduct of a formal public hearing and will require action by the Board of Directors of **CAPITAL METRO**.

ARTICLE VII: CLASSIFICATION OF PASSENGERS

The transit service provided herein shall be available to **any** person and shall not be restricted to students of **UNIVERSITY**.

ARTICLE VIII: CONSIDERATION

For and in consideration of CAPITAL METRO **furnishing** such buses and shuttle bus service as set forth above, **UNIVERSITY** agrees to pay CAPITAL METRO, the sum as specified below:

- (a) For Year One (September 1, 1995 to August 31, 1996), **UNIVERSITY** shall pay CAPITAL METRO the sum of **\$3,853,200**. This amount represents One Hundred Forty-two Thousand Five Hundred (142,500) annual service hours, as previously described. In **addition** to the sum stated above, **UNIVERSITY** shall also pay CAPITAL **METRO** \$27.04 Dollars per service hour for total hours of service which exceed the annual number of hours required for **UNIVERSITY-oriented** routes which are provided by CAPITAL METRO in response to service changes requested by **UNIVERSITY** and approved by **UNIVERSITY** and CAPITAL METRO pursuant to the provisions of Article VI of this agreement.
- (b) For Year Two (September 1, 1996 to August 31, 1997), **UNIVERSITY** shall pay CAPITAL METRO the sum of **\$4,007,328**. This amount represents One Hundred Forty-two Thousand Five Hundred (142,500) annual service hours, as previously described. In addition to the sum stated above, **UNIVERSITY** shall also pay CAPITAL METRO \$28.12 Dollars per service hour for total hours of service which exceed the annual number of hours required for **UNIVERSITY-oriented** routes which are provided by CAPITAL METRO in response to service changes requested by **UNIVERSITY** and approved by **UNIVERSITY** and CAPITAL METRO pursuant to the provisions of Article VI of this agreement.
- (c) For Year Three (September 1, 1997 to August 31, 1998), **UNIVERSITY** shall pay **CAPITAL** METRO the sum of **\$4,167,621**. This amount represents One Hundred Forty-two Thousand Five Hundred (142,500) annual service hours, as previously described. In addition to the sum stated above, **UNIVERSITY** shall also pay CAPITAL METRO \$29.25 Dollars per service hour for total hours of service which exceed the annual number of hours required for **UNIVERSITY-oriented** routes which are provided by CAPITAL METRO in response to service changes requested by **UNIVERSITY** and approved by **UNIVERSITY** and **CAPITAL** METRO pursuant to the provisions of Article VI of this agreement.

(d) Payment of UNIVERSITY to **CAPITAL METRO** for Years Four through Eight (September 1, 1998 to August 31, 2003) shall be negotiated and agreed to by the parties prior to August 31, 1997. However, the negotiated payment to CAPITAL METRO for Years Four through Eight shall not vary from the Consumer Price Index (**CPI**) projection published by the U.S. Commerce Department, by more than one percent (1%) in any given year.

The yearly payment shall be made by UNIVERSITY to CAPITAL METRO in twelve (12) equal monthly installments. Monthly payments shall also include payment of hourly charges for additional service hours, if any, as reflected on CAPITAL METRO's itemized statement of charges for service rendered during the completed billing period.

Payments shall be made within ten (10) working days of presentation of a properly itemized statement of charges for service rendered during the completed billing period; Billing periods will be a minimum of one month in length.

Payment by UNIVERSITY to CAPITAL METRO entitles UNIVERSITY students with valid UNIVERSITY Identification Cards to service on all CAPITAL METRO local, **Dillo** and express park-and-ride bus service without additional charge, by displaying a valid UNIVERSITY identification card to the driver

University students with a valid University Identification Card who are unable to utilize fixed route shuttle, local or express park-and-ride service due to a mobility impairment will be entitled to utilize the Special Transit Service (STS) for a set number of trips per semester without payment of additional fare. The number of trips which a student is entitled to per semester will be calculated by dividing the student service fee for transportation by the normal STS fare. A maximum of 1,800 trips per semester will be provided under this provision of the agreement. In order to utilize the Special Transit Service (STS) students must meet eligibility requirements of the program. This provision will be reviewed by UNIVERSITY and CAPITAL METRO at the end of the first year, and subsequently, every third year through the end of the contract term for possible revision.

UNIVERSITY and **CAPITAL METRO** jointly agree to develop and implement an employee trip reduction program for UNIVERSITY employees during the first year of this agreement. The trip reduction program will promote a reduction in Single Occupancy Vehicle trips by making available transit alternatives at an attractive cost in comparison to parking costs.

ARTICLE IX: INSURANCE AND PERFORMANCE BOND

Should **CAPITAL METRO** elect to provide the services described in this Agreement through a third party contractor, **CAPITAL METRO** shall require the contractor to maintain at all times during the period covered by this Agreement liability and property damage insurance issued by a company authorized to do business in Texas and approved by UNIVERSITY, with a minimum combined single limit of not less than Five Million Dollars (**\$5,000,000**) for each occurrence. Proper certificates of insurance reflecting said insurance coverage in limits not less than those stated above shall be furnished to UNIVERSITY.

CAPITAL METRO shall also require the contractor to secure a Performance Bond in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000) to guarantee faithful performance of its obligations to **CAPITAL METRO**. Such Performance Bond shall be issued by a company authorized to do business in the State of Texas and approved by CAPITAL METRO and **UNIVERSITY**.

Should CAPITAL METRO elect to provide the services described in the Agreement directly, CAPITAL METRO **shall** maintain at all times during the period covered by this Agreement liability and property damage coverage as defined in Exhibit E. Capital Metro at its option may provide this insurance coverage through a self-insurance program or pool.

ARTICLE X: MAINTENANCE OF RECORDS

CAPITAL METRO agrees to maintain records or documentation that shall reflect the following: a) The number of buses operated on any given day, b) The number of revenue trips operated, c) the number of hours operated by each bus on each route or schedule, d) the number of passenger complaints received, e) the number of vehicle and passenger accidents, **f)** the number of roadcalls, g) the estimated percentage of trips operating on schedule (within the 0-5 minute window as compared to the scheduled time of departure), **(h)** information regarding preventive maintenance activity, (i) vehicle load information and any other additional information CAPITAL METRO may elect to include in such records. Reports **summarizing** this information shall be provided monthly to the **UNIVERSITY** in conjunction with the monthly invoice. Reports shall be made available to the President's Shuttle Bus Committee upon request.

UNIVERSITY shall have complete access to such records and documentation at any and all reasonable times during the business day for the purpose of examination, and may at its own expense, cause an audit to be made of CAPITAL METRO's records or documentation, as same pertains to service provided under this Agreement. **CAPITAL METRO** agrees to cooperate with the properly designated **UNIVERSITY** official charged with inspecting and auditing said records and documentation.

ARTICLE XI: LEGALITY OF CONTRACT

The operation by CAPITAL METRO under this Contract shall be performed in compliance **with all** the applicable ordinances of the City of Austin, laws of the State of Texas and the United States. This Contract shall be binding on the parties hereto, their successors and assigns. CAPITAL, **METRO** may not assign this Contract without prior written consent of **UNIVERSITY** and **BOARD**. This Contract shall be construed and performed in accordance with the laws of the State of Texas and any action arising hereunder shall be brought in the court of competent jurisdiction in Travis County, Texas.

ARTICLE XII: INDEMNIFICATION AND HOLD HARMLESS

CAPITAL METRO shall, to **the** extent permitted under the Constitution and laws of the State of Texas and subject to the limits of the Texas Tort Claims Act, **indemnify** and hold harmless BOARD, UNIVERSITY, Their Regents, officers, employees and agents from and against any claims, demands or causes of action whatsoever, caused by, arising out of, or resulting **from** any act or omission by CAPITAL METRO or its contractor, or their agents, officers or employees, including any claims, demands or causes of action arising **in** favor of any person or entity resulting from the acts or omissions of CAPITAL METRO or its contractor, officers, agents, representatives or employees.

ARTICLE XIII: CANCELLATION

If CAPITAL METRO is in default under any term of this Agreement then UNIVERSITY shall give CAPITAL METRO written notice of such default and **CAPITAL METRO** shall have ninety (90) days in which to cure such default, and the failure of CAPITAL METRO to cure any such default within ninety (90) days after written notice of same by UNIVERSITY shall give BOARD the right to cancel this contract **immediately**.

ARTICLE XIV: NOTICE

Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or **certified**, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties as they appear below, but each party may change his address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated at the time of actual receipt; mailed notices shall be deemed delivered, whether actually received or not, forty-eight (48) hours after deposit in a regularly maintained receptacle for United States mail.

Whenever written notice is **required** by any of the provisions of this Agreement the notice shall be given by CAPITAL METRO to:

Vice President for Business **Affairs**
The University of Texas at Austin
P.O. Box 8179
Austin, Texas 78713-8179

or by the **UNIVERSITY** to:

General Manager
Capital Metro
2910 East 5th Street
Austin, Texas 78702

ARTICLE XV: SUSPENSION

Either party may suspend **this** Agreement at any time because of war, declaration of a state of national emergency, acts of God or public enemy, strike, work stoppage or slow down, or other cause beyond the control of such party, by giving the other party written notice of suspension and the reason for same. UNIVERSITY shall be obligated only to pay for services actually provided under this Agreement.

Payments to be made and services to be rendered under this Agreement shall not become due during a period of suspension. BOARD may secure the services herein contemplated from another source during the period in which CAPITAL METRO suspends performance under this Agreement.

ARTICLE XVI: ENTIRE AGREEMENT

This instrument and attachments contain the entire agreement between the parties **and** supersede any prior understanding or written or oral agreements between parties respecting **the** within subject matter. Any oral representations or modifications concerning this instrument shall be of no force or effect unless reduced to writing and signed by the parties.

ARTICLE XVII: LEGAL CONSTRUCTION

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be **construed** as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XVIII: EFFECTIVE DATE

This Agreement shall be effective September 1, 1995.

IN **WITNESS** WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

ATTEST: **CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY**

Secretary

By: _____
Chairperson, Board of Directors

ATTEST: **BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM**

Executive Secretary

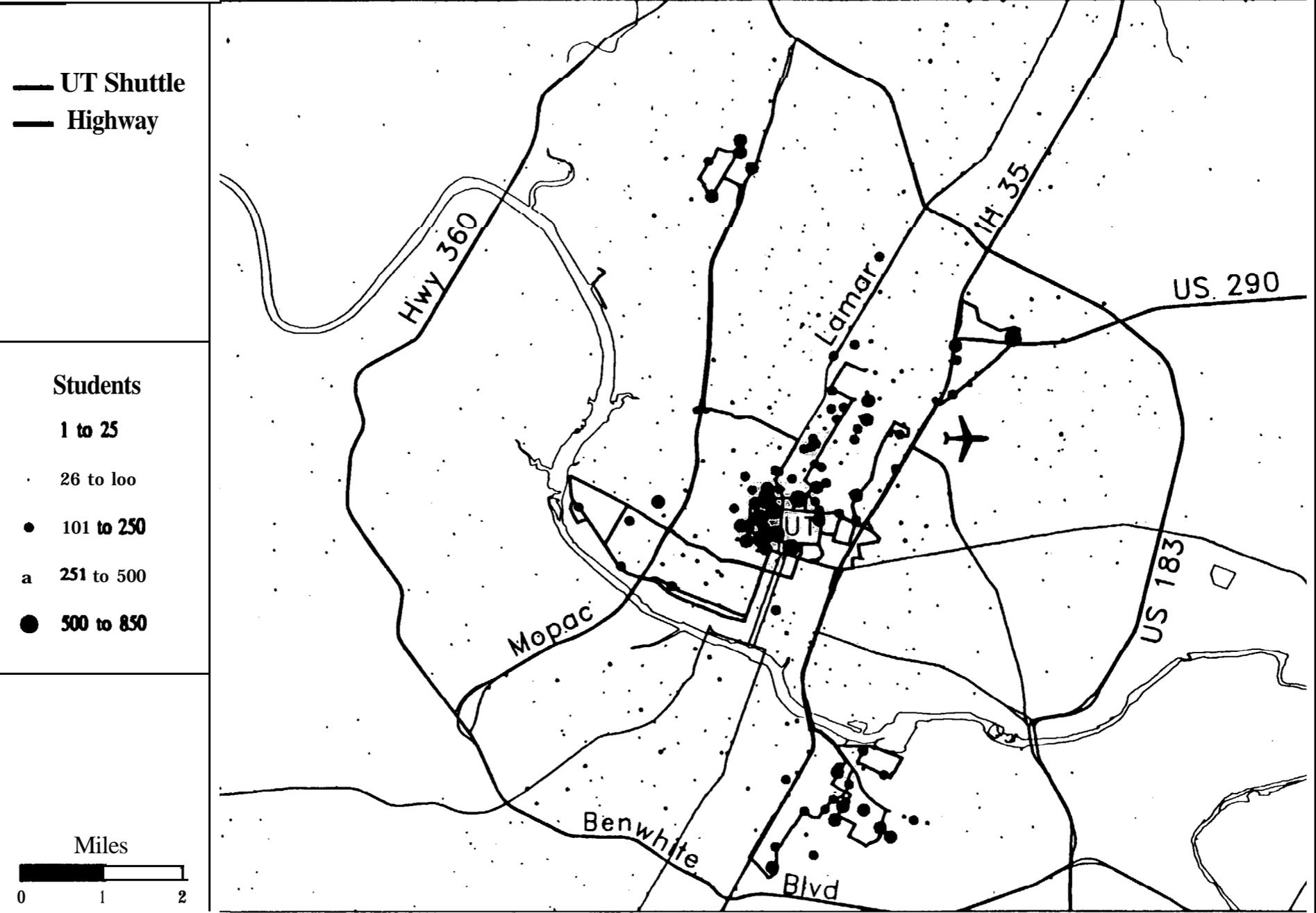
By: _____
Executive Vice Chancellor for Academic Affairs

CONTENT APPROVED:

By: _____
Vice President for Business Affairs
University of Texas at Austin

FORM APPROVED:

By: _____
Office of General Counsel
University of Texas System



— UT Shuttle
 — Highway

Students

- 1 to 25
- 26 to 100
- 101 to 250
- a 251 to 500
- 500 to 850

Miles
 0 1 2

Exhibit A

University of Texas at Austin
 Student Population

EXHIBIT B
PERFORMANCE STANDARDS AND PENALTIES

Overview:

In an effort to stimulate and encourage a high quality of service, various performance standards along with financial penalties for non-attainment, have been established as part of this Agreement.

Penalties for non-attainment of performance standards will be calculated on a monthly basis and deducted from the monthly invoice for the same month in which the penalties were assessed.

Information will be provided by CAPITAL METRO to the UNIVERSITY regarding performance experience for each monthly period. UNIVERSITY has the right to review and inspect the process utilized in the development of performance statistics.

The specific performance targets identified will be jointly reviewed by CAPITAL METRO and UNIVERSITY at the end of the first year of the contract and every third year thereafter throughout the term of the Agreement. Adjustments will be made upon mutual consent of the parties to the Agreement.

On-Time Performance

It is the goal of UNIVERSITY and CAPITAL METRO that buses shall depart from end-of-line time points no later than five **minutes** after their scheduled time and shall not leave any time point prior to their **scheduled** departure time.

The performance standard will require that at least **90** percent of all departures from published timepoints meet the aforementioned criteria.

Missed Trios

It is the goal of UNIVERSITY and CAPITAL METRO that, at minimum, 99.5% of all scheduled trips are completed on a daily basis. In the event of an in-service breakdown, driver's absence or other service related problem, CAPITAL METRO will provide adequate means to dispatch vehicles in such a fashion as to not miss subsequently scheduled trips. Any trip operating fifteen or more minutes behind its scheduled time shall be considered a "missed trip".

Complain&

The performance standard for passenger **complaints** tracks the number of complaints received per thousand boardings. The performance target established under the Agreement is **.12** complaints per 1,000 boardings.

Accidents

The performance standard for accident is based upon the recorded number of passenger and vehicle accidents per 100,000 **miles**. This standard is intended to encourage safe operation of revenue **vehicles** which will result in a safer transit system for passengers, operators, **pedestrians and** the general public. For this Agreement a performance standard of 5.0 vehicle and/or **passenger** accidents per 100,000 miles has been established.

Vehicle Loads

The vehicle load standard specifies the maximum acceptable average vehicle load for a particular type of service. Where the vehicle load standard is regularly exceeded, additional service should be provided to bring **passenger** loads back within the standard range. The vehicle load **standard established** for this Agreement is 150% of seated capacity for radial route in local service and **campus** circulators (a higher standard may be appropriate if vehicles are **reconfigured** for more standees). Standing loads should be limited to no greater than 125% of seated capacity on routes which operate in express mode (for example, along I-35 or **MOPAC**).

Preventive Maintenance

Preventive maintenance is an important factor in providing a mechanically reliable transit service. Preventive maintenance schedules require each vehicle to be brought in for PM inspections at specific mileage **intervals**. **Failure** to meet the PM schedule will contribute to in-service **breakdowns**. The preventive maintenance performance standard calls for 100% of preventive maintenance inspections to be completed as scheduled (within 700 miles of the due date).

Technical Memorandum (Revised October 26, 1993)

Recommended Service Standards for the UT SHUTTLE

The following service standards are based on existing Capital Metro service standards, peer review of service standards for large university transit systems, and transit industry standards for systems of less than 100 vehicles. Standards are suggested in three categories as follows:

Route and Service Design Standards
Service Quality Standards
~~Route~~ Performance Standards

The following standards are recommended for use in operations planning and ongoing service and route performance evaluation for the UT Shuttle system.

Route and Service Design Standards

Route and service design standards focus on the structure of the UT Shuttle system.

Bus Stop Spacing and Location

Industry standards **normally** specify minimum and/or maximum bus stop spacings ranging from one block to over one mile for different types of bus service and for **service** areas with different population densities. Bus stop spacing requirements generally represent attempts to balance the concerns for passenger convenience or accessibility and vehicle operating speed.

Currently, bus stop spacing varies along UT Shuttle routes based upon the type of route. For local radial routes (i.e., RR, ER, IF, LA), bus stops are spaced approximately each $\frac{1}{3}$ mile. Commuter radial routes (i.e., SR, CR, **FW, NR, PV**) reflect bus stop spacing on average every $\frac{1}{5}$ mile along the collector portion of each route in student residential areas. Bus stops are placed on average every $\frac{1}{4}$ mile along circulator routes near campus (i.e., WC, 40, EC).

The existing bus stop spacing on radial routes of $\frac{1}{5}$ to $\frac{1}{3}$ mile reduces vehicle operating speed by requiring numerous stops per mile. A bus stop every $\frac{1}{2}$ mile would provide adequate coverage and still provide walking access for passengers within $\frac{1}{4}$ mile (from the midpoint between stops). However, the UT Shuttle passenger trip demand per stop may warrant more frequent bus stops to distribute passenger loading. The existing bus stop locations should be evaluated to reduce the number of bus stops, with consideration for passenger loading patterns. For example, bus stops with less than 50 boardings and/or alightings per day should be considered for elimination, if another stop is available within $\frac{1}{4}$ mile walking distance.

The bus stop spacing standards on circulator routes appear appropriate for the UT Shuttle system and are not recommended for change.

Route Directness

Standards for route directness normally attempt to apply limitations that are expressed in terms of minutes of additional travel time, miles of additional route length, percentage increase in travel time, or as the ratio between total route length and automobile travel distance between terminal points. Often standards compare auto distance or travel time to transit distance or travel time for the same trip.

The purpose of radial routes operated for the UT Shuttle is to minimize the travel time for students between their residences and classes. This requires the most direct route to maximize efficiency in travel time. The standard for the UT Shuttle should be to provide direct service which requires no greater than 125% of the comparable travel time by auto, including parking and walking to campus.

Span of Service

Span of service for the UT Shuttle is **from 6:45 a.m. to 11:30 p.m.** on weekdays. This service span is based on class hours with consideration for student activity in the evenings. The standard is for the UT Shuttle to operate during hours early enough to deliver students to **campus** prior to the **first** class period in the morning and late enough to accommodate student activities in the evening. The standard for span of service on weekdays should remain flexible. Service should continue to be monitored to evaluate productivity and cost-effectiveness.

The span of service is reduced during periods for registration and exams. Students often request longer hours during **final** exams to accommodate later study habits. Consideration should be given to extending UT Shuttle services during final exams for students who use campus libraries after 11:30 p.m.

Sunday service for the UT Shuttle is being provided on a demonstration basis during the Fall 1993 from 2:00 p.m. until midnight. This service and the service span should be monitored to evaluate cost-effectiveness.

Recovery Time

Recovery time standards focus on the proportion of total vehicle hours or total revenue hours of operation. Included in **total** vehicle hours are vehicle hours not spent in revenue service, such as operator layovers and deadhead mileage.

The terminology for the UT Shuttle system is slightly modified. The private provider who contracts with Capital Metro to operate the UT Shuttle is not paid for deadhead (the time required to drive from the garage to the first in-service timepoint and from the last in-service timepoint to the garage). Total vehicle hours for the UT Shuttle refer to the sum of the hours in actual service carrying passengers (running time) plus layovers for schedule recovery, plus driver breaks. In the case of the UT Shuttle, reference is often made to "service hours" which refers to the number of hours of service contracted between the University of Texas and Capital Metro (138,000 annually). Service hours are equal to vehicle hours, and include running time, layovers for schedule recovery, and driver breaks.

Industry standards for recovery time (layovers for schedule recovery and driver breaks) vary considerably depending upon route structure, route length, and running speed. For systems of less than 100 peak vehicles, recovery time standards are either expressed in minutes per trip (2-5 minutes); per hour (5 minutes); or as a percentage of total running time (10%).

Schedules for the UT Shuttle reflect recovery time **equal** to 17% of total service hours. This high percentage of recovery time reduces cost-effectiveness. For most routes, there is a 3 minute layover for schedule recovery each round trip at the UT campus, representing 13% of total service hours. In addition, 10 minute breaks are scheduled for each driver mid-shift (i.e., after 2 hours on shift), representing 4% of service hours. Driver breaks often occur mid-route. For a typical weekday during the fall term in 1992, a total of 96 service hours were required for schedule recovery and an additional 30 hours were **required** for driver breaks.

Layover for schedule recovery is necessary to adjust for **in-service** variations in travel time, traffic congestion, passenger loads, and wheelchair boardings. Three minutes every round trip also provides adequate opportunity for convenience breaks for drivers. Thirteen percent of UT Shuttle service hours are dedicated to layovers for schedule recovery. A standard for recovery time is typically 10% of total service hours. However, UT Shuttle routes are characterized by very frequent, short round trips. Recovery time of 3 minutes per round trip is reasonable but will result in a higher than "typical" percentage of service hours. In order to achieve more **cost-effective** service, total recovery time should be reduced to approach more closely a goal of 10% of total service hours. Adjustments should be made in phases over the next 3 to 5 years.

Additional driver breaks after just two hours in service are cost ineffective, create schedule inefficiencies, and are disruptive to passengers. As schedules are currently cut, driver breaks occur at periods when passenger trip demand peaks. The reduction in service to provide every driver a break should be prohibited. The layover for schedule recovery each round trip should be sufficient time for driver breaks. However, if the contractor elects to provide driver breaks mid-shift, then relief drivers should continue the runs to insure the highest quality of service.

Route Length

This service standard focuses on the appropriate length of bus routes either in terms of actual distance or travel time. Most standards for systems of 100 buses or less place limitations on route length in terms of travel time per trip (one-way or round trip) that reflect the system's headway requirements and/or timed-transfer policy.

The total round trip travel time for UT Shuttle routes varies from 14 minutes to 40 minutes. Due to the nature of the UT Shuttle service, a standard for the length of a radial route should be measured in travel time: no route length should **require** more than **60** minutes travel time per round trip, including layover for schedule recovery. Standards for route length and round trip travel time will help to recycle buses for more frequent trips and higher passenger trip capacity.

Student residential concentrations are moving to suburban areas; however, UT Shuttle route lengths must be limited in order to control transit travel time. Express service should be made available for students, faculty and staff traveling from suburban residential areas to park and ride facilities for access to UT Shuttle routes.

Route Duplication

A service standard for route duplication is basically concerned with the extent to which different routes in a system are permitted to operate on the same street, thus overlapping ridership markets and service. The standards that have been developed control duplication by specifying a maximum percentage of total route length that can be duplicated or by placing an upper limit on the number of route miles that can be duplicated.

For the UT Shuttle system, there is essentially no duplication of service on radial routes due to the requirements for distribution of the limited resources available. For the circulator routes there is some overlap of service but this generally due to constraints on access to campus streets. A limited number of UT Shuttle routes are duplicated by Capital Metro **fixed** routes. The amount of duplication is nominal. In most cases, the UT Shuttle routes and the Capital Metro-fixed routes deviate after a duplicated route segment to serve different target markets. Only the Intramural Fields and Route **5-Woodrow** reflect significant route duplication. Both routes **run** along Speedway from W. 45th to near the UT campus. Because of the very high density of UT student residences along Speedway, this duplication of services may be warranted.

Because of the unique nature of the UT Shuttle service structure, duplication of service is not a problem and a standard of performance is not necessary.

Route Structure

The focus of this criterion is to set standards for the extent to which the system utilizes such routing techniques as branching, turn-backs, and terminal looping on individual trunk lines. The standards generally attempt to limit the amount of one-way loops and turn-backs on routes.

The standard for the UT Shuttle should be to maximize two-way service on radial routes and facilitate access to service for students living beyond walking distance from campus. One way loops should be acceptable only on the collector end of commuter routes, and then only to maximize service coverage in student residential areas. Circulator route structure should continue to focus on convenient access to campus buildings and facilities.

Service concepts which reflect evolving standards for route structure include: providing more express service on radial commuter routes in growth areas, offering parking for students along the collector end of existing radial commuter routes, providing UT Shuttle park and ride service in suburban areas, and promoting parking shuttles from remote parking facilities near campus.

The UT Shuttle cannot meet all student, faculty and staff transit trip requirements with the limited resources available. Some areas can and are being covered by Capital Metro **fixed** route bus service as evidenced by the **current** use of Capital Metro services by UT students. The use of Capital Metro bus service by UT students, faculty and staff is acceptable as long as these opportunities complement the UT Shuttle route structure and are cost effective.

Service Quality Standards

Service quality standards focus on the quality and quantity of bus service delivered by the UT Shuttle system.

Vehicle Loads

Industry standards specify maximum acceptable average vehicle loads that are normally based on the time period and the **type** of service involved. The lowest permissible load factors are generally provided for express services while higher loads exceeding 100% are permitted on local routes during peak periods. The highest load factors are permitted on short-haul services such as shuttles and circulators where loads exceeding 150% are acceptable.

Currently, there is no standard for acceptable load limits for the UT Shuttle, except standing passengers must stay behind the “white line” at **all** times. **The** highest load factors exceeding 150% are acceptable on radial routes in local **service** and campus circulators. However, standing loads should be limited, preferably to no greater than 125% of seated capacity, on routes which operate at speeds greater than 35 mph in express service (for example, along I-35 and Mo-Pat).

Vehicle Headways

Vehicle **headways** for the UT Shuttle are driven by passenger trip demand. The peer review of similar systems shows that experience is the best method for determining adequate vehicle **headways** for a university shuttle service. There are techniques which are being used by Capital Metro to decrease vehicle **headways** and improve service reliability. For example, one scheduling technique is to dispatch a “ghost” bus to follow a scheduled bus to pick up excess passenger trip demand. The University and Capital Metro have provided for a supplemental budget which allows for unscheduled **service** to be added in the “peak of the peak” to decrease headways.

Span of service is also a function of **service** frequency. **Frequent** trips should be sustained during **periods** of high passenger trip demand. Boarding and alighting data should be analyzed to determine the appropriate span of service for different levels of service frequency. **Headways** should **not** be lengthened before periods of afternoon peak requirements. Adjustments in scheduled **headways** and service span should be incorporated in schedule revisions over the next 3 to 5 years, with the goal of cost-effective service in mind.

The standard for the UT Shuttle after **6:00** p.m. is to operate 1 bus per route. **Headways** are set by the round trip travel time required for each bus to “recycle” on each route. This service standard appears adequate.

Schedule Adherence

Standards regulating schedule adherence and on-time performance normally **define** on-time arrivals as a certain number of minutes before and after the scheduled arrival time. That number is generally in the + or - 5 minutes range and most standards **require** that a certain percentage of arrivals (or departures) must fall within **the range**. The current contract for operation of the

UT Shuttle **requires** that 90% of the trips operate on-time, i.e. 0 minutes early to 5 minutes late, from the scheduled time for departure from campus or the end of line.

The goal of **90%** trips operating within **0** minutes early to **5** minutes late of scheduled time is appropriate for the UT Shuttle system. However, on-time performance should be adhered to at all time points.

Schedule running times between timepoints should be evaluated to establish reasonable expectations for on-time performance at timepoints along each UT Shuttle route. Schedules should be cut to reflect reasonable speeds in each route segment. Current schedules **may** set unreasonable speeds between timepoints along some routes. Consideration should be given to adjusting running times for some route segments during different times of the day, to reflect traffic conditions and experience. Current scheduled running times are generally the same for each segment of each trip throughout the day.

Accessibility/Route Spacing

Standards for route spacing are generally based upon an area's residential or employment density, distance **from** an activity center, and the type of transit services already in operation or planned for the area. These spacing requirements frequently stipulate that a specific percentage of an area's residents should be within **1/4** mile or **1/2** mile of a transit route. Capital Metro has established as a goal that 85% to 95% of residents and employment locations be within **1/4** mile of transit service.

This transit standard is not applicable to the unique UT Shuttle service. A recommended standard is for UT Shuttle service to be available to 85% of student residences. This standard could be further defined to provide campus circulator service to 35% of student residences, radial routes (local or express) to 35% of student residences, and (new) park and ride opportunities to 15% of student residences.

Shelter Placement

Shelters are placed along the collector portion of transit routes to provide waiting passengers with an area for comfortable seating and protection from the elements. The Capital Metro standard for placement of a shelter is a bus stop with more than 50 daily boardings.

The standard for placement of shelters along UT Shuttle routes should take into consideration the high frequency of service (passenger waiting time is short) and the number of days of service Per year (shuttle service operates only on UT class days). Therefore, shelters are recommended for placement at UT Shuttle stops where daily boardings exceed 100 students.

Passenger and Operator Safety

The standards for safety establish performance objectives that should not exceed a certain number of passenger accidents per **1,000,000** boardings and number of vehicle accidents per **100,000** vehicle miles. For systems with less than 100 peak vehicles, generally the standard is expressed as no more than 3 preventable vehicle accidents per 100,000 vehicle miles.

The UT Shuttle system currently enforces a standard for the contract provider of no **more than** 5.6 passenger and/or vehicle accidents **per 100,000 vehicle miles**. The standard for the UT Shuttle includes passenger **and** vehicle accidents and includes preventable **and** non-preventable accidents. Therefore, 5.6 accidents per 100,000 vehicle miles is an acceptable standard compared to the industry. In the future, Capital Metro may find it advantageous to consider two standards in order to distinguish between passenger safety and vehicle safety.

Vehicle Availability

The standards that are utilized to evaluate vehicle availability require that a **specific** number or percentage of operating vehicles must be maintained as a ready reserve fleet to insure that scheduled runs will never be missed due to an unavailability of buses. For systems with less than 100 peak vehicles, standards require that spare vehicle ratios of 10% to 20% must be maintained. Federal Transit Administration (**FTA**) guidelines stipulate a **maximum spare ratio** standard of 20% of peak hour vehicle requirements.

Currently the UT Shuttle contract provider operates with a **20% spare ratio which is in** keeping with the **FTA** recommended goal. No change to this spare ratio level is recommended.

Missed Trips

Standards specify that a maximum of 0% to 10% of scheduled trips can be missed due to vehicle or driver shortages and mechanical failures. The current UT **Shuttle** operating contract allows 0.5% of scheduled trips to be missed due to driver shortages **and** mechanical failures. This standard is high compared to industry experience. No change in this standard is recommended; however, another measure of mechanical reliability of service is the number of miles between mechanical roadcalls. The current UT Shuttle experience is less than 2,000 miles between roadcalls. In order to improve service quality, a standard for miles between roadcalls should be established. An appropriate goal is to improve mechanical **reliability** to achieve no less than **3,000** miles **between roadcalls** (about 4 mechanical roadcalls per weekday). Over 3 to 5 years, the standard should be raised to no less than 4,000 miles between roadcalls (about 3 mechanical roadcalls per day). A mechanical **roadcall** is any loss of time in passenger service due to a mechanical failure **of any component of the bus**.

Passenger Complaints

Standards for passenger complaints track the number of complaints received per driver, day, month or per thousand boardings. Currently, the UT Shuttle standard is no more than .25 complaints per 1,000 boardings. This is an acceptable standard for monitoring passenger satisfaction.

Route Level Performance Standards

The development of economic and productivity measures to monitor and evaluate service performance is a central element in efforts aimed at increasing transit patronage and improving the cost effectiveness of service delivery. The recommended approach for the UT Shuttle service is to use transit service input, output and consumption data to measure service quality by standards of cost **efficiency**, service effectiveness and cost effectiveness.

Cost Efficiency

Cost efficiency indicators show how well service resource input factors such as labor, equipment and facilities are used to generate **service** products such as vehicle hours and miles of service. The following cost efficiency measures are recommended for monitoring by route and by service type for the UT Shuttle system:

- Cost per service hour
- Cost per vehicle mile

Industry standards indicate that most systems also measure cost per vehicle hour, however this measurement is not necessary for the UT Shuttle system because Capital Metro does not pay the contract operator for deadhead hours of **operation**. It is important, however, for Capital Metro to measure non-productive time spent in layovers for schedule recovery and driver breaks. Currently 17% of service hours are spent in non-productive **time** with 13% in layovers for schedule recovery and 4% in operator breaks. The goal should be that non-productive time total no more than 10% of service hours.

Service Effectiveness

Service effectiveness indicators measure the consumption of service products such as vehicle hours and miles of service. The following service effectiveness measures are recommended for monitoring by route and by service type for the UT Shuttle **system**:

- Passenger trips per service hour (radial)
- Passenger trips per trip (circulator)
- Passenger trips per vehicle mile

Cost Effectiveness

Cost effectiveness indicators evaluate service resources as they relate to consumption factors such as passenger trips, passenger trip miles and operating revenue. The following cost effectiveness measures are recommended for monitoring by route and by service type for the UT Shuttle system:

- Cost per passenger trip
- Revenue per passenger trip (University of Texas)
- Subsidy per passenger trip (Capital Metro)

The measurement of cost per passenger trip is the direct cost of operations, i.e. the cost for the contract provider to operate the UT Shuttle. Revenue per passenger trip is the amount paid by the University of Texas to Capital Metro from student fees. Capital Metro's current revenue to cost ratio is approximately 65%. The subsidy per passenger trip is that amount Capital Metro must pay to the contract provider, over and above the revenue provided by the University.

The subsidy paid by Capital Metro is not limited to the 35% of the direct cost of operations. Capital Metro also must provide for inspection and heavy repair of buses assigned to the UT Shuttle, administrative costs for oversight of the UT Shuttle, depreciation of the capital cost (local share 20%) of the buses, and loss of revenue for UT students who ride Capital Metro **fixed** route services without fare.

Performance Indicators

Route level performance standards serve as guideposts to monitor economic and productivity indicators. The goal is to continually push forward UT Shuttle performance measures to reflect improved cost efficiency, **service** effectiveness, and cost **effectiveness**.

Performance indicators should be reported for the UT Shuttle at least three times per year for the fall, spring and summer sessions. Indicators should be tracked by route. Performance evaluation should include route to route comparisons for the UT Shuttle and average comparisons to comparable Capital Metro routes (i.e., radial trunk, park and ride, and flyer routes). Trends in service should be monitored for each UT Shuttle route to evaluate performance over time.

U.T. SHUTTLE - SERVICE ANALYSIS PROCESS

TIMELINE

1)	Detail data collection and analysis	October/November
2)	Data Analysis to U.T. Administration	December 1
3)	Development of Service Change Recommendation ⁸ <ul style="list-style-type: none">o surveys of studentso meeting's with Shuttle driver⁸	Dee - Feb
4)	Internal Review of Recommendations	February 15
5)	U.T. Administration Review	March 1
6)	Board Review	April 15
7)	Dissemination of Public Information	April 1 - 15
8)	Public meeting ⁸ on campus	April 20 - 30
9)	U.T. Administration Decision	May 15
10)	Board Decision	May 30

Dialogue with the Administration and the Shuttle Bus Committee regarding the focus of analysis for the Fall Semester would begin in December when ridership data is conveyed.

SERVICE CHANGE ANALYSIS

The service change analysis completed during the December to February time period would include the following types of activities.

- o Assess relative route performance based on common service standards such as passenger⁸ per vehicle hour and passengers per trip. Adjust service levels to reflect route performance.
- o Assess trends in ridership by route. Identify source of significant ridership change⁸ and respond appropriately.
- o Identify early morning and late evening trip⁸ which have minimal ridership and may be candidate⁸ for elimination.
- o Identify **periods** of reduced ridership during which service frequency could be adjusted.
- o Identify variances between actual and scheduled **runtimes** for possible adjustment.
- o Review maximum loads and capacity report⁸ to identify the need for increased service levels.
- o Review registration and final⁸ schedule in detail to identify service level requirements.
- o Evaluate passenger surveys, suggestions and complaint⁸
- o Assess adequacy of coverage relative to origins and destinations.

Certificate of Coverage

COPY

This is to certify that contracts of coverage listed below have been issued to the listed member and are in effect at this time. Notwithstanding any requirements, terms or conditions of any contracts or other documents with respect to which this certificate may be issued or may pertain, the coverage afforded by the contracts described herein is subject to all the terms, exclusions and additions of such contracts. Coverage is continuous until cancelled.

Contract Number: 2910

Member: Capital Metro Transportation Auth.
 Attn: Lynda Jackson
 2910 East 5th Street
 Austin, TX 78702

Company Affording Coverage: Texas Municipal League
 Intergovernmental Risk Pool
 211 East 7th Street, Suite 300
 Austin, Texas 78701
 (800) 537-6655 or Fax (512) 404-3404

.-GENERAL LIABILITY			
Limits of Liability	: \$	1,000,000	Each Occurrence
Sudden Events			
Involving Pollution	: \$	1,000,000	Each Occurrence
Annual Aggregate	: \$	2,000,000	Effective Date : 10/01/94
Deductible Per Occurrence	: \$	NONE	Anniversary Date : 10/01/95
LAW ENFORCEMENT LIABILITY			
Limits of Liability	: \$		Each Occurrence
Annual Aggregate	: \$		Effective Date :
Deductible Per Occurrence	: \$		Anniversary Date :
ERRORS AND OMISSIONS LIABILITY			
Limits of Liability	: \$		Each Claim
Annual Aggregate	: \$		Effective Date :
Deductible Per Claim	: \$		Anniversary Date :
DESCRIPTION			

Cancellation: Should any of the above described coverages be cancelled before the expiration date thereof, the issuing company will endeavor to mail ~~date~~ written notice to the certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

Date Issued: October 4, 1994 Authorized Representative:



Texas Municipal League Intergovernmental Risk Pool

Addl Insured Yes No
 _____ X

7. U. T. El Paso: Approval to Increase the Compulsory Student Services Fee Effective with the Fall Semester 1995 (Catalog Change).--In order to maintain the quality and availability of essential services for students, the Board approved an increase in the Compulsory Student Services Fee at The University of Texas at El Paso from \$10.70 per semester credit hour with a maximum fee of \$128.40 per semester or summer session to \$11.50 per semester credit hour with a maximum fee of \$138 per semester or summer session to be effective with the Fall Semester 1995.

This fee increase of 7.5% was endorsed by a student fee advisory committee at U. T. El Paso.

The next appropriate catalog published at U. T. El Paso will be amended to conform to this action.

8. U. T. El Paso: Authorization to Establish a Doctor of Education (Ed.D.) Degree in Educational Leadership and Administration and to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--Authorization was granted to establish a Doctor of Education (Ed.D.) degree in Educational Leadership and Administration at The University of Texas at El Paso and to submit the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The Ed.D. degree is consistent with U. T. El Paso's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs.

The Doctor of Education degree in Educational Leadership and Administration, which will be administered by the Department of Educational Leadership and Foundations, will be based on a professional studies model which integrates academic preparation with skill development needed in professional practice. Graduates will be prepared to hold high-level positions in school districts and other educational entities. The integrated curriculum consists of a required first semester residency for each student cohort, plus at least one additional semester of residency. It also includes required and elective courses, a clinical internship in a multicultural educational leadership setting, a language proficiency requirement, and a dissertation.

Central to the curriculum is the internship in which students integrate their academic course work with required skills of daily professional practice. The program will draw extensively on the El Paso community and the United States/Mexico border area as a laboratory for analyzing policies, organizations, and communities in the context of the educational needs of its citizens. To work in this bilingual/bicultural laboratory, doctoral students will be required to demonstrate proficiency in both English and Spanish before advancing to candidacy. A minimum of 60 semester credit hours beyond the master's degree, including a 30 semester credit hour core and a six semester credit hour internship, will be required.

The University anticipates enrolling 10-12 new students each year. With some students enrolling part-time, an average of 27 students is expected to be enrolled in the program for any given year.

The five faculty members of the Department of Educational Leadership and Foundations, plus four faculty members of other departments, constitute the initial program faculty. By reallocating teaching work load, these faculty members will provide the primary support for the program. Two additional faculty will be recruited using South Texas/Border Initiative appropriations for start-up funding. For this program, there are no requirements for significant resources other than faculty. An additional 27 doctoral students will place some modest demand on library and computing resources, but this demand is expected to be absorbed within the overall framework of the University's development.

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

9. U. T. El Paso: Establishment of a Doctor of Philosophy (Ph.D.) Degree in Environmental Science and Engineering and Authorization to Submit the Degree Program to the Coordinating Board for Approval (Catalog Change).--Upon recommendation of the Academic Affairs Committee, the Board established a Doctor of Philosophy (Ph.D.) degree in Environmental Science and Engineering at The University of Texas at El Paso and authorized submission of the proposal to the Texas Higher Education Coordinating Board for review and appropriate action. The degree program is consistent with U. T. El Paso's approved Table of Programs and institutional plans for offering quality degree programs to meet student needs.

The Ph.D. degree in Environmental Science and Engineering will be administered through the Center for Environmental Resource Management, an interdisciplinary center reporting to the Associate Vice President for Research and Graduate Studies at U. T. El Paso. An Environmental Science and Engineering Program Committee made up of fifteen "core" faculty members with significant environmental science and engineering experience has been established. At least 24 additional faculty will participate in the program.

The program is designed for individuals with an environmentally-related master's degree in engineering or the natural sciences. Candidates will complete at least 60 semester credit hours beyond the master's degree including course work providing in-depth treatment of current technologies for environmental protection and remediation and fundamental concepts in environmental biology, ecology, geology, and chemistry. Environmental policy, law, and ethics in the social and political context of environmental issues will also be emphasized. A doctoral dissertation which presents an original, advanced-level investigation of a significant problem in environmental science and engineering is required.

Because the University already has a strong interdisciplinary research program based in the Center for Environmental Resource Management, the additional costs of developing this program are modest. No new facilities or laboratory equipment will be required and no additions to the library budget are considered essential. Through reallocation of teaching work loads, the current faculty

can offer all required courses. The University anticipates adding 1.5 full-time equivalent positions to facilitate the reassignment of existing work loads. This additional staffing can be accomplished through a combination of external contract and grant funding, South Texas/Border Initiative funding, and increased formula funding which will eventually result from enrollment in the program.

Upon approval by the Coordinating Board, the next appropriate catalog published at U. T. El Paso will be amended to conform to this action.

10. U. T. Pan American: Approval of Increases in Residence Hall Room Rates Effective with the Fall Semester 1995 (Catalog Change).--In order to cover recent building improvements and increased operating costs, the Board approved increases in Residence Hall room rates at The University of Texas - Pan American effective with the Fall Semester 1995 as set out below:

	<u>1995-96</u> <u>Rates</u>
<u>Room Rates Per Semester</u>	
Room (Double Occupancy)	\$ 700.00
Private Room (Single Occupancy)	1,070.00
South Wings (Double Occupancy)	770.00
South Wings (Single Occupancy)	1,174.00
<u>Room Rates Per Summer Session</u>	
Room (Double Occupancy)	280.00
South Wings (Double Occupancy)	308.00
South Wings (Single Occupancy)	470.00
<u>Daily Room Rate (Regular Semester or Summer Session)</u>	
Room (Double Occupancy)	10.00
Private Room (Single Occupancy)	15.00
South Wings (Double Occupancy)	14.00
South Wings (Single Occupancy)	20.00

The next appropriate catalog published at U. T. Pan American will be amended to reflect this action.

11. U. T. Permian Basin: Authorization to Increase the Compulsory Student Services Fee Effective with the Fall Semester 1995 (Catalog Change).--The Academic Affairs Committee recommended and the Board approved an increase in the Compulsory Student Services Fee at The University of Texas of the Permian Basin from \$11.50 per semester credit hour with a maximum fee of \$138 per semester or summer session to \$12.50 per semester credit hour with a maximum fee of \$150 per semester or summer session effective with the Fall Semester 1995.

The fee increase was endorsed by the Student Services Fee Advisory Committee at U. T. Permian Basin in accordance with statutory requirements.

The increased revenue from the fee will provide support for development of a modest intercollegiate athletics program at U. T. Permian Basin. The program will create an athletic department and include teams for women's volleyball and tennis and men's soccer. U. T. Permian Basin has applied for membership in the National Association of Intercollegiate Athletics (NAIA) as an independent participant. Preliminary plans call for NAIA conference competition to begin in Fall 1995 for women's volleyball, Fall 1996 for men's soccer, and Fall 1997 for women's tennis.

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

REPORT AND RECOMMENDATIONS OF THE HEALTH AFFAIRS COMMITTEE (Pages 84 - 92).--Committee Chairman Ramirez reported that the Health Affairs Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, the actions set forth in the Minute Orders which follow were recommended by the Health Affairs Committee and approved in open session and without objection by the U. T. Board of Regents.

Prior to considering the items before the Health Affairs Committee, Committee Chairman Ramirez made the following statement:

Thank you, Chairman Rapoport, for your excellent leadership of this Board. The past six years are unequal to anything that I have been associated with before. I would also like to thank the Chancellor, Executive Vice Chancellors, presidents of the component institutions, and all staff concerned. I want to thank all the members of this Board and add my congratulations to Tom Loeffler on his reappointment to this Board. I would like to congratulate Governor Bush on his two very excellent appointees and know that they will do a very good job. I apologize for having to leave so early but there is an illness in my family that requires my early departure from the meeting.

Following Regent Ramirez' remarks, he received a standing ovation from all in attendance at the meeting and then proceeded to consider the items before the Health Affairs Committee.

1. U. T. System: Approval to Increase Premium Rates of The University of Texas System Professional Medical Liability Self-Insurance Plan Effective September 1, 1995.--Upon recommendation of the Health Affairs Committee, the Board approved a 3.4% increase in the premium rates for The University of Texas System Professional Medical Liability Self-Insurance Plan effective September 1, 1995, as follows:

<u>Risk Class</u>	<u>Premium Rates</u>	
	<u>Staff</u>	<u>Resident</u>
1	\$ 3,144	\$ 1,932
2	5,256	3,204
3	8,976	5,484
4	14,592	8,904
5	24,240	14,772

Further, an additional 3% increase in the premium rates was authorized effective June 1, 1995, for all faculty and residents who have not completed 15 hours of risk management training prior to this date. However, the additional 3% rate charge will be waived for new faculty and residents until they have participated in the Plan for one year.

2. U. T. Southwestern Medical Center - Dallas: Initial Appointments to Endowed Academic Positions Effective Immediately.--Approval was given to the following initial appointments to endowed academic positions at The University of Texas Southwestern Medical Center at Dallas effective immediately:
- a. Dennis F. Landers, M.D., Ph.D., Professor and Chairman of the Department of Anesthesiology and Pain Management, to the Margaret Milam McDermott Distinguished Chair in Anesthesiology and Pain Management
 - b. Dr. Richard Baer, Associate Professor in the Department of Microbiology and holder of the H. Lloyd and Willye V. Skaggs Professorship in Medical Research, to the Roy and Christine Sturgis Chair in Biomedical Research.
- Dr. Baer will retain the H. Lloyd and Willye V. Skaggs Professorship in Medical Research.
3. U. T. Medical Branch - Galveston: Appointment of W. Stratford May, Jr., M.D., Ph.D., as Initial Holder of the Bill and Louise Bauer Distinguished Chair in Cancer Research Effective Immediately.--Upon recommendation of the Health Affairs Committee, the Board appointed W. Stratford May, Jr., M.D., Ph.D., Director of the Division of Hematology/Oncology and Director of the Sealy Center for Hematology and Oncology, as initial holder of the Bill and Louise Bauer Distinguished Chair in Cancer Research at The University of Texas Medical Branch at Galveston effective immediately.
4. U. T. Medical Branch - Galveston (U. T. G.S.B.S. - Galveston): Establishment of a Doctoral Program in Nursing and Authorization to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--Following opening remarks by President James and the introduction of Dr. Mary V. Fenton, Dean of the U. T. Nursing School - Galveston, the Board established a doctoral (Ph.D.) program in Nursing in the U. T. G.S.B.S. - Galveston at The University of Texas Medical Branch at Galveston and authorized submission of the proposal to the Texas Higher Education Coordinating Board for approval. This program is consistent with the U. T. Medical Branch - Galveston Strategic Plan and Role and Scope Statement.

The doctoral program in Nursing is to be administered by the U. T. G.S.B.S. - Galveston and is designed to provide nurses who have already acquired a master's degree as nurse practitioners the opportunity to prepare for faculty roles. The major objectives of the program are: (1) to prepare advanced clinical scholars and researchers who can serve as faculty in nurse practitioner master's and doctoral programs throughout the state and (2) to advance the incorporation of knowledge about healing processes into nursing practice. The program will make

a substantive contribution to the growing state and national demand for research on patient outcomes and healing processes such as coping with chronic and long-term illness, health promotion initiatives, and programs for primary care and prevention of disease.

Admission into the doctoral program in Nursing will require that applicants meet the requirements of the U. T. G.S.B.S. - Galveston. Students will be admitted directly into the doctoral program, and all admissions will require the final approval of the Dean of the Graduate School. The course of study requires at least 64 semester credit hours beyond the leveling/prerequisite courses. Students will be enrolled in four categories of courses in the program: core courses, courses in healing modalities in nursing, courses in methods and models of investigation, and free electives.

The start-up costs as well as maintenance and operational costs will be reallocated from U. T. Nursing School - Galveston and institutional funds. Additional support will be derived from School of Nursing endowments and other faculty-generated funds as needed. Two faculty positions will be recruited and reallocated into the budget over the next two years through faculty attrition. Five currently budgeted graduate research assistant positions will be designated for nursing doctoral students. Research support has been built into the current budget, and it is anticipated that externally generated research funds will be increased with the addition of a doctoral program and the associated programs of research.

Upon approval by the Coordinating Board, the next appropriate catalog published at the U. T. Medical Branch - Galveston will be amended to reflect this action.

5. U. T. Medical Branch - Galveston: Authorization to Increase the Compulsory Student Services Fee Effective September 1, 1995 (Catalog Change).--In order to provide adequate funding for student activities, approval was given to increase the Compulsory Student Services Fee at The University of Texas Medical Branch at Galveston effective September 1, 1995, as follows:

U. T. Medical School - Galveston

Year 1 - \$176.00 per academic year
Year 2 - 264.00 per academic year
Year 3 - 264.00 per academic year
Year 4 - 264.00 per academic year

U. T. G.S.B.S. - Galveston, U. T. Allied Health Sciences School - Galveston, and U. T. Nursing School - Galveston

\$7.00 per semester credit hour with a maximum charge per semester of \$84.00.

This increase is in accordance with relevant provisions of Section 54.503 of the Texas Education Code and is supported by the President's Student Fees Advisory Committee.

The next appropriate catalog published at the U. T. Medical Branch - Galveston will be amended to conform to this action.

6. U. T. Health Science Center - Houston: Appointment of L. Maximilian Buja, M.D., as Initial Holder of the Distinguished Chair in Pathology and Laboratory Medicine Effective Immediately.--The Board, upon recommendation of the Health Affairs Committee, appointed L. Maximilian Buja, M.D., Professor and Chair of the Department of Pathology and Laboratory Medicine at The University of Texas Health Science Center at Houston, as initial holder of the Distinguished Chair in Pathology and Laboratory Medicine effective immediately.

See Page 177 related to the redesignation of this Chair.

7. U. T. Health Science Center - Houston (U. T. Dental Branch - Houston): Approval of an Administrative Reorganization and Authorization to Submit the Proposal to the Coordinating Board for Approval (Catalog Change).--Approval was given to reorganize the administrative structure of the U. T. Dental Branch - Houston at The University of Texas Health Science Center at Houston to reduce the number of departments from eighteen to seven and to submit the proposal to the Texas Higher Education Coordinating Board for approval.

The restructured departments are set forth below:

Basic Sciences

Craniofacial Growth and Development

General Dentistry

Health Promotion and Dental Care Delivery

Oral and Maxillofacial Surgery, Anesthesiology and Oral Pharmacology

Prosthodontics

Stomatology.

The new organization will facilitate a more functional operation of the U. T. Dental Branch - Houston within the context of the U. T. Health Science Center - Houston Strategic Plan and is consistent with a national trend in dental education toward larger integrated departments which encourage interdisciplinary teaching and collaboration.

No additional funding will be required for this restructuring.

Upon Coordinating Board approval, the next appropriate catalog published at the U. T. Health Science Center - Houston will be amended to reflect this action.

8. U. T. Health Science Center - San Antonio: Approval to Increase the Compulsory Student Services Fee Effective with the Fall Semester 1995 (Catalog Change).--In order to provide more flexibility in the funding of student health services and academic and student support programs, the Board approved an increase in the Compulsory Student Services Fee at The University of Texas Health Science Center at San Antonio effective with the Fall Semester 1995 as follows:

<u>Schools</u>	<u>Fees for Fall Semester 1995</u>
<u>Students Currently Enrolled and Continuing:</u>	
U. T. Medical School - San Antonio (Academic Year)	\$135.00
U. T. Dental School - San Antonio (Academic Year)	\$135.00
U. T. Allied Health Sciences School - San Antonio, U. T. G.S.B.S. - San Antonio, and U. T. Nursing School - San Antonio	\$ 4.50 per semester credit hour \$ 50.00 maximum per semester \$ 40.00 maximum per summer session \$135.00 maximum per academic year
<u>New Students Entering Fall 1995:</u>	
U. T. Medical School - San Antonio (Academic Year)	\$205.00
U. T. Dental School - San Antonio (Academic Year)	\$205.00
U. T. Allied Health Sciences School - San Antonio, U. T. G.S.B.S. - San Antonio, and U. T. Nursing School - San Antonio	\$ 7.00 per semester credit hour \$ 87.00 maximum per semester \$ 31.00 maximum per summer session \$205.00 maximum per academic year

These increases have been approved by the Student Government Association and endorsed by the Student Fee Advisory Committee, the Recreational Facilities Committee, and the Student Health Advisory Committee.

The next appropriate catalog published at the U. T. Health Science Center - San Antonio will be amended to conform to this action.

9. U. T. Health Science Center - San Antonio (U. T. Dental School - San Antonio): Establishment of a Clinical Usage Fee to be Phased in Beginning with the Fall Semester 1996 (Catalog Change).--The Board, upon recommendation of the Health Affairs Committee, established a Clinical Usage Fee for students in the U. T. Dental School - San Antonio at The University of Texas Health Science Center at San Antonio to be phased in beginning with the Fall Semester 1996 as set out below:

	<u>Academic Year</u>		
	<u>1996-97</u>	<u>1997-98</u>	<u>1998-99</u>
First Year Students	\$ 0	\$ 0	\$ 0
Second Year Students	350	350	350
Third Year Students	0	500	500
Fourth Year Students	0	0	500

The Clinical Usage Fee is a means for funding replacement of capital equipment such as dental chair units, sterilization equipment, radiographic units, and x-ray processors for the Dental Outpatient Clinic in order to maintain a state-of-the-art teaching facility and a modern clinical environment for patients. The phased implementation of this fee will allow all currently enrolled students to complete their degree without being assessed the new fee.

It was ordered that the next appropriate catalog published at the U. T. Health Science Center - San Antonio be amended to conform to this action.

10. U. T. M.D. Anderson Cancer Center - M.D. Anderson Cancer Center Outreach Corporation (Outreach): Amendments to the Articles of Incorporation (Articles) and Bylaws of Outreach to Expand the Membership of the Board of Directors; Appointment of Four New Members to Such Board; and Authorization to Use Name The M.D. Anderson Moncrief Cancer Center at Fort Worth.--On December 12, 1994, a Gift Agreement was executed between Moncrief Radiation Center (Donor), a Texas nonprofit corporation, Radiation and Medical Research Foundation of the Southwest (Foundation), a Texas nonprofit corporation (both of Fort Worth, Tarrant County, Texas), and Outreach (sometimes referred to as "Donee") which provided for a substantial gift by the Donor to Outreach and transfer of control of the Foundation to the President of The University of Texas M.D. Anderson Cancer Center as its sole member. The value of the combined assets of Donor and Foundation are estimated to exceed \$44 million.

The major business points of the Gift Agreement include:

- a. At closing, the assets and liabilities of the Moncrief Radiation Center will be transferred to Outreach and the President of the U. T. M.D. Anderson Cancer Center will become the sole member of the Foundation.
- b. The \$8 million loan by the Texas Commerce Bank on the Moncrief Radiation Center will be paid off by the Foundation prior to closing.

- c. The Moncrief Radiation Center Corporation will remain in existence with the sole purpose of receiving the assets back in an event of reversion. Certain reporting requirements will be required to be made to this corporation by Donee. The Moncrief Radiation Center Corporation will reserve \$5 million to discharge its duties until the Gift Agreement terminates. Upon termination of the Gift Agreement, the reserve will be distributed to Donee.
- d. The facilities at 1450 Eighth Avenue, Fort Worth, Texas, will be known as the "Moncrief Radiation Center" and the facilities at the Huguley leased premises will be known as the "Moncrief Radiation Center at Huguley." Any facility built, added, or altered utilizing Foundation funds will bear the name Moncrief. The program and operations at such sites will be known and referred to as "The M.D. Anderson Moncrief Cancer Center at Fort Worth."
- e. Outreach will change its Articles and Bylaws to require one of its board members to be a resident of Tarrant County.
- f. The President of the U. T. M.D. Anderson Cancer Center as sole member of the Foundation will appoint the board of the Foundation, two of whom must be board members of the Donor, the Moncrief Radiation Center Corporation, and residents of Tarrant County, and one of whom must be W. A. "Tex" Moncrief, Jr., or upon his resignation, incapacity, or death, an adult lineal descendant of W. A. "Tex" Moncrief, Jr. The Board members named in the Gift Agreement for initial appointment are W. A. "Tex" Moncrief, Jr., John S. Justin, Jr., Joe K. Pace, Lee W. Hogan, Randall Meyer, and Robert N. Shaw.
- g. The Foundation will change its name to Moncrief Radiation and Research Foundation at closing, and its funds are restricted for use in Tarrant County to support the U. T. M.D. Anderson Cancer Center program in that county.
- h. Events of reversion include:
 - (1) Donee fails to use the name Moncrief, as provided in the agreement
 - (2) Donee abandons, dissolves, or terminates the program in Tarrant County or Donee discontinues to use the gift as a part of the program
 - (3) Donee fails to meet any of the reporting and accounting requirements provided for in the agreement
 - (4) Donee fails to make appropriate board appointments as provided in the agreement

- (5) Donee sells substantially all of the reversion assets and the sale proceeds are not used in support of the Program.
- i. At least every two years, Outreach will hold one of its directors or executive committee meetings in Fort Worth, Texas.
- j. Ten (10) years after the closing, the Gift Agreement and the requirements therein terminate, with the exception of the Foundation's new name, donor's remedy of specific performance, assumption of certain liabilities, and name of facilities and programs.
- k. Donee has until March 1, 1995, to perform due diligence prior to accepting the gift.

In compliance with the Gift Agreement and upon recommendation of the Health Affairs Committee, the Board:

- a. Amended Article VI of the Articles of Incorporation of the M.D. Anderson Cancer Center Outreach Corporation (Outreach) which presently sets the initial number of board members as four persons to read as follows:

The number of Board of Directors shall be as set forth in Article IV of the Bylaws.

- b. Amended Section 2 of Article IV of the Outreach Bylaws to read as follows:

Section 2. Number. The Board of Directors shall consist of eleven (11) Directors. The number of Directors may be increased or decreased (provided such decrease does not have the effect of shortening the term of any incumbent Director) from time to time by amendment of the Bylaws in accordance with the provisions of Article X, provided that the number of Directors shall never be less than three (3). The Board of Directors shall include one person who is a resident of Tarrant County, Texas, and who also serves as a member of the board of directors of the Radiation and Medical Research Foundation of the Southwest.

- c. Amended Article X of the Outreach Bylaws concerning the method of amendment to read as follows:

These Bylaws may be altered, amended, or repealed by the Member at any annual meeting of the Member, or at any special meeting of the Member if notice of the proposed amendment is contained in the notice of such special meeting of the Member; provided, however, that any such alteration, amendment, or repeal shall have

received the prior approval of the Board of Regents of The University of Texas System; and provided further that the second sentence of Section 2 of Article IV cannot be amended during the term of the Gift Agreement entered into by and among Moncrief Radiation Center, Radiation and Medical Research Foundation of the Southwest, and the Corporation effective as of December 9, 1994, as amended.

- d. Approved the following persons, in addition to those heretofore approved and presently serving, to serve on the Board of Directors for Outreach:
 - (1) Mr. Red McCombs, San Antonio, Texas
 - (2) Mr. W. A. "Tex" Moncrief, Jr., Fort Worth, Texas
 - (3) Dr. Gordon McGee, El Paso, Texas
 - (4) Ms. Alethea Caldwell, Los Angeles, California.

- e. Authorized Outreach to use the name "The M.D. Anderson Moncrief Cancer Center at Fort Worth."

REPORT AND RECOMMENDATIONS OF THE FACILITIES PLANNING AND CONSTRUCTION COMMITTEE (Pages 93 - 160).--Committee Chairman Temple reported that the Facilities Planning and Construction Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Facilities Planning and Construction Committee and approved in open session and without objection by the U. T. Board of Regents:

1. U. T. Dallas - Student Union Building Addition and Renovation (Project No. 302-829): Approval of Final Plans and Specifications; Authorization to Advertise for Bids and for Executive Committee to Award Contracts; Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--Upon recommendation of the Facilities Planning and Construction Committee, the Board:
 - a. Approved the final plans and specifications for the Student Union Building Addition and Renovation at The University of Texas at Dallas within the authorized total project cost of \$3,800,000
 - b. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts associated with this project within the authorized total project cost
 - c. Appropriated \$3,800,000 from Revenue Financing System Bond Proceeds for total project funding. Previous appropriations of \$185,000 from Auxiliary Enterprise Balances will be reimbursed.

Following a presentation by Ms. Pam Clayton, Director of Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and in compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 94, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the Board relating to the Financing System

- c. U. T. Dallas, which is a **"Member"** as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of **\$3,800,000**
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget and was approved by the Texas Higher Education Coordinating Board in October 1994.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "Master **Resolution**"), do hereby execute this certificate for the benefit of the Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue **"Parity Debt"** pursuant to the Master Resolution to finance the cost of the construction of the Student Union Building Addition and Renovation at U. T. Dallas, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First **Supplemental Resolution** Establishing an Interim Financing Program, and the **Second** Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this 9 day of February , 1995



Assistant Vice Chancellor for Finance

2. U. T. El Paso - Indoor Swimming Pool Facility (Project No. 201-810): Approval of Final Plans and Specifications; Authorization to Advertise for Bids and for the Executive Committee to Award Contracts; Additional Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--The Board, upon recommendation of the Facilities Planning and Construction Committee:
 - a. Approved final plans and specifications for the Indoor Swimming Pool Facility at The University of Texas at El Paso within the authorized total project cost of \$5,000,000
 - b. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review and the Executive Committee to award all contracts associated with this project within the authorized total project cost
 - c. Appropriated \$4,500,000 from Revenue Financing System Bond Proceeds to be financed by Student Recreational Fees and \$200,000 from Unexpended Plant Funds. Previous appropriations had been \$300,000 from Unexpended Plant Funds.

Following a presentation by Ms. Pam Clayton, Director of Finance for The University of Texas System, related to the qualifications of this project for the U. T. System Revenue Financing System and in compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 96, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the Board relating to the Financing System
- c. U. T. El Paso, which is a "Member" as such term is used in the Master Resolution, possesses the financial capacity to satisfy its Direct Obligation as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$4,500,000

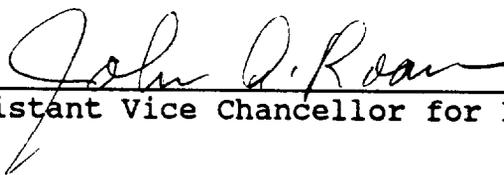
- d. This resolution satisfies the official intent requirements set forth in Section 1.15'0-2 of the U. S. Treasury Regulations.

This project, which was submitted to the Texas Higher Education Coordinating Board in January 1995, is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget to be funded from **\$4,500,000** in Revenue Financing System Bond Proceeds financed by Student Recreational Fees and \$500,000 from Unexpended Plant Funds.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "Master Resolution'*), do hereby execute this certificate for the benefit of the Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity Debt" pursuant to the Master Resolution to finance the cost of the construction of an Indoor Swimming Pool Facility **at** U. T. El Paso, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this 9 day of February, 1995



Assistant Vice Chancellor for Finance

3. U. T. El Paso - Liberal Arts/Science Renovation Projects - Completion of Liberal Arts and Science Facilities Renovations: Authorization for Project; Approval of Preparation of Final Plans and Specifications and Construction by U. T. El Paso Forces or Through Contract Services; Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--The 73rd Session of the Texas Legislature authorized the financing of the Liberal Arts/Science Renovation Projects at The University of Texas at El Paso through Tuition Revenue Bond Proceeds in the amount of \$8,000,000 as a part of the South Texas/Border Initiative. The U. T. Board of Regents has approved major renovation projects for the Old Main Building, Physical Science Building, and Liberal Arts Building, allocating a total of \$7,145,000 to fund these projects. The remaining funds in the amount of \$855,000 will be used for remodeling of the Psychology Laboratories, refurbishment of the interior of Magoffin Auditorium, and to meet some of the remaining related needs of the Liberal Arts and Science programs. Expenditures for any individual building will not exceed \$600,000 and the projects will be managed by U. T. El Paso Administration in consultation with the Office of Facilities Planning and Construction.

In compliance therewith and upon recommendation of the Facilities Planning and Construction Committee, the Board:

- a. Authorized a project for the Liberal Arts/Science Renovation Projects - Completion of Liberal Arts and Science Facilities Renovations at U. T. El Paso at an estimated total project cost of \$855,000 to be funded from Tuition Revenue Bond Proceeds
- b. Approved preparation of final plans and specifications and construction by U. T. El Paso forces or through contract services, as required, in consultation with the Office of Facilities Planning and Construction
- c. Appropriated \$855,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 98, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt

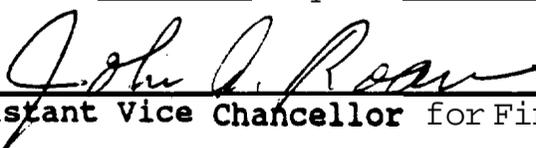
- b. Sufficient funds will be available to meet the financial obligations of the U. T. system including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the Board relating to the Financing System
- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial capacity to satisfy their Direct Obligations as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of \$855,000
- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget to be funded by Tuition Revenue Bond Proceeds.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended on October 8, 1993 (the "**Master** Resolution"), do hereby execute this certificate for the benefit of the Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "**Parity Debt**" pursuant to the Master Resolution to finance the cost of the construction of the Liberal Arts/Science Renovation Projects - Completion of Liberal Arts and Science Facilities Renovations at U. T. El Paso, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this 9 day of February, 1995


 Assistant Vice Chancellor for Finance

4. U. T. Pan American: Approval to Change Name of the Learning Resource Center to the University Library.-- Upon recommendation of the Facilities Planning and Construction Committee, approval was given to change the name of the Learning Resource Center at The University of Texas - Pan American to the University Library to reflect its current function of housing curriculum support materials and services which facilitate access to these materials.

5. U. T. Permian Basin: Approval in Principle for the Construction and Operation of On-Campus Housing by Odessa Housing Finance Corporation (OHFC), a Texas Non-profit Corporation, Odessa, Texas; Authorization for Final Negotiation of Ground Lease Agreement by Representatives of U. T. Permian Basin and U. T. System Administration; and Approval for Executive Vice Chancellor for Academic Affairs to Execute Ground Lease Agreement.-- With the aid of slides, President Sorber presented a comprehensive overview of the proposed construction and operation of on-campus housing at The University of Texas of the Permian Basin.

Following this presentation, the Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Concurred in principle to the construction and operation of on-campus housing by the Odessa Housing Finance Corporation (OHFC), a Texas nonprofit corporation, Odessa, Texas, on the U. T. Permian Basin campus under a long-term Ground Lease Agreement

- b. Authorized final negotiation of the Ground Lease Agreement by representatives of U. T. Permian Basin and The University of Texas System Administration

- c. Assuming final agreement on a lease in substantially the form set out on Pages 102 - 156, authorized the Executive Vice Chancellor for Academic Affairs to execute said Lease and any ancillary documents, including a management agreement, if required, after approval by the Executive Vice Chancellor for Business Affairs and the Office of General Counsel.

Key provisions of the Ground Lease Agreement are as follows:

- a. The U. T. Board of Regents will lease an appropriately-sized tract (acreage to be determined) out of the U. T. Permian Basin campus to the OHFC for a term not to exceed 30 years

- b. The OHFC will provide financing of at least \$1.0 million for construction of a 20-25 unit facility to provide housing to benefit primarily U. T. Permian Basin students

- c. The OHFC will hire architects, provide all project financing, and build and furnish apartments to U. T. Permian Basin specifications
 - U. T. System Office of Facilities Planning and Construction will review plans and specifications
 - Project will be built to applicable city codes and in conformance to applicable laws and regulations
- d. U. T. Permian Basin will operate the complex initially for OHFC pursuant to a management agreement
- e. Pursuant to the management agreement, U. T. Permian Basin will collect rent for OHFC, and
 - Will reimburse direct expenses (leasing and resident staff, utilities, current maintenance) pursuant to agreed budget
 - Set aside an agreed upon amount in reserve for repairs and insurance
 - Remit the balance to OHFC
- f. Proposed considerations to the U. T. Board of Regents include a \$100 per year base rent, shared use of facilities by U. T. Permian Basin for its educational activities and operations as mutually agreeable; student access to convenient, attractive housing; and full recovery of costs for services provided
- g. U. T. Permian Basin will retain the right to build its own housing, but OHFC has the right of first refusal to build additional campus student housing which is not owned by the University
- h. U. T. Permian Basin will retain the right to approve architect, site plan, design, and materials
- i. The Lease will grant the U. T. Board of Regents, on behalf of U. T. Permian Basin, the option to purchase all improvements on the leased premises at any time during the term of the Lease (subject to any required approvals by the Texas Higher Education Coordinating Board or any other agency) at a price based on an amortization of OHFC's investment in the project plus a negotiated rate of return

- j. The U. T. Board of Regents will have the option to require the OHFC, at its sole cost, to demolish all improvements upon expiration of the Lease term or abandonment of the Lease unless the U. T. Board of Regents has taken possession of the facilities. The Lease may be terminated upon the occurrence of uncured defaults by OHFC.
- k. The U. T. Board of Regents will have no liability for the financial performance of the project or for any debt obligations which may be created by OHFC
- l. Assignment of the lease without U. T. Board of Regents' approval by OHFC is limited to the City of Odessa, Ector County, or a successor not-for-profit corporation.

In Fall 1994, U. T. Permian Basin had an enrollment of 2,315 students and a faculty and staff of 213. Currently, U. T. Permian Basin offers limited modular housing to 49 students in 22 trailer-style housing units.

The joint development of an apartment project by U. T. Permian Basin and the OHFC is of great benefit to both entities. Because U. T. Permian Basin does not have adequate cash reserve in its Auxiliary Enterprise fund, traditional revenue bond financing is not feasible; similarly, there has been no interest from private developers in pursuing this project. The OHFC plans to operate the facility through a management agreement with U. T. Permian Basin, providing for direct reimbursement of U. T. Permian Basin costs related to performance of the agreement.

Final negotiation of the Lease will be coordinated with the Offices of Academic Affairs, General Counsel, and Business Affairs. No contractual obligations will be incurred until the review and execution of the final lease format are completed.

DRAFT
1/10/95

GROUND LEASE AGREEMENT

by and between

THE BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM
FOR THE USE AND **BENEFIT** OF
THE UNIVERSITY OF TEXAS OF THE **PERMIAN** BASIN
(LESSOR)

and

ODESSA **HOUSING** FINANCE CORPORATION
(LESSEE)

Dated: As of _____

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

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

Section 1.03. TERM. Unless sooner terminated as herein provided, this Lease shall continue and remain in full force and effect for a term commencing on the date hereof and ending at midnight on _____, 20__ (the "Term").

ARTICLE TWO DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Land” - the tract of approximately acres located on the campus of The University of Texas of the Permian Basin and more particularly described in Exhibit "A".

“LESSOR Representative” - one or more of the persons designated and authorized in writing from time to time by LESSOR to represent LESSOR in exercising LESSOR’S rights and performing LESSOR’S obligations under this Lease; the initial LESSOR Representative shall be the President of The University of Texas of the Permian Basin.

“LESSOR’S Interest” - the fee simple title to the Land and the Facilities located on the Land and LESSOR’S interest under this Lease.

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

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

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

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

"On-Campus Occupants" - those students, faculty, and staff associated with UTPB and those participants in university-related activities who desire to occupy any housing on the campus at UTPB.

"Permitted Assignee" - (a) any Affiliate of LESSEE that is either a Texas nonprofit corporation or some other tax-exempt entity; (b) the City of Odessa or Ector County.

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

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

"Premise" - the Land and the Facilities.

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

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

"UTPB" and/or "University" - The University of Texas of the Permian Basin, a component institution of The University of Texas System, located in the City of Odessa, Ector County, Texas being an "institution of higher education" as defined in Section 61.003, Texas Education Code.

ARTICLE THREE RENT

Section 3.01. RENT. Commencing with the date hereof and continuing throughout the Term, LESSEE shall pay to LESSOR, as annual rent ("Rent"), \$100 for each year or a portion thereof. The Rent shall be due and payable in advance, with the first such payment of Rent being due upon execution of the ground Lease and each subsequent payment due no later than forty-five (45) days after the close of each Academic Year.

ARTICLE FOUR USE OF PREMISE

Section 4.01. PURPOSE AND USE OF LEASE. LESSEE enters into this Lease for the purpose of developing and constructing and maintaining the Facilities in accordance with

the Plans and Specifications and except as otherwise provided herein, the Premises are to be used for no other purpose.

LESSEE shall have the right to use the Premises solely for the development and operation of the Facilities and ancillary uses including uses now or hereafter customarily related to or connected with the ownership and operation of a multi-unit residential apartment development. LESSOR and LESSEE covenant and agree that except as set forth in Sections 15.07 and 15.08 below, the Facilities shall be for the exclusive use and benefit of the students, faculty, staff and guests of The University and such other persons as The University and LESSEE shall mutually agree. LESSOR retains the exclusive right to contract for concessions for food service, vending machines and laundry services to be provided on the UTPB campus and on the Premises.

LESSEE shall comply with all ordinances, laws and regulations of all Governmental Authorities applicable to and as are required for LESSEE'S use and operation of the Premises as such ordinances, laws, and regulations are enforced by any Governmental Authority having jurisdiction with respect to the Premises, including, without limitation, the Rules and Regulations of the Board of Regents of The University of Texas System and the institutional rules and policies of UTPB (collectively, "Governmental Regulations"). LESSEE shall require that the following Persons shall agree in writing to comply with Governmental Regulations: (i) any Person occupying space in the Facilities under a Campus Housing Contract; (ii) any Person managing all or part of the Premises under a Management Agreement; (iii) any Permitted Assignee; and (iv) any assignee or sublessee of all or part of the Premises, provided LESSOR'S approval to such assignment or sublease is obtained as herein required. The Board of Regents of The University of Texas System and UTPB may enforce and apply Governmental Regulations on the Premises and to any Person in or on the Premises, and may authorize UTPB officers and commissioned peace officers to provide such enforcement, subject to the jurisdictional limitations provided by law.

Section 4.02. BENEFIT OF THE UNIVERSITY. Subject to Sections 15.07 and 15.08, LESSEE shall lease and hold the Premises for the support, maintenance or benefit of The University and the Premises shall be leased for a purpose related to the performance of the duties and functions of UTPB and shall not be leased to provide private residential housing to members of the public other than students, faculty and staff who are approved for residency by the Office of the Vice President for Student Services and other persons approved by the LESSOR Representative as participants in university-related activities.

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

ARTICLE FIVE
ACCEPTANCE AND CONDITION OF PREMISES

Section 5.01. **LESSEE'S INSPECTION.** LESSEE has had full opportunity to inspect and examine the Land. Except for the express representations and warranties of LESSOR set forth in this Lease, LESSEE'S execution of this Lease shall be conclusive evidence of LESSEE'S acceptance of the Land in an "AS IS" condition and, subject to LESSORS obligations set forth herein and LESSEE's termination rights set forth in Section 23.09, LESSEE hereby accepts the Land in its present condition.

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

ARTICLE SIX
ACCESS

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

Section 6.02. **ACCESS FOR LESSEE.** LESSOR hereby grants to LESSEE, its agents, employees, contractors, and to all occupants of the Facilities the right of ingress and egress over and upon all real property now or hereafter owned by LESSOR adjacent to the Premises in order that LESSEE, its agents, employees, contractors, and all occupants of the Facilities may have reasonable access from a dedicated public right-of-way to and from the Premises of sufficient size and area to facilitate the use and occupancy of the Premises and reasonable pedestrian and vehicular access from and between such public right-of-way and the Premises over the sidewalks, streets and drives whether now existing or constructed in the future, located thereon. In addition, LESSOR hereby grants to LESSEE, its agents, employees, and contractors, construction easements adjoining all boundary lines of the Premises of sufficient size and area to allow LESSEE to construct, rebuild, alter, repair and maintain the Facilities. The right of ingress and egress granted hereby shall constitute a covenant running with the Premises' and such other real property owned by LESSOR and shall expire upon the expiration of the Term of this Lease. The right of ingress and egress granted hereby shall in no way restrict LESSOR from imposing reasonable restrictions, rules and regulations upon the sidewalks, streets and drives located upon real property owned by LESSOR So long as reasonable ingress and egress is available as described above,

LESSOR shall in no way be prohibited from exercising any of its rights to develop, control, lease, sell, or encumber any of its rights to develop, control, lease, sell, or encumber any of the real property owned by LESSOR and vehicular access from and between the Leased Premises and any public right-of-way shall be restricted to the streets and drives intended for vehicular ingress and egress which are now or may hereafter be constructed on the real property owned by LESSOR and such vehicular ingress and egress shall be subject to the reasonable rules and restrictions generally imposed by LESSOR upon all vehicular traffic utilizing such private streets and drives.

ARTICLE SEVEN
CONSTRUCTION BY LESSEE

Section 7.01. LESSEE TO PAY COSTS. LESSEE will cause the Facilities on the Land to be developed and constructed at no cost and expense to LESSOR. LESSOR shall have no financial obligation or other obligation of any kind under this Lease except as specifically set forth herein.

- A. LESSEE shall furnish all supervision, tools, implements, machinery, labor materials, and accessories such as are necessary and proper for the construction of the Facilities, shall pay all permit and license fees, and shall construct, build, and complete the Facilities (including standard furnishings for each apartment unit) in a good, substantial and worker-like manner all in accordance with this Lease, the Plans and Specifications, and all documents executed pursuant hereto and thereto.**

- B. LESSEE shall have the right to and shall provide for the location, construction, erection, maintenance, and removal of improvements, in any lawful manner, upon or in the Premises for the purpose of carrying out any of the activities provided for herein. LESSEE shall have control of the selection of construction professionals, construction design, means and methods and the final decision regarding construction of the Facilities, subject to the approval of LESSOR Representative which approval shall not be unreasonably withheld. The Plans and Specifications for the construction of the Facilities and for landscaping shall be prepared by architects and engineers who are (a) registered in the State of Texas and (b) approved in writing by the LESSOR Representative. The Plans and Specifications shall include a description of the standard furnishings to be provided by LESSEE for the apartment units in the Facilities. The Plans and Specifications shall require the written approval of the LESSOR Representative before any construction or installation. may be undertaken, which approval shall not be unreasonably withheld. Prior to issuing an approval of the Plans and Specifications (or any Remodeling Plans), the LESSOR Representative shall provide the Plans and Specifications (or the Remodeling Plans) to LESSOR'S Office of Facilities Planning and Construction ("OFPC") for review and recommendations, and the LESSOR Representative**

shall consult with representatives of OFPC concerning any such recommendations, provided that LESSOR Representative's approval shall not be unreasonably delayed. All construction, alteration, renovation or additions to the Premises undertaken by the LESSEE shall be in conformance with all applicable codes, rules and regulations, including amendments thereto. LESSEE shall have the right to contest any such codes for reasonable grounds by ordinary and proper procedures.

- C. LESSEE shall submit to the LESSOR Representative for review all changes in work and materials in the Plans and Specifications and note in writing any required changes or corrections thereto no later than five (5) business days after receipt of the Plans and Specifications. Minor changes in work or materials, not affecting the general character of the Facilities may be made in the Plans and Specifications at any time without the approval of LESSOR Representative, but a copy of the altered Plans and Specifications shall promptly be furnished to the LESSOR Representative.
- D. After completion of the Facilities, at least one hundred twenty (120) days prior to undertaking any material structural alteration, renovation, or remodeling of the Facilities ("Remodeling") during the Term, LESSEE shall submit plans for such Remodeling (the "Remodeling Plans") to the LESSOR for approval, which approval shall not be unreasonably withheld. LESSOR shall either approve or disapprove any such Remodeling Plans within sixty (60) days after receipt of such plans from LESSEE. If LESSOR fails to respond within such sixty (60) day period, it shall be deemed that LESSOR approves any such Remodeling in accordance with the Remodeling Plans submitted by LESSEE.
- E. Subject to Force Majeure, LESSEE covenants that LESSEE shall substantially complete construction of the Facilities on or before _____, 199___, with all units ready for occupancy.
- F. Prior to Commencement of Construction, (or, after completion of the Facilities, prior to undertaking any Remodeling of the Facilities), (1) LESSEE shall deliver to the LESSOR Representative a copy of the signed contract between the LESSEE and the general contractor for construction of the Facilities ("Construction Contract") or any contract between the LESSEE and the general contractor for Remodeling of the Facilities, as applicable; and (2) LESSEE shall provide payment and performance bonds in an amount equal to the contract price set forth in the Construction Contract or the contract for Remodeling, as applicable.
- G. The LESSOR Representative shall have the right to review and approve all payment bonds and performance bonds for work to be done pursuant to the

Plans and Specifications or the Remodeling Plans and shall note in writing any required changes or corrections within five (5) business days after receipt thereof.

- H. LESSEE shall, upon written request of LESSOR Representative, make, in such detail as may reasonably be required and forward to LESSOR Representative, reports in writing as to the actual progress of the construction or Remodeling of the Facilities. During such period, the work shall be subject to inspection by the LESSOR'S Representative and by authorized personnel of UTPB and LESSOR'S Office of Facilities Planning and Construction in order to verify reports of construction, determine compliance with safety, fire and building codes and determine compliance with approved Plans and Specifications or Remodeling Plans or such other inspections as may be necessary in the reasonable opinion of the LESSOR Representative.
- I. LESSEE shall be responsible for obtaining all licenses, patents, registered or copyrighted machines, materials, methods, or processes necessary to construct and operate the Facilities and LESSEE will hold LESSOR free and harmless from any and all claims arising out of LESSEE'S failure to obtain such licenses, patents, registered or copyrighted machines, materials, methods, or processes.
- J. Before erecting or placing any sign upon the Premises, LESSEE shall submit the design and specifications of such sign to LESSOR for approval, which approval shall not be withheld if such signage is consistent with UTPB's current signage policy or such signage was included in the Plans and Specifications.

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

- A. All such construction or work shall be performed in a good and worker-like manner in accordance with good industry practice for the type of work in question;
- B. All such construction or work shall be done in compliance with all applicable building codes, ordinances, and other laws or regulations of Governmental Authorities having jurisdiction (the "Building Regulations");
- C. No such construction or work shall be commenced until there shall have been first obtained all licenses, permits, and authorizations, if any, required by all Governmental Authorities having jurisdiction;

- D. LESSEE shall have obtained and shall maintain in force and effect the insurance coverage required in Section 12.03 with respect to the type of construction or work in question;
- E. After commencement, such construction or work shall be prosecuted with due diligence to its completion;
- F. All such construction or work shall be performed in accordance with the Plans and Specifications (or the Remodeling Plans, as applicable) which have been approved by LESSOR Representative, except as those plans may be changed in accordance with Section 7.01.C above;
- G. LESSEE shall cause all improvements and Alterations to the Premises to be designed, constructed, maintained, and operated in accordance with (i) the Americans with Disabilities Act of 1990, Public Law 101-336, and all rules and regulations promulgated thereunder; (ii) Subchapter D, Chapter 92, Texas Property Code and all rules and regulations promulgated thereunder, notwithstanding the applicability of Section 92.152(a), Texas Property Code; and (iii) the ordinances and codes of the City of Odessa, Texas notwithstanding the applicability of such ordinances and codes to construction located on property owned by the State of Texas; and
- H. LESSEE shall obtain a building permit from the City of Odessa and shall cooperate fully with all inspectors and other officials of the City of Odessa concerning design, construction, maintenance, and operation of all improvements to the Premises and all Alterations.

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

ARTICLE EIGHT
ENCUMBRANCES

[ARTICLE EIGHT ON ENCUMBRANCES **WILL** NEED TO BE EDITED TO CONFORM TO THE REQUIREMENTS APPROPRIATE TO THE FORM **OF** DEBT, **IF ANY**, INCURRED BY LESSOR TO **FUND** CONSTRUCTION OF THE- FACIUTIES.]

Section 8.01. MORTGAGE Of LEASEHOLD. At any time and from time to time, LESSEE may mortgage, grant a lien upon, and a security interest in (and assign as collateral) LESSEE'S leasehold estate in the Premises and LESSEE'S other rights hereunder to a Permitted Mortgagee (as defined in this Section 8.01) without the prior consent of LESSOR by the creation or execution of contractual liens, deeds of trusts, mortgages, assignments or similar instruments (individually, a "Permitted Mortgage" and collectively, the "Permitted Mortgages"); provided (a) the debt secured by any Permitted Mortgage is used for the operation, maintenance, repair, construction, or replacement of the Premises, (b) the debt secured by any Permitted Mortgage is used for the payment of sums due under this Lease or otherwise owed to LESSOR, or (c) the debt secured by any Permitted Mortgage is used by the LESSEE to repay the debt secured by prior Permitted Mortgages and other amounts advanced by (or indemnification payments owed to) the Permitted Mortgagee pursuant to the Permitted Mortgage and related to the Facilities. LESSOR recognizes and agrees that the mortgages or deeds of trust described in Exhibit "D" shall constitute Permitted Mortgages. LESSOR also recognizes and agrees that Permitted Mortgagees shall include the beneficiaries (and such beneficiaries' successors and assigns) under the Permitted Mortgages described in Exhibit "D" and any purchaser at a Foreclosure of any such Permitted Mortgage. Except as specified in the preceding sentence, the term "Permitted Mortgagee" as used in this Lease shall mean a holder or beneficiary of a Permitted Mortgage, and shall be limited to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university, state or local governmental authority, real estate investment trust, pension fund, and other lenders of substance that have assets in excess of fifty million dollars (\$50,000,000) at the time the Permitted Mortgage loan is made.

Section 8.02. PERMITTED MORTGAGE PROVISIONS. Every Permitted Mortgagee to whom LESSEE shall grant a mortgage, pledge, lien or other encumbrance upon LESSEE'S leasehold estate hereunder must expressly agree in the loan documents that, subject to the rights of the Permitted Mortgagees provided by this Lease, (i) such mortgage, pledge, lien or other encumbrance upon LESSEE'S leasehold estate hereunder is second, inferior and subordinate to the rights of LESSOR in and to the Land and the Facilities pursuant to the terms of this Lease; (ii) the Permitted Mortgagee shall not exercise any of its remedies under such loan documents, including acceleration of the maturity of the indebtedness thereunder, for any default or defaults of LESSEE under such loan documents or in connection with such loan, without first advising the LESSOR in the manner provided in Section 22.03 hereof; (iii) such Permitted Mortgagee will accept a cure by the LESSOR of any such default under such loan documents which is capable of being cured, except that LESSOR shall not be required to cure any such default and LESSOR shall have a cure period which shall commence upon Notice to LESSOR of such default and shall be equal in length to the applicable cure period, if any, as provided to LESSEE in such loan documents; and (iv) all payments so made and all things so done or performed by LESSOR shall be as effective to prevent an acceleration of the maturity of the indebtedness, the foreclosure of any liens securing payment thereof or the exercise of any other remedies by such Permitted Mortgagee upon default by LESSEE thereunder as the same would have been if paid, done

or performed by LESSEE instead of by LESSOR. LESSOR shall not be or become liable to any such Permitted Mortgagee as a result of the right and option to cure any such default or defaults by LESSEE.

Section 8.03. MORTGAGEE PROTECTIVE PROVISIONS. LESSOR hereby agrees to the following for the benefit of any Permitted Mortgagee, provided that written notice of such Permitted Mortgagee's name and mailing address is either set forth in Section 22.03 hereof or given to LESSOR and LESSEE.

- A. LESSOR shall not terminate this Lease (or LESSEE'S rights hereunder) for any Event of Default without first advising such Permitted Mortgagee, in writing, of such Event of Default and permitting such Permitted Mortgagee to cure such Event of Default on behalf of LESSEE within sixty (60) days after LESSOR has given Notice to such Permitted Mortgagee; provided that if, during such sixty (60) day period, Permitted Mortgagee takes action to cure such Event of Default but is unable, by reason of the nature of the remedial action involved, to cure such Event of Default within such period, LESSOR shall not terminate this Lease for so long as Permitted Mortgagee continues in good faith with due diligence and without unnecessary delays to cure such Event of Default. Further, if any Event of Default is not cured within such sixty (60) day period, or such longer period as provided in the immediately preceding sentence, or any extension thereof agreed, to by the LESSOR, and (1) the Permitted Mortgagee shall have given the Notices necessary to commence Foreclosure of the liens of its Permitted Mortgage prior to the expiration of such sixty (60) day period (unless the Permitted Mortgagee is enjoined or stayed from giving such Notices or exercising its right of Foreclosure, in which event such sixty (60) day period shall be extended by the period of such injunction or stay, but such sixty (60) day period shall not be extended for a period of time in excess of 270 days), and (2) the purchaser at the Foreclosure fully cures any Event of Default reasonably susceptible of being cured by the purchaser at the Foreclosure within sixty (60) days after such Foreclosure, then LESSOR will not terminate this Lease (or LESSEE'S rights hereunder) because of the occurrence of such Event of Default provided that Foreclosure is diligently prosecuted. LESSOR shall accept amounts paid or actions taken by or on behalf of any Permitted Mortgagee to cure any Event of Default. Nothing under this Section 8.03.A shall be construed to obligate a Permitted Mortgagee to either cure any Event of Default or Foreclose the liens and security interests under its Permitted Mortgage as a consequence of an Event of Default or Incipient Default, regardless of whether such Event of Default or Incipient Default is subsequently cured. If the Permitted Mortgagee or the purchaser at Foreclosure cures all defaults reasonably susceptible of being cured by such Permitted Mortgagee or purchaser, then all other defaults shall no longer be deemed to be defaults hereunder.

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

- F. In the event of the termination of this Lease prior to the Expiration Date, except by a Taking pursuant to Article Seventeen hereof, LESSOR will serve upon any Permitted Mortgagees written Notice that this Lease has been terminated together with a statement of any and all sums which would have at that time been due under the Lease but for such termination and of all other Events of Default or incipient Defaults, if any, under this Lease then known to LESSOR whereupon the Permitted Mortgagee holding the most senior Permitted Mortgage shall have the option to obtain a new lease of the Premises by giving Notice to LESSOR to such effect within sixty (60) days after receipt by such Permitted Mortgagee of Notice of such termination, which new lease shall be (1) effective as of the date of termination of this Lease, (2) for the remainder of the Term, and (3) at the same Rent and upon all of the agreements, terms, covenants and conditions hereof. Upon the execution of such new lease, the lessee named therein shall pay any and all sums which at the time of the execution thereof would be due under this Lease but for such termination and shall, pay all unpaid expenses, including reasonable attorney's fees, court costs and disbursements incurred by LESSOR in connection with the Event of Default and such termination, the recovery of possession of the Premises and the preparation, execution and delivery of such new lease.
- G. All Notices required to be given hereunder by LESSOR to LESSEE shall also be given concurrently to each Permitted Mortgagee, at the address designated in writing to LESSOR, or as set forth in Section 22.03 hereof.
- H. The Permitted Mortgagee or any other Person succeeding to the interests of LESSEE hereunder through a Foreclosure shall be subject to all of the terms and conditions of this Lease except as otherwise expressly provided for herein.
- I. The liability of the Permitted Mortgagee under the Lease shall be limited to the period during which the Permitted Mortgagee may own the interest of the LESSEE hereunder. Upon the Permitted Mortgagee's assignment or transfer of its rights and interests in and to the Lease to a third party, the Permitted Mortgagee shall have no further liability for any obligations arising after such transfer date, which liability shall be borne by the assignee or transferee.

ARTICLE NINE
MAINTENANCE AND REPAIR

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

Section 9.02. USE OF AND REPAIRS TO PREMISES. Throughout the Term of the Lease, LESSEE shall keep all improvements hereafter situated upon the Land in good and safe condition and in reasonable repair, with normal wear and tear, damage caused by casualty, condemnation, renovation and Force Majeure excepted, and LESSEE shall conform to and comply with all applicable ordinances, regulations and laws of all Governmental Authorities as the same may be enforced.

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

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

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

- A. No structural Alterations of the original facade or exterior of the Facilities shall be commenced except after receipt of LESSOR'S written approval of such Alterations no later than thirty (30) days after receipt of Notice of such proposed Alterations, which approval LESSOR agrees not to unreasonably withhold;
- B. No Alterations shall be made which would impair the structural soundness of the Facilities;
- C. No Alterations shall be undertaken until LESSEE shall have procured and paid for, so far as the same may be required from time to time, all applicable permits, licenses and authorizations of all Governmental Authorities having jurisdiction and all required consents of Permitted Mortgagees having a first priority interest in or lien upon the Premises. LESSOR shall join, but without expense to LESSOR, in the application for such applicable permits, licenses

or authorizations whenever such action is necessary and is requested by LESSEE;

- D. Any Alterations shall be commenced and completed within a reasonable time (subject to Force Majeure) and in a good and worker-like manner and in substantial compliance with all applicable permits, licenses and authorizations and buildings laws and with all other applicable laws, ordinances, orders, rules, regulations and requirements of Governmental Authorities, as the same may be enforced;
- E. If any involuntary liens for labor and materials supplied or claimed to have been supplied to the Premises shall be filed, LESSEE shall pay or bond around such liens to LESSOR'S reasonable satisfaction or otherwise obtain the release or discharge thereof at least sixty (60) days prior to the time that any interest in the Land and/or Facilities may become subject to forced sale with respect to such involuntary liens;
- F. Workers' compensation insurance shall be maintained in force covering all persons employed in connection with the development and construction on the Premises with respect to whom death or bodily injury claims could be asserted against LESSOR, LESSEE or the Premises; and
- G. LESSEE will upon demand by LESSOR give reasonably satisfactory proof or assurances to LESSOR that the funds required to pay for the Alterations are or will be available to LESSEE for such purpose.

Section 9.06. DAMAGE TO IMPROVEMENTS. Subject to the other terms of this Lease, in the event any portion of the Facilities is damaged by fire or otherwise, regardless of the extent of such damage or destruction, within ninety (90) days following the date of such damage or destruction, LESSEE shall commence the work of repair, reconstruction or replacement of the damaged or destroyed building or improvement and prosecute the same with reasonable diligence to completion, so that the Facilities shall, at the sole expense of LESSEE, be restored to substantially the same size, function and value as the Facilities existing prior to the damage; provided, however, that if any available insurance proceeds (after payment of all or any portion of such insurance proceeds towards amounts owed under any Permitted Mortgage) are insufficient, in the reasonable judgment of LESSEE, to permit restoration in accordance with the terms of this Lease, or if payment of the insurance proceeds is contested or not settled promptly for any reason, then the LESSOR shall grant an appropriate extension of the time for commencing repairs to allow LESSEE to obtain reasonable replacement financing or to obtain the insurance proceeds. If LESSEE shall in good faith be unable to (i) obtain reasonable replacement financing to restore the Facilities to substantially the same size, function, and value as the Facilities existing prior to the damage or (ii) obtain the insurance proceeds, then LESSEE may terminate this Lease

by written Notice to LESSOR. In the event of termination under this Section 9.06, this Lease shall terminate ten (10) days after the date of such Notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term, and the Rent shall be apportioned and paid to the time of such termination. [CONFORM NEXT SENTENCE WITH REVISED ARTICLE EIGHT] All or any portion of the insurance proceeds payable as a consequence of a casualty affecting the Facilities shall be deposited with and disbursed by the Permitted Mortgagee (holding the Permitted Mortgage with the most senior lien priority) in accordance with such Permitted Mortgagee's loan documents or contractual agreements with LESSEE pending the completion of repairs to the Facilities.

ARTICLE TEN
CERTAIN LIENS PROHIBITED

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

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

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

ARTICLE ELEVEN
OPERATION AND MANAGEMENT OF FACILITIES

Section 11 .01. MANAGEMENT AGREEMENTS. LESSEE shall be responsible for the operation of the Premises. LESSEE shall enter into a Management Agreement, satisfactory to the Committee, with a manager ("Manager") approved by the Committee. LESSOR and LESSEE agree to enter into a Management Agreement under which LESSOR shall serve as the initial Manager of the Premises and LESSOR and LESSEE agree to the selection of subsequent Managers in accordance with the procedures set out in Section 11.02.D. The Management Agreement shall provide for the operation of the Premises without cost or expense to LESSOR in conformity with all applicable laws and rules, regulations and policies of LESSOR applicable to all housing projects on UTPB's campus. The Management Agreement shall provide that (a) all candidates for employment as on-site managers shall be interviewed by a representative of LESSEE and by the Chief Business Officer and the Vice President for Student Services at UTPB prior to hiring any such on-site manager, (b) LESSEE can require the Manager to reassign any of Manager's employees if LESSOR so requests in writing, provided that such requests shall be on the grounds that such employee is not performing the job, and (c) the Manager shall consider University students when hiring staff at the Premises.

Section 11.02. ADVISORY COMMITTEE.

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

B. The Committee shall meet at least once each quarter at the Premises or at such other location as may be approved by the Committee, (unless such meeting shall be waived by all members thereof) or upon the call of any three (3) members upon five (5) business days' Notice to all members by telephone or telecopy. An agenda for each meeting shall be prepared in advance by the LESSOR and LESSEE in consultation with each

other, and each member of the Committee shall receive a copy of the agenda prior to the scheduled time of the meeting. Four (4) members of the Committee shall constitute a quorum provided at least two members present were appointed by LESSEE and two members present were appointed by LESSOR. A concurring vote of at least four (4) members of the Committee shall govern all of its actions. The Committee may act without a meeting if the action is approved in advance in writing by all of the members of the Committee. The Committee shall cause written minutes to be prepared of all actions taken by the Committee and shall deliver a copy thereof to each member of the Committee within seven (7) days following the close of each meeting.

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

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

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

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

the Facilities shall be maintained at the principal office of LESSEE, or if LESSEE so directs, at the principal office of Manager.

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

Section 11.05. AUDITS. LESSOR may, at its option and at its own expense, and during customary business hours, conduct internal audits of the books, records and accounts of the Facilities. Audits may be made on either a continuous or a periodic basis or both, and may be conducted by employees of LESSOR, or by independent auditors retained by the LESSOR, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs by the LESSEE.

Section 11.06. SECURITY SERVICES. UTPB shall have the right, but not the obligation, to provide such security services in and around the Premises that UTPB considers necessary and reasonable taking into consideration the number of occupants of the Premises and the degree of security services required or provided at similar projects located upon campuses which are a part of The University of Texas System. Such security services, if any, shall be provided subject to the jurisdictional limitations of the campus police as peace officers under Texas law and policies of the Board of Regents of The University of Texas System. Should UTPB elect to provide such security services, LESSEE's Manager shall pay to UTPB the LESSEE'S reasonable allocable share of the cost to UTPB of providing such security services, and the payments for security services shall be an expense of operating the Premises, provided that LESSEE'S share of such costs shall not exceed the reasonable and customary costs LESSEE would incur if similar security services were provided by an independent third party for typical multi-unit apartment projects similar to the Premises located in the City of Odessa, Texas. UTPB may require that persons desiring to park vehicles on the Premises must obtain a UTPB campus parking permit.

ARTICLE TWELVE INSURANCE AND INDEMNIFICATION

Section 12.01. INDEMNITY. LESSEE shall indemnify and hold harmless LESSOR and its successors (the "Indemnified Parties"), from all claims, suits, actions and proceedings ("Claims") whatsoever which may be brought or instituted on account of or growing out of any and all injuries or damages, including death, to persons or property relating to the use or occupancy of the Premises (including without limitation the construction, maintenance or operation of the Facilities), and all losses, costs, penalties, damages and expenses, including but not limited to attorneys' fees and other costs of defending against,

investigating and settling the Claims; provided, however, that the indemnity shall not apply with respect to Claims arising from injuries or damages caused by the negligence or willful misconduct of LESSOR, its agents or employees. LESSEE shall assume on behalf of the Indemnified Parties and conduct with reasonable diligence and in good faith the defense of all Claims against the indemnified Parties, whether or not LESSEE is joined therein; provided, however, without otherwise relieving LESSEE of its obligations under this Lease, the Indemnified Parties, at their election and upon Notice to LESSEE, may, at their sole cost and expense, defend or participate in the defense of any or all of the Claims with attorneys and representatives of their own choosing. Maintenance of the insurance referred to in this Lease shall not affect LESSEE's obligations under this Section 12.01 and the limits of such insurance shall not constitute a limit on LESSEE's liability under this Section 12.01; provided, however, that LESSEE shall be relieved of its aforesaid obligation of indemnity to the extent and only to the extent of the amount actually recovered from one or more of the insurance carriers of LESSEE (or recovered in respect of any insurance carried by LESSOR) and either (i) paid to LESSOR or (ii) paid for LESSOR's benefit in reduction of any liability, penalty, damage, expense or charge imposed upon LESSOR in connection with the Claims. LESSOR covenants and agrees that LESSEE shall have the right to contest the validity of any and all such Claims of any kind or character and by whomsoever claimed, in the name of LESSEE or LESSOR, as LESSEE may deem appropriate, provided that the expenses thereof shall be paid by LESSEE, or LESSEE shall cause the same to be paid by its insurer.

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

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

TYPE:	AMOUNT:
<p>(1) Comprehensive General (Public) Liability - to include coverage for the following where the exposure exists:</p> <p>(A) Premises/Operations (B) Independent Contractors (C) Products/Completed Operations (D) Personal Injury</p>	<p>Combined Single Limit for Bodily Injury and Property Damage in an amount acceptable to the LESSOR Representative, not to exceed \$2,500,000.</p>

- (E) Contractual Liability
(F) Explosion, collapse and underground property damage
- (2) Property insurance - for physical damage to the property of the LESSEE including improvements and betterments to the Land. Coverage being for 100% of the replacement cost of the Facilities
- (3) Builder's Risk Insurance - all risk of physical loss during term of the Construction Contract and until the Facilities are substantially completed. Coverage being for 100% of the replacement cost of the Facilities.
- (4) Rental Abatement Insurance, to be provided for a minimum of twelve months or until completion of repairs and renovation of the damages or defects causing the abatement, whichever period is shorter.
- (5) Automobile Liability insurance - for injury, death or damage caused by vehicles during the term of the Construction Contract and until the Facilities are substantially completed Not less than (a) \$100,000 for injuries or death to one person; (b) \$300,000 for injuries or death arising out of the same accident involving more than one person; and (c) \$50,000 in respect of property damage

In addition to the required insurance coverage described above in this section, Workers' Compensation Insurance shall be maintained in force, as required by the laws of the State of Texas, covering all persons employed in connection with the development or construction of improvements on the Premises, or in the operation and maintenance of the Premises, with respect to whom death or bodily injury claims could be asserted against LESSOR, LESSEE, or the Premises.

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

- A. Be named on the Property Insurance. policy and Comprehensive General Liability policy as additional insured/or an insured, as its interest may appear (as long as being so named as a named insured on the Comprehensive General Liability Policy does not jeopardize the validity of such policy or cause

an unreasonable increase in the cost thereof). LESSOR agrees to promptly endorse insurance checks or otherwise release insurance proceeds, provided no Event of Default is continuing hereunder. [CONFORM NEXT SENTENCE WITH REVISED ARTICLE EIGHT] LESSOR shall, regardless of the existence of an Event of Default, promptly endorse insurance checks or otherwise release insurance proceeds payable to (or to be held by) a Permitted Mortgagee in accordance with its Permitted Mortgage.

- B. Be provided with sixty (60) days' advance Notice, in writing, of cancellation or material change in coverage. If any insurance policy provides that the insurer will give such Notice, then LESSEE shall not be obligated to do so with respect to such policy.
- C. Be provided with Certificates of Insurance evidencing the above required insurance at the time the policies are required to be obtained and thereafter with certificates evidencing renewals or replacements of said policies of insurance at least thirty (30) days prior to the expiration or cancellation of any such policies.

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

Section 12.06. BLANKET POLICIES. If any blanket general insurance policy of LESSEE complies with the requirements of this Article Twelve, such insurance shall fulfill the requirements set forth herein. The insurance coverages specified in this ARTICLE XII shall not be limited by any annual aggregate loss limit at any other location owned, leased, or operated by LESSEE. At the request of LESSEE, any Permitted Mortgagee may be named as an insured or an additional insured on any policies as its interest may appear.

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

ARTICLE THIRTEEN
TERMINATION. DEFAULT AND REMEDIES

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

- A. LESSEE shall fail to pay any sum required to be paid under the terms and provisions of this lease and such failure shall not be cured within thirty (30) days after receipt of written Notice from LESSOR of such failure.
- B. The Taking by execution of LESSEES leasehold estate for the benefit of any Person other than a Permitted Mortgagee or purchaser. at a Foreclosure. **[CONFORM WITH REVISED ARTICLE EIGHT]**
- C. LESSEE shall fail to perform any other covenant or agreement, other than the payment of money, to be performed by LESSEE under the terms and provisions of this lease and such failure shall not be cured within sixty (60) days after receipt of written Notice from LESSOR of such failure; provided that if, during such sixty (60) day period, LESSEE takes action to cure such failure but is unable, by reason of the nature of the work involved, to cure such failure within such period and continues such work thereafter diligently and without unnecessary delays, such failure shall not constitute an Event of Default hereunder until the expiration of such additional time following such sixty (60) day period as may be reasonably necessary to complete the cure of such failure.
- D. The filing of a petition for relief against LESSEE, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the entry of a decree or order by a court having jurisdiction over the Premises appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for LESSEE or any substantial part of the properties of LESSEE or ordering the winding up or liquidation of the affairs of LESSEE, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutivedays.
- E. The commencement by LESSEE of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or any other applicable federal or state law of similar import, or the consent or acquiescence by LESSEE to the commencement of a case under such Code or law or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of or for LESSEE or any substantial part of the properties of the LESSEE.

Section 13.02. RIGHT TO EXPEL. The Permitted Mortgagee shall have the right to expel LESSEE upon the occurrence of an Event of Default and assume the position of LESSEE with all rights and duties under this Lease. [CONFORM WITH REVISED ARTICLE **EIGHT**]

Section 13.03. LESSOR'S RIGHTS UPON DEFAULT. [CONFORM WITH REVISED ARTICLE **EIGHT**] Subject to the rights of the Permitted Mortgagees under Article Eight and Section 13.02, upon the occurrence and during the continuance of an Event of Default, LESSOR may at its option declare this Lease and 'all rights and interests created by it to be terminated, may seek any and all damages occasioned by the Event of Default, or may seek any other remedies available at law or in equity.

Section 13.04. RIGHT TO RELET PREMISES. Upon LESSOR'S exercise of the election to terminate this Lease, LESSOR may take possession of the Premises and relet the same for the remainder of the Term upon such terms as LESSOR is able to obtain for the account of LESSEE, who shall make good any deficiency as such occurs. Any termination of this Lease as herein provided shall not relieve LESSEE from the payment of any sum or sums that shall then be due and payable to LESSOR hereunder, or any claim for damages then or theretofore accruing against LESSEE hereunder, and any such termination shall not prevent LESSOR from enforcing the payment of any such sum or sums or from claiming damages by any remedy provided for by law, or from recovering damages from LESSEE for any Event of Default.

Section 13.05. COMPLETION BY PERMITTED MORTGAGEE. [CONFORM WITH REVISED ARTICLE **EIGHT**] Except for delays caused by Force Majeure, if (a) the Commencement of Construction does not occur on or before _____, 199____, or (b) after the Commencement of Construction and prior to the substantial completion of the Facilities, LESSEE abandons (with no intent to continue) construction of the Facilities for a period of forty-five (45) consecutive days, then LESSOR may by written Notice to the Permitted Mortgagee require said Permitted Mortgagee to affirm by written Notice to LESSOR within thirty (30) days of receipt by said Permitted Mortgagee of such Notice from LESSOR that such Permitted Mortgagee intends to use its best efforts to pursue applicable remedies which will result in its causing the completion of the Facilities. If said Permitted Mortgagee fails to give such affirmation or thereafter by written Notice abandons such intent, the failure of the Commencement of Construction to occur or other ceasing of such construction for said forty-five (45) day period (as applicable) shall be an "Event of Default" by LESSEE hereunder and LESSOR may exercise its remedies under this Lease on account thereof. This provision is in addition to the payment and performance bond requirements set forth in this Lease.

ARTICLE FOURTEEN
IMPROVEMENTS

Section 14.01. TITLE TO IMPROVEMENTS. [CONFORM WITH REVISED ARTICLE **EIGHT**] Title to the Facilities and the Facilities Equipment shall be vested completely in LESSEE during the term of this Lease. Upon the termination of this Lease, whether by expiration of the Term hereof or by reason of default on the part of LESSEE, or for any other reason whatsoever, the Facilities and any other improvements erected on the Land by LESSEE during the Term of this Lease, shall merge with the title to the Land, free of any provisions of Article Eight hereof with respect to the rights of Permitted Mortgages (except that title to the Facilities shall vest in any Permitted Mortgagee who receives a New Lease pursuant to Section 8.03.F hereof), and free of the rights of tenants under subleases claiming under or through Lessee (except for purchase money security interests in equipment and except for trade fixtures and personal property of any sublessees of space in the Facilities that can be removed without damage to the Facilities). Subject to the provisions of Section 9.06 and Article Sixteen hereof, LESSEE shall deliver up the Premises to LESSOR in reasonably good condition, actual wear and tear excepted. Upon the termination of this Lease, LESSEE, at LESSOR's request, will execute a recordable instrument evidencing the termination of this Lease and stating the termination date. LESSEE's rights to the Premises shall be as set forth in this Lease, including the following:

- A. Subject to subparagraph B hereof, to the extent that title to such items has not already vested in LESSOR, all furniture, fixtures, equipment and furnishings permanently affixed to the Premises (other than Facility Equipment) shall become the property of LESSOR upon termination of this Lease whether such termination be by expiration of the Term or an earlier termination under any provision of this Lease.
- B. LESSEE shall have the right, within forty-five (45) days after the termination of this Lease, whether such termination be by the expiration of the Term or an earlier termination under any provision of this Lease, to remove from the Premises all of the Facility Equipment; provided that, if any of LESSEE'S property remains in or on the Premises after forty-five (45) days following termination of this Lease and no renewal agreement has been executed, the property that remains shall be deemed to have become the property of LESSOR, and may be disposed of as LESSOR sees fit without liability to account to LESSEE for the proceeds of any sale or other disposition thereof.

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

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

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

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

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

upon any transferee, assignee or purchaser of this Lease and LESSEE'S interest in the Premises.

Section 14.03. LESSOR'S OPTION TO PURCHASE FACILITIES. LESSOR shall have the right to purchase LESSEE'S interest in the Premises at any time for an amount ("Purchase Price") equal to the then-current balance of LESSEE'S amortized capital investment in the Premises, which shall be calculated by deducting, from the total original amount of LESSEE'S capital investment to finance development of the Premises, the sum of all payments received by LESSEE that are designated as return of LESSEE'S capital investment. (Payments in return of LESSEE'S capital investment shall be distinguished from payments received by LESSEE as income from operation of the Premises.) If such purchase by LESSOR is subject to approval of the Coordinating Board, such approval shall be obtained prior to the exercise by LESSOR of its purchase option. Such option to purchase must be exercised by LESSOR by providing written Notice to the LESSEE of LESSOR'S intent to exercise such option not later than seventy-five (75) days prior to the closing date of such purchase. At the closing of such purchase LESSOR shall pay the Purchase Price in cash to LESSEE (except any portion of the Purchase Price to be applied to discharge a Permitted Mortgage), and LESSEE and LESSOR shall execute, acknowledge and deliver to the other and to the Permitted Mortgagees such instruments of conveyance, bills of sale, assumption and release agreements and other instruments as are reasonably necessary to accomplish the purchase pursuant to this Section 14.03 (and as are reasonably satisfactory in form and substance to the Permitted Mortgagees). This Lease shall terminate upon the closing such purchase, on the condition that such termination does not adversely affect the rights of any Permitted Mortgagee under any Permitted Mortgage that survives LESSOR'S purchase in accordance with this Section 14.03. LESSOR shall have the right at all times to exercise its rights under this Section 14.03, notwithstanding the fact that LESSOR has received Notice from LESSEE of an Offer under Section 14.04. In that event, LESSOR shall have the right to elect either to exercise LESSOR'S Option to Purchase the Facilities or to exercise LESSOR'S Right of First Refusal to Purchase the Facilities.

Section 14.04. LESSOR'S RIGHT OF FIRST REFUSAL.

A. LESSEE shall not sell all or part of its interest in the Premises, except to any Person that is a Permitted Assignee, as defined in Section 2.01. In the event LESSEE shall receive, from a third party (the "Offeror") that is a Permitted Assignee, a bona fide offer (the "Offer") in writing, signed by the Offeror, and accompanied by a certified or bank cashier's check for ten percent (10%) of the purchase price offered as a deposit with respect thereto, for the purchase for cash, or partly in cash and partly by assumption of or subject to existing indebtedness, on a date not less than one hundred twenty (120) days, nor more than one hundred eighty (180) days, from the date of the Offer, of the LESSEE'S entire interest in the Premises and the Leasehold estate created hereby, then LESSEE shall, if it wishes to accept the Offer, promptly forward a true copy thereof to the LESSOR

B. LESSOR shall notify LESSEE in writing, within-thirty (30) days after its receipt of an Offer, whether the Chancellor of The University of Texas System will recommend that the Board of Regents of The University of Texas System approve the consummation by LESSOR of the purchase described in the Offer. Provided that the foregoing notice of intent to recommend approval is timely given, LESSOR shall, within ninety (90) days after its receipt of the Offer, notify LESSEE in writing whether LESSOR will recommend the consummation of the purchase described in the Offer to the Coordinating Board. If LESSOR determines that approval, by the Coordinating Board is not required under then-current law, LESSOR shall so notify LESSEE and LESSOR may exercise its right of first refusal under this Section 14.04, notwithstanding any of the provisions herein concerning approval by the Coordinating Board. If LESSOR fails to provide timely notice as described above in this Subparagraph B, or if LESSOR notifies LESSEE that LESSOR will not recommend the consummation of such purchase to the Board of Regents and/or the Coordinating Board, LESSEE may (subject to- the limitations set forth in Section 18.01 hereof) consummate such purchase on the same terms and conditions as set forth in the Offer. If LESSOR informs LESSEE that LESSOR will recommend the consummation of the purchase described in the Offer to the Coordinating Board, then LESSOR shall submit the Offer to the Coordinating Board at the Coordinating Board's next scheduled meeting. If the Coordinating Board does not approve LESSOR'S consummation of the purchase described in the Offer at the next scheduled meeting held by the Coordinating Board, then LESSEE may (subject to the limitations set forth in Section 18.01 hereof) consummate such purchase on the same terms and conditions as set forth in the Offer. If the Coordinating Board approves the consummation of the purchase described in the Offer and if LESSOR does not elect to consummate the purchase described in the Offer by delivering written Notice thereof (hereinafter called "Election to Purchase") to LESSEE no later than ten (10) days after the Coordinating Board approval is granted, then LESSEE may (subject to the limitations set forth in Section 18.01 hereof), no later than one hundred-eighty (180) days after the deadline for delivery of Election to Purchase, consummate such purchase on the same terms and conditions as set forth in the Offer. If LESSOR elects not to consummate a purchase as set forth in an Offer, then LESSOR shall (at LESSEE'S request) execute and acknowledge a certificate indicating the waiver of the right of first refusal with respect to such Offer. If LESSOR timely exercises its right of first refusal by delivering the Election to Purchase in accordance with this Section 14.04, then LESSOR shall, within one hundred twenty-five (125) days after delivery of the Election to Purchase, purchase LESSEE'S interest in the Premises and the leasehold estate created hereby in accordance with the terms and conditions set forth in the Offer. If LESSOR fails to consummate the Offer after delivering its Election to Purchase, LESSEE shall be entitled to a payment from LESSOR in an amount equal to three percent (3%) of the purchase price set forth in the Offer as liquidated damages and shall be entitled to sell LESSEE's interest in the Premises and assign its leasehold estate free of LESSOR'S right of first refusal thereafter at any time prior to the expiration of eighteen (18) months following the deadline for delivery of the Election to Purchase. If LESSEE does not consummate such a conveyance and assignment within such eighteen (18) month period, then LESSEE may not thereafter convey its interest in the

Premises and/or assign its leasehold estate without again complying with the provisions of this Section 14.04.

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

Section 14.05. LESSEE'S RIGHT OF FIRST REFUSAL FOR PHASE II APARTMENT IMPROVEMENTS. [THIS SECTION MAY NOT BE NEEDED.] The Right of First Refusal granted below in this section by LESSOR to LESSEE shall extend only to construction of the second phase of apartments on the campus of the University; LESSEE'S Right of First Refusal shall expire and be of no further effect upon that date (the "ROFR Expiration Date") which is the earlier to occur of the following three dates: (1) _____, 19__; (2) the date that LESSOR leases additional premises to LESSEE or to another person, in accordance with this section, for construction of Phase II Apartments; or (3) the date that LESSOR enters into a contract for construction of a second phase of apartments at LESSOR'S own cost and expense, pursuant to Section 14.06. For and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash in hand paid by the LESSEE to LESSOR, the receipt and sufficiency of which are hereby acknowledged by LESSOR, LESSOR, for itself, its successors and assigns, does hereby covenant and agree with LESSEE, that if at any time and from time to time, prior to the ROFR Expiration Date, LESSOR desires to have one or more additional apartments (the "Phase II Apartments") constructed, at the cost and expense of any lessee, on a tract of real property leased out of the campus of The University, which shall be subject to a lease with such lessee similar to this Lease, LESSOR shall be obligated to give LESSEE written Notice of such desire specifying therein the "Date of Opening of Phase II Apartments" (which, in no event shall be less than eighteen (18) months after the date of such Notice) required by LESSOR for such Phase II Apartments. Such Notice shall offer to LESSEE the right to obtain a lease from LESSOR of the additional premises on which such Phase II Apartments are to be constructed by LESSEE, which lease shall be substantially on the same terms and subject to substantially the same provisions and requirements as this Lease, except as otherwise stated in this Section 14.05, with LESSOR agreeing to discharge the same obligations with respect to each such additional apartment as LESSOR is obligated to provide hereunder or under any management agreement then in effect with respect to the original Facilities. Following receipt of such written Notice from LESSOR, LESSEE shall have one hundred eighty (180) days within which to accept LESSOR'S offer by giving written Notice of its acceptance of such offer within such period of time. Thereafter, the lease of the additional premises shall be closed as promptly as practicable after acceptance by LESSEE. If LESSEE fails to timely exercise such right to lease the additional premises within the time period stated, LESSOR shall then have the right, at any time within one hundred eighty (180) days after expiration of such one hundred eighty (180) day period to lease such additional premises to any other person;

however, any leasing of such additional premises after such date, as well as the leasing of any additional premises for Phase II Apartments prior to the ROFR Expiration Date must again be offered to LESSEE upon said terms and provisions as above stated. Any lease of an additional premises to LESSEE pursuant to this Section 14.05 (i) shall be for a term of years commencing no less than twelve (12) months (unless a shorter period shall have been agreed to by LESSEE) prior to the Date of Opening of Phase II Apartments constructed thereon and expiring on the date which is _____ () calendar years from the Date of Opening of Phase II Apartments; and (ii) the provisions of Section 14.03 shall be revised to provide LESSOR the right to purchase the facilities constructed on such additional premises for a purchase price determined in accordance with Section 14.03.

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

ARTICLE FIFTEEN OCCUPANCY AGREEMENT

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

Section 15.02. REFERRAL OF ON-CAMPUS OCCUPANTS TO THE FACILITIES. [THIS SECTION MAY REQUIRE REVISION.]

A. Consistent with the obligations of LESSOR and UTPB as agencies of the State of Texas to market other campus housing projects that may be constructed or acquired after the date of this Lease and that are owned by UTPB, each Semester, UTPB shall refer On-Campus Occupants to the Facilities (but not to a specific unit) prior to referring such occupants to any other housing facility (if any) on the UTPB campus.

B. Notwithstanding the foregoing provisions of this Section 15.02,

1. UTPB shall not be obligated to require any On-Campus Occupant to lease a unit in the Facilities, and if any On-Campus Occupant rejects

a referral to the Facilities, then UTPB may refer such occupant to another housing facility (if any) on the UTPB campus.

2. In the event that UTPB should construct its own on-campus housing subsequent to the date of this lease, then until all UTPB-owned housing has achieved a one hundred percent (100%) occupancy rate for each Fall Semester, or a ninety-five percent (95%) occupancy rate for each Spring Semester and each Summer Session, UTPB shall have no obligation to refer to the Facilities any On-Campus Occupants consisting of freshmen and sophomores under 21 years of age.

C. During each Semester, LESSEE shall periodically notify UTPB of any vacancies that occur at the Facilities in order to give UTPB an indication of the number of units that will need to be leased for the immediately succeeding Semester.

Section 15.03. OCCUPANCY RENTS; CAMPUS HOUSING CONTRACTS.

A. The LESSEE shall charge Occupancy Rents to Assigned Occupants for the Facilities at the rates set forth in the Annual Budget. Notwithstanding anything contained in this Lease to the contrary, LESSEE shall be entitled to adjust the Occupancy Rents to reasonably compete with rents (1) charged for other housing projects on UTPB's campus (if any), or (2) charged for other comparable housing projects located in Ector County. Any proposed increase in Occupancy Rents shall be submitted to the Committee as a part of an Annual Budget or a revised Annual Budget for approval, as set out in Section 11.02.C; provided, however, that no increase in the Occupancy Rents in excess of five percent (5%) over the Occupancy Rents charged in the preceding Academic Year shall be effective without the prior written approval of LESSOR

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

C. When requested by LESSEE, but only to the extent authorized by applicable laws, the Rules and Regulations of the Board of Regents of The University of Texas System, and UTPB's institutional policies, UTPB shall assist LESSEE in collecting Occupancy Rentals and security deposits owed by the Assigned Occupants pursuant to the Campus Housing Contracts and shall exercise administrative actions as appropriate to assist LESSEE in such collections. UTPB shall promptly deposit any Occupancy Rentals and security deposits which come into its possession in a bank account of LESSEE (or if required by a Permitted

Mortgagee, in an account with a trustee appointed by such Permitted Mortgagee). Except as otherwise set forth in this Section 15.03.C, UTPB will have no obligation to LESSEE if any Assigned Occupant fails to pay the Occupancy Rentals in accordance with the terms of a Campus Housing Contract. LESSEE shall be entitled to exercise all of its rights and remedies under the Campus Housing Contracts (or otherwise at law or in equity) against an Assigned Occupant as a consequence of a breach by such Assigned Occupant of its Project Housing Contract, and UTPB shall cooperate with LESSEE in enforcing such rights and remedies.

Section 15.04. PROMOTION OF FACILITIES. LESSOR, consistent with its obligations as an agency of the State of Texas to market other campus housing projects that may be constructed or acquired after the date of this lease and that are owned by UTPB, shall actively promote and market the Facilities as an integral part of the overall housing program of LESSOR, as described below in this Section.

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

1. Provide LESSEE with a convenient space on UTPB campus at no cost to promote the Facilities to students during UTPB's Spring Semester and Summer Session in 199____.
2. When suitable model units are available, organize an "Open House" at the Facilities and invite all staff and faculty of UTPB.

B. The LESSOR on an ongoing basis shall:

1. Include information about the Facilities in the UTPB Student Brochure with a tear-away inquiry card.
2. Forward all eligible on-campus housing inquiries to LESSEE, or to LESSEE's Manager, as directed by LESSEE.
3. Provide LESSEE upon request with a roster of On-Campus Occupants, to the extent same is reasonably available or accessible to UTPB, which includes, to the extent available and permissible, the first and last name, classification, age, mailing address and telephone number of each On-Campus Occupant.
4. Allow LESSEE to use a reasonable number of signs, flags and banners on the campus to market the Facilities, consistent with University posting policy.

5. If LESSOR installs a toll-free voice response system, include housing information/referral on that toll-free voice response system.
6. Provide tours of the Facilities, in conjunction with LESSEE, for prospective new occupants via new student orientation.
7. Actively promote the Facilities in conjunction with UTPB's promotional and recruiting efforts.
8. Incorporate information about the Facilities in each issue of the UTPB class schedule and other appropriate University publications, to the extent consistent with the obligations of LESSOR and UTPB to promote other campus housing projects (if any) that are owned by UTPB.
9. Permit all Assigned Occupants to participate in University-sponsored orientation programs and other similar programs and facilities of UTPB generally made available to On-Campus Occupants.
10. Permit the management staff for the Facilities to participate in any residence staff training programs or other similar programs made available to the staff of any other UTPB housing facilities.

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

1. Prepare a housing brochure which reflects the floor plans, amenities and benefits of the Facilities.
2. Maintain an on-site leasing office at the Premises.
3. Prepare four 20" by 30" color, mounted renderings of the Facilities for use by UTPB in its promotion and marketing of the Facilities.

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

A A reconciliation of all Assigned Occupants for the applicable Semester, including a listing of the name, age, and priority assignment of each Assigned Occupant, and a schedule showing the amounts of the prepaid Occupancy Rents and security deposits received by LESSEE from the Assigned Occupants, the Occupancy Rents to be paid by the Assigned Occupants for the remainder of the applicable Semester, and such other

information regarding each Assigned Occupant reasonably requested by LESSOR or the Permitted Mortgagees; and

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

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

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

Section 15.07. LEASING TO OTHER PERSONS. Notwithstanding any provisions of this Lease to the contrary, after the Date of Opening, if the Occupancy Level (hereinafter defined) of the Facilities falls below eighty-five percent (85%) for two consecutive calendar months, then LESSEE shall be allowed to lease the unleased units to any Persons, including Persons other than On-Campus Occupants, provided that preference shall be given to On-Campus Occupants, and further provided that the term of any lease entered into with a Person other than an On-Campus Occupant shall be no longer than twelve (12) months and shall expire in any case on or before the date which is three (3) calendar days prior to the commencement of the University's Fall Semester. The rental rates charged to Persons other than On-Campus Occupants may not be any less than Occupancy Rents being charged to On-Campus Occupants. As used herein, the term "Occupancy Level" shall refer to the aggregate number of apartment units in the Facilities (expressed as a percentage of the total number of apartment units in the Facilities) which are subject to signed Campus Housing Contracts under which the tenants are currently paying rental in accordance with the terms of the Campus Housing Contract. If the Occupancy Level should rise to or exceed eighty-five percent (85%) for two consecutive calendar months during the period that LESSEE is allowed to lease units to Persons other than On-Campus Occupants, then at the end of the calendar month during which the Occupancy Level meets or exceeds eighty-five percent (85%) for the two previous calendar months, the LESSEE must resume leasing units only to On-Campus Occupants.

ARTICLE SIXTEEN
DEFAULT BY LESSOR

Section 16.01. LESSOR DEFAULTS. If LESSOR fails to perform any of the obligations or covenants of LESSOR under this Lease and such failure is not cured within thirty (30) days after receipt of written Notice from LESSEE of such failure, then LESSOR shall be considered in default under this Lease, and LESSEE shall be entitled to enforce any one or more of the following rights and remedies:

- A. LESSEE shall be entitled to cease paying all Rent and other amounts owed to LESSOR under this Lease;**
- B. LESSEE shall be entitled to require LESSOR to specifically perform its obligations under this lease or restrain or enjoin LESSOR from continuing the activities that constitute the default of LESSOR; and**
- C. LESSEE shall be entitled to exercise all other rights and remedies available to LESSEE under this Lease or otherwise available to LESSEE at law or in equity as a consequence of the LESSOR'S default.**

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

ARTICLE SEVENTEEN
CONDEMNATION

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

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

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

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

Section 17.05. APPRAISAL. LESSEE and LESSOR shall each nominate one Person deemed by them, respectively, to be fit, reputable and impartial to appraise and determine the unresolved matter. The nomination must be in writing and must be given each party to the other within fifteen (15) days after the aforesaid thirty (30) day period. If only one party shall so nominate an appraiser within such fifteen (15) day period, the other party may then nominate an appraiser by written Notice to the other party given within ten (10) days after its receipt of the nomination of the other party. If only one party shall nominate an appraiser within the periods referred to above, then that appraiser shall have the power to act alone, and the appraiser's decision as to value or such other matters made in

accordance with the provisions hereof shall be binding on both parties. The two Persons so nominated and appointed as appraisers by the parties shall be requested to appraise the Facilities or other matter submitted to them within thirty (30) days after the second of them shall be nominated. If the lower of the two values so determined by them is within ten percent (10%) less than the higher value, then such two appraisers shall appoint a fit, reputable and impartial person to be umpire between them, if they can agree upon such Person. However, if they cannot agree on an umpire within ten (10) days after the expiration of the aforesaid thirty (30) day period for agreement between them (as determined 'in accordance with the terms hereof), then either party may apply to the Chief District Judge of the appropriate United States District Court (or successor judge exercising similar functions) to appoint a fit, reputable and impartial Person, who shall then be umpire, but if such Chief Judge (or successor) shall fail' or refuse to act within thirty (30) days of application to such Chief Judge then either party may apply to any court having jurisdiction for the appointment of such umpire. The appraisers and any umpire shall be members of The Appraisal institute. The following written decisions shall be conclusive and binding on the parties: the decision of one appraiser if either party shall fail to appoint its appraiser as hereinabove provided; the decision of the two appraisers prior to appointment of the umpire; and the decision of a majority of the two appraisers and the umpire. The two appraisers and umpire shall serve their written decision upon the parties hereto within sixty (60) days after the selection of such umpire, provided the two appraisers may extend that period once up to sixty (60) days by joint Notice to the parties hereto. Each party shall bear the expense of its own appraiser, but the fees and expenses of the umpire shall be shared equally. In no event shall the appraisers have the right or power to vary the terms of this Lease. In determining the value of LESSEE'S interest in the Premises, the appraisers and umpire (if any) shall assume that this Lease is in full force and effect and that LESSOR is obligated to continue performing its obligations under this Lease for the remainder of the Term, including its obligations under Article Fifteen.

ARTICLE EIGHTEEN

ASSIGNMENT, SUBLETTING, AND TRANSFERS OF LESSEE'S INTEREST

Section 18.01. ASSIGNMENT BY LESSEE.

[THIS SECTION MAY REQUIRE REVISION.]

- A. At any time after the Date of Opening, LESSEE without the consent of LESSOR may (i) sell or assign LESSEE'S leasehold estate created by this Lease and the other rights of LESSEE hereunder to any Permitted Assignee, or (ii) merge into or consolidate with any Permitted Assignee.
- B. LESSEE is not authorized to sell or assign LESSEE'S leasehold estate in its entirety or for any portion of the unexpired Term (other than a sale or assignment to a Permitted Assignee) without first obtaining the consent of LESSOR, which consent will not be unreasonably withheld or delayed and any

such assignment made or given without first obtaining LESSOR'S consent shall be null and void.

Section 18.02. SUBLETTING. Except for subleases to Assigned Occupants and except as otherwise set forth in this Lease, including Section 15.07, LESSEE is not authorized to sublet the leasehold estate without the LESSOR'S prior written consent.

Section 18.03. APPLICATION TO PERMITTED MORTGAGES. Nothing contained in this Article Eighteen shall be construed to apply to or otherwise limit the rights of LESSEE to mortgage (or assign for collateral) its leasehold estate and other rights under this Lease to a Permitted Mortgagee, as to which Article Eight shall govern.

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

ARTICLE T E E N
COMPLIANCE CERTIFICATES

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

Section 19.02. LESSEE'S COMPLIANCE. LESSOR agrees, so far as permissible under the laws of the State of Texas, at any time and from time to time, upon not less than thirty (30) days prior written Notice by LESSEE, to execute, **acknowledge** and deliver to LESSEE a statement in writing addressed to LESSEE or to such other party as LESSEE shall request, certifying (a) that this Lease is unmodified and in full force and effect (or if there have been

modifications that the same is in full force and effect as modified and stating the modifications); (b) the dates to which the Rent and other charges have been paid; (c) whether an Event of Default (or, to the best of its knowledge, an Incipient Default) has occurred and is continuing hereunder (and stating the nature of any such Event of Default or Incipient Default); and (d) the dates of commencement and expiration of the Term, it being intended that any such statement delivered pursuant to this Section 19.02 may be relied upon by any prospective assignee, sublessee, or Permitted Mortgagee of this Lease or by any assignee or prospective assignee of any Permitted Mortgage or by any undertenant or prospective undertenant of the whole or any part of the Premises.

ARTICLE TWENTY
TAXES AND FEES

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

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

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

ARTICLE TWENTY-ONE
FORCE MAJEURE

Section 21 .01. DISCONTINUANCE DURING FORCE MAJEURE. Whenever a period of time is herein prescribed for action to be taken by LESSEE or a Permitted Mortgagee, LESSEE shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays due to FORCE MAJEURE. LESSOR shall not be obligated to recognize any delay caused by FORCE MAJEURE unless LESSEE shall, within ten (10) days after LESSEE is aware of the existence on an event of FORCE MAJEURE, notify LESSOR thereof in writing, certified mail, return receipt requested. One (1) Notice shall be sufficient per occurrence. The foregoing notwithstanding, if any such delay is caused by LESSOR there shall be no time limit on the period of enforced delay and LESSEE shall not be required to give Notice to LESSOR hereunder.

ARTICLE TWENTY-TWO
GENERAL

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

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

Section 22.03. NOTICES. Any Notice, communication, request, reply or advice or duplicate thereof (herein severally and collectively, for convenience called "Notice") in this instrument provided or permitted to be given, made or accepted by either party to any other party must be in writing and shall, unless otherwise in this instrument expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this

Lease, from and after the expiration of four (4) days after it is so deposited, regardless of whether or when same is actually received by the addressee, except that in all cases Notice given to the holder of any Permitted Mortgage must be received by such Permitted Mortgage to be effective. Notice in any other manner shall be effective only if and when received by the party to be notified.

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

IF TO LESSOR, TO: The University of Texas of the Permian Basin
Odessa, Texas 79762
Attn: President

**OR IF SENT BY
COURIER, TO:** The University of Texas of the Permian Basin
4901 E. University
Odessa, Texas 79762
Attn: President

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

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

IF TO LESSEE, TO: Odessa Housing Finance Corporation
3800 East 42nd Street, Suite 600
Odessa, Texas 79760
Attn: Mr. James Butler

**IF TO PERMITTED
MORTGAGEE, TO:**

OR IF SENT BY
COURIER, TO:

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

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

Section 22.05. MEMORANDUM OF LEASE. Neither LESSOR nor LESSEE shall file this Lease for record in the Office of the County Clerk of Ector County, Texas, or in any public place without the written consent of the other. In lieu thereof, LESSOR and LESSEE agree to execute in recordable form a Memorandum of Ground Lease, wherein a legal description of the Land, the Term of this Lease and certain other provisions hereof, shall be set forth. Such memorandum shall be filed for record in the Office of the County Clerk of Ector County.

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

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

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

Section 22.09. APPROVAL OF ANCILLARY AGREEMENTS. LESSOR agrees that in the event it becomes necessary or desirable for LESSOR to approve in writing any ancillary agreements or documents concerning the Premises or concerning the construction, operation or maintenance of the Facilities or to alter or amend any such ancillary agreements between LESSOR and LESSEE or to give any approval or consent of LESSOR required under the terms of this Lease, LESSOR hereby authorizes, designates and empowers the President of The University of Texas of the Permian Basin to execute any such agreement, approvals or consents necessary or desirable, subject to required approvals (if any) by appropriate UT System officials.

ARTICLE TWENTY-THREE
MISCELLANEOUS

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

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

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

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

Section 23.05. SEVERABILITY. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

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

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

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

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

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

LESSEE shall not use, occupy, or knowingly permit the Premises to be used or occupied, or do or knowingly permit anything to be done in or on the Premises in a manner which would in any way make void or voidable any insurance then in force with respect thereto, which would make it impossible to obtain the insurance required to be furnished by LESSEE hereunder, which would constitute a public or private nuisance, or which would violate any present or future, ordinary or extraordinary laws, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction.

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

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

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

LESSOR:

THE BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM
FOR THE USE AND BENEFIT OF
THE UNIVERSITY OF TEXAS OF
THE PERMIAN BASIN

AT-TEST:

Arthur H. Dilly
Executive Secretary

By: _____
Bernard Rapoport
Chairman

LESSEE:

ODESSA HOUSING FINANCE CORPORATION
a Texas nonprofit corporation

By: _____

APPROVED AS TO CONTENT:

Charles A. Sorber
President, The University of
Texas of the Permian Basin

APPROVED AS TO FORM:

Max J. Werkenthin
Office of General Counsel

UTPBAPT.LS3
1/10/95

6. U. T. San Antonio - Child Care Facility: Authorization of Project and Approval to Solicit Proposals to Construct and Operate the Facility.--Based on an identified need to provide on-campus child care for students, faculty, and staff of The University of Texas at San Antonio, the Board:

- a. Authorized initiation of a project for a child care facility to accommodate a minimum of 150 children of U. T. San Antonio students, faculty, and staff to be built on an approximately two-acre tract on the U. T. San Antonio campus
- b. Approved U. T. San Antonio's solicitation of proposals from qualified child care providers to construct and operate the facility under a long-term ground lease.

U. T. San Antonio has an enrollment in excess of 17,500 students with a faculty and staff of 2,000. An optimum two-acre site for the child care facility has been identified near the student apartment complex. The site is not over the Edwards Aquifer Recharge Zone and is near existing utilities.

U. T. San Antonio prefers to consider the option of constructing the physical facility with revenue bond proceeds, estimated at \$1 million, to be retired with local Auxiliary Enterprise funds and local Designated Funds. U. T. San Antonio will also consider the option of a long-term ground lease to a private developer if it is determined that such an option is financially and operationally viable. It is anticipated that approval by the Texas Higher Education Coordinating Board will be required if U. T. San Antonio builds the project.

No contractual obligations will be incurred until the analysis of proposals is complete and a formal proposal, including necessary revisions in the Capital Improvement Plan and Capital Budget, is approved by the U. T. Board of Regents.

7. U. T. San Antonio - Engineering/Biotechnology Building - Phase II (Project No. 401-747): Approval of Preliminary Plans and Specifications; Authorization to Prepare Final Plans and Specifications; Submission of the Project to the Coordinating Board; Approval of Evaluation of Solar Energy Economic Feasibility; Advertisement for Bids; Executive Committee Award of Contracts; Appropriation Therefor; and Approval of Use of Revenue Financing System Parity Debt, Receipt of Certificate, and Finding of Fact with Regard to Financial Capacity.--Following a brief overview by President Kirkpatrick, the preliminary plans and specifications for the Engineering/Biotechnology Building - Phase II at The University of Texas at San Antonio were presented to the Facilities Planning and Construction Committee by Mr. John Kell and Mr. Henry Muñoz, representing the Project Architect, JonesKell, San Antonio, Texas.

Based on this presentation, the Board, upon recommendation of the Facilities Planning and Construction Committee:

- a. Approved preliminary plans and specifications for the Engineering/Biotechnology Building - Phase II at U. T. San Antonio at an estimated total project cost of \$17,300,000
- b. Authorized preparation of final plans and specifications in accordance with Step Seven of the revised Capital Improvement Process as set forth in the December 1994 Minutes of the U. T. Board of Regents' meeting
- c. Authorized submission of the project to the Texas Higher Education Coordinating Board
- d. Approved the evaluation of solar energy economic feasibility
- e. Authorized the Office of Facilities Planning and Construction to advertise for bids upon completion of final review
- f. Authorized the Executive Committee to award all contracts associated with this project within the authorized total project cost
- g. Appropriated an additional \$13,900,000 from Tuition Revenue Bond Proceeds for \$17,300,000 in total project funding. Previous appropriations had been \$3,100,000 from Tuition Revenue Bond Proceeds and \$300,000 from General Use Fee Balances.

In compliance with Section 5 of the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System, adopted by the U. T. Board of Regents on February 14, 1991, and amended on October 8, 1993, and upon delivery of the Certificate of an Authorized Representative as set out on Page 159, the Board resolved that:

- a. Parity Debt shall be issued to pay the project's cost including any project costs paid prior to the issuance of such Parity Debt
- b. Sufficient funds will be available to meet the financial obligations of the U. T. System including sufficient Pledged Revenues as defined in the Master Resolution to satisfy the Annual Debt Service Requirements of the Financing System and to meet all financial obligations of the Board relating to the Financing System
- c. U. T. component institutions, which are "Members" as such term is used in the Master Resolution, possess the financial

capacity to satisfy their Direct Obligations as defined in the Master Resolution relating to the issuance by the U. T. Board of Regents of tax-exempt Parity Debt in the amount of **\$13,900,000**

- d. This resolution satisfies the official intent requirements set forth in Section 1.150-2 of the U. S. Treasury Regulations.

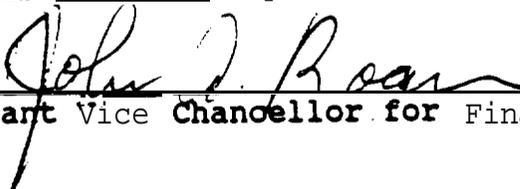
House Bill 2626 of the 73rd Session of the Texas Legislature requires the governing body of the appropriate state agency to verify in an open meeting the economic feasibility of incorporating solar energy devices into new state buildings. Therefore, the Project Architect prepared an evaluation for this project in accordance with instructions from the State Energy Conservation Office of the General Services Commission, and this evaluation determined that a solar-generated domestic hot water system for the project is not economically feasible since steam for this purpose is available at more competitive costs.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget to be funded with \$300,000 in General Use Fee Balances and **\$17,000,000** in Tuition Revenue Bond Proceeds authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative for **\$17,300,000** in total project funding.

PARITY DEBT CERTIFICATE OF U. T. SYSTEM REPRESENTATIVE

I, the undersigned Assistant Vice Chancellor for Finance of The University of Texas System, a U. T. System Representative under the Amended and Restated Master Resolution Establishing The University of Texas System Revenue Financing System adopted by the Board on February 14, 1991, and amended **on** October 8, **1993** (the "**Master** Resolution"), do hereby execute this certificate for the benefit of the Board of Regents pursuant to Section 5(a) (ii) of the Master Resolution in connection with the authorization by the Board to issue "Parity **Debt**" pursuant to the Master Resolution to finance the cost of the construction of the Engineering/Biotechnology Building - Phase II at U. T. San Antonio, and do certify that to the best of my knowledge the Board of Regents is in compliance with all covenants contained in the Master Resolution, First Supplemental Resolution Establishing an Interim Financing Program, and the Second Supplemental Resolution, and is not in default of any of the terms, provisions and conditions in said Master Resolution, First Supplemental Resolution and Second Supplemental Resolution as amended.

EXECUTED this 9 day of February, 1995



Assistant Vice Chancellor for Finance

8. U. T. Health Science Center - San Antonio - Health Sciences Building Program - Allied Health/Research Building (Project No. 402-827): Additional Appropriation.--The Facilities Planning and Construction Committee recommended and the Board appropriated an additional \$410,000 from Tuition Revenue Bond Proceeds issued under the Revenue Financing System for the Allied Health/Research Building at The University of Texas Health Science Center at San Antonio for the prepurchase and installation of a chiller package which will also serve as a backup system for the Robert F. McDermott Clinical Science Building located on the same 25-acre satellite campus west of the main campus. Previous appropriations had been \$900,000 from the same source for fees and administrative expenses through completion of final project plans.

This project is included in the FY 1994-1999 Capital Improvement Plan and the FY 1995 Capital Budget at a total project cost of \$19,000,000 to be funded by Tuition Revenue Bond Proceeds authorized by the 73rd Session of the Texas Legislature as part of the South Texas/Border Initiative.

* * * * *

At the conclusion of the Facilities Planning and Construction Committee meeting, Committee Chairman Temple reported that at today's (February 9) meeting the Board had received a recommendation from the Executive Committee to award five general construction contracts which included a 20.4% participation by Historically Underutilized Businesses, 2.1% by women-owned firms and 18.3% by minority-owned firms.

REPORT AND RECOMMENDATIONS OF THE ASSET MANAGEMENT COMMITTEE (Pages 161 - 233).--Committee Chairman Cruikshank reported that the Asset Management Committee had met in open session to consider those matters on its agenda and to formulate recommendations for the U. T. Board of Regents. Unless otherwise indicated, all actions set forth in the Minute Orders which follow were recommended by the Asset Management Committee and approved in open session and without objection by the U. T. Board of Regents.

At the outset of the meeting of the Asset Management Committee, Chairman Rapoport noted that this would be Regent Cruikshank's last meeting but positively not his last contact with the Board. Mr. Rapoport shared a quote from Emerson -- "Character can do without success." He stated that success is not as important as achievement and in that sense Regent Cruikshank is someone who is unsuccessful but most achieving.

Regent Cruikshank then made the following comments before proceeding with the Asset Management Committee report:

It was just a short six years ago that I arrived to join eight other Regents on this Board. We all came from different walks of life and different backgrounds. We all came without any understanding of the enormity and complexity of The University of Texas System. I see certain threads that ran through the fabric of each Regent. Everyone came with character, with great integrity, and with the understanding that the U. T. System was the most important thing that we had on our plates. We knew there were things that we had to accomplish to make it great, so we worked extremely hard and gave all the time that was necessary. I never saw a Regent who did not give sufficient time and then more time. We should not forget that the Board of Regents could never have been successful without the work of the Chancellor and his staff and academically and medically without, of course, the component presidents and their staff support. It so happened that shortly after I arrived, we began to move the meeting locations from institution to institution and in so doing we were able to measure institutional programs and progress. We were visiting in communities that were supportive of our institutions and assisting the presidents in their community relations programs. I noticed as we visited those institutions that we had a spokesman who stood before the members of the institution and community and spoke from the heart. "B" (Chairman Rapoport), I would like to thank you for your personal support and for your leadership of this Board.

Regent Cruikshank received a round of applause and proceeded to consider the items before the Asset Management Committee.

I. PERMANENT UNIVERSITY FUND

Summary Investment Report at November 30, 1994.--Committee Chairman Cruikshank reviewed the Report on Permanent University Fund Investments and Income at November 30, 1994, as prepared by the Office of Asset Management and as set forth below:

PERMANENT UNIVERSITY FUND¹
SUMMARY REPORT
(\$ millions)

	<u>FY93-94</u>	<u>FY94-95</u>		
	<u>Full Year</u>	<u>Sept./Oct.</u>	<u>Nov.</u>	<u>Year-to-Date</u>
Beginning Market Value	4,468.7	4,428.0	4,354.4	4,428.0
PUF Lands Receipts ²	59.6	9.3	6.5	15.8
Investment Income	242.3	37.3	27.4	64.7
Investment Income Distributed	(242.3)	(37.3)	(27.4)	(64.7)
Realized Gains (Losses)	108.6	6.0	5.0	11.0
Change in Unrealized Gains (Losses)	(208.9)	(88.9)	(93.6)	(182.5)
Ending Market Value	4,428.0	4,354.4	4,272.3	4,272.3
 AUF Income				
Investment Income	242.3 ¹	37.3	27.4	64.7
Surface Income	4.3	0.2	0.2	0.4
Other Income	0.2	0.1	0.0	0.1
Total	246.8	37.6	27.6	65.2

¹Excludes PUF Lands mineral and surface interests with estimated values of \$391.6 million and \$105 million, respectively.

²As of November 30, 1994: 782,144 acres under lease, 519,917 producing acres, 2,596 active leases.

³Amended to exclude fees previously reflected as offset to income.

II. COMMON TRUST FUND

Summary Investment Report at November 30, 1994. --Committee Chairman Cruikshank reviewed the Report on Common Trust Fund Investments and Income at November 30, 1994, as prepared by the Office of Asset Management and as set forth below:

COMMON TRUST FUND
SUMMARY REPORT
(\$ millions)

	<u>FY93-94</u>	<u>FY94-95</u>	
	<u>Full Year</u>	<u>1st Otr</u>	<u>Year-to-Date</u>
Beginning Market Value	1,128.0	1,226.3	1,226.3
Contributions	111.8	16.9	16.9
Investment Income	62.3	15.8	15.8
Expenses	(2.1)	(0.6)	(0.6)
Distributions	(62.7)	(16.3)	(16.3)
Realized Gains (Losses)	36.3	1.9	1.9
Change in Unrealized Gains (Losses)	<u>(47.3)</u>	<u>(50.8)</u>	<u>(50.8)</u>
Ending Market Value	1,226.3	1,193.2	1,193.2
Net Asset Value per Unit	3.336	3.202	3.202
No. of Units (End of Period)	367,542,933	372,595,190	372,595,190
Distribution Rate per Unit	.175	0.04375	0.04375

III. TRUST AND SPECIAL FUNDS

Gifts, Bequests and Estates

1. U. T. Arlington: Approval to Accept Gift from Mrs. Janice N. Holmes, Fort Worth, Texas, and to Establish the Jack Thomas and Janice N. Holmes Scholarship for Classical Studies.--The Board, upon recommendation of the Asset Management Committee, accepted a \$20,000 gift from Mrs. Janice N. Holmes, Fort Worth, Texas, and established the Jack Thomas and Janice N. Holmes Scholarship for Classical Studies at The University of Texas at Arlington.

Income earned from the endowment will be used to provide scholarship support for motivated and academically able undergraduate and graduate students pursuing a degree with a concentration in Classical Studies.

2. U. T. Arlington: Authorization to Accept Gifts from Mr. Lloyd C. Clark, Sun City West, Arizona, and Family and to Establish the Taylor Family UTA President's Scholarship Fund.--Authorization was given to accept \$10,110 in gifts from Mr. Lloyd C. Clark, Sun City West, Arizona, and members of his extended family and to establish the Taylor Family UTA President's Scholarship Fund at The University of Texas at Arlington.

Income earned from the endowment will be used to award scholarships to Tarrant County Community College honor students who transfer to U. T. Arlington.

3. U. T. Austin: Acceptance of Gift and Pledge from Abbott Laboratories, Abbott Park, Illinois, and Establishment of the Abbott Laboratories Endowed Presidential Scholarship in Pharmacy in the College of Pharmacy.--The Asset Management Committee recommended and the Board accepted a \$12,500 gift and a \$12,500 pledge, payable by December 31, 1995, from Abbott Laboratories, Abbott Park, Illinois, for a total of \$25,000 and established the Abbott Laboratories Endowed Presidential Scholarship in Pharmacy in the College of Pharmacy at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to students in the College of Pharmacy.

4. U. T. Austin - School of Law: Acceptance of Gifts from Ms. Joyce Madeline Burg, Houston, Texas, and Establishment of the (a) Bertha Wagner Burg Professorship in Law, (b) Dr. Abner and Sylvan Auldan Burg Professorship in Law, and (c) Joyce M. Burg Professorship in Law.--Upon recommendation of the Asset Management Committee, the Board accepted gifts consisting of \$40,000 and real property described as Lot 6, Block 11, Braeswood, a subdivision in Harris County, Texas, also known as 2311 Bluebonnet Street,

Houston, Texas, valued at \$260,000 from Ms. Joyce Madeline Burg, Houston, Texas, for a total gift value of \$300,000 and established the following three endowments in the School of Law at The University of Texas at Austin:

- a. Bertha Wagner Burg Professorship in Law
- b. Dr. Abner and Sylvan Auldan Burg Professorship in Law
- c. Joyce M. Burg Professorship in Law.

Income earned from these endowments will be used to support the Professorships.

5. U. T. Austin - School of Law: Establishment of the (a) Paul DeWitt Connor Endowed Presidential Scholarship in Law and (b) Dick DeGuerin Endowed Presidential Scholarship in Law.--The following endowments in the School of Law at The University of Texas at Austin were established with the understanding that the funds for the endowments will be held and administered by The University of Texas Law School Foundation (an external foundation) in accordance with the Regents' Rules and Regulations:

- a. Paul DeWitt Connor Endowed Presidential Scholarship in Law (\$50,000)
- b. Dick DeGuerin Endowed Presidential Scholarship in Law (\$25,000).

Income earned from the endowments will be used to award scholarships to law students selected at the discretion of the Dean of the School of Law or the Dean's designee. Scholarship awards for the DeGuerin Scholarship may additionally be based on merit or need.

6. U. T. Austin: Acceptance of Gift from Mr. and Mrs. James T. (Dorothy) Doyle, Fredericksburg, Texas; Establishment of the Doyle Professorship in Western Civilization in the College of Liberal Arts; and Designation of Interest for Addition to the Laurie Petermann Jenschke Scholarship Administered Through the Ex-Students' Association Endowed Scholarships.--The Board, upon recommendation of the Asset Management Committee, accepted a gift of municipal bonds valued at approximately \$102,250 from Mr. and Mrs. James T. (Dorothy) Doyle, Fredericksburg, Texas, and established the Doyle Professorship in Western Civilization in the College of Liberal Arts at The University of Texas at Austin.

Income earned from the endowment will be used to support the Professorship and to provide programmatic support for the Humanities Program in the College of Liberal Arts.

Further, the Board designated the interest realized upon maturity of the gifted municipal bonds for addition to the Laurie Petermann Jenschke Scholarship which is administered for the benefit of music students through the Ex-Students' Association Endowed Scholarships.

7. U. T. Austin: Acceptance of Gift and Pledge from The Eckerd Corporation Foundation, Clearwater, Florida; Establishment of the Eckerd Endowed Presidential Scholarship in Pharmacy No. 1 in the College of Pharmacy; and Eligibility for Matching Funds Under The Brackenridge Matching Program #2.--The Asset Management Committee recommended and the Board accepted a \$20,000 gift and a \$5,000 pledge, payable by December 31, 1995, from The Eckerd Corporation Foundation, Clearwater, Florida, for a total of \$25,000 and established the Eckerd Endowed Presidential Scholarship in Pharmacy No. 1 in the College of Pharmacy at The University of Texas at Austin.

Further, matching funds in the amount of \$12,500 will be reserved under The Brackenridge Matching Program #2 to be allocated proportionately as gifts are received to increase the endowment to a total of \$37,500.

Income earned from the endowment will be used to provide scholarship support to students in the College of Pharmacy.

8. U. T. Austin: Approval to Accept Gifts from Members of The University of Texas Psi Chapter of Eta Kappa Nu (HKN), Austin, Texas, and to Establish the Eta Kappa Nu Endowed Scholarship in Electrical and Computer Engineering in the College of Engineering.--Approval was given to accept \$10,000 in gifts from members of The University of Texas Psi Chapter of Eta Kappa Nu (HKN), Austin, Texas, and to establish the Eta Kappa Nu Endowed Scholarship in Electrical and Computer Engineering in the Department of Electrical and Computer Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to award scholarships to undergraduates who have academic merit in the electrical engineering discipline, good character, and interest in and potential for a successful career in engineering.

9. U. T. Austin: Acceptance of Transfer of Funds and Establishment of the Carolyn L. and Gerhard J. Fonken Endowed Presidential Scholarship.--Authorization was given to accept a \$50,000 transfer of President's discretionary funds and to establish a quasi-endowment at The University of Texas at Austin to be named the Carolyn L. and Gerhard J. Fonken Endowed Presidential Scholarship.

Income earned from the endowment will be used to award scholarships under the Endowed Presidential Scholarship program to outstanding undergraduate students at U. T. Austin. The Office of Student Financial Services will administer the scholarship awards.

10. U. T. Austin: Redesignation of the Judy Spence Frank Fellowship for Excellence in the College of Education as the Judy Spence Tate Fellowship for Excellence.--The Board, upon recommendation of the Asset Management Committee, redesignated the Judy Spence Frank Fellowship for Excellence in the College of Education at The University of Texas at Austin as the Judy Spence Tate Fellowship for Excellence.

This redesignation was made with the concurrence of the donors to reflect the new married name of Mrs. Judy Spence Tate.

11. U. T. Austin: Acceptance of Gifts from Various Donors and Establishment of the Robert Herman Endowed Scholarship in the College of Engineering.--The Asset Management Committee recommended and the Board accepted gifts in the amount of \$17,291 from various donors and established the Robert Herman Endowed Scholarship in the Department of Civil Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support for graduate students with the interest and talent to apply analytical, mathematical, and quantitative approaches to problem solving in the general field of transportation science. Preference for the scholarship will be given to Ph.D. candidates in the Transportation area of Civil Engineering, but it may be awarded to graduate students in other programs or other colleges who exhibit the required qualities.

12. U. T. Austin: Acceptance of Bequest from the Estate of Anna Mae Hutchison, Greenville, Texas, and Establishment of the Anna Mae Hutchison Endowed Scholarship Fund.--Approval was given to accept a bequest of the residue of the Estate of Anna Mae Hutchison, Greenville, Texas, valued in excess of \$2,620,000, and to establish the Anna Mae Hutchison Endowed Scholarship Fund at The University of Texas at Austin.

Eighty percent of income earned from the endowment will be used for scholarship support. The remaining twenty percent of income earned will be used for scholarship support for visually impaired students, for instruction materials, and for educating teachers and instructors of the visually impaired.

13. U. T. Austin: Acceptance of Gifts from Mr. and Mrs. Jerry (Linda) Ivey, Dallas, Texas, and Family and Friends and Establishment of the David Howard Ivey Memorial Endowed Scholarship in the College of Liberal Arts.--Upon recommendation of the Asset Management Committee, the Board accepted a \$7,310 gift from Mr. and Mrs. Jerry (Linda) Ivey, Dallas, Texas, and \$2,690 in gifts from family and friends for a total of \$10,000 and established the David Howard Ivey Memorial Endowed Scholarship in the Department of Psychology, College of Liberal Arts, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to students who are majoring in psychology and who are involved in internships or volunteer work.

14. U. T. Austin: Acceptance of Gifts from Mr. Jerry Odell Jones, Dallas, Texas, and Various Donors and Establishment of the Michael Aubrey Jones Endowed Scholarship in Art in the College of Fine Arts.--The Board, upon recommendation of the Asset Management Committee, accepted a \$7,930 gift from Mr. Jerry Odell Jones, Dallas, Texas, and \$2,070 in gifts from various donors for a total of \$10,000 and established the Michael Aubrey Jones Endowed Scholarship in Art in the Department of Art and Art History, College of Fine Arts, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to visual arts students in the Department of Art and Art History who have demonstrated academic excellence, promise, and talent, with preference given to undergraduate or graduate students majoring in design.

15. U. T. Austin: Authorization to Accept Gift from Mrs. Fay Deen Krejci, Borger, Texas, and to Establish the Joe C. Krejci Endowed Scholarship in Chemical Engineering in the College of Engineering.--Authorization was granted to accept a \$10,000 gift from Mrs. Fay Deen Krejci, Borger, Texas, and to establish the Joe C. Krejci Endowed Scholarship in Chemical Engineering in the Department of Chemical Engineering, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to junior and senior chemical engineering students who have shown academic achievement, good character, and interest in and potential for a successful engineering career.

16. U. T. Austin: Acceptance of Gift from Dr. Nasser I. Al-Rashid, Riyadh, Saudi Arabia, and Establishment of the Clyde E. Lee Endowed Professorship in Transportation Engineering in the College of Engineering.--Approval was given to accept a \$100,000 gift from Dr. Nasser I. Al-Rashid, Riyadh, Saudi Arabia, and to establish the Clyde E. Lee Endowed Professorship in Transportation Engineering in the Department of Civil Engineering, College of Engineering, at The University of Texas at Austin.

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

17. U. T. Austin: Authorization to Accept Gifts from Mr. and Mrs. Sanford (Joyce) Lobliner, Houston, Texas, and Various Donors and to Establish the Debra Beth Lobliner Graduate Fellowship in Developmental Psychology in the College of Liberal Arts.--Upon recommendation of the Asset Management Committee, the Board accepted a \$15,000 gift from Mr. and Mrs. Sanford (Joyce) Lobliner, Houston, Texas, and \$16,110 in gifts from various donors for a total of \$31,110 and established the Debra Beth Lobliner Graduate Fellowship in Developmental Psychology in the Department of Psychology, College of Liberal Arts, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to graduate students in Developmental Psychology who demonstrate strong research potential and for support of individual graduate student research initiatives, including travel to scholarly conferences.

18. U. T. Austin: Acceptance of Gift from Lockheed Fort Worth Company, Fort Worth, Texas, and Transfer of Funds and Establishment of the Lockheed-Martin Endowed Scholarship in the College of Engineering.--The Board, upon recommendation of the Asset Management Committee, accepted a \$5,000 gift from the Lockheed Fort Worth Company, Fort Worth, Texas, and a \$5,000 transfer of College of Engineering Dean's discretionary funds for a total of \$10,000 and established the Lockheed-Martin Endowed Scholarship in the Department of Aerospace Engineering and Engineering Mechanics, College of Engineering, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to junior and senior students in the Department of Aerospace Engineering and Engineering Mechanics at U. T. Austin.

19. U. T. Austin: Acceptance of Bequest from the Estate of Jed Mace, Dallas, Texas, for the Harry Ransom Humanities Research Center.--The Asset Management Committee recommended and the Board accepted a specific bequest of a library book collection, photographs, and memorabilia valued at \$73,000 from the Estate of Jed Mace, Dallas, Texas, for the benefit of the Harry Ransom Humanities Research Center at The University of Texas at Austin.

20. U. T. Austin: Approval to Accept Transfer of Funds and to Establish the Sonya Clark McDonald Machemehl Endowed Presidential Scholarship in the College of Business Administration.--A \$10,874.19 transfer of previously reported gifts from Mr. and Mrs. Charles A. (Sonya) Machemehl, Jr., Birmingham, Alabama, was accepted to establish the Sonya Clark McDonald Machemehl Endowed Presidential Scholarship in the College of Business Administration at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to undergraduate students in the College of Business Administration.

21. U. T. Austin: Acceptance of Gifts from Mr. and Mrs. Dennis (Suzan) Parker, Houston, Texas, and Family and Friends and Establishment of the Douglas A. Parker Memorial Endowed Presidential Scholarship in the College of Business Administration.--Upon recommendation of the Asset Management Committee, the Board accepted \$27,456 in gifts from Mr. and Mrs. Dennis (Suzan) Parker, Houston, Texas, and family and friends and established the Douglas A. Parker Memorial Endowed Presidential Scholarship in the College of Business Administration at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to students in the College of Business Administration based on scholastic merit and need.

22. U. T. Austin: Approval to Accept Transfer of Funds and to Establish the Petroleum Industry Endowed Scholarship in the College of Business Administration and the Graduate School of Business.--Pursuant to authority granted under Section 65.36(f) of the Texas Education Code, the Asset Management Committee recommended and the Board approved a \$30,000 transfer of unrestricted funds and established a quasi-endowment in the College of Business Administration and the Graduate School of Business at The University of Texas at Austin to be named the Petroleum Industry Endowed Scholarship. These funds represent past contributions to the Petroleum Land Management Student Association, an organization which is no longer active on the campus.

Income earned from the endowment will be used to award scholarships to undergraduate and graduate students enrolled in the College of Business Administration and the Graduate School of Business who are pursuing majors or concentrations in a petroleum industry field or in environment related areas, including, but not limited to, environmental management and ecological marketing.

23. U. T. Austin: Acceptance of Gift from the Warren Skaaren Charitable Trust, Austin, Texas, and Establishment of the Warren Skaaren Endowed Presidential Scholarship in the College of Communication.--Authorization was given to accept a \$35,000 gift from the Warren Skaaren Charitable Trust, Austin, Texas, and to establish the Warren Skaaren Endowed Presidential Scholarship in the Department of Radio-Television-Film, College of Communication, at The University of Texas at Austin.

Income earned from the endowment will be used to provide scholarship support to junior, senior, or graduate students pursuing a major in the film industry field, including screen writing, directing, and cinema photography.

24. U. T. Austin: Acceptance of Bequest from the Estate of Maggie Dee Stell, Leon County, Texas, and Establishment of the Maggie Dee Stell Endowed Scholarship Fund.--The Board, upon recommendation of the Asset Management Committee, accepted a bequest of the residue of the Estate of Maggie Dee Stell, Leon County, Texas, valued at approximately \$1,139,140.45, with \$939,140.45 received to date, and established the Maggie Dee Stell Endowed Scholarship Fund at The University of Texas at Austin.

Income earned from the endowment will be used to provide annual scholarship awards to deserving students who otherwise would not be able to attend U. T. Austin. Recipients shall be students who have shown academic achievement, good character, and interest in and potential for a successful career.

25. U. T. Austin - Texas Union Lectureship in Student Leadership in the College of Education: Authorization to Transfer Management to the Office of the Executive Vice President and Provost.--Upon recommendation of the Asset Management Committee, the management of the Texas Union Lectureship in Student Leadership in the College of Education at The University of Texas at Austin was transferred to the Office of the Executive Vice President and Provost.

This transfer was made with the concurrence of the Office of the Executive Vice President and Provost, the College of Education, and the Texas Union administration and was reviewed and approved by The University of Texas System Office of General Counsel.

26. U. T. Austin: Acceptance of Transfer of Funds to Establish the (a) Burdine Anderson Giese Endowed Scholarship in Studio Art, (b) William Mozart McVey Endowed Scholarship in Sculpture, and (c) Lomis Slaughter, Jr. Endowed Scholarship in Sculpture in the College of Fine Arts and (d) Mary and Ben Anderson Endowment for Graduate Studies in Geology in the College of Natural Sciences.--The Asset Management Committee recommended and the Board accepted a \$105,000 transfer from current restricted funds, comprised of part of a previously reported gift from Mr. and Mrs. Ben M. (Mary) Anderson, Houston, Texas, and established four endowments at The University of Texas at Austin as follows:

- a. Endowments for the benefit of the Department of Art and Art History, College of Fine Arts:

(1) Burdine Anderson Giese Endowed Scholarship in Studio Art	\$25,000
(2) William Mozart McVey Endowed Scholarship in Sculpture	\$20,000
(3) Lomis Slaughter, Jr. Endowed Scholarship in Sculpture	\$20,000

Income earned from these three endowments will be used to provide scholarship support to undergraduate or graduate students in the College of Fine Arts in the fields noted in the respective endowment names.

- b. Endowment for the benefit of the Department of Geological Sciences, College of Natural Sciences:

Mary and Ben Anderson Endowment for Graduate Studies in Geology	\$40,000
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Income earned from the endowment will be used to provide support for graduate students and graduate programs in the Department of Geological Sciences, College of Natural Sciences.

27. U. T. Brownsville: Acceptance of Gift and Pledge from Mr. and Mrs. Ruben Edelstein, Brownsville, Texas, and Establishment of the Bernice and Ruben Edelstein Dean's Scholar Endowment.--A \$10,000 gift and a \$15,000 pledge, payable by December 31, 1998, from Mr. and Mrs. Ruben Edelstein, Brownsville, Texas, for a total of \$25,000 were accepted to establish the Bernice and Ruben Edelstein Dean's Scholar Endowment at The University of Texas at Brownsville.

Income earned from the endowment will be used to provide scholarship support to upper-level undergraduate students in the School of Business who have demonstrated outstanding academic performance.

28. U. T. Brownsville: Acceptance of Gift and Pledge from Mercantile Bank, N.A., Brownsville, Texas, and Establishment of the Mercantile Bank Faculty Fellowship in Science & Technology in the College of Science, Mathematics, and Technology.--Upon recommendation of the Asset Management Committee, the Board accepted a \$12,000 gift and a \$48,000 pledge, payable by December 31, 1998, from Mercantile Bank, N.A., Brownsville, Texas, for a total of \$60,000 and established the Mercantile Bank Faculty Fellowship in Science & Technology in the College of Science, Mathematics, and Technology at The University of Texas at Brownsville.

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

29. U. T. Brownsville: Acceptance of Gifts and Pledges from Mr. and Mrs. Fred W. (Frances) Rusteberg and the Extended Rusteberg Family, Brownsville, Texas, and Establishment of the Jessie Cabler Rusteberg Dean's Scholar Endowment.--Approval was given to accept \$15,271.50 in gifts and \$9,728.50 in pledges, payable by December 31, 1998, from Mr. and Mrs. Fred W. (Frances) Rusteberg and the extended Rusteberg Family, Brownsville, Texas, for a total of \$25,000 and to establish the Jessie Cabler Rusteberg Dean's Scholar Endowment at The University of Texas at Brownsville.

Income earned from the endowment will be used to provide scholarship support for continuing upper-level students with demonstrated outstanding academic performance and financial need.

30. U. T. El Paso: Acceptance of Gift from the Children of Mrs. Catherine Crowell Belk, El Paso, Texas, and Establishment of the Catherine Crowell Belk Art Scholarship Fund.--The Board, upon recommendation of the Asset Management Committee, accepted a \$10,000 gift from the children of Mrs. Catherine Crowell Belk, El Paso, Texas, and established the Catherine Crowell Belk Art Scholarship Fund at The University of Texas at El Paso.

Income earned from the endowment will be used to support scholarships for graduate or undergraduate art students, with preference given to female students returning to U. T. El Paso to pursue an art degree after a hiatus in their studies.

31. U. T. El Paso: Acceptance of Gifts from Various Donors and Establishment of the Esther and Louis Benson Endowed Scholarship Fund.--The Asset Management Committee recommended and the Board accepted \$10,000 in gifts from various donors and established the Esther and Louis Benson Endowed Scholarship Fund at The University of Texas at El Paso.

Income earned from the endowment will be used to award scholarships to senior and/or graduate nursing students in the College of Nursing and Health Sciences who are pursuing careers in a community health-related field.

32. U. T. El Paso: Acceptance of Gift from Mr. Hughes Butterworth, Jr., and Family, El Paso, Texas; Establishment of the Hughes Butterworth, Jr. and Family Presidential Leadership Fund; and Designation of One-Half of the Gift for Current Purposes.--A gift of 3,750 shares of Lawyers Title Corporation common stock, valued at \$45,000, from Mr. Hughes Butterworth, Jr., and family, El Paso, Texas, was accepted for the benefit of The University of Texas at El Paso, and one-half of the gift was used to establish the Hughes Butterworth, Jr. and Family Presidential Leadership Fund.

Income earned from the endowment and the remaining one-half of the gift will be used, at the discretion of the President of U. T. El Paso, to support activities and programs at U. T. El Paso with emphasis on the promotion of international relations and educational and economic development within the El Paso community.

33. U. T. El Paso: Acceptance of Bequest from the Estate of Bertha L. Warden, El Paso, Texas, and Establishment of the Milton T. & Bertha L. Warden UTEP Basketball Endowment Fund.--The Board, upon recommendation of the Asset Management Committee, accepted a bequest of one-half of the residue of the Estate of Bertha L. Warden, El Paso, Texas, valued at \$159,981.97 and established a quasi-endowment at The University of Texas at El Paso to be named the Milton T. & Bertha L. Warden UTEP Basketball Endowment Fund.

Income earned from the endowment will be used to provide support to the basketball program at U. T. El Paso.

34. U. T. Pan American: Acceptance of Gift from Mr. Louis A. Beecherl, Jr., Dallas, Texas, and Establishment of the (a) Louis A. Beecherl, Jr. Professorship in Engineering Endowment and (b) Julia Beecherl Professorship in Engineering Endowment.--Authorization was given to accept a \$500,000 gift from Mr. Louis A. Beecherl, Jr., Dallas, Texas, and to establish two Professorships with \$250,000 each at The University of Texas - Pan American as follows:

- a. Louis A. Beecherl, Jr. Professorship in Engineering Endowment
- b. Julia Beecherl Professorship in Engineering Endowment.

Income earned from these endowments will be used to support the Professorships.

35. U. T. Permian Basin: Authorization to Accept Grant from the Abell-Hanger Foundation, Midland, Texas, and Challenge Funds from Houston Endowment Inc., Houston, Texas, and to Establish the Abell-Hanger Endowed Scholarship Fund.--A \$67,000 grant from the Abell-Hanger Foundation, Midland, Texas, and \$33,500 in matching challenge funds from Houston Endowment Inc., Houston, Texas, for a total of \$100,500 were accepted to establish the Abell-Hanger Endowed Scholarship Fund at The University of Texas of the Permian Basin.

Income earned from the endowment will be used to provide scholarship support for junior and senior-level students transferring to U. T. Permian Basin subsequent to graduation from Midland Junior College District and who were recipients of Abell-Hanger Foundation scholarship(s) while attending Midland College.

36. U. T. Permian Basin: Acceptance of Gift from Bank One, Texas, NA, Odessa, Texas, and Challenge Funds from Houston Endowment Inc., Houston, Texas, and Establishment of the Bank One Presidential Scholarship Endowment.--The Asset Management Committee recommended and the Board accepted a \$20,000 gift from Bank One, Texas, NA, Odessa, Texas, and \$10,000 in matching challenge funds from Houston Endowment Inc., Houston, Texas, for a total of \$30,000 and established the Bank One Presidential Scholarship Endowment at The University of Texas of the Permian Basin.

Income earned from the endowment will be used to award scholarships to freshman students, with preference given to Bank One, Texas, NA employees and/or their children.

37. U. T. Southwestern Medical Center - Dallas: Redesignation of the Aradine S. Ard Professorship in Brain Science as the Aradine S. Ard Chair in Brain Science.--The Board, upon recommendation of the Asset Management Committee, redesignated the Aradine S. Ard Professorship in Brain Science at The University of Texas Southwestern Medical Center at Dallas as the Aradine S. Ard Chair in Brain Science. Funds for the Chair will continue to be held and administered by the Southwestern Medical Foundation (an external foundation), Dallas, Texas.

38. U. T. Southwestern Medical Center - Dallas: Acceptance of Grant from the David Bruton, Jr. Charitable Trust, Dallas, Texas; Establishment of The David Bruton, Jr. Medical Scientist Scholarship Fund; and Allocation of Funds from the Private Fund Development Campaign.--Authorization was granted to accept a \$100,000 grant from the David Bruton, Jr. Charitable Trust, Dallas, Texas, and to establish The David Bruton, Jr. Medical Scientist Scholarship Fund at The University of Texas Southwestern Medical Center at Dallas.

Further, \$100,000 will be allocated from the \$12,500,000 challenge fund established with MSRDP funds at the U. T. Southwestern Medical Center - Dallas as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$200,000.

Income earned from the endowment will be used to provide scholarship support to outstanding students in the Medical Scientist Training Program at the U. T. Southwestern Medical Center - Dallas.

39. U. T. Southwestern Medical Center - Dallas: Approval to Accept Bequest from the Estate of Erma Hewitt Folsom, Dallas, Texas.--A bequest of twenty-five percent of the residue of the Estate of Erma Hewitt Folsom, Dallas, Texas, for a total of \$27,674.79, was accepted for the unrestricted use of the Department of Urology at The University of Texas Southwestern Medical Center at Dallas.

40. U. T. Southwestern Medical Center - Dallas: Redesignation of the Betty Jo Hay Chair in Mental Health as the Betty Jo Hay Distinguished Chair in Mental Health and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Approval was given to redesignate the Betty Jo Hay Chair in Mental Health at The University of Texas Southwestern Medical Center at Dallas as the Betty Jo Hay Distinguished Chair in Mental Health with a total endowment of \$1,010,000.

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

41. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift from Mr. and Mrs. Thomas O. (Cinda) Hicks, Dallas, Texas; Establishment of the Thomas O. Hicks Family Distinguished Chair in Alzheimer's Disease Research; Allocation of Funds from the Private Fund Development Campaign; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--The Asset Management Committee recommended and the Board accepted a gift, comprised of 14,884 shares of Sybron International Corporation common stock, valued at \$526,521.50, from Mr. and Mrs. Thomas O. (Cinda) Hicks, Dallas, Texas, and established the Thomas O. Hicks Family Distinguished Chair in Alzheimer's Disease Research at The University of Texas Southwestern Medical Center at Dallas.

Further, \$526,521.50 will be allocated from the \$25,000,000 challenge fund established by an anonymous donor as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$1,053,043.

In addition, the actual income that will be earned on the \$526,521.50 gift and the \$526,521.50 in challenge funds will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

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

42. U. T. Southwestern Medical Center - Dallas: Acceptance of Gift and Pledge from Mr. Jake Tobolowsky, Dallas, Texas; Establishment of the Jake Tobolowsky Visiting Professorship Fund in Psychiatry in Memory of Helen B. Tobolowsky and in Honor of Dr. David M. Tobolowsky; and Allocation of Funds from the Private Fund Development Campaign.--Upon recommendation of the Asset Management Committee, the Board accepted a \$25,000 gift and a \$25,000 pledge, payable by December 31, 1995, from Mr. Jake Tobolowsky, Dallas, Texas, for a total of \$50,000 and established the Jake Tobolowsky Visiting Professorship Fund in Psychiatry in Memory of Helen B. Tobolowsky and in Honor of Dr. David M. Tobolowsky at The University of Texas Southwestern Medical Center at Dallas.

Further, \$50,000 will be allocated from the \$12,500,000 challenge fund established with MSRDP funds at the U. T. Southwestern Medical Center - Dallas as part of the Private Fund Development Campaign and will be used to increase the endowment to a total of \$100,000.

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

43. U. T. Southwestern Medical Center - Dallas: Dissolution of the (a) Nerve Regeneration Endowment Fund, (b) Nerve Regeneration Endowment Fund No. 2, and (c) Southwestern Ball 1993 Endowment Fund; Acceptance of Transfer of Funds to Establish the Kent Waldrep Foundation Center for Basic Neuroscience Research (an Endowment); and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.-- Authorization was granted to dissolve the following three endowments at The University of Texas Southwestern Medical Center at Dallas and to transfer the funds in each, totaling \$2,629,399.92, to establish an endowment at the U. T. Southwestern Medical Center - Dallas to be named the Kent Waldrep Foundation Center for Basic Neuroscience Research:
- a. Nerve Regeneration Endowment Fund
 - b. Nerve Regeneration Endowment Fund No. 2
 - c. Southwestern Ball 1993 Endowment Fund.

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

Income earned from the endowment will be used to support basic research related to nerve growth, function, and regeneration by faculty appointed to endowed positions at the Kent Waldrep Foundation Center for Basic Neuroscience Research.

This action, which has the concurrence of the original primary donors as well as the approval of The University of Texas System Office of General Counsel, will result in the more effective administration of these funds which were all originally donated "to support basic research related to nerve growth, function, and regeneration."

44. U. T. Medical Branch - Galveston: Dissolution of The Harry K. Davis Research and Educational Development Fund for Physician's Assistant Program.--At the request of the original donor, Harry K. Davis, M.D., Coronado, California, the Board dissolved The Harry K. Davis Research and Educational Development Fund for Physician's Assistant Program at The University of Texas Medical Branch at Galveston and returned the funds for current purposes as determined by the Dean of the U. T. Allied Health Sciences School - Galveston.

45. U. T. Medical Branch - Galveston: Acceptance of Bequest from the Estate of Hazel H. Ransom, Austin, Texas, and Establishment of the Harry Hunt Ransom Fellowship in the Medical Humanities.--The Asset Management Committee recommended and the Board accepted a residuary bequest of \$50,000 from the Estate of Hazel H. Ransom, Austin, Texas, and established the Harry Hunt Ransom Fellowship in the Medical Humanities at The University of Texas Medical Branch at Galveston.

This Fellowship was established pursuant to authority granted under Section 65.36(f) of the Texas Education Code.

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

46. U. T. Medical Branch - Galveston: Acceptance of Gifts from Various Donors and Establishment of The Henry Renfert Endowed Scholarship Fund.--Approval was given to accept \$15,225 in gifts from various donors and to establish The Henry Renfert Endowed Scholarship Fund in the U. T. Medical School - Galveston at The University of Texas Medical Branch at Galveston.

Income earned from the endowment will be used to provide scholarships for students in the medical degree program of the U. T. Medical School - Galveston.

47. U. T. Medical Branch - Galveston: Acceptance of Gift from Mr. and Mrs. Peyton A. (Lydia) Schapper, LaMarque, Texas, and Corporate Matching Funds Pledge from Marathon Oil Corporation, Findley, Ohio, and Establishment of The Peyton and Lydia Schapper Endowed Scholarship Fund.--Upon recommendation of the Asset Management Committee, the Board accepted a \$20,000 gift from Mr. and Mrs. Peyton A. (Lydia) Schapper, LaMarque, Texas, and a \$5,000 corporate matching funds pledge, payable by December 31, 1995, from Marathon Oil Corporation, Findley, Ohio, for a total of \$25,000 and established The Peyton and Lydia Schapper Endowed Scholarship Fund in the U. T. Allied Health Sciences School - Galveston at The University of Texas Medical Branch at Galveston.

Income earned from the endowment will be used to provide scholarships for degree-seeking students accepted in the program in the Department of Health Promotion and Gerontology in the U. T. Allied Health Sciences School - Galveston. Scholarship recipients must have an established sound academic record demonstrating their talents and skills and have indicated that Gerontology is their intended career path.

48. U. T. Health Science Center - Houston: Authorization to Redesignate the Distinguished Chair in Cellular Pathology in the Department of Pathology and Laboratory Medicine as the Distinguished Chair in Pathology and Laboratory Medicine.--Authorization was given to redesignate the Distinguished Chair in Cellular Pathology in the Department of Pathology and Laboratory Medicine in the U. T. Medical

School - Houston at The University of Texas Health Science Center at Houston as the Distinguished Chair in Pathology and Laboratory Medicine.

See Page 87 related to an appointment to this Distinguished Chair.

49. U. T. Health Science Center - San Antonio: Acceptance of Transfer of Funds and Establishment of the Rehabilitation Medicine Distinguished Professorship.--The Board, upon recommendation of the Asset Management Committee, accepted a \$250,000 transfer of MSRDP funds and established the Rehabilitation Medicine Distinguished Professorship at The University of Texas Health Science Center at San Antonio.

Income earned from the endowment will be used to support the Distinguished Professorship.

Since this endowment is funded with MSRDP funds, it will be held as "funds functioning as endowment" for accounting purposes.

50. U. T. Health Science Center - San Antonio: Approval to Accept Gift from Dr. and Mrs. J. Marvin Smith, III, San Antonio, Texas, and Other Family Members; Establishment of the Dr. John M. Smith, Jr. Professorship in Family Practice; and Eligibility for Matching Funds Under the Texas Eminent Scholars Program.--Authorization was given to accept a \$100,000 gift from Dr. and Mrs. J. Marvin Smith, III, San Antonio, Texas, and other family members and to establish the Dr. John M. Smith, Jr. Professorship in Family Practice at The University of Texas Health Science Center at San Antonio.

Further, the actual income that will be earned on the \$100,000 gift will be certified to the appropriate State authorities for matching under the Texas Eminent Scholars Program as set out in Chapter 51, Subchapter I of the Texas Education Code, when matching funds are made available under that act.

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

51. U. T. M.D. Anderson Cancer Center - Alando J. Ballantyne Professorship of Head and Neck Surgery: Transfer of Funds and Establishment of the Alando J. Ballantyne Distinguished Lecture Series.--Upon recommendation of the Asset Management Committee, the Board authorized a \$100,000 transfer of accumulated earnings from the Alando J. Ballantyne Professorship of Head and Neck Surgery at The University of Texas M.D. Anderson Cancer Center and established a quasi-endowment to be named the Alando J. Ballantyne Distinguished Lecture Series.

Income earned from the endowment will be used to support an annual lecture series honoring the many contributions of Alando J. Ballantyne, M.D., to the U. T. M.D. Anderson Cancer Center.

This transfer was made with the concurrence of the original donor of the funding for the Alando J. Ballantyne Professorship of Head and Neck Surgery.

52. U. T. M.D. Anderson Cancer Center: Acceptance of Bequest from the Estate of Nellie Austin Polk, Beaumont, Texas.-- The residue of the Estate of Nellie Austin Polk, Beaumont, Texas, totalling \$2,941.96 was accepted for the unrestricted use of The University of Texas M.D. Anderson Cancer Center.

53. U. T. M.D. Anderson Cancer Center: Acceptance of Remainder Interest in the (a) Ruth M. Wilson Trust A, (b) Ruth M. Wilson Trust B, and (c) Robert E. Wilson Revocable Trust, All of Maricopa County, Arizona.-- Approval was given to accept a five percent remainder interest in the Ruth M. Wilson Trust A in the amount of \$6,119.54, a five percent remainder interest in the Ruth M. Wilson Trust B in the amount of \$7,798.29, and a .3125 remainder interest in the Robert E. Wilson Revocable Trust in the amount of \$1,937.66, all of Maricopa County, Arizona, for a total of \$15,855.49, for cancer research at The University of Texas M.D. Anderson Cancer Center.

IV. INTELLECTUAL PROPERTY MATTERS

1. U. T. Health Science Center - Houston: Approval of Patent License, Sponsored Research, and Stock Purchase Agreements with SonoLife, Inc. (SonoLife), Campbell, California; Acceptance of Equity in SonoLife, Inc. by the U. T. System; and Authorization for Dr. Jonathan Ophir to Accept Equity in and Serve on Scientific Advisory Board of SonoLife, Inc.--Upon recommendation of the Asset Management Committee, the Board:
 - a. Approved the Patent License Agreement, Sponsored Research Agreement, and Stock Purchase Agreement between the U. T. Board of Regents, for and on behalf of The University of Texas Health Science Center at Houston, and SonoLife, Inc. (SonoLife), Campbell, California, as set out on Pages 181 - 206

 - b. Approved the acceptance of equity in SonoLife, Inc. by The University of Texas System, for and on behalf of the U. T. Health Science Center - Houston, as partial consideration for the Patent License Agreement

 - c. Authorized the acceptance of equity in and service as Chairman of the Scientific Advisory Board of SonoLife, Inc. by Dr. Jonathan Ophir, Professor in the Department of Radiology at the U. T. Medical School - Houston of the U. T. Health Science Center - Houston.

Dr. Jonathan Ophir has developed computer hardware, software, and associated methods for ultrasound that are useful in medical imaging applications, industrial applications for the quality grading of meat, and in non-imaging medical applications. SonoLife, Inc. is a Texas corporation formed for the purpose of commercializing Dr. Ophir's technology in other than medical diagnostic and therapeutic imaging.

Under the Patent License Agreement, SonoLife is granted a royalty-bearing, exclusive, worldwide license to make, have made, use, or sell the ultrasound technology for the quality grading of meat with an option for non-imaging medical applications. SonoLife will pay the U. T. Health Science Center - Houston four percent (4%) of gross revenues plus one half of consideration received by SonoLife from sublicensees.

SonoLife will issue shares of its common stock in the amounts of 15,000 shares to the U. T. Health Science Center - Houston and 25,000 shares to Dr. Ophir. Thus U. T. Health Science Center - Houston will own fifteen percent (15%) and Dr. Ophir will own twenty-five percent (25%) of stock initially issued by SonoLife. The Stock Purchase Agreement places certain restrictions on the disposition of the shares and sets forth rights of the U. T. Health Science Center - Houston as a shareholder. Dr. Ophir will serve as Chairman of the Scientific Advisory Board of SonoLife.

Under the Sponsored Research Agreement, SonoLife will fund further research for up to five years in amounts that are dependent upon SonoLife's capitalization. Dr. Ophir will direct the research.

PATENT LICENSE AGREEMENT

THIS AGREEMENT is made by and between the BOARD OF REGENTS (“BOARD”) OF THE UNIVERSITY OF TEXAS SYSTEM (“SYSTEM”), an agency of the State of Texas, whose address is 201 West 7th Street, Austin, Texas 78701, and **SonoLife, Inc.** (“LICENSEE”), a Texas Corporation having a principal place of business located at Campbell, California.

WITNESSETH:

Whereas BOARD owns certain PATENT RIGHTS and TECHNOLOGY **RIGHTS** related to LICENSED SUBJECT MATTER, which were developed at The University of Texas Health Science Center at Houston (“UTHSCH”), a component institution of The University of Texas System;

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

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

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

I. EFFECTIVE DATE

This agreement shall be effective as of January 1, 1995 subject to approval by BOARD through its agenda.

II. DEFINITIONS

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

2.1 LICENSED SUBJECT MATTER shall mean inventions and discoveries covered by PATENT RIGHTS or TECHNOLOGY RIGHTS within LICENSED FIELD.

2.2 PATENT RIGHTS shall mean BOARD’S rights in information or discoveries covered by patents and/or patent applications, whether domestic or foreign, and all divisions, continuations, continuations-in-part, reissues, **reexaminations** or extensions thereof, and any letters patent that issue thereon, which name Jonathan Ophir or Youseph Yazdi, as inventor(s), whether sole or otherwise, and which relate to the invention, design, manufacture, use, SALE or LEASE of LICENSED SUBJECT MATTER, including but not limited to those specific patents titled “Method and Apparatus for Measurement and Imaging of Tissue Compressibility or Compliance” which is the subject of U.S. Patent No. **5,107,837**, which issued on April 28, 1992, and “Method and Apparatus for Estimation and Imaging of Tissue Compliance in vivo” which is the subject of PCT application **US90/06736**. PATENT RIGHTS shall also include all of BOARD’s rights in information or discoveries covered by patents and/or patent applications, whether domestic or

foreign, and all divisions, continuations, continuations-in-part, reissues, **reexaminations** or extensions thereof, and any letters patent that issue thereon, which relate to the invention, design, manufacture, use, SALE or LEASE of LICENSED SUBJECT MATTER and which arise out of the research sponsored by LICENSEE pursuant to the Sponsored Research Agreement executed concurrently herewith. PATENT RIGHTS shall not include U.S. Patent No. **5,178,147**, titled "Method and Apparatus for Elastographic Measurement and Imaging" which issued on January 12, 1993, U.S. Patent No. **5,293,870**, titled "Method and Apparatus for Elastographic Measurement and Imaging" which issued on March 15, 1994, and U.S. Patent Application Serial No. **08/212,734** titled "Method and Apparatus for Elastographic Measurement and Imaging" filed March 11, 1994

2.3 TECHNOLOGY RIGHTS shall mean BOARD'S present rights in any technical information, know-how, process, procedure, composition, device, method, formula, protocol, technique, software, design, drawing or data relating to the invention, design, manufacture, use, SALE or LEASE of LICENSED SUBJECT MATTER which are not covered by PATENT RIGHTS but which are necessary for practicing the invention covered by the PATENT RIGHTS at any time during the term of this Agreement and which result from activities conducted under the sponsored Research Agreement.

2.4 LICENSED FIELD shall mean all uses of LICENSED SUBJECT MATTER for meat evaluation.

2.5 OPTION FIELDS shall mean any fields of use other than (i) LICENSED FIELD, and (ii) medical diagnostic and therapeutic imaging.

2.6 LICENSED TERRITORY shall mean the world.

2.7 LICENSED PRODUCT shall mean any product SOLD or LEASED by LICENSEE comprising LICENSED SUBJECT MATTER.

2.8 ROYALTY AMOUNT shall mean the sum of four percent (4%) of the GROSS REVENUE amount for each SALE or LEASE of a LICENSED PRODUCT. A LICENSED PRODUCT shall not be considered SOLD or LEASED if it is placed solely for demonstration or luminary purposes or it is placed for purposes of obtaining governmental or regulatory approvals of **the LICENSED PRODUCT**.

2.9 SALE or SOLD shall mean the commercial **sale**, transfer or disposition of a LICENSED PRODUCT for value to a party other than LICENSEE or a subsidiary of LICENSEE, net of returns and replacements.

2.10 LEASE or LEASED shall mean the commercial lease of LICENSED PRODUCT for value to a party other than LICENSEE or a subsidiary of LICENSEE.

2.11 GROSS REVENUES shall mean gross sales price or lease income minus taxes, shipping fees, import duties and damaged goods returns.

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

III. WARRANTY: SUPERIOR-RIGHTS

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

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

IV. LICENSE

4.1 BOARD hereby grants to LICENSEE a world-wide royalty-bearing, exclusive **LICENSE** under LICENSED SUBJECT MATTER to manufacture, have manufactured, use and/or sell LICENSED PRODUCTS within LICENSED TERRITORY for use within LICENSED FIELD. This grant shall be subject to the payment by LICENSEE to BOARD of all consideration as provided in this AGREEMENT, and shall be further subject to rights retained by BOARD to:

(a) publish the general scientific findings from research related to LICENSED SUBJECT MATTER.

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

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

4.3 LICENSEE shall have the right to grant SUBLICENSES consistent with this Agreement provided that LICENSEE shall require that such SUBLICENSEES be bound by each of the material terms and conditions hereunder, and that LICENSEE be responsible for the payment of royalties whether or not paid to LICENSEE by a SUBLICENSEE. LICENSEE further agrees to deliver to BOARD a true and correct copy of each SUBLICENSE granted by LICENSEE, and any modification or termination thereof, within thirty (30) days after execution, material modification, or termination. Upon termination of this Agreement, any and **all** existing SUBLICENSES granted by LICENSEE shall be assigned to **BOARD**, **subject** to the same obligations which **the** BOARD has to LICENSEE under this Agreement.

4.4 BOARD shall have the right at any time after five (5) years from the date of this Agreement, to terminate the exclusivity of **the license granted** herein in any national political jurisdiction if LICENSEE, within ninety (90) days after written notice from BOARD as to such

intended termination of exclusivity, fails to provide written evidence that it has commercialized or is actively attempting to commercialize the LICENSED SUBJECT MATTER within such jurisdiction. BOARD agrees to negotiate in good faith with LICENSEE for adjusting terms under such a nonexclusive arrangement. BOARD shall have the right at any time after seven (7) years from the date of this Agreement to terminate the license completely in any national political jurisdiction if LICENSEE, within ninety (90) days after written notice from BOARD of such intended termination, fails to provide written evidence that it has commercialized or is actively attempting to commercialize the LICENSED SUBJECT MATTER licensed hereunder within such jurisdiction. Evidence provided by LICENSEE that it has an ongoing and active research, development, manufacturing, marketing or licensing program as appropriate, directed toward production and sale of products based on the LICENSED SUBJECT MATTER within such jurisdiction shall be deemed satisfactory evidence.

V. PAYMENTS AND REPORTS

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

(a) A ROYALTY AMOUNT of four percent (4%) of GROSS REVENUES for each SALE or LEASE of a LICENSED PRODUCT.

(b) With respect to SUBLICENSES, one half (1/2) of any consideration received by LICENSEE from any SUBLICENSEE exclusive of patent and legal cost reimbursement.

5.2 There shall be but one ROYALTY AMOUNT on any LICENSED PRODUCT regardless of the number of PATENT RIGHTS or TECHNOLOGY RIGHTS which may be incorporated or utilized therein.

5.3 During the Term of this Agreement and for one (1) year thereafter, LICENSEE shall keep complete and accurate records of its and its SUBLICENSEE's SALES and/or **LEASES of LICENSED PRODUCTS** under the LICENSE granted in this Agreement in sufficient detail to enable the royalties payable hereunder to be determined. Upon thirty (30) days written notice, and not more often than once each calendar quarter, LICENSEE shall permit BOARD or its representatives, at BOARD'S expense, to periodically examine its books, ledgers, and records during regular business hours for the purpose of and to the extent necessary to verify any amount required under this Agreement. In the event that the amounts due to BOARD are determined to have been underpaid, LICENSEE shall pay the cost of such examination, and accrued interest at the highest allowable rate. **All** such payments shall be due and owing within **thirty** (30) days of notice of the completion of such audit and the report of such discrepancy, except to the extent such notice and report are disputed, in which case such amount shall be due and owing within thirty (30) days of the resolution of such dispute.

5.4 Within thirty (30) days after March 31, June 30, September 30, and December 31, respectively, LICENSEE shall deliver to BOARD a true and accurate report, giving such particulars of the business conducted by LICENSEE and its SUBLICENSEES, if any exist, during the preceding three (3) calendar months under this Agreement as are pertinent to an account for

payments hereunder. Such report shall include at least (a) the total SALES and/or LEASES; (b) the calculation of ROYALTY AMOUNT thereon and amounts payable pursuant to Section 5.1(b); and (c) the total amounts so computed and due BOARD. Simultaneously with the delivery of each such report, LICENSEE shall pay to BOARD the amount, if any, due for the period of such report. If no payments are due, it shall be so reported.

5.5 All amounts payable hereunder by LICENSEE shall be payable in United States funds without deductions for taxes, assessments, fees, or charges of any kind. UTHSCH. is a tax exempt organization under the laws of the State of Texas and of the United States and shall be solely responsible for any taxes which may hereafter be levied upon the ROYALTY AMOUNT payments to BOARD. Checks shall be made payable to The University of Texas Health Science Center at Houston.

5.6 In further consideration, LICENSEE agrees to fund a sponsored research agreement with Jonathan Ophir, D. Eng. as Principal Investigator for a minimum amount of Five Hundred Dollars \$500.00 per year, for a minimum of five (5) years beginning upon the effective date of this Agreement. The scope of the research will be agreed to jointly by LICENSEE and Jonathan Ophir.

VI. COMMON STOCK: EQUITY OWNERSHIP

6.1 In consideration of the rights granted to LICENSEE by BOARD in this AGREEMENT, LICENSEE agrees that upon execution of this AGREEMENT it shall issue BOARD Fifteen Thousand (15,000) fully paid, non-assessable shares of its common stock, \$.01 par value, which shares of stock shall equal fifteen percent (15%) of all shares of its common stock.

6.2 BOARD shall have the right to name directors on the board of directors of LICENSEE in proportion to the number of shares held by BOARD relative to the total number of issued shares, provided, that BOARD shall always have the right to have at least one seat on LICENSEE's board. At its option, BOARD may decline to name a director, but in any event, shall receive notice of each meeting of the board of directors and shall have the right to have an observer attend all such meetings.

6.3 If, as and when LICENSEE issues additional shares of its common stock or any other securities convertible into its common stock in connection with any transaction after the EFFECTIVE DATE of this Agreement and prior to either (i) its initial offering of securities to the public, (ii) sale, transfer or assignment of a controlling interest in LICENSEE, or (iii) sale, transfer or assignment of substantially all the assets of LICENSEE, LICENSEE shall issue to BOARD warrants (hereinafter "WARRANTS") to purchase from LICENSEE additional shares of LICENSEE's common stock (hereinafter "WARRANT SHARES") equal in number to fifteen percent 15 % of the number of shares of common stock or common stock equivalents then being issued by LICENSEE. Such WARRANTS shall be allocated in the same percentages as in paragraph 6.1 [i.e., in the same percentages the stock was owned when the patent license agreement became effective]. The WARRANTS shall be exercisable before the earlier of (a) five (5) years from their date of issue, or (b) their call by LICENSEE (which shall not occur prior to three (3) years from their date of issue). LICENSEE agrees to notify BOARD at least ninety (90) days prior to any transaction involving an exchange of the company's stock or any other securities convertible into its common stock for value, whether for goods or services, and the notice shall

include all details of the transaction. If WARRANTS issued to BOARD and outstanding are not exercised within sixty (60) days prior to the initial public offering of securities by LICENSEE, such WARRANTS shall automatically terminate. LICENSEE shall give BOARD one hundred twenty (120) days written notice prior to the effective date of any such initial public offering. In the event that any of LICENSEE's common stock or securities convertible into common stock is or are issued in a cash transaction, the exercise price per WARRANT SHARE shall be equivalent to the lowest price per share of common stock issued in such transaction. Where the transfer of LICENSEE's stock or securities convertible into common stock is for goods or for services, the exercise price per WARRANT SHARE shall be equivalent to the fair market value of the goods or services obtained by the transfer and shall be calculated according to the previous sentence as though the fair market value of such goods and services were a cash transaction.

VII OPTION

7.1 BOARD grants to LICENSEE an exclusive option to negotiate an exclusive or non-exclusive (as LICENSEE may elect), royalty-bearing, worldwide license to practice LICENSED SUBJECT MATTER as well as any and all of the patents listed in Exhibit A within the OPTION FIELDS, exercisable upon written notice to BOARD at any time during sixty (60) months (subject to Section 7.4) following the Effective Date hereof. In partial consideration of such option, LICENSEE will pay BOARD upon exercise of the option an amount of money as will fully reimburse BOARD's prior patent-related expenditures in respect to searching, preparing, filing, prosecuting and maintaining domestic and foreign PATENT RIGHTS and patents listed in Exhibit A not otherwise reimbursed to BOARD by any other licensee.

7.2 It is agreed by the parties that the license referenced in 7.1 above shall be negotiated in good faith within a period not to exceed one hundred eighty (180) days from LICENSEE's notification to BOARD of its desire to negotiate such a license, or within such other period of time to which the parties shall mutually agree.

7.3 Except as described in Section 7.4 below, BOARD shall not offer the subject matter **optioned** pursuant to Section 7.1 to any third party unless the sixty (60) month notification period described in 7.1 above, or any extension thereof, has expired without the required notification by LICENSEE of its desire to enter into license negotiations, or in the event LICENSEE has provided such notification, the 180 day license negotiation period described in 7.2 above has expired and BOARD and LICENSEE have failed to enter into a license agreement.

7.4 If at any time during the term of this option or any extension thereof BOARD receives a bona **fide** detailed plan (which may include but is not limited to a Sponsored Research Agreement which grants rights to the research results to the Sponsor) to develop and/or commercialize an invention and/or discovery covered under the subject matter **optioned** pursuant to Section 7.1 from a third party (such as a governmental agency, or a commercial entity other than LICENSEE) with resources reasonably necessary to develop and commercialize such invention and/or discovery, BOARD may give written notice to LICENSEE of such event. LICENSEE then shall within sixty (60) days by written notice to BOARD its intent to: (i) elect to negotiate an exclusive license of such invention and/or discovery; (ii) send to BOARD a bona fide detailed plan (**which may** include but is not limited to a Sponsored Research Agreement) to develop and/or commercialize such invention and/or discovery on a schedule that either reasonably approximates that of such third

party or is more favorable than that of such third party; or (iii) release its rights under this option to such invention and/or discovery.

7.5 LICENSEE may extend the term of the option granted in 7.1 above for another sixty (60) month period by the payment to BOARD of a mutually agreed to Extension Fee.

7.6 Upon exercise of the option LICENSEE shall reimburse further reasonable expenditures by BOARD in respect of prosecuting and maintaining PATENT RIGHTS and patents listed in Exhibit A in the United States and in those foreign countries as agreed to by LICENSEE **and** not otherwise reimbursed to BOARD by any other licensee. In any event, if LICENSEE requests that any patent or patent application be prepared, filed, prosecuted or maintained, anywhere in the world, BOARD will diligently undertake such activity to the extent and for so long as LICENSEE reimburses BOARD's reasonable expenditures therefor. Reimbursements due BOARD hereunder shall be paid by LICENSEE within thirty (30) days of its receipt of a bill from BOARD with respect to each patent application and patent for which LICENSEE has exercised its option.

VIII. TERM AND TERMINATION

8.1 The Term of this Agreement shall extend from the Effective Date set forth hereinabove to the full end of the term or terms for which the last patent included within the PATENT RIGHTS has not expired or been abandoned or declared invalid by a court of competent jurisdiction.

8.2 This Agreement will earlier terminate:

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

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

8.3 Upon termination of this Agreement pursuant to this Article VIII or Article 4.4, nothing herein shall be construed to release either party of any obligation matured prior to the effective date of such termination. LICENSEE may, after the effective date of such termination, sell or otherwise dispose of **all** LICENSED PRODUCT and parts therefore that it may have on hand at the date of termination, provided that it pays the ROYALTY thereon as provided in this Agreement.

8.4 Upon termination of this Agreement for any reason Article XII and XIV shall survive for all purposes.

IX. INFRINGEMENT BY THIRD PARTIES

9.1 LICENSEE shall enforce at its expense any patent exclusively licensed hereunder

against substantial infringement within LICENSED FIELD by third parties and shall be entitled to retain any recovery from such enforcement. LICENSEE shall pay BOARD a ROYALTY AMOUNT on any recovery to the extent that such recovery by LICENSEE is held to include damages or a reasonable royalty in lieu thereof, net of all fees and expenses of such recovery, but in no event to exceed one half of the net amount thereof. If LICENSEE and BOARD shall enforce at joint expense any patent exclusively LICENSED hereunder against substantial infringement by third parties and shall be entitled to retain any recovery from such enforcement, then such recovery shall be divided on a pro rata percentage based upon total costs incurred, net all fees and expenses of such recovery owed to third parties. In the event that LICENSEE has not commenced license negotiations with and be diligently pursuing the same or has not filed suit against a substantial infringer of such patents within six (6) months of knowledge thereof, (including notice of such infringement by BOARD of a minimum of ninety (90) days), then BOARD shall have the right to enforce any patent licensed hereunder on behalf of itself and LICENSEE (BOARD retaining all recoveries from such enforcement), provided, however, that LICENSEE shall not be required to maintain more than one suit at any one time in order to retain its rights under this section.

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

9.3 Should LICENSEE be sued by a third party for infringement of a patent for which an injunction would otherwise preclude LICENSEE's practice of LICENSED SUBJECT MATTER, or should the validity of any of the licensed PATENT RIGHTS be challenged in a judicial proceeding, up to one-half (1/2) of the ROYALTY AMOUNT payments may be held in escrow until such time as a settlement is reached or the suit is concluded. ROYALTY AMOUNT payments held in escrow for more than sixty (60) days shall accrue interest at a rate of prime plus one percent (1 %), and shall be payable to BOARD along with any ROYALTY AMOUNT payments due.

X. ASSIGNMENT

This Agreement may not be assigned by LICENSEE without the prior written consent of BOARD.

XI. PATENT MARKING

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

XII. INDEMNIFICATION

LICENSEE shall indemnify, defend and hold harmless BOARD, SYSTEM, and UTHSCH its Regents, officers, employees, and agents from and against any claims, demands, or causes of action whatsoever, including without limitation those arising on account of any injury or death of

persons or damage to property caused by, or arising out of, or resulting from, the exercise or practice of **the** LICENSE granted hereunder by LICENSEE or its officers, employees agents or representatives.

XIII. USE OF BOARD AND COMPONENT'S NAME

LICENSEE shall not use the name of SYSTEM, BOARD or UTHSCH in connection with the marketing or advertising of any LICENSED PRODUCT without express written consent,

XIV. CONFIDENTIAL INFORMATION

14.1 BOARD and LICENSEE each agree that all information contained in documents marked "confidential" which are forwarded to one by the other shall be received in strict confidence, used only for the purposes of this Agreement, and not disclosed by the recipient party (except as required by law or court order), it's agents or employees **without** the prior written consent of the other party, unless such information (a) was in the public domain at the time of disclosure, (b) later became part of the public domain through no act or omission of the recipient party, its employees, agents, successors or assigns, (c) was lawfully disclosed to the recipient party by third party having the right to disclose it, (d) was already known by the recipient party at the time of disclosure, (e) was independently developed or (f) is required to be submitted to a government agency pursuant to any preexisting obligation.

14.2 Each party's obligation of confidence hereunder shall be fulfilled by using at least the same degree of care with the **other** party's confidential information it uses to protect its own confidential information. This obligation shall exist while this agreement is in force and for a period of five (5) years thereafter.

XV. PATENTS AND INVENTIONS

15.1 If after consultation with LICENSEE it is agreed by BOARD AND LICENSEE that a Patent Application should be filed for LICENSED SUBJECT MATTER, BOARD will prepare and file appropriate patent applications, and LICENSEE will pay the cost of searching, preparing, filing, prosecuting and maintaining same. BOARD shall use all reasonable efforts to amend any patent application to include claims reasonably requested by LICENSEE to protect the products contemplated to be sold under this Agreement.

15.2 If LICENSEE notifies BOARD that it does not intend to pay the cost of an application, or if LICENSEE does not respond or make an effort to agree with BOARD on the disposition of rights of an invention within the scope of LICENSED SUBJECT MATTER within ninety (90) days of a written request therefore, then BOARD may file such application at its own expense and LICENSEE shall have no rights to such invention within the jurisdiction covered by such filing. LICENSEE's obligation to underwrite and to pay patent prosecution costs shall continue for so long as this Agreement remains in effect, provided however, that LICENSEE may terminate its obligations with respect to any given patent application or patent upon ninety (90) days written notice to BOARD. BOARD will use its best efforts to curtail patent costs when such notice is received from LICENSEE. BOARD may continue the prosecution **and/or** maintenance of such application(s) or patent(s) at their sole discretion and expense; provided, however, that LICENSEE

shall have no further right or license thereunder.

15.3 With regard to any future inventions that may arise under any research funded by LICENSEE, the BOARD shall disclose such inventions to the LICENSEE and the LICENSEE may elect to have patent applications filed on such inventions pursuant to the terms of this Agreement. The LICENSEE shall have sixty (60) days from the date of the BOARD's disclosure to elect. The election must be in writing and it shall designate the countries in which the LICENSEE elects to have patent applications filed. Upon the LICENSEE's election, these new inventions and corresponding patent applications become automatically part of this Agreement.

XVI. GENERAL

16.1 This Agreement, the Sponsored Research Agreement and the Stock Purchase Agreement executed by the parties concurrently herewith constitute the entire and only agreement between the parties for LICENSED SUBJECT MATTER and all other prior negotiations, representations, agreement, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

16.2 Any notice required by this License Agreement shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of BOARD to:

BOARD OF REGENTS
The University of Texas System
201 West 7th Street
Austin, Texas 78701
ATTENTION: Office of General Counsel

with a copy to:

The University of Texas
Health Science Center at Houston
P.O. Box 20036
Houston, Texas 77225
ATTENTION: Office of Legal Affairs
and Risk Management

or in the case of LICENSEE to:

Sonolife Corporation
1260 Lorelei Court
Campbell, California 95008
ATTENTION: Mr. Ken Erikson

or such other addresses as may be given from time to time under the terms of this notice provision. Such notices shall be effective five (5) days if mailed by certified mail and one (1) day if sent by commercial overnight carrier.

16.3 LICENSEE shall comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement.

16.4 This License Agreement shall be construed and enforced in accordance with the laws of the United States of America and of the State of Texas.

16.5 Failure of either party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved.

16.6 Headings included herein are for convenience only and shall not be used to construe this Agreement.

16.7 If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

16.8 The parties to this Agreement shall be excused from any performance required hereunder if such performance is rendered impossible or unfeasible due to any catastrophe or other major events beyond their reasonable control, including but not limited to war, riot, insurrections, laws, edicts, proclamations, ordinances, rules or regulations of any governmental entity or body, strikes, lock-outs or other serious work stoppages or labor disputes, and floods, earthquakes, fires, explosions or other natural disasters. When such events have abated, the parties obligations hereunder shall resume.

IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this Agreement.

Board of Regents of
The University of Texas System

By: _____
Thomas G. Ricks
Vice Chancellor for
Asset Management

SonoLife, Inc.

By: 
Ken Erikson
President

APPROVED AS TO FORM:

By: _____
Dudley R. Dobie, Jr.
Office of General Counsel

APPROVED AS TO CONTENT:

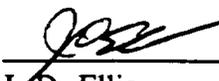
By: 
J. D. Ellis
Assistant Vice President
Financial Services

Exhibit A

U.S. Patent 4,669,482	Issued June 2, 1987	Pulse Echo Method and Apparatus for Sound Velocity Estimation in Vivo
U.S. Patent 4,777,958	Issued October 18, 1988	Method for Enhancing the Accuracy of in Vivo Sound Velocity Estimation
U.S. Patent 4,807,635	Issued February 28, 1989	Pulse Centroid Echo Method and Apparatus for Enhanced Sound Velocity Estimation in Vivo
U.S. Patent 4,878,500	Issued November 7, 1989	Multi-Beam Tracking for Angle Error Correction in Speed of Sound Estimations
U.S. Patent 4,993,416	Issued February 19, 1991	System for Ultrasonic Pan Focal Imaging and Axial Beam Translation
U.S. Patent 5,107,837	Issued April 28, 1992	Method and Apparatus for Measurement and Imaging of Tissue Compressibility or Compliance
U.S. Patent 5,143,070	Issued September 1, 1992	Transaxial Compression Technique for Sound Velocity Estimation
U.S. Patent 5,247,937	Issued September 28, 1993	Transaxial Compression Technique for Sound Velocity Estimation
UTHSCHOU:001RA	Application not yet filed	Method and Apparatus for Measuring the Viscoelastic Properties of Localized Regions in a Body

SPONSORED RESEARCH AGREEMENT

This Sponsored Research Agreement (the "Agreement") is made between The University of Texas Health Science Center at Houston, ("University"), a component institution of The University of Texas System ("System") and **SonoLife**, Inc., a Texas corporation with its principal place of business at Campbell, California ("Sponsor").

RECITALS

A. Sponsor desires that University perform certain research work hereinafter described and is willing to advance funds to sponsor such research; and

B. Sponsor desires to obtain certain rights to patents and technology developed during the course of such research with a view to profitable commercialization of such patents and technology for the Sponsor's benefit; **and**

C. University is willing to perform such research and to grant certain rights to such patents and technology.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the University and Sponsor agree as follows:

1. EFFECTIVE DATE

This Agreement shall be effective as of December 31, 1994 (the "Effective Date").

2. RESEARCH PROGRAM

2.1 University will use its best efforts to conduct the research program described in Attachment **A** ("**Research** Program"), and will furnish the facilities necessary to carry out the Research Program. The Research Program will be under the direction of Jonathan Ophir, or his successor as mutually agreed to by the parties (the Principal Investigator") and will be conducted by the Principal Investigator at the University.

2.2 The Research Program shall be performed during the period from the Effective Date through and including December 31, 1999. Sponsor shall have the option to extend the Research Program under mutually agreeable support terms.

2.3 Sponsor understands that University's primary mission is education and advancement of knowledge, and, consequently, the Research Program will be designed to carry out that mission. The manner of performance of the Research Program shall be

*Attachment A was not provided to the Office of the Board of Regents.

determined solely by the Principal Investigator. University does not guarantee specific results, and the Research Program will be conducted only on a best efforts basis.

2.4 University will keep accurate financial and scientific records relating to the Research Program and will make such records available to Sponsor or its authorized representative throughout the Term of the Agreement during normal business hours upon reasonable notice.

2.5 Sponsor understands that University may be involved in similar research through other researchers on behalf of itself and others. University shall be **free** to continue such research provided that it is conducted separately and by different investigators from the Research Program, and Sponsor shall not gain any rights via this Agreement to such other research.

2.6 University does not guarantee that any patent rights will result from the Research Program, that the scope of any patent rights obtained will cover Sponsor's commercial interest, or that any such patent rights will be free of dominance by other patents, including those based upon inventions made by other inventors in the System independent of the Research Program.

3. COMPENSATION

3.1 As consideration for the performance by University of its obligations under this Agreement, Sponsor will pay the University an amount equal to its expenditures and reasonable overhead in conducting the Research Program subject to a maximum expenditure limitation of Five Hundred Dollars (\$500.00). An initial payment of Five Hundred Dollars (\$500.00) shall be made at the time of execution of this Agreement, and subsequent payments shall be made as funding allows.

3.2 University shall maintain all Research Program funds in a separate account and shall expend such funds for wages, supplies, equipment, travel, and other operation expenses in connection with the Research Program. It is understood that funds for the Research Program which are not used in a particular [quarter] may be used in subsequent [quarters].

3.3 University shall retain title to all equipment purchased and/or fabricated by it with funds provided by Sponsor under this Agreement.

4. CONSULTATION AND REPORTS

4.1 Sponsor's designated representative for consultation and communications with the Principal Investigator shall be Ken Erikson, or such other person as Sponsor may from time to time designate in writing to University and the Principal Investigator ("Designated Representative").

4.2 During the Term of the Agreement, Sponsor's representatives may consult informally with University's representatives regarding the project, both personally and by telephone. Access to work carried on **in University** laboratories in the course of these investigations shall be entirely under the control of University personnel but shall be made available on a reasonable basis.

4.3 The Principal Investigator will make up to four (4) oral reports each year as requested by Sponsor's Designated Representative. At the conclusion of each year, the Principal Investigator shall submit to Sponsor a written report summarizing the work. The Principal Investigator shall also submit a comprehensive **final** report within one hundred twenty (120) days of termination of the Agreement.

5. PUBLICITY

Neither party shall make reference to the other in a press release or any other written statement in connection with work performed under this Agreement, if it is intended for use in the public media, except as required by The Texas Open Records Act or other law or regulation. University, however, shall have the right to acknowledge Sponsor's support of the investigations under this Agreement in scientific or academic publications and other scientific or academic communications, without Sponsor's prior approval. In any such statements, the parties shall describe the scope and nature of their participation accurately and appropriately.

6. PUBLICATION AND ACADEMIC RIGHTS

6.1 University and Principal Investigator have the right to publish or otherwise publicly disclose information gained in the course of this Agreement. In order to avoid loss of patent rights as a result of premature public disclosure of patentable information, University will submit any **prepublication** materials to Sponsor for review and comment at least sixty (60) days prior to planned submission for publication. Sponsor shall notify University within thirty (30) days of receipt of such materials whether it desires University to file patent applications on any inventions contained in the materials; and, if University agrees to do so, University will proceed to file a patent application in due course. University shall have the final authority to determine the scope and content of any publications.

6.2 It is understood that the University investigators may discuss the research being performed under this Agreement with other investigators but shall not reveal information which is Sponsor's Confidential Information under Article 7. In the event any joint inventions result, University shall grant to Sponsor the rights outlined in Article 8 of this Agreement, to the extent these are not in conflict with obligations to another party as a result of the involvement of the other investigator(s). In this latter case, University shall, in good faith, exercise reasonable efforts to enable Sponsor to obtain rights to the joint invention.

7. CONFIDENTIAL INFORMATION

7.1 The parties may wish, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information to each other (“Confidential Information”). Each party will use reasonable efforts to prevent the disclosure of any of the other party’s Confidential Information to **third** parties for a period of three (3) years from receipt thereof, provided that the recipient party’s obligation shall not apply to information that:

- (1) is not disclosed in writing or reduced to writing and so marked with an appropriate confidentiality legend within thirty (30) days of disclosure;
- (2) is already in the recipient party’s possession at the time of disclosure thereof;
- (3) is or later becomes part of the public domain through no fault of the recipient party;
- (4) is received from a third party having no obligations of confidentiality to the disclosing party;
- (5) is independently developed by the recipient party; or
- (6) is required by law or regulation to be disclosed.

7.2 In the event that information is required to be disclosed pursuant to subsection (6), the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law or regulation.

8. PATENTS, COPYRIGHTS, AND TECHNOLOGY RIGHTS

Title to all inventions and discoveries made by University resulting from the research performed hereunder shall reside in University; however, University agrees to grant to Sponsor an option to negotiate an exclusive, worldwide, royalty-bearing license to make, use or sell under any invention or discovery made and conceived during the term of this Agreement and directly resulting from the performance of research hereunder, with the right to sublicense with accounting to University. Sponsor shall have three (3) months from disclosure of any invention or discovery to notify University of its desire to enter into such a license agreement, and a license agreement shall be negotiated in good faith within a period not to exceed six (6) months from Sponsor’s notification to University of its desire to enter into a license agreement, or such period of time as the parties shall mutually agree. In the event that Sponsor and University fail to enter into an agreement during that period of time, then the rights to such inventions and discoveries shall be disposed of in accordance with University policies, with no obligation to Sponsor. Sponsor agrees to pay a reasonable royalty to be negotiated in good faith for the use of the invention or discovery. Until such invention or discovery has been presented as set forth above, University shall not offer rights to that invention or discovery to any third party.

In the event Sponsor elects to exercise its option as to any invention or discovery, in accordance with the procedures detailed above, it shall be obligated to pay all patent expenses for such invention or discovery. This shall include but not be limited to the cost of any prior activities investigating patentability of said invention or discovery before exercise of the option, such as search and opinion for patentability that may have been performed by University pursuant to its arrival at a judgment of commercially exploitable status. It is contemplated that, in the majority of instances, Sponsor **will** be asked to determine whether it will exercise its option prior to the filing of the first patent application.

9. LIABILITY

9.1 Sponsor agrees to indemnify and hold harmless System, University, their Regents, officers, agents and employees from any liability, loss or damage they may suffer as a result of claims, demands, costs or judgments against them arising out of the activities to be carried out pursuant to the obligations of this Agreement, including but not limited to the use by Sponsor of the results obtained from the activities performed by University under this Agreement; provided, however, that the following is excluded from Sponsor's obligation to indemnify and hold harmless:

- a. the negligent failure of University to substantially comply with any applicable FDA or other governmental requirements; or
- b. the negligence or willful malfeasance of any Regent, officer, agent or employee of University or System.

9.2 Both parties agree that upon receipt of a notice of claim or action arising out of the activities to be carried out pursuant to the project described in Attachment A, the party receiving such notice will notify the other party promptly. Sponsor agrees, at its own expense, to provide attorneys to defend against any actions brought or filed against University, System, their Regents, officers, agents **and/or** employees with respect to the subject of the indemnity contained herein, whether such claims or actions are **rightfully** brought or filed; and subject **to the** statutory duty of The Texas Attorney General, University agrees to cooperate with Sponsor in the defense of such claim or action.

10. INDEPENDENT CONTRACTOR

For the purposes of this Agreement and all services to be provided hereunder, the parties shall be, and shall be deemed **to be**, independent contractors and not agents or employees of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other party, except as may be expressly provided for herein or authorized in writing.

11. TERM AND TERMINATION

11.1 This Agreement shall commence on the Effective Date and extend until the end of the Research Program as described hereinabove, unless sooner terminated in accordance with the provisions of this Section ("Term").

11.2 This Agreement may be terminated by the written agreement of both parties.

11.3 In the event that either party shall be in default of its material obligations under this Agreement' and shall fail to remedy such default within sixty (60) days after receipt of written notice thereof, this Agreement shall terminate upon expiration of the sixty (60) day period.

11.4 Termination or cancellation of this Agreement shall not affect the rights and obligations of the parties accrued prior to termination. As its sole liability upon termination, Sponsor shall pay University for all reasonable expenses incurred or committed to be expended as of the effective termination date, including salaries for appointees for the remainder of their appointment.

11.5 Any provisions of this Agreement which by their nature extend beyond termination shall survive such termination.

12. ATTACHMENTS

Attachment A is incorporated and made a part of this Agreement for all purposes.

13. GENERAL

13.1 This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that subject to the approval of University, which may not be unreasonable withheld, Sponsor may assign this Agreement to any purchaser or transferee of all or substantially all of Sponsor's assets or stock upon prior written notice to University, and University may assign its right to receive payments hereunder.

13.2 This Agreement constitutes the entire and only agreement between the parties relating to the Research Program, and all prior negotiations, representations, agreements and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

13.3 Any notice required by this Agreement by Articles 8, 9, or 11 shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of University to:

The University of Texas System
Office of General Counsel
201 West 7th Street
Austin, Texas 78701
FAX: (512) 4994523
PHONE: (5 12)499-4462

copy to:

The University of Texas
Health Science Center at Houston
Office of Contracts and Grants
P.O. Box 20036
Houston, Texas 77225
FAX: (713) 794-1912
PHONE: (713) 7924970

or in the case of Sponsor to:

Mr. Ken Erikson
1260 Lorelei Court
Campbell, California 95008
FAX: (408) 374-2603
PHONE: (408) 374-3 115

or at such other addresses as may be given from time to time in accordance with the terms of this notice provision.

Notices and other communications regarding the day-to-day administration and operation of this Agreement shall be mailed (or otherwise delivered), and addressed in the case of University to:

The University of Texas
Health Science Center at Houston
Office of Contracts and Grants
P.O. Box 20036
Houston, Texas 77225
FAX: (713) 794-1912
PHONE: (713) 7924970

or in the case of Sponsor to:

Mr. Ken Erikson
1260 Lorelei Court
Campbell, California 95008
FAX: (408) 374-2603
PHONE: (408) 374-3 115

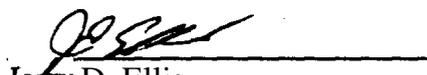
13.4 This Agreement shall be governed by, construed, and enforced in accordance **with the** internal laws of the State of Texas.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

SonoLife, Inc.

By: 
Ken Erikson
President

The University of Texas
Health Science Center at Houston

By: 
Jerry D. Ellis
Assistant Vice President
Financial Services

SONOLIFE, INC.

STOCK PURCHASE AGREEMENT

THIS AGREEMENT is made effective as of the **9th**, day of February 1995, between **SonoLife, Inc.**, whose address is 1260 Lorelei Court, Campbell, California 95008 (hereinafter referred to as "Company") and the Board of Regents of The University of Texas System (hereinafter referred to as "Purchaser").

WHEREAS, Company and Purchaser have entered into a Patent and Technology License Agreement (the "Technology License") relating to certain patent and technology rights owned by BOARD and invented by Jonathan Ophir, D.Eng. ;

WHEREAS, it was contemplated at the time of execution of the Technology License that stock in the Company would be issued to Purchaser as partial consideration for such execution.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and obligations contained herein, the parties agree as follows:

1. **Sale of Stock.** The Company agrees to sell and Purchaser hereby agrees to purchase fifteen thousand (15,000) shares of the Company's Common Stock (the "Shares") in partial consideration for execution of the Technology License.

2. **Investment Representations.**

(a) In connection with the purchase of the Shares, the Purchaser represents to the Company the following:

(i) The Purchaser is aware of the Company's business affairs and financial condition and have acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the securities. The Purchaser is purchasing the securities for investment for Purchasers own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act of 1933 (the "Securities Act").

(ii) The Purchaser understands that the securities have not been registered under the Securities Act by reason of a specific exemption therefrom, which

exemption depends upon, among other things, the bona fide nature of Purchasers investment intent as expressed herein. In this connection, the Purchaser understands that, in view of the Securities and Exchange Commission (the Commission”), the statutory basis for such exemption may not be present if Purchasers representations meant that Purchasers present intention was to hold these securities for a minimum capital gains period under the tax statutes, for a deferred sale, for a market rise, for a sale if the market does not rise, or for a year or any other fixed period in the future.

(iii) **The** Purchaser further acknowledges, agrees and understands that the securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. **The** Purchaser understands and agrees that the certificate evidencing the securities will be imprinted with a legend which prohibits the transfer of the securities unless they are registered or such registration is not required in the opinion of counsel for the Company.

(iv) The Purchaser is aware of the adoption of Rule 144 by the Commission, promulgated under the Securities Act, which permits limited public resale of securities acquired in a nonpublic offering subject to the satisfaction of certain conditions.

(v) The Purchaser further acknowledges that in the event all of the requirements of Rule 144 are not met, compliance with Regulation A or some other registration exemption will be required; and that although Rule 144 is not exclusive, the staff of the Commission has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and other than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales and that such persons and the brokers who participate in the transactions **do so at** their own risk.

(b) The Purchaser agrees, in connection with the Company’s initial public offering of the Company’s securities, (i) not to sell, make short sales of, loan, grant any options for the purchase of, or otherwise dispose of any shares of Common Stock of the Company held by the Purchaser (other than those shares included in the registration) without the prior written consent of the Company or the underwriters managing such initial underwritten public offering of the Company’s securities for one hundred eighty (180) days from the effective date of such registration and (ii) further agrees to execute any agreement reflecting (i) above as may be requested by the underwriters at the time of the public offering.

3. **Legends.** The share certificate evidencing the Shares issued hereunder shall be endorsed with the following legends:

(a) "THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISPOSITION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933".

(b) THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE TRANSFERRED ONLY IN ACCORDANCE WITH THE TERMS OF AN AGREEMENT BETWEEN THE COMPANY AND THE STOCKHOLDER, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.

(c) Any legend required by applicable state securities laws.

4. **Right of First Refusal.**

(a) In the event, at any time following the date of this Agreement, the Purchaser or any of its transferees desires (or are required) to sell or transfer in any manner the Shares, they shall first offer such Shares for sale to the Company at the same price, and upon the same terms (or terms as similar as reasonably possible) upon which they are proposing or is to dispose of such Shares. If the transfer does not involve a price freely set by the Purchaser, the price shall be determined as set forth in Section 4(c) below. Such right of first refusal shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the Purchaser of the terms and conditions of said proposed sale or transfer, or thirty (30) days following the setting of a price under Section 4(c) (when the price is determined under Section 4(c)). In the event the Shares are not disposed of within thirty (30) days following lapse of the period of the right of first refusal provided to the Company, they shall once again be subject to the right of first refusal herein provided.

(b) In the event, at any time following the date of this Agreement, of any transfer by operation of law or other involuntary transfer of all or a portion of the Shares, the Company shall have an option to purchase all of the Shares transferred. Upon such a transfer, the person acquiring the Shares shall promptly notify the Secretary of the Company of such transfer. The right to purchase such Shares shall be provided to the Company for a period of thirty (30) days following receipt by the Company of written notice by the person acquiring the Shares.

(c) With respect to any stock to be transferred pursuant to Sections 4(a) or **4(b)** and as to which a price has not been set by the Purchaser under Section 4(a), the price per Share shall be a price set by the mutual agreement of Purchaser and the Board of Directors of the Company which price will reflect the current value of the Shares in terms of present earnings and future prospects of the Company. If no such mutual agreement can be reached, the price will be determined by an independent financial analyst which is acceptable to both the Purchaser and the Board of Directors of the Company. The cost of such determination, if any, will be divided equally between the Company and the Purchaser. Any time required to resolve a dispute regarding the value of the Shares shall be added to the thirty (30) day period in which the Company may exercise its' right to purchase.

(d) The right of the Company to purchase any part of the Shares may be assigned in whole or in part to one or more employees, officers, directors or shareholders of the Company or other persons or organizations.

(e) All transferees of Shares or any interest therein shall be required as a condition of such transfer to agree in writing in the form satisfactory to the Company that they will receive and hold such Shares or interests subject to the provisions of this Agreement, including, insofar as applicable, the Company's right of first refusal in this Section 4. Any sale or transfer of the Company's Shares shall be void unless the provisions of this Agreement are met.

(f) The right of first refusal granted the Company by **this** Section 4 shall terminate at such time as a public market exists for the Company's Common Stock (or any other stock issued to exchange for the Shares purchased under this Agreement). Upon termination of the right of first refusal, at the Purchasers' request the Company shall issue a new certificate representing the Shares without a legend referring to such refusal right. For the purpose of this Agreement, a "public market" shall be deemed to exist if (i) such stock is listed on a national securities exchange (as that term is used in the Securities Exchange Act of 1934) or (ii) such stock is traded on the over-the-counter market and prices are published daily on business days in a recognized financial journal.

(g) The right of first refusal contained in **this** Section 4 shall not apply to a transfer to the Purchasers trustees for their benefit, provided that such transferee shall agree in writing in form satisfactory to the Company to take such Shares subject to all the terms of this Agreement, including the Company's right of first refusal on further transfers.

5. **Adjustment for Stock Split.** All references to the number of Shares and the purchase price of the Shares in this Agreement shall be appropriately adjusted to reflect any stock split, stock dividend or other change in the Shares which may be made by the Company after the date of this Agreement.

6. General Provisions.

(a) This Agreement shall be **governed** by the laws of the State of Texas. This Agreement represents the entire agreement between the parties with respect to the purchase of Common Stock by the Purchaser, may only be modified or amended in writing signed by both parties and satisfies all of the Company's obligations to the Purchaser with regard to the issuance or sale of securities.

(b) Any notice, demand or request required or permitted to be given by either the Company or the Purchaser pursuant to the terms of this Agreement shall be in writing and shall be deemed given when delivered personally or deposited in the U.S. mail, registered with a return receipt requested and with postage prepaid, and addressed to the parties at the addresses of the parties set forth below or such other address as a party may request by notifying the other in writing.

To Company: Mr. Ken Erikson
 President
 SonoLife, Inc.
 1260 Lorelei Court
 Campbell, California 95008

To Purchaser: Mr. Thomas G. Picks
 Vice Chancellor for Asset Management
 The University of Texas System
 210 West 6th Street
 Austin, Texas 78701

(c) The rights and benefits of the Company under this Agreement shall be transferable to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company's successors and assigns. The rights and obligations of the Purchaser under this Agreement may only be assigned with the prior written consent of the Company.

(d) Either party's failure to enforce any provision or provisions of this Agreement shall not in any way be construed as a waiver of any such provision or provisions, nor prevent that party thereafter from enforcing each and every other provision of this Agreement. The rights granted both parties herein are cumulative and shall not constitute a waiver of either party's right to assert all other legal remedies available to it under the circumstances.

(e) The Purchaser and the Company agree upon request to execute any further documents or instruments necessary or desirable to carry out the purposes or intent of this Agreement.

(f) The Purchaser shall be entitled to be, in its sole discretion, a party to any agreement regarding registration rights **and/or** information rights which the Company enters into pursuant to an equity financing.

(g) Where applicable in this agreement, the plural shall apply to the singular.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year first set forth above.

FOR THE BOARD OF REGENTS OF
THE UNIVERSITY OF TEXAS SYSTEM

BY: _____
Thomas G. Ricks
Vice Chancellor for Asset Management

FOR SONOLIFE, INC.

BY: 
Ken Erikson
President

2. U. T. Health Science Center - San Antonio: Approval of an Assignment and Royalty Agreement with Vital Source Technologies, Inc. (VST), San Antonio, Texas; Acceptance of Equity in Vital Source Technologies, Inc. by the U. T. System; and Authorization for Dr. R. Todd Watkins and Ms. Janise Richards to Accept Equity in and Serve as Officers and Directors of Vital Source Technologies, Inc.--The Board, upon recommendation of the Asset Management Committee:

a. Approved the Assignment and Royalty Agreement set out on Pages 209 - 217 between the U. T. Board of Regents, for and on behalf of The University of Texas Health Science Center at San Antonio, and Vital Source Technologies, Inc. (VST), San Antonio, Texas

b. Approved the acceptance of equity in Vital Source Technologies, Inc. by The University of Texas System, for and on behalf of the U. T. Health Science Center - San Antonio, as partial consideration for the Assignment and Royalty Agreement

c. Authorized the acceptance of equity in and service as officers and directors of Vital Source Technologies, Inc. by Dr. R. Todd Watkins, Assistant Professor in the Department of General Practice in the U. T. Dental School - San Antonio, and Ms. Janise Richards, Instructional Materials Development Specialist in the Department of Educational Resources in the U. T. Dental School - San Antonio at the U. T. Health Science Center - San Antonio.

Dr. R. Todd Watkins and Ms. Janise Richards have developed concepts and computer software for electronic distribution of health-related academic publications. More particularly, the technology involves the conversion of existing health-related textbooks, scholarly publications, and other written works to a format that can be distributed electronically to students in health-related fields of study throughout the United States. Approximately 45 works have been converted to such a format, and prototype software has been written and tested on a demonstration basis. The assignment of the technology to Vital Source Technologies, Inc. should facilitate the investment of private capital for creation of user-friendly computer programs and substantially reduce the potential for uncertainties as to ownership of derivative works created hereafter.

As partial consideration for the assignment, VST will issue to the U. T. System 150,000 shares of VST common stock, \$0.01 par value, which will constitute fifty percent of the founders' stock of the company. In addition, VST will pay a running royalty of one percent of its gross revenues derived from the sale, lease, or licensing of proprietary software.

An equal number of shares of the company will be issued to Dr. Watkins, and shares will be issued to Ms. Richards and possibly others in the future. Dr. Watkins is president of the company and, effective August 1, 1994, reduced his

University position from 100 percent time to five percent time in order to devote his primary efforts to commercialization of the subject technology. Ms. Richards is also an officer of the company and anticipates that she will become a full-time employee of the company.

ASSIGNMENT AND ROYALTY AGREEMENT

This Assignment and Royalty Agreement (this "Agreement") is entered into effective as of August 31, 1994, between the Board of Regents of The University of Texas System, an agency of the State of Texas ("Assignor"); Vital Source Technologies, Inc., a Delaware corporation ("VST"), having its principal place of business in San Antonio, Texas; R. Todd Watkins, Jr., a individual residing in San Antonio, Texas (*Watkins*); and **Janise Richards**, 'an individual residing in San Antonio, **Texas ("Richards")**.

RECITALS

A. Under Assignor's Rules and Regulations, Assignor owns certain intellectual property developed pursuant to the "Macinstein Project", a project to develop an electronic distribution network for health-related academic publications (**the "Network"**).

B. **The** "Macinstein Project" was directed by Watkins, as a faculty member of The University of Texas Health Science Center at San Antonio ("UTHSC"), in collaboration with Richards, another faculty member of UTHSC.

C. Effective as of August **1, 1994**, Watkins' responsibilities at UTHSC were terminated by mutual **agreement** (although he was paid four weeks of **vacation** pay through August 31, 1994) and he vacated his UTHSC office and his support facilities.

D. The parties desire to effect an assignment of all of Assignor's rights and interests in the intellectual property arising out of the "Macinstein Project" to VST in consideration for equity in VST and a royalty on certain future revenues of VST.

AGREEMENTS

In consideration **of** the covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Definitions**. As used herein, the following terms shall have the following meanings:

"Application Software" means the VST proprietary **software which** end-users of the Network download on their' personal computers in order to search and display the text and graphics available **over** the Network, including all upgrades to such software.

"Gross Revenue" with respect to the sale, lease or licensing of Application Software, the gross revenue &rived from such sale, lease or licensing net only of discounts, returns and allowances, all determined in accordance with generally accepted accounting principles applied on a consistent basis.

"Intellectual Property" means all the technology developed at UTHSC as part of the "Macinstein Project", including the "Macinstein" and "Macinstein 3" software prototypes; all data created under the grant mechanism known as "**Macinstein** Data Capture"; and, without limiting the foregoing, the following developments incorporated into "Macinstein", "**Macinstein 3**", designs or specifications for the Network, **and/or** new versions of software: (i) data structure - standards for creating digital versions of analog data as well as a parsing application; (ii) data storage - a **hierarchial** data storage structure to provide timely delivery of information to users; (iii) 'data access - user service applications to be incorporated into the server platform that is accessed by the users, including accounting for payment, continuous data updating and network routing to provide multiple access points for users; (iv) user interface - personal computer applications that allow users to develop data search criteria, to interact with the data storage structure and to display the requested data; and (v) infrastructure - configuration of a wide area network containing large data storage and server mechanisms (a.k.a. bunkers) and service connections to users such as member institutions and individuals.

2 . Assignments.

(a) **Assignor.** Assignor hereby assigns, sells and conveys to VST, its successors and assigns, its entire right, title and interest throughout the world in and to the Intellectual Property, as it existed as of August 1, **1994**, the date of Watkins' departure from UTHSC. Further, as of August 1, 1994, Assignor hereby assigns, sells and conveys to VST, its successors and assigns, without any warranty (including as to ownership) and **only** to the extent which it legally may do so, its entire right, title and interest, if any, in and to (i) the various contracts heretofore entered into between UTHSC and certain medical text book publishers in connection with the "Macinstein Project" and (ii) the equipment and materials listed on **Exhibit A** hereto used in connection with the "Macinstein Project".

(b) **Collaborators.** instruments dated as of the date hereof, Watkins and Richards have each assigned to VST their respective entire right, title and interest, if any, throughout the world in and to the Intellectual Property.

3. Consideration.

(a) **Royalty.** VST shall pay Assignor an **annual royalty** (the "Royalty") equal to 1% of the Cross Revenue derived from the sale, lease or licensing of Application Software to end-users during each calendar year, commencing with respect to the calendar year ending December 31, **1995**, and continuing annually thereafter through the calendar year ending December **31, 2005**. The Royalty shall be due and payable by VST within 90 days after the end of each such calendar year.

(b) **Stock in VST.** VST shall issue to Assignor 150,000 shares (the "Shares") of common stock, **\$.01** par value ("Common Stock"), of VST. The Shares are equal in number to the shares of Common Stock issued to Watkins in connection with the formation of VST. The ownership interest of Assignor represented by the Shares is subject to dilution as additional shares are issued to other persons, including at least 75,000 shares which VST has issued or anticipates issuing to "founders" of VST and an unknown number of additional shares which VST anticipates issuing in the future to investors, management or others.

4. **Waiver of Rights by Collaborators.** Because the Intellectual **Property** is subject to the **Rules and Regulations** of Assignor, Watkins and Richards, as collaborators in the "Macinstein Project", may be entitled to a share of the **Royalty** or the Shares **under such Rules and Regulations**. Upon execution of this Agreement by all parties, Watkins and Richards each hereby waive **any** right to receive any of the Royalty or the Shares **under** the **Rules and Regulations** of Assignor, and they each agree never to make any claim **therefor** against Assignor. Further, Watkins and Richards each acknowledge and agree that they have received adequate consideration, in equity and otherwise, from VST to grant the foregoing waiver.

5. **Continuation of Faculty Positions.** While this Agreement creates no employer-employee relationship, the parties hereto acknowledge that Watkins and Richards may continue limited 'association with UTHSC after August 1, 1994 (the date of the transfer of the Intellectual Property pursuant to paragraph 2(a) hereof) as part of its faculty or professional staff. Except with respect to completion of paperwork on fully funded grants received in connection with "Macinstein Project", the parties acknowledge and agree **that**, after August 1, 1994, such faculty or staff positions will **not** contemplate, as part of such positions, any involvement by Watkins or Richards in the development of the Network being developed by VST. In **furtherance** thereof, (i) Watkins and Richards each agree **that** they will not undertake any activities related to the development of the Network being developed by VST (including any use of equipment or facilities of Assignor or its affiliates) during his/her performance of service for UTHSC **after** August 1, 1994; and (ii) so long as Watkins and Richards abide by their agreement set forth in clause (i) above, Assignor agrees that it shall not have any rights or interests in or to any improvements, developments or discoveries by Watkins or Richards related to the Network being developed by VST which arise after August 1, 1994.

6. **Reports.** Within **90** days after the end of each calendar year, VST shall submit to Assignor a written report for such calendar year accurately identifying Gross Revenue derived from sales, leases or licenses **of** Application Software in sufficient form and detail as to enable Assignor to determine any Royalty due. Such report shall be due even if no Royalty is due.

7. **Books.** VST shall maintain true and complete books of account containing an accurate record of all data **necessary** for the proper computation of the Cross Revenue derived from the sale, lease or license of Application Software. Assignor **shall** have the right to have a certified public accountant appointed by it and acceptable to VST (such acceptance shall not be unreasonably withheld) examine such books, under terms of confidentiality with VST, at all reasonable times, upon 10 **days** prior written notice, for the sole purpose of verifying the accuracy of reports rendered by **VST**. Such examination shall be made during normal business hours at **VST's** principal place of business. The fees and expenses of the representatives performing such examination shall be borne **by** Assignor, except that, if the examination reveals an error to the Assignor's detriment greater than 5% of the actual amount ~~due~~, **VST** shall pay the costs of the examination.

8. **Transfer of Right by Assignee.** Should Assignee grant a license, assignment or otherwise transfer its right to sell, lease or license the Application Software to end-users, such license, assignment or other transfer shall contain provisions specifically making such licensee, assignee or transferee liable for payment to Assignor of the Royalty. VST shall provide to Assignor a copy of any such license, assignment or transfer agreement within 30 days of the effective date thereof.

9. Subjunct. to paragraph 10 hereof, the parties hereto represent and warrant that they have the right and authority to enter into this Agreement and that they have not executed or entered into any other agreements inconsistent with the terms and provisions hereof.

10. Competitive Products and/or Processes. The parties recognize that as a research institution Assignor may have other individuals subject to its Rules and Regulations that- are conducting the same or similar projects that have resulted in the creation of the technology similar to that covered by this Agreement and VST receives no rights or interest therein. Assignor expressly makes no representations that the Intellectual Property does not conflict with any patent application or software copyright which has been filed or may be filed in the future by Assignor or others.

11. Documents. The parties hereto each agree that they each will, and each of their heirs, legal representatives, assigns, administrators and executors will, at the expense of VST, execute all papers and perform such other acts as may be reasonably necessary to give VST the full benefit of ~~the~~ assignment of the Intellectual Property hereunder.

12. Use of Names. ~~It~~ make any commercial use (including, without limitation, use in any brochure, label, packaging, product description, print or media advertising or other such means) of the name of Assignor, the University of Texas System or any of its component institutions without the express written consent of Assignor, Assignor may not make any such commercial use of **VST's** name or its products without the express written consent of VST.

13. Notice. notice required by this Agreement shall be given by prepaid, first class, certified mail, return receipt requested, addressed in the case of Assignor to:

The University of Texas Health
Science Center at San Antonio
7703 Floyd Curl Drive
San Antonio, Texas 78284-7862
Attention: Mr. R.B. Price
Fax: (210) 567-2047
Phone: (210) 567-2015

and to:

Board of Regents
The University of Texas System
201 west 7th street
Austin, Texas 78701
Attention: Office of General Counsel
Fax: **(512)499-4523**
Phone: **(512) 4994362**

0122102.05

or in the case of VST to:

Vital Source Technologies, Inc.
13826 Shavano Ridge
San Antonio, Texas 78230
Attention: R. Todd Watkins, Jr.
Fax: (210) 408-0244
Phone: (210) **408-0244**

or such other address as may be given from time to time under the terms of this notice provision.

1 4 . **Entire Agreement** This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and all other prior negotiations, representations, agreements and understandings (including any different or inconsistent arrangements or results prescribed in or based upon the **Rules and Regulations** of Assignor) are superseded hereby.

1 5 . **Miscellaneous** This Agreement may not be amended or modified, except by means of a written document signed by the duly authorized representatives of the parties. This Agreement may be executed in one or more separate counterparts which may be assembled as, and shall constitute, one document binding upon all of the parties. Failure of any party to enforce a right under this Agreement shall not act as a waiver of that right or the ability to later assert that right relative to the particular situation involved. Headings included herein are for convenience only and shall not be used to construe this Agreement. If any provision of this Agreement shall be found by a court to be void, invalid or unenforceable, the same shall be reformed to comply with applicable law (or stricken if not so conformable) so as not to affect the validity or enforceability of this Agreement, and so as to enforce this Agreement to the maximum extent allowable by law. This Agreement shall be construed and enforced in accordance with the laws of the United States of America and the State of Texas.

IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this Agreement.

ATTEST:

ASSIGNOR:

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

By: _____

By: _____

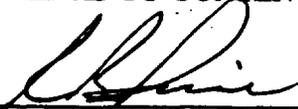
Thomas G. Ricks
Vice Chancellor for
Asset Management

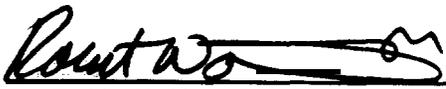
[signatures continued on next page]

APPROVED AS TO FORM:

By: _____
Dudley R. Dobie, Jr.
Office of General Counsel

APPROVED AS TO CONTENT:

By:  _____
R.B. Price
Executive Vice President for
Administration and Business
Affairs
The University of Texas Health
Science Center at San Antonio

 _____
R. Todd Watkins, Jr.

 _____
Janise Richards

VST:

VITAL SOURCE TECHNOLOGIES, INC.

By:  _____
R. Todd Watkins, Jr.,
President

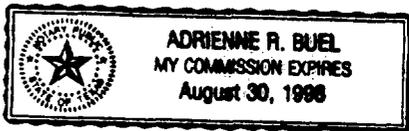
THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was **acknowledged** before me on the _____ day of October, 1994 by **Thomas G. Ricks**, Vice Chancellor for Asset Management of **The University of Texas Health Science Center** at San Antonio, a Texas corporation, on behalf of said corporation.

Notary Public in and for the State of Texas
My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

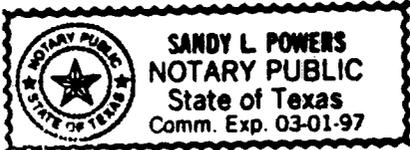
This instrument was acknowledged before me on the 20th of October, 1994 by R.B. Price, Executive Vice President for Administration and Business Affairs of The University of Texas Health Science Center at San Antonio, a Texas corporation,, on behalf of said corporation.



Adrienne R. Buel
Notary Public in and for the State of Texas
My Commission Expires: 8-30-96

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

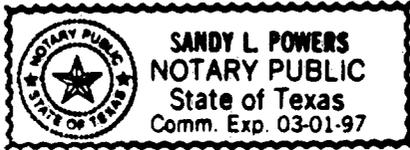
This instrument was acknowledged before me on the 10th of October, 1994 by R. Todd Watkins, Jr.



Sandy Powers
Notary Public in and for the State of Texas
My Commission Expires: 3-1-97

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

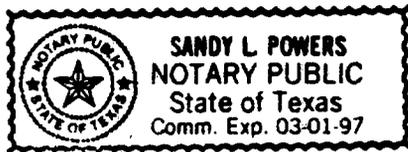
This instrument was **acknowledged** before me on the 10th of October, 1994 by Janise Richards.



Sandy Powers
Notary Public in and for the State of Texas
My Commission Expires: 3-1-97

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument **was** acknowledged before me on the 10th October, 1994 by R. Todd Watkins, Jr., President of Vital Source Technologies, **Inc.**, a Delaware corporation, on behalf of said corporation.



Sandy L. Powers

Notary Public in and for the State of Texas
My Commission Expires: 3-1-97

EXHIBIT A

Apple Lisa Computer UT#745-67932
Drafting Table UT#52 133
Drafting Table UT#52 132
Chair UT#745-89405
Micronet Harddrive UT#745-89247

V. OTHER MATTERS

1. U. T. System: Amendments to Sections III and IV of the Private Placement Investment Policy Statement.--In order to improve the response time and level of participation of Asset Management Committee members in the private investment decision making process and to more uniformly control the investment risk of any asset class through asset allocation, diversification requirements, and other investment guidelines, the Board, upon recommendation of the Asset Management Committee, amended Sections III and IV of The University of Texas System Private Placement Investment Policy Statement.

The U. T. System Private Placement Investment Policy Statement, as amended through February 9, 1995, is set forth in its entirety on Pages 219 - 222.

The University of Texas System
Private Placement Investment Policy Statement

I. PURPOSE

The purpose of this policy is to orient and limit U. T. System private placement investments to business situations with a high probability of excellent returns over time, but without avoidable risks or risks out of proportion to expected returns. Good communication and flexibility are desired results from implementation of this policy.

This policy shall govern the use of private placements in all funds under the supervision of the Board of Regents.

II. INVESTMENT OBJECTIVES

The primary investment objective of the private placement investment portfolio is long-term capital appreciation in excess of the return expected from publicly traded stocks. The portfolio's target annual rate of return is 15%, evaluated on a long-term basis. Equity investments or their equivalent will be emphasized to accelerate growth of capital and maximize the private placement investment portfolio's potential as an inflation hedge.

A second investment objective of the private placement investment portfolio is to provide a means of prudent diversification of the total fund, recognizing both the absolute growth of private investment in a global economy as well as the inherently greater balance afforded over funds limited to publicly traded securities.

III. INVESTMENT APPROVAL AND MANAGEMENT

The Office of Private Investments, under procedures established by the Vice Chancellor for Asset Management, is responsible for the selection, investigation, due diligence, negotiation, closing, and monitoring of each private investment.

The Office of Private Investments shall conduct a thorough written evaluation of each specific investment proposal selected for review. Upon the unanimous approval of the Office of Private Investments portfolio managers, the proposed transaction, its risk and return characteristics, and structure will be recommended to the Vice Chancellor for Asset Management, who will independently approve or reject the portfolio managers' investment recommendation, after considering fully all relevant information available. In the event that the Vice Chancellor for Asset Management approves the portfolio managers' recommendation to invest in a proposed transaction, he or she shall present the investment recommendation for approval by a majority of the Asset Management Committee. Approval by the Asset Management Committee shall constitute sufficient authority for the Office of Asset Management to enter into the proposed transaction subject to any further Board approvals required at the time.

At least once a quarter, the Vice Chancellor for Asset Management shall issue a report to the Asset Management Committee which summarizes the activity of the private investment portfolios for each fund so invested. Said report shall include new commitments, portfolio cash flows, and performance for the immediately preceding quarter and portfolio values and asset allocation as of the end of the immediately preceding quarter.

IV. INVESTMENT PORTFOLIO LIMITS

The funded and outstanding private placement investment portfolio (at cost) may not exceed 10% of the book value of fund groups authorized to use this class of investment without prior approval of the Board of Regents.

Funded private placement investments plus unfunded commitments to partnership/fund-type investments may exceed the 10% cap due to the multi-year investment cycle generally associated with partnerships. The absolute level of unfunded commitments shall be reviewed quarterly with the Asset Management Committee.

New investment commitments irrespective of type are limited to 25% of the funded portfolio cap in any fiscal year without prior approval of the Asset Management Committee. The Board of Regents in establishing this limit, recognizes both the opportunity driven nature of private placement investments as well as the prudence associated with a relatively stable and manageable influx of new investments over time.

The maximum investment in any one entity shall not exceed 10% of the funded investment cap.

V. INVESTMENT GUIDELINES

All investment decisions shall be made in compliance with the "prudent person standard." Portfolio investments shall be based upon the projected ability of the underlying business or project to create incremental value through the expansion or improved efficiency of operations or by the development and production of natural resources. Investments may be used to finance capital expenditures and working capital at any stage of a company's growth and/or to effect a change of control.

Investments with the following risk characteristics shall be avoided:

- a. Financial risk associated with highly leveraged transactions where the business is closely tied to either the economy or a specific industry cycle, securities denominated in soft currencies, fluctuating interest rates, commodity prices, or exchange rates.
- b. Operating risk associated with a single product or patent, extreme reliance on an individual in management, dominant suppliers or customers, or low barriers to entry.
- c. Regulatory risk associated with regulated industries subject to politicization of rate setting, base service decisions, or where success is highly dependent on continued access to public resources or favorable tax policy.

- d. Environmental risk associated with products or manufacturing processes deemed unusually hazardous to the environment.

Additional prohibitions shall include:

- 1) Participation in hostile takeovers
- 2) Start-ups or early stage companies involved in high technology product lines, unless made through a properly structured venture capital partnership/fund or via coinvestment with such an organization
- 3) Equity ownership in entities in bankruptcy.

The private placement portfolios shall minimize ownership of securities and participation in other activities that would cause the income attributable to these investments to be classified as unrelated business taxable income.

Waiver of any of these guidelines requires the approval of the Asset Management Committee.

VI. INVESTMENT MANAGEMENT FIRMS/PARTNERSHIPS

The private placement portfolios may be invested in any authorized areas through management contracts with unaffiliated organizations possessing specialized investment skills. Such investment may be in the form of interests in limited partnerships, trusts, joint ventures, etc., where principals of the management firms have investment discretion. The principals of such firms shall have a demonstrated record of accomplishment and performance in the area of investment being undertaken and shall be required to invest on the same terms as the participating investors. Management fees and performance compensation payable under such contracts shall not exceed prevailing norms at the time of negotiation.

Private placement investments may include coinvestment directly in transactions sponsored and invested in by a management firm/partnership in which U. T. is already an investor.

VII. BOARD REPRESENTATION

The Board of Regents recognizes that private placement investments frequently result in ownership of an interest in a company sufficient to warrant joining the board of directors to monitor and participate in oversight of the company. The decision to accept a board seat shall be the responsibility of the Asset Management Committee.

VIII. PRIVATE PLACEMENT PORTFOLIO VALUATION

The valuation of the private placement investments is an important ongoing yet inherently subjective process. To avoid unwarranted fluctuations and to assure a consistent methodology, all valuations will adhere to the process established and approved in Attachment A, U. T. System Private Placement Valuation Criteria.

U. T. System Private Placement
Valuation Criteria

To Change Market Value in Published Financial Reports

The methodology used to evaluate private placement investments is by nature subjective and must be thoughtfully and conservatively administered. All valuation decisions are subject to concurrence by the Vice Chancellor for Asset Management. Valuation will generally occur on an annual basis except for public securities (quarterly) and partnerships (upon receipt of partner valuation).

Direct Investments

- a. Publicly traded stocks and bonds with no restrictions
 - @ last bid price or market closing price. Restricted public stock values in excess of cost shall be reduced by 25%.
- b. Non-public stocks and bonds
 - @ last price paid in a new round of financing (requiring at least one new investor to confirm value ascribed).
 - @ a subjective but responsible multiple of operating cash flow, less funded debt and less minority interest. (Valuation increase shall be reduced by 25%.)
- c. Oil and gas reserves at amortized cost
- d. Real estate at last appraised value

Partnership Investments

- a. General partner valuation less 25% of value increase
- b. Oil and gas reserves at amortized cost

Other

Control blocks of marketable stock held by U. T. or in conjunction with other investors may have value beyond market quotes.

Write Down - Book & Market Value

Investments of no discernible value or burdened with formidable business problems with little potential for success shall be written down to \$1 upon such a determination.

2. U. T. System: Adoption of the Long Term Fund Policy Statement and Rescission of Common Trust Fund Charter and Common Trust Fund Investment Policy Statement.-- Upon recommendation of the Asset Management Committee, the Board adopted the Long Term Fund Policy Statement for The University of Texas System as set forth on Pages 224 - 233 and rescinded both the Common Trust Fund Charter and the Common Trust Fund Investment Policy Statement.

The Long Term Fund Policy Statement was adopted as a result of a review of Fund investment policies and performance by the Office of Asset Management and Cambridge Associates, a leading investment advisor to college and university endowments. The review was undertaken in response to the amendment of the Texas Uniform Management of Institutional Funds Act to permit public institutions of higher education to distribute cumulative realized gains in addition to income.

The policy changes will preserve the long term purchasing power of Fund assets and payout stream by maximizing inflation adjusted total return. The major policy changes include the gradual reduction of payout as a percentage of Fund assets and the enhancement of the Fund's return/risk profile through diversification into international and alternative asset categories.

THE UNIVERSITY OF TEXAS SYSTEM

LONG TERM FUND

POLICY STATEMENT

Purpose

The Long Term Fund (the "LTF" or "Fund") shall be established by the Board of Regents of The University of Texas System (the "Board") as a pooled fund for the collective investment of private endowments and other long term funds supporting various programs of The University of Texas System. The LTF shall succeed the Common Trust Fund and provide investment management of underlying funds benefiting U. T. component institutions. The LTF shall also provide for greater diversification of investments than what might be possible if each account were managed separately.

LTF Organization

The LTF shall be organized as a mutual fund in which each eligible fund shall purchase and redeem Fund units as provided in this LTF Policy Statement. The ownership of LTF assets shall at all times be vested in the Board. Such assets shall be deemed to be held by the Board, as a fiduciary, regardless of the name in which the assets may be registered.

LTF Management

Fiduciary responsibility for the LTF rests with the Board. The LTF shall be governed through the Asset Management Committee (the "Committee") which shall a) define long term investment objectives and risk tolerances for the LTF, b) develop investment policies consistent with LTF objectives, and c) monitor LTF performances against LTF objectives. The Office of Asset Management shall invest the LTF assets in conformity with this policy statement and employ an investment staff to support the chief investment officer in the management of the Fund.

Unaffiliated investment managers may be hired to improve the Fund's return and risk characteristics. Such managers shall have complete investment discretion unless restricted by the terms of their management contracts. Managers shall be monitored for performance and adherence to investment disciplines.

LTF Administration

The Office of Asset Management shall employ an administrative staff to ensure that all transaction and accounting records are complete and prepared on a timely basis. Internal controls shall be emphasized so as to provide for responsible separation of duties and adequacy of an audit trail. Custody of LTF assets shall comply with applicable law and be structured so as to provide essential safekeeping and trading efficiency.

Funds Eligible to Purchase LTF Units

No fund shall be eligible to purchase units of the LTF unless it is under the sole control, with full discretion as to investments, of the Board and/or officers of the U. T. System. Any fund whose governing instrument contains provisions which conflict with this Policy Statement, whether initially or as a result of amendments to either document, shall not be eligible to purchase or hold units of the LTF.

The funds of a foundation which is structured as a supporting organization described in Section 509(a) of the Internal Revenue Code of 1986 which supports the activities of the U. T. System and its component institutions, may purchase units in the LTF provided that:

1. the purchase of LTF units by foundation funds is approved by the chief investment officer,
2. all members of the foundation's governing board are also members of the Board,
3. the foundation has the same fiscal year as the LTF,
4. a contract between the Board and the foundation has been executed authorizing investment of foundation funds in the LTF, and,
5. no officer of such foundation, other than members of the Board, the Chancellor, the chief investment officer or his or her delegate shall have any control over the management of the LTF other than to request purchase and redemption of LTF units.

LTF Investment Objectives

The primary investment objective shall be to preserve the purchasing power of LTF principal and distributions stream by maximizing inflation adjusted total return. Based on long term historical returns, the LTF shall attempt to earn an average annual total return of at least inflation plus 5.5% over rolling 5 and 10 year periods.

A secondary return objective is to outperform relevant capital markets. This objective recognizes that the LTF's long term objectives cannot be met solely by achieving a total return target equal to the rate of inflation. This secondary objective is especially relevant when capital market returns greatly exceed the rate of inflation. The LTF's success in meeting its objectives depends upon its ability to generate high returns in periods of low inflation that will offset lower returns generated in years when the capital markets underperform the rate of inflation.

Asset Allocation

Asset allocation is the primary determinant of investment performance and is the responsibility of the Committee. Asset allocation targets may be changed from time to time based on the economic and investment outlook.

In establishing asset allocation policy, the Committee shall recognize that the LTF's return/risk profile can be enhanced by diversifying the LTF's investments across different types of assets whose returns are not closely correlated. The Committee should seek to protect the LTF against both routine illiquidity in normal markets and extraordinary illiquidity during a period of extended deflation. The LTF should maintain adequate liquidity to support distributions and any redemptions.

LTF assets may be allocated to the following broad asset classes based upon their individual return/risk characteristics and relationships to other asset classes:

1. Cash Equivalents - are highly reliable in protecting the purchasing power of current income streams but are less reliable in protecting the purchasing power of asset values in an inflationary economy. Cash equivalents provide good liquidity under both deflation and inflation conditions.

2. Fixed Income Investments - offer the best protection for hedging against the threat of deflation by providing a dependable and predictable source of LTF income. Such bonds should be high quality, non-callable and intermediate to long term in order to ensure the generation of current income and preservation of nominal capital.
3. Equities - provide both current income and growth of income, but their principal purpose is to provide appreciation of the LTF. Historically, returns for equities are higher than for bonds over all extended periods since 1929. As such, equities represent the best chance of preserving the purchasing power of the Fund.
4. Alternative Assets - generally consist of alternative marketable investments and alternative illiquid investments. The advantages of alternative investments is that they enhance long term returns through investment in inefficient, complex markets. They offer reduced endowment volatility through their low correlation characteristics. The disadvantages of this asset class are that they are illiquid, require higher and more complex fees, and are dependent on the quality of external managers and their due diligence efforts. In addition, they possess a limited return history versus traditional stocks and bonds. The risk of alternative investments shall be controlled with extensive due diligence and diversification over time and across funds.

Alternative Marketable Investments -

These investments are broadly defined to include absolute return funds (hedge funds), arbitrage and special situation funds, high yield bonds, distressed obligations and emerging markets whose underlying securities are traded on public exchanges. As such, they offer faster drawdown and earlier realization potential than alternative "illiquid" investments.

Alternative "Illiquid" Investments -

These investments are generally held through limited partnership interests. They include private equity and buyout funds, and venture capital interests that are privately held and which are not registered for sale on public exchanges.

5. Inflation Hedging Assets - This category includes oil and gas interests, real estate, commodities and other assets whose current incomes and principal values generally increase as inflation accelerates.

Asset Allocation Policy Targets

The long term asset allocation policy targets for the LTF shall be established and reviewed annually by the Committee. The long term asset allocation policy targets for the Fund shall be as follows:

	<u>Percentage</u>
Cash and Equivalents	0.0%
Equities	
U. S. Common Stocks:	
Med/Large Capitalization Stocks	25.0%
Small Capitalization Stocks	<u>10.0</u>
subtotal	35.0

Investment Guidelines

The Fund must be invested at all times in strict compliance with applicable law. The primary and constant standard for making investment decisions is the "Prudent Person Rule."

Investment restrictions include the following:

General:

1. All investments must be U. S. dollar denominated unless held by an investment manager retained to manage an international portfolio.
2. Investment policies of any unaffiliated liquid investment fund must be reviewed and approved by the chief investment officer prior to investment of Fund monies in such liquid investment fund. No requirement exists that such funds conform to the above restrictions on money market instruments.
3. No securities may be purchased or held which would jeopardize the Fund's tax-exempt status.
4. No securities may be purchased on margin or leverage unless specifically authorized by the Asset Management Committee.
5. No transactions in short sales may be made unless specifically authorized by the Asset Management Committee.
6. Transactions in derivative instruments (other than those received as part of an investment unit) must be authorized by the Vice Chancellor for Asset Management and may occur only as part of a hedging, asset allocation, or other program specifically authorized by the Asset Management Committee. For purposes of this policy, derivatives shall be defined as any instrument whose value is derived, in whole or part, from the value of any one or more underlying assets, or index of assets (such as stocks, bonds, commodities, interest rates, and currencies) and evidenced by forward, futures, swap, cap, floor, option, and other applicable contracts.

Fixed Income:

1. Commercial paper must be rated in the two highest quality classes by Moody's Investors Service, Inc. (P1 or P2) or Standard & Poor's Corporation (A1 or A2).
2. Negotiable certificates of deposit must be with a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
3. Bankers' Acceptances must be guaranteed by an accepting bank with a minimum certificate of deposit rating of 1 by Duff & Phelps.
4. Repurchase Agreements and Reverse Repurchase Agreements must be with a domestic dealer selected by the Federal Reserve as a primary dealer in U. S. Treasury securities; or a bank that is associated with a holding company meeting the commercial paper rating criteria specified above or that has a certificate of deposit rating of 1 or better by Duff & Phelps.
5. The average quality of the fixed income portfolio shall be rated A1 using Moody's Investors Service, Inc. ratings or A+ using Standard & Poor's ratings. Fixed income securities (including preferred stocks) must be rated a minimum of Baa3 by Moody's Investors Service, Inc. or BBB- by Standard & Poor's Corporation, respectively, when purchased unless approved by the chief investment officer. Unrated bonds or preferred stocks may be purchased prior to review by the Asset Management Committee if, in the opinion of the System's investment staff, they are

at least equal in quality to publicly offered securities eligible for purchase. The cost of bonds or preferred stocks rated below Baa3 or BBB-, unrated bonds, and unrated preferred stocks which have been purchased but have not been reviewed by the Asset Management Committee may not exceed 1% of the book value of the Fund.

Equities:

1. No more than 5% of the voting securities of a corporation may be owned by the Board unless additional ownership is specifically authorized by the chief investment officer.
2. Portfolio managers transacting solely within their assigned assets:
 - shall hold no more than 25% of their managed portfolio in any one industry or industries (as defined by the chief investment officer) at cost unless the manager was retained to concentrate in an industry or industries.
 - shall hold no more than 10% of their managed portfolio in the securities of one corporation at cost unless authorized by the chief investment officer.
 - shall not hold investment in real estate, partnerships, and other such illiquid assets unless retained to manage this type of asset.
 - shall hold equity securities, cash and cash equivalents. Cash and cash equivalents shall not exceed 10% of the market value of the entire portfolio unless approved by the chief investment officer. Any security which converts into an equity security shall be considered an equity security for the purposes of this restriction.

Fund Distributions

The Fund shall balance the needs and interests of present beneficiaries with those of the future. Fund spending policy objectives shall be to:

- a) provide a predictable, stable stream of distributions over time,
- b) ensure that the inflation adjusted value of distributions is maintained over the long term, and
- c) ensure that the inflation adjusted value of Fund assets is maintained over the long term.

The goal is for the Fund's average spending rate over time not to exceed the Fund's average annual investment return after inflation in order to preserve the purchasing power of Fund distributions and underlying assets.

Pursuant to the Uniform Management of Institutional Funds Act, a governing board may distribute for the uses and purposes for which the fund is established the net realized appreciation in the fair market value of the assets of an endowment fund over the historic dollar value of the fund to the extent prudent under the standard provided by the Act. In addition, income may be distributed for the purposes associated with the endowments/foundations.

The Committee shall be responsible for establishing the Fund's distribution percentage and determining the equivalent per unit rate for any given year. Unless otherwise established by the Committee and approved by the Board or prohibited by the Act, fund distributions shall be based on the following criteria:

1. The annual payout rate of \$0.175 per unit shall remain in place until this per unit rate is less than or equal to a distribution percentage of 4.5% calculated as follows:
 - a) Using the most recent August 31st year end, determine an average market value using the 12 quarters including and previous to the year end selected.
 - b) Determine annualized distributions to the unit-holders as of the August 31st date determined in 1. a) (August 31st distributions multiplied by 4)
 - c) Divide step b) by step a) to determine the distribution percentage. If this result is less than or equal to 4.5%, the distribution percentage and the equivalent per unit rate shall be established as provided in step 2. below.

2. Determine the per unit rate as follows:
 - a) Take the distribution percentage as established in step c) above and increase by the three-year annualized CPI calculated for the fiscal year established above in 1. a)
 - b) If this percentage as calculated in 2. a) is between 3.5% and 5.5% determine a per unit rate as follows: Take the distribution percentage calculated in step 2. a) above and multiply by the average market value established in 1. a). Divide this result by the # of units at the end of the fiscal year used for these calculations to determine a per unit rate. This per unit rate shall be used in calculating distributions to the unitholders beginning with the fiscal year following the recommendation by the Committee and approved by the Board.
 - c) If the percentage in step 2. a) is not within the range of 3.5% and 5.5% a percentage shall be established by the Committee and step 2. b) shall be used in calculating the per unit rate.

Distributions from the Fund to the unitholders shall be made quarterly as soon as practicable on or after the last day of November, February, May, and August of each fiscal year.

Fund Accounting

The fiscal year of the LTF shall begin on September 1st and end on August 31st.

Market value of the Fund shall be maintained on an accrual basis in compliance with Financial Accounting Standards Board Statements, Government Accounting Standards Board Statements, or industry guidelines, whichever is applicable.

Asset write-offs or write-downs shall be approved by the chief investment officer.

Valuation of Assets

On each last business day in November, February, May, and August of each fiscal year (the quarterly valuation date), the Office of Asset Management shall determine the fair market value of all Fund net assets and the net asset value per unit of the Fund. Such valuations shall be determined in accordance with an Asset Valuation Policy approved by the Vice Chancellor for Asset Management and consistent with prevailing industry standards.

The fair market value of the Fund's net assets shall include all related receivables and payables of the Fund on the valuation date and the value of each unit thereof shall be its proportionate part of such net value. Such valuation shall be final and conclusive. Valuations shall be given no effect on the general ledger and supporting ledgers of the U. T. System but shall be memorandum accounts only.

Reporting

As soon as reasonably available after the end of each fiscal year, the Office of Asset Management shall deliver to the Committee an investment report presenting activity and the performance of the LTF for the immediately preceding quarter.

Purchase of LTF Units

Purchase of Fund units may be made on any quarterly purchase date (September 1, December 1, March 1, and June 1 of each fiscal year or the first working day subsequent thereto) upon payment of cash to the Fund or contribution of assets approved by the chief investment officer, at the net asset value per unit of the Fund as of the purchase date.

In order to permit complete investment of funds and to avoid fractional units, any purchase amount will be assigned a whole number of units in the Fund based on the appropriate per unit value of the Fund. Any fractional amount of purchase funds which exceeds the market value of the units assigned will be transferred to the Fund but no units shall be issued. Each fund whose monies are invested in the Fund shall own an undivided interest in the Fund in the proportion that the number of units invested therein bears to the total number of all units comprising the Fund.

Redemption of LTF Units

Redemption of Units shall be paid in cash as soon as practicable after the quarterly valuation date of the LTF. If the withdrawal is greater than \$10 million, advance notice of 30 business days shall be required prior to the quarterly valuation date. If the withdrawal is for less than \$10 million, advance notice of five business days shall be required prior to the quarterly valuation date. Withdrawals from the LTF shall be at the market value price per unit determined for the period of the withdrawal except as follows: Withdrawals to correct administrative errors shall be calculated at the per unit value at the time the error occurred, if determinable. If the error date is indeterminable, the average cost per unit of the withdrawing unitholder shall be used to determine the number of units to withdraw. This provision does not apply to transfer of units between endowment unitholders.

Securities Lending

The LTF may enter into a securities lending contract with a bank or nonbank security lending agent. The contract shall state acceptable collateral for securities loaned, duties of the borrower, delivery of loaned securities and collateral, acceptable investment of collateral, and indemnification provisions. The contract may include other provisions as appropriate. The securities lending program will be evaluated from time to time as deemed necessary by the Committee. Monthly reports issued by the agent shall be reviewed by the Office of Asset Management to insure compliance with contract provisions.

Segregation of Investments

If any investment contained in the LTF shall be subsequently determined by the Board of Regents to be an ineligible investment, such investment may, prior to any further admissions to or withdrawals from such Fund, at the discretion of the chief investment officer, be sold or segregated and set apart in a liquidating account solely for the benefit of Fund unitholders at the time of such segregation. Each such liquidating account shall be administered in such manner and the proceeds thereof distributed at such time or times as the chief investment officer deems to be in the best interests of Fund unitholders.

Investor Responsibility

As a shareholder, the Fund has the right to a voice in corporate affairs consistent with those of any shareholder. These include the right and obligation to vote proxies in a manner consistent with the unique role and mission of higher education as well as for the economic benefit of the Fund. Notwithstanding the above, the Committee shall discharge its fiduciary duties with respect to the Fund solely in the interest of Fund unitholders and shall not invest the Fund so as to achieve temporal benefits for any purpose including use of its economic power to advance social or political purposes.

Conflicts of Interest

Members of the Board and the Investment Advisory Committee are frequently persons of wide-ranging business interests. Therefore, a prudent, independent investment decision process may result in investments in firms or organizations with which a member of the Board or the Investment Advisory Committee is affiliated. Affiliation shall be interpreted within this section to mean an employee, officer, director, or owner of five percent or more of the voting stock of a firm or organization. The Fund may invest in such securities provided that:

1. A member of the Board or the Investment Advisory Committee:
 - a) shall disclose any conflict of interest with respect to a proposed investment or selection of a vendor
 - b) shall not participate in the discussion of an investment or vendor selection involving a conflict of interest
 - c) shall not vote on any issue involving a conflict of interest.
2. Investments will not be purchased from or sold to a member of the Board or the Investment Advisory Committee.
3. All staff members of the Office of Asset Management with discretionary authority to purchase securities or otherwise expend Fund assets shall comply with U. T. System ethics and standards of conduct policies.

Amendment of Policy Statement

The Board of Regents reserves the right to amend the LTF Policy Statement as it deems necessary or advisable.

Effective Date

The effective date of this policy shall be February 9, 1995.

RECONVENE.--At 2:55 p.m., the Board reconvened as a committee of the whole to consider those items remaining on the agenda.

EXECUTIVE SESSION OF THE BOARD OF REGENTS

Chairman Rapoport reported that the Board had met in Executive Session in the Dobie Room of the Peter T. Flawn Academic Center to discuss matters in accordance with Texas Government Code, Chapter 551, Sections 551.071, 551.072, and 551.074. In response to Chairman Rapoport's inquiry regarding the wishes of the Board, the following actions were taken:

1. U. T. Southwestern Medical Center - Dallas and U. T. Medical Branch - Galveston: Settlements of Medical Liability Litigation.--Regent Smiley reported that the Board heard presentations from The University of Texas System Administration officials concerning the two medical liability matters listed in the agenda.

Based on these presentations, Regent Smiley moved that the Chancellor and the Office of General Counsel be authorized to settle the following medical liability litigation matters in accordance with the individual proposals presented in Executive Session:

- a. On behalf of The University of Texas Southwestern Medical Center at Dallas, the medical liability litigation filed by Natalie Makki, et al.
- b. On behalf of The University of Texas Medical Branch at Galveston, the medical liability litigation filed by Daniel G. Wilson.

Vice-Chairman Temple and Regent Loeffler seconded the motion which prevailed without objection.

2. U. T. Austin - Will C. Hogg Memorial Fund: Authorization to Sell 4.7058 Acres of Land Located at the Southeast Intersection of Waugh Drive and Allen Parkway in Houston, Harris County, Texas, and Approval for Executive Director of Endowment Real Estate to Take All Steps to Close the Transaction.--The Board, upon motion of Vice-Chairman Temple, seconded by Vice-Chairman Lebermann and Regent Cruikshank:
 - a. Authorized the sale of 4.7058 acres of land located at the southeast intersection of Waugh Drive and Allen Parkway in Houston, Harris County, Texas, on behalf of the Will C. Hogg Memorial Fund at The University of Texas at Austin
 - b. Authorized the Executive Director of Endowment Real Estate or his delegate to take all steps necessary to close the transaction according to the parameters outlined in Executive Session following approval of the Office of General Counsel.

3. U. T. Austin - The Lundell Endowment: Authorization for the Board of Regents as Trustee for The Lundell Endowment to Sell a 4.3165 Acre Tract of Land in Plano, Collin County, Texas, and Approval for Vice Chancellor for Asset Management to Execute All Documents Relating Thereto.-- Upon motion of Regent Loeffler, the Board of Regents of The University of Texas System, as Trustee of The Lundell Endowment:

- a. Approved, confirmed, and ratified all actions of the Office of Endowment Real Estate in negotiating on behalf of the Trustee the sale of a 4.3165 acre tract of land in Plano, Collin County, Texas, on behalf of The University of Texas at Austin, including the form of Real Estate Contract presented to the Trustee
- b. Approved, ratified, and confirmed the execution of the Real Estate Contract and authorized the Vice Chancellor for Asset Management or his delegate to execute the special warranty deed and all other closing documents pertaining to the sale of the property following review by the Office of General Counsel.

Vice-Chairman Temple seconded the motion which carried without objection.

4. U. T. Health Science Center - Houston: Authorization to Purchase Approximately 4.722 Acres of Land and Improvements Located at 1300 Moursund Street in Houston, Harris County, Texas, and Approval for Executive Vice Chancellor for Business Affairs to Execute All Documents Relating Thereto.--Regent Cruikshank moved that the Board:

- a. Authorize The University of Texas Health Science Center at Houston to purchase approximately 4.722 acres of land and associated improvements located at 1300 Moursund Street in Houston, Harris County, Texas, according to the parameters outlined in Executive Session
- b. Authorize the Executive Vice Chancellor for Business Affairs or his delegate to execute all documents pertaining to the purchase following approval by the Office of General Counsel.

Vice-Chairman Temple seconded the motion which prevailed by unanimous vote.

5. U. T. M.D. Anderson Cancer Center: Authorization for Executive Vice President for Administration and Finance to Execute All Documents Required to Purchase Approximately 6.89 Acres of Land and Improvements Located at the Southeast Corner of Old Spanish Trail and Fannin Street in Houston, Harris County, Texas (Texas National Guard Site).--Upon motion of Regent Holmes, seconded by Regent Cruikshank, the Board authorized the Executive Vice President for Administration and Finance of The University of Texas M.D. Anderson Cancer Center or his delegate to execute all documents required to purchase

approximately 6.89 acres of land and improvements located at the southeast corner of Old Spanish Trail and Fannin Street in Houston, Harris County, Texas (Texas National Guard Site), according to the parameters outlined in Executive Session following approval of the Office of General Counsel.

REPORT OF BOARD FOR LEASE OF UNIVERSITY LANDS

Regents Rapoport and Lebermann, as members of the Board for Lease of University Lands, submitted the following report on behalf of that Board:

Report

The Board for Lease of University Lands has not met since its last meeting on November 10, 1994.

Following is a report on the 86th Oil and Gas Lease Sale and Frontier Oil and Gas Lease Sale 86-A on Permanent University Fund lands held on November 10, 1994, in Midland, Texas:

- a. 37,623 acres were nominated by the oil and gas industry for the 86th Oil and Gas Lease Sale. Bonuses in the amount of \$1,837,668 were paid for leases covering 15,225 acres. No bids were received on 22,398 acres.
- b. Frontier acreage totalling 478,932 acres was available for leasing under the terms of the Frontier Oil and Gas Lease Sale 86-A. Bonuses in the amount of \$429,226 were paid for leases covering 7,121 acres. No bids were received on 471,811 acres.
- c. Total bonuses paid were \$2,266,894.

The Board for Lease of University Lands held a general business meeting in conjunction with the 86th Oil and Gas Lease Sale and Frontier Oil and Gas Lease Sale 86-A and approved the following:

- a. Authorized the continuation of the Oil Royalty Take In-Kind Program and ratified Take In-Kind contracts dated effective November 4, 1994
- b. Terminated the Temporary Unitization, Pooling and Development Unit Agreement with Shenandoah Petroleum Corporation
- c. Approved the lease terms for the 87th Oil and Gas Lease Sale and Frontier Oil and Gas Lease Sale 87-A to be held in Midland, Texas, in May 1995.

OTHER MATTERS

1. U. T. System: Annual Report on the Activities of the Faculty Advisory Council.--Chancellor Cunningham introduced Dr. Jerry Polinard, Chair of The University of Texas System Faculty Advisory Council and Professor in the Department of Political Science at The University of Texas - Pan American, who presented the following report:

U. T. System Faculty Advisory Council
Annual Report to the U. T. System Board of Regents
1993-1994

On behalf of the U. T. System Faculty Advisory Council (UTSFAC), I want to thank the Board of Regents for inviting us once again to present our annual report. The Council, which first met in April 1990, was authorized by the Board of Regents, and we appreciate the Board's continued support. In the five years of our existence, the faculty who have participated on the Council have been enriched by the contact with the Board, the Chancellor and his staff, and with each other. We have learned about the System, and we have shared what we learn with our colleagues at our home institutions. We remain the only council of its type in higher education in Texas, and I want to assure the Board and the Chancellor that we do not treat this experience lightly.

As you know, the Council is composed of two members from each of the fifteen component campuses. These members are appointed formally by the chief administrative officers of each component, most of whom rely on the recommendations of the campus faculty governance organizations. Consequently, most of the UTSFAC members are currently, or have been in the recent past, the chairs of their institution's faculty senate. The Council meets four times a year (September, November, February, and June). The Council distributes its tasks through four standing committees organized on the basis of subject matter (Academic Affairs, Faculty Governance, Faculty Quality, and Health Affairs). The Council may also undertake specific tasks at the suggestion of the Board of Regents, the Chancellor, or the component institutions.

In general, the Council serves as a clearinghouse for those Systemwide concerns that affect faculty. As such, the Council sometimes offers a faculty perspective in direct response to requests from the Board of Regents or the Chancellor. Other times, the Council may suggest a faculty perspective to the Board of Regents or the Chancellor in response to requests from System faculty.

An overview of the Council's activities in 1993-94 offers some indication of the broad range of activities in which the Council is involved. First, the Council completed the analyses of the Faculty Satisfaction Survey (FSS) and presented reports to the System Council last summer and to the Board last November. Further work utilizing the FSS data continues on individual campuses as the faculty and administration examine the data from their home institution.

Second, the Council is seeking external funding for the development, implementation, and evaluation of a Systemwide group of collaborative campus-wide centers of teaching effectiveness. Currently, three of the thirteen U. T. teaching components have campus-wide agencies focusing on teaching improvement, and our goal is to expand this number. A status report on this project was presented to the System Council last month.

Third, the Council is implementing a study of the methods by which teaching is evaluated throughout the System. The study includes collecting and analyzing all instruments and procedures for evaluating teaching effectiveness currently used at all System components. In addition, the Council will survey faculty, administrators, students, and alumni to obtain their perceptions of the process of teacher evaluation. This project also was presented to the System Council last month.

Both the centers of teaching effectiveness and the analysis of the various approaches to evaluating teaching attest to the importance the Council places on the role of teaching and the issue of accountability in the classroom.

Fourth, the Council, through the Health Affairs Committee, has continued to be involved with such issues as employee health insurance, the organization and function of Ethics Committees at the health components, and the health-care economic trends and their import for System components.

In addition to these activities, UTSFAC members, at the request of the Chancellor, represented the Council in such other System projects as the Task Force on U. T. System/Public School Collaborations, the Committee on the Advancement of Minorities, the Committee on the Advancement of Women, and the ORP Enhancement Committee.

These are the details of some of our work this past year, but may I conclude by suggesting the value of the Council is in the sum of its parts. I was present at the

Council's first meeting five years ago, and I think it is fair to say that neither the Board, nor then-Chancellor Mark, nor the faculty members had any firm idea as to what we were about. Since that meeting, the Council, with the support of the Board, and with the active involvement of Chancellor Cunningham and the sound advice of Francie Frederick, has found its voice as a representation of the faculty perspective in Systemwide activities. We do not take the Board's support or the Chancellor's involvement for granted. We will continue to work to earn that support. If I may borrow a phrase my grandfather used to use, we will continue to try to "give good weight."

On behalf of the Board, Chairman Rapoport thanked Dr. Polinard for this very informative report.

2. U. T. System: Presentations by Mr. Robert Parker (Chair, Student Advisory Group) and Mr. John Black (President, U. T. Austin Students' Association) Related to the Student Regent Issue.--At the request of Chairman Rapoport, Chancellor Cunningham introduced the following who were allocated a combined total of 15 minutes to discuss the student regent issue:

Mr. Robert Parker, Chair of The University of Texas System Student Advisory Group and a student at The University of Texas at Tyler

Mr. John Black, President of the Students' Association at The University of Texas at Austin.

Chancellor Cunningham then called on Mr. Parker who made the following presentation:

Remarks of Mr. Robert Parker

Chairman Rapoport, Members of the Board, Chancellor Cunningham --

I would like to thank you for the opportunity and the time on the agenda to speak here today.

First of all, it has been an honor and a pleasure to serve as a member of the U. T. System Student Advisory Group for the past three years as a representative of The University of Texas at Tyler including serving as Chair for the current year.

For the benefit of our new Regent-Designate (Mr. Donald L. Evans), this Group was created in 1989 as a means with which to provide meaningful student input to both the Chancellor and the Board of Regents. Currently, 13 components (with enrolled students) have three representatives each on

this Group. The Group meets six times a year to discuss student issues and concerns that affect all of U. T. System.

I look forward to returning to speak before this Board in May 1995 on issues and proposals that the Group is currently working on.

However, today I am here to discuss an issue brought before our Group at our January 1995 meeting. That issue, as you may or may not know, is the student regent/advisor.

As a body, this issue has not been voted on as a group. Our April 7-8, 1995 meeting will be the earliest time that this issue will be decided. At present, the "student advisor" has been approved "in spirit" by the Student Rights Subcommittee. No proposal has been officially offered.

Yet, in the interim between meetings, in the search for increased meaningful and timely student input, I believe more information is essential before an informed vote of approval/disapproval occurs.

As Chair, I have discussed the issue with the student body presidents of Texas A&M University and Texas Tech University. In upcoming weeks, I will be speaking with student leaders from around the state.

However, in talking with student leaders, it is equally important to seek the opinion of this Board upon which ultimately this advisor sits. So I present this issue regarding the student advisor to the Board. The Group would like to know any input or concern that this Board may have.

In what ways can communication and interaction be maximized between this Group and the Board?

In closing, again, thank you for your time. I would like to conclude by personally inviting you to our next meeting which will be held on April 7-8, 1995, in Austin in Ashbel Smith Hall.

In response to Mr. Parker's inquiry as to the Board's position on this issue, Chairman Rapoport commented that with more information from the students the Board may be able to serve them better. He noted that a major portion of the Board's concern relates to its fiduciary responsibility and its relationship with the Legislature, the students, faculty members, and with the people of the State of Texas. Mr. Rapoport stated that every student has access to the Chancellor or to any member of the Board and that he, personally, would meet with students at any time. He pointed out that it often takes a Regent several years to understand the complex issues that come before the Board and it would be difficult for a student

to serve long enough to gain a good understanding of how the System works. Chairman Rapoport concluded by noting that if students want access to the Board, they can have all the access they want as members of the Board are willing to meet with them.

Mr. Parker commented that some of the students believe that the access is not there and asked if there were ways to maximize the interaction between the Student Advisory Group and the Board.

In response to Mr. Parker's inquiry, Vice-Chairman Lebermann commended the students for a well thought-out plan and noted that he was in agreement with Chairman Rapoport's remarks. He pointed out that as a former student body president at U. T. Austin he could understand the students' concerns and noted that the very establishment of the Student Advisory Group is a major step. He said that in his days as a student at U. T. Austin the students were invited now and again to visit with the president and/or the chancellor but it was not "organized." Thus the establishment of the Student Advisory Group in 1989 provided an avenue by which the legitimate concerns of students from all of the component institutions could be brought to the attention of the Board. Mr. Lebermann noted that he and Regent Loeffler have had conversations about the need, as the Board moves about the component institutions for its meetings, to have the members of the Student Advisory Group meet with the Board formally and informally to discuss pertinent student concerns. He added that those Regents who are located in Austin would be available to the students as would the other members of the Board and that he was more than willing to meet with the entire Student Advisory Group or any member thereof on any subject and at any time. Mr. Lebermann noted that he would report back to the Board on the various meetings that he has with students so that he could share what he has learned.

Regent Smiley noted that she concurred with Vice-Chairman Lebermann's comments and she would be available to the students. As a former student body president at Baylor University, Regent Smiley stated that she could appreciate the importance of access and understanding the fiduciary responsibility of the Board.

Mr. Parker noted that communication with the Board was very important to the students and he believed today's dialogue would be helpful.

In response to Regent Loeffler's inquiry as to whether the Student Advisory Group, with its 39 representatives from 13 institutions, is focused on U. T. System problems or on parochial problems at each of the 13 institutions, Mr. Parker commented that the Group does not ignore component issues. Mr. Loeffler then asked if it was more important for this Group to focus on component or U. T. System issues and Mr. Parker responded that the Group does what it can to help each individual component but that it ultimately deals with U. T. System issues.

Following Mr. Parker's presentation, Chancellor Cunningham introduced Mr. Black, who thanked the members of the Board for the opportunity to address the student regent issue. Mr. Black reviewed the two decade old efforts to persuade legislators to require university governing boards to include student members. Noting that

the student regent issue is very important and he did not think the legislative route was assured, Mr. Black commented that the Group was coming to the Board with a new approach and new hope and was asking the Board to look at the issue. He cited the need to look at better ways to create a flow of ideas between the Board and the students so that the students will feel comfortable with the Regents. Mr. Black suggested that the chair of the Student Advisory Group sit on the Board as an ex officio member and noted that as consumers of the U. T. System, the students want more direct contact with the nine Regents. He stated the key is interaction between the two to develop better working relationships, noting that the students are not interested in demands and entitlements. Mr. Black pointed out that the students would like to interact with the Regents on a personal level and have some insight into the fiduciary responsibilities of the Board.

In closing, Mr. Black stated that "I bring to you a challenge. We know we have something to add. We desire to take nothing away. We want to carry weight too and want to work with and not around or over the Board."

Vice-Chairman Lebermann expressed appreciation to Mr. Black for his comments and stated that he knew it was a heartfelt issue and looked forward to future conversations with the students.

On behalf of the Board, Chairman Rapoport thanked Mr. Parker and Mr. Black for their comments.

SCHEDULED MEETING.--Chairman Rapoport announced that the next scheduled meeting of the U. T. Board of Regents would be held on May 11, 1995, at The University of Texas Medical Branch at Galveston.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 3:35 p.m.

/s/ Arthur H. Dilly
Executive Secretary

February 20, 1995