



TO: BCRTA Board of Trustees

FROM: Matthew Dutkevicz, Executive Director
Meagan Varney, Procurement & Compliance Specialist

RE: *Ground Lease: Chestnut Street Multimodal Station*

October 13th, 2023

STRATEGIC PLAN GOAL / OBJECTIVE

Developing Multimodal Infrastructure

RECOMMENDATION

Authorize the Executive Director to execute a 40-year ground Lease for 97 W Chestnut Street with Miami University for the construction and operation of the Chestnut Street Multimodal Station.

FINANCIAL CONSIDERATIONS

- The lease cost is \$1.00 per month for the lease term.
- BCRTA will incur additional cost to acquire title insurance for the subject property. Title insurance is estimated to be \$60K. BCRTA has proposed splitting this expense equally with Miami University.

BUSINESS PURPOSE

To construct a multi-modal transportation center at Chestnut Fields in Oxford, Ohio on Miami University's campus. This facility will provide a one-stop transfer location for BCRTA's services in Oxford as well as connections to Middletown and Hamilton and is designed as a community gathering space for intermodal trips by foot, bike, scooter, and bus. Eventually the facility will also serve intermodal trips by train sharing common space and a walking path with the proposed City of Oxford Amtrak train station due to be built in 2026.

BACKGROUND

BCRTA staff has negotiated this lease on and off for more than three years. The content of the lease has been finely analyzed by both sides and is largely driven by federal regulation and state law. Because of the Federal Transit Administration interest in the project (\$22.5M), the facility must continue to be used for public transit purposes throughout the useful life of the asset (40 years). In the event that the lease is terminated, and the facility is not used for public transit purposes, the FTA must be reimbursed for the remaining value.

BCRTA Resolution No. 23-10-01

Authorizing the Butler County Regional Transit Authority (BCRTA) Executive Director to Execute a Ground Lease with the Miami University Board of Trustees for Construction and Operation of the Chestnut Street Multimodal Station.

Whereas the BCRTA and Miami University have partnered to provide local and regional public transit services since 2013; and

Whereas Miami University and BCRTA are contracted to continue their partnership through 2033; and

Whereas BCRTA and Miami University have endeavored to create a multimodal gateway to the Oxford and University communities through cooperative education, grant-seeking, and relationship-building; and

Whereas Miami University has committed one-million six-hundred-thousand dollars (\$1,600,000) toward such a project; and

Whereas BCRTA has raised more than an additional twenty-two and one-half million dollars (\$22,500,000) toward such a project; and

Whereas BCRTA is in receipt of a bid to build such a facility from a qualified and responsible contractor; and

Whereas Miami University has proposed a property known as 97 W Chestnut Street for constructing such a facility; and

Whereas BCRTA has conducted alternative site evaluations and completed all requirements for federal funding pursuant to the National Environmental Policy Act (NEPA) and FTA Master Agreement; and

Whereas BCRTA staff and legal counsel and Miami University staff and legal counsel have negotiated extensively to draft an equitable and mutually agreeable ground lease for the property described as 97 W Chestnut Street; and

Whereas adoption of this resolution was recommended by the Butler County Regional Transit Authority Board of Trustees at the regular monthly meeting on October 18, 2023.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees for the Butler County Regional Transit Authority:

SECTION 1: The BCRTA Board of Trustees hereby authorizes the BCRTA Executive Director to negotiate and execute a ground lease with the Miami University Board of Trustees on behalf of the Butler County Board of Trustees, for a term of forty (40) years, attached hereto as Exhibit A and incorporated herein by reference.


SECTION 2: All prior legislation, or any parts thereof, which is/are inconsistent with this Resolution is/are hereby repealed as to the inconsistent part thereof.

SECTION 3: It is hereby found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board, and that all deliberations of this Board and any of its committees that resulted in such formal actions were in meeting open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

Adopted: October 18, 2023



Chris Lawson
Board President



Matthew Dutkevicz
Executive Director

GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT (this “**Agreement**” or this “**Lease**”) is made as of the Effective Date (as defined in **Article I** below) by and between MIAMI UNIVERSITY, a public institution of higher education established and existing under the laws of the State of Ohio having a principal place of business at 501 E. High Street, Oxford, Butler County, Ohio 45056, as Lessor (the “**University**”); and BUTLER COUNTY REGIONAL TRANSIT AUTHORITY, an Ohio regional transit authority having a principal place of business at 3045 Moser Court, Hamilton, Butler County, Ohio 45011, as Lessee (“**BCRTA**”).

WITNESSETH:

WHEREAS, BCRTA presently maintains and operates a public mass transportation system in Butler County, Ohio;

WHEREAS, convenient and affordable transportation for administrators, faculty, staff and students of the University to, from, and around the University is critical to the educational mission of the University;

WHEREAS, BCRTA desires to bolster the public transit infrastructure and amenities in Butler County, Ohio, by constructing the Project (as defined in **Article I** below), which is designed to support regional job-seekers and education-seekers, transit-dependent families, local residents and visitors;

WHEREAS, the Project’s intended site, located at TPN: H4000115000007, H4000115000008 and H4000115000011), is owned in fee simple by the University (the “**Project Site**”), and BCRTA desires to lease a portion of the Project Site for purposes of constructing improvements thereon, including all building fixtures, equipment and such other improvements which collectively, upon completion, shall comprise the Project;

WHEREAS, contemporaneous to entering into this Lease, the BCRTA is actively applying for and securing funding in the form of grants from federal and state authorities and local contributions to provide financing critical to ensure completion of the Project; and

WHEREAS, the BCRTA and the University now seek to enter into this Lease for the entirety of the Premises (as defined in **Article I** below).

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the University and the BCRTA, each intending to be legally bound, agree as follows:

Article I. DEFINITIONS

Section 1.01 **Definitions.** In addition to the words and terms elsewhere defined in this Lease, the following words and terms as used in this Lease shall have the following meanings unless the context or use indicates another or different meaning or intent.

(a) “**Affiliate**” means any person which is controlled by the BCRTA or its successor agency, which controls the BCRTA or its successor, or which is under common control with the BCRTA or its successor.

(b) “**Authorized BCRTA Representative**” means the individual who signs this Lease for and on behalf of the BCRTA, who is hereby appointed by the BCRTA to serve in such capacity.

(c) “**BCRTA**” means Butler County Regional Transit Authority, lessee hereunder, an Ohio regional transit authority authorized to do business in the State of Ohio and its successors and assigns, including any surviving, resulting or transferee entity as provided in **Section 8.03** hereof.

(d) “**Commencement Date**” means the date of BCRTA’s opening for business as a multimodal transportation site to the general public in the Premises. Tenant agrees to complete the Acceptance Letter, attached hereto as Exhibit D, signifying the Commencement Date of the Lease and the commencement date of the payment of Rent for the Premises. University and BCRTA acknowledge and agree, in the event of any conflict between this Lease and the Acceptance Letter, such fully executed Acceptance Letter shall control and prevail.

(e) “**Completion Date**” means the date of completion of the acquisition, construction and installation of the Project, as certified in writing by BCRTA to University.

(f) “**Construction Period**” means the period commencing on the date on which the first disbursement of monies are disbursed by the Project Manager in conjunction with construction of the Project, and ending on the Completion Date.

(g) “**Federal Interest**” has the meaning set forth in **Section 8.12** of this Agreement.

(h) “**FTA**” means the Federal Transit Administration.

(i) “**Default Rate**” means the index rate, base rate or reference rate from time to time published as the Wall Street Journal Prime Rate (being the base rate on corporate loans posted by at least 70% of the nation's top 10 banks by assets).

(j) “**Effective Date**” means the date that this Lease is signed by both University and BCRTA.

(k) “**Environmental Contamination**” means the presence of Hazardous Material(s) in concentrations which require remediation under applicable Environmental Laws.

(l) “**Environmental Laws**” means any federal, state or local law, ordinance, regulation or order relating to the protection of or regulation of the environment or public health or safety, including cleanup of Hazardous Materials.

(m) “**Event of Default**” means any of the events described in **Section 10.01** hereof.

(n) “**Granting Authority**” means any governmental or quasi-governmental agency or authority, including but not limited to the FTA, the United States Department of Transportation, its agents, employees and representatives responsible for granting and dissemination of BUILD discretionary grant funds, the State of Ohio Department of Transportation, its agents, employees and representatives for distribution and dissemination of TIGER grant funds, or any other governmental agency or authority, from which funding for the Project has been obtained.

(o) “**Hazardous Materials**” means all chemicals, substances and/or materials listed under or otherwise governed or regulated by any Environmental Laws including, without limitation, hazardous or toxic substances, hazardous wastes or hazardous materials, petroleum products or any constituents thereof.

(p) “**Lease**” and “**Agreement**” means this instrument.

(q) “**Lease Term**” and “**Term**” means the duration of the leasehold interest created by this Lease as specified in **Section 5.01** hereof.

(r) “**Leasehold Interest**” means the interest of the BCRTA in the Premises pursuant hereto, subject to the Permitted Encumbrances.

(s) “**Net Proceeds**”, when used with respect to any insurance or condemnation award, means the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such gross proceeds.

(t) “**Permitted Encumbrances**” means, as of any particular time, (i) this Lease and the security interests created herein, (ii) [intentionally omitted], (iii) utility, access or other easements and rights of way, restrictions, reservations, reversions and exceptions in the nature of easements that the BCRTA certifies will not materially interfere with or impair the operations being conducted at the Project, (iv) unfiled and inchoate mechanics' and materialmen's liens for construction work in progress, (v) architects', contractors', subcontractors', mechanics', materialmen's, suppliers', laborers' and vendors' liens or other similar liens not then payable or permitted to exist as provided in **Section 6.01(c)** hereof, (vi) subleases to operators of portions of the Premises, (vii) such minor defects, irregularities, encumbrances, easements, rights of way and clouds on title that do not materially impair the Premises affected thereby for the purpose for which it was acquired or is held by the BCRTA, and (viii) Permitted Exceptions described in the Title Policy.

(u) “**Premises**” means a portion of the Project Site that is described on **Exhibit A**, and includes the land depicted on **Exhibit B**, together with all easements, hereditaments, tenements and other rights and privileges of any kind appurtenant thereto, less such real estate and interests in real estate as may be taken by the exercise of the power of eminent domain as provided in **Section 7.02** hereof, and subject to any and all existing rights, obligations, easements, licenses, restrictions, agreements and other instruments of record or reserved herein.

(v) “**Project**” means that certain multimodal transportation facility constructed in Butler County, Ohio, consisting of land, improvements to be constructed thereon or therein, building fixtures and building equipment installed or to be installed thereat, and shall be comprised of the Premises, the Project Improvements and the Project Equipment, as they may at any time exist. BCRTA intends to call the Project *The Chestnut Street Shared Services Facility and Multimodal Station*.

(w) “**Project Equipment**” means the building fixtures and building equipment acquired and/or installed with the proceeds of any payment by BCRTA or the Tenant Improvement Allowance (defined herein) pursuant to **Section 4.05** hereof and any item of property acquired and installed in substitution therefor and renewals and replacements thereof pursuant to **Sections 6.02, 7.01, and 7.02** hereof, less such property as may be released from this Lease pursuant to **Section 6.02** hereof or taken by the exercise of power of eminent domain as provided in **Section 7.02** hereof, but not including any of the BCRTA's own machinery, equipment and related property installed under the provisions of **Section 6.01** hereof. The Project Equipment insofar as it will be initially installed as a part of the Project shall be more fully described on **Exhibit C**. The parties acknowledge that **Exhibit C** cannot be fully prepared until after the Commencement Date.

(x) “**Project Funds**” means all monies secured by the BCRTA relative to construction of the Project as identified herein, including governmental grants received from the Granting Authorities and the Tenant Improvement Allowance (defined herein) provided by the University.

(y) “**Project Improvements**” means, collectively, the buildings, structures, fixtures and other improvements heretofore constructed or to be constructed in conjunction with the Project and comprising the Premises, but not constituting a part of the Project Equipment, the acquisition, construction or installation of which or the improvements or replacements thereto, in whole or in part, are to be acquired with the proceeds from the Project Funds.

(z) “**Project Manager**” means the individual appointed by the BCRTA to provide project oversight and to serve as the lead development coordinator relative to the Project. Notwithstanding anything herein to the contrary, the Project Manager may either be an employee of the BCRTA or an independent third party, whichever the BCRTA shall choose in its sole discretion.

(aa) “**Talawanda**” means the Board of Education of the Talawanda City School District.

(bb) “**Talawanda Lease**” means that certain Lease Agreement by and between the University and Talawanda, dated as of April 15, 2019.

(cc) “**Tenant Improvement Allowance**” means the grant of One Million, Six Hundred Thousand Dollars (\$1.6 Million) by the University to the BCRTA to be used by BCRTA for purposes of constructing and completing the Project as contemplated herein. The Tenant Improvement Allowance shall be paid to BCRTA only after the remaining cost to complete the Project is less than Nine Million Dollars (\$9,000,000) as indicated on the Schedule of Values to be prepared by the Contractor (or Construction Manager, as the case may be) and updated on a regular basis, not less than monthly, and timely delivered to University for its review. University shall pay the Tenant Improvement Allowance to BCRTA within fourteen (14) business days after (i) all other Project Funds are secured and committed from all other sources, (ii) University’s receipt of written notice from BCRTA and the Contractor or Construction Manager for the Project certifying that the Project has progressed so that there is less than Nine Million Dollars (\$9,000,000) needed to complete the Project, as measured against the Schedule of Values, and (ii) University’s review and confirmation of the same.

(dd) “**Termination for Convenience Right**” has the meaning set forth in **Section 3.01** of this Lease.

(ee) “**Title Policy**” means the owner's policy of title insurance that will be procured by the University as required under this Agreement.

Section 1.02 Rules of Construction. Unless the context clearly indicates to the contrary:

(a) “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter” and other equivalent words refer to this Lease and not solely to the particular portion thereof in which any such word is used.

(b) Words importing the singular number shall include the plural number and vice versa, and any pronoun used herein shall be deemed to cover all genders.

(c) All references herein to particular Sections are references to Sections of this Lease.

(d) Any certificate or statement required to be delivered under the provisions of this Lease shall, in the absence of manifest error, be deemed to be conclusive evidence of the truth, correctness and accuracy of the matters covered in such certificate or statement.

Article II. REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties by the University. The University makes the following representations and warranties:

(a) Organization and Authority. The University is a public body corporate and politic, created and validly existing pursuant to the Constitution and laws of the State of Ohio. The University has the power to enter into the transactions contemplated herein and to perform and observe all such obligations in accordance with the terms hereof. By proper corporate action, the University has duly authorized the execution and delivery of this Lease and all instruments as may be required to effectuate the same.

(b) Agreements are Legal and Authorized. The execution and delivery by the University of the Lease and the compliance by the University with all of the provisions hereof and the consummation of the transactions contemplated hereby (to the extent such provisions and consummation are within the control of the University): (i) are within the power of the University, (ii) will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, or any commitment, agreement or instrument of whatever nature to which the University is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the University or any of its activities or properties, which would have a material adverse impact on the University's ability to perform its obligations hereunder, (iii) will not result in the creation or imposition of any material and prohibited lien, charge or encumbrance on the Project or the Premises; and (iv) have been duly authorized by all necessary action on the part of the University. The University is not subject to any charter, law, contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the University from entering into this Lease or any instruments pertaining thereto, or performing any of its obligations thereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights.

(c) No Prior Pledge. Neither this Lease nor the receipts and revenues generated hereunder have been pledged or hypothecated in any manner or for any purpose, other than as may be specifically set forth herein.

(d) Enforceability. This Lease is a legal, valid and binding limited obligation of the University enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

(e) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending, or to the best knowledge of the University threatened against or affecting the University in any court or before any governmental authority or arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the transactions contemplated by this Lease or which may be reasonably anticipated to adversely affect the validity or enforceability of the Lease or the ability of the University to perform its obligations hereunder.

(f) Environmental Condition of the Premises. To the best knowledge of the University, except as may be set forth in the Phase I Environmental Site Assessments dated May 6, 2021, July, 2013 and May, 2013 or the Pre-Demolition Asbestos Survey completed by Westech Environmental dated April 4, 2023, the

Premises have not previously nor are they presently the subject of any ongoing claim of or investigation into an event of Environmental Contamination.

Section 2.02 Representations and Warranties by BCRTA. The BCRTA makes the following representations and warranties:

(a) Organization and Power. BCRTA is an Ohio regional transit authority, duly organized and validly existing under the laws of the State of Ohio. BCRTA has the power and authority to enter into this Lease and to perform and observe its obligations contained herein in accordance with the terms hereof, and has, by proper action, been duly authorized to execute, deliver and perform this Lease in accordance with the terms hereof.

(b) Pending Litigation. To the best knowledge of the BCRTA, there are presently no actions, suits, proceedings, inquiries or investigations pending, threatened against or affecting the BCRTA in any court or before any governmental authority, arbitration board or tribunal which is reasonably anticipated to materially and adversely affect the Project or the transactions contemplated by this Lease or which is reasonably anticipated to adversely affect the validity or enforceability of the Lease or the ability of the BCRTA to perform its obligations hereunder.

(c) Agreements Are Valid and Authorized. The execution and delivery by the BCRTA of the Lease and the compliance by BCRTA with all of the provisions hereof and the consummation of the transactions contemplated hereby (to the extent such provisions and consummation are within the control of the BCRTA): (i) are within the power of the BCRTA, (ii) will not conflict with or result in any material breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, or any commitment, agreement or instrument of whatever nature to which the BCRTA is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the BCRTA or any of its activities or properties, which would have a material adverse impact on the BCRTA's ability to perform its obligations hereunder, (iii) will not result in the creation or imposition of any material and prohibited lien, charge or encumbrance on the Project or the Premises; and (iv) have been duly authorized by all necessary action on the part of the BCRTA.

(d) Governmental Consents. To the best knowledge of the BCRTA, neither the BCRTA nor any of its business or properties, nor any relationship between the BCRTA and any other person, nor any circumstance in connection with the execution, delivery and performance by the BCRTA of its obligations under this Lease, is such as to require the consent, approval or authorization of, or the filing, registration or qualification with any governmental authority on the part of the BCRTA, other than those already obtained or required to be obtained as of the Effective Date.

(e) No Defaults. No event has occurred and no condition exists with respect to the BCRTA that would constitute an Event of Default (as defined herein) under this Lease or which, with the lapse of time or with the giving of notice or both would become an Event of Default hereunder.

(f) Governmental Approvals. The Project has been or will be acquired, constructed and installed in such manner as to conform in all material respects with all applicable zoning, planning, building and other regulations of governmental authorities having jurisdiction over the Project and all necessary utilities will be available in all material respects to the Project.

(g) Enforceability. This Lease is a legal, valid and binding obligation of the BCRTA enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

(h) Operation of the Project. From and after the Effective Date, BCRTA will develop, construct, maintain, and operate the Project or cause it to be developed, constructed, maintained, and operated in a manner consistent with all applicable federal, state and/or local laws and ordinances, including but not limited to any and all FTA regulations governing the use of the Project.

Article III. DUE DILIGENCE, LEASING CLAUSES AND WARRANTY OF TITLE

Section 3.01 Due Diligence.

(a) Commencing on the Effective Date of this Lease and continuing for a period of ninety (90) days thereafter, BCRTA shall have the right to complete, at BCRTA's sole cost and expense, all physical and legal inspections and testing of the Premises it deems necessary or desirable ("**Due Diligence**"). The Due Diligence may include, but shall not be limited to, such due diligence items as BCRTA may determine in its sole discretion, including without limitation, obtaining an appraisal, survey, title examination, zoning reports, property condition assessment, evaluation of utilities, environmental studies, and availability of appropriate governmental/licensing approvals and entitlements. Except as expressly set forth herein, BCRTA shall obtain the Due Diligence information at its sole cost and expense. In order to conduct the Due Diligence, University shall permit access to the Premises by BCRTA, its agents, employees and contractors for inspection and testing of the condition of the Premises, provided that BCRTA gives University twenty-four (24) hours' prior notice of each inspection time, and provided that BCRTA shall cause its contractors conducting inspection and testing to be responsible for all damage to the Premises or injury to persons occurring as a result of such inspection and testing.

(b) If BCRTA is satisfied with the results of the Due Diligence, BCRTA will deliver written notice of this determination to University on or before the expiration of the Due Diligence Period (a "**Confirmation Notice**"). If BCRTA is not satisfied with the results of its Due Diligence, it may deliver written notice to University describing the conditions that must be corrected in order to induce BCRTA to Lease the Property (an "**Objection Notice**") on or before the expiration of the Due Diligence Period. If BCRTA delivers an Objection Notice to University, University will not be obligated to cure any matter described in the Objection Notice, except to remove mortgages, judgment liens or similar encumbrances. However, University will have up to thirty (30) days after its receipt of an Objection Notice (such 30-day period, the "**University Cure Period**") to attempt to remedy the objection(s) to BCRTA's satisfaction, or to confirm that the objection(s) will be remedied at or before the Commencement Date. If University remedies the objection(s) to BCRTA's satisfaction in BCRTA's sole discretion, BCRTA will issue a Confirmation Notice. If University does not remedy the objection(s) to BCRTA's satisfaction within the University Cure Period, BCRTA will have the right to terminate this Lease by delivering written notice to University (a "**Termination Notice**") within thirty (30) days following the expiration of the University Cure Period. Notwithstanding any other provision of this Lease, BCRTA has the right to terminate the Lease for its convenience by delivering a Termination Notice (without Objection Notice) to University at any time before the expiration of the Due Diligence Period ("**Termination for Convenience Right**"). If BCRTA fails to deliver a Confirmation Notice, Objection Notice or Termination Notice to University prior to the expiration of the Due Diligence Period, BCRTA shall be

deemed to have waived all objections to the condition of the Premises and all exceptions to title shall become Permitted Exceptions.

Section 3.02 Lease of the Premises. Subject to all Permitted Encumbrances, effective as of the Effective Date, the University hereby leases the Premises to the BCRTA and the BCRTA hereby leases the Premises from the University, including the Project to be constructed thereon, at the rental rate and for the Lease Term as forth in **Section 5.01** hereof, and in accordance with all other provisions of this Lease. Furthermore, during the Construction Period, the University hereby grants to the BCRTA temporary easements and/or licenses (as appropriate) over and across its lands adjoining the Premises for the purposes of acquiring, constructing, installing and maintaining the Project, as set forth in **Section 4.01** hereof. Such temporary easements and/or licenses shall expire on the Completion Date, whereupon the BCRTA shall have possession of the Premises, construction of the Project shall be complete and the Lease Term and the Leasehold Interest (an “estate for years”) shall commence, subject to any easements and/or licenses retained by the University. The University hereby agrees that third parties shall be entitled to rely on the authorization and appointment set forth in this paragraph. Notwithstanding the foregoing or anything to the contrary contained herein, the University hereby reserves the easements depicted on Exhibit B for itself and its successors and assigns, which such easements shall be deemed Permitted Encumbrances. BCRTA represents and warrants that BCRTA will, in the exercise of its reasonable discretion, grant or permit the University to record additional easements as may be necessary for the reasonable use of the Project Site or other adjacent property owned by the University provided the granting of such easements does not materially impair the BCRTA’s use and enjoyment of the Premises.

Section 3.03 Title. Commencing on the Commencement Date, and continuing during the Lease Term, BCRTA shall have a leasehold interest in the Premises and shall have ownership of the Project during the Lease Term. In accordance with and subject to the terms hereof, the University hereby agrees to accept ownership of and title to the property and improvements that are to comprise the Project and Premises, when the same are conveyed to the University at the conclusion of this Lease or earlier termination hereof, by, or on behalf of, the BCRTA. The University acknowledges that in order to take title to the Project, payment to the FTA or its successor may be required as a matter of federal law. Pending such conveyance, the University disclaims any interest in the equipment and improvements comprising the Project, as well as all other items of equipment that are neither paid for with proceeds of any Project Funds, nor additions or alterations, replacements or substitutions therefor. The University shall not otherwise encumber the Premises or any part thereof, except with the written consent of BCRTA which shall not be unreasonably denied. The University will do no act to impair its title to the Premises without the permission of BCRTA, except in the event BCRTA commits an Event of Default (beyond any applicable cure periods) or otherwise fails to perform its obligations under this Lease (beyond any applicable cure periods). Except as expressly set forth herein, the University makes no warranty as to the design, suitability, condition or fitness for purpose of the Project. The University agrees that it shall, upon request of the BCRTA, join where necessary in any proceeding to protect and defend the University’s title in and to the Premises, provided that the BCRTA and University shall evenly split the costs of any such proceeding, except in the event the proceeding was instituted as a result of, or in connection with the negligence or willful misconduct, or a default under this Lease by one of the parties to this Lease in which case, to the extent permitted by law, the costs of any such proceeding shall be the responsibility of the party that committed the negligence or willful misconduct, or a default under this Lease. The University acknowledges and agrees that the termination of this Lease will not terminate or adversely affect the lease or sublease of the tenants or subtenants of the Premises. Further, so long as there shall not have occurred and be continuing an Event of Default under this Lease, if applicable the University hereby agrees to enter into from time to time, upon the prior written request of the BCRTA, a Non-Disturbance and Attornment Agreement in form and substance reasonably agreeable to University benefiting tenants and subtenants of the Project ensuring that the termination of this Lease will not terminate the lease or sublease of the tenants and subtenants of the Premises.

Section 3.04 Quiet Enjoyment. Providing no Event of Default exists beyond any applicable cure periods and is continuing hereunder, BCRTA shall have the right of quiet enjoyment and peaceable possession of the Premises, free from all claims of all persons whomsoever acting by, through or under the University, including but not limited to Talawanda, throughout the Lease Term, subject to the terms of this Lease. Provided no Event of Default exists beyond any applicable cure periods and is continuing, the University agrees that it will not take or cause another party to take any action to interfere with the BCRTA's peaceful and quiet enjoyment of the Premises during the Lease Term. The University agrees that, provided no Event of Default exists and is continuing, in the event the peaceful and quiet enjoyment of the Premises shall otherwise be denied to the BCRTA or contested by anyone, the University shall, upon request of the BCRTA, take commercially reasonable steps under the circumstances to protect and defend the quiet enjoyment of the BCRTA, provided that, unless such denial or contest shall result from the negligence or willful misconduct of the University, the costs related to such steps shall not be borne by the University. The provisions of this Section shall apply so long as the BCRTA shall perform the covenants, conditions and agreements to be performed by it hereunder, or so long as the period for remedying any default in such performance shall not be expired.

Section 3.05 Limitations of Warranties. The warranties and covenants and other obligations of the University hereunder shall be limited to the extent of the University's interest in the Premises and such amounts as may be collected from time to time from the BCRTA under this Lease; provided, however that nothing contained in this Section shall restrict the University's liability resulting from the University's gross negligence or willful misconduct.

Section 3.06 Agreement of the University to Execute Amendment to Ground Lease Agreement. The University and the BCRTA understand and agree that portions of the Premises and/or items of the Project Equipment may, from time to time, need to be removed from this Lease in accordance with the provisions hereof and, similarly, that certain items of personal and real property may be acquired by the BCRTA and/or the University or may be acquired directly by the University for inclusion in the Project. The University agrees to execute from time to time an amendment or amendments to this Lease, in reasonable form, containing reasonable, mutually agreeable, terms as necessary to facilitate such adjustments; provided, however, that the University may withhold its consent and signature from any amendment that would extend the Lease Term of this Lease, in its sole and exclusive discretion.

Section 3.07 Easements and Licenses. The University and the BCRTA each covenant and agree that the University shall grant the Premises and BCRTA shall accept the Premises subject to the following easements and/or licenses, as further described and depicted on Exhibit E:

(a) A Temporary Construction License over the areas shaded in red depicted on Exhibit E from University to BCRTA for purposes of constructing the Improvements contemplated by this Agreement, which license will expire and terminate immediately upon BCRTA's completion of the construction of the Improvements;

(b) A Permanent Access Easement from the City of Oxford, Ohio to University over the eastern driveway entrance to the Project Site from Chestnut Street depicted on Exhibit E, which will provide that University's Lessees shall have the right to utilize the same for ingress and egress to and from the Project Site during the Term of the Agreement;

(c) A Temporary Access License over the western driveway entrance to the Project Site from Chestnut Street depicted on Exhibit E, which will provide that BCRTA and University shall have the right to

utilize the same for ingress and egress to and from the Project Site during the Term of the Agreement;

Article IV. CONTINGENCY; COMMENCEMENT AND COMPLETION OF THE PROJECT

Section 4.01 Project Contingent on Project Funds; Agreement to Construct and Install Project.

(a) It is expressly understood and agreed by the BCRTA and the University, that this Lease is being entered into by the University and the BCRTA in conjunction with the BCRTA's application to the Granting Authorities for Project Funds which are critical to construction of the Project as contemplated herein and, but for such Project Funds, the BCRTA would not be capable of undertaking and completing the Project. Accordingly, in the event that such Project Funds are not granted to the BCRTA, or are otherwise rescinded subsequent to the BCRTA being advised that such funds are forthcoming, this Lease shall immediately become null and void, and the parties shall have no continuing obligations hereunder. For purposes of clarity, should either: (i) the BCRTA fail to secure all Project Funds deemed necessary to complete construction of the Project as contemplated herein prior to initiation of the Construction Period; or (ii) the BCRTA fail to obtain all of the easements necessary for the commencement and completion of the Project, then (A) the BCRTA shall be under no obligation to commence and complete the Project and this Lease shall be void; (B) the University shall be under no obligation to pay or otherwise provide any Project Funds to BCRTA; and (C) BCRTA shall return to and reimburse the University all Project Funds University paid to BCRTA prior to the commencement or completion of the Project.

(b) Upon confirmation by the BCRTA of receipt of all necessary Project Funds and the commencement of the Construction Period, BCRTA shall promptly coordinate with the Project Manager to: establish a schedule for the acquisition, construction and installation of the Project Improvements and Project Equipment, and ensure that this schedule accommodates completion of the acquisition, construction and installation of the Project no later than March 2026, delays incident to the occurrence of force majeure events (as defined herein) excepted (provided that BCRTA notifies the University of the occurrence of a force majeure event within 30 days of its occurrence) but if said acquisition, construction and installation is not completed within the time herein contemplated there shall be no resulting diminution in or postponement of the rents required to be paid by the BCRTA pursuant to **Section 5.03** hereof, other than an adjustment to the Commencement Date (as defined herein). The BCRTA shall take all necessary steps to track the inventory of Project Equipment following acquisition and installation of the same upon the Project so that the same may be conveyed to the University upon the conclusion or earlier termination of this Lease. Notwithstanding the foregoing or anything to the contrary contained herein, in the event the Project is not fully completed and open for business to the public on or before the Completion Date, as established by the Acceptance Letter, University shall have the right to terminate this Lease and required BCRTA to restore the Premises to the condition it was in immediately prior to the commencement of construction. In addition to any other notice and cure provision set forth herein, prior to exercising such right to terminate, University shall give BCRTA written notice of its intent to exercise its right to terminate and BCRTA shall have 180 days after receipt of such notice within which to complete the Project. If University exercises its termination rights under this **Section 4.01(b)**, then BCRTA shall be solely responsible for repaying to the applicable party or governmental entity the Federal Interest under **Section 8.12** of this Lease and any Tenant Improvement Allowance deposited by University.

Section 4.02 Disbursement of Project Funds.

(a) In order to provide funds for payment of the cost of the acquisition, construction and installation of the Project, the BCRTA has applied for the Project Funds (other than the Tenant Improvement

Allowance) which, with the Tenant Improvement Allowance, shall be sufficient to plan, design, bid, contract for and complete construction of the Project as contemplated herein. Notwithstanding anything herein to the contrary, until the BCRTA is in receipt of such funds (less the Tenant Improvement Allowance), the Construction Period will not commence. Thereafter, during the Construction Period, the Project Manager shall promptly remit payment from the Project Funds upon written request from the BCRTA for the following purposes; after all other Project Funds have been expended (less the Tenant Improvement Allowance):

(i) payment to the BCRTA of such amounts, if any, as shall be necessary to reimburse the BCRTA in full for all advances and payments made prior to or after the delivery of the Project Funds for expenditures in connection with the acquisition of rights of way necessary for providing ingress/egress, clearing the site, preliminary site improvement, the preparation of the plans and specifications for the Project (including any preliminary study or planning of the Project of any aspect thereof), the acquisition, construction and installation of the improvements and equipment comprising the Project, the acquisition, construction and installation of necessary utility services or other public facilities to connect the Project with public transportation and utility facilities, and the acquisition, construction and installation of all real or personal property, including Project Equipment deemed necessary in connection with the Project, and any architectural, engineering and supervisory services with respect to any of the foregoing;

(ii) payment for labor, services, materials and supplies used or furnished in site improvement and in the acquisition construction and installation of those improvements and equipment comprising the Project, all as provided in the plans and specifications therefor; payment for the cost of the acquisition, construction and installation of utility services or other facilities to connect the Project with public transportation and utility facilities; payment for the cost of all real and personal property, including Project Equipment, deemed necessary in connection with construction of the Project; and payment for any miscellaneous expenses incidental to any of the foregoing;

(iii) payment of all fees, if any, for reasonable architectural, engineering and supervisory services with respect to the Project, including, but not limited to planning, designing, bidding, and contracting for such services, and the salary of the Project Manager, whether such compensation is on an hourly or fulltime basis;

(iv) to such extent as they shall not be paid by a contractor for acquisition, construction or installation with respect to any part of the Project, payment of the premiums on all insurance required to be taken out and maintained by the BCRTA during the Construction Period under this Lease, or reimbursement therefor;

(v) payment of the taxes, assessments and other charges, if any, referred to in **Section 6.03** hereof that may become payable during the Construction Period;

(vi) upon prior approval of the Project Manager, payment of expenses incurred by the BCRTA in seeking to enforce any remedy against any contractor or subcontractor with respect to any default under a contract relating to the Project; and

(vii) any other amounts reasonably approved by the Project Manager and agreed upon in writing by the parties.

(b) The payments specified in **Sections 4.02(a)(i)-(vii)** above shall be made by the Project Manager only upon receipt of the following:

(i) A certification by the BCRTA stating that: (1) an obligation in the stated amount has been incurred by or on behalf of the BCRTA in connection with the acquisition, construction and/or installation

of the Project; (2) such obligation is a proper charge against the Project Funds and has not been the basis of any previous withdrawal from the Project Funds, specifying the purpose and circumstances of such obligation in reasonable detail and identifying the party to whom such obligation is owed; and (3) the BCRTA has no notice of any vendor's, mechanic's, or other liens or right to liens, chattel mortgages or conditional sales contracts, or other contracts or obligations (other than those being contested in good faith as permitted in **Section 6.01(c)** hereof) which should be satisfied or discharged before such payment is made, and (4) conditional and unconditional releases and waivers of all liens from each contractor performing work on the Project.

(ii) With respect to any such requisition for payment for labor, services, material, supplies or equipment, a certificate, signed by an Authorized BCRTA Representative and certifying that insofar as such obligation was incurred for labor, services, material, supplies or equipment in connection with the acquisition, construction and installation of the Project, such labor and services were, to the knowledge of the requisitioning party, performed and such material, supplies or equipment were or are to be used in connection with the acquisition, construction and installation of the Project or delivered to the site for that purpose.

(iii) In making any such payment from the Project Funds, the Project Manager may rely on any such requisitions and certificates delivered to it pursuant to this Section and the Project Manager shall be relieved of all liability with respect to making such payments in accordance with such requisitions and such certificates without inspection of the Project or need for any additional investigation.

Section 4.03 Cooperation of the Parties. The University and the BCRTA agree to cooperate with each other in furnishing to the Project Manager any such documents referred to in **Section 4.02** hereof that may be required to effect payments out of the Project Funds, and to cause such requisitions and certificates to be directed by the Authorized BCRTA Representative to the Project Manager as may be necessary to effect payment out of the Project Funds in accordance with **Section 4.02** hereof. Such obligation of the University and the BCRTA is subject to any provisions of this Lease requiring additional documentation with respect to payments and shall not extend beyond the Project Funds available for payment under the terms hereof.

Section 4.04 Establishment of Completion Date. The Completion Date of the Project shall be evidenced to the Project Manager by the executed Acceptance Letter in the form attached hereto as Exhibit D, signed on behalf of the BCRTA by an Authorized BCRTA Representative stating , among other relevant things, that, except for unexpended Project Funds for Project costs not then due and payable as provided in **Section 4.02(i)** hereof, (a) the acquisition, construction and installation of the Project has been substantially completed and a temporary or final certificate of occupancy has been issued therefor and all labor, services, materials and supplies used in such acquisition, construction and installation have been paid for, (b) the Project has been acquired, constructed and installed to the BCRTA's satisfaction and all costs and expenses incurred in connection therewith have been paid, (c) except for disputed claims for payment, BCRTA has received full and final releases and waivers of liens from all contractors performing work on the Project and (d) all permissions required of governmental authorities for the occupancy of the Premises have been obtained, including a temporary or final certificate of occupancy. Notwithstanding the foregoing, the Acceptance Letter shall state that it is given without prejudice to any rights of the BCRTA and University against third parties which may exist on the date of such certificate or which may subsequently accrue. The University and the BCRTA agree to cooperate one with the other in causing such Acceptance Letter to be furnished to the Project Manager. Notwithstanding the foregoing, in the event that the Project Funds have been exhausted prior to completion of the Project, the representations required by this **Section 4.04** shall not be required to be included in the Acceptance Letter.

Section 4.05 Insufficiency of Project Funds. Following commencement of the Construction Period but prior to the conclusion thereof, the BCRTA and University agree that if the Project Funds are not sufficient to pay

the costs of constructing and completing the Project as contemplated herein, and the timetable for completing construction of the Project cannot be amended to allow construction of the Project to be completed in phases for which sufficient Project Funds are available, then University shall have the right, at its option, to terminate this Lease and require BCRTA to restore the Project Site to substantially the same condition it was in immediately prior to the commencement of construction. In addition to any other notice and cure provision set forth herein, prior to exercising such right to terminate, University shall give BCRTA written notice of its intent to exercise its right to terminate and BCRTA shall have 180 days after receipt of such notice within which to obtain funding sufficient to complete the Project. In the event that University terminates this Lease under this **Section 4.05**, BCRTA shall be solely liable to repay all amounts of the Project Funds, including those amounts received from University, FTA, and any other federal, state, or local governmental or non-governmental entity.

Section 4.06 Remedies Against Suppliers, Contractors and Subcontractors and their Sureties. In the event of default by any supplier, contractor or subcontractor under any contract made by it in connection with the Project, or in the event of breach of warranty with respect to any material, workmanship or performance guaranty pertaining to construction of the Project, the BCRTA, either separately or in conjunction with others, will promptly proceed to exhaust the remedies of the BCRTA, as applicable, against any defaulting supplier, contractor or subcontractor and against any surety therefor, for the performance of any contract made in connection with the construction of the Project as contemplated herein. The University agrees to obtain the prior consent of the BCRTA (which shall not be unreasonably withheld, conditioned or delayed) before taking any action in connection with any such default. If the BCRTA desires, the BCRTA may, in its own name or in the name of the University (if written approval is requested and granted by the University, in the University's sole discretion), prosecute or defend any action or proceeding or take any other action involving any such supplier, contractor, subcontractor or surety which the BCRTA deems reasonably necessary, and in such event the University hereby agrees to cooperate fully with the BCRTA and to take all action necessary to effect the substitution of the BCRTA for the University in any such action or proceeding. BCRTA acknowledges and agrees that any legal action involving University may require prior written authorization from the Ohio Attorney General, and BCRTA shall not proceed with any actions without receiving such authorization. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing prior to the Completion Date shall be first paid to the Project Manager for inclusion in the Project Funds, second, to reimburse the University for any costs, fees, damages or expenses (legal or otherwise) it incurred in prosecuting or defending such action or proceeding.

Section 4.07 Construction of Improvements.

(a) Design Approval. Prior to undertaking of any construction, reconstruction, remodel, or demolition of any structure on the Premises, including the Project Improvements. BCRTA shall submit to University, for University's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed, a written request for consent and plans and specifications detailing such work or alterations. University's interest in approving such plans and specifications shall be to ensure that: (i) the market value of the Project Improvements (or University's adjacent property) will not be diminished; (ii) the design will be harmonious with surroundings and settings and the University's intended use thereof; and (iii) the structural integrity of the planned work or Project Improvements will not be compromised. University shall promptly, but no longer than within fifteen (15) days of receipt of such request, approve or deny such request (in the event of approval, such work shall be deemed "**Approved Work**"). If University disapproves any such plans and specifications, University shall note on the plans and specifications the sections or items that are disapproved.

(b) Design Standards. The Project shall be constructed substantially in accordance with the design and development standards agreed upon by the parties and more particularly described in plans and specifications approved by University.

(c) Construction Documents. Prior to the commencement of construction of the Approved Work, BCRTA shall submit a copy of all construction documents with the general contractor, as well as any architectural drawings (collectively, the "Construction Documents") to University.

(d) Bonding of Construction. Prior to the commencement of construction of the Approved Work, BCRTA shall submit to University, at the expense of BCRTA or its general contractor, a performance bond and a labor and materials bond from a surety company reasonably acceptable to University. Such surety shall be authorized to do business in the State of Ohio and be of recognized responsibility. The performance bond shall be conditioned, in the case of the initial construction, upon the completion of the Project substantially in accordance with the plans and specifications approved by University and within the time set forth in the this Lease and the Construction Documents, and in the case of any Approved Work, upon the completion of the Approved Work substantially in accordance with the plans and specifications and Construction Documents applicable to such work, and in compliance with all relevant legal requirements. Such labor and materials bond shall insure completion of the construction free and clear of all liens, chattel mortgages and conditional bills of sale. Each bond shall be issued for the benefit of University and BCRTA, as their respective interests shall appear. The amount of each bond shall be equal to one hundred percent (100%) of the estimated cost of construction for the performance bond and one hundred percent (100%) of the estimated cost of construction for the labor and materials bonds. If University and BCRTA shall fail to agree on the proper amount of such bonds, BCRTA shall supply the bonds in the amount requested by University.

(e) Prevailing Wage. As additional consideration under this Lease, and as an accommodation to University, BCRTA agrees to pay, and cause its contractors to pay, Davis Bacon Act federal Prevailing Wage rates in constructing the Project.

(f) Commencement of Construction. BCRTA shall commence construction of the Project no later than three hundred sixty five (365) days after BCRTA's receipt of (i) the Project Funds (less the Tenant Improvement Allowance) and (ii) all necessary permits and approvals from the appropriate governmental authorities.

(g) General Construction Provisions. During construction, the insurance policies required hereunder shall include builders' risk coverage. All construction shall be performed in a good and workman-like manner and in compliance with all applicable laws, rules, and regulations pertaining to the same. BCRTA and not University shall pay or may cause others to pay for all expenses and costs incurred in the construction of the Project. All bids and contracts for any construction, including without limitation, for the Project, shall be with persons or entities other than University, and the rights, title and interests of University in and to the Premises and Project Site shall not be subject to any lien or encumbrance relating to the same.

Article V. EFFECTIVE DATE; LEASE TERM; RENTAL PROVISIONS

Section 5.01 Effective Date of this Lease; Duration of Lease Term; Talawanda Lease. This Lease shall become effective upon the Effective Date. The term of this Lease shall commence upon the Commencement Date and shall continue uninterrupted for a period of forty (40) years (the "Lease Term" or "Term"). BCRTA hereby acknowledges that (a) it has received a copy of the Talawanda Lease, as amended by that certain letter dated October 13, 2022, which was sent by University's SVP for Finance and Business Services to the Board of Education of the Talawanda City School District (the "Extension Letter"); and (b) the Extension Letter

extends the term of the Talawanda Lease on a month-to-month basis until no longer needed by Talawanda. BCRTA hereby further acknowledges that BCRTA shall not have any interest in the Premises until the Effective Date, and covenants that BCRTA shall not do anything to interrupt or otherwise violate Talawanda's rights under the Talawanda Lease. The University represents that BCRTA shall have access to the Premises, including any portion thereof occupied by Talawanda, on and after the last month of the extension, subject to easements granted to or retained by the University and any Permitted Exceptions.

Section 5.02 Delivery and Acceptance of Possession of the Premises. Subject to the Permitted Encumbrances, the University agrees to deliver to the BCRTA sole and exclusive possession of the Premises (subject to the right of the Project Manager and University to enter thereon for inspection and other purposes as set forth in **Section 8.02** hereof) on the Effective Date of this Lease and the BCRTA agrees to accept possession of the Premises upon such delivery; provided, however, that the BCRTA shall be permitted full right of access to the Premises prior to the Completion Date in furtherance of its obligations relative to construction of the Project. Upon the Effective Date of this Lease, all of BCRTA's rights and obligations under this Lease shall be in effect (including the payment of Additional Rent) other than the payment of Base Rent.

Section 5.03 Rent and Other Amounts Payable. On the Commencement Date, and thereafter, on or before the first of each month during the Lease Term, the BCRTA shall pay or cause to be paid to the University as rent for the Premises ("**Base Rent**"), a sum equal to One Dollar (\$1.00), it being agreed that the Base Rent and the BCRTA's participation in the construction of the Project shall serve as good, valuable and sufficient consideration. In addition to paying the Base Rent as set forth herein, the BCRTA shall, at all times commencing upon the Effective Date and continuing during the Lease Term, be responsible for the payment of any and all expenses pertaining to the Premises, including but not limited to capital repairs to the Premises, and all items of operating expense relating to BCRTA's operations within and upon the Premises (each an item of "**Additional Rent**" and collectively referred to with Base Rent as "**Rent**").

Section 5.04 Place of Rental Payments. The Base Rent referenced herein shall be remitted to the University's address for notices as identified herein, as appropriate, on or before the first day of each month, as well as payments for any other item of Additional Rent for which the University contracts on behalf of the BCRTA, if any. All other payments provided for in **Section 5.03** hereof shall be paid directly to such invoicing entities in accordance with their respective accounts receivable practices.

Section 5.05 Obligations of BCRTA.

(a) The obligations of the BCRTA to make the payments required in **Section 5.03** hereof and to perform and observe the other agreements on its part contained herein, subject to the contingency provisions set forth in **Section 4.01** hereof, shall be absolute and unconditional and with no right of setoff. Accordingly, during the Lease Term the BCRTA (i) will not suspend or discontinue any payments provided for in **Section 5.03** hereof except to the extent the same have been prepaid, (ii) will perform and observe all of its other agreements contained in this Lease, and (iii) except as provided in **Section 11.01** hereof, will not terminate the Lease for any cause, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Premises or Project, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Ohio, or any political subdivision of either thereof, or any failure of the University to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Lease.

(b) Nothing contained in this Section shall be construed to release the University from its performance of any of the agreements on its part herein contained; and if the University should fail to perform

any such agreement, the BCRTA may undertake such action against the University as the BCRTA may deem necessary to compel performance so long as such action does not conflict with the agreements on the part of the BCRTA contained in the preceding sentence. The BCRTA may, however, at its own cost and expense and in its own name or in the name of the University, prosecute or defend any action or proceeding or take any other action involving third persons which the BCRTA deems reasonably necessary or in order to insure the acquisition, construction, installation and completion of the Project or to secure or protect its right of possession, occupancy and use of the Premises, and in such event the University hereby agrees to cooperate fully with the BCRTA and to take all lawful action which is required to effect the substitution of the BCRTA for the University in any such action or proceeding if the BCRTA shall so request.

Section 5.06 Holdover. In the event the BCRTA remains in possession of the Premises after the expiration of the Lease Term, including any extension thereof, without first obtaining the University's written consent, the BCRTA shall be deemed a tenant at sufferance and may be evicted by the University without notice. The BCRTA shall be obligated to pay rent for each month that it holds over without written consent at a monthly rental as set forth in **Section 5.07** hereof. All of the BCRTA's obligations under this Lease shall apply during such period of holding over. To the extent permitted by law, the BCRTA shall also be liable for (a) any additional rent as herein provided and (b) for all other damages which the University may suffer as a result of such holding over by the BCRTA including, without limitation, the loss of a prospective tenant or tenants for such space and the cost of evicting the BCRTA, including reasonable attorneys' fees. There shall be no renewal of this Lease by operation of law or otherwise. Nothing in this Section shall be construed as consent by the University to any holding over by the BCRTA after expiration of the Lease Term, or any extension thereof.

Section 5.07 Surrender of Premises. On the last day of the Lease Term hereof, or on any sooner termination, the BCRTA shall surrender the Premises to the University clean and free of debris, Hazardous Materials, and Environmental Contamination, and the BCRTA's personal property, trade fixtures and equipment. If the Premises are not surrendered at the expiration of the Lease Term or earlier termination of this Lease in accordance with the provisions of this Section, at the University's option, Tenant shall continue to be responsible for the payment of Base Rent plus the payment \$5,000 monthly and all other amounts due under this Lease until the Premises are so surrendered in accordance with said provisions. To the extent permitted by law, the BCRTA shall be responsible for any and all damages, expenses, costs, losses or liabilities arising from any delay by the BCRTA in so surrendering the Premises including, without limitation, any damages, expenses, costs, losses or liabilities arising from any claim against the BCRTA made by any succeeding tenant or prospective tenant founded on or resulting from such delay and losses and damages suffered by the University due to lost opportunities to lease any portion of the Premises to any such succeeding tenant or prospective tenant, together with, in each case, reasonable attorneys' fees and actual costs.

Article VI. MAINTENANCE AND MODIFICATIONS; TAXES; INSURANCE; UTILITIES

Section 6.01 Maintenance and Modifications of the Project by the BCRTA.

(a) During the Lease Term, BCRTA will cause the Premises to be maintained, preserved and kept in good repair, working order and condition and will, from time to time, cause to be made all necessary and proper repairs, replacements and renewals. The BCRTA covenants that as long as the BCRTA or one of its Affiliates has a leasehold interest in the Premises, it or one of its Affiliates will cause the same to be reasonably maintained and operated in good order, condition and repair and in accordance with any and all regulations set forth by the FTA from time to time. The BCRTA may comply with the foregoing obligations, in whole or in part, by causing them to be performed by the permitted sublessees, tenants and property managers of the Premises.

(b) The BCRTA may from time to time, in its sole discretion and at its own expense, make any additions, modifications or improvements to the Premises, so long as the additions, modifications or improvements DO NOT (i) alter the purpose/use of the Project; (ii) alter the exterior footprint or architectural appearance of the Project; (iii) extend the depreciation of the building beyond the lease term under circumstances in which University must repay Federal Interest or any other governmental interest to the extent such repayment relates to the additions, modifications or improvements made without University approval; or (iv) do anything that would require the University to repay Federal Interest or sums owed to any other governmental entity of any kind (whether federal, state, or local). All machinery, equipment and related property so installed by the BCRTA shall remain the sole property of the BCRTA following the conclusion of the Lease Term or upon earlier termination of this Lease, unless such property is reasonably necessary for University to use or operate the Premises following the expiration of this Lease and the University requests in writing for such property to remain, subject to the terms of **Section 8.12** of this Agreement. All such machinery, equipment and other related property may be modified or removed at any time; provided that any damage to the Premises occasioned by such modification or removal shall be repaired by the BCRTA at its own expense.

(c) The BCRTA shall not permit any mechanics' liens, materialmen's liens or other liens to be established and remain against the Project or Premises for labor or materials furnished or services rendered in connection with any additions, modifications, improvements, repairs, renewals or replacements so made by it; provided, that if the BCRTA shall first notify the University of its intention to do so, the BCRTA may in good faith contest any mechanics' liens, materialmen's liens or other liens filed or established against the Premises, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom unless the University shall notify the BCRTA that, in the opinion of independent counsel, by nonpayment of any such items, the Premises or any material part thereof, or the revenues from the Premises will be subject to loss or forfeiture, in which event the BCRTA shall promptly pay and cause to be satisfied and discharged all such unpaid items. The University will cooperate fully with the BCRTA in any such contest, provided, however, that BCRTA shall be solely responsible for the cost of all reasonable attorneys' fees, costs, and expenses incurred by the University in such contest. Notwithstanding the foregoing or anything to the contrary contained herein, if any mechanics', laborers' or materialmen's lien is filed at any time against this Lease or any interest herein and/or the Premises or Project site arising out of the construction of the Project or any additions, alterations, repairs or replacements thereto, then in any case, BCRTA shall, within one hundred twenty (120) days after notice of the filing thereof, discharge or may cause others to discharge the same of record by payment, bond, order of a court of competent jurisdiction or otherwise.

Section 6.02 Removal of Project Equipment. Subject to its obligations under **Section 6.01** of this Lease, the BCRTA shall not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary Project Equipment. In any instance where the BCRTA determines, in its sole discretion, that any such items have become inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary for their purposes, the BCRTA may remove such items of Project Equipment and sell, trade-in, exchange or otherwise dispose of them (as a whole or in part) without any responsibility or accountability to the University therefore and may, at its election in its reasonable discretion, install other equipment in substitution therefor, provided that the BCRTA shall certify that such removal (taking into account any substitution) shall not impair the operation of the Premises. At the option of the BCRTA, at any time prior to the end of the Construction Period, the BCRTA may deposit such moneys into the Project Funds, whereupon such moneys shall become a part of the Project Funds and used in the manner as set forth in **Article IV** hereof. The preceding provisions of this **Section 6.02** shall apply to the Project only during the Lease Term of this Lease.

Section 6.03 Taxes, Other Governmental Charges and Utility Charges. The University and the BCRTA further acknowledge that under present law, neither the Premises, nor any part of the University's or the BCRTA's interest in the Project will be subject to ad valorem taxation by the State of Ohio or by any political or taxing subdivision thereof, and that under present law the income and profits (if any) of the University or the BCRTA deriving from the Premises are not subject to either Federal or Ohio taxation. Notwithstanding the foregoing, BCRTA agrees that, in the event any tax liability shall accrue to the Project or Premises from and after the Effective Date of this Lease, the BCRTA shall pay, as the same shall become lawfully due and payable: (i) all taxes and governmental charges of any kind whatsoever upon or with respect to the interest held by the BCRTA under this Lease; (ii) all taxes and governmental charges of any kind whatsoever upon or with respect to the Project or any machinery, equipment or related property installed or brought by the BCRTA therein or thereon (including, without limiting the generality of the foregoing, any taxes levied upon or with respect to the income or profits of the University from the Project which, if not paid, will become a charge on the rents, revenues and receipts from the Premises); (iii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project; and (iv) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on the Project; provided, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the BCRTA shall be obligated to pay only such installments as are required to be paid during the Lease Term.

Section 6.04 Insurance Required. From the Effective Date and throughout the Lease Term, the BCRTA shall have in place all insurance coverage required by federal, state and/or municipal laws for a regional transit authority. Notwithstanding the foregoing, the BCRTA shall have the option to self-insure (through a joint self-insurance pool or otherwise) in accordance with and pursuant to the insurance requirements set forth herein. On or before July 1 of each year throughout the Lease Term, the BCRTA and University shall conduct an annual review of BCRTA's insurance limits to confirm that adequate insurance coverage is being maintained, which such limits shall have a minimum threshold of \$10,000,000 for Commercial General Liability, and \$10,000,000 for Automobile Liability. BCRTA shall immediately notify the University in the event that BCRTA shall lose its insurance coverage or if the coverage under any policy of insurance shall fall below the minimum limits agreed upon by the parties. Upon receipt of any such notification, University may, in its sole discretion, elect to obtain such coverage on behalf of BCRTA and to seek prompt repayment for the same. Notwithstanding the foregoing, any exercise of self-help pursuant to this Section shall be in addition to and not in lieu of any additional rights or remedies available to such non-breaching party as are identified herein. The University shall be named as an additional insured on all liability policies of insurance carried by BCRTA under the terms of this Lease. Following the Commencement Date, on or before July 1 of each year throughout the Lease Term, the BCRTA shall provide the University with certificates of insurance evidencing the required general liability and automobile liability coverages required hereunder. Notwithstanding anything set forth herein, the parties acknowledge that the insurance requirements incumbent upon BCRTA may be satisfied through statutorily permitted risk sharing pools despite the fact that such arrangements are not technically "insurance" under state law.

Section 6.05 Application of Net Proceeds of Insurance. The Net Proceeds of the liability insurance carried pursuant to the provisions of **Section 6.04** hereof shall be applied to pay the liability with respect to which the insurance payment is made. Nothing contained in this **Section 6.05** shall relieve the BCRTA of its obligations as set forth in **Section 7.01** hereof.

Section 6.06 Additional Provisions Respecting Insurance. All claims made under any insurance policies carried pursuant to the requirements of **Section 6.04** hereof, regardless of amount, may be adjusted by the BCRTA with the insurers.

Section 6.07 Advances by the University. If the BCRTA fails to maintain the full insurance coverage required by this Lease or fails to keep the Premises in a safe condition, or fails to keep the same in good repair and good operating condition, the University may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or make the required repairs, renewals and replacements if the BCRTA shall fail to do so within fifteen (15) days following delivery of written notice of such failure to the BCRTA by the University. To the extent permitted by law, all amounts so advanced therefor by the University shall become an additional obligation of the BCRTA and which amounts, together with interest thereon at the Default Rate from the date thereof, shall be promptly reimbursed as an item of Rent by the BCRTA upon receipt of a written invoice therefor.

Section 6.08 Title Insurance.

(a) BCRTA has or may order a title commitment (at University's cost, subject to the terms of this Agreement and **Section 1.01(t)**) reflecting the state of title to the Premises (the "**Title Commitment**"). Within sixty (60) days after the Effective Date ("**Survey Deadline**"), if not accomplished beforehand, BCRTA at its sole cost shall cause an Ohio licensed surveyor to prepare an ALTA/ACSM Land Title Survey of the Premises (the "**Survey**") and provide two (2) copies of the Survey to University. Within fifteen (15) days after the Survey Deadline, BCRTA shall notify University of any exception in the Title Commitment or any matter disclosed in the Survey which makes the Premises materially unsuitable for BCRTA's purposes ("**Title Objections**"). University thereupon shall have fifteen (15) days ("**Cure Period**") within which to cause such Title Objections to be removed from the Title Commitment or cause the matters reflected on the Survey to be removed, as the case may be ("**Cure**"); provided, University shall have no duty to effect a Cure except as set forth herein. As to any Title Objection to a mortgage or other monetary lien encumbering the land on which the Project is to be built which was placed or allowed to remain on the land by the negligent or intentional acts or omissions of the University, University shall cure such Title Objection within thirty (30) days of receipt of BCRTA's Title Objections. Additionally, as to each Title Objection which, in BCRTA's reasonable discretion, makes the Premises unsuitable for BCRTA's purposes, and which can be cured by the expenditure of funds in an amount of up to Fifty Thousand and 00/100 Dollars (\$50,000.00), University shall cure such objection. As to any Title Objection which cannot be cured through the expenditure of Fifty Thousand and 00/100 Dollars (\$50,000.00) or less, University and BCRTA shall meet to discuss and negotiate, and if necessary, mediate, in good faith a reasonable manner of addressing such Title Objection. Anything to the contrary notwithstanding, BCRTA shall not assert a Title Objection or as to matters caused by BCRTA, its real estate brokers, or persons or entities hired by or on behalf of BCRTA and having rights to file a lien on the Premises or any other part of the Project Site.

(b) BCRTA will pay the cost of the Title Commitment. BCRTA and University shall equally share the cost of an ALTA Policy of Title Insurance (latest revision), applicable to a leasehold, in the amount of the Project Funds. The costs to be shared include the cost of any commercially reasonable coverage that requires additional premium for endorsements, or the deletion of any standard exceptions. The title evidence shall be certified to on or before 15 calendar days after the Effective Date with endorsement as of 8:00 AM on the 88th day after the Effective Date, and shall show (i) in University marketable title, in fee simple as to parcel 1, (ii) in the City of Oxford marketable title, in fee simple as to parcel 2 and parcel 3, free and clear of all liens and encumbrances, subject to all matters listed in Section 6.08(a).

Section 6.09 Responsibility.

(a) BCRTA is a regional transit authority and, as such, is subject to the laws of the State of Ohio, including without limitation, the Ohio Constitution and applicable sections of the Ohio Revised Code. As such:

(i) to the extent permitted by Ohio law, the BCRTA agrees to be liable for the wrongful acts and omissions of its officers, employees and agents engaged in the scope of their employment arising under this Lease; and (ii) in lieu of the BCRTA's obligation to indemnify the University under this Lease, to the extent permitted by law, the BCRTA hereby agrees to be responsible for any and all liability, claims, costs, expenses (but specifically excluding legal fees, courts costs, witness fees and other such related costs) or damages arising from any claim with respect to the BCRTA's wrongful conduct in connection with this Lease.

(b) The University is a public institution and, as such, is subject to the laws of the State of Ohio, including without limitation, the Ohio Constitution and applicable sections of the Ohio Revised Code. As such: (i) to the extent permitted by Ohio law, the University agrees to be liable for the wrongful acts and omissions of its officers, employees and agents engaged in the scope of their employment arising under this Lease; and (ii) in lieu of the University's obligation to indemnify the BCRTA under this Lease, the BCRTA hereby agrees, to the extent permitted by law, to be responsible for any and all liability, claims, costs, expenses (but specifically excluding legal fees, courts costs, witness fees and other such related costs) or damages arising from any claim with respect to the University's wrongful conduct in connection with this Lease.

(c) The University expressly agrees to be solely responsible for any claims arising prior to the Effective Date of this Lease and relating to the Premises, including but not limited to any claims relating to an alleged Environmental Contamination at or upon the Premises arising prior to the Effective Date of this Lease.

(d) BCRTA expressly agrees that from and after the Effective Date of this Lease:

(i) BCRTA shall be responsible for compliance with all Environmental Laws and all governmental notices, orders and requests pursuant to Environmental Laws, including without limitation, providing, obtaining, maintaining and complying with all permits, registrations, notifications, reports, licenses and other authorizations required by Environmental Laws applicable to this Lease or BCRTA's use or occupancy of the Project Site;

(ii) BCRTA shall be responsible to ensure that no Hazardous Materials are brought, placed, held, stored, located, used, disposed of or released upon, under, from or at the Project Site, other than in strict compliance with all Environmental Laws and only in those amounts relating to and necessitated by permitted uses of the Project Site and shall be solely responsible for any and all claims arising from or after the Effective Date of this Lease until such time as BCRTA returns possession of the Project Site to University; provided, however, notwithstanding the foregoing, BCRTA shall continue to be solely responsible for any and all claims arising from or after the Effective Date of this Lease that arise out of or in connection with BCRTA's use or operation of the Project Site at any time;

(iii) BCRTA will (1), with the exception of privileged or confidential communications, provide University with copies of all communications between BCRTA and any governmental agencies or authorities or a third party related to Hazardous Materials brought, placed, held, stored, located, used, disposed of or released upon, under, from or at the Project Site or related to the violation or alleged violation of any Environmental Laws with respect to the use or occupancy of the Project Site within five (5) business days of BCRTA's receipt thereof, (2) permit University, at University's sole discretion, to participate in any proceeding brought by a government agency or authority, or a third party, with respect to Hazardous Materials brought, placed, held, stored, located, used, disposed of or released upon, under, from or at the Project or with respect to the violation or alleged violation of any Environmental Laws arising out of the use or occupancy of the Project Site, and (3) permit University, from time-to-time, to conduct inspections, tests, analyses and investigations of BCRTA's compliance with its obligations in this Section or otherwise related to the environmental conditions relative to the use or occupancy of the Project Site;

(iv) To the extent possible, BCRTA will promptly cure and resolve any such actions and proceeds that result from any Environmental Contamination caused by BCRTA or BCRTA's officers, agents, employees, contractors, customers, licensees or invitees. BCRTA will keep the Project Site free of any lien imposed pursuant to Environmental Laws;

(v) If BCRTA fails to undertake to cure a violation of any of the foregoing covenants within a reasonable time, University may cause the removal of any Environmental Contamination from the Project Site in accordance with Environmental Laws and, to the extent permitted by law, the reasonable costs of any remediation of said Environmental Contamination required by Environmental Laws will be Additional Rent under this Lease, and such reasonable costs will become due and payable on demand by University;

(e) Not less than 180 days (or more than 365 days) prior to the expiration or earlier termination of this Lease, BCRTA shall obtain and pay for a Phase I environmental inspection of the Project Site, and, if necessary, a Phase II environmental inspection and any additional testing that may be necessary as a result thereof (the "**Environmental Testing**"), reasonably demonstrating (i) the Project Site is in compliance with all Environmental Laws, (ii) no Hazardous Materials have been released, spilled, or currently exist on the Project Site, and (iii) the Project Site is not subject to any Environmental Contamination. If the results of the Environmental Testing determine that (1) the Project Site is not in compliance with all Environmental Laws, (2) Hazardous Materials have been released, spilled, or currently exist on the Project Site, or (3) the Project Site is subject to any Environmental Contamination, then BCRTA shall be responsible, at its sole cost and expense to remediate the Project Site and cause the removal of any Environmental Contamination to University's satisfaction.

Article VII. DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.01 Damage and Destruction. If prior to expiration of the Lease Term, the Project and/or Premises are damaged or destroyed by fire or other casualty, the BCRTA shall be obligated to continue to make the rental payments specified in **Section 5.03** hereof, and shall promptly replace, repair, rebuild or restore the property damaged to substantially the same condition as existed prior to the event causing such damage, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the BCRTA (which may require FTA input) and as will not impair the operating unity of the Project and/or Premises, or change its character to such an extent that its ownership by the University would not be permitted under the laws pursuant to which the University was created. The University hereby acknowledges and agrees that the University shall have no right to settle any claim with regard to any damage or destruction of the Project Improvements without first securing the written approval of the BCRTA, which approval may be granted or withheld in the BCRTA's sole and absolute discretion. In exercising its discretion BCRTA may consider the position of the FTA related to the Federal Interest. All Net Proceeds of any casualty insurance policy shall be made available to additional insureds or loss payees under such policy, and applied in a manner consistent with **Section 6.05** hereof. Notwithstanding anything set forth herein to the contrary, the obligation of BCRTA to replace, repair, rebuild or restore the property is conditioned upon BCRTA's actual receipt of insurance proceeds necessary to fund such replacement, repair, rebuilding or restoration of the property (which may be impacted by the FTA's position as to the Federal Interest.)

Section 7.02 Condemnation. If the title in and to, or the temporary use of, the Project Improvements or any part thereof) shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, the BCRTA shall be obligated to continue to make the rental payments specified in **Section 5.03** hereof, as applicable, and shall cause the restoration of the Premises, as applicable, to substantially the same condition as existed prior to the exercise of

the said power of eminent domain, or shall acquire and install other machinery, equipment or related property suitable for the BCRTA's operations thereat, title to which machinery, equipment or related property will be conveyed to the University by bill of sale and shall be deemed a part of the Project, as applicable, and available for use and occupancy by the BCRTA without the payment of any Rent other than the payments specified in **Section 5.03** hereof. The University hereby acknowledges and agrees that the University shall have no right to convey the Premises in lieu of condemnation or to settle any claim with regard to condemnation without written first obtaining the written approval of the BCRTA, which approval may be granted or withheld in the BCRTA's sole and absolute discretion. All condemnation proceeds and proceeds received in lieu of condemnation shall be made available to the BCRTA for purposes of fulfilling its obligation to restore the Premises as set forth herein.

Article VIII. SPECIAL COVENANTS

Section 8.01 Disclaimer of Warranties. THE UNIVERSITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR ANY PORTION THEREOF LEASED HEREUNDER THAT SUCH PREMISES WILL BE SUITABLE FOR THE PROJECT OR THE BCRTA'S PURPOSES OR NEEDS.

Section 8.02 Inspection of the Premises; Right of Access by the University. The BCRTA agrees that the University, or any of its authorized agents shall have the right, at all reasonable times during business hours, to enter upon the Premises and to examine and inspect the Project provided that such activities do not result in any interference or prejudice to the BCRTA's operations or those of any subtenant of BCRTA, to ensure compliance with the provisions of this Lease. Provided that the BCRTA is not then in default hereunder, such inspection shall only be made upon reasonable prior notice to the BCRTA and in the presence of a representative of the BCRTA. The BCRTA further agrees that the University and its duly authorized agents shall have such rights of access to the Premises during the Construction Period as may be reasonably necessary in accordance with **Section 4.01** to cause the acquisition, construction and installation of the Project to be completed.

Section 8.03 BCRTA to Maintain its Existence; Exceptions Permitted. The BCRTA agrees that throughout the Term of this Lease, it shall maintain its existence and shall not merge or consolidate with any other entity and shall not transfer or convey all or substantially all of its property (other than the assignment of its interest under this Lease as permitted under the terms of this Lease), assets and licenses; provided however, the BCRTA may, without violating any provisions of this Lease, consolidate with or merge into another domestic entity or permit one or more domestic legal entities to consolidate with or merge into or transfer or convey all or substantially all of its assets to another domestic legal entity, but only on the condition that the assignee legal entity or the legal entity resulting from or surviving such merger (if other than the BCRTA) or consolidation or legal entity to which such transfer is made is then solvent and shall expressly assume in writing and agree to pay and to perform all of the BCRTA's obligations under this Lease. If the BCRTA is the surviving entity following such a merger the express assumption referenced in this **Section 8.03** shall not be required.

Section 8.04 Good Standing in the State. The BCRTA and the University both warrant and represent that they are currently in good standing in the State of Ohio and shall remain so during the Construction Period and Lease Term.

Section 8.05 Granting and Release of Easements. If no Event of Default shall have happened and be continuing, the University, upon written request of BCRTA, grant without delay, or modify, amend, release or terminate any easements, licenses, rights of way (temporary or perpetual and including the dedication of public highways), other rights or privileges in the nature of easements with respect to any property included in the

Premises and other contracts or agreements helpful in effecting the development, construction, maintenance, operation or restoration of the Project, and such grant will be free from the lien or security interests created by this Lease, and the University agrees that it shall execute and deliver and will cause the Project Manager (if such action shall be undertaken during the Construction Period) to execute and deliver any instrument necessary or appropriate to confirm, grant, amend, modify, terminate or release any such easement, license, right of way, other right or privilege or other document within ten (10) business days upon receipt of: (a) a copy of the instrument of grant or release, and (b) a written certification from the BCRTA signed by an Authorized BCRTA Representative requesting the execution of such instrument and stating (i) that such grant or release is not detrimental to the proper conduct of the business of the BCRTA, and (ii) that such grant or release will not impair the effective use or materially interfere with the operation of the Premises or completion of construction of the Project.

Section 8.06 Compliance with Laws. Beginning on the Effective Date of this Lease, the BCRTA agrees that it will comply in all material respects with any applicable law, ordinance, rule or regulation of any governmental authority with respect to its use of the Premises.

Section 8.07 Jurisdiction and Governing Law. This Agreement shall be construed in accordance with the laws of the United States of America and the State of Ohio, regardless of Ohio's choice of law provisions. Any litigation (or alternative dispute resolution proceedings ("ADR") arising out of or related to this Agreement shall be venued in the appropriate state or federal courts located in the State of Ohio (or in the case of ADR shall be conducted in Butler County, Ohio). The parties further agree that they do hereby waive all questions or personal jurisdiction, venue and convenience of forum for purposes of giving effect to this provision.

Section 8.08 Limitation of Liability of Directors, Trustees, Officers, Members, Agents and Employees of the University and the BCRTA. Nothing herein shall be deemed to be an obligation of any director, officer, member, agent or employee of the University in his or her individual capacity, and neither the directors of the University nor any officer thereof shall be liable personally or be subject to any personal liability or accountability by reason of the Project or this Lease. No director, officer, member, agent or employee of the University shall incur any personal liability with respect to any other action taken by him or her pursuant to this Lease of the Project. Nothing herein shall be deemed to be an obligation of any trustee, officer, member, agent or employee of the BCRTA in his or her individual capacity, and neither the trustees of the BCRTA, nor any officer thereof shall be liable personally or be subject to any personal liability or accountability by reason of the Project or this Lease. No trustee, officer, member, agent or employee of the BCRTA shall incur any personal liability with respect to any other action taken by him or her pursuant to this Lease or the Project.

Section 8.09 Political Activity. BCRTA acknowledges and agrees that no portion of the Project Funds shall be use for any partisan political activity or to further the election or defeat of any candidate for public office. All employees of the BCRTA, during the Lease Term, shall observe the limitations on political activities to which they may be subject under the Hatch Act (5 U.S.C. 1501 et seq; 18 U.S.C. 595).

Section 8.10 Federal Changes. At all times relevant hereto, the BCRTA will undertake all necessary steps to comply will all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by implication within any grant or applicable application materials, as the same may be amended or promulgated during the Term of this Lease.

Section 8.11 Clean Air Act and Federal Water Pollution Control Regulations. During the Term hereof, and as it relates to the Premises and the Project, the BCRTA agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USE 185(h), Section 508 of the Clean Water Act, as amended (33 USC 1368, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 125,

et seq.), as amended), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR. Part 15), which prohibit the use under non-exempt federal contracts, grants or loans, or facilities included on the EPA list for Violating Facilities.

Section 8.12 Repayment of Federal Interest.

(a) Federal Interest. The parties acknowledge that a portion of the Project Funds includes funding provided to BCRTA by the FTA (or other governmental agencies), and that additional funding may be provided to BCRTA by the FTA (or other governmental agencies) to support the Project during the Term (such funds are hereinafter referred to as the “**FTA Funds**” regardless of whether they were supplied by the FTA or other governmental agencies), if approved by University. The Parties acknowledge that a portion of the FTA Funds (the “**Federal Interest**”) may need to be repaid to the FTA upon the expiration or earlier termination of this Lease. The parties wish to memorialize hereinafter the manner in which the Federal Interest will be calculated and repaid.

(b) Procedures. Upon the expiration or earlier termination of this Lease for any reason, University shall , within thirty (30) days’ of request from BCRTA, provide BCRTA notice of whether University will continue to use the Premises for transit purposes or if the Premises will be used for non-transit purposes. Upon receiving such notice from University, BCRTA shall engage with FTA to determine the process for calculating the Federal Interest (if any). BCRTA shall be solely responsible for taking all steps necessary to calculate the Federal Interest, including, without limitation, obtaining an appraisal for the Premises and an appraisal review with FTA; provided that University shall provide reasonable assistance to BCRTA in working with FTA. BCRTA shall communicate any disposition instructions BCRTA receives from FTA to University. Once the property is valued according to the then-current FTA regulations, BCRTA shall provide University with instructions on disposing of the Federal Interest (which process is currently outlined in FTA Circular 5010.1E Chapter IV(2)(j)(2)(b)).

(c) Financial Responsibility for Repaying the Federal Interest. The repayment of the Federal Interest shall be governed exclusively by the following terms and conditions:

(i) If this Lease is terminated due to the natural expiration of the Lease Term by its terms (which coincides with the termination of the useful life of the Project under current FTA regulations), then BCRTA and the University shall equally share (50% each) the cost of repaying the Federal Interest, if any.

(ii) If this Lease is terminated by BCRTA due to an Event of Default committed by University (or University’s uncured and material breach of this Lease), then University shall be solely responsible for repaying the entire Federal Interest.

(iii) If this Lease is terminated by University due to an Event of Default committed by BCRTA (or BCRTA’s uncured and material breach of this Lease), or if BCRTA exercises its Termination for Convenience Right under this Lease, then BCRTA shall be solely responsible for repaying the entire Federal Interest.

(iv) With respect to additions, modifications or improvements to the Premises made by BCRTA (under **Section 6.01** hereof) with University approval, which result in a Federal Interest in the additions, modifications, or improvements, if this Lease is terminated due to the expiration of the Lease Term (which coincides with the termination of the useful life of the Project under current FTA regulations), then the University shall be solely responsible for repaying the entire Federal Interest as to those additions, modifications, or improvements.

(d) Repayment of Projects Funds other than the Federal Interest. Except as otherwise outlined above, BCRTA shall be solely responsible for repaying any amount of the Project Funds BCRTA agreed to repay under any grant or other agreement with the party providing such Project Funds. BCRTA covenants and agrees that it will keep the Property lien free and no mechanic's liens or other lien shall be allowed against the Premises or the estate of University in the Property at any time.

(e) Laws and Regulations. BCRTA represents and warrants that at all times during the Lease Term it will operate the Project and maintain the Premises at all times in accordance with federal laws, rules and regulations, including but not limited to any regulations, laws or requirements of the FTA as may be promulgated by the FTA from time to time.

(f) Real Property Inventory. BCRTA represents and warrants that it will maintain a Real Property Inventory on file and will annually provide the University with a written copy of such inventory report within thirty (30) days of the date it delivers the Real Property Inventory to the FTA.

(g) Survival. The terms of this **Section 8.12** shall survive the expiration or earlier termination of this Lease.

(h) No Indemnity. Neither University's nor BCRTA's agreement to repay the Federal Interest upon the terms set forth herein shall constitute an indemnity by either party. University and BCRTA both acknowledge and agree that the payment obligations outlined in this **Section 8.12** have been negotiated by the parties in recognition of the relative risks to each with respect to the repayment of certain funds that may or may not be owed at the expiration of the Term of this Lease, and expressly state that such obligations are not intended (and shall not be interpreted by any party, including a third-party) as an obligation to indemnify either party.

Section 8.13 False or Fraudulent Statements.

(a) The BCRTA acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C. Paragraphs 3801 et seq. and U.S. Department of Transportation Regulations. "Program Fraud Civil Remedies", 49 C.F.R. Part 31, apply to their actions pertaining to the Project. Upon execution of the within Lease, the BCRTA certify and affirm the truthfulness and accuracy of any statement it has made, makes, may make, or causes to be made, pertaining to the within the Lease or the construction of the Project as contemplated herein. In addition to other penalties that may be applicable, the BCRTA further acknowledges that if it makes, or causes to be made, false, fictitious, or fraudulent claims, statements, submissions, or certifications, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on such offending party to the extent the Federal Government may deem appropriate.

(b) The BCRTA also acknowledges that if it makes, or causes to be made, false, fictitious, or fraudulent claims, statements, submissions or certifications to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Paragraph 5307, the Federal Government shall have the right to impose the penalties of 18 U.S.C. Paragraph 1001 and 49 U.S.C. Paragraph 5307(n)(t) on the such offending party, to the extent the Federal Government may deem appropriate.

Section 8.14 Continuous Operations. During the Lease Term: (a) BCRTA shall maintain continuous operations at the Premises in accordance with the provisions of this Lease and shall not cease such operations, other than a temporary cessation as may be required during any period of repair or reconstruction resulting

from damage to, destruction of or Condemnation as to any part of the Premises; and (b) BCRTA shall not voluntarily close the Project without first obtaining the written consent of the University and the Granting Authorities, and any effort to close or discontinue operating the Project prior to securing such written authority shall constitute a Default hereunder.

**Article IX. ASSIGNMENT, PLEDGING AND SELLING; REDEMPTION;
RENT PREPAYMENT AND ABATEMENT**

Section 9.01 Assignment and Subletting.

(a) Subleasing. The BCRTA may not sublease any part of the Premises or Project without the prior written consent of the University, which consent shall not be unreasonably delayed, withheld or conditioned. No sublease shall relieve the BCRTA from primary liability for any of its obligations hereunder. In the event of a sublease, the BCRTA shall remain primarily liable for payment of the rents specified in **Section 5.03** hereof, and for the payment, performance, and observance of all other obligations and agreements herein provided to be performed by the BCRTA. In connection with any such sublease, the BCRTA shall furnish or cause to be furnished to the University, upon request, assurances reasonably satisfactory to the University that the Premises will continue to be operated in compliance with the provisions and purposes identified herein. The University shall have the right, at any time and from time to time, to notify any sublessee of the rights of the University as provided by this Section. The Parties acknowledge that it is their goal to avoid a situation in which a sublease would result in the Premises or Project no longer being used for transit purposes thereby resulting in the FTA's ability to recover the Federal Interest.

(b) Assignment. Except as set forth herein, this Lease may not be assigned, in whole or in part, by the BCRTA without the consent of the University in each case, such approval not to be unreasonably withheld or denied. Any assignment of this Lease shall also be subject to the following conditions:

(i) no assignment shall relieve the BCRTA from primary liability for any payment of rent or other obligations hereunder accruing prior to the date of such assignment unless the BCRTA shall have obtained the consent of the University, such approval not to be unreasonably withheld, conditioned or delayed; provided, however, in connection with an assignment of this Lease; and

(ii) the BCRTA shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the University a true and complete copy of each such assignment, together with any instrument of assumption.

Section 9.02 Restrictions on Sale of the Project by the University. Except for any sale under threat of a taking by eminent domain or a sale pursuant to **Article VI** hereof, the University agrees that, during the Lease Term, it shall not: (a) directly, indirectly, or beneficially sell, convey, or otherwise dispose of any part of its interest in the Premises; (b) permit any part of the Premises to become subject to any lien, claim of title, encumbrance, security interest, conditional sale contract, title retention arrangement, finance lease, or other charge of any kind, without the written consent of the BCRTA (which shall not be unreasonably withheld, conditioned, or delayed); or (c) assign, transfer, or hypothecate any payment of rent (or analogous payment) then due or to accrue in the future under any lease of the Premises, except that if the laws of the State at the time shall permit, nothing contained in this Section shall prevent the consolidation of the University with, or merger of the University into, or transfer of the Premises as an entirety to, any public body of the State whose property and income are not subject to taxation and which has authority to own and lease the Project, provided, that upon any such consolidation, merger, or transfer: (i) the due and punctual repayment of the principal of, premium, if any, and interest on all remaining Project Funds at the time of such sale, to any Granting Authority

entitled to the same, on a pro rata basis, if required; and (ii) the due and punctual performance and observance of all the agreements of the University to which the University is a party with respect to the Project to be kept and performed by the University, shall be expressly assumed in writing by the public body resulting from such consolidation or surviving such merger or to which the Project shall be transferred as an entirety. Notwithstanding anything set forth herein to the contrary, University agrees that it may, after giving advance written notice to BCRTA, execute any documents that would adversely affect the Federal Interest including, but not limited to, a lease, transfer of title, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, and/or innovative finance arrangements, provided, however, that if the University executes any such document and the Federal Interest is adversely affected, University shall pay the cost to reimburse the portion of the Federal Interest that is thereby affected.

Section 9.03 Prepayment of Rents. There is expressly reserved to the BCRTA the right, and the BCRTA is authorized and permitted, at any time it may choose, so long as it is not then in default hereunder, to prepay all or any part of the rents payable under **Section 5.03** hereof, and the University agrees to accept such prepayment when the same is tendered by the BCRTA. All prepaid rents shall be credited against the rents specified in **Section 5.03**, in chronological order of its due dates. The mere payment and acceptance of such prepaid rent, without more, is a matter of convenience to the parties and shall not, in and of itself, prejudice the parties or constitute a waiver of any legal position they wish to take or argument they wish to make.

Article X. EVENTS OF DEFAULT AND REMEDIES

Section 10.01 Events of Default. The following shall constitute an Event of Default under this Lease:

(a) failure by the BCRTA to make any rental payments required under **Section 5.03** hereof on or before the date that the payment is due and continuance of such failure for a period of five (5) business days after written notice thereof has been given to the BCRTA;

(b) failure by either the University or the BCRTA to observe and perform any material covenant, condition or agreement required hereunder (other than as referred to in **Section 5.03(a)**), for a period of thirty (30) days following receipt of written notice from the non-breaching party, specifying such failure and requesting remediation, unless the parties shall agree in writing to an extension of such time; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the non-breaching party shall not unreasonably withhold its consent to an extension of such time if curative measures are possible and corrective action is instituted by the breaching party within the applicable period and diligently pursued to completion;

(c) the entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the BCRTA or adjudging the BCRTA bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the BCRTA under Title 11 of the United States Code, as now constituted or as amended or any other applicable Federal or state bankruptcy or other similar law, and such decree or order shall have continued undischarged or unstayed for a period of ninety (90) days; or the entry of a decree or order of a court having jurisdiction of the premises for the appointment of a receiver or liquidator or trustee or custodian or assignee in bankruptcy or insolvency of the BCRTA or of all or a major part of its property, or for the winding up or liquidation of its affairs and such decree or order shall have remained in force undischarged or unstayed for a period of ninety (90) days;

(d) the BCRTA shall institute proceedings to be adjudicated a bankrupt or insolvent, or shall consent to the filing of a bankruptcy or insolvency proceeding against it, or shall file a petition or answer or consent seeking relief under Title 11 of the United States Code, as now constituted or as amended, or any other

applicable Federal or state bankruptcy or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of any such petition, or shall consent to the appointment or taking possession of a receiver or liquidator or trustee or custodian or assignee in bankruptcy or insolvency of it or of all or a major part of its property, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or the failure of the BCRTA generally to pay its debts as such debts become due, or the taking of action by the BCRTA in furtherance of any such action; or

(e) The sale, transfer, assignment or other disposal of the Premises or the BCRTA's interest in the Premises other than a sale, transfer, assignment or disposal which may be permitted under the provisions of **Article IX** hereof.

The foregoing provisions of this Section are subject to the following limitations. If by reason of force majeure the BCRTA is unable in whole or in part to carry out the agreements on its part herein contained, other than the obligations on the part of the BCRTA contained in **Sections 5.03, 6.03, 6.04, 8.03, 8.12 and 8.13** hereof, the BCRTA shall not be deemed in default during the continuance of such inability. The term "**force majeure**" as used herein shall mean, without limitation, the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; terrorism; orders of any kind of the government of the United States of America or of the State of Ohio or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery, transmission pipes or canals; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the BCRTA. The BCRTA agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the BCRTA from carrying out its agreements; provided, that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the BCRTA, and the BCRTA shall not be required to make settlement of strikes, lockouts and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the BCRTA, unfavorable to the BCRTA.

Section 10.02 Remedies for Default. Whenever any Event of Default shall have happened and be subsisting, the University may take any one (1) or more of the following remedial steps:

(a) declare all installments of rent payable under **Section 5.03** hereof for the remainder of the Lease Term to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) re-enter and take possession of the Premises and the Project without terminating this Lease and without any liability to the BCRTA for such entry and repossession, and sublease the Premises and the Project for the account of the BCRTA, holding the BCRTA liable for the difference in the rents and other amounts payable by such sublessee in such subleasing and the rents and other amounts payable by the BCRTA hereunder;

(c) terminate the Lease, exclude the BCRTA from possession of the Project and use its best efforts to lease the Project to another for the account of the BCRTA, holding the BCRTA liable for all rent, Project Funds, repayment of the Federal Interest (if any) and other payments due up to the effective date of such leasing;

(d) require accounting books and records of the BCRTA pertaining exclusively to the Premises; however this remedy is only applicable to an Event of Default identified under **Section 10.01(a)**; and

(e) take whatever action at law or in equity may appear necessary or desirable to collect the rents then due, or to enforce performance and observance of any obligation, agreement or covenant of the BCRTA under this Lease.

Any amounts collected pursuant to action taken under this Section shall be paid to satisfy any outstanding obligations of the BCRTA under this Lease. Any enforcement of recovery under this Section shall be limited to and against the BCRTA ONLY and no claim or recovery may be made against any officer, trustee or other employee of the BCRTA.

Section 10.03 No Remedy Exclusive. No remedy herein conferred upon or reserved to the University is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the University to exercise any remedy reserved to it in this Section, it shall not be necessary to give any notice, other than such notice or notices as may be herein expressly required.

Section 10.04 Reserved.

Section 10.05 No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.06 Waiver of Appraisalment, Valuation, Etc. If the BCRTA should default under any of the provisions of this Lease, the BCRTA agrees to waive, to the extent it may lawfully do so, the benefit of all appraisalment, valuation, stay, extension or redemption laws now or hereafter in force, and all right of appraisalment and redemption to which it may be entitled.

Section 10.07 Reinstatement of Lease. Notwithstanding any termination of this Lease in accordance with the provisions of **Section 10.02**, until the earliest of such time as (a) the University shall have entered into a valid and binding agreement providing for the reletting of the Premises, (b) the University's Board of Trustees or the President's Executive Cabinet have taken formal action to use the Premises for a purpose other than as described in this Lease, or (c) the passage of months, the BCRTA may at any time after such termination pay all accrued unpaid rent, except rent accelerated pursuant to **Section 10.02(a)** of this Lease, plus any costs incurred by the University relative to such default, and fully cure all other defaults then capable of being cured. Upon such payment and cure, this Lease shall be fully reinstated, as if it had never been terminated, and the BCRTA shall be restored to the use, occupancy and possession of the Project and any acceleration pursuant to **Section 10.02(a)** of this Lease shall thereupon be rescinded and annulled.

Article XI. MISCELLANEOUS

Section 11.01 Notices. Any notice, request or other communication (a "**notice**") required or permitted to be given hereunder shall be in writing and shall be delivered by hand or national overnight courier (such as United Parcel Service or Federal Express), sent by facsimile (provided a copy of such notice is deposited with an overnight courier for next business day delivery) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Any such notice shall be considered given on the date of delivery to hand or courier delivery, confirmed facsimile transmission (provided a copy of such notice is deposited with an overnight courier for next business day delivery), deposit

with such overnight courier for next business day delivery, or receipt via the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver any notices required hereunder due to change of address for which no notice was given shall be deemed to be constructive receipt of the notice. By giving at least five (5) days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of any party may be given by such party's counsel.

Notice addresses are as follows:

- As to the BCRTA: Butler County Regional Transit Authority
Attn: Executive Director
3045 Moser Court
Hamilton, Ohio 45011
Office: 513.785.5246
Email: dutkeviczmm@butlercountyrta.com
- With a copy to: Isaac Wiles & Burkholder LLC
Attn: Mark Landes and Ryan Spitzer
2 Miranova Pl, Suite 700
Columbus, Ohio 43215
614.221.2121
Email: rspitzer@isaacwiles.com
- As to the University: Miami University
Attn: AVP for Facilities Planning and Operations
101 South Fisher Drive
Oxford, Ohio 45056
Email: powellej@miamioh.edu
- With a copy to: Miami University
Attn: Office of General Counsel
501 East High Street
215 Roudebush Hall
Oxford, OH 45056
generalcounsel@miamioh.edu

A duplicate copy of each notice, certificate or other communication given hereunder by the University, the BCRTA or the Project Manager shall also be provided to each of the other parties. The University, the BCRTA and the Project Manager may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.02 Binding Effect. This Lease shall inure to the benefit of and shall be binding upon the University, the BCRTA and their respective successors and assigns.

Section 11.03 Severability. If any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.04 Amounts Remaining in Project Fund. It is agreed by the parties hereto that, moneys remaining in the Project Fund following completion of the Project, unless any Granting Authority shall require otherwise, shall belong to and be paid to the BCRTA by the Project Manager as an overpayment of rents (excluding the amount of the Tenant Improvement Allowance, which shall be paid to University if such funds are not needed to complete the Project).

Section 11.05 Amendments, Changes and Modifications. Except as otherwise provided herein, this Lease may only be amended, changed, modified, altered or terminated by the written agreement of the University and the BCRTA.

Section 11.06 Execution of Counterparts. This Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.07 Captions. The captions and headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Lease.

Section 11.08 Recording of Lease. This Lease shall not be recorded. However, a short form or memorandum hereof and every assignment and modification hereof may, at the election and expense of the BCRTA, be recorded in the office of the County Recorder for Butler County, Ohio, or in such other office as may be at the time provided by law as the proper place for such recordation. The University will reasonably cooperate in the execution and recording of the short form or memorandum.

Section 11.09 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio as applied to contracts made and to be performed in the state of Ohio.

Section 11.10 Net Lease. This Lease shall be deemed a “net lease,” and the BCRTA shall pay absolutely net during the Lease Term the rents, revenues, utilities, fees, maintenance costs and expenses, and receipts pledged hereunder, without abatement, deduction or set off other than those herein expressly provided.

Section 11.11 No Joint Venture; Relationship. This Agreement is not intended to constitute or create a joint venture, pooling arrangement, partnership or formal business organization of any kind by and between the University and the BCRTA; and the rights and obligations of the parties shall be only those expressly set forth herein. At all times relevant hereto, the BCRTA and the University shall remain independent entities, neither party shall act as agent for the other (unless the same shall be expressly set forth herein), and the employees of one party shall not be deemed to be the employees of the other.

Section 11.12 Estoppel Certificates. Upon ten (10) business days written request of either party, the non-requesting party will provide a statement to a proposed assignee of this Lease concerning (a) whether a default exists under this Lease, and if so specifying the nature of such default; (b) whether this Lease has been amended, and if so, specifying the amendments; and (c) any other matter concerning this Lease reasonably requested by such proposed assignee.

Section 11.13 Third Party Beneficiary. The University and the BCRTA hereby acknowledge that as a result of any grant it may make, the FTA will have rights in the project which are binding upon the parties. Beyond such rights in the FTA, there are no third party beneficiaries under this Lease.

Section 11.14 Compliance with Laws. The performance by both the University and the BCRTA in accordance herewith, and each such party’s conduct with respect to the Project and this Lease shall, at all times,

comply with all applicable standards, provisions, and stipulations of United States (including federal, state, and local) laws, rules, regulations, and ordinances.

Section 11.15 Entire Agreement; Priority. All exhibits attached to this Lease are hereby incorporated herein by this reference. This Lease, including the exhibits attached hereto, sets forth the entire understanding of the University and BCRTA with respect to the subject matter hereof. In the event of any conflict between the terms herein and those of the exhibits, the terms herein shall prevail. No person has any authority to make any representation or promise on behalf of any of the parties which is inconsistent with the terms set forth in this Lease and this Lease has not been executed in reliance on any promise or representation not set forth in this Lease.

Section 11.16 Incorporation of Federal Transit Administration (FTA) Terms. This Lease includes, in part, certain Standard Terms and Conditions required by the United States Department of Transportation (“**DOT**”), whether or not the same be expressly set forth in the preceding contractual provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, amended as of March 18, 2013, are incorporated herein by reference. Anything to the contrary herein notwithstanding, all FTA mandates shall be deemed to control in the event of a conflict with other provisions set forth herein; provided that the repayment of the Federal Interest shall be controlled exclusively by the process set forth in this Lease except to the extent that may be contrary to law. The parties hereto shall take reasonable steps not to perform any act, fail to perform any act, or refuse to comply with any BCRTA requests which may cause the BCRTA to be in violation of such FTA terms and conditions.

Section 11.17 Access Requirements for Persons with Disabilities. During the Term hereof, the BCRTA agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Section 12101 et seq; Section 504 of the Rehabilitation Act of 1973, as amended, 19 U.S.C. Section 792:49 U.S.C. Section 5301 (d); and the Federal Regulations including any amendments thereto: 49 C.F.R. Part 27, 49 C.F.R. Part 38; 28 C.F.R. Part 35; 28 C.F.R. Part 36; 41 C.F.R. Subpart 101-19; 29 C.F.R. Part 1630; 47 C.F.R. Part 1630; 47 C.F.R. Part 64, Subpart F; and 49 C.F.R. Part 609, as the same apply to the Premises.

Section 11.18 Access to Wash Bays. As part of the Project, BCRTA may install and maintain wash bays at the Premises that will be used to clean buses and other vehicles. As additional consideration for the rights granted to BCRTA by University under this Lease, if wash bays are installed and maintained at the Premises, BCRTA shall permit University to utilize the wash bays located on the Premises to clean the University’s vehicle fleet. University shall refrain from using the wash bays to clean the beds of dump trucks and other similar activities that may overly tax the wash bay system.

Section 11.19 Access to Fueling Stations. As part of the Project, BCRTA may install and may, during the Term, maintain fueling stations at the Premises. BCRTA covenants and agrees to negotiate in good faith a fueling station agreement with University to permit the University to utilize these fueling stations.

Section 11.20 Access to Main Street. BCRTA shall use commercially reasonable efforts to work with the City of Oxford to maintain a secondary point of ingress/egress off of S. Main Street (a/k/a Collins Run Road) from the area around the athletic track located south of the Project.

Section 11.21 Non-Discrimination. BCRTA covenants for itself, its heirs, executors, administrators, successors, and assigns and all persons claiming under or through it or them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises or

Project herein leased, and BCRTA and any person claiming under or through BCRTA shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of BCRTA and its subtenants, licensees, vendees or customers in the Premises or Project.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the University and the BCRTA have caused this Lease to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized representatives, all as of the date first above written.

WITNESS:

LESSOR:

MIAMI UNIVERSITY, a public institution of higher education established and existing under the laws of the State of Ohio

By: _____

Name: David K. Creamer

Title: Sr. Vice President for Finance and Business Services/Treasurer

WITNESS:

LESSEE:

BUTLER COUNTY REGIONAL TRANSIT AUTHORITY, an Ohio regional transit authority

By: _____

Name: _____

Title: _____

[Acknowledgments appear on the next following page.]

[ADD ACKNOWLEDGMENTS.]

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

DEPICTION OF PREMISES AND EASEMENTS

EXHIBIT C

PROJECT EQUIPMENT

After execution of this Lease, BCRTA will prepare and the parties will execute a Letter Agreement setting forth an itemized description of the Project Equipment. Once executed, the Letter Agreement will be attached hereto as **Exhibit C** immediately following this page.

EXHIBIT D

FORM OF ACCEPTANCE LETTER

12065970.6

12696695.2

12696695.2

Summary Report	
Title	compareDocs Comparison Results
Date & Time	4/7/2023 12:48:44 PM
Comparison Time	4.64 seconds
compareDocs version	v5.0.100.42

Sources	
Original Document	[#12696695] [v1] MU Lease for Multimodal Facility - BCRTA Edits.docx
Modified Document	[#12696695] [v2] MU Lease for Multimodal Facility - Miami Revisions.docx

Comparison Statistics	
Insertions	40
Deletions	12
Changes	30
Moves	0
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	82

Word Rendering Set Markup Options	
Name	
<u>Insertions</u>	
Deletions	
<u>Moves / Moves</u>	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark outside border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	Redline
Character Level	Word	False
Include Comments	Word	False
Include Field Codes	Word	True
Flatten Field Codes	Word	True
Include Footnotes / Endnotes	Word	False
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	False
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True

Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print

BCRTA STATION

CHESTNUT STREET

OXFORD, OHIO

EXHIBIT

Drawing:

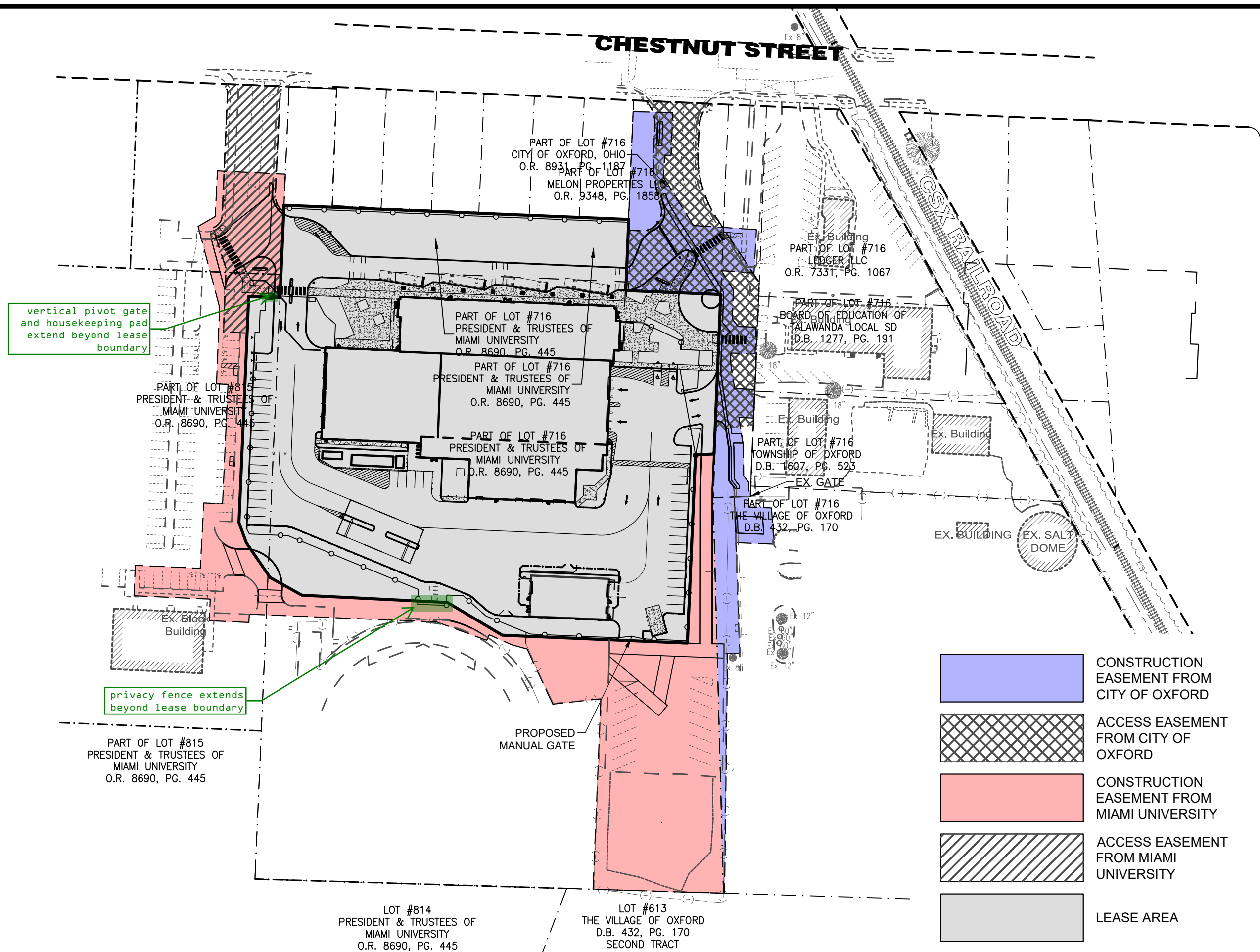
Scale: 1" = 100'

Drawn by:

Checked By:

Issue Date:

10-6-2023



vertical pivot gate and housekeeping pad extend beyond lease boundary

privacy fence extends beyond lease boundary

- CONSTRUCTION EASEMENT FROM CITY OF OXFORD
- ACCESS EASEMENT FROM CITY OF OXFORD
- CONSTRUCTION EASEMENT FROM MIAMI UNIVERSITY
- ACCESS EASEMENT FROM MIAMI UNIVERSITY
- LEASE AREA

PART OF LOT #716 CITY OF OXFORD, OHIO O.R. 8931, PG. 1187
 PART OF LOT #716 MELON PROPERTIES LLC O.R. 9348, PG. 1858
 PART OF LOT #716 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 PART OF LOT #716 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 PART OF LOT #716 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 PART OF LOT #716 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 PART OF LOT #716 TOWNSHIP OF OXFORD D.B. 1607, PG. 523
 PART OF LOT #716 THE VILLAGE OF OXFORD D.B. 432, PG. 170
 LOT #815 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 LOT #814 PRESIDENT & TRUSTEES OF MIAMI UNIVERSITY O.R. 8690, PG. 445
 LOT #613 THE VILLAGE OF OXFORD D.B. 432, PG. 170 SECOND TRACT

ALTA COMMITMENT FOR TITLE INSURANCE

issued by:



Commitment Number:

GLC2300378
Revision 01 - 8/25/2023

NOTICE

IMPORTANT - READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and the Commitment Conditions, Commonwealth Land Title Insurance Company, a Florida corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I-Requirements have not been met within one hundred eighty (180) days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

Commonwealth Land Title Insurance Company

By:

Michael J. Nolan, President

Attest:

Marjorie Nemzura, Secretary

Countersigned By:

Genevieve Jonas
Authorized Officer or Agent

This page is only a part of a 2021 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

ISSUING OFFICE:	FOR SETTLEMENT INQUIRIES, CONTACT:
Title Officer: Brianne M Brown Commonwealth Land Title Insurance Company 312 Walnut Street, Suite 2250 Cincinnati, OH 45202 Phone: 513-337-5492 Fax: 513-794-3565 Main Phone: (513)985-0550 Email: Brianne.Brown@cltic.com	Escrow Officer: Brianne M Brown Commonwealth Land Title Insurance Company 312 Walnut Street, Suite 2250 Cincinnati, OH 45202 Phone: 513-337-5492 Fax: 513-794-3565 Main Phone: (513)985-0550 Email: Brianne.Brown@cltic.com

Order Number: GLC2300378

Project Name:

SCHEDULE A

1. Commitment Date: July 21, 2023 at 12:00 AM
2. Policy to be issued:
 - (a) ALTA Owner's Policy 2021 - OH (12/01/2022)
 - Proposed Insured: Purchaser with contractual rights under a purchase agreement with the vested owner identified at Item 4 below
 - Proposed Amount of Insurance: \$100,000.00
 - The estate or interest to be insured: Leasehold
3. The estate or interest in the Land at the Commitment Date is:
 - Leasehold
4. The Title is, at the Commitment Date, vested in:
 - Parcel 1: President and Trustees of Miami University, an Ohio Public university, by deed filed for record April 30, 2014 and recorded in [OR Volume 8690, Page 445](#) of the Butler County, Ohio Records.
 - Parcel 2: City of Oxford, Ohio, an Ohio municipality, by deed filed for record August 19, 2016 and recorded in [OR Volume 8931, Page 1187](#) of the Butler County, Ohio Records.
 - Parcel 3: AS TO THE 99 YEAR LEASEHOLD INTEREST: The Village of Oxford, Butler County, Ohio, a municipal corporation, by deed filed for record May 16, 1946 and recorded in [Deed Volume 432, Page 169](#) of the Butler County, Ohio Records.
 AS TO THE FEE: Miami University, an Ohio Public university
5. The Land is described as follows:
 - SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

END OF SCHEDULE A

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EXHIBIT "A"

Legal Description

PARCEL 1:

Situated in the City of Oxford, Butler County Ohio, being part of Lots #716, #815, #816, #817 and #818 and all of Lot #814, in the City of Oxford, being part of the lands of The Board of Education of Tallawanda School District as recorded in Deed Book 604, Page 185, Talawanda Local School District of Butler County, Ohio as recorded in Deed Book 586, Page 21, Deed Book 586, Page 31, Deed Book 589, Page 525, Deed Book 631, Page 505, Deed Book 601, Page 669 and Deed Book 637, Page 468 of the Butler County Recorder's Office and being more particularly described as follows:

Beginning at a found 1/2 " iron pin at the northeast corner of Lot #817, being on the South right of way of West Chestnut Street and being the northeast corner of the lands of Allen W. Leach Tr. as recorded in Official Record 8050, Page 2124 of the Butler County Recorder's Office and being the True Point of Beginning;

thence, leaving said northwest corner of the lands of Allen W. Leach Tr. and with said South right of way of West Chestnut Street, South 87° 39' 04" East, 541.76 feet to a found 1/2 " iron pin on the North line of Chestnut West Subdivision as recorded in Plat Envelope 2843, Page "A" of the Butler County Recorder's Office;

thence, leaving said South right of way of West Chestnut Street and said North line of Chestnut West Subdivision, South 02° 07' 18" West, 125.00 feet to a found 1/2 " rebar on the South line of said Chestnut West Subdivision;

thence, with said South line of Chestnut West Subdivision, South 87° 39' 04" East, 312.48 feet to a found 5/8" iron pin on the West line of the lands of Terry and Tom Dudley as recorded in Deed Book 1796, Page 183 and being on the southeast corner of the lands of Berry Hill LLP as recorded in Official Record 7799, Page 974 of the Butler County Recorder's Office;

thence, leaving said southeast corner of the lands of Berry Hill LLP and with said West line of the lands of Terry and Tom Dudley, South 02° 22' 30" West, 75.00 feet to a set 5/8" iron pin;

thence, continuing with the South line of the lands of Terry and Tom Dudley, South 87° 39' 04" East, 100.00 feet to a set Magspike on the West line of Collins Run Road (private), and being the West line of the lands of the Village of Oxford (First Tract) as recorded in Deed Book 432, Page 170 of the Butler County Recorder's Office;

thence, leaving said South line of the lands of Terry and Tom Dudley and with said west line of Collins Run Road (private) and said lands of the Village of Oxford (First Tract), South 02° 22' 30" West, 200.20 feet to a found Magnail;

thence, leaving said West line of Collins Run Road (private) and continuing with said West line of the lands of the Village of Oxford (First Tract), South 01° 29' 28" East, 430.26 feet to a 5/8" iron pin set on the North line of Lot #613 and being the North line of the lands of the Village of Oxford (Second Tract) as recorded in Deed Book 432, Page 170 of the Butler County Recorder's Office;

thence, leaving said West line of the Village of Oxford (First Tract) and with said North line of Lot #613 and the North line of the lands of the Village of Oxford (Second Tract) for the following three courses:

- 1) North 88° 15' 49" West, 165.05 feet to a 1/2 " iron pin found;
- 2) South 20° 46' 29" West, 413.15 feet to a found 1/2 " iron pin;
- 3) North 88° 08' 55" West, 180.22 feet to a found 1/2 " iron pin on the northeast corner of Lot #818, being the lands of James F. and Regin Laird as recorded in Official Record 8045, Page 1102 of the Butler County Recorder's Office;

thence, leaving said Lot #613 and with said North line of Lot # 818, being the North line of said lands of James F. and Regin Laird, North 88° 15' 55" West, (passing a found 5/8" iron pin at 439.11 feet), for a total of 637.11 feet to a found

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EXHIBIT "A"

Legal Description

wooden post on the southeast corner of the lands of Margarette Chapman Beckwith as recorded in Official Record 5094, Page 464 of the Butler County Recorder's Office and being on the North line of Lot #3690 and being the lands of Jody Klieber and Rachel Cramer as recorded in Official Record 7854, Page 590 of the Butler County Recorder's Office;

thence, leaving said North line of Lot #3690 and said North line of the lands of Jody Klieber and Rachel Cramer, North 01° 20' 24" East, 417.48 feet to a found stone on the southeast corner of the lands of Ann L. Prows Tr, as recorded in Official Record 5271, Page 560 of the Butler County Recorder's Office and being on the northeast corner of the lands of Robert L. Blackburn as recorded in Deed Book 1403, Page 456 of the Butler County Recorder's Office;

thence, with the East line of said lands of Ann L. Prows Tr. for the following three courses:

- 1) North 01° 15' 24" East, 135.27 feet to a found 1/2 " iron pin;
- 2) South 87° 40' 40" East, 35.60 feet to a 1/2 " iron pin;
- 3) North 02° 14' 57" East, 483.81 feet to a found 1/2 " iron pin on the southwest corner of said lands of Allen W. Leach, Tr;

thence, leaving said East line of said lands of Ann. L. Prows Tr. and with the South line of said lands of Allen W. Leach, Tr., South 87° 36' 57" East, 105.26 feet to a 1/2 " iron pin;

thence, continuing with the East line of said lands of Allen W. Leach, Tr., North 02° 10' 21" East, 195.20 feet the True Point of Beginning, containing 1,162,605 square feet or 26.690 acres of land, more or less.

The above description was prepared by Bayer Becker, David Douglas Smith, Ohio Professional Surveyor No. 7121. The Plat of which is recorded in Volume 56, Page 79 of the Butler County Engineer's Record of Land Surveys.

Basis of Bearings: Ohio State Plane Coordinates, South Zone (3402).

SAVE AND EXCEPT THE FOLLOWING (OR Volume 8695, Page 252):

Situated in the City of Oxford, Butler County Ohio, being part of #816, in the City of Oxford, being part of the lands of the lands of Talawanda Local School District of Butler County, Ohio as recorded, Deed Book 589, Page 525 in the Butler County Recorder's Office and being more particularly described as follows:

Commencing at a found 1/2 " iron pin at the northeast corner of Lot #816, being on the South right of way of West Chestnut, being the northeast corner of the lands of Allen W. Leach Tr. as recorded in Official Record 8050, Page 2124 of the Butler County Recorder's Office; thence, leaving said northwest corner of the lands of Allen W. Leach Tr. and with said South right of way of West Chestnut Street, South 87° 39' 04" East, 20.26 feet to a set Magspike and being the True Point of Beginning;

thence, leaving said South right of way of West Chestnut Street on a new division line through said lands of Talawanda Local School District of Butler County, Ohio for the following three courses:

- 1) South 02° 14' 57" West, 103.00 feet to a set Magspike;
- 2) South 87° 39' 04" East, 60.00 feet to a set 5/8" iron pin;
- 3) North 02° 14' 57" East, 103.00 feet to a set 5/8" iron pin on said South right of way of West Chestnut Street;

thence, with said South right of way of West Chestnut Street, North 87° 39' 04" West, 60.00 feet to the True Point of Beginning, containing 6,180 square feet or 0.142 acres of land, more or less and subject to all easements and rights-of-way of record.

The above description was prepared by Bayer Becker, David Douglas Smith, Ohio Professional Surveyor No. 7121.

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EXHIBIT "A"
Legal Description

Basis of Bearings: Ohio State Plane Coordinates, South Zone (3402).

For Informational Purposes Only:

PPN: H4000-115-000-002; -003; -004; -005; -006; -007; -008; -011

PARCEL 2:

Situate and being in the City of Oxford, Butler County, Ohio and Part of Lot Number Seven Hundred Sixteen (716), more fully described as follows:

Beginning at the northwest corner of said Lot No. 716; thence South 88° 30' East along the North line of said lot a distance of 363.00 feet to a point, which point is the true point of beginning; Thence South 1° West parallel to the West line of said lot a distance of 200.00 feet to a point; thence South 88° 30' East parallel to the North line of said lot a distance of 100.00 feet to a point; Thence North 1° East parallel to the West line of said lot a distance of 200.00 feet to a point in the North line of said Lot No. 716; Thence North 88° 30' West along the North line of said Lot No. 716A distance of 100.00 feet to the point of beginning.

For Informational Purposes Only:

PPN: H4100-115-000-012

PARCEL 3:

The Company will require a new boundary survey, which must be presented to and approved by the County Engineer and/or any other required governmental agency, pursuant to Ohio Revised Code Section 315.251 prior to the transfer of said property.

NO VALID LEGAL DESCRIPTION OF RECORD. A NEW LEGAL AND SURVEY ARE REQUIRED.

PARCEL NO. H4100-115-000-016 BEING A PART OF LOT NO. 716 SAVE AND EXCEPT THE FOLLOWING:

Deed Book 483, Page 379 (100 X200);
Deed Book 495, Page 228 (1.85 acres) and corrected in Deed Book 631, Page 361;
Deed Book 542, Page 385 (1.437 acres);
OR Book 604, Page 185 (7.07 acres)

Remaining acreage of 4.77 Acres, more or less.

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SCHEDULE B, PART I - Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. INTENTIONALLY DELETED
6. INTENTIONALLY DELETED
7. The Company will require a new boundary survey and legal description, which must be presented to and approved by the County Engineer and/or any other required governmental agency, pursuant to Ohio Revised Code Section 315.251 prior to the transfer of said property. (As to Parcel 3, Parcel H4100-115-000-016)
8. INTENTIONALLY DELETED
9. Receipt of proof of corporate status, or limited liability company status, or partnership status, and all agreement(s), and necessary consents, authorizations, resolutions, notices and corporate/partnership actions have been conducted, given or properly waived relating to the transaction to be insured, including entity resolution(s) authorizing and designating appropriate officers/members/or partners to execute any and all necessary documents.
10. INTENTIONALLY DELETED
11. The Company should be furnished an Owner's/Seller's Affidavit.

The Company reserves the right to add additional items or make further requirements after review of the requested Affidavit.
12. The Company should be furnished a letter from Planning and Zoning and/or a surveyor certification stating there are no zoning violations, if a zoning endorsement is requested.
13. Payment of taxes, charges, and assessments levied and assessed against the Land, which are due and payable.
14. The actual value of the estate or interest to be insured must be disclosed to the Company and, subject to approval by the Company, shown on this Commitment as the liability of the policy(ies) to be issued. Until the liability of the policy(ies) to be issued shall be determined and shown on the Commitment, the total liability of the Company under this Commitment shall not exceed \$100,000.00.
15. For each policy to be issued as identified in Schedule A, Item 2; the Company shall not be liable under this

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SCHEDULE B, PART I - Requirements
(continued)

Commitment until it receives a designation for a Proposed Insured, acceptable to the Company. The Company may amend this commitment to add, among other things, additional exceptions or requirements after the designation of the Proposed Insured.

16. The Company may make additional requirements and/or exceptions upon further ascertaining details of the transaction and/or its review of the documents creating the interest or estate to be insured.
17. Notice: Please be aware that due to the conflict between federal and state laws concerning the cultivation, distribution, manufacture or sale of marijuana, the Company is not able to close or insure any transaction involving Land that is associated with these activities.
18. Notice: If the Company will be serving as the closing agent, closing funds provided in excess of \$1,000.00 must be good funds in compliance with Ohio Revised Code Section 1349.21. In order to comply and close your transaction timely, we require all closing funds be tendered to our office by wire transfer, so that all funds are collected in the escrow account and available at the time of closing.
19. Notice: Please be aware that the Company will not insure a prohibited person as defined under Ohio Revised Code Section 5301.256 as to the ownership in agricultural land or land in proximity to a military installation as defined under the referenced code section which is an excluded matter under Exclusion 1 of the Exclusions from Coverage of any policy issued as an ordinance or governmental regulation that restricts, regulates, prohibits, or relates to the occupancy, use, or enjoyment of Land.
20. Payment and release of Mortgage from Village of Oxford, Ohio, to The First National Bank of Cincinnati, Ohio, as Trustee, in the maximum amount of \$33,000.00, filed for record March 9, 1953, in [Volume 542, Page 571](#), of the Butler County, Ohio Records. (As to Parcel 3)
21. The search did not disclose any open mortgages or deeds of trust of record, therefore the Company reserves the right to require further evidence to confirm that the property is unencumbered, and further reserves the right to make additional requirements or add additional items or exceptions upon receipt of the requested evidence. (As to Parcels 1 & 2)
22. INTENTIONALLY DELETED
23. INTENTIONALLY DELETED
24. INTENTIONALLY DELETED
25. Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of a Company agent, an authorized employee of the insured lender, or by using Bancserv or other Company-approved third-party service. If the above requirement cannot be met, please call the Company at the number provided in this report.
26. Recordation of the following:
 - a) properly executed and notarized Lease or Memorandum of Lease from President and Trustees of Miami University, an Ohio public university, as Lessor, conveying leasehold title to Lessee (as to Parcel 1);

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SCHEDULE B, PART I - Requirements
(continued)

b) properly executed and notarized Lease or Memorandum of Lease from City of Oxford, an Ohio municipality, as Lessor, conveying leasehold title to Lessee (as to Parcel 2); and

c) properly executed and notarized Lease or Memorandum of Lease from The Village of Oxford, Butler County, Ohio, a municipal corporation, as Lessor, conveying leasehold title to Lessee (as to Parcel 3).

NOTE: Parcel 3 is subject to a 99 year Leasehold renewable forever from Miami University. The Company will require an approval stamp from Miami University affixed to the lease from The Village of Oxford, Butler County, Ohio, to Lessee. A fee is required to be paid to Miami University for either of the above-referenced options.

27. If the leasehold estate will encumber only a portion of the real property described in Exhibit "A" hereof, a survey and legal description of the leasehold area will be required.

END OF SCHEDULE B, PART I

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SCHEDULE B, PART II - Exceptions

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Taxes or special assessments which are not shown as existing liens by the Public Records.
3. Rights or claims of parties in possession not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

In order to delete the survey exception shown above, a satisfactory survey of the subject Land, which complies with the minimum standards for land surveys made for title insurance purposes, is to be furnished to the Company.

The Company reserves the right to add additional items as disclosed by the survey, or make further requirements after review of the requested documentation.

5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
6. Oil and gas leases, pipeline agreements or any other instruments related to the production or sale of oil and gas which may arise subsequent to the date of the Policy, pursuant to Ohio Revised Code Section 1509.31(D).
7. Easements or claims of easements not shown by the Public Records.
8. Representations of the acreage or area in the property descriptions in Schedule A or on the survey, if any.
9. Rights of public to use those portions of the Land lying within the confines of public roads and highways.
10. Any lease, grant, exception or reservation of minerals or mineral rights together with any rights appurtenant thereto.

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SCHEDULE B, PART II - Exceptions
(continued)

11. No liability is assumed for tax increases occasioned by retroactive revaluation arising out of the change in land usage, on account of errors or omissions and changes in the valuation of the property by legally constituted authorities.
12. Annual ground rents payable to Miami University as set forth in the deed to The Village of Oxford, filed for record May 16, 1946, in [Deed Volume 432, Page 169](#), of the Butler County, Ohio Records. (as to Parcel 3)
13. Reservations, restrictions, covenants, limitations, easements and/or other conditions as stated in instrument filed for record April 29, 1952, in [Deed Volume 542, Page 385](#), of the Butler County, Ohio Records. (As to Parcels 1, 3)
14. Easement to The Cincinnati Gas & Electric Company, filed for record December 21, 1956, in [Misc. Volume 37, Page 211](#), of the Butler County, Ohio Records. (As to Parcel 1)
15. Reservations, restrictions, covenants, limitations, easements, and/or conditions, as stated in instrument, filed for record May 9, 1955, in [Deed Volume 601, Page 669](#), of the Butler County, Ohio Records. (As to Parcel 1)
16. Easement to The Cincinnati Gas & Electric Company, filed for record March 29, 1982, in [Deed Volume 1440, Page 265](#), of the Butler County, Ohio Records. (Parcel 3)
17. Lease and Utility and Access Easement Agreement by and between The Board of County Commissioners of Butler County (Lessee), and The City of Oxford, Ohio (Lessor), filed for record February 29, 2008, in [OR Volume 7991, Page 1667](#) of the Butler County, Ohio Records. (Parcels 2, 3)
18. Lease and Utility and Access Easement Agreement by and between The Board of County Commissioners of Butler County (Lessee), and The City of Oxford, Ohio (Lessor), filed for record October 13, 2008, in [OR Volume 8055, Page 1984](#) of the Butler County, Ohio Records. (Parcels 2, 3)

Amendment No. 1 to Lease and Utility and Access Easement Agreement by and between City of Oxford, Ohio (Lessor) and Board of County Commissioners of Butler County, Ohio (Lessee), filed for record March 16, 2018, in [OR Volume 9140, Page 1936](#) of the Butler County, Ohio Records.
19. Taxes and assessments for full year 2023 and subsequent years are a lien, but not yet due and payable. The County Treasurer's General Tax records for the year 2022 are as follows:

PPN: H4000 115 000 002
Taxes are EXEMPT.

PPN: H4000 115 000 003
Taxes are EXEMPT.

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SCHEDULE B, PART II - Exceptions
(continued)

PPN: H4000 115 000 004
Taxes are EXEMPT.

PPN: H4000 115 000 005
Taxes are EXEMPT.

PPN: H4000 115 000 006
Taxes are EXEMPT.

PPN: H4000 115 000 007
Taxes are EXEMPT.

PPN: H4000 115 000 008
Taxes are EXEMPT.

PPN: H4000 115 000 011
Taxes are EXEMPT.

PPN: H4100115000012
Taxes are EXEMPT.

PPN: H4000115000016
Taxes are EXEMPT.

NOTE: Taxes are exempt and may be subject to increase upon change in status or ownership or upon failure to otherwise qualify for current exemptions.

20. Any deficiency in the description of the premises demised by the lease described in Schedule "A".
21. Rights of the Owners and other Lessees of the land described in Schedule A of which the insured premises is a part, to use those portions of said land not reserved for the exclusive use and possession of the Insured by the terms and provisions of the Lease described in Schedule "A".
22. The effect of any failure to comply with the terms, covenants, conditions and provisions of the lease described or referred to in Schedule "A".

END OF SCHEDULE B, PART II

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COMMITMENT CONDITIONS**1. DEFINITIONS**

- a. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.
 - b. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
 - c. "Land": The land described in Item 5 of Schedule A and improvements located on that land that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
 - d. "Mortgage": A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.
 - e. "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
 - f. "Proposed Amount of Insurance": Each dollar amount specified in Schedule A as the Proposed Amount of Insurance of each Policy to be issued pursuant to this Commitment.
 - g. "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
 - h. "Public Records": The recording or filing system established under State statutes in effect at the Commitment Date under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.
 - i. "State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.
 - j. "Title": The estate or interest in the Land identified in Item 3 of Schedule A.
2. If all of the Schedule B, Part I-Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
 3. The Company's liability and obligation is limited by and this Commitment is not valid without:
 - a. the Notice;
 - b. the Commitment to Issue Policy;
 - c. the Commitment Conditions;
 - d. Schedule A;
 - e. Schedule B, Part I-Requirements; and
 - f. Schedule B, Part II-Exceptions; and
 - g. a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company is not liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- a. The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - i. comply with the Schedule B, Part I-Requirements;
 - ii. eliminate, with the Company's written consent, any Schedule B, Part II-Exceptions; or
 - iii. acquire the Title or create the Mortgage covered by this Commitment.
- b. The Company is not liable under Commitment Condition 5.a. if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- c. The Company is only liable under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- d. The Company's liability does not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Condition 5.a. or the Proposed Amount of Insurance.

This page is only a part of a 2021 ALTA® Commitment for Title Insurance issued by Commonwealth Land Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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(continued)

- e. The Company is not liable for the content of the Transaction Identification Data, if any.
- f. The Company is not obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I-Requirements have been met to the satisfaction of the Company.
- g. The Company's liability is further limited by the terms and provisions of the Policy to be issued to the Proposed Insured.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT; CHOICE OF LAW AND CHOICE OF FORUM

- a. Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- b. Any claim must be based in contract under the State law of the State where the Land is located and is restricted to the terms and provisions of this Commitment. Any litigation or other proceeding brought by the Proposed Insured against the Company must be filed only in a State or federal court having jurisdiction.
- c. This Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- d. The deletion or modification of any Schedule B, Part II-Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- e. Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- f. When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT IS ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for closing, settlement, escrow, or any other purpose.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. CLAIMS PROCEDURES

This Commitment incorporates by reference all Conditions for making a claim in the Policy to be issued to the Proposed Insured. Commitment Condition 9 does not modify the limitations of liability in Commitment Conditions 5 and 6.

10. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS COMMITMENT, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS COMMITMENT, ANY BREACH OF A COMMITMENT PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS COMMITMENT, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING. ANY POLICY ISSUED PURSUANT TO THIS COMMITMENT WILL CONTAIN A CLASS ACTION CONDITION.

11. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Amount of Insurance is Two Million And No/100 Dollars (\$2,000,000.00) or less may be arbitrated at the election of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

END OF CONDITIONS

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1-BCRTA Board Packet 10-18-2023 Part 2

Final Audit Report

2023-10-23

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