

ORIGINAL

GROUND LEASE AND DEVELOPMENT AGREEMENT
between
THE STATE BOARD OF HIGHER EDUCATION AND
THE UNIVERSITY OF NORTH DAKOTA
and
UNIVERSITY OF NORTH DAKOTA RESEARCH FOUNDATION

1. Parties.

This Ground Lease and Development Agreement ("Agreement") is executed this 1st day of November, 2006, by and between THE STATE BOARD OF HIGHER EDUCATION AND THE UNIVERSITY OF NORTH DAKOTA, agencies of the State of North Dakota ("University"), hereinafter also referred to as LESSOR, and UNIVERSITY OF NORTH DAKOTA RESEARCH FOUNDATION, a North Dakota nonprofit corporation ("UNDRF"), hereinafter also referred to as LESSEE.

2. Lease Agreement.

LESSOR hereby agrees to and does lease to LESSEE and LESSEE agrees to and hereby does lease from LESSOR the premises hereafter described for the term and at the rental and upon the conditions and for the purposes hereinafter set forth.

3. Description of the Leased Premises.

The leased premises consisting of approximately 45,000 square feet more or less are as set forth in Exhibit "A" attached hereto and incorporated by reference here ("Premises") being the site plan prepared by LESSEE for the purpose of constructing a Centers of Excellence for Life Sciences and Advanced Technology ("COELSAT").

4. Length of Lease.

a. Term. This Agreement shall commence upon execution of this Agreement ("Commencement Date") and shall continue until October 1, 2036. Upon termination, pursuant to this section, the Premises shall return to the exclusive control of LESSOR. Premises at LESSOR's option and at LESSEE's expense shall be returned in the same condition as existed prior to Agreement.

b. Option to Renew. LESSEE in its sole discretion shall have the option to renew this Agreement for two (2) ten (10) year terms ("Extended Terms"), provided that LESSEE is not in default, has not violated any provision of this Agreement and has provided written notice of intent to exercise the option to renew to LESSOR no later than ninety (90) days prior to the termination of the prior lease term. Terms and conditions of this Agreement during any Extended Term shall be the same as substantially contained herein.

c. Right Upon Termination. At the end of the thirty (30) year term of this Agreement, or at the end of any subsequent Extended Term elected by LESSEE, paragraph 20 herein entitled "LESSEE's Rights Upon Termination" shall apply.

DEPT APPROVED
PATRICIA.SIGURDSON
01/18/12

d. Access. LESSEE shall have unencumbered and exclusive use of the Premises to construct the COELSAT as described in Exhibit "B" attached hereto and all the improvements associated therewith.

5. Rent

a. Base Rent. The base annual rent for the entire term of this agreement and any extended terms shall be One Dollar (\$1.00).

b. Payment of Rent. All rent as herein shall be prepaid 30 years in advance upon execution of this agreement. There shall be a one time fee of Two Thousand Five Hundred dollars (\$2,500.00) to offset the LESSOR's expenses for inspections and certifications. The said fee shall be paid in full upon execution of this agreement.

6. Authorized Uses and Purposes.

a. Research Enterprise and Commercialization Facility. LESSEE understands the primary use of the Premises shall be for constructing and operating a research enterprise and commercialization facility, known initially as COELSAT, and limited to the functions of the type of facility used for research and commercialization work and ventures which comply with the LESSOR's policies and regulations. LESSEE shall operate a COELSAT in a safe manner consistent with normal operating practices and applicable laws and regulations, including the policies and procedures established by the State Board of Higher Education and University of North Dakota. Any use other than the operation of a COELSAT shall require the written approval of LESSOR. Such approval shall not be unreasonably withheld if the proposed other uses are consistent with and appropriate to LESSOR's mission and purposes.

b. Cost of Improvements. The cost of construction of all improvements to the Premises shall be borne by LESSEE. LESSEE agrees to obtain all necessary permits and pay all permit fees.

c. Building Approval. LESSEE shall submit to LESSOR complete construction drawings and specifications for approval. Review and approval of the drawings will be completed at stages of design development, including at the completion of design development where the drawings and specifications describe in complete detail all elevations, floor plans, and building materials. Construction of the COELSAT will not begin until LESSOR has approved all plans and drawings.

d. Subsequent Alterations. LESSEE shall have the right during the term of this Agreement to make alterations to existing improvements upon the Premises consistent with the operation of a research enterprise and commercialization facility, provided, however, that no such alterations, etc. shall be commenced prior to obtaining LESSOR's written approval.

7. Obligations of LESSOR.

a. Operation and Maintenance of Adjacent Facilities. LESSOR agrees that during the Term of this Agreement or any Extended Term, it shall, within its financial ability, operate, maintain and keep in good repair all public and common facilities and services on its grounds and adjacent facilities.

b. Paving and Parking Lots. All streets, sidewalks, and parking lots constructed by the LESSEE outside of the Premises shall be maintained and regulated by the LESSOR. Maintenance is limited to that routine striping, patching, cleaning, and snow removal required for normal operation of a street, parking lot, or sidewalk.

8. Obligations of LESSEE.

a. Acceptance of Premises. LESSEE, by execution of this Agreement represents that it has inspected the Premises, and that it accepts the condition of same as they now exist, and fully assumes all risks incident to the use thereof, including, but not limited to, any hidden, latent, or other dangerous conditions on the Premises. LESSEE accepts the Premises in the present condition and agrees to repair and maintain any improvements, fixtures, or any other object on the Premises without expense to LESSOR. LESSEE further agrees to remove, or cause to be removed at LESSEE's expense, any trash, garbage or debris generated by LESSEE's use of the Premises.

b. Outside Storage. Other than during construction, LESSEE will not store in a location susceptible to view by the public any equipment, materials or supplies on the Premises. Any screens or other devices used to keep equipment, materials or supplies from view shall be subject to written approval by LESSOR.

c. Lighting and Signs. LESSEE shall secure in advance written approval from LESSOR before placing any exterior lighting or exterior signs on the Premises and such approval shall not be unreasonably withheld. All signage used to identify the COELSAT will be similar to in shape and construction signage currently in use by the LESSOR to identify major buildings.

d. LESSEE's Taxes. LESSEE shall promptly pay any and all taxes and assessments levied on or against LESSEE's property on said Premises, and all licenses, permits, occupational and inspection fees assessed or charged against said Premises of either party to this Agreement by reason of LESSEE's use or occupancy of said Premises, and LESSEE shall hold LESSOR free and harmless from any loss, damage, or expense, including reasonable attorney's fees, arising out of or by reason of any charges specified in this subparagraph.

If LESSEE, in good faith, desires to contest the validity or amount of any tax or assessment herein agreed to be paid by it, LESSEE shall not be in default hereunder in respect to the payment of any taxes, payments in lieu of taxes, which LESSEE shall be required by any provision hereof to pay so long as LESSEE shall first notify LESSOR prior to the due date thereof of its intention to contest such payment, shall thereafter, in good faith and with all possible promptness, contest such payment, and LESSEE shall deposit with LESSOR the amount of the taxes payable and may thereupon defer the payment of any such tax during such time as the validity or amount of such tax is contested by LESSEE by appropriate legal proceedings. Should any rebate be made on account of any taxes paid by LESSEE, the amount of such rebate shall belong to and be paid to LESSEE.

e. Compliance with Laws. LESSEE agrees to comply with all laws, ordinances, rules and regulations promulgated by LESSOR and any governmental unit having jurisdiction, applicable to the use of the Premises and to use the premises in compliance therewith.

f. Liens. LESSEE agrees to promptly pay all sums legally due and payable on account of any labor performed on or materials furnished or services performed for the Premises. LESSEE shall not permit any liens to be placed against the Premises on account of labor performed or material furnished and, in the event such a lien is placed against the premises, LESSEE agrees to save LESSOR harmless from any and all such asserted claims and liens and to remove or cause to be removed any and all such asserted claims or liens as soon as reasonably possible.

g. Repair of Premises. LESSEE shall at its sole expense keep, maintain and repair the Premises, any improvements thereto and all equipment in a good and well-maintained condition consistent with good business practice and in a manner which will preserve, enhance and protect the general appearance and value of the Premises. Failure to maintain and repair shall be deemed a default under this Agreement. In the event LESSEE fails to comply with this subparagraph, LESSOR shall issue a written notice to LESSEE regarding its failure to maintain and repair. The notice must state with reasonable specificity (1) the nature of LESSEE's failure to keep, maintain or repair, and (2) the remedy required by LESSOR to cure the default. In the event that LESSEE fails within thirty (30) days after receipt of LESSOR's default notification under this paragraph to commence appropriate action to cure such default, LESSOR shall have the right thereafter to terminate this Agreement immediately, or in the alternative, to cure said default in an efficient, effective, and good workmanlike manner, and to assess the costs thereof against LESSEE. LESSEE hereby agrees to pay any and all such assessments, including all costs, disbursements and reasonable attorney's fees incurred by LESSOR in curing said default within thirty (30) days after LESSOR's demand. Provided, however, that if LESSEE commences appropriate action to cure a default as soon as reasonably possible thereafter, LESSOR shall waive the default. However, if LESSEE fails to diligently pursue and reasonably cure the default, LESSOR shall have the option, without further notice, of declaring LESSEE in default and proceeding to cure the provision herein.

h. Non-Assignment. LESSEE shall not at any time assign any part of this Agreement or sublease or assign any of the Premises, or sublease the COELSAT, without the prior written approval of LESSOR, and such approval shall not be unreasonably withheld. No assignment shall be valid unless the assignee expressly assumes and agrees to perform every covenant of this Agreement, which, by its terms, LESSEE agrees to keep and perform. The assignee's assumption shall be evidenced by a recordable instrument, either by joinder in the assignment itself or by separate instrument. The assignment shall not be deemed valid unless it and the assumption agreement are promptly filed for record in the appropriate office, and an executed original thereof delivered to LESSOR. If LESSEE's interest in and to this Agreement is unlawfully assigned, its liability for the performance of every term, condition, covenant, or agreement contained herein shall remain in full force and effect.

i. Utilities. LESSEE agrees to install or cause to be installed on the Premises, meters for all utilities to be used on the premises, and to pay any and all costs and expenses incurred as a result of the installation and use of such utilities.

j. Safety and Security. The parties hereby agree that LESSEE assumes all responsibility and obligation for providing safety and security on the Premises, including, but not limited to making all necessary arrangements with the University of North Dakota Police Department and the City of Grand Forks Fire Department to provide emergency access to the COELSAT. All policy compliance for all chemical, radiation, biological and hazardous materials is to be coordinated with the UND Safety Office.

k. Construction. LESSEE shall pay the entire cost of all buildings and improvements constructed by it on the Premises. LESSEE also agrees to pay the entire cost of all utilities, and/or other improvements to the LESSOR's property that is being completed for the purpose of constructing the research enterprise and commercialization facility.

i. Pavement and Parking Lots. LESSEE shall pay the entire cost of all paving for streets, parking lots, and sidewalks that are required for access to the Premises from adjacent streets. LESSEE shall be responsible for all major repairs to the streets, parking lots, and sidewalks that are caused by original construction defects and outside the scope of normal repairs. All regular occupants of the COELSAT will be required to obtain parking permits from the LESSOR and comply with the LESSOR's rules and regulations as they apply to traffic control and parking.

9. Quiet Enjoyment.

LESSOR covenants, warrants, and represents that, subject to the laws of the State of North Dakota and regulations promulgated thereunder, it has full right and power to execute and perform this Agreement and to grant the estate leased herein and that LESSEE, upon payment of rent herein specified and performance of the covenants and agreements herein contained, shall peaceably and quietly have, hold and enjoy the Premises during the full term of this Agreement, subject to LESSOR's right to inspect the Premises as stated in paragraph 10 hereunder.

10. LESSOR's Right to Entry.

LESSOR, its agents, and employees shall have the right to inspect the Premises at any reasonable time for the purpose of examining same and to ascertain if they are in good repair, and at any time during the construction of the improvements prior to occupancy to determine if the property meets applicable codes and is being constructed according to the plans and specifications submitted to the LESSOR by the LESSEE and approved by the LESSOR prior to the start of construction. Prior to any inspection by LESSOR other than during the construction period, it shall arrange with LESSEE for a suitable time to make such inspection, except in emergency situation such as fire or other conditions hazardous to property or life.

11. Civil Rights Assurances.

LESSEE, in the use of the Premises for itself, its representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the premises that: (1) no person on the grounds of sex, race, color, creed, physical condition, developmental disability, sexual orientation, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such premises and the furnishing of services thereon, no person on the grounds of sex, race, color, creed, physical condition, developmental disability, sexual orientation, national

origin or ancestry shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that LESSEE shall use the Premises in compliance with all other requirements imposed by and state or federal agency having jurisdiction over the premises.

12. Holding Over.

In the event that LESSEE holds over in its occupation of the Premises or any portion thereof after the expiration or other termination of this Agreement or any renewal or extension thereof, such holding over shall operate and be construed as a tenancy from month to month at the same monthly rental that applied to the last preceding month and subject to all the other terms and conditions herein provided, and in no event shall the tenancy be deemed to be one of longer than one month. However, nothing contained herein shall be construed as consent by LESSOR to the holding over of the Premises by LESSEE.

13. Reasonable Exercise of LESSOR's Rights.

All rights privileges, options and powers as are reserved by LESSOR with respect to the Premises, shall be exercised in a reasonable manner, without unnecessary and unreasonable interference with LESSEE's use and occupancy of the Premises; and wherever LESSEE's rights or privileges to act under this Agreement are stated to be subject to prior consent or approval of LESSOR, it is understood and agreed that consent or approval shall not be arbitrarily or unreasonably withheld.

14. Condemnation.

In the event of any taking by condemnation or eminent domain of any portion of the Premises, LESSOR and LESSEE shall share all compensation paid, or award given, for the property taken in accordance with their respective interests in the Premises, except that any compensation paid or award given with respect to the improvements, furniture, furnishings, fixtures, equipment, and other personal property on the Premises owned by LESSEE shall inure to the benefit of LESSEE.

If all of the Premises is taken, or if a portion thereof is taken so that the operation of the business conducted on the Premises shall be as a result thereof economically not feasible, then, as of the date possession is taken pursuant to such condemnation or exercise of the right of eminent domain, this Agreement shall cease and terminate and the obligations of the parties hereunder for the unexpired term of this Agreement likewise shall cease and terminate. If only a portion of the Premises is taken and operation of the business conducted on the Premises is economically feasible, then the rent shall be equitably apportioned and adjusted.

15. Damage to Premises.

In the event of partial or complete loss to the Premises and research enterprise and commercialization facility by fire, the elements, accident, or other occurrence, LESSOR shall have no obligation to compensate LESSEE for any loss incurred except that caused by LESSOR's negligence. LESSEE shall, within thirty (30) days of said loss give notice to LESSOR of its intent to repair or rebuild, or of its intent to terminate this Agreement. In the event that LESSEE chooses to repair or rebuild, the rent shall continue unabated. In the event that LESSEE chooses not to repair or rebuild, LESSEE will return the Premises to the condition of its existence prior to LESSEE's improvements.

In the event that a loss or occurrence on the Premises caused by an act of LESSEE causes a loss to LESSOR's property, LESSEE shall, at its expense, repair, replace, or rebuild or cause to be repaired, replaced or rebuilt, any such property damaged or lost to its previous condition as soon as reasonably possible, and to reimburse LESSOR, its agents, and employees for any and all costs and expenses, including reasonable attorney's fees incurred as a result of such loss or damage.

16. Default.

LESSOR shall give written notice to LESSEE of any default under this Agreement in the payment of rent or otherwise, and LESSEE shall have the right for ten (10) days after notice to cure any default with respect to the payment of rent, and shall have the right to cure other defaults in accordance with other provisions of this Agreement specifically applicable to said default.

17. Future Development.

LESSOR reserves the right to further develop or improve the adjacent property in LESSOR's sole discretion, regardless of the desires or opinions of LESSEE.

18. LESSOR's Right to Terminate.

a. LESSOR shall have the right to terminate this Agreement in its entirety immediately upon the happening of the following events or as otherwise specified in this Agreement:

- 1) Filing of a petition, voluntary or involuntary, for the adjudication of LESSEE as a bankrupt.
- 2) The making by LESSEE of any general assignment for the benefit of creditors.
- 3) The abandonment by LESSEE of the Premises, except in connection with its surrender to an assignee, sublessee, mortgagee, or other parties succeeding to LESSEE's interest hereunder, provided, however, that such surrender shall be subject to prior written approval by LESSOR, and further provided that nonuse of the Premises by LESSEE, so long as the Premises remain available for bona fide lease or sublease for any use or purpose authorized hereunder, shall not be deemed abandonment as long as LESSEE is not in default of any of the terms of this Agreement.

b. Failure of LESSOR to declare this Agreement terminated upon a default by LESSEE for any of the reasons set out above shall not operate to bar or destroy the right of LESSOR to cancel this Agreement by reason of any subsequent violation of the terms of this Agreement. Further, the acceptance of rental by LESSOR for any period after default of any of the terms, covenant, or conditions by LESSEE shall not be deemed a waiver of any right on the part of LESSOR to cancel this Agreement.

19. Mortgages and Subordination.

LESSEE shall have the right at any time during the term of this Agreement, at its own expense, to negotiate and obtain a loan or loans which may be secured by a mortgage and UCC filings on LESSEE's improvements to the Premises. In the event that LESSEE encumbers the Premises or any other land owned by LESSOR, said encumbrance shall be cause for immediate termination of this Agreement by LESSOR. Further, LESSEE agrees that in the event of such an

encumbrance, it shall remove or cause to be removed, at no expense to LESSOR, said encumbrance and shall do so immediately. LESSEE further agrees that in the event such an encumbrance damages LESSOR in any way, LESSEE shall on demand reimburse LESSOR in full for said damages. In no way shall any interest of LESSOR be subordinated to any other interest.

20. LESSEE's Right Upon Termination.

At the termination of this Agreement or any subsequent renewals or extension, LESSEE shall be entitled to elect one of the following options:

a. LESSEE shall return the Premises to LESSOR clear of all or any specifically designated improvements above ground level which have been purchased or constructed by LESSEE, its agents, employees, assigns or successors; provided, however, that LESSEE shall have ninety (90) days after termination in which to remove all such improvements or those specifically designed by LESSOR. In the event that demolition by LESSEE exceeds the ninety (90) day period, LESSEE shall pay rent at the then current rate for any excess days; or,

b. LESSEE may, with mutual consent of LESSOR and appropriate legislative authorization, transfer title to said improvements in lieu of removal of the said improvements of LESSEE to LESSOR, and LESSEE hereby agrees to execute all appropriate documents to vest title to said improvements in LESSOR free and clear of any and all liens, encumbrances and security interests. Nothing within this agreement implies or warrants that legislative authorization is forthcoming, and that this agreement in no manner implies or warrants that this lease becomes the effective means of obtaining title to said improvements without the express consent of the legislature.

21. Non-exclusive Lease.

It is understood and agreed by and between the parties that LESSOR retains the privilege of entering into other agreements which may or may not be similar to this Agreement and which may or may not contain similar terms with other entities for the use of adjacent land but this paragraph shall not be construed to abrogate LESSEE's right to Quiet Enjoyment contained herein. LESSEE hereby agrees that it will not object to, obstruct, or hinder in any way LESSOR's right to enter into such agreements, even though such agreements may be adverse to LESSEE's interests.

22. Liability and Insurance.

a. Fire Liability. It is understood and agreed by the parties that in no event shall LESSOR be liable for any damages to the Premises or to any of LESSEE's other property at this location caused by or resulting from fire, except for damage caused by LESSOR's negligence.

b. Damage Other Than That By or Resulting From Fire. It is understood and agreed that LESSOR shall not be liable for any non-fire related repairs arising out of injury or damage to LESSEE's property caused by LESSEE.

c. Insurance. As soon as LESSEE commences construction on the Premises or any part of it, or from and after any earlier date when LESSEE makes actual use of and occupies the Premises or any part of it, LESSEE shall cause to be written a policy or policies of insurance in the form generally known as commercial general liability policies. In addition, if any boilers or elevators are included in improvements located on the Premises, LESSEE shall cause to be written boiler insurance and elevator insurance policies. The policies shall insure LESSEE against all claims and demands made by any person or persons for injuries received in connection with the operation and maintenance of the Premises, improvements, and buildings located on the Property and for any other risk insured against by such policies. Each class of policies shall be written within limits of not less than Five Hundred Thousand Dollars (\$500,000) for damages incurred or claimed by any one person for bodily injury, or otherwise, plus One Hundred Thousand Dollars (\$100,000) for damages to Premises, and for not less than One Million Dollars (\$1,000,000) for damages incurred or claimed by more than one person for bodily injury, or otherwise, plus One Hundred Thousand Dollars (\$100,000) for damages to property. All such policies shall name LESSEE and LESSOR, as their respective interests may appear, as the insured persons. LESSEE shall promptly deliver evidence of each policy or policies (such as an ACORD certificate) to LESSOR as soon as they are written, together with adequate evidence of the fact that the premiums are paid. In addition, the insurance must include the following:

1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the LESSEE. The amount of any deductible or self-retention is subject to approval by the LESSOR.
2. The Insurance may be in a policy or policies of insurance, primary or excess, including the so-called umbrella or catastrophe form, and must be placed with insurers rated at "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. "Follows form" means the excess policy to which it is excess. The policies shall be in form and terms approved by the LESSOR.
3. That the insurance required, through a policy or endorsement, shall include:
 - a. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the University;
 - b. A provision that the policy and endorsements may not be cancelled or modified without thirty (30) days prior written notice to the LESSOR;
 - c. A provision that any attorney who represents the LESSOR under the policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under section 54-12-08 of the North Dakota Century Code;
 - d. A provision that the LESSEE'S insurance shall be primary (i.e. pay first) with respect to any insurance, self-insurance, or self-retention maintained by the University and that any insurance, self insurance or self retention maintained by the LESSOR shall be in excess of LESSEE'S insurance and shall not contribute with it; and
 - e. Cross liability / severability of interest for all policies and endorsements.

4. That legal defense provided to the LESSOR under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the LESSOR is necessary.
5. That the failure to provide insurance as required is a material breach of contract entitling the LESSOR to terminate the Agreement immediately.

d. From and after the time this Agreement is executed, during construction of any improvements on the Premises, LESSEE will insure such improvements with "builder's risk" insurance against damage or destruction by fire and full extended coverage including vandalism and malicious mischief, covering all improvements to be erected and all materials for the same which are on or about the Premises; and LESSEE will keep insured any and all buildings and improvements upon the Premises against all loss or damage by flood, fire and windstorm, together with "extended coverage." The amount of insurance shall at all times be sufficient to prevent any party in interest from being or becoming a co-insurer on any part of the risk, and shall not be less than eighty percent (80%) of the full insurable value. All of the insurance policies shall include LESSOR as one of the insured parties and shall fully protect both LESSOR and LESSEE, as their respective interests may appear.

Once the initial building has been constructed on the Premises, and subject to and subordinate to any of LESSEE's mortgagee's more restrictive provisions of its mortgage with LESSEE, in the event that the improvements or Premises are damaged or destroyed by fire, windstorm, or other casualty, if the loss is equal to or greater than eighty percent (80%) of the value of the improvements, LESSEE may elect to either: (i) terminate this Agreement and return the Premises to a marketable condition, repair any damages caused to LESSOR's adjacent buildings, and pay to LESSOR a fee of one (1) year's prospective rent from the first day of the month following the date of such catastrophe; or (ii) repair the damages. In either event, all applicable insurance proceeds received by LESSOR and LESSEE for the destruction of buildings or improvements by fire, windstorm, or other casualty shall be deposited in a joint account in a bank designated by LESSEE in the City of Grand Forks. These funds shall be made available to LESSEE for the construction or repair, as the case may be, of any building or buildings damaged or destroyed by fire, windstorm, or other casualty for which insurance is payable. LESSOR and LESSEE shall periodically pay out these funds from the joint account on the estimate of any reliable and authorized architect licensed in the State of North Dakota, who must certify that the amount of the estimate is reasonable and is being applied to the payment of the reconstruction or repair. LESSEE shall assure the application of the money for such purpose. In the event LESSEE rebuilds or repairs, the rebuilt or repaired building or improvement, or the replaced or repaired personal property on the Premises, shall be of the same or higher value as prior to the damage or destruction, and shall be rebuilt and ready for occupancy within fifteen (15) months from the time of the loss or destruction. The fifteen (15) month period for reconstruction shall be extended by delays caused without LESSEE's fault or neglect by act of God, strikes, lockouts, or other conditions (other than matters of finance) beyond LESSEE's control. In the event LESSEE elects not to rebuild or repair and terminate under subsection (i) above, then, subject to LESSEE's mortgagee's more restrictive requirements, the insurance proceeds shall be held and disbursed under the terms and conditions above, first to repair any damage to LESSOR'S Premises and adjacent buildings, if any, then to return the Premises to a marketable condition, then to pay LESSOR the termination fee, and any remainder disbursed to LESSEE.

e. By their effective dates, LESSEE shall deliver to LESSOR duplicate certificates of insurance.

f. LESSEE shall pay premiums for all of the insurance policies it is required to carry under the terms of this Agreement, and shall deliver to LESSOR evidence of such payment before the payment of any premiums becomes in default. LESSEE shall also cause renewals of expiring policies to be written and the policies or copies thereof, as required by this Agreement, to be delivered to LESSOR at least ten (10) days before the policies' expiration dates.

23. Liability.

Each party shall be responsible for claims, losses, damages, and expenses, which are proximately caused by the wrongful or negligent acts or omissions of that party or its agents, employees, or representatives acting within the scope of their duties. The liability of LESSOR is subject to the conditions and limitations set out in chapter 32-12.2 of the North Dakota Century Code. Nothing herein shall preclude either party from asserting against third parties any defense to liability it may have under the law or be construed to create a basis for a claim or suit when none would otherwise exist. This provision shall survive the termination of this Agreement.

24. Environment.

It shall be the responsibility of LESSEE to verify the environmental condition of the Premises. Any changes to the condition of the site as a result of any action on the part of LESSEE shall be the sole responsibility of LESSEE. LESSEE agrees to remediate all environmental damages caused by any action on the part of LESSEE, and to pay any fines or damages associated with such action. LESSEE will not permit or allow the storing or release of any hazardous substance, pollutant or contaminant on the Premises or otherwise engage in any activity that would subject LESSOR or LESSEE to liability in connection with the storage or use or release of such substances.

25. Severability.

In the event that any provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision contained herein, provided that the validity of any such provisions does not materially prejudice either LESSOR or LESSEE in their respective rights and obligations contained in the valid provisions of this Agreement.

26. Force Majeure.

If act of God, acts of war, acts of terrorism, civil disturbance, labor strikes, governmental action, including the revocation of any license or permit necessary for the operation contemplated in this Agreement, and/or the inadequate or disruption to the supply of materials, goods and/or labor, where such action is not due to LESSEE's fault, or any other causes beyond the control of LESSEE shall have an adverse effect upon or otherwise impede any construction phase of the COELSAT, then any time limitations described within this agreement and concerning the commencement of construction, shall be tolled and extended until LESSEE determines the herein described events no longer have an adverse effect upon or otherwise impede any construction phase of the COELSAT.

27. Notice.

Any notice required or desired to be served by either party upon the other may be served by depositing such notice in certified United States mail, return receipt requested, in a sealed envelope, postage prepaid, and addressed as follows:

a. To LESSOR:

Robert C. Gallager
Vice President for Finance and Operations
University of North Dakota
P.O. Box 8378
Grand Forks, ND 58202-8378

b. To LESSEE:

Jim Petell
University of North Dakota Research Foundation
James Ray Drive
Grand Forks, ND 58202

or to such other address or person as shall from time to time be designated by the parties in writing. The provisions of this section do not supersede any statutes or rules of court regarding notice of claims or service of process. In the event of a conflict between this section and any statutes or rules of court, the statutes or rules of court govern.

28. Easements.

LESSOR hereby agrees that it shall grant Easements necessary to supply utilities, parking, and access to the Premises. Terms of all Easements shall be limited to the Term of the Lease. Easements shall not be recorded, but will be executed as agreements between the LESSEE and LESSOR and shall describe the boundaries of the easements by graphic illustration. To the extent necessary, LESSOR shall provide adequate ingress and egress easement rights on land owned by the LESSOR but not leased to any other entity to permit full and complete access of the Premises and the COELSAT by LESSEE, its agents, employees, contractors, invitees, guests, customers and other third parties.

29. Net Rent:

All rents shall be net to the LESSOR. No service, convenience, gratuity, or other barter shall be deemed as payment of all or part of the rent other than the cash rent stipulated within this agreement.

30. Hazardous Substances:

The LESSEE will be responsible for mitigating at no cost to the LESSOR the effect of any buried materials, foreign soils, or other unknown conditions deleterious to the construction of the COELSAT or its related appurtenances. The LESSOR will be responsible for mitigation of the effect any Hazardous Material, Hazardous Waste or other foreign product that is regulated under any Environmental Law. The LESSOR, based upon its knowledge, represents and warrants to LESSEE, which representations and warranties the LESSEE has relied and will

continue to rely upon during the term of the Lease and extension thereof, the following with respect to the Premises:

- (a) LESSOR nor any tenant of LESSOR has ever generated, transported, used, stored, treated, disposed of, or managed any Hazardous Waste or Hazardous Material (as defined below) on the Premises. No lien has been imposed by any governmental agency on any property, facility, machinery, or equipment owned, operated, leased, or used by LESSOR in connection with the presence of any Hazardous Material on the Premises.
- (b) (1) LESSOR has no liability under, nor has it ever violated, any Environmental Law (as defined below), (2) LESSOR and the Premises and any facilities and operations thereon are presently in compliance with all applicable Environmental Laws; (3) LESSOR has never entered into or been subject to any judgment, consent decree, compliance order, or administrative order with respect to any environmental or health and safety matter or the enforcement of any Environmental Law; and (4) LESSOR has no knowledge of the items enumerated herein will be forthcoming.
- (c) LESSOR has provided to LESSEE copies of all documents, records, and information known to LESSOR concerning any environmental or health and safety matter relevant to LESSOR, whether generated by LESSOR or others, including, without limitation, environmental audits, environmental risk assessments, site assessments, documentation regarding off-site disposal of Hazardous Materials, spill control plans, and reports, correspondence, permits, licenses, approvals, consents, and other authorizations related to environmental or health and safety matters issued by any governmental agency.
- (d) LESSEE shall have the right, exercisable at any time, to investigate and perform tests on the Premises, at LESSEE'S sole cost and expense, to determine whether Hazardous Materials are located on the Premises or if LESSOR (or any entity whose conduct LESSOR is or may be responsible under any Environmental Law) has violated any Environmental Law, and LESSEE may, in the event that such Hazardous Materials and/or violations exist, demand that any and all required corrective action be taken by LESSOR
- (e) For purposes of this Paragraph, (1) "Hazardous Material" shall mean and include any hazardous waste, hazardous material, hazardous substance, petroleum product, oil, asbestos or asbestos containing material, toxic substance, pollutant, contaminant, or other substance which may pose a threat to the environmental or to human health or safety, as defined or regulated under any Environmental Law; (2) "Hazardous Waste" shall mean and include any hazardous waste as defined or regulated under any Environmental Law; and (3) "Environmental Law" shall mean any environmental or health and safety-related law, regulation, rule, ordinance, or by-law at the foreign, federal, state or local level, whether existing as of the date hereof, previously enforced, or subsequently enacted.

- (f) There are no wells or underground petroleum storage tanks located on the Premises, nor have there ever been any wells or petroleum storage tanks located on the Premises.

31. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and each party understands that there are no other oral understandings or agreements other than those set out herein. This Agreement cannot be added to, altered, or amended in any way except by written agreement signed by all of the parties hereto.

32. Successors and Assigns.

The conditions, covenants, and agreements in the foregoing Agreement contained herein are to be kept and performed by the parties hereto and shall be binding upon said respective parties, their successors and assigns.

33. Choice of Laws & Forum.

This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of North Dakota, which shall also be the forum for any proceeding or suit in law or equity arising from or incident to the Agreement.

34. Headings.

The paragraph headings in this Agreement are used only for ease of reference and do not limit, modify, construe, or interpret any provision of this Agreement.

35. Non-waiver.

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

36. Spoliation – Notice of Potential Claims

LESSEE shall promptly notify LESSOR of all potential claims that arise from or result from this Agreement. LESSEE shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to LESSOR the opportunity to review and inspect the evidence, including the scene of an accident.

The remainder of this page has been intentionally left blank.

IN WITNESS THEREOF the parties have caused this Agreement to be executed by their proper officers thereunto duly authorized as of the day and year above written.

STATE OF NORTH DAKOTA)

COUNTY OF GRAND FORKS)

On this 1st day of November, 2006, before me personally appeared Charles E. Kupchella, President and Robert C. Gallagher, Vice President, and acknowledged to me that he/she executed this instrument as his/her free act and deed.

Patricia J. Bohnet
Notary Public

UNIVERSITY OF NORTH DAKOTA

By: Charles E. Kupchella
Charles E. Kupchella, President

By: Robert C. Gallagher
Robert C. Gallagher, Vice President for Finance and Operations

STATE OF NORTH DAKOTA

COUNTY OF GRAND FORKS
On this 6th day of NOVEMBER, 2006^{SR}, before me personally appeared Peter Alfonso, Authorized Agent, and acknowledged to me that he/she executed this instrument as his/her free act and deed.

Susan Rundquist
Notary Public

UNIVERSITY OF NORTH DAKOTA RESEARCH FOUNDATION

By: Peter Alfonso
Peter Alfonso, President

SUSAN RUNDQUIST
NOTARY PUBLIC
STATE OF NORTH DAKOTA
My Commission Expires: Nov. 21, 2011

PATRICIA J. BOHNET
NOTARY PUBLIC
STATE OF NORTH DAKOTA
My Commission Expires: May 9, 2012