SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE, AND ATTORNMENT AGREEMENT (“Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ by and among \_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_, with an address at \_\_\_\_\_\_\_\_\_\_ (“Lender”); \_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_, with an address at \_\_\_\_\_\_\_\_\_\_ (“Lessor”); and The Curators of the University of Missouri, a Missouri public corporation, with an address at c/o Director of Business Services, 1105 Carrie Francke Drive, Columbia, Missouri 65211 (“Lessee”), and together with the Lender and Lessor, the “Parties”.

WHEREAS, pursuant to that certain [TITLE OF LEASE DOCUMENT], by and between \_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_ (“Original Lessor”) dated the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, as amended on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (“Lease”), Lessor is the lessor and Lessee is the lessee of [DESCRIPTION OF LEASED PREMISES] as further described in the Lease, which is located at the real property described in Exhibit A attached hereto and made a part hereof (collectively, the “Property”);

WHEREAS, Lessor has entered into that certain [TITLE OF DEED OF TRUST], dated on the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_, in Book \_\_\_\_\_\_, Page \_\_\_\_\_\_\_, of the records of Boone County, Missouri (the “Mortgage”), in order to secure Lessor’s obligations under certain loan(s) to Lessor from Lender as described in the Mortgage (the “Loan”); and

WHEREAS, the parties hereto desire to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Subordination. Lessee hereby subordinates all of its right, title and interest as lessee under the Lease to the right, title and interest of Lender under the Mortgage, and Lessee further agrees that the Lease now is and shall at all times continue to be subordinate in each and every respect to the Mortgage and to any and all increases, extensions, renewals, modifications, substitutions, replacements and/or consolidations of the Mortgage; provided, however, no such actions shall affect Lessee’s rights and obligations under the Lease or this Agreement.

2. Non-Disturbance. So long as no default exists and no event has occurred which has continued to exist for such period of time (after notice, if any, required by the Lease) as would entitle Lessor to terminate the Lease or dispossess Lessee thereunder, the Lease shall not be terminated nor shall Lessee be named or joined as a defendant or its use, possession, or enjoyment of the Property or rights under the Lease be interfered with in any foreclosure or other action or proceeding in the nature of foreclosure or deed in lieu thereof instituted under or in connection with the Mortgage or if Lender takes possession of the Property pursuant to any provisions of the Mortgage, in any case unless Lessor would have had such right if the Mortgage had not been made, nor shall Lessee’s rights under the Lease be affected by any breach or default under or enforcement of the Mortgage, except that neither Lender nor any other the person or entity acquiring the interest of Lessor as a result of any such action or proceeding or deed in lieu of thereof or taking of possession (“Purchaser”) shall be: (a) bound by any amendment of the Lease made without the consent of Lender or, after notice of the transfer of such interest, such successor in interest of Lessor; or (b) liable to Lessee for any acts or omissions of Lessor or claims against Lessor occurring or arising prior to the date of the succession by Purchaser to the interest of Lessor or the taking of possession, provided, that (i) Lessee shall retain any setoffs or defenses it may have to the enforcement of its obligations under the Lease accruing prior to such date, and that (ii) Lessee shall retain any other rights or remedies it may have under the Lease as a result of such acts, omissions, or claims, including its right to terminate the Lease, if applicable.

3. Attornment. Unless the Lease is terminated in accordance with Paragraph 2 hereof, if the interests of Lessor shall be transferred by reason of the exercise of any power of sale contained in the Mortgage, if applicable, or by any foreclosure or other proceeding for enforcement of the Mortgage or by deed in lieu thereof, or if Lender takes possession of the Property pursuant to any provisions of the Mortgage, then: (a) Lessee shall be bound to Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof with the same force and effect as if Purchaser were the lessor under the Lease, and (b) Lessee shall attorn to Purchaser as the lessor under the Lease in accordance with its terms. Such attornment shall be effective and self-operative without the execution of any further instruments upon the succession by Purchaser to the interest of Lessor or the taking of possession. Upon any such attornment, the respective rights and obligations of Purchaser and Lessee, under the Lease and to the extent of the then-remaining balance of the term thereof, shall be and are the same as now set forth in the Lease except as otherwise expressly provided in Paragraph 2 hereof.

4. Assignment of Leases. Lessee hereby acknowledges that all of Lessor’s right, title and interest as lessor under the Lease is being duly assigned to Lender pursuant to the terms of the Mortgage and that all rental payments under the Lease shall continue to be paid to Lessor in accordance with the terms of the Lease unless and until Lessee is otherwise notified in writing by Lender. Upon receipt of any such written notice from Lender, Lessee agrees to make payment of all rental payments then due or to become due under the Lease directly to Lender or to its agent designated in such written notice and to continue to do so until otherwise notified in writing by Lender. Lessor hereby (a) irrevocably directs and authorizes Lessee to make rental payments directly to Lender following receipt of such notice, and (b) agrees that (i) Lessee shall have the right to rely on such notice (A) without any obligation to inquire as to whether any default exists under the Mortgage or the indebtedness secured thereby and (B) notwithstanding any notice or claim of Lessor to the contrary, and that (ii) Lessor shall have no right or claim against Lessee for or by reason of any rental payments made by Lessee to Lender following receipt of such notice.

5. Notices of Default. In the event of a default by Lessor under the Lease, Lessee will, simultaneously with the giving of any notice of such default to Lessor under the provisions of the Lease, send a copy of such notice of default to Lender, and Lessee agrees that Lender shall have the right but not the obligation to correct or remedy, or cause to be corrected or remedied, each such default; provided, however, that Lender shall have no greater period of time than that given to Lessor under the Lease to cure any such default. In the event of a default by Lessor under the Mortgage or Loans, Lender will, simultaneously with the giving of any notice of such default to Lessor under the provisions of the Mortgage or Loans, send a copy of such notice of default to Lessee.

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have signed and delivered this Agreement as of the date first above written.

LENDER:

[NAME OF LENDER]

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

Name:

Title:

LESSOR:

[NAME OF LESSOR]

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

Name:

Title:

LESSEE:

THE CURATORS OF THE UNIVERSITY OF MISSOURI

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

David J. Sheahen, Assistant Vice President for Management Services

LENDER ACKNOWLEDGMENT

STATE OF MISSOURI )

) SS

COUNTY OF BOONE )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to me personally known, who, being by me duly sworn did say that he or she is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of [NAME OF BANK], and that said Agreement acknowledged said Agreement to be the free act and deed of said [National Bank].

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my notarial seal, at my office in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the day and year last above written.

|  |
| --- |
|  |
| Notary Public Signature |

My Commission expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LESSOR ACKNOWLEDGEMENT

STATE OF MISSOURI )

) SS

COUNTY OF BOONE )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me appeared [NAME OF LESSOR], [TITLE OF LESSOR], of [COMPANY NAME OF LESSOR], to me known to be the person described in and who executed the foregoing Subordination, Non-Disturbance and Attornment Agreement, as the members or designated agents of [NAME OF COMPANY], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and acknowledged that s/he executed the same as the free act and deed of said \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and are acting for and on behalf of and as members or designated agents of the said \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my notarial seal, at my office in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the day and year last above written.

|  |
| --- |
|  |
| Notary Public Signature |

My Commission expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

LESSEE ACKNOWLEDGEMENT

STATE OF MISSOURI )

) SS

COUNTY OF BOONE )

On this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, before me appeared David J. Sheahen, to me personally known, who, being by me duly sworn, did say that he is the Assistant Vice President of management Services, and that on behalf of said corporation, by authority of its Board of Curators, said David J. Sheahen acknowledged said Agreement to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my notarial seal, at my office in Columbia Missouri, the day and year last above written.

|  |
| --- |
|  |
| Notary Public Signature |

My Commission in Boone County, Missouri, expires \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

EXHIBIT A

Description of Real Property