

**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**June 1, 2018  
10:30 a.m.**

A meeting of the University of South Alabama Board of Trustees was duly convened by Judge Ken Simon, Chair *pro tempore*, on Friday, June 1, 2018, at 10:37 a.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Alexis Atkins, Scott Charlton, Steve Furr, Ron Graham, Ron Jenkins, Arlene Mitchell, Lenus Perkins, Jimmy Shumock, Ken Simon, Steve Stokes, Mike Windom and Jim Yance.

Members Absent: Chandra Brown Stewart, Tom Corcoran, Kay Ivey and Margie Tuckson.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, David Johnson, Melva Jones, Zorrya Kelley (BSU), John Marymont, Abe Mitchell, Mike Mitchell, Grace Newcombe (SGA), Matthew Reichert (Faculty Senate), John Smith, Jean Tucker, Tony Waldrop, Scott Weldon and Doug Whitmore (NAA).

Media: Nicole Fierro and Alyssa Newton (WPMD), Dale Liesch (*Lagniappe*), Richard Narramore (*Vanguard*), Nicolette Schleisman and Arnell Hamilton (WKRK), Creg Stephenson (*al.com*), and Kati Weis and Ron Gaines (WALA).

The meeting came to order and the attendance roll was called. Chairman Simon expressed pride in the University's commitment to excellence. He recognized Ms. Arlene Mitchell, the late Mayer Mitchell and Mr. Abe Mitchell for their receipt of the prestigious Distinguished Friend of Education Award from the Council for Advancement and Support of Education (CASE). He recognized Dr. Furr for his receipt of the Paul W. Burluson Award from the Medical Association of the State of Alabama.

Chairman Simon called for adoption of the revised agenda. On motion by Mr. Shumock, seconded by Dr. Stokes, the revised agenda was adopted unanimously.

Chairman Simon called for consideration of the minutes of the March 2, 2018, meeting of the Board of Trustees, **ITEM 1**. On motion by Mr. Yance, seconded by Mr. Shumock, the minutes were adopted unanimously.

Chairman Simon called for a report from the Budget and Finance Committee. Mr. Yance, Vice Chair, said the Committee voted unanimously during its meeting on May 31 to recommend Board approval of **ITEM 23.A** as follows, and he moved for approval of the resolution. President Waldrop discussed the benefits of an on-campus stadium for the community and student life. He noted the University would rely on private philanthropy and public funding, and stressed that academic dollars would not be used for the project. Dr. Erdmann commented on a statement of support from the City of Mobile. SGA President Ms. Grace Newcombe and

**Black Student Union (BSU) President Ms. Zorrya Kelley shared enthusiasm for the proposed stadium and the positive impact to students. Mr. Shumock seconded and the Board voted unanimously to approve the resolution:**

**RESOLUTION  
AUTHORIZATION OF THE PRESIDENT TO EXECUTE A CONTRACT  
FOR SITE WORK FOR CONSTRUCTION OF AN ON-CAMPUS FOOTBALL STADIUM**

**WHEREAS**, the University of South Alabama is contemplating the construction of an on-campus football stadium with a seating capacity of approximately 25,000 and an estimated total cost of approximately \$72 million, and

**WHEREAS**, the University has committed that the funding for the stadium, and resulting debt service on bonded indebtedness incurred to construct the stadium, will come from a combination of the athletic department, auxiliary enterprises, and public/private funding, and

**WHEREAS**, the University further commits that no funding for the stadium will be derived from student tuition, fees or other levies placed on students, and

**WHEREAS**, the University is in discussions with the City of Mobile and Mobile County to assist with funding for the payment of debt service on the stadium, and

**WHEREAS**, the University is attempting to raise additional funds from private and corporate support, and

**WHEREAS**, the University has determined that the total funding from the athletic department, auxiliary enterprises, City/County and private/corporate support will be sufficient to pay anticipated debt on funds borrowed to construct the stadium, and

**WHEREAS**, the University desires to complete construction by the Fall 2020 football season and, if desired by the bowls, to make the stadium available for the Reese's Senior Bowl, the Dollar General Bowl and other events as agreed upon by the University, and

**WHEREAS**, in order to complete the stadium in time for the 2020 football season, site work must begin during July 2018,

**THEREFORE, BE IT RESOLVED**, the University of South Alabama Board of Trustees hereby authorizes the University President to carry out all necessary steps to execute a contract for site work for the construction of an on-campus football stadium. This contract will be awarded to the lowest qualified, responsible and responsive bidder for the work, pursuant to the bid process as required by applicable Alabama law. This contract will be subject to the bid being within the budgeted funds available for this project and the determination by University administration that funding has been identified to adequately fund this site work.

**Mr. Yance stated the Committee voted unanimously to recommend Board approval of ITEM 23 as follows and he moved for approval. Mr. Graham seconded and the Board voted unanimously to approve the resolution:**

**RESOLUTION**  
**A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A RENT SUPPLEMENT**  
**AGREEMENT FROM THE UNIVERSITY OF SOUTH ALABAMA**  
**RESPECTING NOT TO EXCEED \$14,000,000 PROMISSORY NOTE FROM**  
**USA RESEARCH AND TECHNOLOGY CORPORATION**

**BE IT RESOLVED** by the Board of Trustees (herein called the "Board") of the **UNIVERSITY OF SOUTH ALABAMA** (herein called the "University") as follows:

**Section 1. (a) Findings.** The Board has determined and hereby finds and declares that the following facts are true and correct:

(a) The Board heretofore provided for the incorporation of an Alabama non-profit corporation under the name USA Research and Technology Corporation ("RTC") for the purpose of furthering the educational, research and technology mission of the University; and

(b) The Board heretofore approved a Ground Lease Agreement dated December 17, 2003, as amended by a First Amendatory Ground Lease dated June 21, 2007 (collectively, the "Ground Lease") between the University and RTC pursuant to which the University has leased certain real property to RTC to enable it to develop and construct facilities useful in connection with the mission of RTC as heretofore approved by the University, and included thereon are various facilities including without limitation two known as "Building II" and "Building III" (collectively, the "Buildings") for use and operation by RTC in furtherance of its mission and in support of the operations and mission of the University; and

(c) In connection with its acquisition and development of the Buildings, RTC obtained an \$18,000,000 loan (the "2007 Wells Loan") from Wells Fargo Bank, N.A., as successor to Wachovia Bank, National Association ("Wells Fargo"), the repayment of which is evidenced by a Promissory Note dated July 17, 2007 (the "2007 Wells Promissory Note") in the original principal amount of \$18,000,000 and outstanding as of June 1, 2018 in the amount of \$11,622,438.47; and

(d) The 2007 Wells Promissory Note bears interest at a variable rate, and RTC and Wells Fargo (as successor to Wachovia Bank, National Association) heretofore entered that certain ISDA Master Agreement and that certain Schedule to the Master Agreement, each dated as of December 22, 2006, along with a Swap Transaction Confirmation, copies of which are attached as Exhibit A hereto (collectively, the "2007 RTC Swap") in order to "synthetically fix" the interest rate on the 2007 Wells Promissory Note; and

(e) In order to protect the continued use of the Buildings for the purposes set forth in the Ground Lease and to protect the integrity of the use of the property described in the Ground Lease, the University entered a Rent Supplement Agreement dated July 17, 2007 (the "2007 Rent Supplement Agreement") with Wells Fargo (as successor to Wachovia Bank, National Association), pursuant to which the University agreed to make payments to RTC necessary to bring RTC's net operating income for any fiscal year to equal debt service payments owed by RTC under the 2007 Wells Loan for such fiscal year, which, among other things, enables the University to prevent any disposition or use of the property by persons or entities other than RTC, or those occupying space in the Buildings pursuant to leases or

other arrangements approved by RTC, and to assure continued control and use of the property described in the Ground Lease; and

(f) RTC has determined it to be necessary, wise and in its interest to refinance the Promissory Note by obtaining a new, fixed rate loan (the "2018 Loan") and, in connection therewith, cause the 2007 RTC Swap to be terminated, and that proceeds of the 2018 Loan would be used to (i) refinance the 2007 Wells Loan, (ii) pay the fee to break the 2007 RTC Swap, and (iii) pay the costs of issuance of the 2018 Promissory Note (defined below) for the 2018 Loan and the other transactions costs incurred by RTC and the University in negotiating and finalizing all other instruments and agreements relating to the 2018 Loan; and

(g) RTC, with the advice and assistance of PFM Financial Advisors, LLC, contacted various financial institutions for proposals for the 2018 Loan and determined that PNC Bank, National Association ("2018 Lender") submitted the bid that presented the lowest cost of financing, and best financing terms, for RTC; and

(h) The obligation of RTC to repay the 2018 Loan shall be evidenced by a promissory note from RTC to the 2018 Lender in a principal amount of not to exceed \$14,000,000 and in substantially the form attached hereto as Exhibit B, revised to reflect principal and interest amortized on a mortgage style basis over a period from the closing through June 1, 2038, with a final maturity on or around June 1, 2028 (*i.e.*, all principal amortized after June 1, 2028 will become due and payable on June 1, 2028), and with such other changes and modifications as shall be agreed to by RTC (the "2018 Promissory Note"), which shall be issued pursuant to a Loan Agreement between the 2018 Lender and RTC in substantially the form attached hereto as Exhibit C, revised to reflect principal and interest amortized on a mortgage style basis over a period from the closing through June 1, 2038, with a final maturity on or around June 1, 2028 (*i.e.*, all principal amortized after June 1, 2028 will become due and payable on June 1, 2028), and with such other changes and modifications as shall be agreed to by RTC (the "2018 Loan Agreement");

(i) In connection with the 2018 Loan, the University will need to enter a Rent Supplement Agreement with the 2018 Lender in substantially the form attached hereto as Exhibit D, with such changes and modifications as shall be agreed to by the President of the University (the "2018 Rent Supplement Agreement"), pursuant to which the University shall agree to make such payments to RTC as shall be necessary to enable RTC to timely pay debt service on the 2018 Promissory Note and other amounts due under the 2018 Loan Agreement to the 2018 Lender, along with debt service due on any other RTC obligations secured by a similar rent supplement agreement; and

(j) The 2007 RTC Swap provides that the fee to terminate the same is not computed or determined until the day immediately preceding the date of termination (as the same is based upon then prevailing rates of interest), and as such it is necessary that the Board proceed to approve and authorize execution of the 2018 Rent Supplement Agreement prior to such time as RTC approves the 2018 Loan, the 2018 Promissory Note, the 2018 Loan Agreement, and any additional agreements incident to the 2018 Loan.

**Section 2. Authorization.** The President of the University is hereby authorized and directed to execute and deliver, on behalf of the University, the 2018 Rent Supplement Agreement presented to the meeting at which this resolution is adopted, which is hereby adopted in all respects as if set out in full in this resolution, with such changes, completions, modifications, additions and deletions as may in each case be approved by the President.

**Section 3. General Authorization.** The President of the University, the Vice President for Finance and Administration of the University, and the Secretary of the Board are hereby authorized to execute such further agreements, certifications, instruments or other documents, containing such terms as such officer shall approve, and to take such other actions as any of them may deem appropriate or necessary, for the consummation of the transactions covered by this resolution and to the end that the 2018 Rent Supplement Agreement may be executed and delivered by the University, and that the 2018 Loan Agreement may entered into and delivered, and the 2018 Promissory Note may be issued and delivered, by RTC. The Secretary or any Assistant Secretary of the Board is hereby authorized and directed to affix the official seal of the Board to such instruments and to attest the same, and to the 2018 Rent Supplement Agreement and to attest the same.

**Mr. Yance said Mr. Weldon reported on the quarterly financial statements for the six months ended March 31, 2018, during the May 31 Committee meeting.**

**Chairman Simon called for consideration of ITEM 2 as follows. On motion by Mr. Shumock, seconded by Capt. Jenkins, the Board voted unanimously to approve the resolution:**

**RESOLUTION  
BOARD MEETING SCHEDULE, 2018-2019**

**WHEREAS**, Article II, Section 1, of the Bylaws provides that the Board shall schedule annually, in advance, regular meetings of the Board to be held during the ensuing year, and may designate one of such meetings as the annual meeting of the Board,

**THEREFORE, BE IT RESOLVED** that the regular meetings of the University of South Alabama Board of Trustees shall be held on the following dates:

Friday, August 31, 2018  
Friday, December 7, 2018  
Friday, March 15, 2019  
Thursday, June 6, 2019

**FURTHER, BE IT RESOLVED** that the date of June 6, 2019, be designated as the annual meeting of the University of South Alabama Board of Trustees for 2018-2019.

**Chairman Simon addressed ITEM 3 as follows. On motion by Dr. Stokes, seconded by Mr. Shumock, the Board voted unanimously to approve the resolution:**

**RESOLUTION  
AMENDED BYLAWS OF THE BOARD OF TRUSTEES**

**WHEREAS**, Article VIII of the Bylaws of the University of South Alabama Board of Trustees provides that "the bylaws may be amended or repealed at any meeting of the

Board by eight members of the Board voting in favor of same, but no such action shall be taken unless notice of the substance of such proposed adoption, amendment or repeal shall have been given at a previous meeting or notice in writing of the substance of the proposed change shall have been served upon each member of the Board at least thirty (30) days in advance of the final vote upon such change. However, by unanimous consent of the entire Board, the requirements for such notice may be waived," and

**WHEREAS**, a copy of the proposed amended bylaws was mailed to each member of the Board on May 2, 2018, and

**WHEREAS**, the proposed amended bylaws (a copy of which is attached hereto and incorporated by reference herein) are presented for the Board's consideration of approval, a vote of eight members being necessary to adopt such amendments, and

**WHEREAS**, the foregoing actions comply with the notice requirements of Article VIII, pertaining to amendment of the bylaws, and

**WHEREAS**, the Board, after due consideration and deliberation, has determined that the proposed amendments are in the best interest of the efficient operation of the Board in carrying out its role and responsibilities to the University,

**THEREFORE, BE IT RESOLVED**, the Board of Trustees approves and adopts the Bylaws of the Board of Trustees as amended.

Chairman Simon called for presentation of **ITEM 4**, the President's Report. President Waldrop recognized Honorary Trustee Mr. Abe Mitchell, USA National Alumni Association President Mr. Doug Whitmore and recently elected BSU President Ms. Zorrrya Kelley.

President Waldrop called on Neonatal Intensive Care Unit (NICU) Nurse Manager Ms. Renee Rogers, who gave information on the 98-bed NICU that serves as the regional transport referral center to outlying hospitals for a 150-mile radius. She advised that the NICU admits close to 1,000 patients annually with 20 percent referred by the transport team. She spoke about the expensive equipment and demonstrated some of the special supplies needed to treat patients. Mr. Bailey discussed a chart showing the survival rates of premature babies treated at the USA Children's & Women's Hospital NICU were greater than those of hospitals featured in a 2014 Time magazine article.

President Waldrop talked about a new employee program that allows staff one day of leave per year to volunteer with any agency affiliated with the United Way of Southwest Alabama. He also reported on a number of visits by the President's Council and the Faculty Senate and SGA presidents to regional corporations and agencies. Photos highlighting a recent tour of Holman Correctional Facility and a snapper research fishing trip from Dauphin Island Sea Lab were shown. He correlated these activities with the strategic priority for strengthening University-Community Engagement.

President Waldrop asked Dr. Marymont and Mr. Bailey to report on administrative searches. Dr. Marymont discussed the responsibilities for the role of chief medical officer for USA Health and advised of the recruitment of Dr. Michael Chang following a national search. Mr. Bailey

stated that a finalist for the position of chief information officer for USA Health would be on campus for a second visit the following week. Dr. Marymont announced that Associate Professor of Surgery Dr. Jon Simmons was recently appointed as director of the Division of Trauma/Critical Care at USA Health.

President Waldrop advised of the promotion of Mr. Haskins to Vice President for Marketing and Communications. Mr. Haskins shared enthusiasm for the positive momentum of the University and the work of his team.

President Waldrop called on Dr. Erdmann, who introduced new Head Coach for Men's Basketball Mr. Richie Riley. Coach Riley shared excitement for the opportunity to join South Alabama.

Dr. Erdmann reported that USA Athletics achieved a six-year, department-wide goal over the 2018 spring semester in having approximately 400 student athletes earn a 3.0 or greater grade point average (GPA). He discussed impressive academic progress rate (APR) data for 2016-2017 and advised that South Alabama Athletics was awarded the Sun Belt Conference's Vic Bubas Cup for a fourth successive year. He credited the coaches and student athletes for their hard work.

President Waldrop asked Associate Vice President for Facilities Management Mr. Randy Moon and Dr. Erdmann to give an update on campus facilities. Mr. Moon and Dr. Erdmann presented a video featuring the progress made on the Jaguar Training Center, the intramural fields and Camellia Hall.

Dr. Smith was recognized for his service as South's Faculty Athletic Representative for 10 years and was presented a framed commemorative Jaguar jersey. Dr. Smith conveyed pride for the academic accomplishments of student athletes.

Chairman Simon introduced recently elected Faculty Senate and SGA presidents Dr. Matthew Reichert and Ms. Grace Newcombe, respectively. Both delivered reports on the activities under way and planned for their organizations for the upcoming academic year, **ITEM 5** and **ITEM 6**, respectively.

Chairman Simon called for consideration of consent agenda **ITEMS 9, 11, 12, 13** and **22** as follows, noting all were unanimously recommended for Board approval by the respective committees that met on May 31, 2018. On motion by Mr. Yance, seconded by Ms. Mitchell, the resolutions were approved unanimously:

RESOLUTION  
DIRECTOR OF THE JAGUAR ATHLETIC FUND, INC.

**WHEREAS**, pursuant to the Amended Bylaws of the Jaguar Athletic Fund, Inc. ("USAJAF"), the Board of Trustees of the University of South Alabama ("University") shall approve the USAJAF slate of officers and directors, and

**WHEREAS**, the University and USAJAF have a history of interaction and cooperation that has served the interests of the University, and

**WHEREAS**, the Board of Directors of the USAJAF, through its Nominating Committee, is authorized to nominate directors and officers consistent with the aforesaid for consideration and approval by the Board of Trustees of the University, and

**WHEREAS**, the Nominating Committee of the Board of Directors and the Board of Directors of the USAJAF have nominated Mrs. Shirley Brown for a three-year term representing women's golf pending the approval of the Board of Trustees of the University,

**THEREFORE, BE IT RESOLVED** that the Board of Trustees of the University of South Alabama does hereby approve Mrs. Shirley Brown as a member of the Board of Directors of the USAJAF with a three-year term beginning June 2018 and ending June 2021.

**RESOLUTION  
USA HOSPITALS MEDICAL STAFF APPOINTMENTS AND REAPPOINTMENTS  
FOR FEBRUARY, MARCH AND APRIL 2018**

**WHEREAS**, the Medical Staff appointments and reappointments for February, March and April 2018 for the University of South Alabama Hospitals are recommended for Board approval by the Medical Executive Committees and the Executive Committee of the University of South Alabama Hospitals,

**THEREFORE, BE IT RESOLVED** that the Board of Trustees of the University of South Alabama approves the appointments and reappointments as submitted.

**RESOLUTION  
USA HOSPITALS MEDICAL STAFF BYLAWS AND RULES AND REGULATIONS  
REVISIONS OF APRIL 10, 2018**

**WHEREAS**, revisions to USA Hospitals Medical Staff Bylaws and Rules and Regulations, approved at the April 10, 2018, Medical Staff meeting and attached hereto, are recommended for approval by the Medical Executive Committees, General Medical Staff and the Executive Committee of the University of South Alabama Hospitals,

**THEREFORE, BE IT RESOLVED** that the Board of Trustees of the University of South Alabama approves the revisions as submitted.

**RESOLUTION  
UNIVERSITY DISTINGUISHED PROFESSORS - COLLEGE OF MEDICINE**

**WHEREAS**, the University of South Alabama seeks to honor exceptional faculty who have distinguished themselves in academic and scholarly productivity throughout their careers, and

**WHEREAS**, Edward Panacek, M.D., a full professor and Chair of the Department of Emergency Medicine in the College of Medicine, is an alumnus of the college, has had a distinguished career in academic emergency medicine prior to and since returning to the University of South Alabama as chair in 2015, contributes broadly to the leadership and initiatives of a number of national professional societies, has received numerous awards for his service and research achievements, has published more than 200 articles, book



chapters and invited reviews, and is committed to the development of a new academic residency program in emergency medicine at the University of South Alabama, and

**WHEREAS**, William Richards, M.D., a full professor and Chair of the Department of Surgery in the College of Medicine, is an expert in laproscopic surgery, has published more than 170 articles, book chapters and invited reviews, serves as editor for three prominent surgical journals, has had significant research funding over his career, and has mentored numerous residents, clinical fellows and junior faculty to develop their research careers in surgery, and

**WHEREAS**, Lisa Spiryda, M.D., Ph.D., a full professor and Chair of the Department of Obstetrics and Gynecology in the College of Medicine, has had a significant record of publication and research funding, has served as a research mentor and/or thesis advisor for more than 60 high school students, undergraduate honors students, nursing students, Ph.D. students, medical students and residents throughout her career, serves as editor or editorial board member for a number of prominent journals in surgical research, clinical obstetrics and gynecology, and has been a keen advocate for integrated M.D./Ph.D. training,

**NOW, THEREFORE BE IT RESOLVED**, that the Board of Trustees of the University of South Alabama recognizes these contributions and bestows upon Drs. Edward Panacek, William Richards, and Lisa Spiryda the title *University Distinguished Professor* for the 2018-2019 academic year.

**RESOLUTION  
DIRECTORS OF THE UNIVERSITY OF SOUTH ALABAMA  
RESEARCH AND TECHNOLOGY CORPORATION**

**WHEREAS**, pursuant to the bylaws of the University of South Alabama Research and Technology Corporation ("USARTC"), the Board shall elect USARTC directors who are not officers, employees, or trustees of the University, and

**WHEREAS**, the following individuals have been nominated as USARTC directors and have agreed to serve four-year, renewable terms beginning September 2018 and expiring September 2022:

**APPOINTMENT:**

Mr. Jim Spafford

**REAPPOINTMENT:**

Mr. Danny Patterson

Ms. Cheryl Coleman Williams

**THEREFORE, BE IT RESOLVED** that the Board of Trustees of the University of South Alabama does hereby elect the aforementioned individuals to serve as members of the USARTC Board of Directors as set forth.

**Chairman Simon called for a report from the Audit Committee. Mr. Shumock, Committee Chair, stated, at a meeting on May 31, Mr. Berry discussed risk assessment, technology assessment and audit planning for the University. He said the assessment process is ongoing**

and results are expected by the end of the calendar year. He said Mr. Berry would engage with the Committee in the weeks ahead to deliver information of significance to the University.

Chairman Simon called for a report from the Development, Endowment and Investments Committee. Mr. Yance, Committee Chair, stated, at a meeting on May 31, presentations on endowment performance were made by Mr. Albano and Mr. Pitman, and by Mr. Tom Van Zant of Commonfund. He said the Committee was advised that \$10 million in profits was liquidated from equity holdings due to market volatility. He stated Dr. Stokes, Upward & Onward Campaign Co-chair, and Associate Vice President for University Development Mr. Josh Cogswell reported campaign highlights as of May 28 and shared information on the success of the SouthFund employee drive and the inaugural social media-driven USA Day of Giving, and on upcoming development events.

Chairman Simon called for a report from the Health Affairs Committee. Dr. Stokes, Committee Vice Chair, said, at a meeting on May 31, medical student Ms. Supraja “Sippy” Sridhar discussed USA’s Donor to Diner program; Dr. Errol Crook talked about USA Health’s Boxing Out Hunger program; Mr. Bailey discussed the virtual high school graduation of a USA Children’s & Women’s Hospital patient which received national media attention.

President Waldrop called on Dr. Marymont and Mr. Bailey, who shared information on a recent luncheon hosted for local legislative delegation members, elected officials and community leaders, at which USA Health was awarded an Alabama legislative resolution signed by Governor Ivey declaring the importance of USA Health to the regional community. They thanked Mr. Fulford and Mr. Lawkis for their involvement. Mr. Yance said the program which showcased the excellence of the University’s medical system was outstanding.

Chairman Simon called for a report from the Academic and Student Affairs Committee. Dr. Charlton, Chair, said, at a meeting on May 31, the Committee voted unanimously to recommend **ITEM 16** as follows. He moved approval of the resolution and Mr. Yance seconded. The Board voted unanimously to approve the resolution:

**RESOLUTION  
TENURE AND PROMOTION**

**WHEREAS**, in accordance with University policy, faculty applications for tenure and promotion have been reviewed by the respective faculty peers, departmental chair, college dean, and by the Provost and Senior Vice President for Academic Affairs or the Vice President for Medical Affairs, and the President, and of those faculty considered, the following individuals are hereby recommended for tenure and/or promotion,

**THEREFORE, BE IT RESOLVED**, the University of South Alabama Board of Trustees approves and grants tenure and/or promotion to the following individuals effective August 15, 2018.

**PAT CAPPS COVEY COLLEGE OF ALLIED HEALTH PROFESSIONS:**

**Promotion to Senior Instructor:**  
Melton Dale Smith

**COLLEGE OF ARTS AND SCIENCES:**

**Tenure:**

Mia L. Anderson  
Huybrechts Bindele  
E. Claire Cage  
Joseph M. Currier  
Lesley A. Gregoricka  
Christina K. Lindeman  
Patrick J. Shaw  
Larry Yet

**Promotion to Associate Professor:**

Mia L. Anderson  
Huybrechts Bindele  
E. Claire Cage  
Joseph M. Currier  
Lesley A. Gregoricka  
Christina K. Lindeman  
Richard A. O'Brien  
Larry Yet

**Promotion to Senior Instructor:**

Leslie E. Whiston

**Promotion to Professor:**

Ruth H. Carmichael  
C. Diane Gibbs  
Ellen B. Harrington

**MITCHELL COLLEGE OF BUSINESS:**

**Tenure:**

Carol E. Vann

**Promotion to Associate Professor:**

Carol E. Vann

**MITCHELL CANCER INSTITUTE:**

**Promotion to Research Assistant Professor:**

Sanjeev Srivastava

**Promotion to Associate Professor:**

Komaraiah Palle

**COLLEGE OF ENGINEERING:**

**Tenure:**

John C. Cleary  
T. Grant Glover  
Min-Wook Kang  
Saami Yazdani

**Promotion to Associate Professor:**

John C. Cleary  
T. Grant Glover  
Min-Wook Kang  
Saami Yazdani

**MARX LIBRARY:**

**Promotion to Senior Librarian:**

Muriel Nero

**COLLEGE OF MEDICINE:**

**Promotion to Professor:**

Andrea Kahn  
Juan Ochoa

**Promotion to Associate Professor:**

Haidee Custodio  
Leander Grimm

**COLLEGE OF NURSING:**

**Tenure:**

Bettina H. Riley

**Promotion to Associate Professor:**

Pamela T. Johnson  
Sherry M. Lawrence  
Bettina H. Riley

Dr. Charlton summarized **ITEM 17** as follows, noting a thorough discussion and unanimous vote recommending Board approval by the Committee. Chairman Simon asked Ms. Newcombe, SGA President, to comment. Ms. Newcombe expressed support for the increases in order that the University could continue to fund quality programs and state-of-the-art facilities for students. Chairman Simon asserted that academic revenue would not be used for the on-campus stadium project. On motion by Dr. Charlton, seconded by Ms. Mitchell, the Board voted unanimously to approve the resolution:

**RESOLUTION  
TUITION, FEES, HOUSING AND DINING RATES, 2018-2019**

**WHEREAS**, the University of South Alabama is committed to maintaining high-quality educational and student services programs, and

**WHEREAS**, the University experienced a significant decline in student enrollment for the 2017-2018 academic year, resulting in a budget impact of \$8.3 million, and faces the possibility of a further decline in 2018-2019, and

**WHEREAS**, USA has faced over \$300 million in accumulated reductions in state appropriations since 2007-2008, and

**WHEREAS**, tuition and required fees charged by the University are significantly less than tuition and fees charged by peer institutions in the state, and

**WHEREAS**, the University's academic building and technology infrastructure has been under continued pressure due to increasingly limited financial resources, and

**WHEREAS**, after extensive analysis of the University's financial needs for 2018-2019 and beyond, the University Administration and the Budget Council have determined that increases in tuition, fees, housing, and dining rates are necessary to maintain the standard of academic quality that USA students and their families desire and expect, and

**WHEREAS**, with the proposed tuition, fees, housing, and dining rates for 2018-2019, as set forth in the attached schedules, such costs at the University would continue to be among the lowest in effect at peer public institutions in the state of Alabama,

**THEREFORE, BE IT RESOLVED**, the Board of Trustees of the University of South Alabama approves the tuition, required student fees, housing and dining rates for the 2018-2019 academic year as set forth in the attached schedules.

Dr. Charlton reported that Dr. Smith introduced South's new Chief Compliance Officer Mr. Chris Hansen to the Committee on May 31 and reported that Barnes & Noble College would assume management of the Bookstore; Dr. Mitchell introduced new Director of the Counseling and Testing Center Dr. John Friend; Dr. Krista Harrell presented information on the Global Student Leader Network; Ms. Chronister introduced Dr. Reid Cummings and Ms. Jana Stupavsky, Director and Assistant Director of USA's Center for Real Estate and Economic Development (CREED), respectively, for an overview on CREED operations; Dr. Johnson introduced Director of TeamUSA Dr. Julie Estis, who gave a presentation on team-based learning, and Associate Vice

President for Institutional Effectiveness Dr. Angela Coleman, who advised of a new SACSCOC (Southern Association of Colleges and Schools Commission on Colleges) standard related to Board self-assessment.

Chairman Simon asked retired Dean of the College of Nursing Dr. Debra Davis to join him and President Waldrop. He talked about the progress of the College of Nursing under Dr. Davis' leadership and read **ITEM 15** as follows. On motion by Ms. Mitchell, seconded Mr. Windom, the Board voted unanimously to approve the resolution. Dr. Davis credited great mentors and faculty members for the College's success and she thanked the Board of Trustees for their support and recognition:

**RESOLUTION  
COMMENDATION OF DR. DEBRA C. DAVIS**

**WHEREAS**, Dr. Debra C. Davis served as Dean of the College of Nursing for 19 years, and

**WHEREAS**, under Dr. Davis' leadership as Dean, the College of Nursing founded the first Doctor of Nursing Practice program in Alabama and,

**WHEREAS**, Dr. Davis served on the Board of Commissioners for the Commission on Collegiate Nursing Education, and

**WHEREAS**, Dr. Davis was recognized by the Governor of the State of Alabama for leadership, dedication and professionalism in service to the Alabama State Board of Nursing in 2005 and 2009, and

**WHEREAS**, since 1998, Dr. Davis helped facilitate more than \$40 million in grant awards for the College of Nursing at the University, and

**WHEREAS**, Dr. Davis was awarded grants to begin the first Clinical Nurse Leader Program in combination with an accelerated Bachelor of Science in Nursing Program, and


**WHEREAS**, under the leadership of Dr. Davis the student enrollment increased from 964 to 4,227 and the number of faculty increased from 40 to 106, and

**WHEREAS**, Dr. Davis was inducted into the Alabama Nursing Hall of Fame in 2015,

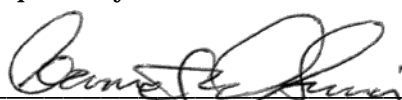
**THEREFORE, BE IT RESOLVED** that the University of South Alabama Board of Trustees expresses its appreciation to Dr. Debra C. Davis for her many contributions and offers its best wishes upon her retirement.

**There being no further business, the meeting was adjourned at 12:10 p.m.**

Attest to:

  
\_\_\_\_\_  
Arlene Mitchell, Secretary

Respectfully submitted:

  
\_\_\_\_\_  
Kenneth O. Simon, Chair *pro tempore*

# APPENDIX A



UNIVERSITY OF SOUTH ALABAMA

**DISCLOSURE OF INFORMATION ON PURCHASE OF REAL PROPERTY  
PURSUANT TO ALABAMA ACT 2014-133**

**PROPERTY ADDRESS:**

171 Hillcrest Road  
Mobile, Alabama 36608  
Parcel Number 28-05-21-2-000-013.01X

**APPRAISAL INFORMATION:**

Appraised By: Gaylord C. Lyon & Co. Inc.  
Date of Appraisal: 08/25/2017  
Appraised Value: \$166,000.00

**CONTRACTS RELATED TO THE PURCHASE:**

Attached as Exhibit "A"

**PURCHASE TERMS:**

Cash Purchase

**SOURCES OF FUNDS USED IN THE PURCHASE:**

Unrestricted Funds

USA PROPERTIES

775 N. University Blvd. | Suite 150 | Mobile, Alabama 36608-4548  
TEL: (251) 460-6100 | FAX: (251) 461-1765 | SouthAlabama.edu

## REAL ESTATE PURCHASE CONTRACT

The **University of South Alabama** ("Buyer"), a public body corporate, whose principal address is 307 University Boulevard North, AD-170, Mobile, AL 36688 ("Buyer's Address"), hereby agrees to buy and **Terence Earl Renkl** ("Seller"), whose principal address is 171 Hillcrest Road, Mobile, Alabama 36608 ("Seller's Address"), hereby agrees to sell for the consideration and upon the terms hereinafter set forth, the real estate commonly known as:

171 Hillcrest Road, Mobile, Alabama 36608

Parcel: R02-28-05-21-2-000-013.01.

BEGINNING AT A POINT 25 FEET EAST ON THE WEST LINE OF SECTION 21, TOWNSHIP 4 SOUTH, RANGE 2 WEST AND 1244.88 FEET SOUTH OF THE SOUTH LINE OF TANNER-WILLIAMS ROAD; SAID POINT BEING ON THE EAST RIGHT OF WAY LINE OF ARNOLD ROAD; THENCE RUN SOUTH AND ALONG THE EAST RIGHT OF WAY LINE OF ARNOLD 104,36 FEET; THENCE RUN EAST, 217.72 FEET; THENCE RUN NORTH, 104.36 FEET; THENCE RUN WEST 217.72 FEET TO THE POINT OF BEGINNING,

TOGETHER WITH all rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining (the "Property").

### ARTICLE I - Purchase Price and Condition of Property

1.1 The purchase price for the Property shall be **ONE HUNDRED EIGHTY FIVE THOUSAND AND NO/100 DOLLARS (\$185,000.00)** (the "Purchase Price") and shall be payable on the day of Closing ("Closing Date") by cash, cashier's check, certified check or wire transfer. Buyer shall pay the cost of acquiring a current title insurance policy for the benefit of Buyer, and the cost of document preparation, including a general warranty deed. Buyer agrees to pay other closing and settlement costs. Property taxes shall be prorated as of the Closing date.



1.2 Seller agrees that the proceeds of this sale shall be used to satisfy any and all outstanding mortgages and/or liens that exist on the Property at the Closing of this transaction (the "Closing") before any remaining proceeds from the sale are given to Seller.

1.3 Seller understands that Buyer desires to buy the land only without any dwelling or structure of any kind located upon it. Seller hereby agrees, at Seller's expense, to have all the current structure demolished with all debris associated therewith, including the structure's slab, and all concrete drives removed from the Property to Buyer's reasonable satisfaction prior to Closing. Buyer agrees seller shall have the rights of salvage to any and all portions of the current structure prior to Closing.

#### **ARTICLE II – Earnest Money**

2.1 Buyer agrees to deliver earnest money in the amount of Twelve Thousand and No/100 Dollars (\$12,000.00) to the Seller upon execution of this Real Estate Purchase Contract (the "Contract"), said earnest money to be returned to Buyer in full if the Closing of this transaction does not occur by the time specified herein due to Seller's failure to demolish the current structure on the property as described in section 1.3. If the Closing should not occur for any reason other than Seller's failure to demolish the structure, Buyer's earnest money will be returned to Buyer.

#### **ARTICLE III - Closing**

3.1 Unless otherwise extended by the provisions of the "Contract" or by agreement in writing by the parties, the Closing of this transaction shall be held no sooner than February 13, 2018, and no later than March 15, 2018.

3.2 The Closing shall be held at the title insurance company of Buyer's choosing.

#### **ARTICLE IV - Possession**

4.1 Seller and Buyer acknowledge and agree that until the Closing date, Seller shall have possession of the Property and shall continue to pay any and all expenses incurred by Seller such as yard maintenance and agrees to indemnify and hold Buyer harmless from any and all costs associated with same. Seller shall be responsible for insuring the property during the period of Seller's

possession. Buyer shall bear no responsibility for risk of loss prior to the time that Seller vacates the property.

#### **ARTICLE V - Deed and Other Documents**

5.1 Seller shall convey the Property to Buyer by recordable General Warranty Deed (the "Deed"), conveying good and marketable title of record to the Property, in fee simple, free and clear of all liens and encumbrances except for a lien of real property taxes not yet due and payable, any liens and encumbrances which do not interfere with Buyer's intended use of the Property, including existing easements, and other exceptions approved in writing by Buyer.

5.2 Seller shall execute and deliver with the Deed such other documents as may be required by any governmental entity or by the title insurance company as a condition to the issuance of its policy of title insurance in accordance with Article VI, including, but not limited to:

- (a) The standard affidavit required by the title insurance company for the removal of the standard preprinted exceptions from the title insurance policy; and
- (b) A Certificate of Non-Foreign Status or other evidence satisfactory to Buyer and the title insurance company confirming that Buyer is not required to withhold or pay to the Internal Revenue Service any part of the "amount realized" as such term is defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto.

#### **ARTICLE VI - Title Insurance**

6.1 Buyer shall order a title insurance commitment or preliminary title report issued by the title company of Buyer's choosing (referred to as "Title Insurance Company") in which the Title Insurance Company commits that upon delivery and recordation of the Deed and other documents provided for in this Contract, it will issue, at its usual rate, an ALTA form B owner's policy with extended coverage or comparable form, insuring access to the Property and such other endorsements as Buyer may request (the "Policy"), insuring Buyer in the total amount of the Purchase Price, fee simple title to the Premises subject only to (a) the lien for real estate taxes not yet due and payable; (b) exceptions approved in writing by Buyer; and/or (c) such liens as are to be released and discharged at the Closing. Seller agrees to provide to Buyer and the Title Insurance Company all title information

in Seller's possession relating to the Property together with a copy of the most recent tax bills relating to the Property.

6.2 Without limiting the foregoing or being limited thereby, the standard exceptions for parties in possession, mechanics' and materialmen's liens and matters which would be disclosed by an accurate survey shall be eliminated from said Policy.

6.3 Seller shall bear all costs and expenses incurred in connection with the issuance of said title commitment, Policy and any endorsements thereto which are required to conform the Policy to the terms and conditions of this Contract.

6.4 If the title insurance commitment or report shows any exceptions to title other than those referred to in Article 6.1 above, Buyer shall notify Seller in writing of the defects in title within ten (10) days after receipt of the title commitment (with copies of all documents referred to therein). Seller shall then have ten (10) days after receipt of such notice in which to cure such defects and furnish to Buyer satisfactory proof that such defects have been cured. Seller agrees to use its best efforts to cure such defects. If Seller fails or is unable to cure such title defects within such ten (10) day period or to obtain title insurance which will give affirmative coverage to Buyer against loss as a result of such title defects, Buyer shall have the option, to be exercised in its sole discretion, to (i) proceed with Closing of this transaction subject to such title defects, or (ii) terminate this Contract.

#### **ARTICLE VII - Taxes and Assessments**

7.1 Seller shall pay or credit against the Purchase Price all unpaid real estate taxes, including penalties and interest, for all tax years preceding the Closing Date, and shall credit a portion of such taxes for the tax year in which the Closing is held, prorated through the Closing Date. The proration of such taxes shall be based on a 365-day year and on the most recently available rate and valuation and the amount so computed and adjusted shall be final.

7.2 Seller shall pay any special assessments which (a) are a lien on the Property on the Closing Date, whether such assessments are past due, then due or thereafter to become due or (b) are not a lien but are then known and will be payable in whole or in part after the Closing Date.

## **ARTICLE VIII - Utility Charges**

8.1 Seller shall pay or credit on the Purchase Price all unpaid utility charges and all charges for services of any type furnished to the Property by all governmental agencies, public utilities and/or private utilities through the Closing Date.

## **ARTICLE IX - Risk of Loss**

9.1 The risk of loss, damage or destruction to the Property and any improvements thereon through condemnation, fire or otherwise shall be borne by Seller until the Closing.

## **ARTICLE X - Conditions to Closing**

10.1 Buyer's obligation to close this transaction is subject to the following conditions and covenants:

(a) Easements. Buyer may obtain at or prior to Closing all other easements or licenses deemed necessary by Buyer upon terms and conditions acceptable to Buyer. Seller agrees to reasonably cooperate with Buyer in obtaining any such easements or licenses.

(b) Survey. Buyer may obtain, at Buyer's sole cost, a certified ALTA survey, being a legal description, made by a licensed surveyor, showing the area, dimensions and location of the Property to the nearest monuments, streets, alleys or property, the location of all improvements, utilities and encroachments, the location of all proposed and recorded easements against or appurtenant to the Property. If a survey is obtained and discloses any condition rendering the Property unusable, in Buyer's sole judgment, for the intended purpose of Buyer, Buyer may terminate this Contract for Purchase with no penalty.

(c) Title Insurance. Buyer shall have obtained from Seller a satisfactory title insurance commitment or preliminary title report in accordance with Article VI above.

(d) Seller's Performance. Seller shall have performed all terms, covenants and obligations required of Seller hereunder.

(e) Environmental Audit and Testing. Buyer, at Buyer's expense, may obtain a current satisfactory Phase I or Phase II Environmental Audit of the Property and any other environmental testing which Buyer deems reasonably necessary to evaluate potential environmental risks. If such audit or tests reveal the existence of

any toxic or hazardous waste, material or substance on, under or surrounding the Property, Buyer may terminate this Contract.

(f) Satisfaction of all existing mortgages and/or liens.

(g) Demolition by Seller of all existing structures upon the property and removal of all debris associated therewith, to Buyer's reasonable satisfaction. The parties have agreed seller may leave all fencing and a portion of the concrete driveway nearest Hillcrest Road measuring approximately 42' x 20'.

#### **ARTICLE XI - Notices**

11.1 Unless otherwise provided herein, all notices shall be in writing and shall be deemed effective upon the earlier of either (a) personal delivery (b) facsimile or (c) deposit in the U.S. Mail, marked Certified or Registered, return receipt requested, with postage prepaid to Seller at 171 Hillcrest Road, Mobile, Alabama 36608, and to Buyer at 775 N. University Blvd., Suite 150, Mobile, AL 36608.

#### **ARTICLE XII - Representations and Warranties**

12.1 Seller represents, warrants and covenants to Buyer as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the Closing Date.

(a) All covenants, conditions, restrictions, easements and similar matters affecting the Property have been complied with.

(b) There is no pending or threatened litigation, arbitration, administrative action or examination, claim, or demand whatsoever relating to the Property or the furnishings and equipment contained in the premises and sold as part of this Agreement. No attachments, execution proceedings, liens, assignments or insolvency proceedings are pending, threatened or contemplated against Seller, the Property or the furnishings and equipment contained in the premises and sold as part of this Agreement. Seller is not contemplating the institution of insolvency proceedings.

(c) Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Property.



(d) Seller has not been notified of any possible future improvements by any public authority, any part of the cost of which might be assessed against any part of the Property.

(e) To the best of Seller's knowledge, Seller: (i) has not used the Property for the storage, treatment, generation, production or disposal of any toxic or hazardous waste, material or substance nor does Seller have knowledge of such use by others; (ii) has not caused or permitted and has no knowledge of the release of any toxic or hazardous waste, material or substance on or off site of the Property; (iii) has not received any notice from any governmental authority or other agency concerning the removal of any toxic or hazardous waste, material or substance from the Property; and (iv) has disclosed to Buyer the location of all underground storage tanks on the Property (if any).

(f) No event has occurred with respect to the Property which would constitute a violation of any applicable environmental law, ordinance or regulation.

(g) The execution and delivery of this Contract has been duly authorized and validly executed and delivered by Seller, and will not (i) constitute or result in the breach of or default under any oral or written agreement to which Seller is a party or which affects the Property; (ii) constitute or result in a violation of any order, decree or injunction with respect to which either Seller and/or the Property is/are bound; (iii) cause or entitle any party to have a right to accelerate or declare a default under any oral or written agreement to which Seller is a party or which affects the Property; and or (iv) violate any provision of any municipal, state or federal law, statutory or otherwise, to which either Seller or the Property may be subject.

12.2 As an inducement to Seller to enter into this Contract, Buyer represents that Buyer has the right, power and authority to purchase the Property in accordance with the terms and conditions of this Contract and that Buyer has validly executed and delivered this Contract.

12.3 Except as is expressly provided in this Contract, Buyer acknowledges that neither Seller nor any agent, attorney, employee or representative of Seller has made any representations as to the physical nature or condition of the Property.

12.4 All of the representations, warranties and covenants made by Seller in Article XII and elsewhere in this Contract shall survive the Closing for a period of two (2) years. Unless Buyer delivers notice to Seller of a breach of representation, warranty or covenant contained in Article XII or elsewhere in this Contract within two (2) years of the Closing Date, the representation, warranty or covenant shall be of no further force or effect.

### **ARTICLE XIII - Miscellaneous**

13.1 This Contract shall inure to the benefit of and bind the parties hereto, their respective heirs, executors, administrators, personal and/or legal representatives, successors and assigns.

13.2 This Contract constitutes the entire agreement between the parties and there are no representations, oral or written, relating to the Property or to this transaction which have not been incorporated herein. Any agreement hereafter made shall be ineffective to change, modify or discharge this Contract in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of any change, modification or discharge is sought.

13.3 The headings of the Articles hereof have been inserted for convenience only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

13.4 If two or more persons constitute the Seller, the word "Seller" shall be construed as if it reads "Sellers" throughout this Contract.

13.5 This Contract shall be construed, interpreted and enforced in accordance with the laws of the State of Alabama. The parties agree and acknowledge that the only forum for any claim against Buyer pursuant to this Agreement is the Alabama State Board of Adjustment.

13.6 This Contract may be executed in multiple counterparts, each of which shall be considered to be an original document.

13.7 The Effective Date shall be the date of the last execution hereof.

13.8 Time is of the essence hereof.

13.9 Any condition or right of termination, cancellation or rescission granted by this Contract to Seller or Buyer may be waived by such party provided such waiver is in writing.

13.10 If the time period or date by which any right, option or election provided under this Contract must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, expires or occurs on a Saturday, Sunday, or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

#### **ARTICLE XIV - Acceptance**

14.1 In the event this Contract is not signed simultaneously by both parties, it shall be considered to be an offer made by the party first executing it. In such event this offer shall expire **October 27, 2017 at 12:00pm NOON**, Central Daylight Time following the offer unless one copy of this Contract, executed by the party to whom this offer had been made, shall have been mailed (in accordance with Article XI hereof) or personally delivered to the party making the offer.



**ARTICLE XV – Broker Agency Disclosure: 34-27-8-(c)**

The selling company is:	The listing company is:
<b>USA Properties</b>	<b>USA Properties</b>
<b><u>TWO BLOCKS MAY BE CHECKED</u></b>	<b><u>TWO BLOCKS MAY BE CHECKED</u></b>
<input type="checkbox"/> and is an Agent of the Seller <input checked="" type="checkbox"/> and is an Agent of the Buyer <input type="checkbox"/> and is an Agent of both Seller and Buyer acting as a limited dual consensual agent <input checked="" type="checkbox"/> and is assisting the <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller as a transaction broker.	<input type="checkbox"/> and is an Agent of the Seller <input checked="" type="checkbox"/> and is an Agent of the Buyer <input type="checkbox"/> and is an Agent of both Seller and Buyer acting as a limited dual consensual agent <input checked="" type="checkbox"/> and is assisting the <input type="checkbox"/> Buyer <input checked="" type="checkbox"/> Seller as a transaction broker.
Buyer(s) initials: <u>PKD</u>	Seller(s) initials: <u>JER</u>

15.1 Both Buyer and Seller agree and understand that USA Properties is acting as an agent of the Buyer in this transaction and is solely assisting Seller as a transaction broker. Seller understands that Seller is under no obligation to pay a commission to USA Properties with respect to this transaction.

Signed by Buyer this 24<sup>th</sup> day of October, 2017.

Signed by Buyer this 26<sup>th</sup> day of October, 2017.

BUYER:  
UNIVERSITY OF SOUTH ALABAMA

By: Robert K. Davis

Robert K. Davis  
University Treasurer

SELLER:  
TERENCE EARL RENKL

By: Terence Earl Renkl

Print Name: TERENCE EARL RENKL

**REAL ESTATE PURCHASE CONTRACT ADDENDUM #1**

This Addendum is to be attached and made a part of the Real Estate Purchase Contract ("Contract") between the **University of South Alabama** ("Buyer"), a public body corporate, whose principal address is 307 University Boulevard North, AD-170, Mobile, AL 36688 and **Terence Earl Renkl** ("Seller"), whose principal address is 171 Hillcrest Road, Mobile, Alabama 36608.

The following terms are incorporated into and made a part of the Contract:

1. The Closing of the transaction shall take place no sooner than February 13, 2018 and no later than March 30, 2018.
2. Buyer represents to Seller its satisfaction of all conditions to closing as stated in Article X of the Contract, with the exceptions of:
  - (f) Satisfaction of all existing mortgages and/or liens; and
  - (g) Demolition of all existing structures upon the property and removal of all debris associated therewith, to Buyer's reasonable satisfaction. The parties have agreed that seller may leave all fencing and a portion of the concrete driveway nearest Hillcrest Road measuring approximately 42' x 20'.
3. Buyer further represents its readiness and intent to close this transaction as quickly as possible, subject to the above two conditions being satisfied by Seller.

Except as revised and amended by this Addendum, all other terms, provision, covenants, and agreements contained in the Contract shall remain in full force and effect.

Signed by Buyer this 9th day of February, 2018.

Signed by Seller this 9th day of February, 2018.

BUYER:  
**University of South Alabama, a public body corporate of the State of Alabama**

SELLER:  
**Terence Earl Renkl**

By: Robert K. Davis

Robert K. Davis  
University Treasurer

By: Terence E. Renkl  
Print Name: TERENCE E. RENKL

**B Y L A W S**  
**OF THE BOARD OF TRUSTEES**  
**OF THE UNIVERSITY OF SOUTH ALABAMA**

**PREAMBLE**

The Legislature of the State of Alabama vested full management and control over the University of South Alabama in a Board of Trustees pursuant to Act No. 157, Acts of Alabama, 1963, Secondary Extraordinary Session, stating at that time: “The Governor and the State Superintendent of Education, by virtue of their respective offices, and the [T]rustees appointed from the senatorial districts of the state, enumerated in Section 16-55-2, are constituted a public body corporate under the name of the University of South Alabama to carry into effect the purposes expressed in this article and to establish a state institution of higher learning.”(Code of Alabama, 1975, Section 16-55-1). For the purpose of providing a definitive and orderly form of governance, and in order to continue to carry out the purposes required of the Board of Trustees of the University of South Alabama, in the establishment and continuation of a state institution of higher learning, the Board of Trustees hereby does promulgate and adopt these Bylaws.

**ARTICLE I**  
**THE BOARD OF TRUSTEES**

The entire management and control over the University of South Alabama (hereinafter referred to as the “University”) shall be vested in the Board of Trustees of the University of South Alabama (hereinafter referred to as the “Board”); however, upon general or specific authorization or delegation made or provided for in these Bylaws, the Board may exercise such management and control through the officers, officials, committees and agents as it may deem fit and appropriate, all in accordance with state law. The Board acts as a body politic and no individual member of the Board shall have the authority to act for the Board or for the University.

Section 1. **Composition of Board.** Consistent with the 2014 amendatory language to Sections 16-55-2 , Code of Alabama 1975, the Board shall consist of **three** members from Mobile County; **five** members from the state at large; **two** members from the United States at large; the Governor, who shall be *ex officio* President of the Board; and **one** member from each of the following state senatorial districts, or combinations thereof, as those districts existed in 1963: (1) Sixteenth and Seventeenth Districts comprising Monroe and Wilcox Counties, and Butler, Conecuh, and Covington Counties, respectively; (2) Nineteenth and Twentieth Districts comprising Choctaw, Clarke, and Washington Counties, and Marengo and Sumter Counties, respectively; (3) Twenty-first District comprising Baldwin and Escambia Counties; (4) Twenty-third, Twenty-fifth, and Thirtieth Districts comprising Dale and Geneva Counties, Coffee and Crenshaw Counties, and Dallas and Lowndes Counties, respectively; and (5) Thirty-fifth District comprising Henry and Houston Counties.

Section 2. **Election and Term of Office.** The Governor, as an *ex officio* Trustee, serves his or her term of office in correspondence with his or her term of office as Governor of the State of Alabama. In accordance with the statute regarding the University of South Alabama, the Trustees are appointed by the Governor, by and with the advice and consent of the State Senate, and, for those appointed or reappointed after the effective date of the 2014 amendment to said statute, hold office for a term of six years, and until their successors shall be appointed and qualified. Any Trustee appointed to serve a twelve-year term before the effective date of the 2014 amendment will continue to serve for the remainder of that term. As terms expire after that date,

appointments to fill positions on the Board shall be for six-year terms. There are three classes of board members, so that, after the transition to all Trustees serving six-year terms, one-third of the members of the Board is appointed every two years. Vacancies occurring in the office of Trustee, from death or resignation, and the vacancies regularly occurring by expiration of the term shall be filled by the Governor, and the appointee holds office until the next meeting of the Legislature. Successors to those Trustees whose terms expire during an interim shall hold office for a full term, unless they are rejected by the Senate. Neither the existence nor continuation of a vacancy in the office of the Trustee shall serve to impair or hinder any provisions of these Bylaws or the validity of the operation and actions by the Board by virtue of that vacancy alone.

Section 3. **Compensation of Trustees.** No Trustee shall receive any pay or emolument other than his or her actual expenses incurred in the discharge of duties as a Trustee; such expenses shall be paid or reimbursed from university funds, upon the authorization of the President of the University (hereinafter referred to as the “President”).

Section 4. **Primary Functions of the Board.** The Board acts as a public body corporate, and no individual member of the Board has the authority to act for the Board or the University. Communications to the Board shall be directed to the Board through the President or Chair *pro tempore*, except as otherwise provided herein. The Board of Trustees, as a public body corporate, has all rights, privileges, and authority necessary to promote the purpose of its creation, which is to establish and provide for the maintenance and operation of a state university in Mobile County. In accordance with such powers, the Board of Trustees shall have the power to organize the institution by appointment of instructors and faculty members, and such executive and administrative officers and employees, as may be necessary to operate the University, which the Board hereby delegates to the President; the Board may remove any faculty members or employees in its discretion, and shall have the power and authority to fix salaries or compensation, increase or reduce same at its discretion, all of which duty the Board hereby delegates to the President. The Board may prescribe courses of instruction, rates of tuition and fees, confer such academic and honorary degrees as are usually conferred by institutions of like character, and may do all else necessary and considered in the best interest of the institution to carry out the purposes of the institution.

Section 5. **Emeritus Status.** The Board, in its sole discretion, may recognize any Trustee who has served with distinction as Trustee Emeritus following said Trustee's term of service. The Trustee must have provided distinguished and meritorious service, outstanding leadership, and exceptional contributions to the University over a period of years. Any Trustee so recognized as Trustee Emeritus shall have no voting rights and will remain Trustee Emeritus at the pleasure of the Board of Trustees. Such designation shall confer no responsibilities, duties, rights, privileges, or benefits, but shall constitute recognition of service and experience and will publicly acknowledge that person as particularly suited for counsel and advice to the Board. The Board encourages the availability of those who have been awarded Trustee Emeritus status for such counsel and advice and may request special services of them.

Section 6. **Honorary Trustee.** The Board, in its sole discretion, may recognize as an Honorary Trustee any individual who has demonstrated a sustained and extraordinary commitment to the mission of the University. Election of an Honorary Trustee shall occur at any regular meeting of the Board and, because of the prestige of this position, shall occur on very rare occasions. Honorary Trustees shall have no voting rights and will maintain this designation at the pleasure of the Board. Such designation shall confer no responsibilities, duties, rights, privileges, or benefits, but shall constitute recognition of service with distinction to the University. It will also publicly acknowledge that person as particularly suited for counsel and advice to the Board.

Section 7. **Removal of a Trustee.** Under the laws of the State of Alabama, the Board of Trustees has no power to remove one of its members. Section 60 of the Constitution of Alabama, which provides that "[no] person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature, or capable of holding any office of trust or profit in this state" sets forth the constitutional grounds and procedure for removing a Trustee.

## **ARTICLE II**

### **MEETINGS OF THE BOARD OF TRUSTEES**

Section 1. **Annual and Regular Meetings.** The Board shall hold a regular annual meeting each year at the University on the first Monday in June, unless the Board, in regular session, shall determine to hold its annual meeting at some other time and place. Each year at the

annual meeting, the Board shall schedule its regular meetings to be held during the ensuing year, and may designate one such meeting as the annual meeting of the Board. This schedule of meetings then will be recommended to the Governor for approval. The Chair *pro tempore* may cancel or change the date, place or time of a scheduled regular or annual meeting and will provide advance notice of such changes or cancellation. In any event, the Board shall meet at least once in each year.

Section 2. **Special Meetings.** In addition, other than the annual and regularly scheduled meetings of the Board, special meetings of the Board may be assembled, as follows: Special meetings may be called by the Chair *pro tempore* of the Board or the Governor by written notice mailed to each Trustee at least ten (10) days in advance of the date of the meeting; and a special meeting shall be called by the Chair *pro tempore* or the Governor upon application in writing of any three or more members of the board. No special meeting shall be held on a date less than ten (10) days subsequent to the Chair *pro tempore*'s or Governor's notice of the meeting, except in case of an emergency, which the Chair *pro tempore* or Governor shall specify in his or her notice to the Board of Trustees.

Section 3. **Adjourned Meetings.** At any meeting, the Board may continue in session as long as it may deem proper for the welfare of the institution. Any session may be adjourned, as provided in *Roberts Rules of Order*, as last revised, and continued at a future time with proper notice to all members.

Section 4. **Quorum.** Seven members of the Board of Trustees shall constitute a quorum, but a smaller number may adjourn from day to day until a quorum is present. A majority of those present shall govern unless a greater number is required hereunder. Members of the Board of Trustees may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment by means of which all persons participating in the meeting may hear each other at the same time. Participation by such means shall constitute presence in person at a meeting for all purposes. However, a majority of a quorum of the members of the Board of Trustees, or, in the event of a meeting of only the executive committee, a majority of a quorum of the executive committee of the Board of Trustees, must be physically present at the location noticed and called for the meeting in order to conduct any business or deliberation. Members of the Board of Trustees and any committees of the board

may not utilize electronic communications or otherwise conduct meetings except as in compliance with the Alabama Open Meetings Act. No Trustee for whom a conflict of interest exists shall vote on such matter before the Board.

Section 5. **Agenda.** The President shall mail to each member of the Board notice of the time and place of any meeting, which shall include an agenda for the meeting, at least ten (10) days prior to the time of meeting. The development and preparation of the agenda for Board meetings shall be vested in the President, who shall place such items on the agenda as are needed for the ongoing operation of the institution and/or that require the approval of the Board. Members of the Board desiring to place any item or items on the agenda for meetings shall inform the President in writing not less than fifteen (15) days prior to the meeting concerning such items, and the President shall include the items in the agenda to be mailed out to the members of the Board in accordance with the foregoing. Any item not included on the agenda mailed to members prior to a meeting may be considered upon the approval of a majority of those present and voting; provided, however, that any discussion or action upon the election of officers of the Board and/or the appointment and/or termination, including a contract renewal, of the President of the University, must be specifically identified on the agenda that was mailed at least ten (10) days prior to the time of meeting. The agenda that is approved by the Board at the commencement of the Board meeting shall be considered the official agenda. The omission of an item from the official agenda shall not invalidate otherwise valid actions by the Board.

Section 6. **Minutes.** Minutes of all meetings of the Board and its committees shall be prepared and distributed promptly to all members of the Board under the direction of the Secretary of the Board. Upon approval by the Board or committee, such minutes shall be maintained permanently and in an accessible manner in the Office of the President under the direction of the Secretary of the Board.

Section 7. **Public Admission to Meetings.** All meetings of the Board of Trustees shall be open to the public, except that the Board may declare an executive session as authorized by law. Formal action by the Board resulting from any executive session discussions shall be taken by the Board in an open meeting and made a part of the official minutes.



Section 8. **Rules of Order.** Rules of order shall be in accordance with *Robert's Rules of Order*, as last revised, which are the normal governing parliamentary procedure rules. The Chair of the meeting will determine all questions concerning such rules.

Section 9. **Meeting Attendance.** Inasmuch as the Board of Trustees has determined that meeting attendance is crucial to the most efficient management of the University and operation of the Board, the names of all Trustees who do not attend at least half the meetings scheduled each Board year will be reported to the Chair *pro tempore* at the next annual meeting of the Board, and the Chair *pro tempore* will then take the actions he or she deems appropriate.

### **ARTICLE III OFFICERS**

The Board shall have the following officers and any other officers it may elect from time to time. Such officers shall have the powers and shall perform the duties as are set forth herein, together with those which may be authorized and delegated by the Board from time to time. The terms of office for the Chair *pro tempore*, Vice Chair, and Secretary will be three years, with elections held at the annual meeting of the Board corresponding with the expiration of those terms. If a vacancy occurs during the term of any such office, an election to complete the term of that office will be held at the next meeting of the Board.

Section 1. **President of the Board.** The Governor of the State of Alabama shall be *ex officio* President of the Board. The President may call special meetings of the Board upon the conditions set forth herein.

Section 2. **Chair Pro Tempore.** Upon adoption of these Bylaws and thereafter, the Board of Trustees shall elect from its membership a Chair *pro tempore* for a three-year term, commencing immediately following the annual meeting at which the election is held. Such officer may not be elected for successive terms. He or she shall preside at all Board meetings and call special meetings of the Board upon the conditions set forth herein. The Chair *pro tempore* shall serve as chair of the Executive Committee, and shall appoint such committees as may be authorized by the Board, or as he or she may deem desirable, fill vacancies which will occur on such committees, and give final approval to the agenda for the Board meeting.

Section 3. **Vice Chair.** Concurrent with the time of election of the Chair *pro tempore* for the term set forth for the Chair *pro tempore* in Section 2, the Board shall elect from its membership a Vice Chair. In the absence of the Chair *pro tempore*, the Vice Chair shall assume those duties. The Vice Chair shall serve on the Executive Committee.

Section 4. **The Secretary.** Concurrent with the time of election of the Chair *pro tempore* and for the term set forth for the Chair *pro tempore* in Section 2, the Board shall elect a Secretary. Through the Office of the President of the University, the Secretary shall be responsible for the preparation and distribution of notices of Board meetings and agendas. In addition, he or she shall attend Board meetings and make, record, and retain complete records and minutes of all official actions of the Board and its committees. The Secretary shall be the custodian of the corporate seal and affix the seal to documents as executed on behalf of the Board and shall attest to the same and certify any action of the Board. The Secretary shall serve on the Executive Committee.

Section 5. **Removal from Office.** Any officer of the Board may be removed from his or her office for cause by a two-thirds vote of the full Board of Trustees.

#### **ARTICLE IV COMMITTEES**

**Organization.** The Board may create such committees as it deems proper, and may assign to such committees any authority, duty or responsibility desired by the Board; provided, however, that all committees, except the Executive Committee, are advisory to the full Board. The committees of the Board shall consist of the standing committees created herein and other committees created by the Board from time to time. The standing committees shall have the powers, duties and responsibilities set forth herein, or subsequently assigned by the Board through adoption and approval of amendments to these Bylaws. Vacancies in committee memberships shall be filled in the same manner as when appointments originally were made. Committee members and the chair and the vice chair of the committees shall be appointed by the Chair *pro tempore* for terms concurrent with the term of the Chair *pro tempore*.

**Method of Operation.** The committees and subcommittees shall meet upon the call of the President, the Chair *pro tempore*, or the chair of the committee or subcommittee. Unless otherwise provided, actions taken by such committees are not binding upon the Board, but shall be advisory, except those actions undertaken by the Executive Committee, as authorized in Article IV, Section I, herein. All recommendations and actions of the committees shall be reported to the Board of Trustees.

**Committee Participation.** The President of the University is vested with the responsibility of providing notice of all committee meetings to the members of the committees. The Chair *pro tempore* will serve as an *ex officio* member on each committee. The President and the Chair *pro tempore* may participate in all meetings but shall have no vote, except that the Chair *pro tempore* shall have a vote on the Executive Committee and any other committee when he or she is a member of the committee. All committees assist and support the Board, President, faculty, and staff in carrying out their responsibilities. Committees may request through the Office of the President any information necessary or appropriate to their deliberations. All committee reports and recommendations shall be submitted for consideration and are advisory in nature until they have been approved by the full Board. Any Board member may attend any committee meeting.

Section 1. **Executive Committee.** The Chair *pro tempore* shall appoint an Executive Committee consisting of seven (7) members of the Board, subject to the approval of the Board, with terms concurrent with the term of the Chair *pro tempore*, who serves as chair of the Executive Committee. The majority of the Executive Committee constitutes a quorum. With notice from the President or the Chair *pro tempore*, the Executive Committee may meet at any time. The Executive Committee has the power to transact all business of the Board in the interim between meetings of the Board and may perform all duties and transact all business necessary for the well-being of the University, including, but not limited to, matters related to real estate, personnel, investments and athletics. However, action by the full Board is required to amend these Bylaws, remove officers of the Board, select or remove the President of the University, issue bonded indebtedness on behalf of the University, or as otherwise determined by the full Board. The Executive Committee shall serve a dual role as Governance Committee responsible for trustee matters including, but not limited to, service, honorary designations, efficiency, educational

development, and travel. Minutes of the Executive Committee shall be submitted to all members of the Board.

Section 2. **Budget and Finance Committee.** The Budget and Finance Committee shall be responsible for the review and study of budget requests; recommending comprehensive budgets; review and study of real estate transactions and matters related to facilities construction and infrastructure maintenance; and submitting such reports and recommendations to the Executive Committee of the Board and/or the full Board, as deemed necessary and appropriate.

Section 3. **Audit Committee.** The Audit Committee shall be responsible for the oversight and integrity of the financial statements and other financial reports; performance of the University's internal and external audit functions; selection of an external auditor; assurance that the University is performing self-assessment of operating risks and evaluations of internal controls on a regular basis; the study and review of all reports and other correspondence from external auditors; and the submission of audit reports and recommendations to the Board of Trustees. The Executive Director of Internal Audit shall be accountable to the Board of Trustees through the Audit Committee, and shall make reports to the Audit Committee as appropriate.

Section 4. **Long-Range Planning Committee.** The Long-Range Planning Committee shall be responsible for long range plan recommendations; review of new and existing academic programs; academic planning and organization; mission statement and statements of role and scope; review of planning for new facilities; and other matters which may be referred to it by the President or the Board.

Section 5. **Health Affairs Committee.** The Health Affairs Committee shall be responsible for providing guidance to and receiving reports from staff and administrative personnel responsible for the University of South Alabama Hospitals and Clinics. It will consider and make recommendations requiring Board action relating to the Hospitals and Clinics and the College of Medicine. In addition to committee members designated as provided in these Bylaws, the committee includes, as non-voting *ex officio* members, the President, the Vice President for Medical Affairs, Dean of the College of Medicine, the President of the Medical Staff of the University of South Alabama Medical Center and the Chief Executive Officer of USA Health.

Section 6. **Academic and Student Affairs Committee.** The Academic and Student Affairs Committee shall be responsible for receiving and reviewing information relevant to issues involving academic affairs and student affairs at the University.

Section 7. **Development, Endowment and Investments Committee.** The Development, Endowment and Investments Committee shall be responsible for establishing policies and guidelines to oversee the University's Development and Alumni Relations programs, invest and manage the University's endowment and other investment funds, and for submitting such reports and recommendations to the Executive Committee of the Board and/or the full Board of Trustees, as deemed necessary and appropriate.

Section 8. **Evaluation and Compensation Committee.** The Evaluation and Compensation Committee shall be responsible for conducting periodic performance reviews of the President and recommending to the Board an appropriate compensation package for the President.

## **ARTICLE V PRESIDENT AND DUTIES**

**Appointment of the President of the University as Chief Executive Officer of the Institution.** The President shall be selected by the Board of Trustees and serve at the pleasure of the Board but may be removed only by a vote of eight members of the Board. The Board of Trustees is responsible for conducting periodic evaluations of the performance of the President.

The President is the chief educational and administrative officer of the University. Unless excused by the Chair *pro tempore*, he or she shall attend and participate in all meetings of the Board and may make recommendations on matters before the Board. The President does not vote on Board matters. The President shall be responsible for the execution of the policies of the Board and the Executive Committee and performing all those matters necessary to carry out the ends and purposes for which the University was established. The President shall have all authority necessary to conduct the programs of the University, including the authority to award degrees, add officers to the University which he or she deems necessary, delegate authority among subordinates and all other authority which shall, from time to time, be delegated by the Board of Trustees to the President. Prior to appointment of vice presidents, the President shall notify the Board of his or

her intention to appoint such officers to the University. The President reports to the Board on the current operations of the University and directs, coordinates and implements the planning, development and appraisal of all activities of the University of South Alabama.

## **ARTICLE VI CONFLICT OF INTEREST**

Members of the Board of Trustees (“Trustees”) of the University of South Alabama have an affirmative obligation to act at all times in the best interests of the University. This policy serves to define the term “conflict of interest” to assist members of the Board in identifying and disclosing such conflicts, and to minimize the impact of such conflicts on the actions of the University whenever possible.

*Fiduciary duty.* Each Trustee has a fiduciary duty to conduct himself or herself without conflict to the interests of the University. When acting within his or her capacity as a Trustee, he or she must subordinate personal, business, third-party, and other interests to the welfare and best interests of the University.

*Conflict of interest.* A “conflict of interest” is any transaction or relationship which presents, or may present, a conflict between a Trustee’s obligations to the University and his or her personal, business, or other interests. A conflict of interest may arise in any circumstance that may compromise the ability of a Trustee to make unbiased and impartial decisions on behalf of the University. Such circumstances may involve family relationships,<sup>1</sup> business transactions, professional activities, or personal affiliations.

Further, Alabama Code §13A-10-62 (1975) provides:

- (a) A public servant commits the crime of failing to disclose a conflict of interest if he exercises any substantial discretionary function in connection with a government contract, purchase, payment or other pecuniary transaction without advance public disclosure of a known potential conflicting interest in the transaction.

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<sup>1</sup>Family relationships include spouse, child, grandchild, parent, grandparent, sibling, niece, nephew, aunt, uncle, cousin, in-laws and step relations, as well as any person living in the household of a Trustee.

- (b) A “potential conflicting interest” exists, but is not limited to, when the public servant is a director, president, general manager or similar executive officer, or owns directly or indirectly a substantial portion of any non-governmental entity participating in the transaction.
- (c) Public disclosure includes public announcement or notification to a superior officer or the attorney general.
- (d) Failing to disclose a conflict of interest is a Class A misdemeanor.

*Disclosure.* The Board of Trustees recognizes that conflicts of interest are not uncommon, and that not all conflicts of interest are necessarily harmful to the University. However, the Board requires full disclosure of all actual and potential conflicts of interest. Each Trustee shall disclose any and all facts that may be construed as a conflict of interest, both through an annual completion of a Statement of Disclosure, and completion of an amended Statement of Disclosure whenever such actual or potential conflict occurs.

*Process.* Any actual or potential conflicts which are presented in a Statement of Disclosure or amended Statement of Disclosure will be evaluated for action, as needed, by the Chair *pro tempore* of the Board of Trustees. The Chair *pro tempore*, or Vice Chair if evaluating a possible conflict of the Chair *pro tempore*, of the Board may either handle the evaluation on his or her own or refer it to the Board for further consideration. Additional information from a Trustee may be sought at any time. A Trustee whose potential conflict is under review may not debate, vote, or otherwise participate in the evaluation of the conflict. If a conflict is being evaluated or has been found to exist, the Trustee shall recuse himself or herself from any discussion or voting regarding transactions involving the area of conflict.

*Resolution.* If it is determined that an actual or potential conflict of interest does exist, an appropriate remedy shall be determined. Such remedy may include, but is not limited to, the following:

- Waive the conflict of interest as unlikely to affect the Trustee’s ability to act in the best interests of the organization.
- Determine that the Trustee should be recused from all deliberation and decision-making related to the particular transaction or relationship that gives rise to the conflict of interest.

*Policy regarding Trustees doing business with the University.* A conflict of interest exists any time a Trustee seeks to enter into a business relationship with the University. Similar conflicts may arise through family members or through organizations in which a Trustee serves in a leadership, employment, or ownership capacity.

Such conflicts do not necessarily preclude business relationships with the University. The following procedure is designed to resolve conflicts of interest whenever a Trustee or a member of his or her family (see footnote number 1) has an ownership interest in, is a director, officer, or key individual of an entity which intends to enter into a business relationship with the University:

- The Trustee must promptly disclose the intent to enter into a business relationship with the University to the Chair *pro tempore* of the Board of Trustees.
- The Trustee must recuse himself or herself from all deliberation, debate and voting related to the contemplated business relationship.
- The Chair *pro tempore* or the Board if the issue is referred by the Chair *pro tempore*, must determine without the presence or participation of the Trustee under review that the transaction is fair and in the best interest of the University.
- If the business relationship under consideration is approved, the Trustee may not participate in any process by which his or her performance as a vendor or recipient is evaluated, or in any such evaluation of a related party.

Notwithstanding the foregoing, contracts, or proposals for purchases of goods, property, or services will not be awarded to organizations in which a Trustee either:

- 1) holds an interest of ten percent (10%) or greater, or
- 2) serves as a director or senior executive officer,

if a substantial part of the contract or proposal involves the quality of performance (i.e. possibly requiring enforcement of a performance bond or filing suit for non-performance). Also, no Trustee shall advocate or attempt to influence the employment by the University of any member of his or her family.



**ARTICLE VII**  
**OFFICIAL CORPORATE SEAL**

The official corporate seal of the University of South Alabama shall be circular in form, encircled as follows:



**ARTICLE VIII**  
**AMENDMENT OR REPEAL OF BYLAWS**

After the adoption of these Bylaws, they may be amended or repealed at any meeting of the Board by eight members of the Board voting in favor of same, but no such action shall be taken unless notice of the substance of such proposed adoption, amendment or repeal was given at a previous meeting or notice in writing of the substance of the proposed change was served upon each member of the Board at least thirty (30) days in advance of the final vote upon such change. However, by unanimous consent of the entire Board, the requirements for such notice may be waived. The Chair *pro tempore* may appoint an ad hoc committee which may meet from time to time to consider Bylaw amendments.

14<sup>th</sup> Edition, June 1, 2018

RECOMMENDED TO BE EFFECTIVE June 1, 2018

## **MEDICAL STAFF BYLAWS**

- 1) **ARTICLE III – CATEGORIES OF MEMBERSHIP**  
Revised Refer and Follow Category to order outpatient care and treatment.
- 2) **ARTICLE IV- THE ALLIED STAFF**  
Revised to allow the dentist to use history and physician from the patient's primary physician.
- 3) **ARTICLE XV-CORRECTIVE ACTION**  
Revised the summary suspension section to include duplicate wording as automatic suspension for Joint hospital suspension (Not new just relocation for clarity).
- 4) **ARTICLE XXVII-HOSPITAL COMMITTEES**  
Revised the names of committees for Children's & Women's Hospital and deleted two committees for the Medical Center.

## **RULES AND REGULATIONS**

- 1) **Section 2.4.11 Care of Dental Patients**  
Added dentist responsibilities to include coordination with the patient's primary physician to provide the clinical history and physical. Revised the USA Practitioner's responsibilities to include reviewing and updating the history and physical prior to anesthesia and surgery for the dentist.
- 2) **Section 4.5 Verbal or Telephone Orders**  
Revised the following:
  - Authentication timeframe changed to "promptly but no more than 30 days following entry of the order."
  - Clarifying who can authenticate the verbal order to include another practitioner caring for the patient.

**Proposed Changes to University of South Alabama Hospitals Medical Staff Bylaws  
Approved at the USA Hospitals General Medical Staff Meeting on April 10, 2018**

Underlines are **additions** - Strikethroughs are ~~deletion~~

## **Bylaws**

### **ARTICLE III – CATEGORIES OF MEMBERSHIP**

#### **Section 3.04 Refer and Follow Staff**

The Refer and Follow Staff shall consist of those LIP Practitioners, who wish to be affiliated with the Hospital and refer patients to members of the Active and/or Courtesy Staff, but who do not admit or treat patients in the hospital.

Members of the Refer and Follow Staff may not admit, write orders, perform procedures or attend inpatients; but ~~may~~:

- A. **May** refer patients to members of the Active and/or Courtesy Staff.
- B. **May** visit their patients while in the hospital
- C. **May** review their patient's medical record via the electronic medical record, if applicable, both remotely and at the hospital
- D. **May** document in the progress notes, including access via the electronic record, if applicable, both remotely and at the hospital.
- E. **May** obtain results of tests and therapy
- F. **May** discuss ongoing management with the patient's physician(s).
- G. Does not require physician back-up coverage
- H. **Are excluded from** Focused Professional Practice Evaluation (FPPE) or OPPE requirements
- I. May order **outpatient care, treatment and** testing within the scope of their practice
- J. May not vote nor serve on Medical Staff Committees
- K. May not hold office

### **ARTICLE IV - THE ALLIED STAFF**

The Allied Staff shall consist of those individuals who provide independent clinical services and who are not Physicians or members of the Medical Staff. The Allied Staff shall include but is not limited to, dentists, podiatrists, optometrists, chiropractors, clinical psychologists, physician's assistants, certified registered nurse anesthetists, certified nurse practitioners, certified nurse midwives, and sexual assault nurse examiners (SANE nurses) and non-licensed healthcare providers such as Optometry Technicians, etc.

Allied Staff may exercise judgment within their licensure, certification, and/or area of competence; where required by scope of practice. Certified nurse midwives may write admission orders for inpatients and subsequent orders as long as they maintain an agreement with a collaborating physician. **Dentists manage the care and treatment for ambulatory/outpatient care dental patients at CW with the input of the patient's primary physician and an associated USA practitioner who performs the discipline-specific history and physical examination update.**

Otherwise, Allied Staff participate directly in the management of patients under the supervision or direction of a physician or employer; record reports and progress notes in patients' records; and write orders to the extent established by the appropriate Department Chair and in accordance with applicable law. Allied Staff shall be appointed by the BOT in accordance with the procedures herein.

Allied Staff shall be subject to Focused Professional Practice Evaluation (FPPE) per specialty and be subject to Ongoing Professional Practice Evaluation (OPPE). If any LIP allied health staff member has a low volume of FPPE activity during their provisional first year period on allied health staff, the practitioner will remain on FPPE review until FPPE activity can be obtained. When this individual is due to apply for reappointment, the Combined Credentials Committee will determine whether the practitioner should be given the privilege requested due to continued pendency of FPPE or should remain in the FPPE monitoring status due to contractual arrangements or medical staff coverage needs. The Combined Credentials committee will make its recommendation to the MEC accordingly.

Allied Staff shall provide evidence of current professional liability coverage as provided herein.

Appointees to the Allied Staff shall adhere to the current Bylaws, Medical Staff Rules and Regulations, and any subsequent amendments approved by the MEC, Executive Committee, and the BOT.

Allied Staff are not considered members of the Medical Staff and are not eligible for Fair Hearing and Appellate Rights specified in Article XVI.

Appointments to the Allied Staff shall be for a period of not more than two (2) years and may be consecutive.

**Proposed Changes to University of South Alabama Hospitals Medical Staff Bylaws  
Approved at the USA Hospitals General Medical Staff Meeting on April 10, 2018**

Underlines are **additions** - Strikethroughs are **deletion**

**ARTICLE XV – CORRECTIVE ACTION**

**Section 15.02 – Summary Suspension**

**Notice:**

- A. When the ad hoc committee or MEC recommends an action which triggers procedural rights, the Staff Member under suspension shall be sent the notice required by Section 16.02 within five (5) business days of the recommendation of an action.
- B. All summary suspensions and actions or recommendations of the ad hoc committee shall be reported by the Chair of MEC to the MEC at its next scheduled meeting.

**C. Summary suspension at one of the hospitals of USA Health:**

**In the event a practitioner's privileges have been summarily suspended at one of the hospitals of USA Health pursuant to the process described in this Article XV, the practitioner's privileges will be automatically suspended at all the hospitals of USA Health pending the final decision made as a result of the Corrective Action/Fair Hearing and Appellate Review process.**

**NOTE:** The above section is also located in Section 15.03 – Automatic Suspension or Limitation Plan to leave the above statement in the automatic suspension section as it applies to both sections.

**ARTICLE XXVII - HOSPITAL COMMITTEES**

Hospital committees recommended by Chair of MEC or Hospital Administrator and approved by the Executive Committee include Medical Staff representatives. Biennially, the Chair of MEC, Chair-Elect/Secretary of MEC, and Immediate Past Chair of MEC in collaboration with the Hospital Administrator shall appointment Medical Staff representatives for each Hospital Committee to serve for two years beginning January 1. Members may be reappointed.

Hospital Committees (see Hospital's Performance Improvement Plan for detailed descriptions of committee functions) include, but are not limited to, the following:

**Children's and Women's Hospital**

- A. Performance Improvement Council\*
- B. Pharmacy & Therapeutics/Medication Use Committee/**Antibiotic Stewardship\***
- C. Patient Safety and Medical Error Reduction Committee/**Combined Critical Events Subcommittee\***
- D. **CW Infection Prevention and Control, Infection Prevention and Control Combined Committee\***, \*\*
- E. Medical Ethics Committee\*
- F. Emergency Services ~~Care/Evaluation Center~~ Committee\*
- G. **Surgery Steering Committee\***

**Medical Center**

- A. Performance Improvement Council\*
- B. Critical Care Committee\*
- C. Pharmacy and Therapeutics\*
- D. ~~Patient Safety\*~~
- E. Medication Error Reduction Committee\*
- F. Rapid Response/Code Committee
- G. ~~Information Management Committee~~
- H. Infection Control Combined Committee\*, \*\*
- I. Medical Ethics Committee\*
- J. Emergency Department Committee\*
- K. Trauma Burn **Operational** Committee\*
- L. Robotic Sub-committee\*

\* Denotes joint hospital and medical staff committees.

\*\*Denotes joint USA hospitals committees.

**Proposed Changes to University of South Alabama Hospitals Medical Staff Rules and Regulations  
Approved at the USA Hospitals General Medical Staff Meeting on April 10, 2018**

Underlines are additions - Strikethroughs are ~~deletion~~

## **Rules & Regulations**

### **2.4.11 Care of Dental Patients**

A patient admitted for dental care is a dual responsibility of the dentist and the attending physician who assumes responsibilities as outlined below.

Dentist's responsibilities:

- 1) A detailed dental history justifying the clinical necessity for the procedure ~~hospital admission;~~
- 2) Coordinate with the patient's primary physician to provide information about the patient's clinical history and physical condition prior to the planned procedure, utilizing USA's Dental History & Physical form or equivalent form.
- 3) A detailed description of the dental examination and pre-operative diagnosis
- 4) A complete operative report describing the findings and techniques employed. In cases of tooth extraction, the dentist shall clearly state the number of teeth and fragments removed. All tissue including teeth and fragments shall be sent to the hospital pathologist for examination;
- 5) Progress notes as are pertinent to the dental condition;
- 6) A clinical summary
- 7) Patients shall be discharged on the written order of the dentist member of the staff.

USA practitioner's ~~Primary Attending physician's~~ responsibilities

- 1) Review medical history provided by the primary physician and the dentist. Perform a relevant medical history update with physical examination prior to anesthesia and surgery
  - 2) Accept transfer of care from the dentist to the USA practitioner if inpatient admission is needed or provide consultation if warranted for a change in condition during or following the procedure.
- ~~Supervision of the patient's general care while hospitalized.~~

### **4.5 Verbal or Telephone Orders**

Physicians should enter CPOE into the Medical Record. Verbal orders should be rare and are to be accepted only in emergent/urgent situations or when physicians are performing procedures.

Telephone orders should be communicated by CPOE physicians only when the physician is unable to access the medical record. Both verbal and telephone orders shall be authenticated by the physician promptly as seen as possible but not to exceed 96 hours ~~but no more than 30 days following entry of the order.~~

In appropriate situations, verbal or telephone orders may be accepted by licensed, certified registered staff members, within the limits established by the Medical Staff, consistent with the State Practice Acts, from an attending physician or designee. A verbal order shall be considered to be complete once given to a registered nurse functioning within his/her sphere of competence and subsequently authenticated by the responsible practitioner or another practitioner responsible for the care of the patient.

Other personnel authorized to accept or carry out orders within the confines of their respective departments are as follows: Registered Physical Therapist, Registered Respiratory Therapist, Registered Pharmacist, Registered Radiology Technologist, Registered Dietician, Licensed Social Worker, qualified Occupational and Speech Therapists, Ultrasonographer, Registered Medical Technologist, Medical Laboratory Technician, Physician Assistant and Advance Practice Nurse Practitioner. All orders dictated shall be identified by the date and time of the order, the appropriate notation (TOV or VOV for either telephone or verbal order verified), the name of the practitioner, and the name and title of the individual to whom the order was dictated. Verbal orders are to be accepted only in emergent/urgent situations. Based upon the Code of Federal Regulations all entries must be legible, complete, and must be authenticated by the person identified by name and discipline or another person covering who is responsible for ordering, providing, or evaluating the service furnished. The responsible physician or another authorized physician who is responsible for the care of the patient shall authenticate, date and time any order promptly but in no case ~~longer than 96 hours~~ more than 30 days following the order. The exceptions are:

- orders for restraints which have specified time frames for authentication or
- change in Life Sustaining Medical Treatment status that must be signed within 24 hours

The physician shall take full responsibility for any order given to include written, telephone (TOV) or verbal (VOV).

**UNIVERSITY OF SOUTH ALABAMA HOSPITALS**  
**MEDICAL STAFF MEETING MINUTES**  
**April 10, 2018**

The meeting of the University of South Alabama Hospitals Medical Staff was held at the Strada Patient Care Center on Tuesday, April 10, 2018. In the absence of John Marymont, MD, Vice President for Medical Affairs and Dean of the College of Medicine, the meeting was called to order at 6:17 p.m. by Owen Bailey, Chief Executive Officer/Senior Associate Vice President for Medical Affairs. A roster of attendees is available in the Medical Staff Credentialing Office.

Mr. Owen Bailey welcomed everyone and expressed appreciation to the staff involved in preparing for the dinner meeting. The new members of the USA Hospitals Medical Staff were introduced. Congratulations to Franklin Trimm, MD for being named Associate Dean of Diversity and Inclusion, Assistant Vice President for Medical Affairs.

Sabrina Bessette, MD, USA Medical Center Medical Staff Chair presented the proposed revisions to the Medical Staff Bylaws and Rules and Regulations for review and approval. A motion was made, carried, and approved.

Mr. Owen Bailey reported for the USA Health System. Information was shared pertaining to partnerships being created between various health systems and the future partnership plans for USA Health. USA Health has experienced a 12-13% growth in each of the last two years. Many positive changes were reported with the three planning phases: Strategic, Capital, and Facility. USA Health is working with the ADAMS Company to develop a Facilities Master Plan. All facility locations and current conditions along with possible future facility locations are being evaluated. The report of these evaluations will be data driven and will create a road map for future growth. Mr. Bailey mentioned two leadership team positions that were underway for selection: Chief Information Officer (CIO) and Chief Medical Office (CMO). For the CMO the search committee has identified four candidates, and on-site interviews will be scheduled soon.

Mr. Sam Dean, Administrator of USA Medical Center, presented a slide show depicting recent accomplishments. Gratitude was expressed for all who supported the renovation of the lobby. More than 200 people gathered to celebrate at the lobby grand opening. Plans are underway for designing the state-of-the-art trauma center funded by the \$5 million gift from Mr. Herbert Meisler and \$4 million from the Governor. He announced that the Burn Center is still ranked first in the nation. Parking expansion has been approved to add 117 additional spaces. South Flight is returning to USA. Although it will not be owned or staffed by USA, it will be branded with USA for marketing. Other subjects depicted were the outpatient operating rooms and the banners on Mobile Street.

Mr. Chris Jett, Administrator of USA Children's & Women's Hospital reported on the renovations of the 4<sup>th</sup> and 5<sup>th</sup> floors of the Pediatric Tower for the new Mother/Baby area. A fund-raising goal of \$5 million has been set for the Pediatric Emergency Department. He stated that fund raising was half-way there. Information was shared on the upcoming fund raising signature event "Local Goodness 2018" to be held at the Strada Patient Center on April 15<sup>th</sup>. Mr. Jett reported that operations are up 5% overall with the pediatric intensive care unit and the operating rooms being up 20%. Consideration is being given to expand one of the operating rooms.

Mr. Brian Norris, Administrator of USA Health Ambulatory Services, reported that that the ambulatory quality team worked very hard to turn good patient care into measurable results. Thorough documentation from specific areas was gathered and used to meet key performance areas in the Merit-Based Incentive Payment System (MIPS). A minimum score of 70 is required to qualify for a positive payment adjustment. The USA Health providers scored a 94.95, which will appear on governmental and other websites. He stressed that very few practices score this high and stated that everyone should be very proud of giving great patient care.

Mr. Owen Bailey shared information about the Outreach Special Project. The team is visiting all rural hospitals within 150 mile radius and sharing information about USA Health and our services. He commented on numerous medical symposiums held in the area that were very beneficial to the medical staff and community. Some of these reached a record growth in the number of attendees. The symposiums were a valuable opportunity to connect with the referring communities. Information about the new USA Branding was shared. Mr. Bailey stressed that the branding is not just logos, but a reflection of how we portray ourselves and our culture. Currently the USA Health social media following is larger than all of the health systems in the city combined.

With no further business, the meeting was adjourned at 6:52 p.m.

Respectfully submitted,



Juliana Kuck  
Medical Credentialing Coordinator

# University of South Alabama

## 2018-2019 Tuition & Fee

### 5.0% Tuition Increase

Student Classification	Current tuition	Proposed tuition	Change	Added fee per semester*
	<u>2017-2018</u>	<u>2018-2019</u>		<u>2018-2019</u>
Undergraduate In-State	\$313	\$329	<b>\$16</b>	\$60 / \$100
Graduate In-State	\$421	\$442	<b>\$21</b>	\$60 / \$100

Non-resident rate is twice the resident rate

\*A \$60 fee will be charged per semester for part-time students (1 - 11 credit hours) and a charge of \$100 per semester for full-time students (12 or more credit hours).

Student Classification	Current full academic year tuition	Proposed full academic year tuition	New fee for full academic year for full-time students
	<u>2017-2018</u>	<u>2018-2019</u>	<u>2018-2019</u>
Undergraduate In-State	\$9,390	\$9,870	\$200
Graduate In-State	\$10,104	\$10,608	\$200

Non-resident rate is twice the resident rate

Note: Based on 30 undergraduate and 24 graduate hours over two semesters per academic year

### Web Course per-Hour Tuition

#### 5.0% Tuition Increase

Student Classification	Current tuition	Proposed tuition	Change	Added fee per semester*
	<u>2017-2018</u>	<u>2018-2019</u>		<u>2018-2019</u>
Undergraduate	\$412	\$433	<b>\$21</b>	\$60 / \$100
Graduate	\$500	\$525	<b>\$25</b>	\$60 / \$100

\*A \$60 fee will be charged per semester for part-time students (1 - 11 credit hours) and a charge of \$100 per semester for full-time students (12 or more credit hours).

### College of Medicine

#### 3.0% Tuition Increase

Student Classification	Current tuition	Proposed tuition	Change
	<u>2017-2018</u>	<u>2018-2019</u>	
Undergraduate	\$30,101	\$31,004	<b>\$903</b>

**UNIVERSITY OF SOUTH ALABAMA  
2018-2019 Proposal**

<b>In-State Tuition Rate*</b>	<b>Undergraduate</b>		<b>Graduate</b>	
<b>Tuition Rate by College</b>	<b>Current Tuition</b>	<b>5.0% Increase</b>	<b>Current Tuition</b>	<b>5.0% Increase</b>
College of Arts and Sciences College of Education and Professional Studies	\$313	\$329	\$421	\$442
Pat Capps Covey College of Allied Health Professions Mitchell College of Business School of Computing	\$328	\$344	\$443	\$465
College of Engineering	\$332	\$359**	\$448	\$480**
College of Nursing	\$360	\$378	\$485	\$509

<b>Out-of-State Tuition Rate</b>	<b>Undergraduate</b>		<b>Graduate</b>	
<b>Tuition Rate by College</b>	<b>Current Tuition</b>	<b>2 times the in-state rate</b>	<b>Current Tuition</b>	<b>2 times the in-state rate</b>
College of Arts and Sciences College of Education and Professional Studies	\$626	\$658	\$842	\$884
Pat Capps Covey College of Allied Health Professions Mitchell College of Business School of Computing	\$656	\$688	\$886	\$930
College of Engineering	\$664	\$718***	\$896	\$960***
College of Nursing	\$720	\$756	\$970	\$1,018

<b>Web Course Tuition Rate</b>	<b>Undergraduate</b>		<b>Graduate</b>	
<b>Tuition Rate by College</b>	<b>Current Tuition</b>	<b>5.0% Increase</b>	<b>Current Tuition</b>	<b>5.0% Increase</b>
College of Arts and Sciences College of Education and Professional Studies	\$412	\$433	\$500	\$525
Pat Capps Covey College of Allied Health Professions Mitchell College of Business School of Computing	\$426	\$447	\$524	\$550
College of Engineering	\$432	\$464**	\$528	\$564**
College of Nursing	\$459	\$482	\$566	\$594

\*Includes Study Abroad/Study Away (Outside the State of Alabama)

\*\*Includes an increase of \$10 to the differential per credit hour charge for in state and web course Engineering students

\*\*\*Includes an increase of \$20 to the differential per credit hour charge for out-of-state Engineering students



## 2018 - 2019 Proposed Semester Room Rates

Residence Hall		2017-2018 Current Rate	2018-2019 Proposed Rate	Difference
BETA / GAMMA	Apartment for 4	\$1,990	\$2,000	\$10
	Apartment for 2 / Private Apartment	\$2,920	\$3,050	\$130
	Studio Apartment for 2	\$2,470	\$2,650	\$180
	Suite for 1 / Large Private Room	\$2,675	\$2,775	\$100
	Suite for 2	\$1,990	\$2,000	\$10
DELTA	Room for 2	\$1,990	\$2,000	\$10
	Large Private Room	\$2,675	\$2,775	
	Private Room	\$2,570	\$2,650	\$80
	Room for 2 w/ kitchenette	\$2,350	\$2,420	\$70
	Private Room w/ kitchenette	\$2,570	\$2,650	\$80
STOKES HALL	Suite for 1	\$2,920	\$3,050	\$130
EPSILON	Room for 2	\$2,570	\$2,650	\$80
AZALEA HALL	Room for 2	\$2,570	\$2,650	\$80
CAMELLIA HALL	Room for 2		\$2,650	

## 2018 - 2019 Proposed Semester Meal Plan Rates

<b>Meal Plan Type</b>		<b>2017-2018 Current Rate</b>	<b>2018-2019 Proposed Rate</b>	<b>Difference</b>
Freshmen and above	All Access Pass with \$175 Bonus Bucks	\$1,755	\$1,810	\$55
	All Access Pass with \$300 Bonus Bucks	\$1,880	\$1,935	\$55
	All Access Pass with \$450 Bonus Bucks	\$2,030	\$2,085	\$55
Sophomore and above	10 Meals Per Week with \$500 Bonus Bucks*	\$1,755	\$1,810	\$55
Junior and above	\$1400 Bonus Bucks*		\$1,400	New Plan
	7 Meals Per Week with \$100 Bonus Bucks	\$950	\$1,000	\$50

*\*New option in 2018-2019 - Junior and above*

(Local Currency—Single Jurisdiction)

Signed Master & Amended  
Schedule

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of December 22, 2006

WACHOVIA BANK, NATIONAL ASSOCIATION and USA RESEARCH AND TECHNOLOGY CORPORATION

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

### 1. Interpretation

- (a) *Definitions.* The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) *General Conditions.*

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.



(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party, at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable: —

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above, will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) *Basic Representations.*

- (i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;



(iv) *Consents*. All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force, and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding*. Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events*. No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation*. There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information*. All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information*. It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations*. It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply with Laws*. It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

#### 5. Events of Default and Termination Events

(a) *Events of Default*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver*. Failure by the party to make, when due, any payment under this Agreement or delivery, under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) *Breach of Agreement*. Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed



by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its



winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) *Illegality*. Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

- (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Credit Event Upon Merger*. If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or



(iii) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality.* If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

#### 6. Early Termination

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) *Right to Terminate. If: —*

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.



(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative



number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void



## 8. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 10. Notices

- (a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—
- (i) if in writing and delivered in person or by courier, on the date it is delivered;
  - (ii) if sent by telex, on the date the recipient's answerback is received;



(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 11. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably: —

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 12. Definitions

As used in this Agreement:—

"*Additional Termination Event*" has the meaning specified in Section 5(b).

"*Affected Party*" has the meaning specified in Section 5(b).



**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iii).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"law"** includes any treaty, law, rule or regulation and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain



resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under



this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

- (a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and
- (b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Event"** means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined

by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

WACHOVIA BANK, NATIONAL ASSOCIATION  
(Name of Party)

USA RESEARCH AND TECHNOLOGY CORPORATION  
(Name of Party)

By: Sherry M. Stofer  
Name: Sherry M. Stofer  
Title: Vice President  
Date: 7-11-07

By: M. Wayne Davis  
Name: M. WAYNE DAVIS  
Title: SECRETARY - TREASURER  
Date: FEBRUARY 27, 2007



**SCHEDULE**  
to the  
**MASTER AGREEMENT**  
dated as of December 22, 2006 between,  
**WACHOVIA BANK, NATIONAL ASSOCIATION ("Party A")**  
and **USA RESEARCH AND TECHNOLOGY CORPORATION ("Party B")**

**Part 1. Termination Provisions**

- (a) "Specified Entity" means each party's Affiliates for purposes of Section 5(a)(v).
- (b) "Specified Transaction" has its meaning as defined in Section 12.
- (c) "Cross Default" applies to both parties. With respect to Party B, "Cross Default" is amended by inserting at the end of Section 5(a)(vi): "or (3) any default, event of default or other similar condition or event (however described) under any existing or future agreement or instrument relating to any loan or extension of credit from Party A (or any of its Affiliates) to Party B (whether or not anyone else is a party thereto)."

"Specified Indebtedness" means any obligation (whether present, future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money or relating to the payment or delivery of funds, securities or other property (including, without limitation, collateral), other than indebtedness in respect of any bank deposits received in the ordinary course of business by any foreign branch of a party the repayment of which is prevented, hindered or delayed by any governmental or regulatory action or law unrelated to the financial condition or solvency of such party or that foreign branch.

"Threshold Amount" means, with respect to Party A, an amount (including its equivalent in another currency) equal to the higher of \$10,000,000 or 2% of its stockholders' equity as reflected on its most recent financial statements or call reports, and with respect to Party B, any amount of Specified Indebtedness.

- (d) "Credit Event Upon Merger" applies to both parties.
- (e) "Automatic Early Termination" does not apply to either party.
- (f) **Payments on Early Termination.** Except as otherwise provided herein, "Market Quotation" and the "Second Method" apply, provided that with respect to the following types of Transactions, a Market Quotation shall not be determined or included under clause (a) of the definition of Settlement Amount, and instead a "Loss" shall be determined and included under clause (b) of the definition of Settlement Amount with respect to the following types of Transactions: any Transactions which are commodity swaps, commodity options, commodity forwards or any other commodity derivative transactions.

In the case of any Terminated Transaction that is, or is subject to, any unexercised option, the words "economic equivalent of any payment or delivery" appearing in the definition of "Market Quotation" shall be construed to take into account the economic equivalent of the option.

- (g) "Additional Termination Event" does not apply to either party.



Part 2. Tax Provisions

(a) **Tax Representations.**

(i) Party A represents at all times hereunder that (A) it is a national banking association organized or formed under the laws of the United States, and (B) it is a United States resident for United States federal income tax purposes.

(ii) Party B represents at all times hereunder that (A) it is organized or formed under the laws of a state within the United States, and (B) it is (or, if Party B is disregarded for United States federal income tax purposes, its beneficial owner is) a United States resident for United States federal income tax purposes.

(b) **Tax Forms.**

(i) Each party agrees to deliver to the other party the tax forms specified below with respect to it at the following times: before the first Payment Date under this Agreement; promptly upon reasonable demand by the other party; and promptly upon learning that any such form previously provided by the party has become obsolete or incorrect.

(A) **Tax Forms to be Delivered by Party A:**

None specified.

(B) **Tax forms to be Delivered by Party B:**

(I) If Party B is (or, if Party B is disregarded for United States federal income tax purposes, its beneficial owner is) treated as a corporation for United States federal income tax purposes whose name includes "Incorporated", "Inc.", "Corporation", "P.C.", "Insurance Company", "Indemnity Company", "Reinsurance Company", or "Assurance Company":

None specified, unless any amount payable to Party B under this Agreement is to be paid to an account outside the United States, in which case the tax form to be delivered by Party B shall be a correct, complete and duly executed U.S. Internal Revenue Service Form W-9 (or successor thereto) that eliminates U.S. federal backup withholding tax on payments to Party B under this Agreement.

(II) In all other cases:

A correct, complete and duly executed U.S. Internal Revenue Service Form W-9 (or successor thereto) that eliminates U.S. federal backup withholding tax on payments to Party B under this Agreement.

(ii) In addition, each party agrees to deliver to the other party, upon reasonable demand by such other party, any other tax form that may be required or reasonably requested in writing in order to allow such other party to make a payment under this Agreement (or under any Credit Support Document) without any deduction or withholding for or on account of any tax imposed by any government or other taxing authority in respect of any such payment (other than a stamp, registration, documentation or similar tax), or with such deduction or withholding at a reduced rate, which form shall be correct, complete and duly executed.

(c) **Withholding Tax Liability.** A breach of a representation under paragraph (a) above, or a failure to deliver a required tax form in accordance with paragraph (b) above, by a party hereunder (the "defaulting payee") may result in a tax liability on the part of the other party (the "payor"), as required by the United States Internal Revenue Code and regulations thereunder, for withholding or backup withholding on any payment by the



payor to the defaulting payee under this Agreement (or under any Credit Support Document), including a liability to remit to the U.S. Treasury Department the required amount of withholding and to pay interest and penalties to the U.S. Treasury Department for amounts not withheld.

Accordingly, if any such breach or failure by the defaulting payee results in any such tax liability, then (i) any amount so withheld and remitted to the U.S. Treasury Department shall discharge the payor's obligation under this Agreement (or under any Credit Support Document) to pay to the defaulting payee the portion of any payment so withheld and remitted (with the payor having no obligation to "gross up" any of its payments for such withheld amounts), and (ii) if any tax liability resulting from the defaulting payee's breach or failure is assessed directly against the payor in respect of any amounts not withheld, the defaulting payee shall indemnify the payor on demand for the amount of such tax liability (including interest and penalties). However, any such breach or failure by the defaulting payee shall not be an "Event of Default" or a "Potential Event of Default" under this Agreement unless the defaulting payee fails to so indemnify the payor.

### Part 3. Documents

#### **Delivery of Documents.**

(i) When it delivers this Agreement, Party B shall also deliver its Closing Documents to Party A in form and substance reasonably satisfactory to Party A. For each Transaction, Party B shall deliver, promptly upon request, a duly executed incumbency certificate for the person(s) executing the Confirmation for that Transaction on behalf of Party B.

(ii) For Party B, "Closing Documents" means an opinion of counsel covering Party B's Basic Representations under Section 3(a) as they relate to this Agreement, or in lieu thereof, (A) a copy, certified by the secretary or assistant secretary of Party B, of the resolutions of Party B's board of directors authorizing the execution, delivery and performance by Party B of this Agreement and authorizing Party B to enter into Transactions hereunder and (B) a duly executed certificate of the secretary or assistant secretary of Party B certifying the name, true signature and authority of each person authorized to execute this Agreement and enter into Transactions for Party B.

### Part 4. Miscellaneous

- (a) **Addresses for Notices.** For purposes of Section 10(a) of this Agreement, all notices to a party shall, with respect to any particular Transaction, be sent to its address, telex number or facsimile number specified in the relevant Confirmation (or as specified below if not specified in the relevant Confirmation), provided that any notice under Section 5 or 6 of this Agreement, and any notice under this Agreement not related to a particular Transaction, shall be sent to a party at its address specified below.

#### **To Party A:**

#### **WACHOVIA BANK, NATIONAL ASSOCIATION**

301 South College Street, DC-8

Charlotte, NC 28202-0600

Attention: Derivatives Documentation Group

Fax: (704) 383-0575

Phone: (704) 383-8778



To Party B:

USA RESEARCH AND TECHNOLOGY CORPORATION

USA Administration Bldg, ~~Room 338~~  
Room 338  
Mobile, AZ 36688

Attention: M. Wayne Davis

Fax: 251-460-6137

Phone: 251-460-6132

- (b) "Calculation Agent" means Party A.
- (c) "Credit Support Document" means, with respect to Party B, each document (whether now existing or hereafter executed) which by its terms secures, guarantees or otherwise supports Party B's obligations under this Agreement from time to time, whether or not this Agreement, any Transaction, or any type of Transaction entered into hereunder is specifically referenced or described in any such document.

"Credit Support Default" is amended by adding at the end of Section 5(a)(iii)(1):

"any default, event of default or other similar condition or event (however described) exists under any Credit Support Document, any action is taken to realize upon any collateral provided to secure such party's obligations hereunder or under any Transaction, or the other party fails at any time to have a valid and perfected first priority security interest in any such collateral;"

- (d) "Credit Support Provider" means, with respect to Party B, each party to a Credit Support Document that provides or is obligated to provide security, a guaranty or other credit support for Party B's obligations under this Agreement.
- (e) **Governing Law.** To the extent not otherwise preempted by U.S. Federal law, this Agreement will be governed by and construed in accordance with the law of the State of New York (without giving effect to any provision of New York law that would cause another jurisdiction's laws to be applied).
- (f) **Waiver of Jury Trial.** To the extent permitted by applicable law, each party irrevocably waives any and all right to trial by jury in any legal proceeding in connection with this Agreement, any Credit Support Document to which it is a party, or any Transaction.
- (g) **Netting of Payments.** Section 2(c)(ii) will apply in respect of all Transactions from the date of this Agreement, provided that Section 2(c)(ii) will not apply with respect to any Transactions or group of Transactions for which the parties mutually agree shall be netted operationally.
- (h) "Affiliate" has its meaning as defined in Section 12.

#### Part 5. Other Provisions

- (a) **2000 ISDA Definitions.** This Agreement and each Transaction are subject to the 2000 ISDA Definitions (including its Annex) published by the International Swaps and Derivatives Association, Inc. (together, the "2000 ISDA Definitions") and will be governed by the provisions of the 2000 ISDA Definitions. The provisions of the 2000 ISDA Definitions are incorporated by reference in, and shall form part of, this Agreement and each Confirmation. Any reference to a "Swap Transaction" in the 2000 ISDA Definitions is deemed to be a reference to a "Transaction" for purposes of this Agreement or any Confirmation, and any



reference to a "Transaction" in this Agreement or any Confirmation is deemed to be a reference to a "Swap Transaction" for purposes of the 2000 ISDA Definitions. The provisions of this Agreement (exclusive of the 2000 ISDA Definitions) shall prevail in the event of any conflict between such provisions and the 2000 ISDA Definitions.

(b) **Scope of Agreement.** Any Specified Transaction now existing or hereafter entered into between the parties (whether or not evidenced by a Confirmation) shall constitute a "Transaction" under this Agreement and shall be subject to, governed by, and construed in accordance with the terms of this Agreement, unless the confirming document(s) for that Specified Transaction provide(s) otherwise. For any such Specified Transaction not evidenced by a Confirmation, Section 2(a)(i) of this Agreement is amended to read as follows: "(i) Each party will make each payment or delivery to be made by it under each Transaction, as specified in each Confirmation (or otherwise in accordance with the terms of that Transaction if not evidenced by a Confirmation), subject to the other provisions of this Agreement." In the event the parties enter into any such Specified Transaction that is a foreign exchange transaction or provides for one or more payments or deliveries to be made in a currency other than U.S. Dollars, this Agreement shall be deemed to incorporate by reference the multicurrency provisions of the 1992 ISDA Master Agreement (Multicurrency-Cross Border) form, including Section 8 thereof, and shall be read and construed in accordance with such provisions, mutatis mutandis, with such modifications deemed made to Sections 6(e) and 12 hereof to incorporate the Termination Currency Equivalent provisions of Sections 6(e) and 14 of such form and with U.S. Dollars being deemed the Termination Currency for such purpose.

(c) **Additional Representations.** In addition to the representations under Section 3, the following representations will apply:

(1) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Relevant Agreement that:

(1) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into the Relevant Agreement and as to whether the Relevant Agreement is appropriate or proper for it based solely upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party or any of its affiliates (or its respective representatives) as investment advice or as a recommendation to enter into the Relevant Agreement, it being understood that information and explanations related to the terms and conditions of any Relevant Agreement will not be considered investment advice or a recommendation to enter into the Relevant Agreement. No communication (written or oral) received from the other party or any of its affiliates (or its respective representatives) will be deemed to be an assurance or guarantee as to the expected results of the Relevant Agreement.

(2) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Relevant Agreement based solely upon its own evaluation of the Relevant Agreement (including the present and future results, consequences, risks, and benefits thereof, whether financial, accounting, tax, legal, or otherwise) or that of its own advisers. It is also capable of assuming, and assumes, the risks of the Relevant Agreement. It also understands that the terms under which any Transaction may be terminated early are set forth in this Agreement (or in the relevant Confirmation), and any early termination of a Transaction other than pursuant to such terms is subject to mutual agreement of the parties confirmed in writing, the terms of which may require one party to pay an early termination fee to the other party based upon market conditions prevailing at the time of early termination.



- (3) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of the Relevant Agreement, and any agency, brokerage, advisory or fiduciary services that the other party (or any of its affiliates) may otherwise provide to the party (or to any of its affiliates) excludes the Relevant Agreement.

"Relevant Agreement" means this Agreement, each Transaction, each Confirmation, any Credit Support Document, or any agreement (including any amendment, modification, transfer or early termination) between the parties relating to this Agreement or to any Transaction, Confirmation or Credit Support Document.

(ii) **Eligibility.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that it is an "eligible contract participant" within the meaning of the Commodity Exchange Act.

(iii) **ERISA.** Each party represents to the other party at all times hereunder that it is not (i) an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or a plan as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986, as amended (the "Code"), subject to Title I of ERISA or Section 4975 of the Code, or a plan as so defined but which is not subject to Title I of ERISA or Section 4975 of the Code but is subject to another law materially similar to Title I of ERISA or Section 4975 of the Code (each of which, an "ERISA Plan"), (ii) a person or entity acting on behalf of an ERISA Plan, or (iii) a person or entity the assets of which constitute assets of an ERISA Plan.

- (d) **Set-off.** Any amount ("Early Termination Amount") payable to one party ("Payee") by the other party ("Payer") under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(ii) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by means of set off against any amount(s) ("Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer or to any Affiliate of the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer (or between the Payee and any Affiliate of the Payer) or instrument(s) or undertaking(s) issued or executed by the Payee to, or in the favor of, the Payer or any Affiliate of the Payer (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this paragraph.

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the relevant currency.

Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (e) **Change of Account.** Any account designated by a party pursuant to Section 2(b) shall be in the same legal and tax jurisdiction as the original account.
- (f) **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties or any of their Affiliates in connection with this Agreement or any Transaction or potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and those of its Affiliates and (iii) agrees, to the extent permitted by applicable law, that such recordings may be submitted in evidence in any Proceedings.



(g) **Confirmation Procedures.** Upon receipt thereof, Party B shall examine the terms of each Confirmation sent by Party A, and unless Party B objects to the terms within three New York business days after receipt of that Confirmation, those terms shall be deemed accepted and correct absent manifest error, in which case that Confirmation will be sufficient to form a binding supplement to this Agreement notwithstanding Section 8(e)(ii) of this Agreement.

(h) **Covenants of Financial Agreements.**

(i) Party B shall provide Party A at all times hereunder with the same covenant protection as Party B provides Party A (or any of its Affiliates) under Financial Agreements. Therefore, in addition to the Cross Default provisions of this Agreement, and notwithstanding the satisfaction of any obligation or promise to pay money to Party A (or any of its Affiliates) under any Financial Agreement, or the termination or cancellation of any Financial Agreement, Party B hereby agrees to perform, comply with and observe for the benefit of Party A hereunder all affirmative and negative covenants contained in each Financial Agreement applicable to Party B (excluding any obligation or promise to pay money under any Financial Agreement) at any time Party B has any obligation (whether absolute or contingent) under this Agreement.

(ii) For purposes hereof: (A) the affirmative and negative covenants of each Financial Agreement applicable to Party B (together with related definitions and ancillary provisions, but in any event excluding any obligation or promise to pay money under any Financial Agreement) are incorporated (and upon execution of any future Financial Agreement, shall automatically be incorporated) by reference herein (*mutatis mutandis*); (B) if other lenders or creditors are parties to any Financial Agreement, then references therein to the lenders or creditors shall be deemed references to Party A; and (C) for any such covenant applying only when any loan, other extension of credit, obligation or commitment under the Financial Agreement is outstanding, that covenant shall be deemed to apply hereunder at any time Party B has any obligation (whether absolute or contingent) under this Agreement.

(iii) Notwithstanding the foregoing, if the incorporation of any provision by reference from any Financial Agreement would result in the violation by Party B of the terms of that Financial Agreement, or be in violation of any law, rule or regulation (as interpreted by any court of competent jurisdiction), then this Agreement shall not incorporate that provision.

"Financial Agreement" means each existing or future agreement or instrument relating to any loan or extension of credit from Party A (or any of its Affiliates) to Party B (whether or not anyone else is a party thereto), as the same exists when executed and without regard to (i) any termination or cancellation thereof or Party A (or any of its Affiliates) ceasing to be a party thereto (whether as a result of repayment thereof or otherwise), or (ii) unless consented to in writing by Party A (or any of its Affiliates), any amendment, modification, addition, waiver or consent thereto or thereof.

(i) **Transfer.** Notwithstanding anything contained in Section 7 of this Agreement, if the rights of Party A (or any of its Affiliates) in any loan or extension of credit under any Financial Agreement are sold, assigned or otherwise transferred to any purchaser, assignee or transferee to which Party A (or its relevant Affiliate) may lawfully make such sale, assignment or transfer, then Party A may transfer without recourse its rights and obligations in or under this Agreement (and any Credit Support Document) to any such purchaser, assignee or transferee, provided that Party B is provided with written notice of such transfer and a written acknowledgement of the purchaser, assignee or transferee stating that it has acquired such rights and obligations of Party A and is bound by the terms of this Agreement (and any Credit Support Document) as Party A's successor hereunder (and thereunder).



(j) **Independent Obligations.** (i) Although Party B may be entering into one or more Transactions under this Agreement to hedge against the interest expense of, or other risk associated with, an existing or future loan or other financing, this Agreement and each Transaction shall be an independent obligation of Party B separate and apart from any such loan or other financing, and therefore: (A) each party's obligations under this Agreement or any Transaction shall not be contingent on whether any loan or other financing closes, is outstanding or is repaid, in whole or in part, at any time; (B) subject to paragraph (ii) below, any repayment, acceleration, satisfaction, discharge or release of, and any amendment, modification or waiver, with respect to, any loan or other financing, whether in whole or in part, at any time, shall not in any way affect this Agreement, any Transaction or either party's obligations under this Agreement or any Transaction; (C) payments that become due under this Agreement or any Transaction shall be due whether or not (1) the Notional Amount of any Transaction at any time is different from the principal amount of any loan or other financing, (2) the Termination Date of any Transaction occurs before or after the maturity date of any loan or other financing, or (3) any other terms of any loan or other financing are different from the terms of this Agreement or any Transaction; (D) nothing in this Agreement or in any Confirmation is intended to be, nor shall anything herein or therein be construed as, a prepayment penalty, charge or premium for purposes of any loan or other financing, nor shall any terms of any loan or other financing be deemed a waiver of or otherwise impair any amount due or that may become due under this Agreement or under any Transaction; (E) if Party B at any time receives from Party A (or any of its affiliates) any payoff statement or other written statement regarding any loan or other financing, nothing in such statement shall be deemed to apply to this Agreement or any Transaction except as otherwise expressly provided in that statement and then only to the extent so provided; (F) the terms under which any Transaction may be terminated early are set forth in this Agreement (including any Confirmation of such Transaction), and any early termination of a Transaction other than pursuant to the provisions of this Agreement (including any such Confirmation) is subject to mutual agreement of the parties confirmed in writing, the terms of which may require one party to pay an early termination fee to the other party based upon market conditions prevailing at the time of early termination; and (G) if at any time any existing or future collateral or other credit support secures or otherwise supports both this Agreement (or any Transaction hereunder) and any loan or other financing (whether this Agreement or any Transaction hereunder is specifically identified in the collateral or credit support documents, or instead is referred to therein generically), then Party A (or its agent) shall be entitled to continue to hold such collateral or other credit support, and such collateral or other credit support shall continue to secure or otherwise support Party B's obligations under this Agreement (or any Transaction hereunder), until such time as all such obligations of Party B are completely satisfied notwithstanding any repayment, acceleration, satisfaction, discharge or release of any such loan or other financing.

(ii) Nothing in paragraph (i) above shall be construed as impairing or limiting: any set-off rights; any cross default, credit support default or other provisions contained in this Agreement or any Confirmation to the extent such provisions refer to any repayment or acceleration of any loan or other financing; any rights or obligations under any Credit Support Documents; or any obligations of Party B under any covenant incorporated in this Schedule by reference from any loan or other financing (provided that any amendment, modification or waiver executed and delivered by Party A in writing with respect to any such covenant shall be deemed to apply hereunder to that covenant as so incorporated unless otherwise expressly provided in such writing).

(k) **Buy-outs.** Provided that an Early Termination Date has not occurred or been designated under Section 6(e) of this Agreement on or before the date of Party B's request, Party B may from time to time, with respect to any Transaction (or portion thereof), request on any New York Business Day that Party A, in good faith and in accordance with its usual business practices, provide Party B with an offer on that day for the amount Party B would be required to pay to or receive from Party A for terminating that Transaction (or portion thereof) ("Termination Amount"). That request may be made by an authorized officer of Party B by a telephone call to Party A's derivatives desk at (704) 374-3471, and if Party B does not accept Party A's offer on the telephone call in which Party A provides the offer, that offer shall be deemed rejected and the Transaction shall continue in full force and effect subject to the terms of this Agreement, including this paragraph under



which Party B may make subsequent requests. If Party B accepts the offer on that telephone call, then (unless the parties shall have agreed otherwise) that Transaction (or portion thereof, as the case may be) will terminate on the day of acceptance ("Unwind Date"), and the Termination Amount shall be payable by the party specified in that offer on the next succeeding New York Business Day. Any such Termination Amount shall be deemed to be payable under Section 2(a)(i) of this Agreement whether or not evidenced by a Confirmation. The obligation of either party to make any payment or delivery under that Transaction for any payment date or delivery date occurring on or prior to the Unwind Date shall survive such termination unless Party A has included such payment or the value of such delivery in the Termination Amount. Any request by Party B for any such offer shall be made only between the hours of 8 AM and 5 PM (New York City time). Party B's acceptance of any such offer shall be deemed a representation by Party B that the termination of such Transaction, in whole or in part, will not result in the breach of any hedging requirement contained in any agreement or instrument relating to any loan or extension of credit to Party B or its affiliates.

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized signatories as of the date hereof.

**WACHOVIA BANK, NATIONAL ASSOCIATION**

By: Sherry M. Stofor  
Name: Sherry M. Stofor  
Title: Vice President

**USA RESEARCH AND TECHNOLOGY CORPORATION**

By: M. Wayne Davis  
Name: M. Wayne Davis  
Title: Secretary/Treasurer



DC/1768774-1/Confirm

## RATE CAP TRANSACTION CONFIRMATION

**WACHOVIA**

Date: March 01, 2007  
 To: USA Research and Technology Corporation ("Counterparty")  
 Address: The University of S Alabama Administration Bld.  
 Room 338  
 Mobile AL  
 36688 USA  
 E-mail: wdavis@southal.edu, kdavis@southal.edu  
 Attention: Wayne Davis and Ken Davis  
 From: Wachovia Bank, N.A. ("Wachovia")  
 Ref. No: 1768774

Dear Wayne Davis and Ken Davis:

This confirms the terms of the Transaction described below between Counterparty and Wachovia. The definitions and provisions contained in the 2000 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

1. The terms of the particular Transaction to which the Confirmation relates are as follows:

<u>Transaction Type:</u>	Rate Cap
<u>Currency for Payments:</u>	U.S. Dollars
<u>Notional Amount:</u>	USD 18,000,000.00
<u>Term:</u>	
Trade Date:	February 27, 2007
Effective Date:	May 01, 2007
Termination Date:	May 01, 2008, subject to adjustment in accordance with the Modified Following Business Day Convention.
<u>Fixed Amount:</u>	
Fixed Amount Payer:	Inapplicable
Fixed Amount:	At Counterparty's request, the upfront Fixed Amount of this Transaction has been rolled into another Transaction as reflected in the adjustment to the Fixed Rate thereof. The other Transaction is evidenced by a Confirmation dated March 01, 2007 between Wachovia and Counterparty (Wachovia reference number 1587999). Accordingly, no Fixed Amount is payable under this Transaction.
Payment Date:	Inapplicable
<u>Floating Amounts:</u>	
Floating Rate Payer:	Wachovia
Cap Rate:	6.10%
Payment Dates:	Monthly on the 1st of each month commencing June 01, 2007, through and including the Termination Date
Business Day Convention:	Modified Following
Business Day:	New York
Floating Rate for initial Calculation Period:	Determined two London Banking Days prior to the Effective Date
Floating Rate Option:	USD-LIBOR-BBA
Designated Maturity:	1 Month
Spread:	Plus 0.85%

Wachovia: 1768774

Floating Rate Day	
Count Fraction:	Actual/360
Floating Rate determined:	Two London Banking Days prior to each Reset Date.
Reset Dates:	The first day of each Calculation Period.
Compounding:	Inapplicable
Rounding Convention:	5 decimal places per the ISDA Definitions.

2. The additional provisions of this Confirmation are as follows:


<u>Calculation Agent:</u>	Wachovia
<u>Payment Instructions:</u>	Wachovia Bank, N.A. CIB Group, ABA 053000219 Ref: Derivative Desk (Trade No: 1768774) Account #: 04659360006116
<u>Wachovia Contacts:</u>	Settlement and/or Rate Resets: 1-800-249-3865 1-704-383-8429
	Documentation: Tel: (704) 383-4599 Fax: (704) 383-9139
	Collateral: Tel: (704) 383-9529 Please quote transaction reference number.
<u>Payments to Counterparty:</u>	Please provide written payment instructions. Wachovia will make no payments until written payment instructions are received. Phone: 1-800-249-3865 Fax: 1-704-383-8429
<u>Documentation</u>	

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement between Wachovia and Counterparty dated as of December 22, 2006, as amended and supplemented from time to time (the "ISDA Master Agreement"). All provisions contained or incorporated by reference in the Master Agreement will govern this Confirmation except as expressly modified herein.



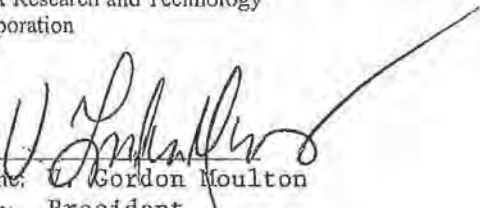
Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us.

Very truly yours,  
Wachovia Bank, N.A.

By: 

Name: Tracey Bissell  
Title: Vice President  
Ref. No. 1768774

Accepted and Confirmed as of date first  
written above;  
USA Research and Technology  
Corporation

By:   
Name: Gordon Moulton  
Title: President



DC/1587999-7/Confirm

## SWAP TRANSACTION CONFIRMATION



# WACHOVIA

Date: March 01, 2007  
 To: USA Research and Technology Corporation ("Counterparty")  
 Address: The University of S Alabama Administration Bld.,  
 Room 338  
 Mobile AL  
 36688 USA  
 Email: wdavis@usouthal.edu, kdavis@usouthal.edu  
 Attention: Wayne Davis and Ken Davis  
 From: Wachovia Bank, N.A. ("Wachovia")  
 Ref. No: 1587999

Dear Wayne Davis and Ken Davis:

This confirms the terms of the Transaction described below between Counterparty and Wachovia. The definitions and provisions contained in the 2000 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern. Fixed Amounts and Floating Amounts for each applicable Payment Date hereunder will be calculated in accordance with the ISDA Definitions, and if any Fixed Amount and Floating Amount are due for the same Payment Date hereunder, then those amounts shall not be payable and instead the Fixed Rate Payer shall pay the positive difference, if any, between the Fixed Amount and the Floating Amount, and the Floating Rate Payer shall pay the positive difference, if any, between the Floating Amount and the Fixed Amount.

1. The terms of the particular Transaction to which the Confirmation relates are as follows:

<u>Transaction Type:</u>	Interest Rate Swap
<u>Currency for Payments:</u>	U.S. Dollars
<u>Notional Amount:</u>	For a Calculation Period, the amount set forth opposite that Calculation Period on Attachment I hereto
<u>Term:</u>	
Trade Date:	February 27, 2007
Effective Date:	May 01, 2008. The Effective Date is the first day of the first Calculation Period. However, the rights and obligations of both parties under this Transaction are in effect as of the Trade Date.
Termination Date:	May 01, 2028, subject to adjustment in accordance with the Modified Following Business Day Convention.

Counterparty hereby acknowledges that the payments due by it under this Transaction shall be due on their respective due dates whether or not (i) there exists at any time a commitment for any Financing or any such commitment expires or terminates, (ii) any closing of any Financing takes place or is postponed or delayed, (iii) any advance is made,

Wachovia: 1587999



outstanding or repaid in connection with any Financing, either before, on or after the Effective Date, (iv) circumstances change such that Counterparty ceases to have any need for, or is unable to obtain, any Financing; or (v) the principal amount of any Financing is less or more than the Notional Amount of this Transaction, the term of any Financing is shorter or longer than the Term of this Transaction, or any other terms of any Financing differ from the terms of this Transaction. "Financing" means any loan or other extension of credit from Wachovia (or any other entity) to Counterparty (or any other entity). In addition, Counterparty acknowledges that its obligations in respect of this Transaction upon the occurrence of any Event of Default, Termination Event or Additional Termination Event shall be due and payable by Counterparty whether any such event occurs before, on or after the Effective Date.

Fixed Amounts:

Fixed Rate Payer:	Counterparty
Payment Dates:	Monthly on the 1st of each month commencing June 02, 2008, through and including the Termination Date
Business Day Convention:	Modified Following
Business Day:	New York
Fixed Rate:	6.10%
Fixed Rate Day Count Fraction:	Actual/360

Floating Amounts:

Floating Rate Payer:	Wachovia
Payment Dates:	Monthly on the 1st of each month commencing June 02, 2008, through and including the Termination Date
Business Day Convention:	Modified Following
Business Day:	New York
Floating Rate for initial Calculation Period:	Determined two London Banking Days prior to the Effective Date
Floating Rate Option:	USD-LIBOR-BBA
Designated Maturity:	1 Month
Spread:	Plus 0.85%
Floating Rate Day Count Fraction:	Actual/360
Floating Rate determined:	Two London Banking Days prior to each Reset Date.
Reset Dates:	The first day of each Calculation Period.
Compounding:	Inapplicable
Rounding convention:	5 decimal places per the ISDA Definitions.

2. The additional provisions of this Confirmation are as follows:

<u>Calculation Agent:</u>	Wachovia
<u>Payment Instructions:</u>	Wachovia Wholesale Lockbox P.O. Box 60308 Charlotte, NC 28260-0308

<u>Wachovia Contacts:</u>	Settlement and/or Rate Resets: 1-800-249-3865 1-704-383-8429
---------------------------	--

Documentation:

Wachovia: 1587999

Tel: (704) 383-4599  
Fax: (704) 383-9139

**Collateral:**

Tel: (704) 383-9529

Please quote transaction reference number.

Please provide written payment instructions.

Wachovia will make no payments until  
written payment instructions are received.

Phone: 1-800-249-3865 Fax: 1-704-383-8429

Payments to Counterparty:

Additional Terms

**Fixed Rate Adjustment.** At Counterparty's request, the upfront Fixed Amount of another Transaction has been rolled over into this Transaction as reflected in an adjustment to the Fixed Rate of this Transaction. The other Transaction is evidenced by a Confirmation dated March 01, 2007 between Wachovia and Counterparty (Wachovia reference number 1768774).

Additional Termination Event

(a) The following event shall constitute an "Additional Termination Event" for this Transaction under the ISDA Master Agreement referred to herein: by June 01, 2007, Counterparty's obligations under the ISDA Master Agreement referred to herein and this Transaction fail to be secured with collateral of a type and quantity, and upon terms and conditions, as shall be acceptable to Wachovia in its sole discretion.

(b) If that Additional Termination Event occurs and is continuing, Wachovia may give written notice to Counterparty designating a New York Business Day not earlier than (nor more than 20 days after) the day such notice is given as the "Early Termination Date" for this Transaction. Upon the giving of that notice, all obligations under this Transaction will terminate and be replaced by an obligation of one party to make a payment to the other party under Section 6(e) of the ISDA Master Agreement referred to herein. The amount of, and the party obligated to make, such payment shall be determined by Wachovia in accordance with the provisions of such Section 6(e). For that purpose, this Transaction shall be a "Terminated Transaction", the Counterparty shall be the "Affected Party", and the "Second Method" and "Market Quotation" shall apply. Such payment will be due on the New York Business Day following the Early Termination Date by the party obligated to pay that amount under Section 6(e) of the ISDA Master Agreement referred to herein.

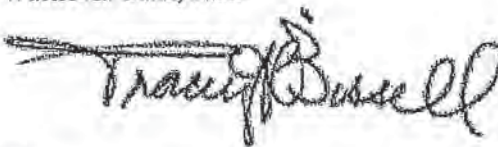
Documentation

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement between Wachovia and Counterparty dated as of December 22, 2006, as amended and supplemented from time to time (the "ISDA Master Agreement"). All provisions contained or incorporated by reference in the Master Agreement will govern this Confirmation except as expressly modified herein.



Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us.

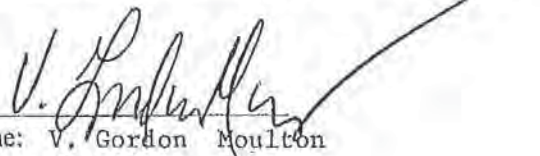
Very truly yours,  
Wachovia Bank, N.A.



By: \_\_\_\_\_  
Name: Tracey Bissell  
Title: Vice President

Ref. No. 1587999

Accepted and Confirmed as of date first  
written above:  
USA Research and Technology Corporation

By:  \_\_\_\_\_  
Name: V. Gordon Moulton  
Title: President



**ATTACHMENT I**  
Amortization Schedule for 1587999

<u>Calculation Period</u> (from and including, to but excluding)		<u>USD Notional Amount</u>	<u>USD Notional Reduction</u> (at end of period)
01 May 08	to 02 Jun 08	18,000,000.00	33,349.05
02 Jun 08	to 01 Jul 08	17,966,650.95	42,662.92
01 Jul 08	to 01 Aug 08	17,923,988.03	36,798.32
01 Aug 08	to 02 Sep 08	17,887,189.71	33,960.73
02 Sep 08	to 01 Oct 08	17,853,228.98	43,220.27
01 Oct 08	to 03 Nov 08	17,810,008.71	31,361.42
03 Nov 08	to 01 Dec 08	17,778,647.29	46,599.25
01 Dec 08	to 02 Jan 09	17,732,048.04	34,801.95
02 Jan 09	to 02 Feb 09	17,697,246.09	37,989.35
02 Feb 09	to 02 Mar 09	17,659,256.74	47,165.69
02 Mar 09	to 01 Apr 09	17,612,091.05	41,420.92
01 Apr 09	to 01 May 09	17,570,670.13	41,631.48
01 May 09	to 01 Jun 09	17,529,038.65	38,872.91
01 Jun 09	to 01 Jul 09	17,490,165.74	42,040.71
01 Jul 09	to 03 Aug 09	17,448,125.03	33,384.95
03 Aug 09	to 01 Sep 09	17,414,740.08	45,374.95
01 Sep 09	to 01 Oct 09	17,369,365.13	42,654.78
01 Oct 09	to 02 Nov 09	17,326,710.35	36,999.78
02 Nov 09	to 01 Dec 09	17,289,710.57	45,989.33
01 Dec 09	to 04 Jan 10	17,243,721.24	31,606.06
04 Jan 10	to 01 Feb 10	17,212,115.18	49,287.13
01 Feb 10	to 01 Mar 10	17,162,828.05	49,520.97
01 Mar 10	to 01 Apr 10	17,113,307.08	41,056.65
01 Apr 10	to 03 May 10	17,072,250.43	38,379.51
03 May 10	to 01 Jun 10	17,033,870.92	47,246.50
01 Jun 10	to 01 Jul 10	16,986,624.42	44,600.38
01 Jul 10	to 02 Aug 10	16,942,024.04	39,085.63
02 Aug 10	to 01 Sep 10	16,902,938.41	45,025.78
01 Sep 10	to 01 Oct 10	16,857,912.63	45,254.66
01 Oct 10	to 01 Nov 10	16,812,657.97	42,635.89
01 Nov 10	to 01 Dec 10	16,770,022.08	45,701.44
01 Dec 10	to 03 Jan 11	16,724,320.64	37,432.22
03 Jan 11	to 01 Feb 11	16,686,888.42	48,951.53
01 Feb 11	to 01 Mar 11	16,637,936.89	52,011.28
01 Mar 11	to 01 Apr 11	16,585,925.61	43,826.87
01 Apr 11	to 02 May 11	16,542,098.74	44,057.08
02 May 11	to 01 Jun 11	16,498,041.66	47,084.00
01 Jun 11	to 01 Jul 11	16,450,957.66	47,323.35
01 Jul 11	to 01 Aug 11	16,403,634.31	44,784.40
01 Aug 11	to 01 Sep 11	16,358,849.91	45,019.65
01 Sep 11	to 03 Oct 11	16,313,830.26	42,491.84
03 Oct 11	to 01 Nov 11	16,271,338.42	50,993.50
01 Nov 11	to 01 Dec 11	16,220,344.92	48,495.63
01 Dec 11	to 03 Jan 12	16,171,849.29	40,521.46
03 Jan 12	to 01 Feb 12	16,131,327.83	51,681.50
01 Feb 12	to 01 Mar 12	16,079,646.33	51,935.45

<u>Calculation Period</u> (from and including, to but excluding)		<u>USD Notional Amount</u>	<u>USD Notional Reduction</u> (at end of period)
01 Mar 12	to 02 Apr 12	16,027,710.88	44,043.24
02 Apr 12	to 01 May 12	15,983,667.64	52,407.08
01 May 12	to 01 Jun 12	15,931,260.56	47,265.68
01 Jun 12	to 02 Jul 12	15,883,994.88	47,513.95
02 Jul 12	to 01 Aug 12	15,836,480.93	50,446.94
01 Aug 12	to 04 Sep 12	15,786,033.99	40,003.95
04 Sep 12	to 01 Oct 12	15,746,030.04	58,910.96
01 Oct 12	to 01 Nov 12	15,687,119.08	48,548.10
01 Nov 12	to 03 Dec 12	15,638,570.98	46,153.24
03 Dec 12	to 02 Jan 13	15,592,417.74	51,687.59
02 Jan 13	to 01 Feb 13	15,540,730.15	51,950.34
01 Feb 13	to 01 Mar 13	15,488,779.81	57,463.39
01 Mar 13	to 01 Apr 13	15,431,316.42	49,891.77
01 Apr 13	to 01 May 13	15,381,424.65	52,760.14
01 May 13	to 03 Jun 13	15,328,664.51	45,236.27
03 Jun 13	to 01 Jul 13	15,283,428.24	58,437.67
01 Jul 13	to 01 Aug 13	15,224,990.57	50,975.56
01 Aug 13	to 03 Sep 13	15,174,015.01	46,101.02
03 Sep 13	to 01 Oct 13	15,127,913.99	59,175.50
01 Oct 13	to 01 Nov 13	15,068,738.49	51,796.32
01 Nov 13	to 02 Dec 13	15,016,942.17	52,068.39
02 Dec 13	to 02 Jan 14	14,964,873.78	52,341.89
02 Jan 14	to 03 Feb 14	14,912,531.89	50,089.99
03 Feb 14	to 03 Mar 14	14,862,441.90	60,435.02
03 Mar 14	to 01 Apr 14	14,802,006.88	58,213.63
01 Apr 14	to 01 May 14	14,743,793.25	56,001.43
01 May 14	to 02 Jun 14	14,687,791.82	51,308.58
02 Jun 14	to 01 Jul 14	14,636,483.24	59,027.00
01 Jul 14	to 01 Aug 14	14,577,456.24	54,376.91
01 Aug 14	to 02 Sep 14	14,523,079.33	52,201.69
02 Sep 14	to 01 Oct 14	14,470,877.64	59,840.77
01 Oct 14	to 03 Nov 14	14,411,036.87	50,367.34
03 Nov 14	to 01 Dec 14	14,360,669.53	62,815.65
01 Dec 14	to 02 Jan 15	14,297,853.88	53,422.91
02 Jan 15	to 02 Feb 15	14,244,430.97	56,126.22
02 Feb 15	to 02 Mar 15	14,188,304.75	63,633.43
02 Mar 15	to 01 Apr 15	14,124,671.32	59,148.64
01 Apr 15	to 01 May 15	14,065,522.68	59,449.31
01 May 15	to 01 Jun 15	14,006,073.37	57,378.26
01 Jun 15	to 01 Jul 15	13,948,695.11	60,043.18
01 Jul 15	to 03 Aug 15	13,888,651.93	53,288.34
03 Aug 15	to 01 Sep 15	13,835,363.59	62,963.61
01 Sep 15	to 01 Oct 15	13,772,399.98	60,939.35
01 Oct 15	to 02 Nov 15	13,711,460.63	56,602.46
02 Nov 15	to 01 Dec 15	13,654,858.17	63,850.59
01 Dec 15	to 04 Jan 16	13,591,007.58	52,649.75



<u>Calculation Period</u> (from and including, to but excluding)	<u>USD Notional Amount</u>	<u>USD Notional Reduction</u> (at end of period)
04 Jan 16 to 01 Feb 16	13,538,357.83	66,717.06
01 Feb 16 to 01 Mar 16	13,471,640.77	64,750.90
01 Mar 16 to 01 Apr 16	13,406,889.87	60,525.64
01 Apr 16 to 02 May 16	13,346,364.23	60,843.56
02 May 16 to 01 Jun 16	13,285,520.67	63,414.32
01 Jun 16 to 01 Jul 16	13,222,106.35	63,736.68
01 Jul 16 to 01 Aug 16	13,158,369.67	61,831.06
01 Aug 16 to 01 Sep 16	13,096,538.61	62,155.84
01 Sep 16 to 03 Oct 16	13,034,382.77	60,273.73
03 Oct 16 to 01 Nov 16	12,974,109.04	67,195.72
01 Nov 16 to 01 Dec 16	12,906,913.32	65,338.91
01 Dec 16 to 03 Jan 17	12,841,574.41	59,143.25
03 Jan 17 to 01 Feb 17	12,782,431.16	68,137.60
01 Feb 17 to 01 Mar 17	12,714,293.56	70,626.79
01 Mar 17 to 03 Apr 17	12,643,666.77	60,249.88
03 Apr 17 to 01 May 17	12,583,416.89	71,247.73
01 May 17 to 01 Jun 17	12,512,169.16	65,225.41
01 Jun 17 to 03 Jul 17	12,446,943.75	63,458.95
03 Jul 17 to 01 Aug 17	12,383,484.80	70,097.98
01 Aug 17 to 01 Sep 17	12,313,386.82	66,269.57
01 Sep 17 to 02 Oct 17	12,247,117.25	66,617.66
02 Oct 17 to 01 Nov 17	12,180,499.59	69,031.51
01 Nov 17 to 01 Dec 17	12,111,468.08	69,382.42
01 Dec 17 to 02 Jan 18	12,042,085.66	65,654.19
02 Jan 18 to 01 Feb 18	11,976,431.47	70,068.86
01 Feb 18 to 01 Mar 18	11,906,362.61	74,459.97
01 Mar 18 to 02 Apr 18	11,831,902.64	66,793.84
02 Apr 18 to 01 May 18	11,765,108.80	73,136.61
01 May 18 to 01 Jun 18	11,691,972.19	69,533.72
01 Jun 18 to 02 Jul 18	11,622,438.47	69,898.96
02 Jul 18 to 01 Aug 18	11,552,539.51	72,223.64
01 Aug 18 to 04 Sep 18	11,480,315.87	64,809.67
04 Sep 18 to 01 Oct 18	11,415,506.20	78,723.11
01 Oct 18 to 01 Nov 18	11,336,783.09	71,399.45
01 Nov 18 to 03 Dec 18	11,265,383.64	69,865.64
03 Dec 18 to 02 Jan 19	11,195,518.00	74,038.50
02 Jan 19 to 01 Feb 19	11,121,479.50	74,414.86
01 Feb 19 to 01 Mar 19	11,047,064.64	78,536.87
01 Mar 19 to 01 Apr 19	10,968,527.77	73,333.81
01 Apr 19 to 01 May 19	10,895,193.96	75,565.15
01 May 19 to 03 Jun 19	10,819,628.81	70,449.29
03 Jun 19 to 01 Jul 19	10,749,179.52	79,950.16
01 Jul 19 to 01 Aug 19	10,669,229.36	74,905.96
01 Aug 19 to 03 Sep 19	10,594,323.40	71,709.12
03 Sep 19 to 01 Oct 19	10,522,614.28	81,025.09
01 Oct 19 to 01 Nov 19	10,441,589.19	76,101.70



<u>Calculation Period</u> (from and including, to but excluding)	<u>USD Notional Amount</u>	<u>USD Notional Reduction</u> (at end of period)
01 Nov 19 to 02 Dec 19	10,365,487.49	76,501.45
02 Dec 19 to 02 Jan 20	10,288,986.04	76,903.29
02 Jan 20 to 03 Feb 20	10,212,082.75	75,576.87
03 Feb 20 to 02 Mar 20	10,136,505.88	82,856.96
02 Mar 20 to 01 Apr 20	10,053,648.92	79,843.00
01 Apr 20 to 01 May 20	9,973,805.92	80,248.87
01 May 20 to 01 Jun 20	9,893,557.05	78,980.39
01 Jun 20 to 01 Jul 20	9,814,576.66	81,058.29
01 Jul 20 to 03 Aug 20	9,733,518.37	76,522.46
03 Aug 20 to 01 Sep 20	9,656,995.91	83,495.65
01 Sep 20 to 01 Oct 20	9,573,500.26	82,283.76
01 Oct 20 to 02 Nov 20	9,491,216.50	79,485.56
02 Nov 20 to 01 Dec 20	9,411,730.94	84,700.85
01 Dec 20 to 04 Jan 21	9,327,030.09	77,214.99
04 Jan 21 to 01 Feb 21	9,249,815.10	87,063.82
01 Feb 21 to 01 Mar 21	9,162,751.28	87,476.89
01 Mar 21 to 01 Apr 21	9,075,274.39	83,278.65
01 Apr 21 to 03 May 21	8,991,995.74	82,192.45
03 May 21 to 01 Jun 21	8,909,803.29	87,167.27
01 Jun 21 to 01 Jul 21	8,822,636.02	86,100.65
01 Jul 21 to 02 Aug 21	8,736,535.37	83,577.61
02 Aug 21 to 01 Sep 21	8,652,957.76	86,963.18
01 Sep 21 to 01 Oct 21	8,565,994.58	87,405.24
01 Oct 21 to 01 Nov 21	8,478,589.34	86,412.90
01 Nov 21 to 01 Dec 21	8,392,176.44	88,288.82
01 Dec 21 to 03 Jan 22	8,303,887.62	84,516.48
03 Jan 22 to 01 Feb 22	8,219,371.14	90,559.97
01 Feb 22 to 01 Mar 22	8,128,811.17	92,382.36
01 Mar 22 to 01 Apr 22	8,036,428.81	88,735.48
01 Apr 22 to 02 May 22	7,947,693.33	89,201.58
02 May 22 to 01 Jun 22	7,858,491.75	91,001.72
01 Jun 22 to 01 Jul 22	7,767,490.03	91,464.31
01 Jul 22 to 01 Aug 22	7,676,025.72	90,628.59
01 Aug 22 to 01 Sep 22	7,585,397.13	91,104.64
01 Sep 22 to 03 Oct 22	7,494,292.49	90,313.33
03 Oct 22 to 01 Nov 22	7,403,979.16	94,566.72
01 Nov 22 to 01 Dec 22	7,309,412.44	93,792.87
01 Dec 22 to 03 Jan 23	7,215,619.57	90,601.71
03 Jan 23 to 01 Feb 23	7,125,017.86	95,937.50
01 Feb 23 to 01 Mar 23	7,029,080.36	97,599.97
01 Mar 23 to 03 Apr 23	6,931,480.39	92,190.52
03 Apr 23 to 01 May 23	6,839,289.87	98,500.42
01 May 23 to 01 Jun 23	6,740,789.45	95,541.18
01 Jun 23 to 03 Jul 23	6,645,248.27	94,917.04
03 Jul 23 to 01 Aug 23	6,550,331.23	98,761.45
01 Aug 23 to 01 Sep 23	6,451,569.78	97,060.39

<u>Calculation Period</u> (from and including, to but excluding)	<u>USD Notional Amount</u>	<u>USD Notional Reduction</u> (at end of period)
01 Sep 23 to 02 Oct 23	6,354,509.39	97,570.22
02 Oct 23 to 01 Nov 23	6,256,939.17	99,142.94
01 Nov 23 to 01 Dec 23	6,157,796.23	99,646.92
01 Dec 23 to 02 Jan 24	6,058,149.31	98,100.42
02 Jan 24 to 01 Feb 24	5,960,048.89	100,652.13
01 Feb 24 to 01 Mar 24	5,859,396.76	102,156.63
01 Mar 24 to 01 Apr 24	5,757,240.13	100,707.55
01 Apr 24 to 01 May 24	5,656,532.58	102,195.01
01 May 24 to 03 Jun 24	5,554,337.57	99,891.05
03 Jun 24 to 01 Jul 24	5,454,446.52	105,070.73
01 Jul 24 to 01 Aug 24	5,349,375.79	102,849.97
01 Aug 24 to 03 Sep 24	5,246,525.82	101,612.23
03 Sep 24 to 01 Oct 24	5,144,913.59	106,539.29
01 Oct 24 to 01 Nov 24	5,038,374.30	104,483.59
01 Nov 24 to 02 Dec 24	4,933,890.71	105,032.42
02 Dec 24 to 02 Jan 25	4,828,858.29	105,584.13
02 Jan 25 to 03 Feb 25	4,723,274.16	105,338.41
03 Feb 25 to 03 Mar 25	4,617,935.75	109,039.51
03 Mar 25 to 01 Apr 25	4,508,896.24	108,792.83
01 Apr 25 to 01 May 25	4,400,103.41	108,581.86
01 May 25 to 02 Jun 25	4,291,521.55	107,679.47
02 Jun 25 to 01 Jul 25	4,183,842.08	110,390.11
01 Jul 25 to 01 Aug 25	4,073,451.97	109,552.11
01 Aug 25 to 02 Sep 25	3,963,899.86	109,455.90
02 Sep 25 to 01 Oct 25	3,854,443.96	112,008.74
01 Oct 25 to 03 Nov 25	3,742,435.22	110,022.60
03 Nov 25 to 01 Dec 25	3,632,412.62	113,715.27
01 Dec 25 to 02 Jan 26	3,518,697.35	111,869.89
02 Jan 26 to 02 Feb 26	3,406,827.46	113,053.74
02 Feb 26 to 02 Mar 26	3,293,773.72	115,321.92
02 Mar 26 to 01 Apr 26	3,178,451.80	114,791.92
01 Apr 26 to 01 May 26	3,063,659.88	115,375.45
01 May 26 to 01 Jun 26	2,948,284.43	115,462.37
01 Jun 26 to 01 Jul 26	2,832,822.06	116,548.87
01 Jul 26 to 03 Aug 26	2,716,273.19	115,760.56
03 Aug 26 to 01 Sep 26	2,600,512.63	118,170.42
01 Sep 26 to 01 Oct 26	2,482,342.21	118,330.48
01 Oct 26 to 02 Nov 26	2,364,011.73	118,130.85
02 Nov 26 to 01 Dec 26	2,245,880.88	119,913.04
01 Dec 26 to 04 Jan 27	2,125,967.84	118,701.11
04 Jan 27 to 01 Feb 27	2,007,266.73	121,425.68
01 Feb 27 to 01 Mar 27	1,885,841.05	122,001.78
01 Mar 27 to 01 Apr 27	1,763,839.27	121,683.99
01 Apr 27 to 03 May 27	1,642,155.28	122,044.92
03 May 27 to 01 Jun 27	1,520,110.36	123,479.40
01 Jun 27 to 01 Jul 27	1,396,630.96	123,849.51



**Calculation Period**

(from and including, to but excluding)

01 Jul 27	to	02 Aug 27
02 Aug 27	to	01 Sep 27
01 Sep 27	to	01 Oct 27
01 Oct 27	to	01 Nov 27
01 Nov 27	to	01 Dec 27
01 Dec 27	to	03 Jan 28
03 Jan 28	to	01 Feb 28
01 Feb 28	to	01 Mar 28
01 Mar 28	to	03 Apr 28
03 Apr 28	to	01 May 28

**USD Notional Amount**

1,272,781.45
1,148,733.70
1,023,624.05
897,878.42
771,645.73
644,619.21
517,274.66
388,867.44
259,829.24
130,333.07

**USD Notional Reduction**

(at end of period)

124,047.75
125,109.65
125,745.63
126,232.69
127,026.52
127,344.55
128,407.22
129,038.20
129,496.17
130,333.07



**EXHIBIT B**  
**FORM OF 2018 PROMISSORY NOTE**

**PROMISSORY NOTE**

Mobile, Alabama  
\_\_\_\_\_, 2018

[\$\_\_\_\_\_]

For value received, **USA Research and Technology Corporation** (the "Borrower"), promises to pay (if more than one, jointly and severally) to the order of **PNC Bank, National Association** (the "Bank") (the Bank, hereinafter, along with any other holder of this note, called the "Creditor"), the principal sum of [\_\_\_\_\_] Million [\_\_\_\_\_] and No/100 Dollars (\$[\_\_\_\_\_]), with interest on the unpaid balance thereof from the date hereof until paid in full at the rate of 4.38 percent (4.38%) per annum. Interest shall be computed on the basis of an assumed 360-day year consisting of 12 consecutive 30-day months.

Commencing on \_\_\_\_\_, principal and interest shall be payable in [\_\_\_\_\_] consecutive monthly installments of principal and interest in the amount of \$[\_\_\_\_\_] each pursuant to the attached Schedule A; provided; however, that upon and during the continuation of an Event of Default (as defined in the Loan Agreement hereinafter described), such payments shall be increased based upon this note bearing interest at the Default Rate during such period of time. The entire principal balance of said debt, together with accrued interest thereon, shall be due and payable in full on June 1, 2028, which payment shall be a balloon payment. "Default Rate" shall mean, for any period of computation, the rate of interest on this note then in effect, plus three hundred (300) basis points.

The Borrower may prepay the principal outstanding under this Note in whole or in part at any time upon not less than thirty (30) days prior written notice to the holder of this Note, at and for an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount of this Note to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the final maturity date of this Note. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) "Selected Interest Rates." For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate.

This note shall be payable at the main office of the Creditor or such other place as the Creditor shall designate from time to time.

The proceeds of this note are to be advanced to the Borrower on the date hereof in accordance with the terms of a Loan Agreement between the Borrower and the Bank of even date herewith (as may be amended from time to time, the "Loan Agreement"). This note is secured by the following instruments executed and delivered to the Creditor, together with such other instruments as may have been delivered previously or simultaneously to the Bank, even though not listed (all of such instruments are hereinafter referred to as the "Security Documents"):

<u>Instrument</u>	<u>Executed By</u>	<u>Date</u>
Negative Pledge Agreement and Assignment of Rents and Leases	Borrower	of even date
Rent Supplement Agreement	University of South Alabama	of even date

It is hereby agreed that if default be made in the payment of this note or any part hereof or any interest hereon, or if an event of default occurs under any Security Document or the Loan Agreement, or if the Borrower shall become bankrupt or insolvent, then, at the option of the Creditor, the entire unpaid principal balance of this note, with accrued interest thereon, shall at once become due and payable in full, without notice, time being of the essence of this contract.

The Borrower waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold it liable, and the Borrower agrees that time of payment may be extended or renewal notes taken or other indulgences granted without notice of, or consent to, such action, and without release of liability.

This note has been executed by the Borrower without condition that anyone else should sign or become bound hereunder and without any other conditions whatever being made. The provisions hereof are binding on the heirs, executors, administrators, successors and assigns of the Borrower, and shall inure to the benefit of the Creditor, its successors and assigns.

The Creditor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies, and no waiver of any kind shall be valid against the Creditor unless in writing and signed by the Creditor. All rights and remedies of the Creditor hereunder and under any statute or rule of law shall be cumulative and may be exercised successively or concurrently. This note shall be governed by and construed in accordance with the laws of the State of Alabama.

**USA Research and Technology Corporation**

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

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

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



**Schedule A**

**EXHIBIT C**  
**2018 LOAN AGREEMENT**

## LOAN AGREEMENT

This **LOAN AGREEMENT** (this "Agreement") is entered as of this \_\_\_\_ day of June, 2018, by and between **USA RESEARCH AND TECHNOLOGY CORPORATION** (the "Borrower") and **PNC BANK, NATIONAL ASSOCIATION** (the "Lender").

### Recitals:

A. The Borrower has applied to the Lender for a loan in the principal amount of \$\_\_\_\_\_ to (i) fund the refinance of a loan (the "Refunded Loan"), the proceeds of which were used to improve that certain real property more particularly described on Exhibit A hereto, (ii) pay the costs of terminating an interest rate exchange agreement entered by Borrower in connection with the Refunded Loan, and (iii) to pay a portion of the costs of issuance of this Loan, the Note herein described, and other related instruments; and

B. The Lender has agreed to make such loan on the terms, conditions and agreements hereinafter set forth.

### Agreement

**NOW, THEREFORE**, in consideration of the Recitals and of the covenants and agreements hereinafter set forth, and of other valuable considerations, the Borrower and the Lender hereby agree as follows:

### ARTICLE I DEFINITIONS

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular, and vice versa.

All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made in accordance with generally accepted accounting principles. All references herein to "generally accepted accounting principles" refer to such principles as they exist at the date of application thereof.

All references in this instrument to designated "Articles", "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

The terms "herein", "hereof" and "hereunder and other words of



similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

**“Business Day”** shall mean a day when state banks located in Birmingham, Alabama, are generally open for business.

**“Cost of Prepayment”** means an amount equal to the present value, if positive, of the product of (a) the difference between (i) the yield, on the beginning date of the applicable interest period, of a U.S. Treasury obligation with a maturity similar to the applicable interest period, minus (ii) the yield on the prepayment date, of a U.S. Treasury obligation with a maturity similar to the remaining maturity of the applicable interest period, and (b) the principal amount to be prepaid, and (c) the number of years, including fractional years, from the prepayment date to the final maturity date of the Note. The yield on any U.S. Treasury obligation shall be determined by reference to Federal Reserve Statistical Release H.15 (519) “Selected Interest Rates.” For purposes of making present value calculations, the yield to maturity of a similar maturity U.S. Treasury obligation on the prepayment date shall be deemed the discount rate.

**“Debt Service Coverage Ratio”** means the ratio of (i) Borrower's Net Operating Income to (ii) the aggregate principal and interest payable on the Loan (after giving effect to any interest rate swap, cap, or collar) along with any and all other amounts arising out of or under any Loan Document and then owed by Borrower to Lender (“**Debt Service**”) and principal and interest payable on all other loans.

**“Default Rate”** shall mean, for any period of computation, the rate of interest on the Note then in effect, plus three hundred (300) basis points.

**“Event of Default”** shall have the meaning attributed to that term in Article VI.

**“Fixed Rate”** shall be a rate equal to 4.38% per annum.

**“Improvements”** shall have the meaning attributed to that term in the Negative Pledge Agreement.

**“Leases”** shall have the meaning attributed to that term in the Negative Pledge Agreement.

**“Liabilities”** shall mean the indebtedness evidenced by the Note, and all interest thereon and any and every extension, renewal and modification thereof and all costs, expenses and charges payable with respect to the Loan Documents.

**“Lien”** shall mean any mortgage, pledge, assignment, charge, encumbrance, lien, security interest or other preferential arrangement of any kind or nature whatsoever.

**“Loan”** shall have the meaning attributed to that term in Section 2.01.

**“Loan Documents”** shall mean this Agreement, the Note, the Security

Documents and all other documents now or hereafter executed or delivered in connection with the Loan or any of the foregoing documents, or to evidence or secure the Loan, and all amendments thereto.

**“Make Whole Amount”** shall mean the premium payable by Borrower to Lender in connection with any prepayment of the Loan equal to the Cost of Prepayment.

**“Maturity Date”** shall mean June 1, 2028.

**“Negative Pledge Agreement”** shall have the meaning attributed to that term in Section 2.03 hereof.

**“Net Operating Income”** means all of Borrower's actual income (including any amounts paid to Borrower by USA under the Rent Supplement Agreement) minus any and all expenses, including, as applicable and without limitation, a management fee, and reasonable reserves for capital repairs and replacements; however, Net Operating Income shall be calculated without considering the effect of extraordinary income and expenses, mark-to-market swap adjustment, depreciation expense and amortization expense. Net Operating Income shall include cash, cash equivalents, and investments which were generated in previous fiscal years and which are available at the end of the year for which Net Operating Income is being calculated.

**“Note”** shall have the meaning attributed to that term in Section 2.01.

**“Person”** shall include natural persons, sole proprietorships, corporations (which shall be deemed to include business trusts), unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies, governments (whether national, federal, state, county, city, municipal or otherwise) and any governmental instrumentality, division, agency, body or department.

**“Real Estate”** shall have the meaning attributed to that term in the Negative Pledge Agreement.

**“Rent Supplement Agreement”** shall mean that certain Rent Supplement Agreement made by USA in favor the Lender dated the same date as this Agreement.

**“Rents”** shall have the meaning attributed to that term in the Negative Pledge Agreement.

**“Security Documents”** shall mean the Negative Pledge Agreement, the Rent Supplement Agreement and any other documents and agreements now or hereafter executed by the Borrower in favor of the Lender securing or relating to the Loan.

**“USA”** shall mean the University of South Alabama.

ARTICLE II  
LOAN TERMS

SECTION 2.01. Note. On the terms and conditions set forth in this Agreement, the Lender agrees to make a loan to the Borrower in a principal amount of \$\_\_\_\_\_ (the "Loan"). The Loan shall be evidenced by a promissory note (the "Note") payable to the order of the Lender, duly executed by the Borrower, dated the date of this Agreement, in the principal amount of \$\_\_\_\_\_, bearing interest at the Fixed Rate (and, during the occurrence and continuation of an Event of Default, at the Default Rate) as more particularly set forth therein. The proceeds from the Loan shall be remitted on the date hereof to the Borrower [as directed in writing by the Borrower.]

SECTION 2.02. Payments. Principal and interest on the Note shall mature and be due and payable in such amount as shall, or the period commencing \_\_\_\_\_, and continuing on the same day of each successive month to and including \_\_\_\_\_, cause the total payment of principal and interest due each month to equal \$\_\_\_\_\_, and on the Maturity Date for the outstanding principal balance of the Note, together with all accrued and unpaid interest thereon, to be due and payable in full, all as shown on Exhibit B hereto; provided; however, that upon and during the continuation of an Event of Default, such payments shall be increased based upon the Note bearing interest at the Default Rate during such period of time.

SECTION 2.03. Security Documents. As security for the Liabilities, the Borrower shall deliver to the Lender at closing (a) a Negative Pledge Agreement and Assignment of Rents and Leases (the "Negative Pledge Agreement") dated the date of this Agreement, covenanting not to encumber the Real Estate and granting to the Lender an assignment of the Leases and the Rents; and (b) the Rent Supplement Agreement.

SECTION 2.04. Prepayment. The Borrower may at any time upon not less than thirty (30) days prior written notice to the holder of the Note, prepay all or any part of the Loan. A prepayment fee equal to the Make Whole Amount, if any, shall be due and payable by the Borrower upon such prepayment.

SECTION 2.05. Time, Place and Application of Payments. All amounts payable under the Loan Documents, including principal, interest, other fees and charges, and reimbursement for expenses, shall be made to the Lender on or before 2:00 p.m. (\_\_\_\_\_, \_\_\_\_\_ time) on the date on which such payment is due, at the main office of the Lender in \_\_\_\_\_, \_\_\_\_\_, in immediately available funds. Payments received by the Lender shall be applied first to expenses, fees and charges, then to interest and finally to principal.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to Lender as follows:

SECTION 3.01. Powers, etc. The Borrower has the power and authority to own its properties and assets and to carry on its business as now being conducted. The



Borrower has the power to execute and perform this Agreement, to borrow hereunder and to execute and deliver the Note and the Security Documents.

SECTION 3.02. Authorization of Borrowing, etc. The execution, delivery and performance of this Agreement, the borrowings hereunder and the execution and delivery of the Note and the Security Documents by the Borrower have been duly authorized by all requisite action, and will not violate any provision of law, any order of any court or other agency of government, or any indenture, agreement or other instrument to which Borrower is a party.

SECTION 3.03. Liabilities. The most recent balance sheet for the Borrower furnished to the Lender accurately reflects the Borrower's obligations for borrowed money or other debts, obligations and liabilities, direct or contingent.

SECTION 3.04. Title. The Borrower has title to all its properties and assets reflected on the balance sheet referred to in Section 3.03 hereof (including, without limitation, leasehold title to the Real Estate) except as encumbered by any Liens reflected on said balance sheet and except for such properties and assets as have been disposed of since the date of said balance sheet as no longer used or useful in the conduct of its business or as have been disposed of in the ordinary course of the business thereof.

SECTION 3.05. Litigation. There are no actions, suits or proceedings pending against or affecting the Borrower, at law or in equity or by or before any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which involve any of the transactions contemplated in this Agreement.

SECTION 3.06. Agreements. To the best of its knowledge, the Borrower is not a party to any agreement or instrument, or subject to any charter or other restriction, materially and adversely affecting its business, properties or assets, operations or condition, financial or otherwise, and the Borrower, to the best of its knowledge, is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party, which default would have a material adverse effect upon its business, properties or assets, operations or condition, financial or otherwise.

SECTION 3.07. Federal Reserve Board Regulations. The Borrower does not intend to use any part of the proceeds of the Loan for the purpose of purchasing or carrying any Margin Stock or retiring any debt incurred to purchase or carry any Margin Stock.

ARTICLE IV  
CONDITIONS OF LENDING

SECTION 4.01. Representations and Warranties. On the date hereof, the representations and warranties set forth in Article III hereof shall be true and correct.

SECTION 4.02. No Default. On and as of the date hereof, Borrower shall be in compliance with all the terms and provisions set forth in this Agreement on its part to be observed or performed, and no Event of Default, nor any event which upon notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing. .

ARTICLE V  
COVENANTS OF BORROWER

From the date on which this Agreement is delivered until payment in full of the principal of and interest on the Loan, the Borrower covenants and agrees that, unless the Lender shall otherwise consent in writing:

SECTION 5.01. Use of Loan Proceeds. The Borrower shall use the Loan proceeds only for the purposes described in Recital A of this Agreement.

SECTION 5.02. Certain Notices. The Borrower shall promptly notify Lender in writing of the expiration of, termination of, material change to or material default under any Lease or the receipt by the Borrower of notice of such event, and in no event later than thirty (30) days after the Borrower has knowledge of such event.

SECTION 5.03. Insurance. The Borrower shall keep (or cause its tenants to keep) the Improvements insured at all times. All such insurance policies shall be issued by such companies and insure against such hazards as the Lender may reasonably require, and shall contain appropriate loss payable clauses in favor of the Lender, and certificates and endorsements evidencing such policies shall be deposited with the Lender in a form acceptable to Lender. All such policies shall contain a provision that they may not be canceled without giving the Lender at least thirty (30) days' prior written notice of such cancellation.

SECTION 5.04. Debt Service Coverage Ratio. The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.00 to 1.00, measured annually. Borrower shall annually furnish to Lender, not later than two hundred seventy (270) days following the end of each fiscal year of Borrower, a "Covenant Compliance Certificate" with respect to Borrower's compliance with this Debt Service Coverage Ratio requirement in substantially the form currently provided by Borrower under the instruments being refinanced hereby.

SECTION 5.05. Financial Statements; Other Information. (a) Borrower shall deliver to Lender, within two hundred seventy (270) days after the close of each fiscal year, audited financial statements reflecting its operations during such fiscal year, including,

without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If audited statements are required, all such statements shall be examined by an independent certified public accountant acceptable to Lender. The opinion of such independent certified public accountant shall not be acceptable to Lender if qualified due to any limitations in scope imposed by Borrower or any other person or entity. Any other qualification of the opinion by the accountant shall render the acceptability of the financial statements subject to Lender's approval.

(b) Borrower shall also deliver to Lender such other financial information or operating reports as shall be reasonably requested by Lender.

SECTION 5.06. Payment of Debt. The Borrower shall (i) make full and timely payment of the principal of, and interest on, the Loan and all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter arising, and (ii) duly comply with all the terms and covenants contained in the Note, the Security Documents and all other instruments and documents given to the Lender in connection with or pursuant to this Agreement, all at the times and places and in the manner set forth therein.

SECTION 5.07. Further Assurances. The Borrower shall at its cost and expense, upon request of the Lender, duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions and purposes of this Agreement and the Security Documents.

## ARTICLE VI EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01. Events of Default. The following shall constitute Events of Default under this Agreement:

(a) if the Borrower shall fail to pay to the Lender when due the principal or interest on the Loan or any other sum due under this Agreement and such default shall continue unremedied for a period of ten (10) days after the date the Lender gives the Borrower written notice of such default; or

(b) if the Borrower shall fail to pay when due the principal of or interest on any bonds, notes or loans of Borrower in an amount greater than \$100,000 and such default shall continue unremedied for a period longer than any grace period applicable to such indebtedness; .

(c) if the Borrower fails to comply with any of the other provisions of this Agreement or of the Note, the Negative Pledge Agreement or the other Loan Documents and such default shall continue unremedied for a period of thirty (30) days after the date the Lender gives the Borrower written notice of such default;



provided, however, that said cure period shall be extended for up to an additional thirty (30) days if (1) the default is not reasonably capable of being cured in thirty (30) days, (2) the Borrower has commenced a cure during the initial thirty (30)-day cure period and (3) the Borrower is diligently pursuing said cure; or

(d) if any statement, representation or warranty contained herein or in the Negative Pledge Agreement or any of the other Loan Documents or in any report, certificate or other instrument delivered to the Lender under this Agreement shall be untrue in any material respect at the time it was made; or

(e) if the Borrower conveys or further encumbers all or any part of the Real Estate or Improvements, without the prior written consent of the Lender; or

(f) if the Borrower fails to pay its debts generally as they come due, or, if a receiver, trustee, liquidator or other custodian is appointed for the Borrower, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage earner's plan or otherwise) is filed by or against the Borrower, or if the Borrower applies for the benefits of, or takes advantage of, any law for relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; provided, however, that in the case of an involuntary bankruptcy filing or other proceeding, said filing or other proceeding involving the Borrower shall not be deemed an Event of Default hereunder unless such filing or other proceeding shall continue undismissed or unstayed for a period of thirty (30) consecutive calendar days; or

(g) if the Borrower becomes insolvent or dissolves.

SECTION 6.02. Remedies. Upon the happening of any Event of Default hereunder, and after any applicable notice and right to cure as provided in Section 6.01 hereof, the Lender may at its option take any or all of the following actions: (a) declare the Loan due and payable; (b) declare the Note in default; and (c) exercise any other remedies or rights which the Lender may have hereunder, under any other instruments executed in connection with this Loan or under applicable law.

## ARTICLE VII MISCELLANEOUS

SECTION 7.01. Notices. Any notice or other communication required or permitted to be given by this Agreement or the other Loan Documents or by applicable law shall be in writing and shall be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below) with receipt acknowledged by the recipient thereof, (b) three (3) Business Days following the date deposited in U.S. mail, certified or registered, with return receipt requested, or (c) one (1) Business Day following the date deposited with Federal Express or other national overnight carrier, and in each case addressed as follows:

If to the Borrower:

USA Research and Technology  
Corporation 307 University Boulevard  
USA Administration Building, Room 170  
Mobile, Alabama 36688

If to the Lender:

PNC Bank, National Association

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SECTION 7.02. Survival of Warranties; etc. All covenants, agreements, representations and warranties made in this Agreement, in the certificates delivered pursuant to this Agreement and in the Security Documents shall survive the making by the Lender of the Loan and the execution and delivery to the Lender of the Note and the Security Documents and shall continue in full force and effect so long as the Note is outstanding and unpaid and this Agreement has not been terminated by the Lender in writing. Whenever in this Agreement or in the Security Documents any party is referred to, such reference shall be deemed to include the successors and assigns of such party, except that the Borrower may not assign or transfer this Agreement or the Security Documents without the prior written consent of the Lender. All covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement, the Note or the Security Documents shall bind the Borrower's successors and assigns and shall inure to the benefit of the successors and assigns of the Lender.

SECTION 7.03. Governing Law; Waiver of Jury Trial. (a) This Agreement and the Note shall be governed by and construed in accordance with and governed by the laws of the State of Alabama.

(b) To the extent permitted by law, each of the Borrower and the Lender irrevocably and voluntarily waives any right it may have to a trial by jury with respect to any controversy or claim between the Borrower and said Lender, whether arising in contract or tort or by statute, including but not limited to any controversy or claim that arises out of or relates to this Loan Agreement, the Note, or the term sheet provided by the Lender to the Borrower respecting the Loan.

SECTION 7.04. Non-Waiver. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege under this Agreement, the Security Documents or the Note shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

SECTION 7.05. Non-Business Days. Should any installment of the principal of, or interest on, the Note become due and payable on other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day, and in the case of an

installment of principal, interest shall be payable thereon at the rate per annum specified in this Agreement during such extension.

SECTION 7.06. Modification; etc. No modification, amendment or waiver of any provision of this Agreement, the Security Documents or the Note, and no consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to, or demand on, the Borrower in any case shall entitle the Borrower to any other or further notice or demand in the same, similar or other circumstances.

SECTION 7.07. Severability. Any provision of this Agreement, the Security Documents or any other Loan Document to which the Borrower is or is to be a party which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 7.08. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together all such counterparts shall constitute but one agreement, and any party may execute this Agreement by executing any one or more of such counterparts.

SECTION 7.09. Successors and Assigns. Plural or singular words used in this Agreement to designate the Borrower shall be construed to refer to the person or persons, firm, partnership or corporation, whether one or more than one, obtaining the Loan from the Lender; all covenants and agreements made herein by the Borrower shall bind the heirs, personal representatives, successors and assigns of all those undersigned designated as the Borrower; and every option, right and privilege herein reserved or secured to the Lender shall inure to the benefit of the Lender's successors and assigns.

**IN WITNESS WHEREOF**, the Borrower has caused this Agreement to be executed by its duly authorized representative, and the Lender has caused this Agreement to be executed by its duly authorized corporate officer, all as of the date first set forth above.

USA RESEARCH AND  
TECHNOLOGY CORPORATION

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

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

Title: \_\_\_\_\_

PNC BANK, NATIONAL ASSOCIATION

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

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

Title: \_\_\_\_\_



**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT D**  
**FORM OF 2018 RENT SUPPLEMENT AGREEMENT**

**RENT SUPPLEMENT AGREEMENT**

Date: \_\_\_\_\_, 2018

USA Research and Technology Corporation 307  
University Boulevard  
Administration Building, Room 170  
Mobile, Alabama 36688  
(Hereinafter referred to as "Borrower")

University of South Alabama 307  
University Boulevard  
Administration Building, Room 380  
Mobile, Alabama 36688 (Hereinafter  
referred to as "USA")

PNC Bank, National Association

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of USA, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of USA, in connection with a loan to the Borrower, USA hereby agrees for the benefit of Bank and its successors and assigns that, to the extent that the Borrower fails to maintain for any fiscal year of the Borrower or USA during the term of the Term Loan a Debt Service Coverage Ratio (as defined in the Loan Agreement) of 1.00:1.00 such that the Borrower's Net Operating Income is, at any such time, less than Borrower's Debt Service obligations to the Bank, USA shall pay to the Borrower, for the benefit of the Bank, any and all rent amounts necessary to cause Borrower's Net Operating Income for such fiscal year to be an amount equal to all of Borrower's Debt Service obligations for such fiscal year. As used herein "Borrower Loan Documents" means the Loan Agreement, the Promissory Note and any Negative Pledge Agreement and Assignment of Rents and Leases as those agreements may be amended from time to time.

USA further covenants and agrees:

**USA'S LIABILITY.** This Rent Supplement Agreement is a continuing and unconditional obligation of payment and performance and not of collection. USA is, to the extent provided herein, jointly and severally obligated together with Borrower for the Borrower's obligation to maintain a 1.00:1.00 Debt Service Coverage Ratio. This Rent Supplement Agreement does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Rent Supplement Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of money from the Borrower to the Bank is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of USA's obligation hereunder, all as though such payment had not been made.

**USA'S RATING.** USA covenants and agrees to maintain an Investment Grade Rating from at least one of the major credit rating agencies, which for Moody's Investors Service means a rating of not lower than "Baa3", for S&P Global Ratings means a rating of not lower than "BBB-", and for Fitch Ratings means a rating of not lower than "BBB-".



**CONSENT TO MODIFICATIONS.** USA consents and agrees that Bank and Borrower may from time to time, upon written agreement between Bank and Borrower, without affecting, impairing, lessening or releasing the obligations of USA hereunder:

(a) extend or modify the time, manner, place or terms of payment of performance and/or otherwise change or modify the credit terms of the Note, Loan Agreement, and/or any other Loan Document;

(b) increase, renew, or enter into a novation of the Note, Loan Agreement, and/or any other Borrower Loan Document; and

(c) waive or consent to the departure from terms of the Note, Loan Agreement, and/or any other Borrower Loan Document;

**FINANCIAL CONDITION AND ACCREDITATION.** USA represents and covenants to Bank and its affiliates that on and after the date hereof:

(a) all audited financial statements of USA as of any fiscal year ended September 30 furnished to Bank (if any) are correct and accurately reflect the financial condition of USA as of the respective dates thereof;

(b) since the date of such financial statements, as of September 30, 2017, there has not occurred a material adverse change in the financial condition of USA;

(c) there are not now pending any court or administrative proceedings or undischarged judgments against USA which represent a material threat to the financial position of USA, no federal or state tax liens have been filed or threatened against USA, and USA is not in default or claimed default under any agreement;

(d) USA is an accredited member of the Southern Association of Colleges and Schools; and

(e) at such reasonable times as Bank requests, USA will furnish Bank and its affiliates with such other financial and accreditation information as Bank and its affiliates may reasonably request, subject however to federal and state laws mandating the privacy of such records.

**INTEREST AND APPLICATION OF PAYMENTS.** Regardless of any other provision of this Rent Supplement Agreement or other Borrower Loan Document, if for any reason the effective interest on any of the Borrower's payment obligation under any Borrower Loan Document should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Borrower's payment obligations to the Bank. Monies received from any source by Bank for application toward payment of the Borrower's obligations may be applied to such Borrower's payment obligation in any manner or order deemed appropriate by Bank and its affiliates.

**DEFAULT.** If any of the following events occur, a default ("Default") under this Rent Supplement Agreement shall exist:

(a) failure of timely payment or performance of any of Borrower's obligations to Bank or a default under any Borrower Loan Document;

(b) a breach of any material agreement or representation contained or referred to in the Rent Supplement Agreement, or any of the Borrower Loan Documents; and/or

(c) the dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against USA.

**REMEDIES IN THE EVENT OF A DEFAULT.** USA and Bank agree as follows:

(a) If a Default occurs, the Bank shall, prior to exercising any remedies it may have under any of the Borrower Loan Documents, notify USA of any such Default;

(b) USA shall have thirty (30) days following notice given to it of such Default to cure such default to the satisfaction of Bank; and

(c) In the event that such Default has not been cured within the above-described 30-day period, then, no later than 30 days thereafter, USA shall: (i) cause the Borrower to convey to it all of the Borrower's right, title and interest to the Site (as that term is defined in the Loan Agreement); and (ii) either (A) purchase from Bank the Borrower Loan Documents by paying to the Bank the entire unpaid balance of all of the Borrower's obligations under the Borrower Loan Documents; or (B) prepay in full the entire unpaid balance of all of the Borrower's obligations under the Borrower Loan Documents. For the avoidance of doubt, payment made under clause (c)(ii)(A) or (B) shall include, without limitation: (I) the entire unpaid principal balance of such obligations; and (II) all interest accrued and unpaid through the date of purchase or prepayment. For the further avoidance of doubt, USA's obligations under this clause (c) are independent of, and in addition to, any obligation of USA elsewhere described in this agreement. Should USA elect to make payment under clause (c)(ii)(A) above, Bank's assignment of the Borrower Loan Documents to USA shall be without warranty, recourse, or representation. Should USA fail to timely honor its obligation to purchase or prepay the Borrower Loan Documents as aforesaid, then USA agrees to pay to Bank, as liquidated damages, the amount of the purchase price or prepayment set forth above together with all reasonable costs, charges and expenses incurred or paid by Bank in connection with enforcing such obligation including, without limitation, reasonable attorneys' fees and costs.

Should USA elect to make payment under clause (c)(ii)(B) of the immediately preceding paragraph, USA shall prepare and Bank will execute and deliver to USA such documents as may be necessary to release Borrower from the Borrower Loan Documents and otherwise relinquish all rights of Bank against USA under any of the Borrower Loan Documents, except for such rights or claims which, by their terms, survive the payment of Borrower's obligations under the Borrower Loan Documents.

**MISCELLANEOUS. Assignment.** This Rent Supplement Agreement and other Borrower Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

Bank's interests in and rights under this Rent Supplement Agreement and other Borrower Loan Documents are freely assignable, in whole or in part, by Bank. Prior to any assignment, Bank will give USA and Borrower 45 days written notice. Any assignment shall not release USA from its obligations hereunder.

**Organization; Powers.** USA

- (i) is a body corporate and politic under the laws of the State of Alabama;
- (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and
- (iii) has the power and authority to execute, deliver and perform, and by all necessary action

has authorized the execution, delivery and performance of all of its obligations under this Rent Supplement Agreement and any other Borrower Loan Document to which it is a party.

**Applicable Law; Conflict Between Documents.** This Rent Supplement Agreement shall be governed by and construed under the laws of the State of Alabama. If the terms of this Rent Supplement Agreement should conflict with the terms of any commitment letter that survives closing, the terms of this Rent Supplement Agreement shall control.

**Severability.** If any provision of this Rent Supplement Agreement or of the other Borrower Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Rent Supplement Agreement or other Borrower Loan Documents.

**Notices.** Any notices to USA shall be sufficiently given if in writing and mailed or delivered to USA's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to XYZ Bank, 301 Downtown Avenue, Suite 1100, Everytown, Eachstate, 12345, or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that USA changes USA's address at any time prior to the date that all of Borrower's obligations to Bank are paid in full, USA agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid.

**Plural; Captions.** All references in the Borrower Loan Documents to borrower, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Borrower Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Borrower Loan Documents.

**Binding Contract.** USA by execution of and Bank by acceptance of this Rent Supplement Agreement agrees that each party is bound to all terms and provisions of this Rent Supplement Agreement.

**Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Rent Supplement Agreement and other Borrower Loan Documents shall be valid unless in writing and signed by an officer of Bank and a contract officer of USA (with respect to this Rent Supplement Agreement) and Borrower (with respect to Borrower Loan Documents). No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or privilege granted pursuant to this Rent Supplement Agreement and other Borrower Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege.

**LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL OR MEDIATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE BORROWER LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY MEDIATION, JUDICIALLY OR OTHERWISE.

**FINAL AGREEMENT.** This Agreement and the other Borrower Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

**FINANCIAL AND OTHER INFORMATION.** USA shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to USA's financial condition. Such information shall be true, complete, and accurate.

**IN WITNESS WHEREOF,** USA and XYZ Bank, on the day and year first written above, have caused this Rent Supplement Agreement to be duly executed under seal.

University of South Alabama

(Seal) By: \_\_\_\_\_

Title: \_\_\_\_\_

PNC Bank, National Association

(Seal) By: \_\_\_\_\_

Title: \_\_\_\_\_



# **COMMITTEE MINUTES**

**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**AUDIT COMMITTEE**

**May 31, 2018  
1:30 p.m.**

A meeting of the Audit Committee of the University of South Alabama Board of Trustees was duly convened by Mr. Jimmy Shumock, Chair, on Thursday, May 31, 2018, at 1:45 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Alexis Atkins, Scott Charlton, Ron Graham, Ron Jenkins and Jimmy Shumock.

Other Trustees: Steve Furr, Arlene Mitchell, Lenus Perkins, Ken Simon, Steve Stokes, Mike Windom and Jim Yance.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Matthew Reichert (Faculty Senate), John Smith, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

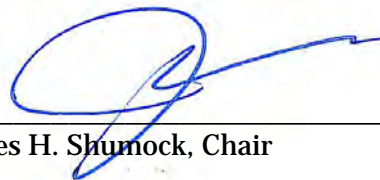
The meeting came to order and the attendance roll was called. Mr. Shumock called upon Mr. Berry for a report on the activities of the Office of Internal Audit, **ITEM 7**. Mr. Berry discussed premises relating to information security and internal audit functions and advised of efforts under way to ascertain areas of risk for the academic and health care components of the University. He said assessment results would be reported to the Board in December. President Waldrop conveyed confidence with the progress being made by Mr. Berry.

Mr. Shumock called for consideration of the minutes of the meeting held on March 1, 2018. On motion by Ms. Atkins, seconded by Dr. Charlton, the Committee voted unanimously to adopt the minutes.

Mr. Shumock briefly remarked that an educational session for Committee members would be held in the weeks ahead.

There being no further business, the meeting was adjourned at 2:01 p.m.

Respectfully submitted:



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James H. Shumock, Chair

**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**DEVELOPMENT, ENDOWMENT AND INVESTMENTS COMMITTEE**

**May 31, 2018  
2:01 p.m.**

A meeting of the Development, Endowment and Investments Committee of the University of South Alabama Board of Trustees was duly convened by Mr. Jim Yance, Chair, on Thursday, May 31, 2018, at 2:01 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Ron Jenkins, Steve Stokes, Mike Windom and Jim Yance.

Members Absent: Chandra Brown Stewart, Tom Corcoran and Margie Tuckson.

Other Trustees: Alexis Atkins, Scott Charlton, Steve Furr, Ron Graham, Arlene Mitchell, Lenus Perkins, Jimmy Shumock and Ken Simon.

Administration and Others: Terry Albano, Owen Bailey, Robert Berry, Lynne Chronister, Josh Cogswell, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Norman Pitman, Matthew Reichert (Faculty Senate), Tom Van Zant (Commonfund), John Smith, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

The meeting came to order and the attendance roll was called. Mr. Yance called for consideration of the minutes of the meeting held on March 1, 2018. On motion by Mr. Windom, seconded by Capt. Jenkins, the Committee voted unanimously to adopt the minutes.

Mr. Yance called on Mr. Albano to discuss endowment and investment performance for the period October 1, 2017, through March 31, 2018, **ITEM 8**. Mr. Albano reported a return of 2.96 percent vs. the relative index of 2.45 percent, an outperformance of .51 percent. He detailed manager performance and asset allocation. Mr. Pitman provided insight on market conditions and manager underperformance. Mr. Albano stated the annualized performance since inception was 5.36 percent vs. the relative index of 4.38 percent, an outperformance of .98 percent. He advised of the divestment of close to \$10 million in investment profits due to market volatility, as was discussed previously. He introduced Mr. Tom Van Zant of Commonfund, who discussed portfolio results for the period October 1, 2017, through April 30, 2018, and shared perspective on market expectations.

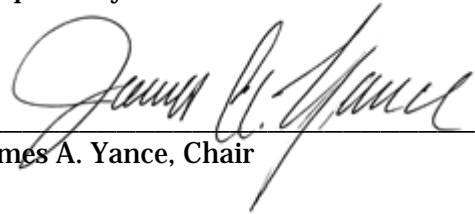
Mr. Yance asked Dr. Erdmann to present **ITEM 9**, a resolution to elect Ms. Shirley Brown as a director of the Jaguar Athletic Fund, Inc., representing women's golf for a three-year term beginning June 2018 and ending June 2021 (for copies of resolutions, policies and other authorized documents, refer to the minutes of the Board of Trustees meeting held on June 1,

2018). On motion by Mr. Windom, seconded by Capt. Jenkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Mr. Yance called for a report on the activities of the Division of Development and Alumni Relations, **ITEM 10**. Dr. Stokes, Upward & Onward Campaign Co-Chair, discussed campaign highlights, noting \$15.8 million in gifts and pledges secured for the fiscal year through May 29, 2018, and approximately \$120 million raised toward the \$150 million campaign goal. He reported \$16.7 million recorded for the Mitchell-Moulton Scholarship Initiative, inclusive of matching gifts, and significant gifts recently signed, including \$1.2 million from Blue Cross Blue Shield of Alabama for College of Medicine scholarships; \$1 million for the USA Children's & Women's Hospital Neonatal Intensive Care Unit; and \$1.5 million for the College of Engineering. He said the SouthFund employee drive was a success, noting the \$750,000 goal was surpassed with \$822,855 raised and a 57 percent participation rate. He said the inaugural USA Day of Giving held on March 22 raised \$346,368 from 957 donors and discussed upcoming development activities. Associate Vice President for University Development Mr. Josh Cogswell presented additional fundraising results.

There being no further business, the meeting was adjourned at 2:34 p.m.

Respectfully submitted:



James A. Yance, Chair



**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**HEALTH AFFAIRS COMMITTEE**

**May 31, 2018  
2:34 p.m.**

A meeting of the Health Affairs Committee of the University of South Alabama Board of Trustees was duly convened by Dr. Steve Furr, Chair, on Thursday, May 31, 2018, at 2:34 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Alexis Atkins, Scott Charlton, Steve Furr, Arlene Mitchell and Steve Stokes.

Member Absent: Chandra Brown Stewart.

Other Trustees: Ron Graham, Ron Jenkins, Lenus Perkins, Jimmy Shumock, Ken Simon, Mike Windom and Jim Yance.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Errol Crook, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, Ashton Hennig, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Beth Poates, Matthew Reichert (Faculty Senate), John Smith, Supraja Sridhar, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

The meeting came to order and the attendance roll was called. Dr. Furr called for consideration of the minutes of the meeting held on March 1, 2018. On motion by Ms. Mitchell, seconded by Ms. Atkins, the Committee voted unanimously to adopt the minutes.

Dr. Furr presented **ITEM 11**, a resolution authorizing the USA Hospitals medical staff appointments and reappointments for February, March and April 2018 (for copies of resolutions, policies and other authorized documents, refer to the minutes of the Board of Trustees meeting held on June 1, 2018). On motion by Dr. Charlton, seconded by Ms. Mitchell, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Dr. Furr presented **ITEM 12**, a resolution authorizing revisions to the USA Hospitals medical staff bylaws and rules and regulations as submitted. On motion by Ms. Atkins, seconded by Dr. Stokes, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Dr. Furr asked Dr. Marymont to discuss **ITEM 13**, a resolution acknowledging the contributions of Professor and Chair of the Department of Emergency Medicine Dr. Edward Panacek; Professor and Chair of the Department of Surgery Dr. William Richards; and Professor and Chair of the Department of Obstetrics and Gynecology Dr. Lisa Spiryda, and bestowing upon

them the title of Distinguished Professor for the 2018-2019 academic year. On motion by Ms. Mitchell, seconded by Ms. Atkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Dr. Furr called on Dr. Marymont for a report on the activities of USA Health and the College of Medicine (COM), **ITEM 14**. Dr. Marymont advised that a major issue some medical students face is hunger. He introduced Ms. Supraja "Sippy" Sridhar, student and founder of an initiative to reduce collegiate hunger and increase awareness. Ms. Sridhar gave an overview of the student-led Donor to Diner program that has garnered international media attention and become a national organization with chapters at other institutions.

Chairman Simon asked Dr. Marymont to comment on medical exams outcomes. Dr. Marymont stated the average MCAT score of 30 and grade point average of 3.75 of students accepted into the program rank in the 20<sup>th</sup> percentile nationally. He said these students' average Step 1 and Step 2 scores place in the 40<sup>th</sup> and 90<sup>th</sup> percentiles, respectively, which he called testament to the educational process and faculty at South. He added the average Step 1 score of 234 for the COM's 2018 graduating class exceeded the national average score of 228 and was the highest on record, which he estimated would rank in the 50<sup>th</sup> to 60<sup>th</sup> percentile nationally.

Mr. Bailey recognized Manager of Outreach and Special Projects for USA Health Ms. Ashton Hennig; USA Health Social Worker at South's Stanton Road Clinic Ms. Beth Poates; and Professor and Abraham Mitchell Chair of Internal Medicine/Director of South's Center for Health Communities Dr. Errol Crook for their efforts administering a program that addresses food insecurity experienced by patients of the Stanton Road Clinic. Dr. Crook shared information about South's Boxing Out Hunger partnership with Feeding the Gulf Coast, which began in June 2017 and was one of five projects in the nation to be selected for grant funding through Feeding America's Health Care Pilot Program.

Mr. Bailey discussed the story of Ms. Cynthia Pettway, a patient of USA Children's & Women's Hospital who virtually participated, by means of a remote-driven robot, in her high school graduation held at the Mitchell Center. He said the news coverage was circulated nationally and internationally and reached more than 16 million viewers, garnering South Alabama widespread attention.

There being no further business, the meeting was adjourned at 3:07 p.m.

Respectfully submitted:

  
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Steven P. Furr, M.D., Chair

**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**ACADEMIC AND STUDENT AFFAIRS COMMITTEE**

**May 31, 2018  
3:07 p.m.**

A meeting of the Academic and Student Affairs Committee of the University of South Alabama Board of Trustees was duly convened by Dr. Scott Charlton, Chair, on Thursday, May 31, 2018, at 3:07 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Alexis Atkins, Scott Charlton, Steve Furr, Ron Graham, Lenus Perkins and Mike Windom.

Member Absent: Margie Tuckson.

Other Trustees: Ron Jenkins, Arlene Mitchell, Jimmy Shumock, Ken Simon, Steve Stokes and Jim Yance.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Angela Coleman, Brant Cook, Josh Crownover, Reid Cummings, Joel Erdmann, Julie Estis, Monica Ezell, Mike Finan, John Friend, Happy Fulford, Chris Hansen, Mike Haskins, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Neel Patel, Matthew Reichert (Faculty Senate), John Smith, Jana Stupavsky, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

The meeting came to order and the attendance roll was called. Dr. Charlton called for consideration of the minutes of the meeting held on March 1, 2018. On motion by Mr. Windom, seconded by Ms. Atkins, the Committee voted unanimously to adopt the minutes.

Dr. Charlton called upon Dr. Smith, who introduced new Chief Compliance Officer Mr. Chris Hansen. As part of **ITEM 19**, a report on the activities of the Division of Student Affairs, Dr. Smith shared that, effective June 25, the college division of book retailer Barnes & Noble would manage University Bookstore operations.

Dr. Charlton called upon Provost Johnson for presentation of **ITEM 15**, a resolution commending retired College of Nursing Dean Dr. Debra Davis for service (for copies of resolutions, policies and other authorized documents, refer to the minutes of the Board of Trustees meeting on June 1, 2018). On motion by Ms. Mitchell, seconded by Ms. Atkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Dr. Charlton asked Provost Johnson to discuss **ITEM 16**, a resolution granting tenure and promotion to faculty members as recommended. On motion by Mr. Windom, seconded by Mr. Perkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Concerning **ITEM 17**, a resolution authorizing tuition, fees, and housing and dining rates for 2018-2019 as set forth, Provost Johnson summarized a recommendation for a five percent increase in tuition, a new academic infrastructure and technology fee, and a nominal increase in engineering tuition that would fund the hiring of a faculty member to serve as a professor of practice. He emphasized, with the increases as proposed, South's rates would continue to be competitively positioned among those of peer institutions in the state. Dr. Marymont added that a three-percent increase in College of Medicine tuition was recommended as well. Dr. Smith said the proposal included an increase in housing rates averaging 3.7 percent and in dining rates averaging 3.4 percent, the proceeds of which would help fund improvements to the dining program and residential facilities. He further reminded the group that revenues from state appropriation and tuition were not expended on housing and dining operations. President Waldrop stressed the importance of sustaining quality programs. Brief discussion took place on the impact of minimal tuition and fee increases over time. On motion by Ms. Atkins, seconded by Mr. Graham, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Dr. Charlton called upon Dr. Mitchell for additional remarks related to **ITEM 19**, a report on the activities of the Division of Student Affairs. Dr. Mitchell introduced South's new Director of the Office of Counseling and Testing Services, Dr. John Friend. Associate Dean of Students and Title IX Coordinator Dr. Krista Harrell introduced 2017-2018 Global Student Director Mr. Josh Crownover and incoming director for 2018-2019 Mr. Bryant Cook. She talked about the formation of a Global Student Leader Network at South designed to connect students with their counterparts at other institutions in the nation and beyond. Mr. Crownover shared brief remarks on the initiative.

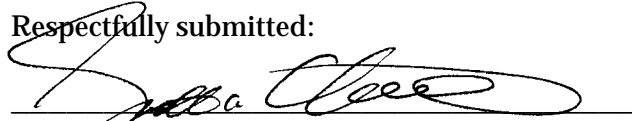
Dr. Charlton asked Ms. Chronister to address **ITEM 20**, a report on the activities of the Division of Research and Economic Development. Ms. Chronister introduced Mitchell College of Business Economics and Finance Assistant Professor Dr. Reid Cummings and Management Instructor Ms. Jana Stupavsky, who serve as the Director and Assistant Director of South's Center for Real Estate and Economic Development (CREED), respectively. Dr. Cummings and Ms. Stupavsky gave an overview on the services provided by CREED. Business major Mr. Neel Patel was recognized for his role with the Center.

Dr. Charlton called for a report on the activities of the Division of Academic Affairs, **ITEM 18**. Provost Johnson introduced Speech Pathology and Audiology Associate Professor Dr. Julie Estis, who serves as Director of TeamUSA, the University's quality enhancement plan (QEP). Dr. Estis shared information on TeamUSA, which focuses on team-based learning in the classroom to improve student outcomes.

Provost Johnson introduced Associate Vice President for Institutional Effectiveness Dr. Angela Coleman, who advised of a new SACSCOC (Southern Association of Colleges and Schools Commission on Colleges) standard that will require boards to conduct regular self-assessments.

There being no further business, the meeting was adjourned at 4:29 p.m.

Respectfully submitted:



Scott Charlton, M.D., Chair



**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**BUDGET AND FINANCE COMMITTEE**

**May 31, 2018  
4:29 p.m.**

A meeting of the Budget and Finance Committee of the University of South Alabama Board of Trustees was duly convened by Mr. Jim Yance, Vice Chair, on Thursday, May 31, 2018, at 4:29 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Ron Graham, Arlene Mitchell, Lenus Perkins, Steve Stokes and Jim Yance.

Member Absent: Tom Corcoran.

Other Trustees: Alexis Atkins, Scott Charlton, Steve Furr, Ron Jenkins, Jimmy Shumock, Ken Simon and Mike Windom.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Matthew Reichert (Faculty Senate), John Smith, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

The meeting came to order and the attendance roll was called. Mr. Yance called for adoption of the revised agenda. On motion by Mr. Perkins, seconded by Mr. Graham, the revised agenda was adopted unanimously.

Mr. Yance called for consideration of the minutes of the meeting held on March 1, 2018. On motion by Ms. Mitchell, seconded by Mr. Perkins, the Committee voted unanimously to adopt the minutes.

Mr. Yance called upon Mr. Weldon to address the quarterly financial statements for the six months ended March 31, 2018, **ITEM 21**. Mr. Weldon advised of a \$4.5 million increase in net position compared to a \$22 million increase in net position at the end of March 2017. He said the information in the financial statements was as expected.

Mr. Yance called on Ms. Chronister for presentation of **ITEM 22**, a resolution to elect directors of the USA Research and Technology Corporation (RTC) Board as nominated (for copies of resolutions, policies and other authorized documents, refer to the minutes of the Board of Trustees meeting held on June 1, 2018). On motion by Ms. Mitchell, seconded by Mr. Graham, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

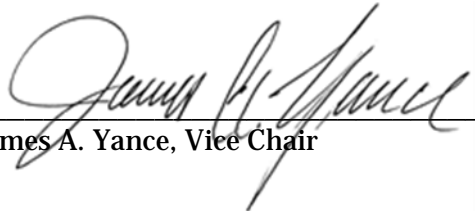
Mr. Yance asked Mr. Weldon to discuss **ITEM 23**, a resolution authorizing the President to execute a rent supplement agreement to replace one created in 2007 that guaranteed RTC debt owed to Wells Fargo Bank (formerly Wachovia Bank). Mr. Weldon explained that refinancing of this debt to capitalize on lower interest rates, along with termination of an interest rate swap, would allow the

RTC to save money and improve cash flow. He said refinancing with a different lender necessitated a new rent supplement agreement. On motion by Ms. Atkins, seconded by Mr. Perkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

Mr. Yance called on President Waldrop to address **ITEM 23.A**, a resolution authorizing the President to execute a contract for site work in preparation for construction of an on-campus football stadium subject to applicable bid laws and specific funding conditions. President Waldrop conveyed optimism that construction of a stadium could be completed in time for the 2020 football season and he advised of numerous meetings held with potential donors, as well as with members of the Mobile City Council and Mobile County Commission, to discuss funding support. He and Dr. Erdmann thanked Mr. Yance and Mr. Shumock for their commitment in attending the meetings. Dr. Erdmann credited Associate Vice President for Facilities Management Mr. Randy Moon for expert guidance in the planning process and he presented artistic renderings depicting the proposed 25,000-seat stadium that would be built adjacent to the Jaguar Training Center and Football Field House. President Waldrop emphasized that tuition dollars would not be used for the project and said progress would depend primarily on funding commitments from public and private sources. Mr. Weldon advised that construction of the proposed \$70 to \$75 million stadium would be financed with a bond issue and debt service would be paid from Athletics and Auxiliary Enterprises revenue streams as well as from pledged community support. He added that execution of a bond issue may have a minor impact on the University's bond rating. Mr. Yance and Mr. Shumock conveyed appreciation for the collaborative process. On motion by Dr. Stokes, seconded by Mr. Perkins, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

There being no further business, the meeting was adjourned at 4:52 p.m.

Respectfully submitted:



James A. Yance, Vice Chair

**UNIVERSITY OF SOUTH ALABAMA  
BOARD OF TRUSTEES**

**COMMITTEE OF THE WHOLE**

**May 31, 2018  
4:52 p.m.**

A meeting of the Committee of the Whole of the University of South Alabama Board of Trustees was duly convened by Judge Ken Simon, Chair *pro tempore*, on Thursday, May 31, 2018, at 4:52 p.m. in the Board Room of the Frederick P. Whiddon Administration Building.

Members Present: Alexis Atkins, Scott Charlton, Steve Furr, Ron Graham, Ron Jenkins, Arlene Mitchell, Lenus Perkins, Jimmy Shumock, Ken Simon, Steve Stokes, Mike Windom and Jim Yance.

Members Absent: Chandra Brown Stewart, Tom Corcoran, Kay Ivey and Margie Tuckson.

Administration and Others: Owen Bailey, Robert Berry, Lynne Chronister, Joel Erdmann, Monica Ezell, Mike Finan, Happy Fulford, Mike Haskins, David Johnson, Melva Jones, John Marymont, Mike Mitchell, Grace Newcombe (SGA), Matthew Reichert (Faculty Senate), John Smith, Jean Tucker, Tony Waldrop and Scott Weldon.

Media: Cassie Fambro and Alyssa Newton (WPMI) and Richard Narramore (*Vanguard*).

The meeting came to order and the attendance roll was called. Chairman Simon called for consideration of the minutes of the Evaluation and Compensation Committee meeting held on March 1, 2018. On motion by Mr. Shumock, seconded by Ms. Atkins, the Committee voted unanimously to adopt the minutes.

Chairman Simon presented **ITEM 24**, a resolution authorizing the dates of Board meetings for 2018-2019 (for copies of resolutions, policies and other authorized documents, refer to the minutes of the Board of Trustees meeting held on June 1, 2018). On motion by Mr. Shumock, seconded by Mr. Windom, the Committee voted unanimously to recommend approval of the resolution by the Board of Trustees.

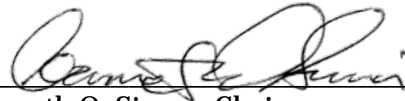
Chairman Simon called upon Provost Johnson to discuss **ITEM 25**, a resolution to adopt the amended bylaws of the Board of Trustees. Provost Johnson shared background involving a request from the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) for legislation that would abolish the Governor's position as chair of Alabama college and university boards, which was viewed as a conflict of interest. He stated SACSCOC later agreed to accept commensurate changes in the language of the Alabama Community College System bylaws in lieu of new legislation. Accordingly, he said authorization of South's amended Board bylaws as proposed would bring South Alabama into compliance with the SACSCOC recommendation. He added that the Governor's role as President of the Board would not change and stated USA had communicated with Governor Ivey and she was understanding of the revisions. He predicted public universities around the state would need to effect similar corrective action eventually. Ms. Tucker described other minor housekeeping updates, such as the addition of language relating to the Evaluation and Compensation

Committee of the Whole  
May 31, 2018  
Page 2

Committee and correction of titles. She stated statutory amendments and additional changes to the Board bylaws may be needed at a later time.

There being no further business, the meeting was adjourned at 5:00 p.m.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Kenneth O. Simon", written over a horizontal line.

Kenneth O. Simon, Chair