

MEMORANDUM

TO: Kenneth Adams, President/CEO, NYS Empire State Development Corporation and Commissioner of the NYS Department of Economic Development

FROM: Robert J. Jones, President, University at Albany, SUNY

RE: University at Albany's Campus Plan for START-UP NY

DATE: December 16, 2013

I, President Robert J. Jones of the University at Albany, hereby certify the following:

- a.) we have provided a copy of the enclosed Campus Plan for Designation of Tax-Free Area, at least 30 days prior to submitting the plan to the Commissioner, to the municipality or municipalities in which the proposed Tax-Free NY Area is located, local economic development entities, the applicable faculty senate, union representatives, and student government; and
- b.) we comply with Public Officers Law Section 74; State University of New York's Policy on Conflict of Interest and; and Conflict of Interest Policy of The Research Foundation for The State University of New York; and attached copies of the polices herewith; and
- c.) we comply with the Commissioner's rules and guidelines on anticompetitive behavior (NY EDL, art. 21, sect. 440); and
- d.) the proposed Tax-Free NY Area(s) has not been financed with any tax-exempt bonds and, therefore, will not jeopardize the tax-free status of the University at Albany; and **OR** the proposed Tax-Free NY Area has been financed with tax-exempt bonds and appropriate documentation deeming that the designation of the Tax-Free NY Area(s) will not jeopardize or conflict with any existing tax-exempt bonds used to finance any property of CAMPUS is enclosed; and
- e.) we conveyed to the surrounding municipalities (and economic development entities) that UAlbany is not including in its plan off-campus land or space for the proposed Tax-Free NY Area at the time of initially submitting our plan. However, UAlbany may choose to do so in the future and will consult in advance with the surrounding municipalities (and economic development entities) regarding the designation of such off-campus of space or land as required by statute and regulation; and
- f.) we have not displaced or eliminated any academic programs, any administrative programs, offices, housing facilities, dining facilities, athletic facilities, or any other

facility, space or program that actively serves students, faculty or staff in order to created vacant land or space to be designated as a Tax-Free NY Area; and

g.) the information contained in the enclosed application is accurate and complete.

Robert J. Jones
President, University at Albany

DATE

Enclosures:

- 1.) UAlbany's START-UP NY Plan
- 2.) Tax-Free Area Plan with shapefile of campus area and/or shapefile of vacant space
 - a) Uptown Campus
 - b) Downtown Campus
 - c) East Campus
- 3.) Letter from bond counsel or other appropriate documentation
- 4.) List of property(ies) (see Excel spreadsheet)
- 5.) Lease template and Facilities Use Agreement Templates
 - a) Lease Template for Vacant Space
 - b) Lease Template for Vacant Land
- 6.) Public Officers Law, §74
- 7.) SUNY Conflict of Interest Policy
- 8.) RF Conflict of Interest Policy
- 9.) SUNY Statement on Research Integrity



START-UP NY CAMPUS PLAN FOR DESIGNATION OF TAX-FREE AREA(S)

Campus Name: University at Albany, State University of New York
 Campus Contact Person: Michael Shimazu, Associate Vice President for Business Partnerships and Economic Development

THE TAX-FREE NY AREA PLAN SHALL BE DEVELOPED BY THE CAMPUS TEAM AND PROVIDE THE FOLLOWING REQUIRED INFORMATION:

1) Specification or identification of space or land proposed for designation as a Tax-Free NY Area identifying the following:

i. Provide the name and address of the SUNY, CUNY or community college seeking approval as a Sponsor, the address of the space or land proposed for designation as a Tax-Free NY Area, and a written description of the physical characteristics of the area for designation.

Name:	University at Albany
Campus Address:	1400 Washington Avenue; Albany, NY 12222
Address(es) of Proposed Tax-Free NY Area(s):	<ol style="list-style-type: none"> 1. Uptown Campus – 1400 Washington Avenue, Albany NY 12222 – space 2. Downtown Campus – 135 Western Avenue, Albany NY 12203 – space 3. East Campus – 5 University Place, Rensselaer, NY 12144 – space 4. Uptown Campus – 1400 Washington Avenue, Albany NY 12222 – land 5. East Campus – 5 University Place, Rensselaer, NY 12144 -- land
Description of physical characteristics:	<ol style="list-style-type: none"> 1. Uptown Campus – space – 1,635 SF biology wet lab with fume hood; existing building on well-established suburban/urban campus, adjacent to University instruction and researchers; minor upgrades needed 2. Downtown Campus – space – up to 10,000 SF in 127,000 SF Schuyler Building; urban campus suitable for mixed use commercial; major renovation of spaces required; building is currently not in use 3. East Campus – space – up to 8,631 SF of wet lab and offices of various sizes on established suburban, multi-tenant campus; mixed commercial, university, and lab research use; minor upgrades needed; owned by UAlbany affiliate: University at Albany Biosciences Development Corporation (UABDC) 4. Uptown Campus – land – up to approximately 18 acres of land on Fuller Road West portion of campus; land is suburban/urban with close proximity to residences and Nanotech campus; site is undeveloped and would require utilities and road extension 5. East Campus – land – up to 35 acres of land in suburban mixed use campus; land is undeveloped with limited road frontage; would require utilities extensions; land owned by UABDC

ii. Provide digital files containing Polygon shapefile that delineates area for designation.

<i>Attach to Campus Plan</i> See attachments 2 a, b, and c
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iii. Provide digital files containing Point shapefile that provides locations of area for designation. Point shapefile must include a unique identifier for each feature.

<i>Attach to Campus Plan</i> See attachments 2a, b, and c

- iv. Provide digital files containing a chart that includes name of city, town or village where the area for designation is located; street address; zip code; name of property owner; type of property; parcel identification number (if applicable and available); vacant Building name/number; type of vacant space; total square footage of area for designation; unique identifier; and any geographic information system (GIS) maps, as indicated on the application form, of the area comprising the proposed Tax-Free NY Area, showing existing streets, highways, waterways, natural boundaries and other physical features.

Attach to Campus Plan **John Giarrusso to provide**

- 2) The total square footage of the space or acreage of land proposed for designation as a Tax-Free NY Area

SPACE – up to 20,266 SF

LAND – up to 53 acres

- 3) Provide a description of the type of business or businesses that may locate on the area to be designated.

See UAlbany's START-UP NY Plan (Attachment #1; page 5)

- 4) Provide a description of the academic mission of the Sponsor and how the anticipated businesses will align or further the academic mission of the university or college.

See UAlbany's START-UP NY Plan (Attachment #1; page 6)

- 5) Provide a description of how participation by those types of businesses in the Program would generate positive community and economic benefits, including but not limited to:

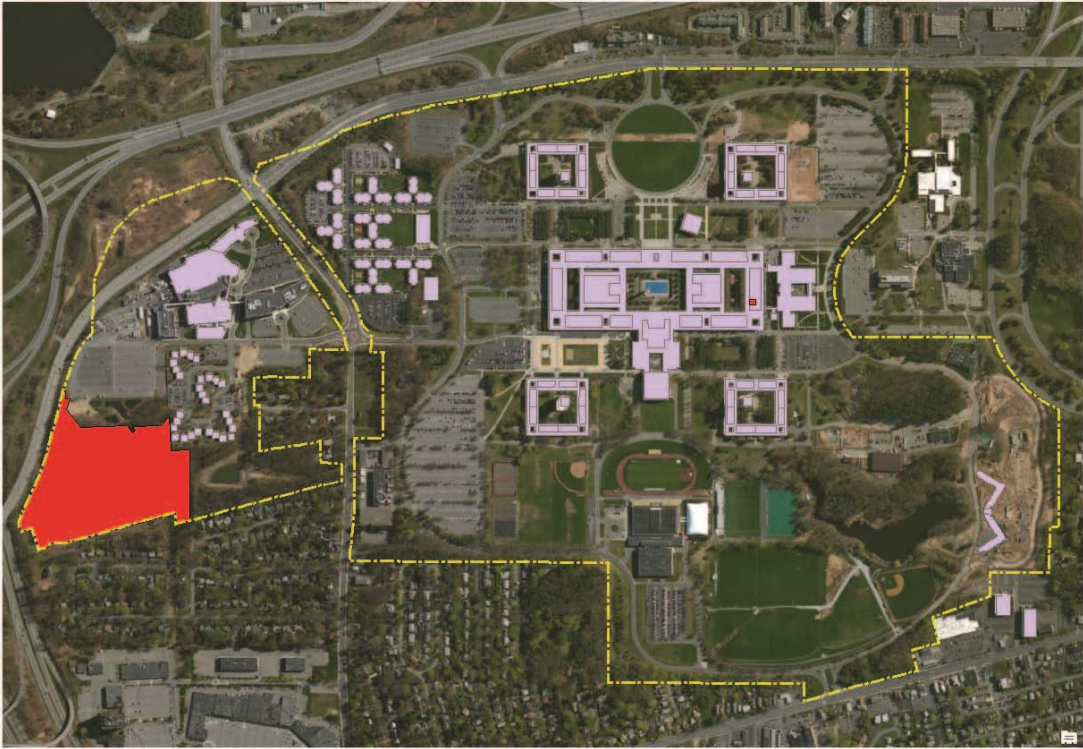
- Increased employment opportunities;
- Increased opportunities for internships, vocational training and experiential learning for undergraduate and graduate study;
- Diversification of the local economy;
- Environmental sustainability;
- Increased entrepreneurship opportunities;
- Positive, non-competitive and/or synergistic links to existing businesses;
- Effect on the local economy; and
- Opportunities as a magnet for economic and social growth.

See UAlbany's START-UP NY Plan (Attachment #1; page 8)

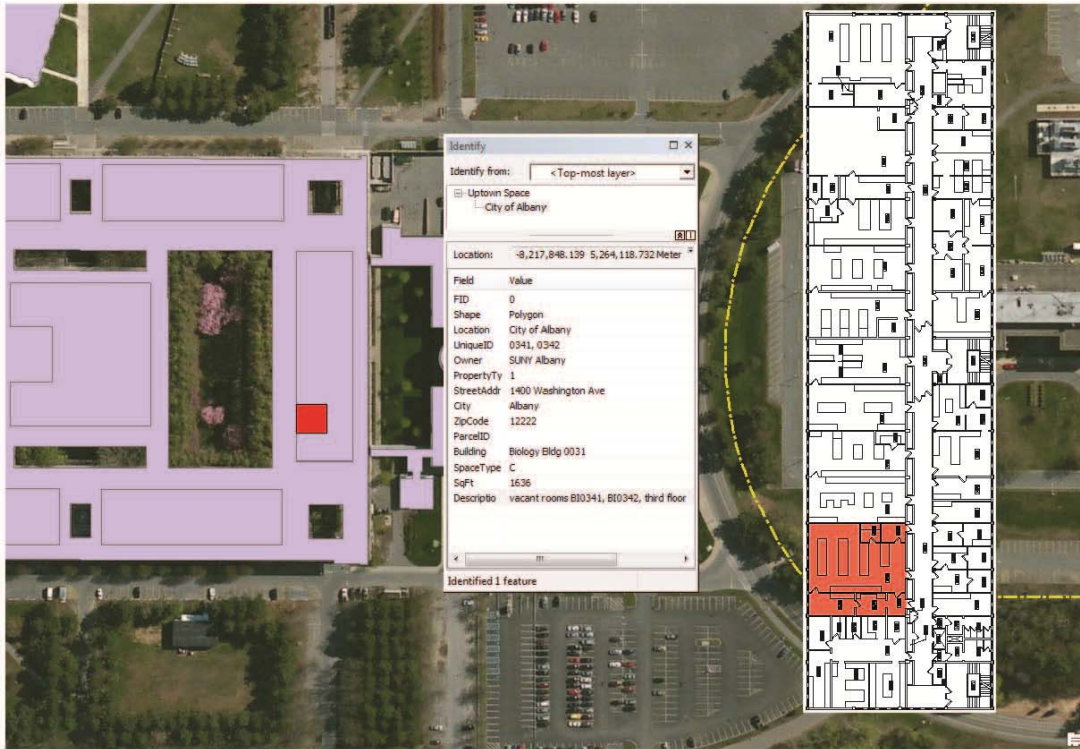
- 6) Provide a description of the process the Sponsor will follow to select participating businesses.

See UAlbany's START-UP NY Plan (Attachment #1; page 8)

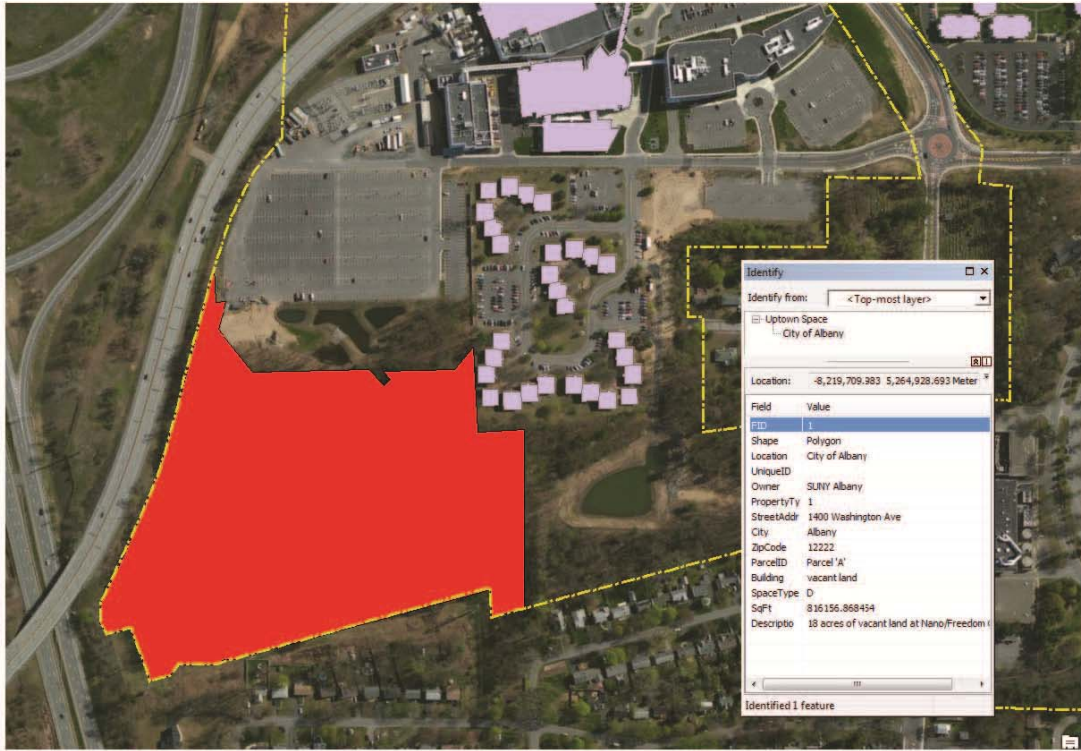
UAlbany Uptown Campus - Biology Building & Fuller Rd West Vacant Land



UAlbany Uptown Campus - Biology Building, Room 0341, 0342



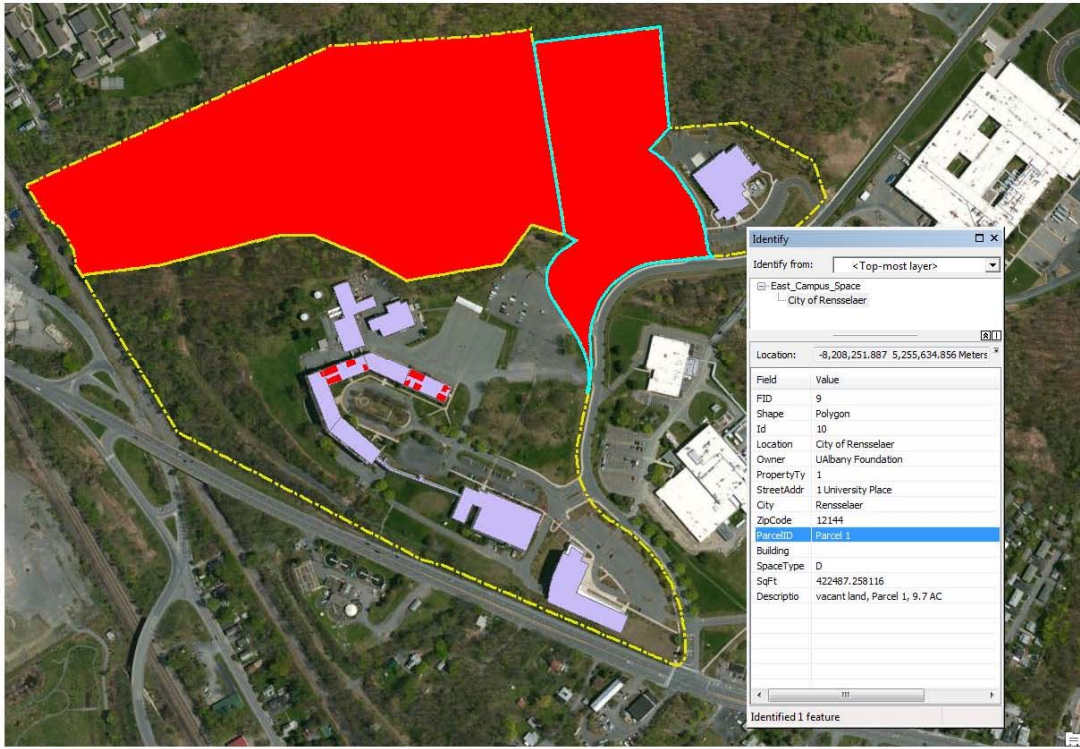
UAlbany Uptown Campus - Fuller Rd West Vacant Land (18.7 AC)



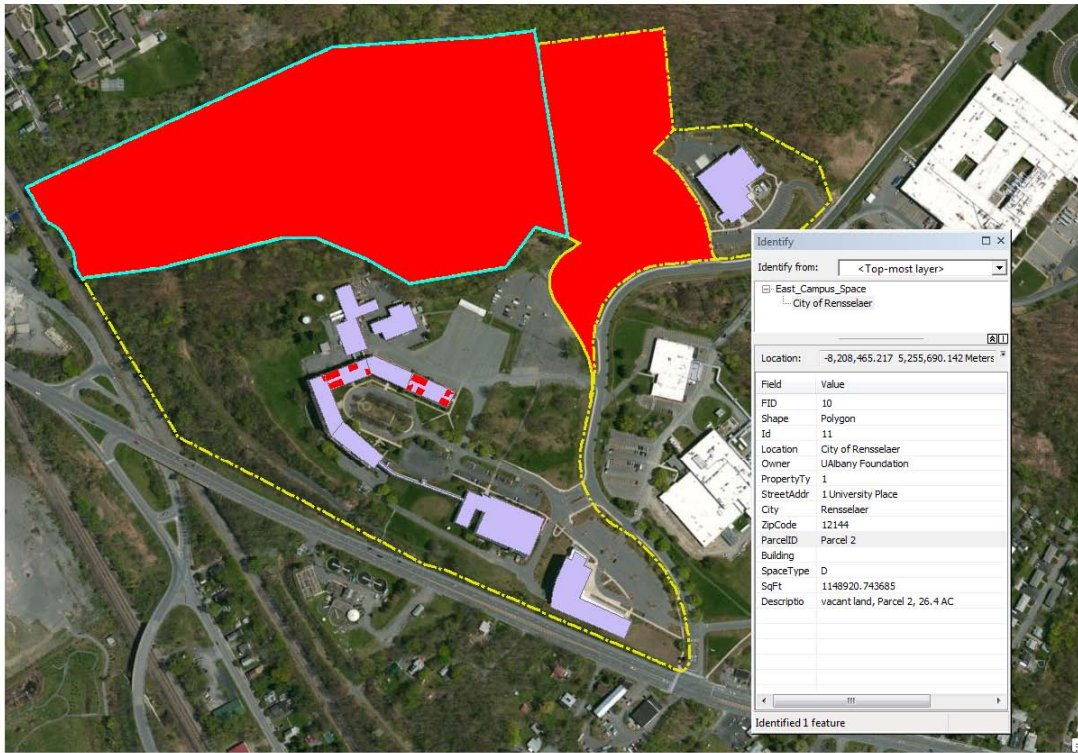
UAlbany Downtown Campus - The Schuyler School



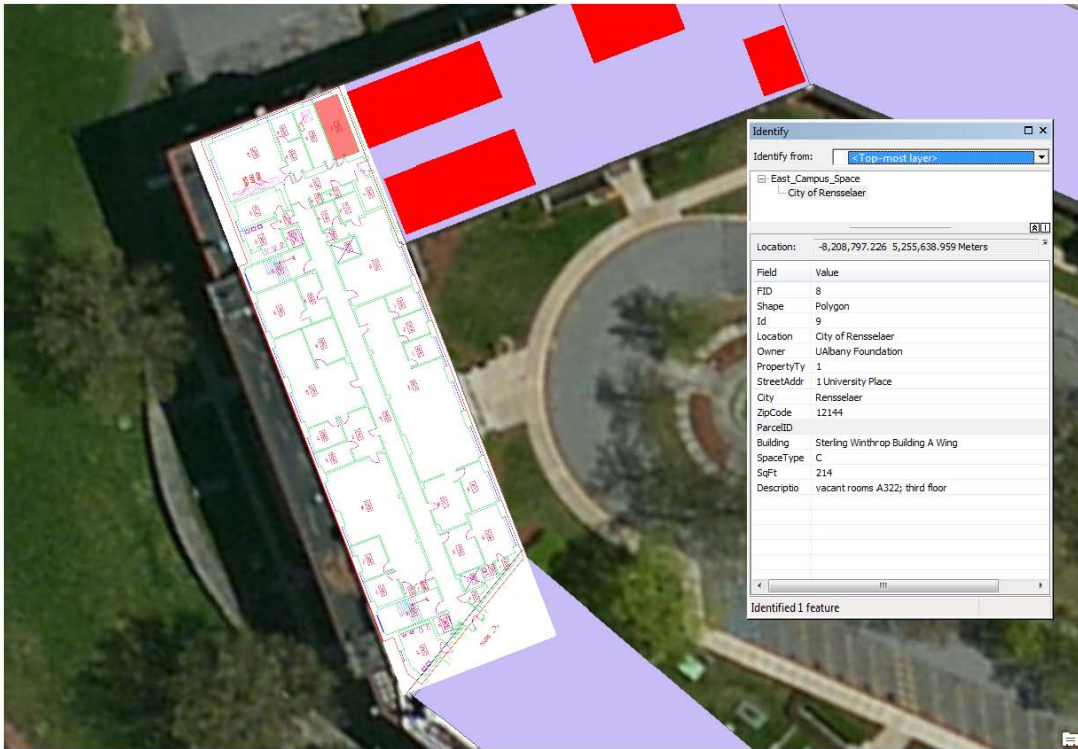
UAlbany East Campus - Parcel 1 (9.7 AC Vacant Land)



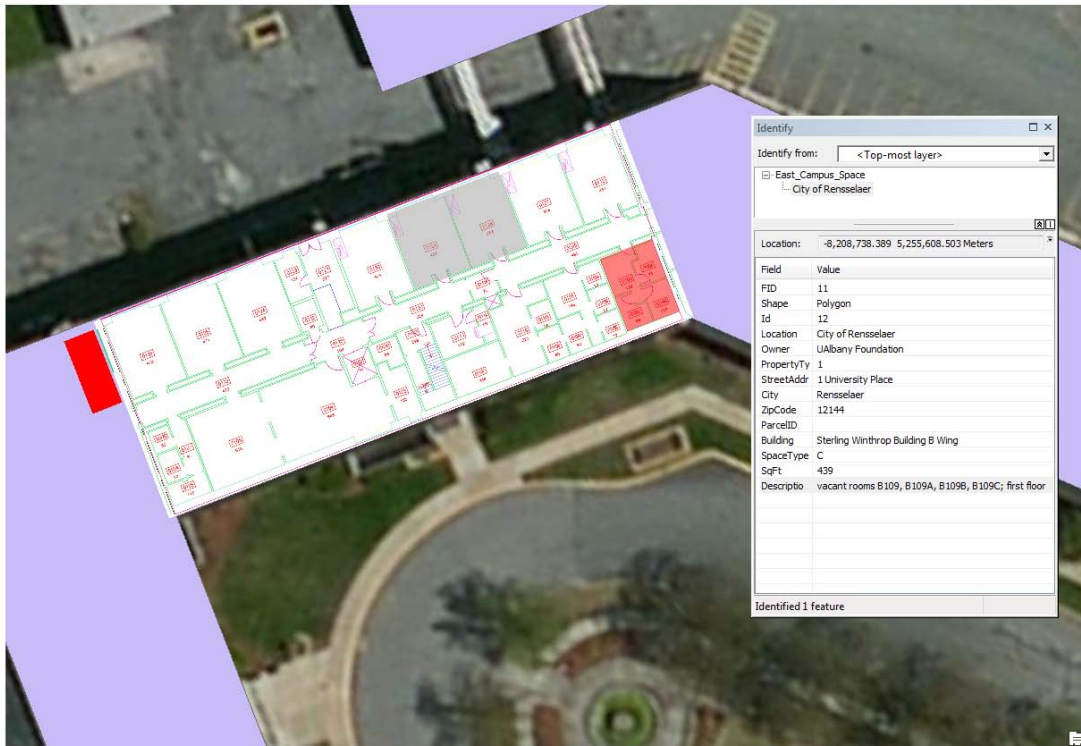
UAlbany East Campus - Parcel 2 (26.4 AC Vacant Land)



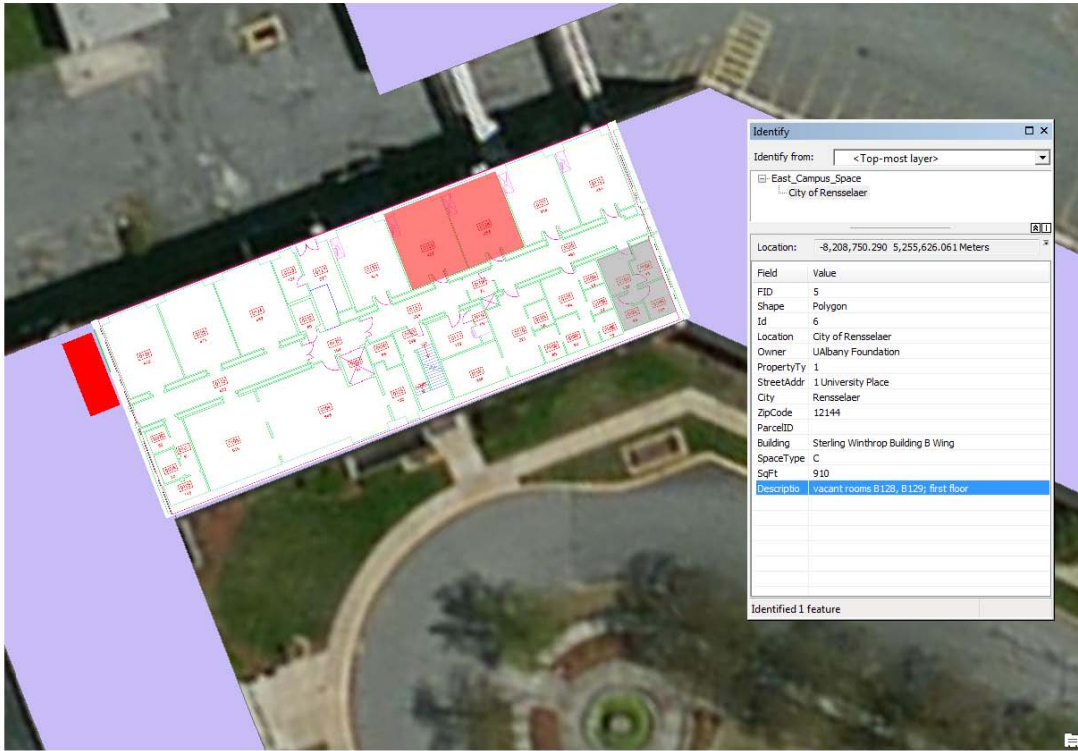
UAlbany East Campus - Sterling Winthrop Building A Wing, A322



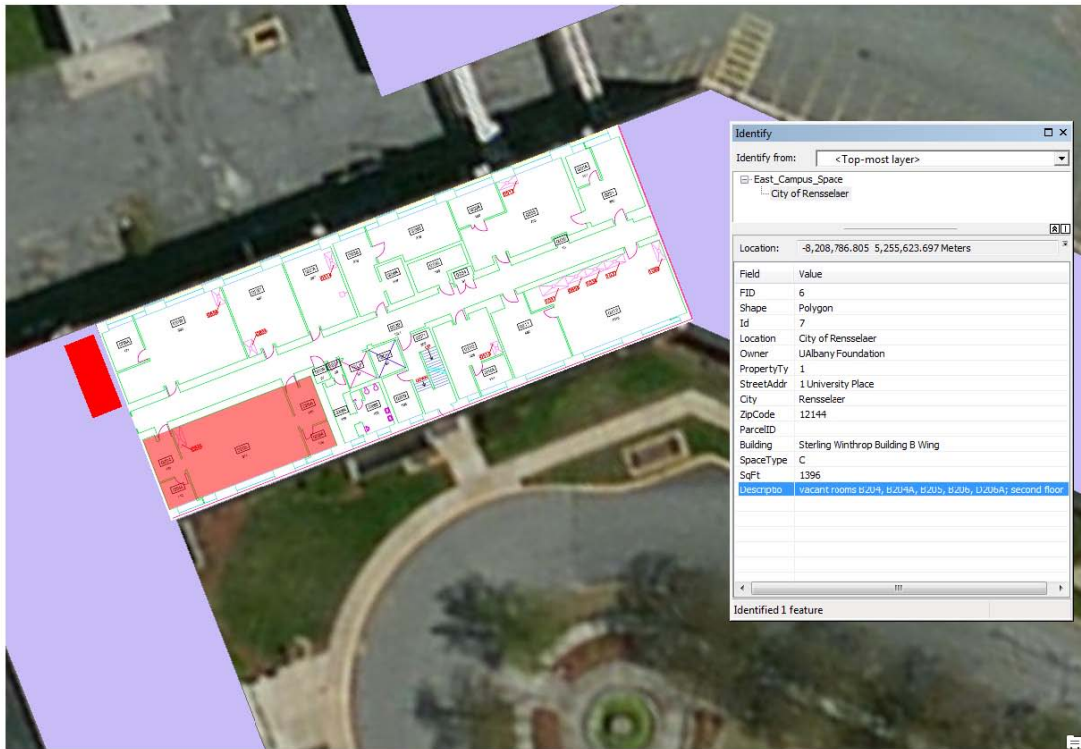
UAlbany East Campus - Sterling Winthrop Building B Wing, B109, B109A, B109B, B109C



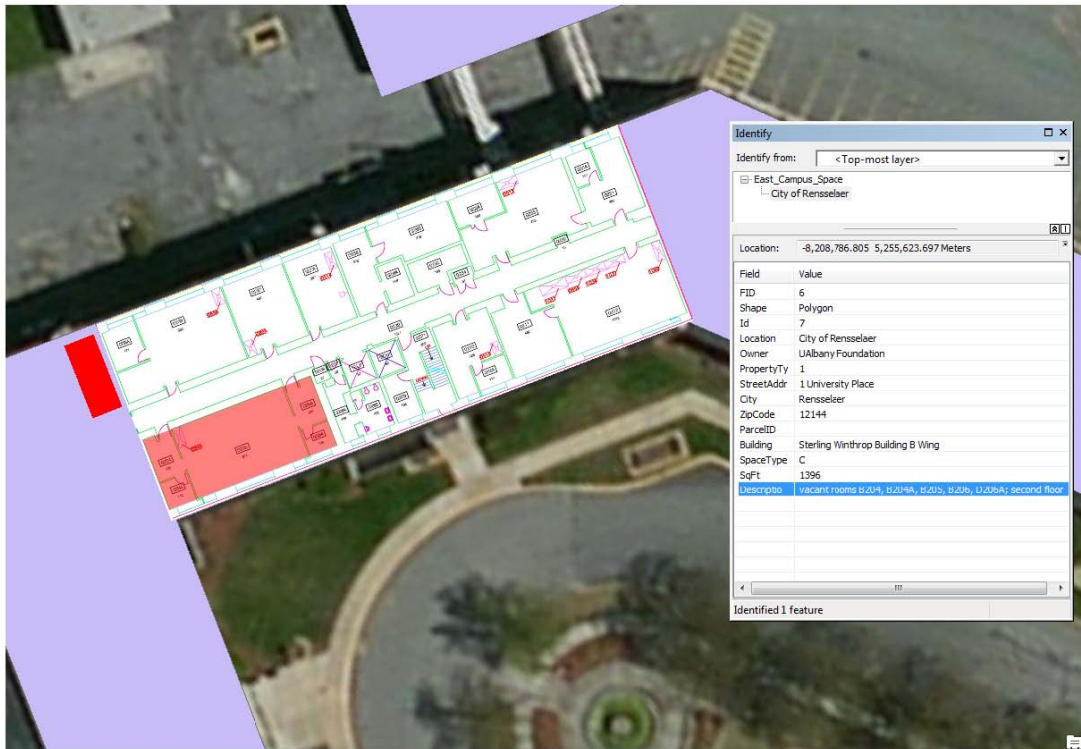
UAlbany East Campus - Sterling Winthrop Building B Wing, B128, B129



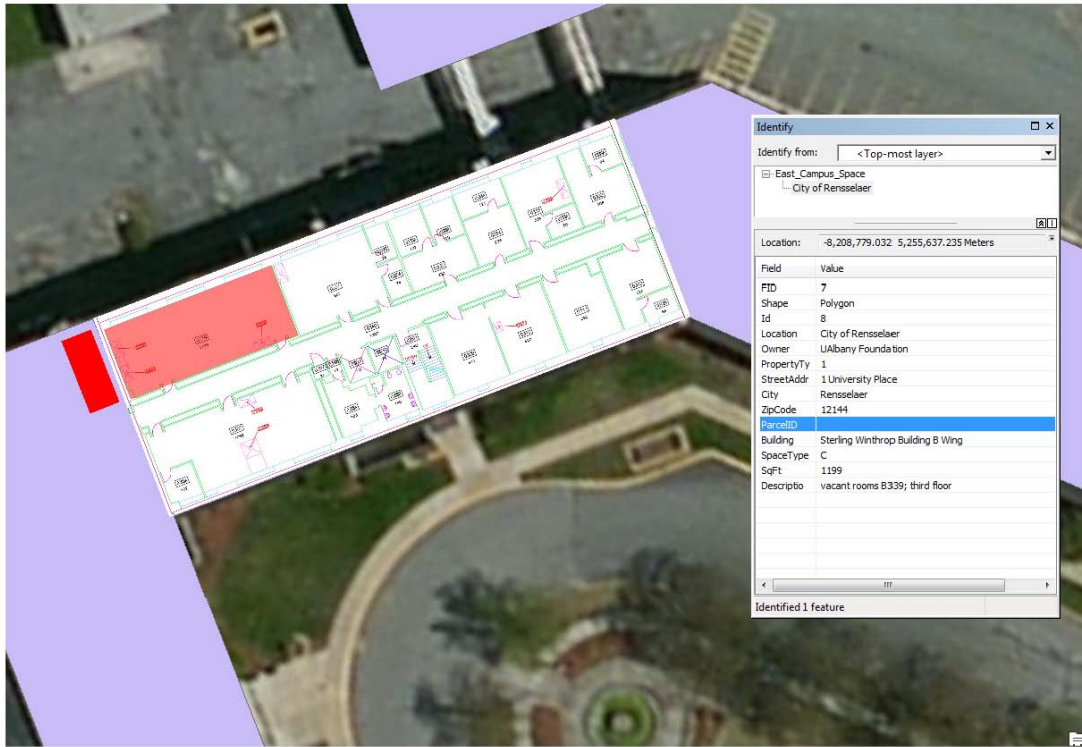
UAlbany East Campus - Sterling Winthrop Building B Wing, B204, B204A, B205, B206, B206A



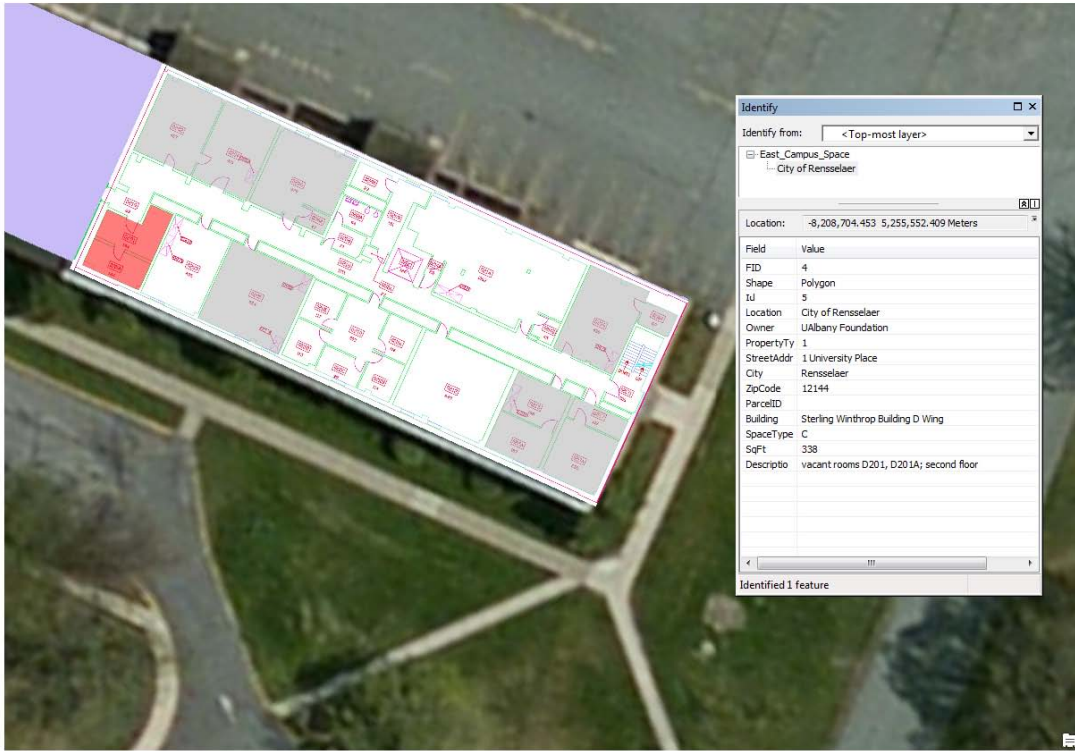
UAlbany East Campus - Sterling Winthrop Building B Wing, B204, B204A, B205, B206, B206A



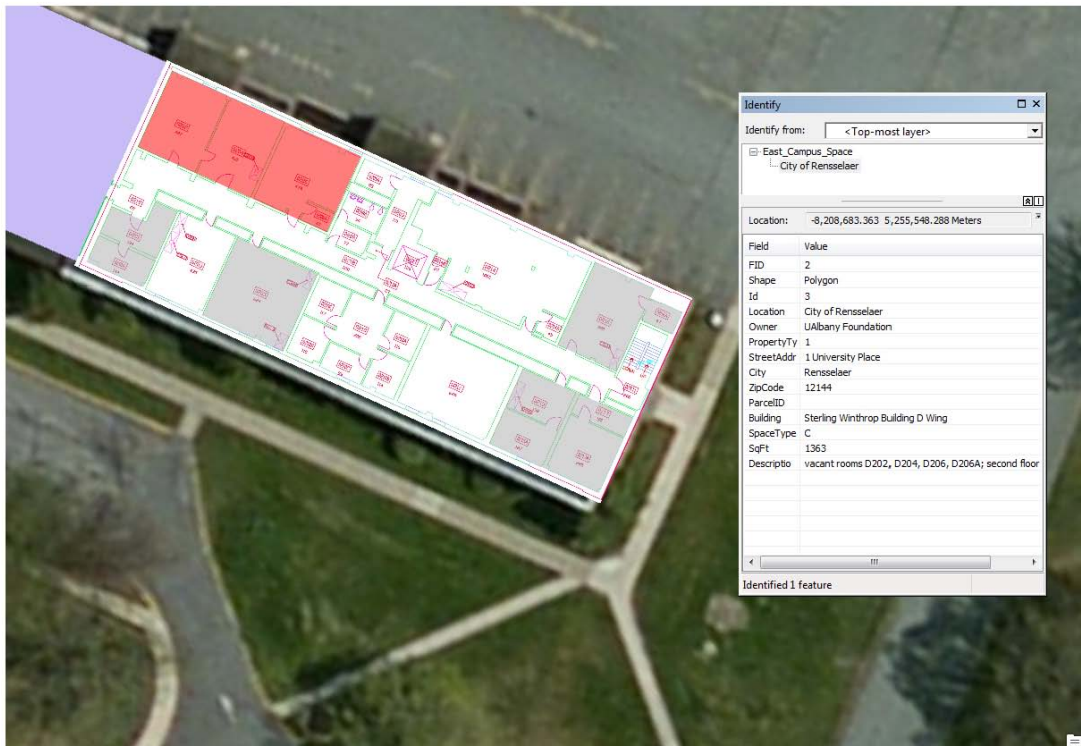
UAlbany East Campus - Sterling Winthrop Building B Wing, B339



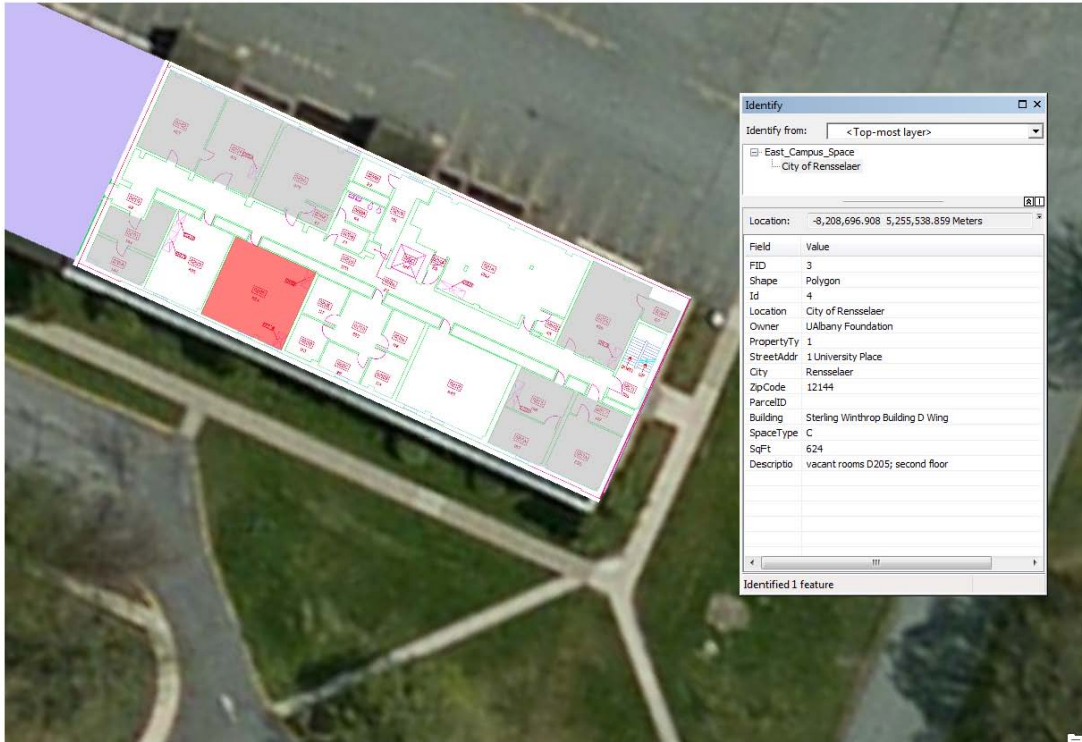
UAlbany East Campus - Sterling Winthrop Building D Wing, D201, D201A



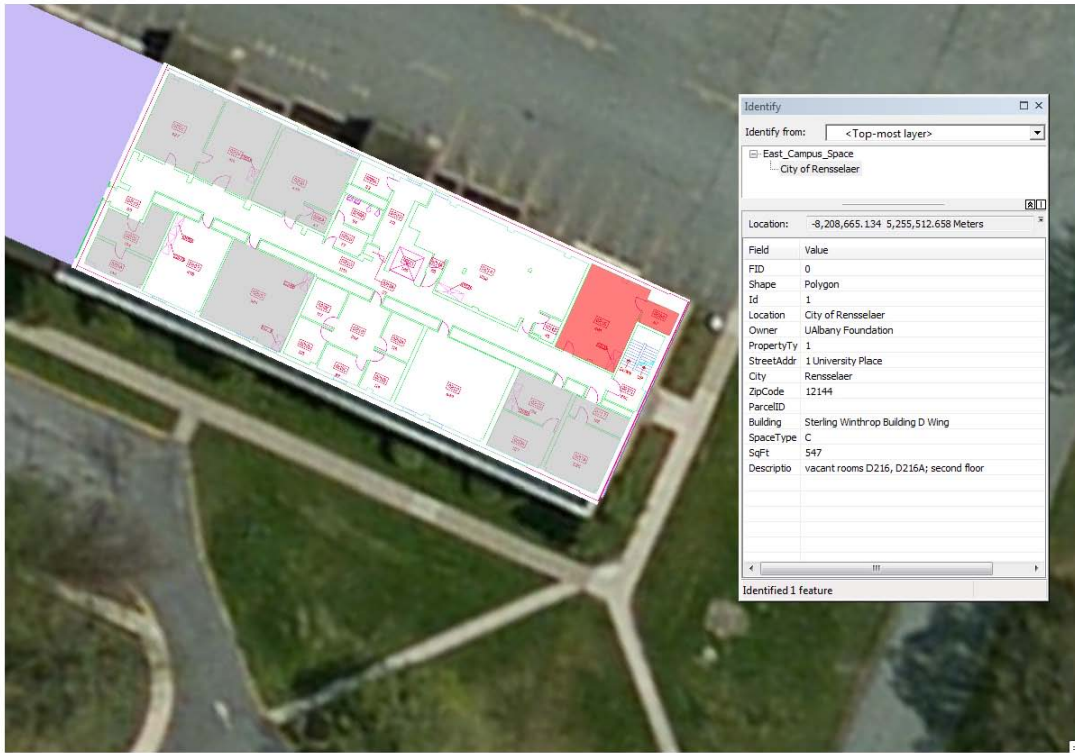
UAlbany East Campus - Sterling Winthrop Building D Wing, D202, D204, D206, D206A



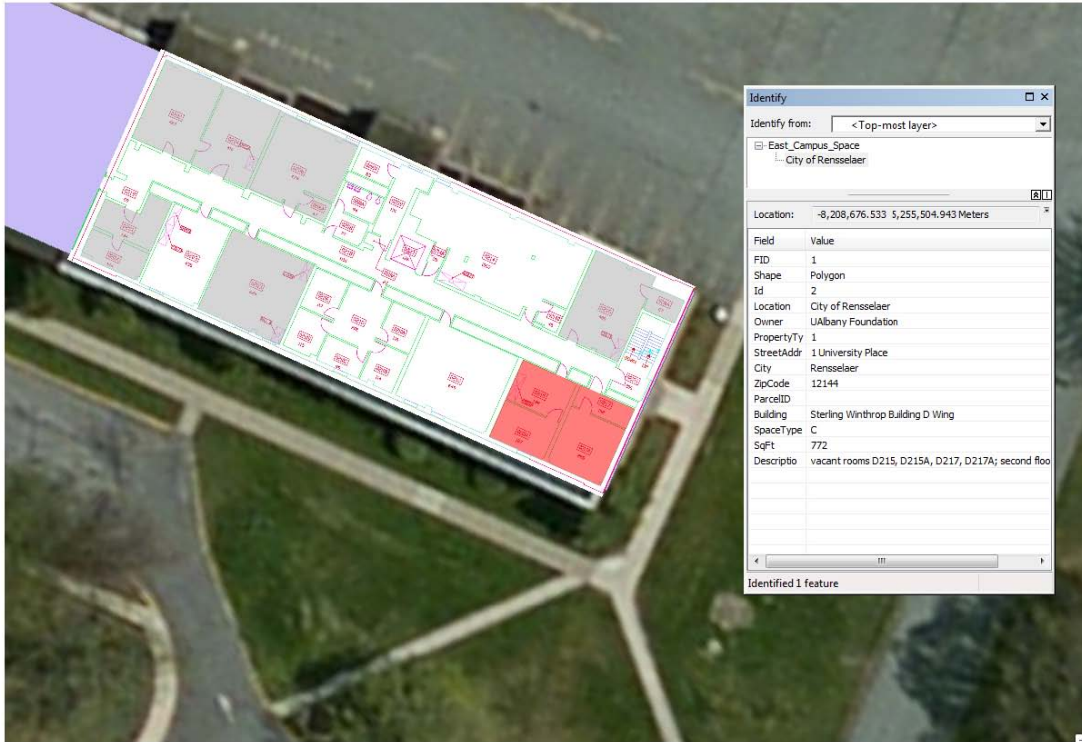
UAlbany East Campus - Sterling Winthrop Building D Wing, D205



UAlbany East Campus - Sterling Winthrop Building D Wing, D216, D216A



UAlbany East Campus - Sterling Winthrop Building D Wing, D215, D215A, D217, D217A



LETTER FROM BOND COUNSEL
OR OTHER APPROPRIATE DOCUMENTATION
ON TAX EXEMPT STATUS

WAITING ON SUNY GUIDANCE

LIST OF PROPERTY(IES)
(SEE EXCEL SPREADSHEET & CHECKLIST)

JOHN

SUNY LEASE TEMPLATE
"VACANT SPACE"

ATTACHMENT #5a

THE PEOPLE OF THE STATE OF NEW YORK
ACTING BY AND THROUGH THE
STATE UNIVERSITY OF NEW YORK AT
_____ (NAME OF LESSOR)

TO

_____ (NAME OF START UP NY BUSINESS)

LEASE AGREEMENT (VACANT SPACE)

DATED AS OF ____ __, 201__

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32. MISCELLANOUS

LEASE AGREEMENT FOR VACANT SPACE

THIS LEASE (the "Agreement"), made and entered as of the ___ day of ___ 20___, by and between STATE UNIVERSITY OF NEW YORK, a corporation established by the New York Education Law, with an office and place of business at State University Plaza, Albany, New York 12246 ("SUNY" or University) for and on behalf of the State University of New York College at _____ ("Lessor") and _____ (name of Start UP NY company) a New York company with its principal office and place of business at _____ ("Lessee");

WITNESSETH:

WHEREAS, the New York State Legislature (the "Legislature") has determined that to revitalize the economy of New York, it is necessary and appropriate to promote entrepreneurship and job creation by transforming public higher education institutions through the establishment of tax free communities "Tax Free NY Areas", particularly in Upstate New York to attract high tech businesses, startups companies, venture capital, new business and investments from across the world; and

WHEREAS, in furtherance of this objective, the Legislature enacted the Act which grants the Trustees of the State University of New York the authority and power to lease and otherwise contract to make available "Eligible Land" situated at the Sponsor's Campus for the development, construction and operation of the "Project."; and

WHEREAS, Lessor maintains an academic campus and other facilities on a parcel of real property located in the Town of _____ County, State of New York, known as the State University of New York at _____ that includes land that has been approved and designated as "Eligible Land" under the Start Up New York Program and more particularly described in SCHEDULE A annexed hereto (the "Demised Premises"); and

WHEREAS, Lessee, a for profit private corporation has in connection with its application to Lessor to participate in the Start Up NY Program is desirous of leasing the real property particularly designated in Schedule A in order to renovate, operate, sublease, license and/or otherwise develop or cause or permit to be renovated, operated, subleased, licensed and/or otherwise developed at the Demised Premises the Project; and

WHEREAS, for that purpose, Lessor desires to grant Lessee access to, possession, quiet enjoyment and control of the Demised Premises and the facilities to be constructed thereon through a Ground Lease, which real property shall be the Demised Premises for part of the Project (hereinafter referred to as the Project Site") which is also more particularly described in Schedule B; and

WHEREAS, the Trustees of SUNY and the Lessor approved resolutions authorizing this Ground Agreement between Lessor and Lessee (the particular parcel to be leased being described more fully in SCHEDULE A attached hereto and made a part hereof and cross-hatched upon the print of survey marked SCHEDULE B attached hereto and made a part hereof and referred to as the "Demised Premises", to be used for the development and operation of a _____ (type of business).

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth,

the Parties hereby covenant, promise and agree as follows:

1. DEFINITIONS

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms has the following meanings:

“The Act” means the Start Up New York Act as it amends the State Economic Development Law, Tax Law, Executive Law, the Administrative Code of the City of New York, the Real Property Tax Law and Education Law to establish the Start Up NY Program.

“Agreement” means this Start Up NY Ground Lease Agreement, including, for the avoidance of doubt, Exhibit A and A-1, and all schedules referred to herein.

“Build Out” means the construction or improvements of the interior space of Eligible Land (Vacant Space), including flooring, walls, finished plumbing, electrical and mechanical work and any space improvements proposed and put in place by Lessee in accordance to specifications submitted and approved by Lessor.

“Campus” means any physical property in New York State owned or leased by Lessor, held in trust for the Lessor, or owned or leased by an affiliated not-for-profit entity on behalf of the Lessor or for the benefit of the Lessor, and include any such additional physical property that may be acquired, established, operated or contracted to be operated for or on behalf of the Lessor.

“Commissioner” means the Commissioner of the New York State Department of Economic Development.

“Contractor” means a person, corporation or entity engaged by Lessee to construct, reconstruct, demolish, excavate, rehabilitate, repair, renovate, alter, or improve the Project and it shall include subcontractors, independent contractor or agents employed by the Contractor for the aforesaid purposes in connection with the Project.

“Date Lessee takes possession of the Demised Premises” shall mean the date on which Lessee’s notification to SUNY of Lessee’s readiness to commence construction.

“Demised Premises” means all the real property described in the legal description attached to this Agreement as Schedule A and identified on the survey maps attached hereto as Schedule B.

“EDL” means the New York State Economic Development Law.

“Effective Date” means the date which the Commissioner or as the case may be, the Start UP NY Approval Board give its approval for this Agreement to be binding on the parties.

“Eligible Land” means vacant land or space that is eligible for designation as a Tax-Free NY Area.

“Force Majeure” means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following: (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared

or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; (b) ionizing radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active toxic explosive or other hazardous properties of any explosive assembly or nuclear component; (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the Project or this Agreement.

“Proceeds of the Lease” means the Base Rent, Additional Rent and other any monetary consideration that the Lessee shall be required by the Commissioner or the Start Up NY Approval Board as the case may be, in consultation with the Chancellor of the University or his/her designee to pay periodically, to the Sponsoring Campus to be allocated and used for the purposes set forth in §361 of the Education Law.

“Project” means the design, construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration or improvement of the real property comprising the Demised Premises that is used by the Lessee for the approved Start UP NY business.

“Project Labor Agreement” mean a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

“Base Rent” has the same meaning ascribed thereto in §__ of this Agreement.

“Additional Rent” has the same meaning ascribed thereto in §__ of this Agreement.

“Schedule D” means “Exhibit A”, the standard contract terms and conditions required to be appended and made part of contracts such as this of which the State University of New York is a party.

“Schedule D-1” means Exhibit A-1, the affirmative action terms and conditions required to be appended and made part of contracts such as this of which the State University of New York is a party.

“Sponsor” or “Sponsoring University or College” means a university or college that has received approval to sponsor a Tax-Free NY area.

“START-UP NY Approval Board” means a board consisting of three members, one each appointed by the Governor, the Speaker of the Assembly and the Temporary President of the New York State Senate to carry out certain specified functions in the Act.

“START UP NY Program” means the economic revitalization program established under the Act that allows Start UP NY businesses to carry on eligible business activities in a Tax Free

NY Area.

“START UP NY Business” means business sponsored by the Lessor and approved by the Commissioner to carry out eligible START UP NY businesses on Eligible Land

“State Agency” for the purposes of the applicability of Executive Law 15-A means: (i) any state department, or (ii) any division, board, commission or bureau of any state department, or (iii) the state university of New York and the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state, or (iv) a board, a majority of whose members are appointed by the governor or who serve by virtue of being state officers or employees as defined in subparagraph (i), (ii) or (iii) of paragraph (i) of subdivision one of section seventy-three of the public officers law: “State Agency” for the purposes of the applicability of Executive Law 15-A to this Agreement means: (i) any state department, or (ii) any division, board, commission or bureau of any state department, or (iii) the state university of New York and the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state, or (iv) a board, a majority of whose members are appointed by the Governor or who serve by virtue of being state officers or employees as defined in subparagraph (i), (ii) or (iii) of paragraph (i) of subdivision one of section Seventy-Three of the Public Officers law:

“State Contract” for the purposes of the applicability of Executive Law 15-A to this Agreement means: (a) a contract, subcontract, lease, grant, bond, covenant or other agreement entered into for the purposes of the Project, where any individual, public corporation or authority, private corporation, limited liability company or other entity spends or is committed to spend or does expend funds in excess of twenty-five thousand dollars (\$25,000.00), in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished in connection with the Project; (b) a contract, subcontract, lease, grant, bond, covenant or other agreement entered into for the purposes of the Project, where any individual, public corporation or authority, private corporation, limited liability company or other entity spends or is committed to spend or does expend funds in excess of one hundred thousand dollars (\$100,000.00) for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements on a Demised Premises.

“State Subcontract” for the purposes of the applicability of Executive Law 15-A to this Agreement mean any a contract, subcontract, lease, grant, bond, covenant or other agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between any individual, public corporation or authority, private corporation, limited liability company and a prime contractor, in which a portion of the prime contractor’s obligation under the State Contract is undertaken or assumed by a business enterprise not controlled by a prime contractor.

“Strategic State Asset” means land or a building or group of buildings owned by the State of New York that is closed, vacant, or for which notice of closure has been given pursuant to any statutory notice requirement or which is otherwise authorized to be closed pursuant to any chapter of the laws of New York.

“Tax-Free NY Area” means the land or vacant space of a university or college and designated area of a New York State Incubator that meets the eligibility criteria specified in Article 21 of

the EDL and has been approved as a Tax-Free NY Area pursuant to Sections 220.5, 220.7, 220.8, or 220.9 herein. It also means a Strategic State Asset that has been approved by the START-UP NY Approval Board.

2. DESCRIPTION OF DEMISED PREMISES

Lessor does hereby lease to Lessee, and Lessee does hereby take and Lease from Lessor, all the real property described in the legal description attached as Schedule A hereto and identified on the survey maps attached as Schedule B hereto together with the right to use in common, with others entitled thereto, the hallways, stairways, and elevators, necessary for access to said leased premises, and lavatories nearest thereto (collectively, the “Demised Premises”).

3. START UP NY MANDATORY REQUIREMENTS

(a) Article 8 of New York State Labor Law-Prevailing Wage. The parties agree that pursuant to §361 of the Education Law any contract or agreement for the for the construction, alteration, rehabilitation, demolition, reconstruction, excavation, repair, renovation or improvement work on the Demised Premises shall (A) be awarded by a competitive process and (B) state that such work is deemed a public works project for the purposes of Article 8 of the Labor Law and require compliance with all provisions of Article 8 of the Labor Law by Lessee, any sublessee, any contractor or any subcontractor performing such work. Accordingly, contractors, subcontractors or agents engaged by the Lessee to construct, reconstruct, demolish, excavate, rehabilitate, repair, renovate, alter, or improve the Project shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Department of Labor shall provide the Contractor with posters relating to prevailing wage rates and the same shall be displayed by the Contractor in a conspicuous place at the construction Demised Premises. The Contractor shall also distribute wallet cards, to be provided by the Department of Labor, to all workers engaged at the construction Demised Premises containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, such contractors, subcontractors or agents are required to keep certified copies of its payrolls at the Demised Premises.

(b) Participation of Minority and Women Owned Businesses Enterprises (“MWBEs”). For the purposes of Article 15-A of the Executive Law, any individual, public corporation or authority, private corporation, limited liability company or partnership or other entity entering into a contract, subcontract, lease, grant, bond, covenant or other agreement for the Project shall be deemed to be a State Agency and such contracts shall be deemed to be a State Contract. Accordingly, the parties to such contract, subcontract, lease, grant, bond, covenant or other agreement shall comply with the requirements of Article 15-A of the Executive Law.

(c) Reverter. It is agreed by and between Lessor and Lessee that while this Agreement is in effect, all Build Out improvements erected upon the Demised Premises shall remain the property of Lessee or subcontractors, as the case may be, but upon expiration or termination of this Agreement, all Build Out improvements (excluding movable fixtures,

trade fixtures, attached furniture and personal property not constituting Leasehold improvements, and specialty installations, provided that Lessee or such subcontractors, as the case may be, repairs any and all damage to the Demised Premises resulting from the removal of any such fixtures, improvements or installations) shall become the absolute property of Lessor without payment by Lessor except that, if Lessor grants a new Agreement to the Leasehold Mortgagee or its designee or Lessee grants a new sublease on similar terms to the Leasehold Mortgagee or its designee, then, at the option of such Lessee or such sublessee, title shall remain in the Lessee or sublessee while the new Agreement or new sublease is in effect.

(d) Cessation of Use of Demised Premises As Described in this Lease. In the event the Lessee shall cease to use the Demised Premises for the purposes described herein, this Lease shall terminate on the thirtieth day after notice of such termination is mailed to the Lessee and the Demised Premises and Improvements thereon shall revert to the Lessor.

(e) Removal of the Business from the Start UP NY Program. Subject to the requirement of the Act and its implementing regulations, if Lessee is duly removed from the Start UP NY Program, such event shall constitute to a rescission of this Lease effective on the 30th day after the Commissioner serves a removal notice on the Start UP NY Business, and the Demised Premises and any improvements thereon shall revert to Lessor.

(f) Indemnity.

i. *By Lessee:* Lessee hereby agree to indemnify, hold harmless and defend Lessor from and against all claims, suits, actions, and liability to all persons on the leased premises, including tenant, tenant's agents, contractors, subcontractors, employees, customers, guests, licensees, invitees, and members of the public, for damage to any such person's property, whether real or personal, or for personal injuries arising out of tenant's use or occupation of the Demised Premises prior to the Term hereof and, during the Term of this Agreement, for any personal injury, loss of life, and/or damage to property sustained in or about the Demised Premises or the appurtenances thereto, so far as the same arises out of the use and operation of the Demised Premises, and from and against all reasonable costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Lessor agrees to notify Lessee promptly in writing of any such claim presented to Lessor or action commenced against Lessor and permit Lessee to defend or settle the same. Lessor agrees to cooperate with Lessee in any way reasonably requested by Lessee, but at Lessee's expense, to enable Lessee to defend against any such claims. Lessor reserves the right to join in any action at its cost and expense when it determines there is an issue involving a significant public interest.

ii. *By Lessor:* Subject to the availability of lawful appropriation and consistent with the New York State Court of Claims Act, Lessor shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor or of its officers or employees when acting within the course and scope of their employment in connection with this Agreement.

(g) Proceeds of This Lease. The parties agree that any proceeds of this Lease shall be allocated by the Board of Trustees of the University to the Sponsoring Campus for which this lease applies and deposited in the General Fund of such Sponsoring Campus and used for purposes including but not limited to students financial aid for students who are eligible to receive Tuition Assistance Award or Supplemental Tuition Assistance pursuant to §667 or

667-A of the Education Law and to support additional full time faculty positions.

(h) Project Labor Agreements. Lessee shall have the right to require a contractor awarded a contract, subcontract, Agreement, grant, bond, covenant or other agreement for a project to enter into a Project Labor Agreement during and for the work involved with such project when such requirement is part of Lessee's request for proposals for the project and when Lessee determines that the record supporting the decision to enter into such an agreement establishes that the interests underlying the competitive bidding laws are best met by requiring a project labor agreement including: obtaining the best work at the lowest possible price; preventing favoritism, fraud and corruption; the impact of delay; the possibility of cost savings; and any local history of labor unrest. Notwithstanding the foregoing, if Lessee does not require a Project Labor Agreement, or the subcontractors does not elect to require its contractor or subcontractor to enter into a Project Labor Agreement, then any contractor, subcontractor, agreement, lease, grant, bond, covenant or other agreements for a project shall, unless otherwise waived by the University or other instrumentality of the New York with authority to do so, be awarded pursuant to §135 of the State Finance Law (the WICKS LAW)

4. BUILD-OUT OF VACANT SPACE

Lessee shall be responsible for the Build Out of the Vacant Space, but shall not make structural alterations or additions to the Demised Premises, but only non-structural alterations provided Lessor consents thereto by approving a Build Out Specifications to be submitted by Lessee together with its Application to participate in the Start UP NY Program and which after the approval of this Lease by the Commissioner or the Start UP NY Approval Board as the case may be shall be further approved by the Sponsor, which consent shall not be unreasonably withheld or delayed. All such allowed alterations shall be at Lessee's expense and shall be in quality at least equal to the present construction. Lessee shall not permit any mechanics' liens, or similar liens to remain upon the leased premises for labor and material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed at the direction of Lessee and shall cause any such lien to be released of record forthwith without cost to Lessor. Any alterations or improvements made by the Lessee shall become the property of Lessor at the termination of occupancy as provided herein.

5. TERM

(a) The term of this Agreement shall be a period commencing on the Effective Date and expiring on the earlier of the _____ (___th) anniversary of the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement. .

(b) Option For Renewal: Lessee shall, provided the Agreement is in full force and effect and Lessee is not in default under any of the terms and conditions of the Agreement at the time of notification or commencement, have one (1) option to extend this Agreement for a term of ____ (___) years as of the date the extension term is to commence, on the same terms and conditions set forth in the Agreement, except as modified by the terms, covenants and conditions as set forth below:

i) If Lessee elects to exercise said option, then Lessee shall provide Lessor with written notice no earlier than the date which is ____ (___) months prior to the expiration of the term of the Agreement but no later than the date which is ____ (___) months prior to the expiration of the term of the Agreement. If Lessee fails to provide such notice, Lessee shall

have no further or additional right to extend or renew the term of the Agreement.

ii. This Option for Renewal is not transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to extend this Agreement shall be "personal" to Lessee as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid option to extend. Lessee shall have no further right to extend the term of the Agreement.

(c) Term Greater Than Forty Years or of One Million or More Square Feet: Where this Agreement is for a term greater than forty (40) years (including any options to renew) or of One Million or More Square Feet it shall commence upon the approval of the START-UP NY Approval Board in accordance with the Act and implementing regulations.

(d) Survival: The applicable provisions of this Agreement shall continue in effect after the expiration of the initial term or any renewal term of this Ground Agreement, to the extent necessary to provide for final billing and adjustment, to enable Lessee to remove its personal property and to enable Lessee to remove Improvements and restore the Demised Premises in accordance with Section 8 herein

3. RENT:

(a) Lessee shall pay base rent at the rate of one dollar (\$1.00) per annum ("Base Rent") on the first day of each calendar year during the Term. In addition, Lessee shall pay all other amounts required to be paid by Lessee hereunder (sometimes collectively referred to herein as "Additional Rent" and, together with Base Rent, the "Rent") as and when due and payable.

(b) The Annual Rent in effect at the expiration of the term of the Agreement shall subject to the Commissioner's directions and approval be negotiated between the parties.

(c) In addition to the Base and Additional Rent, the Lessee may be required by the Commissioner or the Start Up NY Approval Board as the case may be, in consultation with the Chancellor of the University or his/her designee when approving this Agreement to pay periodically, to the Sponsoring Campus, additional sums that will be allocated and used for the purposes set forth in §361 of the Education Law.

7. EASEMENTS; UTILITIES

(a) Lessor hereby reserves the right to maintain, repair and replace such existing utility lines, pipes, ducts, conduits and wires (collectively, the "facilities") on, under and above the Demised Premises as may be reasonably necessary for the servicing of the Lessor (other than the Demised Premises). The rights reserved to Lessor pursuant to this paragraph shall be subject to the following conditions precedent:

(i) Lessor may maintain, repair and replace the facilities on the Demised Premises if Lessee or any subcontractors shall fail to do so pursuant to the terms of this Agreement or the applicable sublease. In performing such work, Lessor shall use all commercially reasonable efforts to minimize interference with Lessee's and/or any subcontractors Entity's operations, and shall promptly restore all damage to the Demised Premises or any Improvements thereon and remove all debris associated with such work at its sole cost and expense.

(ii) If Lessor shall maintain, repair and replace any such facilities, then Lessor shall, except in an emergency, in each instance:

(A) Deliver to Lessee at least thirty (30) days prior to such maintenance, repair and replacement, notice of the proposed work.

(B) if reasonably requested by Lessee at the time, deliver to Lessee prior to such maintenance, repair and replacement, public liability, workers' compensation, casualty and other insurance coverage or legal indemnification (i.e., NYS Court of Claims Act, Public Officers' Law §17) which shall be reasonably satisfactory to Lessee.

(b) At any time during the Term of this Agreement, Lessee may, at its own expense, relocate the facilities and install and/or relocate any new utility facilities within the Demised Premises to the extent necessary to develop, construct and/or operate the Project. Lessee shall comply with the requirements of subsection (a) above in performing this work and Lessee shall be responsible for obtaining the written approval of all beneficiaries of such utility facilities (including, when applicable, the facilities) at its sole cost and expense prior to undertaking such work. In addition, Lessor agrees to provide Lessee and/or the applicable utility provider with all easements over adjacent property of Lessor that Lessee or such utility provider may require relocating the facilities and installing and/or relocating such utility facilities, at no cost to Lessee or the applicable utility provider, provided that such easements do not materially interfere with the use of Lessor's adjacent property or render title thereto unmarketable.

(c) Lessee may, at Lessee's option and with Lessor's consent, which Lessor agrees not unreasonably to withhold, condition or delay, use the storm and sanitary sewer facilities and sewer plant of Lessor existing from time to time at or adjacent to the Lessor and the other utilities of Lessor from time to time located thereat, in each case to the extent Lessor has at the time sufficient capacity to service the Lessor and Lessee's requirements. Lessee shall be responsible for the cost of connecting such sewer facilities, sewer plant and utilities to the Project. It is understood that the Parties contemplate that gas and electricity will be obtained from the public utilities, at least in the first instance. In the event any utility facilities of Lessor (including the facilities) are used by Lessee, then, unless otherwise agreed between the Parties to this Agreement in writing, Lessee shall pay or cause to be paid to Lessor a reasonable rate or charge for any such use, which shall not in any instance exceed the rate or charge which would be assessed against Lessee for use of similar utility facilities and equipment of the public utility furnishing the same or Lessor's out-of-pocket cost, whichever is higher. In the case of storm or sanitary sewer facility use, in the absence of any such other written agreement, the rate or charge which may be assessed or charged by Lessor shall not exceed that charged by the nearest sewer district operated by the County of _____ (name of municipality with jurisdiction) or Lessor's out-of-pocket cost, whichever is higher. Any "tap-in" charges made by Lessor shall not exceed those charged by the public utility establishing similar "tap-in" charges.

(d) Lessor makes no representation as to the adequacy of any utilities described in subsection (c) above or their suitability for Lessee's operations, and Lessor shall have no liability or responsibility if any one or more of the utility services provided by or furnished through utility facilities (including the facilities) and equipment of Lessor are interrupted or terminated for any other reason whatsoever, and a loss of any such utility service shall not be deemed a constructive eviction of Lessee or a defense to any of Lessee's obligations hereunder, and shall not entitle Lessee to terminate this Agreement.

8. NET LEASE

(a) Notwithstanding any present or future law to the contrary, except as otherwise expressly set forth in this Agreement, Lessee shall not be entitled to terminate this Agreement, nor shall Lessee be entitled to any abatement, set-off, counterclaim, defense or deduction with respect to any Base Rent or Additional Rent, nor shall the obligations of Lessee hereunder be affected by reason of any damage to or destruction of the Demised Premises, any prohibition, limitation, restriction, or prevention of Lessee's use, occupancy or enjoyment of the Demised Premises, or any other cause whether similar or dissimilar to the foregoing. The Parties intend that the obligations of Lessee hereunder shall be separate and independent covenants and agreements. It is the intention of the Parties that the Rent payable hereunder shall be absolutely net to Lessor without any set-off or deduction whatsoever, so that this Agreement shall yield, net, to Lessor, the Rent payable to Lessor during the entire Term of this Agreement, and that all costs, expenses, deductions and charges of any kind and nature relating to the Demised Premises or to the ownership, lease, use or occupation thereof which may arise or become due and payable during or after the Term of this Agreement, shall be paid by Lessee, and that Lessor shall be indemnified and held harmless by Lessee from and against claims for same, and under no circumstances or condition shall Lessor be expected or required to make any payment of any kind or be under any other obligation or liability hereunder, except to the extent expressly provided in this Agreement.

(b) Without limiting the generality of the foregoing, Lessee covenants to pay, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, as Additional Rent, all taxes, assessments (including, but not limited to, that portion of all assessments for public improvements or benefits payable during the Term, whether or not such improvements are commenced or completed within the Term of this Agreement), payments in lieu of taxes, water, sewer and other rents, rates or charges, charges for public utilities, excises, levies, license and permit and inspection fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior or during the Term of this Agreement may have been or may be assessed, levied, confirmed, imposed upon, or grow or become due or payable out of or in respect of, or become a lien on, the Demised Premises or any part thereof or any appurtenance thereto, or any use, possession, or occupation of the Demised Premises, but only to the extent the same are payable with respect to the Term (all of the foregoing, together with any and all penalties and/or interest thereon, being hereinafter sometimes collectively referred to as "Taxes", and any of the same being hereinafter sometimes referred to as a "Tax"). Any Tax imposed against the Demised Premises, relating to a fiscal period of the imposing authority, a part of which period occurs after the Expiration Date (whether or not such Tax shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Demised Premises, or shall become payable, during the Term) shall be apportioned between Lessor and Lessee as of the Expiration Date.

(c) Lessee shall have the right to contest the amount or validity, in whole or in part, of any real estate Tax by appropriate proceedings diligently conducted in good faith, provided: (i) neither Lessor nor Lessee would by reason thereof be subject to any criminal liability (or any civil liability other than late charges, interest, fees and penalties attributable thereto which shall be Lessee's responsibility); (ii) neither the Demised Premises nor any part thereof or interest therein would, by reason of the postponement or deferment of payment of such Tax, be, in the reasonable judgment of Lessor, in danger of being forfeited or lost or subject to any lien, encumbrance or charge or penalty unless Lessor is indemnified therefor by Lessee (or, if such contest is brought during the term of any construction loan, and Lessor reasonably determines an indemnity is insufficient security for such contest, Lessee provides a bond in an amount and form satisfactory to Lessor in its commercially reasonable discretion); and (iii) Lessee shall regularly keep Lessor

advised as to the status of such proceedings. Upon the termination of such proceedings, it shall be the obligation of Lessee to pay the amount of such Tax or part thereof as finally determined in such proceedings to be due, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties and other liabilities in connection therewith.

(d) At Lessee's sole cost and expense, upon Lessee's written request, Lessor shall permit the proceedings to be brought in Lessor's name or shall join in any proceedings referred to in Section 6(c) hereof if the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Lessor. If the preceding sentence applies, Lessor shall cooperate in such proceedings. If a refund of an overpayment of any real estate Tax paid by Lessee with respect to a period of time within the Term is paid (or credited) to Lessor, whether during the Term or after the Expiration Date, Lessor will pay such amount to Lessee within thirty (30) days after receipt thereof. If a refund of an overpayment of any Tax paid by Lessor with respect to a period of time other than during the Term is paid to Lessee, whether during the Term or after the Expiration Date, Lessee will pay such amount to Lessor within thirty (30) days after receipt thereof.

9. AS-IS

(a) Lessor shall have no obligation to perform any alterations to the Demised Premises to prepare the same for Lessee's occupancy thereof. Upon execution of this Agreement, Lessee shall be irrevocably deemed to have (i) accepted and be fully satisfied in all respects with, the Demised Premises, including, without limitation, the status of title shown on any title commitment issued to Lessee by a title Lessee prior to execution of this Agreement (the "Title Commitment"), the environmental condition of the Demised Premises, and the property's value and zoning, (ii) decided to lease the Demised Premises solely on the basis of its own independent investigation, and (iii) accepted the Demised Premises in their present "as-is" condition. Except as expressly stated in this Agreement, Lessor has not made, does not make, and has not authorized anyone else to make any representation as to the present or future status of title, the environmental condition, physical condition, value, leasing, operation, use, tax status, zoning, income and expenses or any other matter or thing pertaining to the Demised Premises, and Lessee acknowledges that except as expressly stated in this Agreement, that no such representation has been made and that in entering into this Agreement Lessee does not rely on any such representation. Lessor makes no warranty or representation, express or implied or arising by operation of law, including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Demised Premises.

(b) In the event that, as of the date that all required State approvals of this Agreement have been obtained (the "Approval Date"), there are any matters recorded against the Demised Premises which are not disclosed in the Title Commitment ("New Title Exceptions"), Lessee shall have the right to notify Lessor within fifteen (15) days after the Approval Date that it objects to any such New Title Exceptions (a "Title Objection Notice"). In such event, Lessor shall have the right (but not the obligation) within thirty (30) days after receipt of the Title Objection Notice, in its discretion to either record or bond such New Title Exception, or provide the necessary assurances to the title Lessee so that Lessee can obtain a title insurance policy which is not subject to any New Title Exceptions listed in Lessee's Title Objection Notice (an "Acceptable Policy"). If Lessor is unable or unwilling to discharge or bond such New Title Exceptions or to cause an Acceptable Policy to be issued to Lessee within such thirty (30) day period (which period shall be extended if same cannot with reasonable diligence be completed within thirty (30) days provided that Lessor is diligently seeking to discharge or bond such New Title Exceptions or to

cause an Acceptable Policy to be issued to Lessee, but not beyond one hundred eighty (180) days after the date of Lessee's Title Objection Notice), then Lessee shall have the right within thirty (30) days after Lessor's period to cure has expired to terminate this Agreement upon notice to Lessor.

10. REPAIR AND MAINTENANCE

Lessee shall repair and maintain the Demised Premises in good condition subject to normal wear and tear, and without commission of waste, and subject to the casualty and condemnation provisions in this Agreement. Lessee shall be responsible for making all structural and non-structural repairs, replacements and alterations to the Demised Premises as needed to maintain the Demised Premises in a first-class manner. All such work shall be performed in a good and workmanlike manner in accordance with the terms herein. Lessee shall operate and maintain the Demised Premises in accordance with all applicable laws and regulations. Upon the expiration of the Term or earlier termination of this Agreement, Lessee shall peaceably surrender to Lessor the Demised Premises, which, if Lessee has theretofore complied with its maintenance and repair obligations under this Agreement, may be returned to Lessor in its "as-is" condition.

11. INSURANCE

(a) Lessee agrees that any insurance coverage for property owned by Lessee is solely the responsibility of Lessee.

(b) Lessee shall, during the Term of this Agreement, maintain a commercial general liability insurance policy (non-cancelable except upon thirty (30) days' notice to Lessor) with any Lessee authorized to do business in the State of New York, insuring both Lessor and Lessee and written on the occurrence basis, affording protection with a combined single limit of **\$10,000,000** in the event of death or injury and a combined single limit of \$1,000,000 in the event of damage to any property; provided, however, that if any sublessee shall at any time maintain higher insurance limits for the benefit of Lessee, Lessee shall cause Lessor to be included as an insured under such policy. Policies subject to \$100,000 deductible shall be deemed satisfactory. Such limits shall be reviewed at reasonable intervals and adjusted to conform to limits maintained for similar types of properties, similarly situated. Lessee shall pay all premiums for said policies.

(c) Upon failure at any time on the part of the Lessee to pay the premiums for the insurance required by this Agreement, Lessor shall, upon written notice to Lessee, be at liberty from time to time, as often as such failure shall occur, to pay the premiums therefor, and any and all sums so paid by Lessor shall be and become and are hereby declared to be Additional Rent under this Agreement. Any failure to pay the same within ten (10) days after demand shall, at the option of Lessor, become an Event of Default under this Agreement.

(d) Lessee agrees that Lessor shall not be liable to Lessee or to any insurance Lessee insuring Lessee for damage which was or could have been insured pursuant to this Section. Lessor agrees that Lessee shall have the right to have its sublessee maintain the required coverage hereunder. If any insurance in addition to that required of Lessee hereunder is carried by sublessee for the benefit of Lessee, then, whenever possible, the Certificate Holders shall be named as additional insureds, as their interest may appear, and duplicates or certificates of such policies shall also be delivered to Lessor.

12. USE OF DEMISED PREMISES

The Demised Premises may be used for the permitted uses described in Schedule C hereto and for purposes ancillary thereto (collectively, the "Permitted Uses"). Lessee's use of the Demised Premises shall also be reasonably consistent with the provisions of the "Start UP NY Act" and its implementing regulations.

13. EMINENT DOMAIN

(a) If at any time during the Term of this Agreement, title to the whole or materially all of the Demised Premises shall be taken by the exercise of any right of condemnation or eminent domain or, in lieu or anticipation thereof, by agreement between Lessor and those authorized to exercise such right, or by Lessor pursuant to its authority under law to do so, Lessee, at its option may cancel this Agreement by notice to Lessor and Lessee's liability to perform the terms and conditions of this Agreement shall cease, and the aggregate of awards collected, after the payment of fees and expenses incurred in the establishment and collection of such awards, shall be paid and applied in the following order of priority:

(i) To payment to Lessor of the value of the land so taken, subject to this Agreement and subject to the limitation on use of the land for campus purposes;

(ii) To payment of the Leasehold Mortgage; and

(ii) To pay Lessee such amounts, if any, as are payable to subcontractors under subleases; and

(iv) Remainder to Lessee.

(b) For purposes of this Section, "materially all of the Demised Premises" shall be deemed to have been taken if (i) prior to or during initial construction of the Project, part of the net leasable space of the Project shall be so taken and Lessee has determined that Lessee and its present or potential sublessees are unable to develop the remainder of the Demised Premises for the Project to its reasonable satisfaction, or (ii) after initial construction of the Project, more than ten percent (10%) of the rentable square footage of the Project has been so taken and Lessee reasonably determines that the remaining leasable area of the Project is not sufficient to make the continued operation of the Project economically viable.

(c) Subject to the provisions of any Leasehold Mortgage, if at any time during the Term of this Agreement, title to less than materially all of the Demised Premises shall be taken as aforesaid, all of the award or awards or other proceeds shall be paid over to Lessee, or, at Lessee's request, to its sublessee, provided the amount of the award does not exceed \$100,000, or, if it does exceed \$100,000, then to the Insurance Trustee, for release during restoration in the same manner as the proceeds of casualty insurance are to be released for repair and rebuilding under the provisions of Section 10 hereof. Lessor shall promptly endorse any checks payable to the order of Lessor in connection such with awards and shall deliver the same to Lessee or to the Leasehold Mortgagee, as the case may be. Any portion of the award remaining after restoration of the Project and/or Improvements shall be paid to the Leasehold Mortgagee, if required, and the balance of the award shall be paid to Lessor. If title to less than materially all of the Demised Premises shall be taken as aforesaid, this Agreement shall continue in full force and effect.

14. EVENTS OF DEFAULT

An Event of Default shall be deemed to have occurred if: (a) Lessee fails to pay any amount of Base Rent payable hereunder when due and such sum remains unpaid for ten (10) days after notice from Lessor (provided, however, that Lessee shall not be entitled to more than one such notice in any twelve month period); (b) Lessee fails to pay any sum (other than Base Rent) when due hereunder and such sum remains unpaid for ten (10) days after notice from Lessor; (c) Lessee shall default in fulfilling any of the other covenants or agreements of this Agreement beyond the notice and grace periods permitted herein, or, if no notice and grace periods are specified herein, if any such default shall not be cured within thirty (30) days after notice from Lessor specifying the default (provided, that if such default cannot with reasonable diligence be cured within such thirty (30) day period, then Lessee's time to cure shall be extended as long as Lessee commences to cure within such thirty (30) day period and continues to cure with due diligence); or (d) Lessee is adjudicated a bankrupt or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if a permanent receiver or trustee or custodian be appointed for Lessee's property, and such proceeding shall not be dismissed or stayed or such receivership or trusteeship or custodianship vacated or stayed within one hundred twenty (120) days after such institution or appointment, or Lessee admits in writing its inability to pay its debts when due.

15. CERTAIN REMEDIES OF LESSOR

If an Event of Default occurs, Lessor may immediately, or at any time thereafter, subject to the rights that Lessor may grant to a Leasehold Mortgagee, terminate this Agreement, reenter the Demised Premises and remove all persons and all or any property therefrom, either by summary dispossession proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Demised Premises, together with all Improvements. In such event, Lessee shall remain liable as hereinafter provided, subject to the provisions of Section 25 hereof.

16. OTHER REMEDIES OF LESSOR

(a) In addition to the legal remedies of Lessor herein referred to, if an Event of Default occurs, Lessor shall have all other legal and equitable remedies for the enforcement of the provisions of this Agreement available hereunder, at law and/or in equity.

(b) After an Event of Default, this Agreement shall continue in effect so long as Lessor does not terminate this Agreement, and, while such Event of Default exists, Lessor may enforce its rights and remedies hereunder, including the right to recover Rent and/or other monetary consideration accruing to the Sponsoring Camps under this Agreement from Lessee as it becomes due hereunder and, subject to the rights of any Leasehold Mortgagee, from any subcontractors. In such event, (i) Lessee shall be deemed to have assigned to Lessor Lessee's right to collect and receive rent and other payments from any subtenants and (ii) Lessor shall apply any such rents and other payments to the discharge of Lessee's obligations under any such sublease or subleases. After an Event of Default (other than with respect to payment of monthly Base Rent), Lessor may, without waiving Lessee's performance of its obligations hereunder, make the defaulted payment or perform such act on Lessee's behalf. All costs incurred by Lessor in taking such action shall be deemed Additional Rent and/or other monetary consideration due under this Agreement and shall be paid to Lessor on demand. Lessee shall reimburse Lessor for all expenses incurred by Lessor (including reasonable attorneys' fees and disbursements), by reason of any breach by Lessee, or its agents, servants or employees, of any covenant or provision of this Agreement.

17. MECHANIC'S LIEN

If any mechanic's lien or other lien or orders for the payment of money shall be filed against the Demised Premises or any part thereof by reason of or arising out of labor or material furnished or alleged to have been furnished or to be furnished to or for the account of Lessee or any subcontractors or operator at the Demised Premises or for or by reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against Lessor as owner thereof, Lessee shall, within forty-five (45) days after written notice from Lessor, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee shall also defend on behalf of Lessor, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien or orders. Lessee shall pay any damage and discharge any judgment entered therein and save harmless Lessor from any claim or damage resulting therefrom. Lessor shall also have the right to bond the lien itself at Lessee's expense after reasonable notice to Lessee.

18. ASSIGNMENT AND SUBLEASE

(a) Lessee may assign this Agreement with the prior written consent of Lessor. Such assignment shall also be subject to the regulatory and transactional approval requirements set forth for the consideration and approval of applications for Start UP NY Businesses provided in the Act and its implementing regulations. Upon such permitted assignment of this Agreement and upon the delivery to Lessor of an instrument in writing duly executed by the then assignee, by which the assignee shall expressly assume and agree to perform all of the terms, conditions and covenants hereof accruing from and after the date of assignment and for the remainder of the Term hereof, Lessee, or any subsequent assignee which shall further assign this Agreement, shall be released from all further liability or responsibility hereunder, except as to obligations which are (i) then due and unpaid or (ii) then in default (notice of which has been previously given to Lessee by Lessor, if such notice is required under the terms of this Agreement).

(b) In the event that Lessee shall sell or assign its Leasehold interest as set forth herein (other than on the foreclosure of the Leasehold Mortgage or an assignment in lieu thereof) in exchange for a valuable consideration, then, in that event, (i) Lessor shall be entitled to receive fifty percent (50%) of the net amount received and (ii) Lessee shall retain fifty percent (50%) of the net amount received, that is, after reduction by the reasonable expenses of the assignment.

19. RECORDATION

Lessor and Lessee agree to execute a Memorandum of Agreement in compliance with Section 291-c of the Real Property Law of the State of New York to be recorded in the County Clerk's Office under whose jurisdiction the Demised Premises is located. Upon any modification of the legal description of the Demised Premises made pursuant to the terms of Section 4 hereof, Lessor and Lessee agree promptly to execute an amended Memorandum of Agreement to reflect a modification of the Demised Premises and record the amended Memorandum of Agreement in the said County Clerk's Office.

20. COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD

Lessor and Lessee acknowledge that the Demised Premises are or will be subject to certain covenants, easements and restrictions recorded against the Demised Premises as of the date hereof or after the date hereof with Lessee's reasonable approval, and provided any such covenant, easement or restriction does not unreasonably increase any obligations or reduce any

rights of Lessee or any subcontractors. Lessee acknowledges that any such covenants, easements and/or restrictions recorded against the Demised Premises may contain provisions which are enforceable against Lessee, and subject to Section 8(b) hereof, Lessee agrees to perform and comply with same as if Lessee were the owner of the Demised Premises. Lessee agrees, further, to include a provision in each sublease that it may grant in accordance with this Agreement which obligates each subcontractors of the Demised Premises (or portion thereof) to perform and comply with such covenants, easements and restrictions recorded against the Demised Premises as of the date hereof or after the date hereof to the same extent that Lessee is obligated hereby. To the extent that Lessor is obligated by the terms of any of the aforesaid covenants, easements and restrictions (including wetlands conservation covenants), or by the terms of any separate agreement, to enforce such covenants, easements and restrictions (including wetlands conservation covenants), Lessor covenants and agrees that it will enforce the same consistent with such obligation to do so. In any action to enforce any such covenant, easement and/or restriction, Lessee hereby waives for the benefit of the holder of such covenant, easement or restriction, the following defenses: that it is not appurtenant to an interest in real property; that it is not of a character that has been recognized traditionally at common law; that it imposes a negative burden; that it imposes affirmative obligations upon the owner of any interest in the burdened property; that the benefit does not touch or concern real property; that there is no privity of estate or of contract; or that it imposes an unreasonable restraint on alienation.

21. RECOGNITION AND ATTORNMENT

Lessor agrees within twenty (20) days after request of Lessee to execute and deliver to Lessee for delivery to any sublessee of all or part of the Demised Premises a recognition agreement stating, in effect, in recordable form and otherwise in form reasonably satisfactory to Lessee, that it will not terminate the sublease or evict the sublessee, and will recognize the subcontractors's rights under the sublease and the rights of subcontractors's leasehold Mortgagee as if Lessor were the original sublessee, notwithstanding any default under and termination of this Agreement; provided, that there is no uncured event of default then existing under the sublease which entitles the Lessor thereunder immediately to terminate the sublease; and provided, further, that the sublessee has agreed in the sublease and, if requested, reconfirms in writing, at the time, its agreement to attorn to Lessor. Such recognition agreement shall require such subcontractors, at Lessor's request, to enter into a direct Agreement with Lessor upon all of the terms of the sublease (but subject to the terms of this Section 23 and the recognition agreement). Any such recognition agreement shall provide at Lessor's request that neither Lessor nor anyone claiming under Lessor shall be:

- (a) liable for any act or omission of any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or
- (b) subject to any offsets or defenses which such subcontractors Entity may have against any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or
- (c) bound by any payment of rent which such subcontractors Entity might have paid for more than the current month to any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or
- (d) bound by any covenant to undertake or complete any construction of the Demised Premises or any portion thereof demised by such sublease, or
- (e) bound by any obligation to make any payment to such subcontractors Entity

provided, however, that Lessor shall continue to procure and deliver, or cause to be delivered, any grant provided by the Dormitory Authority of the State of New York and any related allowance which Lessee is obligated to procure and deliver under any sublease, or

(f) bound by any sublease or amendment thereto or modification thereof of which Lessor shall not have been provided copies of and approved as set forth in Section 21 hereof.

22. RIGHT OF ENTRY

Lessor shall have the right to enter upon the Demised Premises during business hours upon one (1) days' notice to Lessee for purposes of inspecting the Demised Premises and for purposes of determining whether Lessee is performing the terms, covenants and conditions of this Agreement to be performed by Lessee. Such right of entry, with respect to portions of the Demised Premises to the subtenants of Lessee or operated by a managing agent shall be limited by the reasonable rules and regulations of Lessee's subcontractors or manager.

23. BROKERAGE

Lessor and Lessee each represents to the other that it has not employed or negotiated with any broker, finder or similar agent with respect to this Agreement which might be entitled to a commission.

24. NOTICES OR DEMANDS

All notices, demands, requests, waivers and other communications required or permitted under this Agreement shall be in writing, shall be provided to Lessor and Lessee, and shall be deemed properly given, serviced and received (a) on the date received, if delivered by hand; (b) one (1) day after the date sent, if delivered by overnight delivery service; (c) on the date sent, if delivered via facsimile at the numbers set forth below, on or before 5:00 P.M. local time, with a hard copy to follow by overnight delivery service; (d) on the date received with proof of receipt to Lessor or Lessee to whose attention it is directed or when Lessor or Lessee refuses to accept receipt if sent, postage prepaid, by registered or certified mail, return receipt requested, postage prepaid. In the case of subsections (a) through (d) above, in each case, addressed as follows, unless and until Lessor or Lessee notifies the other Party in accordance with this Section 28 of a change of address:

In the case of Lessor:

State University of New York at _____
Address _____
Attention: _____
Telephone Number: _____
Email: _____

With a copy (which shall not constitute notice) to:

State University of New York
State University Plaza
Albany, New York 12246
Attention: General Counsel and Vice
Chancellor for Legal Affairs

Facsimile Number: (518) 320-1541

In the case of Lessee:

Address _____
Attention: _____
Telephone Number: _____
Email: _____

25. QUIET ENJOYMENT

Lessor covenants that Lessee, upon performing the covenants on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the Term hereof.

26. OBLIGATIONS AND BENEFITS

Except as herein specifically provided to the contrary, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Lessor and Lessee, and their respective successors and assigns.

27. TITLES

The titles to Sections are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

28. REPRESENTATIONS

This Agreement represents the entire agreement of the Parties concerning the Agreement of the Demised Premises. Neither Party has made any representation or promises except as herein contained, nor shall no modification of any provision hereof be valid unless in writing and signed by the Parties hereto. In the event of any conflict between this Agreement and any other agreement between the Parties, this Agreement shall govern.

29. COMPLIANCE WITH LAW

Subject to the provisions of Section 4(e), Lessee shall comply or cause compliance with all applicable laws and regulations of governmental authorities having jurisdiction of the Demised Premises, but nothing contained in this Agreement shall be deemed to confer such authority over the Demised Premises which by reason of the State of New York's ownership of the Demised Premises or for any other reason does not otherwise exist. Lessee may defer compliance as long as it is diligently contesting or causing to be contested the applicability or validity of any such law or regulation provided the Demised Premises are not in any imminent danger of forfeiture or becoming subject to a material lien and provided Lessor is not thereby subjected to any criminal liability.

30. ESTOPPEL CERTIFICATES

(a) Lessee agrees at any time and from time to time, upon not less than twenty (20) days' prior notice by Lessor, to execute, acknowledge and deliver, without charge, to Lessor, or to any person designated by Lessor, a statement in writing certifying that this Agreement is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature to execute, thereof), that Lessee has not received any notice of default or termination of this Agreement (or if Lessee has received such a notice, that it has been revoked, if such be the case), that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), that Lessee to its knowledge has no claims against Lessor hereunder (or if Lessee has any such claims, specifying the same), and the dates to which the rent and the other sums and charges payable by Lessee hereunder have been paid.

(b) Lessor agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Lessee, to execute, acknowledge and deliver, without charge, to Lessee, or to any person designated by Lessee, a statement in writing certifying that this Agreement is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof), that Lessor has not received any notice of default or termination of this Agreement (or if Lessor has received such a notice, that it has been revoked, if such be the case), that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), that Lessor to its knowledge has no claims against Lessee hereunder (or if Lessor has any such claims, specifying the same), and the dates to which the rent and the other sums and charges payable by Lessee hereunder have been paid.

31. MISCELLANEOUS

(a) Incorporating Schedule D and Schedule D-1. Schedule D and Schedule D-1 hereto are hereby incorporated into and made a part of this Agreement to the extent applicable. In addition, each sublease, management agreement or other contract or agreement relating to the Demised Premises (including, but not limited to, any contract or agreement for any construction, alteration, rehabilitation, demolition, reconstruction, excavation, repair, renovation or improvement work performed by personnel of Lessee or contractors or subcontractors of Lessee or is otherwise performed on the Demised Premises), shall contain the following:

(i) the provisions of Schedule D hereto, expressly or by incorporation by reference, to the extent applicable, except that Schedule D paragraphs 1, 2, 3, 7 and 9 shall not apply to any such sublease, management agreement or other contract or agreement unless a party thereto is a New York State entity and in which case the applicable provisions of Schedule D hereto shall apply:

(b) Further Assurances. During the Term and upon the request of either Party, Lessor or Lessee shall take such action and execute and deliver to the other Party such further instruments, documents or agreements as such requesting Party may reasonably require in order to complete or otherwise effect and carry out the terms and intentions of this Agreement; provided, however, that such activity is done without detriment, cost or additional obligation to the other Party.

(c) Governing Law; Service. All matters arising out of or relating to this Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, without reference to its choice of law rules or principles. Unresolved disputes arising from the

implementation of this Agreement shall be heard in a New York Court with competent jurisdiction to adjudicate such matters. Lessor and Lessee hereby agree to accept service of process by registered mail addressed to its designated legal counsel at such legal counsel's addresses indicated in Section 26 hereof.

(d) No Third Party Beneficiaries. Except as otherwise provided herein, this Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

(e) Waiver. No waiver by Lessor or Lessee of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by either Party of the same, or any other provision or the enforcement thereof. A Party's consent to or approval of any act by the other Party requiring the other Party's consent or approval shall not be deemed to render unnecessary the obtaining of such Party's or any other Party's consent to or approval of any subsequent consent or approval of either Party, whether or not similar to the act so consented to or approved. The failure of Lessor or Lessee to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that Party of the right to insist later on adherence thereto, or thereafter to insist upon strict adherence to that term or any other term of this Agreement. To be effective, any waiver must be in a writing signed by an authorized representative of the Party granting such waiver.

(f) Entire Agreement; Changes to Agreement. This Agreement (including the Exhibits A and A-1 and Schedules hereto) contains the entire agreement of Lessor and Lessee with respect to the subject matter hereof and no oral statement or written matter prior to the date of this Agreement shall have any effect or force. This Agreement may not be changed, modified, amended, waived, superseded, renewed, extended or terminated orally, but only by an agreement in writing signed by Lessor and Lessee or, in the case of a waiver, by the Party waiving compliance.

(g) Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same Agreement.

(h) No Right to Publicize. Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of Lessor or Lessee (including any contraction, abbreviation or simulation of any of the foregoing). Nothing is intended to preclude Lessor and Lessee from disclosing the existence of this Agreement and the relationship described herein. The initial announcement of this relationship shall be mutually coordinated and agreed upon by the Parties.

(i) Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement of which time is an element.

(j) Prevailing Party. In the event of a dispute between the Parties, with respect to the interpretation, enforcement, construction or operation of the terms and conditions of this Agreement or any other documents or instruments contemplated hereby to be executed and delivered, the prevailing Party (where statutorily authorized) in connection with the resolution of such dispute, shall be entitled to collect from the other Party its reasonable attorneys' fees, costs and expenses, including its costs, fees and expenses in connection with any appeals or enforcement of an attorneys' fee award.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Amended and Restated Ground Agreement as of the day and year first above written.

STATE UNIVERSITY OF NEW YORK CONTRACT # _____

START UP NY BUSINESS CERTIFICATION:

In addition to acceptance of this agreement, I certify that all information provided to SUNY is complete, true and accurate.

_____ (NAME OF START UP NY BUSINESS)

President

Date

STATE UNIVERSITY OF NEW YORK CERTIFICATION:

I certify that original copies of this signature page will be attached to all other exact copies of this agreement.

STATE UNIVERSITY OF NEW YORK SYSTEM ADMINISTRATION ON BEHALF OF SUNY
AT _____

Robert Haelen
Vice Chancellor for Office of Capital Facilities

Date

APPROVED: DEPARTMENT OF ECONOMIC DEVELOPMENT OF NEW YORK

By: _____

Dated: _____

ACKNOWLEDGMENT – LESSEE

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the ___ day of _____ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My commission expires: _____

(Seal)

ACKNOWLEDGMENT – DEPARTMENT OF ECONMIC DEVELOPMENT

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the ___ day of _____ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My commission expires: _____

(Seal)

SCHEDULE A

LEGAL DESCRIPTION OF DEMISED PREMISES

SCHEDULE B

SURVEY MAP OF DEMISED PREMISES

SEE ATTACHED

SCHEDULE C

PERMITTED USES

To develop, construct and operate, or cause or permit to be developed, constructed and operated on the Demised Premises, a _____ (nature and description of the START UP NY business and other facilities related to or ancillary to any of the foregoing that is consistent with the academic mission of Lessor and START UP NY Act.

SCHEDULE D

STANDARD CONTRACT CLAUSES – STATE UNIVERSITY OF NEW YORK

SEE ATTACHED

SCHEDULE D-1

STANDARD AFFIRMATIVE ACTION CLAUSES – STATE UNIVERSITY OF NEW YORK

SEE ATTACHED

SUNY LEASE TEMPLATE
"VACANT LAND"

ATTACHMENT #5b

THE PEOPLE OF THE STATE OF NEW YORK
ACTING BY AND THROUGH THE
STATE UNIVERSITY OF NEW YORK AT _____ (NAME OF LESSOR)

TO

_____ (NAME OF START UP NY BUSINESS)

GROUND LEASE (VACANT LAND)

DATED AS OF ____ __, 201__

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GROUND LEASE

THIS GROUND LEASE (*the "Agreement"*), made and entered as of the ___ day of ___ 20___, by and between **STATE UNIVERSITY OF NEW YORK**, a corporation established by the New York State Education Law, with an office and place of business at State University Plaza, Albany, New York 12246 ("**SUNY**" or **University**") for and on behalf of the State University of New York College at _____ ("**Lessor**" or "**Sponsor**") and _____ (name of Start UP NY company) a New York company with its principal office and place of business at _____ ("**Lessee**");

WITNESSETH:

WHEREAS, the New York State Legislature (the "Legislature") has determined that to revitalize the economy of New York, it is necessary and appropriate to promote entrepreneurship and job creation by transforming public higher education institutions through the establishment of tax free communities "Tax Free NY Areas" at such institutions, particularly, in Upstate New York to attract high tech businesses, startups companies, venture capital, new business and investments from across the world; and

WHEREAS, in furtherance of this objective, the Legislature enacted the Act which grants the Trustees of the State University of New York the authority and power to lease and otherwise contract to make available "Eligible Land" situated at the Sponsor's Campus for the finance, design, development, and construction of the "Project."; and

WHEREAS, Lessor maintains an academic campus and other facilities on a parcel of real property located in the Town of _____, _____ County, State of New York, known as the State University of New York at _____ that includes land that has been approved and designated as "Eligible Land" under the Start Up NY Program and more particularly described in SCHEDULE A annexed hereto (the "Demised Premises"); and

WHEREAS, Lessee, a for profit private corporation has in connection with its application to participate in the Start Up NY Program is desirous of leasing the land particularly designated in Schedule A in order to construct, operate, sublease, license and/or otherwise develop or cause or permit to be constructed, operated, subleased, licensed and/or otherwise developed at the Demised Premises, the Project; and

WHEREAS, for that purpose, Lessor desires to grant Lessee access to, possession, quiet enjoyment and control of the Demised Premises and the facilities to be constructed thereon through a Ground Lease, which real property shall be the Demised Premises for the Project (the "Project Site") which is also more particularly described in Schedule B; and

WHEREAS, the Trustees of SUNY and Lessor have approved resolutions authorizing this Ground Lease between Lessor and Lessee (the particular parcel to be leased being described more fully in SCHEDULE A attached hereto and made a part hereof and cross-hatched upon the print of survey marked SCHEDULE B attached hereto and made a part hereof and referred to as the "Demised Premises", to be used for the development and operation of a _____ (type of business).

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the Parties hereby covenant, promise and agree as follows:

1. DEFINITIONS

Unless otherwise specified or the context otherwise requires, for the purposes of this Agreement the following terms have the following meanings:

“The Act” means the legislation amending the State Economic Development Law, Tax Law, Executive Law, the Administrative Code of the City of New York, the Real Property Tax Law and Education Law to establish the Start UP NY Program.

“Agreement” means this Start UP NY Ground Lease Agreement, including, for the avoidance of doubt, all schedules referred to herein.

“Campus” means any physical property in New York State owned or leased by the Sponsor, held in trust for Sponsor, or owned or leased by an affiliated not-for-profit entity on behalf of Sponsor or for the benefit of Lessor, and include any such additional physical property that may be acquired, established, operated or contracted to be operated for or on behalf of Lessor.

“Commissioner” means the Commissioner of the New York State Department of Economic Development.

“Contractor” means a person, corporation or entity engaged by Lessee to construct, reconstruct, demolish, excavate, rehabilitate, repair, renovate, alter, or improve the Project and it shall include subcontractors, independent contractors or agents employed by the Contractor for the aforesaid purposes in connection with the Project.

“Date Lessee takes possession of the Demised Premises” shall mean the date on which Lessee’s notification to SUNY of Lessee’s readiness to commence construction.

“Demised Premises” means all the real property described in the legal description attached to this Agreement as Schedule A and identified on the survey maps attached hereto as Schedule B.

“EDL” means the New York State Economic Development Law.

“Effective Date” means the date which the Commissioner or as the case may be, the Start UP NY Approval Board give its approval for this Agreement to be binding on the parties.

“Eligible Land” means vacant land or space that is eligible for designation as a Tax-Free NY Area.

“Force Majeure” means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following: (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority; (b) ionizing radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active toxic explosive or other hazardous properties of any explosive assembly or nuclear component; (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; (d) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and (e) strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its

suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of the Project or this Agreement.

“Improvements” means all the buildings, improvements, structures, whether temporary or permanent, erected or located in, on, under or upon the Demised Premises by Lessee as of the Effective Date. It shall also include all other facilities, fixtures, appurtenances, tangible and intangible (other than receivables), personal property of the Lessee brought to the Demised Property by Lessee as of the Effective Date, including inventories of any nature whatsoever contained on or attending to the Demised Premises or used in connection with the Project or the Start Up NY business as well as all mechanical, electrical and other systems installed or used in connection with any of the foregoing as of the Effective Date.

“Insurance Trustee” means the insurance trustee designated in the Leasehold Mortgage, or, in the event there is no Leasehold Mortgage or no insurance trustee designated therein, a bank or trust Lessee selected by Lessee with its principal office in the State of New York and having capital of not less than \$200,000,000.

“Leasehold Mortgage” has the same meaning ascribed thereto in §19 of this Agreement.

“Leasehold Mortgagee” has the same meaning ascribed thereto in §19 of this Agreement.

“Proceeds of the Lease” means the Base Rent, Additional Rent and other any monetary consideration that the Lessee shall be required by the Commissioner or the Start Up NY Approval Board as the case may be, in consultation with the Chancellor of the University or his/her designee to periodically, pay to the Sponsor to be allocated and used for the purposes set forth in §361 of the Education Law.

“Project” means the design, construction, reconstruction, demolition, excavation, rehabilitation, repair, renovation, alteration or improvement of the real property comprising the Demised Premises that is used by the Lessee for the approved Start UP NY business.

“Project Labor Agreement” means a pre-hire collective bargaining agreement between a contractor and a bona fide building and construction trade labor organization establishing the labor organization as the collective bargaining representative for all persons who will perform work on public work project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform project work.

“Base Rent” has the same meaning ascribed thereto in Section 6 of this Agreement.

“Additional Rent” has the same meaning ascribed thereto in Section 6 of this Agreement.

“Schedule D” means “Exhibit A”, the standard contract terms and conditions required to be appended and made part of contracts such as this of which the State University of New York is a party.

“Schedule D-1” means Exhibit A-1, the affirmative action terms and conditions required to be appended and made part of contracts such as this of which the State University of New York is a party.

“Sponsor” or “Sponsoring University or College” means a university or college that has received approval to sponsor a Tax-Free NY area.

“START-UP NY Approval Board” means a board consisting of three members, one each appointed by the Governor, the Speaker of the Assembly and the Temporary President of the New York State Senate to carry out certain specified functions in the Act.

“START UP NY Program” means the economic revitalization program established under the Act that allows Start UP NY businesses to carry on eligible business activities in a Tax Free NY Area.

“START UP NY Business” means business sponsored by the Sponsor and approved by the Commissioner to carry out eligible START UP NY businesses on Eligible Land

“State Agency” for the purposes of the applicability of Executive Law 15-A to this Agreement means: (i) any state department, or (ii) any division, board, commission or bureau of any state department, or (iii) the state university of New York and the city university of New York, including all their constituent units except community colleges and the independent institutions operating statutory or contract colleges on behalf of the state, or (iv) a board, a majority of whose members are appointed by the Governor or who serve by virtue of being state officers or employees as defined in subparagraph (i), (ii) or (iii) of paragraph (i) of subdivision one of section Seventy-Three of the Public Officers law:

“State Contract” for the purposes of the applicability of Executive Law 15-A to this Agreement means: (a) a contract, subcontract, lease, grant, bond, covenant or other agreement entered into for the purposes of the Project, where any individual, public corporation or authority, private corporation, limited liability company or other entity spends or is committed to spend or does expend funds in excess of twenty-five thousand dollars (\$25,000.00), in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or an combination of the foregoing, to be performed for, or rendered or furnished in connection with the Project; (b) a contract, subcontract, lease, grant, bond, covenant or other agreement entered into for the purposes of the Project, where any individual, public corporation or authority, private corporation, limited liability company or other entity spends or is committed to spend or does expend funds in excess of one hundred thousand dollars (\$100,000.00) for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements on a Demised Premises.

“State Subcontract” for the purposes of the applicability of Executive Law 15-A to this Agreement mean any a contract, subcontract, lease, grant, bond, covenant or other agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between any individual, public corporation or authority, private corporation, limited liability company and a prime contractor, in which a portion of the prime contractor’s obligation under the State Contract is undertaken or assumed by a business enterprise not controlled by a prime contractor.

“Strategic State Asset” means land or a building or group of buildings owned by the State of New York that is closed, vacant, or for which notice of closure has been given pursuant to any statutory notice requirement or which is otherwise authorized to be closed pursuant to any chapter of the laws of New York.

“Tax-Free NY Area” means the land or vacant space of a university or college and designated area of a New York State Incubator that meets the eligibility criteria specified in Article 21 of the EDL and has been approved as a Tax-Free NY Area pursuant to Sections 220.5, 220.7, 220.8, or 220.9 herein. It also means a Strategic State Asset that has been approved by the START-UP NY Approval Board.

2. DESCRIPTION OF DEMISED PREMISES

Lessor does hereby lease to Lessee, and Lessee does hereby take and Lease from Lessor, all the real property described in the legal description attached as Schedule A hereto and identified on the survey maps attached as Schedule B hereto (collectively, the “Demised Premises”).

TOGETHER WITH and including all buildings and improvements situated on the Land (collectively the “Improvements”), including, without limitation, the parcel of land, known as the Demised Premises and particularly delineated in Schedule B and all parking areas and driveways, appurtenances thereto. (Show metes and bounds or other applicable description that can be easily identified shared and verified by an independent third party of the vacant space or land.

TOGETHER WITH including the right of Lessee to use, in common with the students, faculty, administration and visitors at, of or to the Lessor, all of the surrounding or adjoining private streets, roads, highways, alleys, driveways, sidewalks, easements, rights-of-way and appurtenances owned by Lessor which give vehicular or pedestrian access to the Demised Premises. Access across or through the Lessor (other than the area of the Demised Premises) shall be subject to the regulations of Lessor. Lessor shall at all times permit access to the Demised Premises and shall keep such access free and clear of ice, snow and debris, but, in the event that Lessor shall determine not to remove ice and snow from the entire Lessor, then Lessor shall not be obligated to provide such service to Lessee, and, in such event, Lessee may, at Lessee's sole option and at Lessee's cost and expense, provide snow and ice removal service for such access ways from public roads to the Demised Premises but Lessee shall not materially interfere thereby with other activities at the Lessor's campus.

RESERVING to Lessor the right to maintain, repair and replace existing utility lines and related appurtenances under and above the Demised Premises as provided in Section 6 of this Agreement.

FURTHER RESERVING to Lessor the mineral, gas and petroleum rights, if any, situated beneath the surface of the Demised Premises; provided, that such mineral, gas and petroleum rights shall not be taken from beneath the surface of the Demised Premises during the Term (by access from the Demised Premises or lands other than the Demised Premises).

3. START UP NY MANDATORY REQUIREMENTS

(a) Article 8 of New York State Labor Law-Prevailing Wage. The parties agree that pursuant to §361 of the Education Law any contract or agreement for the for the construction, alteration, rehabilitation, demolition, reconstruction, excavation, repair, renovation or improvement work on the Demised Premises shall (A) be awarded by a competitive process and (B) state that such work is deemed a public works project for the purposes of Article 8 of the Labor Law and require compliance with all provisions of Article 8 of the Labor Law by Lessee, any sublessee, any contractor or any subcontractor performing such work. Accordingly, contractors, subcontractors or agents engaged by the Lessee to construct, reconstruct, demolish, excavate, rehabilitate, repair, renovate, alter, or improve the Project shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Department of Labor shall provide the Contractor with posters relating to prevailing wage rates and the same shall be displayed by the Contractor in a conspicuous place at the construction Demised Premises. The Contractor shall also distribute wallet cards, to be provided by the Department of Labor, to all workers engaged at the construction Demised

Premises containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, such contractors, subcontractors or agents are required to keep certified copies of its payrolls at the Demised Premises.

(b) Participation of Minority and Women Owned Businesses Enterprises ("MWBEs"). For the purposes of Article 15-A of the Executive Law, any individual, public corporation or authority, private corporation, limited liability company or partnership or other entity entering into a contract, subcontract, lease, grant, bond, covenant or other agreement for the Project shall be deemed to be a State Agency and such contracts shall be deemed to be a State Contract. Accordingly, the parties to such contract, subcontract, lease, grant, bond, covenant or other agreement shall comply with the requirements of Article 15-A of the Executive Law.

(c) Reverter. It is agreed by and between Lessor and Lessee that while this Agreement is in effect, all improvements and fixtures for the Build Out erected upon the Demised Premises shall remain the property of Lessee or a subcontractors, as the case may be, but upon expiration or termination of this Agreement, all Improvements and fixtures (excluding movable fixtures, trade fixtures, attached furniture and personal property not constituting Leasehold improvements, and specialty installations, provided that Lessee or such subcontractors, as the case may be, repairs any and all damage to the Demised Premises resulting from the removal of any such fixtures, improvements or installations) shall become the absolute property of Lessor without payment by Lessor except that, if Lessor grants a new Agreement to the Leasehold Mortgagee or its designee or Lessee grants a new sublease on similar terms to the Leasehold Mortgagee or its designee, then, at the option of such Lessee or such sublessee, title shall remain in the Lessee or sublessee while the new Agreement or new sublease is in effect.

(d) Cessation of Use of Demised Premises As Described in this Lease. In the event Lessee cease to use the Demised Premises for the purposes described herein, this Lease shall terminate on the thirtieth day after notice of such termination is mailed to Lessee and the Demised Premises and Improvements thereon shall revert to Lessor.

(e) Removal of the Business from the Start UP NY Program. Subject to the requirements of the Act and its implementing regulations, if Lessee is duly removed from the Start UP NY Program, such event shall constitute to a rescission of this Lease effective on the 30th day after the Commissioner serves a removal notice on the Start UP NY Business, and the Demised Premises and any improvements thereon shall revert to Lessor.

(f) Indemnity.

i. By Lessee: Lessee hereby agree to indemnify, hold harmless and defend Lessor from and against all claims, suits, actions, and liability to all persons on the leased premises, including tenant, tenant's agents, contractors, subcontractors, employees, customers, guests, licensees, invitees, and members of the public, for damage to any such person's property, whether real or personal, or for personal injuries arising out of tenant's use or occupation of the Demised Premises prior to the Term hereof and, during the Term of this Agreement, for any personal injury, loss of life, and/or damage to property sustained in or about the Demised Premises or the appurtenances thereto, so far as the

same arises out of the use and operation of the Demised Premises, and from and against all reasonable costs, counsel fees, expenses and liabilities incurred in and about any such claim, the investigation thereof, or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Lessor agrees to notify Lessee promptly in writing of any such claim presented to Lessor or action commenced against Lessor and permit Lessee to defend or settle the same. Lessor agrees to cooperate with Lessee in any way reasonably requested by Lessee, but at Lessee's expense, to enable Lessee to defend against any such claims. Lessor reserves the right to join in any action at its cost and expense when it determines there is an issue involving a significant public interest.

ii. By Lessor: Subject to the availability of lawful appropriation and consistent with the New York State Court of Claims Act, Lessor shall hold the Lessee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Lessor or of its officers or employees when acting within the course and scope of their employment in connection with this Agreement.

(g) Proceeds of This Lease. The parties agree that any proceeds of this Lease shall be allocated by the Board of Trustees of the University to the Sponsor for which this lease applies and deposited in the General Fund of such Sponsor and used for purposes including but not limited to students financial aid for students who are eligible to receive Tuition Assistance Award or Supplemental Tuition Assistance pursuant to §667 or 667-A of the Education Law and to support additional full time faculty positions.

(h) Project Labor Agreements. Lessee shall have the right to require a contractor awarded a contract, subcontract, Agreement, grant, bond, covenant or other agreement for a project to enter into a Project Labor Agreement during and for the work involved with such project when such requirement is part of Lessee's request for proposals for the project and when Lessee determines that the record supporting the decision to enter into such an agreement establishes that the interests underlying the competitive bidding laws are best met by requiring a project labor agreement including: obtaining the best work at the lowest possible price; preventing favoritism, fraud and corruption; the impact of delay; the possibility of cost savings; and any local history of labor unrest. Notwithstanding the foregoing, if Lessee does not require a Project Labor Agreement, or the subcontractors does not elect to require its contractor or subcontractor to enter into a Project Labor Agreement, then any contractor, subcontractor, agreement, lease, grant, bond, covenant or other agreements for a project shall, unless otherwise waived by the University or another instrumentality of the State of New York with authority to do so, be awarded pursuant to §135 of the State Finance Law (the "WICKS LAW")

4. CONSTRUCTION

(a) Subject to the terms and conditions hereinafter set forth, Lessee may develop, construct and furnish or at its option cause or permit to be developed, constructed and furnished upon the Demised Premises, buildings and other structures and improvements, including utility lines and systems, roads, sidewalks and parking and recreational facilities (collectively, "Improvements") comprising the Project.

(b) Lessee shall be responsible for obtaining (or cause or permit to be obtained), without expense to Lessor, all permits, licenses and other governmental approvals (collectively, "Permits") required for the development, construction, and furnishing of the Project and the subsequent operation thereof. Lessor agrees to cooperate with Lessee, without expense to

Lessor, by signing documents and taking other action reasonably required in order for Lessee to obtain (or cause or permit to be obtained) the Permits.

(c) All construction contracts entered into by Lessee in connection with any construction, alteration or rehabilitation of Improvements upon the Demised Premises (individually, "Construction Contract" and, collectively, "Construction Contracts") shall be assignable (without the contractor's consent) to Lessor and to any Leasehold Mortgagee, as defined in Section 19 below. Upon execution and delivery of each Construction Contract, Lessee shall collaterally assign such Construction Contract to Lessor by agreement in form reasonably satisfactory to Lessor. The Lessor' right to assignment of Construction Contracts shall be and hereby is made subject and subordinate to the right of the Leasehold Mortgagee to obtain an assignment thereof in a similar fashion, whether or not Lessor is the first to exercise such right. Lessee shall require of each of its subcontractors:

(i) that all Construction Contracts entered into by said subcontractors shall be assignable (without the contractor's consent) to Lessee and Lessor and to any Leasehold Mortgagee; and

(ii) that, upon execution and delivery of each Construction Contract, the subcontractors shall collaterally assign such Construction Contract to Lessee and Lessor. Each such collateral assignment shall, among other things, give Lessee and the Lessor the right (but not the obligation) to take all action and receive performance under the Construction Contract in lieu of subcontractors if an Event of Default described thereunder shall occur or subcontractors shall be in default beyond applicable notice and grace periods under the sublease, under any agreement between Lessee and/or any of the Lessor, on the one hand, and subcontractors, on the other hand, or under the Construction Contract. Lessee and the Lessor' right to an assignment of such Construction Contracts shall be expressly subject and subordinate to the right of any Leasehold Mortgagee to obtain an assignment of the Construction Contracts. Each such Construction Contract shall provide that, upon receipt by the contractor of written notice from Lessee and the Lessor stating that (a) subcontractors is in default as described hereinabove and (b) Lessee and the Lessor are electing to exercise their rights under the assignment and assume all the rights and obligations of subcontractors thereunder from and after the date of said notice, then such contractor shall continue performance under the Construction Contract in accordance with the terms thereof, regardless of any default by subcontractors under the Construction Contract, so long as Lessee and Lessor compensate Contractor as provided in the Construction Contract for all work, labor, services and materials rendered on Lessee's and Lessor' behalf and otherwise observes all other obligations as "owner" under the Construction Contract following such notice. Notwithstanding the above, the parties recognize that Lessor will experience significant damages from having partially-completed and unwanted construction on the Demised Premises. Nothing herein shall in any way prejudice the rights that Lessor would otherwise have to seek damages under this Agreement or otherwise by law.

(d) If the estimated cost of construction, alteration or rehabilitation shall be in any one instance in excess of \$150,000, Lessee shall, prior to the commencement of the work, procure, execute and deliver, or cause to be procured, executed and delivered, to Lessor and maintain, or cause to be maintained, at its own cost and expense, a performance bond and a payment bond (or, if Lessee so elects, other security reasonably satisfactory to Lessor and to the Leasehold Mortgagee), which shall be in an amount not less than one hundred percent (100%) of the total contract price of such construction, alteration or rehabilitation work. Said bonds must be issued by a surety authorized to do business in the State of New York as a surety. Such performance bond shall guaranty performance of the Construction Contract for such work within a reasonable time, free of all liens, encumbrances, chattel mortgages, conditional bills of sale and

other charges, and in accordance with the plans and specifications approved by Lessor. Attorneys-in-fact who execute said bonds on behalf of a surety must affix thereto a certified and effectively dated copy of their power of appointment. Lessor will not unreasonably withhold, condition or delay its consent to other forms of security proposed by Lessee. The obligations contained in this Section 2(d) shall be waived by Lessor with respect to any construction, alteration or rehabilitation performed by Lessee or subcontractors, provided that Lessee or subcontractor provides evidence reasonably satisfactory to Lessor of financial security, in the form of a guaranty or otherwise, sufficient to pay for and complete any such construction, alteration or rehabilitation costing in excess of \$150,000 in any one instance.

(e) Throughout the Term of this Agreement and during any period of construction, alteration or rehabilitation, Lessee shall, at Lessee's sole cost and expense, be responsible for assuring compliance with the New York State Uniform Fire Prevention and Building Code and with the Life Safety Code of the National Fire Protection Association, to the extent applicable. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to subject Lessee to the jurisdiction of any municipal government or any other body exercising similar functions.

(f) Lessee shall have the sole right to name the START UP NY Business and to place signs on the Demised Premises with respect to the use of the Demised Premises.

5. TERM

(a) The term of this Agreement shall be a period commencing on the Effective Date and expiring on the earlier of the _____ (___th) anniversary of the Effective Date, unless sooner terminated in accordance with the provisions of this Agreement. .

(b) Option For Renewal: Lessee shall, provided the Agreement is in full force and effect and Lessee is not in default under any of the terms and conditions of the Agreement at the time of notification or commencement, have one (1) option to extend this Agreement for a term of ____ (___) years as of the date the extension term is to commence, on the same terms and conditions set forth in the Agreement, except as modified by the terms, covenants and conditions as set forth below:

i) If Lessee elects to exercise said option, then Lessee shall provide Lessor with written notice no earlier than the date which is ____ (___) months prior to the expiration of the term of the Agreement but no later than the date which is ____ (___) months prior to the expiration of the term of the Agreement. If Lessee fails to provide such notice, Lessee shall have no further or additional right to extend or renew the term of the Agreement.

ii. This Option for Renewal is not transferable; the parties hereto acknowledge and agree that they intend that the aforesaid option to extend this Agreement shall be "personal" to Lessee as set forth above and that in no event will any assignee or sublessee have any rights to exercise the aforesaid option to extend. Lessee shall have no further right to extend the term of the Agreement.

(c) Term Greater Than Forty Years or of One Million or More Square Feet: Where this Agreement is for a term greater than forty (40) years (including any options to renew) or of One Million or More Square Feet it shall commence upon the approval of the START-UP NY Approval Board in accordance with the Act and implementing regulations.

(d) Survival: The applicable provisions of this Agreement shall continue in effect after the expiration of the initial term or any renewal term of this Ground Agreement, to the extent necessary to provide for final billing and adjustment, to enable Lessee to remove its personal property and to enable Lessee to remove Improvements and restore the Demised Premises in accordance with Section 8 herein.

6. RENT

(a) Lessee shall pay base rent at the rate of one dollar (\$1.00) per annum ("Base Rent") on the first day of each calendar year during the Term. In addition, Lessee shall pay all other amounts required to be paid by Lessee hereunder (sometimes collectively referred to herein as "Additional Rent" and, together with Base Rent, the "Rent") as and when due and payable.

(b) The Annual Rent in effect at the expiration of the term of the Agreement shall subject to the Commissioner's directions and approval be negotiated between the parties.

(c) In addition to the Base and Additional Rent, the Lessee may be required by the Commissioner or the Start Up NY Approval Board as the case may be, in consultation with the Chancellor of the University or his/her designee when approving this Agreement to pay periodically, to the Sponsoring Campus, additional sums that will be allocated and used for the purposes set forth in §361 of the Education Law.

7. EASEMENTS; UTILITIES

(a) Lessor hereby reserves the right to maintain, repair and replace such existing utility lines, pipes, ducts, conduits and wires (collectively, the "facilities") on, under and above the Demised Premises as may be reasonably necessary for the servicing of the Lessor (other than the Demised Premises). The rights reserved to Lessor pursuant to this paragraph shall be subject to the following conditions precedent:

(i) Lessor may maintain, repair and replace the facilities on the Demised Premises if Lessee or any subcontractors shall fail to do so pursuant to the terms of this Agreement or the applicable sublease. In performing such work, Lessor shall use all commercially reasonable efforts to minimize interference with Lessee's and/or any subcontractors Entity's operations, and shall promptly restore all damage to the Demised Premises or any Improvements thereon and remove all debris associated with such work at its sole cost and expense.

(ii) If Lessor shall maintain, repair and replace any such facilities, then Lessor shall, except in an emergency, in each instance:

(A) Deliver to Lessee at least thirty (30) days prior to such maintenance, repair and replacement, notice of the proposed work.

(B) if reasonably requested by Lessee at the time, deliver to Lessee prior to such maintenance, repair and replacement, public liability, workers' compensation, casualty and other insurance coverage or legal indemnification (i.e., NYS Court of Claims Act, Public Officers' Law §17) which shall be reasonably satisfactory to Lessee.

(b) At any time during the Term of this Agreement, Lessee may, at its own expense, relocate the facilities and install and/or relocate any new utility facilities within the Demised Premises to the extent necessary to develop, construct and/or operate the Project. Lessee shall comply with the requirements of subsection (a) above in performing this work and Lessee shall be responsible for obtaining the written approval of all beneficiaries of such utility facilities

(including, when applicable, the facilities) at its sole cost and expense prior to undertaking such work. In addition, Lessor agrees to provide Lessee and/or the applicable utility provider with all easements over adjacent property of Lessor that Lessee or such utility provider may require relocating the facilities and installing and/or relocating such utility facilities, at no cost to Lessee or the applicable utility provider, provided that such easements do not materially interfere with the use of Lessor's adjacent property or render title thereto unmarketable.

(c) Lessee may, at Lessee's option and with Lessor's consent, which Lessor agrees not unreasonably to withhold, condition or delay, use the storm and sanitary sewer facilities and sewer plant of Lessor existing from time to time at or adjacent to the Lessor and the other utilities of Lessor from time to time located thereat, in each case to the extent Lessor has at the time sufficient capacity to service the Lessor and Lessee's requirements. Lessee shall be responsible for the cost of connecting such sewer facilities, sewer plant and utilities to the Project. It is understood that the Parties contemplate that gas and electricity will be obtained from the public utilities, at least in the first instance. In the event any utility facilities of Lessor (including the facilities) are used by Lessee, then, unless otherwise agreed between the Parties to this Agreement in writing, Lessee shall pay or cause to be paid to Lessor a reasonable rate or charge for any such use, which shall not in any instance exceed the rate or charge which would be assessed against Lessee for use of similar utility facilities and equipment of the public utility furnishing the same or Lessor's out-of-pocket cost, whichever is higher. In the case of storm or sanitary sewer facility use, in the absence of any such other written agreement, the rate or charge which may be assessed or charged by Lessor shall not exceed that charged by the nearest sewer district operated by the County of _____ (name of municipality with jurisdiction) or Lessor's out-of-pocket cost, whichever is higher. Any "tap-in" charges made by Lessor shall not exceed those charged by the public utility establishing similar "tap-in" charges.

(d) Lessor makes no representation as to the adequacy of any utilities described in subsection (c) above or their suitability for Lessee's operations, and Lessor shall have no liability or responsibility if any one or more of the utility services provided by or furnished through utility facilities (including the facilities) and equipment of Lessor are interrupted or terminated for any other reason whatsoever, and a loss of any such utility service shall not be deemed a constructive eviction of Lessee or a defense to any of Lessee's obligations hereunder, and shall not entitle Lessee to terminate this Agreement.

8. NET LEASE

(a) This Agreement is a net lease. Notwithstanding any present or future law to the contrary, except as otherwise expressly set forth in this Agreement, Lessee shall not be entitled to terminate this Agreement, nor shall Lessee be entitled to any abatement, set-off, counterclaim, defense or deduction with respect to any Base Rent or Additional Rent, nor shall the obligations of Lessee hereunder be affected by reason of any damage to or destruction of the Demised Premises, any prohibition, limitation, restriction, or prevention of Lessee's use, occupancy or enjoyment of the Demised Premises, or any other cause whether similar or dissimilar to the foregoing. The Parties intend that the obligations of Lessee hereunder shall be separate and independent covenants and agreements. It is the intention of the Parties that the Rent payable hereunder shall be absolutely net to Lessor without any set-off or deduction whatsoever, so that this Agreement shall yield, net, to Lessor, the Rent payable to Lessor during the entire Term of this Agreement, and that all costs, expenses, deductions and charges of any kind and nature relating to the Demised Premises or to the ownership, lease, use or occupation thereof which may arise or become due and payable during or after the Term of this Agreement, shall be paid by Lessee, and that Lessor shall be indemnified and held harmless by Lessee from and against

claims for same, and under no circumstances or condition shall Lessor be expected or required to make any payment of any kind or be under any other obligation or liability hereunder, except to the extent expressly provided in this Agreement.

(b) Without limiting the generality of the foregoing, Lessee covenants to pay, before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, as Additional Rent, all taxes, assessments (including, but not limited to, that portion of all assessments for public improvements or benefits payable during the Term, whether or not such improvements are commenced or completed within the Term of this Agreement), payments in lieu of taxes, water, sewer and other rents, rates or charges, charges for public utilities, excises, levies, license and permit and inspection fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior or during the Term of this Agreement may have been or may be assessed, levied, confirmed, imposed upon, or grow or become due or payable out of or in respect of, or become a lien on, the Demised Premises or any part thereof or any appurtenance thereto, or any use, possession, or occupation of the Demised Premises, but only to the extent the same are payable with respect to the Term (all of the foregoing, together with any and all penalties and/or interest thereon, being hereinafter sometimes collectively referred to as "Taxes", and any of the same being hereinafter sometimes referred to as a "Tax"). Any Tax imposed against the Demised Premises, relating to a fiscal period of the imposing authority, a part of which period occurs after the Expiration Date (whether or not such Tax shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Demised Premises, or shall become payable, during the Term) shall be apportioned between Lessor and Lessee as of the Expiration Date.

(c) Lessee shall have the right to contest the amount or validity, in whole or in part, of any real estate Tax by appropriate proceedings diligently conducted in good faith, provided: (i) neither Lessor nor Lessee would by reason thereof be subject to any criminal liability (or any civil liability other than late charges, interest, fees and penalties attributable thereto which shall be Lessee's responsibility); (ii) neither the Demised Premises nor any part thereof or interest therein would, by reason of the postponement or deferment of payment of such Tax, be, in the reasonable judgment of Lessor, in danger of being forfeited or lost or subject to any lien, encumbrance or charge or penalty unless Lessor is indemnified therefor by Lessee (or, if such contest is brought during the term of any construction loan, and Lessor reasonably determines an indemnity is insufficient security for such contest, Lessee provides a bond in an amount and form satisfactory to Lessor in its commercially reasonable discretion); and (iii) Lessee shall regularly keep Lessor advised as to the status of such proceedings. Upon the termination of such proceedings, it shall be the obligation of Lessee to pay the amount of such Tax or part thereof as finally determined in such proceedings to be due, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable attorneys' fees and disbursements), interest, penalties and other liabilities in connection therewith.

(d) At Lessee's sole cost and expense, upon Lessee's written request, Lessor shall permit the proceedings to be brought in Lessor's name or shall join in any proceedings referred to in Section 6(c) hereof if the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Lessor. If the preceding sentence applies, Lessor shall cooperate in such proceedings. If a refund of an overpayment of any real estate Tax paid by Lessee with respect to a period of time within the Term is paid (or credited) to Lessor, whether during the Term or after the Expiration Date, Lessor will pay such amount to Lessee within thirty (30) days after receipt thereof. If a refund

of an overpayment of any Tax paid by Lessor with respect to a period of time other than during the Term is paid to Lessee, whether during the Term or after the Expiration Date, Lessee will pay such amount to Lessor within thirty (30) days after receipt thereof.

9. AS-IS

(a) Lessor shall have no obligation to perform any alterations to the Demised Premises to prepare the same for Lessee's occupancy thereof. Upon execution of this Agreement, Lessee shall be irrevocably deemed to have (i) accepted and be fully satisfied in all respects with, the Demised Premises, including, without limitation, the status of title shown on any title commitment issued to Lessee by a title Lessee prior to execution of this Agreement (the "Title Commitment"), the environmental condition of the Demised Premises, and the property's value and zoning, (ii) decided to lease the Demised Premises solely on the basis of its own independent investigation, and (iii) accepted the Demised Premises in their present "as-is" condition. Except as expressly stated in this Agreement, Lessor has not made, does not make, and has not authorized anyone else to make any representation as to the present or future status of title, the environmental condition, physical condition, value, leasing, operation, use, tax status, zoning, income and expenses or any other matter or thing pertaining to the Demised Premises, and Lessee acknowledges that except as expressly stated in this Agreement, that no such representation has been made and that in entering into this Agreement Lessee does not rely on any such representation. Lessor makes no warranty or representation, express or implied or arising by operation of law, including, without limitation, any warranty of condition, habitability, merchantability, or fitness for a particular purpose of the Demised Premises.

(b) In the event that, as of the date that all required State approvals of this Agreement have been obtained (the "Approval Date"), there are any matters recorded against the Demised Premises which are not disclosed in the Title Commitment ("New Title Exceptions"), Lessee shall have the right to notify Lessor within fifteen (15) days after the Approval Date that it objects to any such New Title Exceptions (a "Title Objection Notice"). In such event, Lessor shall have the right (but not the obligation) within thirty (30) days after receipt of the Title Objection Notice, in its discretion to either record or bond such New Title Exception, or provide the necessary assurances to the title Lessee so that Lessee can obtain a title insurance policy which is not subject to any New Title Exceptions listed in Lessee's Title Objection Notice (an "Acceptable Policy"). If Lessor is unable or unwilling to discharge or bond such New Title Exceptions or to cause an Acceptable Policy to be issued to Lessee within such thirty (30) day period (which period shall be extended if same cannot with reasonable diligence be completed within thirty (30) days provided that Lessor is diligently seeking to discharge or bond such New Title Exceptions or to cause an Acceptable Policy to be issued to Lessee, but not beyond one hundred eighty (180) days after the date of Lessee's Title Objection Notice), then Lessee shall have the right within thirty (30) days after Lessor's period to cure has expired to terminate this Agreement upon notice to Lessor.

10. REPAIR AND MAINTENANCE

Lessee shall repair and maintain the Demised Premises in good condition subject to normal wear and tear, and without commission of waste, and subject to the casualty and condemnation provisions in this Agreement. Lessee shall be responsible for making all structural and non-structural repairs, replacements and alterations to the Demised Premises as needed to maintain the Demised Premises in a first-class manner. All such work shall be performed in a good and workmanlike manner in accordance with the terms herein. Lessee shall operate and maintain the Demised Premises in accordance with all applicable laws and regulations. Upon the expiration of the Term or earlier termination of this Agreement, Lessee shall peaceably

surrender to Lessor the Demised Premises, which, if Lessee has theretofore complied with its maintenance and repair obligations under this Agreement, may be returned to Lessor in its "as-is" condition.

11. INSURANCE

(a) Lessee shall, at its own costs and expense during the Term of the Agreement, keep the Improvements insured against loss by fire and extended coverage perils, with insurance companies authorized to do business in the State of New York, with Lessor named as an insured, in an amount sufficient to avoid co-insurance and in any event in an amount not less than the full replacement cost of the Improvements. Such policies shall be non-cancelable, except upon thirty (30) days' notice to Lessor. Lessee shall pay, when due, all premiums thereon, but shall not at any time be required to pay premiums more than one (1) year in advance. Certificates (and, if requested by Lessor, copies) of such policies of insurance and renewals thereof from time to time, will be delivered to Lessor with reasonable promptness.

(b) Lessee shall, during the Term of this Agreement, maintain a commercial general liability insurance policy (non-cancelable except upon thirty (30) days' notice to Lessor) with any Lessee authorized to do business in the State of New York, insuring both Lessor and Lessee and written on the occurrence basis, affording protection with a combined single limit of \$10,000,000 in the event of death or injury and a combined single limit of \$1,000,000 in the event of damage to any property; provided, however, that if any sublessee shall at any time maintain higher insurance limits for the benefit of Lessee, Lessee shall cause Lessor to be included as an insured under such policy. Policies subject to \$100,000 deductible shall be deemed satisfactory. Such limits shall be reviewed at reasonable intervals and adjusted to conform to limits maintained for similar types of properties, similarly situated. Lessee shall pay all premiums for said policies.

(c) Upon failure at any time on the part of the Lessee to pay the premiums for the insurance required by this Agreement, Lessor shall, upon written notice to Lessee, be at liberty from time to time, as often as such failure shall occur, to pay the premiums therefor, and any and all sums so paid by Lessor shall be and become and are hereby declared to be Additional Rent under this Agreement. Any failure to pay the same within ten (10) days after demand shall, at the option of Lessor, become an Event of Default under this Agreement.

(d) Lessee agrees that Lessor shall not be liable to Lessee or to any insurance Lessee insuring Lessee for damage which was or could have been insured pursuant to this Section. Lessor agrees that Lessee shall have the right to have its sublessee maintain the required coverage hereunder. If any insurance in addition to that required of Lessee hereunder is carried by sublessee for the benefit of Lessee, then, whenever possible, the Certificate Holders shall be named as additional insureds, as their interest may appear, and duplicates or certificates of such policies shall also be delivered to Lessor.

12. CASUALTY

(a) If the Improvements shall be damaged or totally destroyed by fire or by extended coverage perils, they shall be repaired or restored according to the provisions contained in this Section, at the cost and expense of Lessee. Lessor shall not be required to contribute in any way toward such repair, and the Improvements involved shall be repaired to a condition which is comparable as nearly as possible to their condition just prior to the damage, subject to applicable law at the time.

(b) In the event of a partial or total destruction of the Improvements on the Demised

Premises, Lessee shall repair, restore or reconstruct the affected Improvements within one hundred eighty (180) days after the receipt by Lessee of fire insurance proceeds, subject *to force majeure*, or within a reasonable additional extension period which may be required, to a condition comparable to their condition at the time of such destruction, subject to applicable law at the time. Lessor shall promptly endorse any checks payable to Lessor in connection with such proceeds and shall deliver the same to Lessee or the Insurance Trustee, as the case may be. The proceeds of any such insurance shall be payable as follows:

(i) to Lessee to the extent of proceeds not exceeding \$100,000, which proceeds Lessee agrees shall be received in trust to pay the costs of restoration or shall be payable by Lessee, if it so elects, to its sublessee in trust to pay the cost of restoration.

(ii) the entire proceeds, in the event the proceeds exceed \$100,000, to the Insurance Trustee.

(c) Upon receipt by the Insurance Trustee of:

(i) A certificate of Lessee (a "Repair Certificate") dated not more than twenty (20) days prior to the date of such receipt (A) requesting the payment of a specified amount of such insurance monies; (B) describing in reasonable detail the work and materials applied to the restoration or replacement of the damaged or destroyed Improvements since the date of the last Repair Certificate of Lessee; (C) stating that such specified amount does not exceed the cost of such work and materials; and (D) stating that such work and materials have not previously been made the basis of any request for or any withdrawal of money;

(ii) A certificate of an independent engineer or an independent architect designated by Lessee, who in either case shall be duly licensed and shall be approved by Lessor (which approval shall not be unreasonably withheld, conditioned or delayed) stating (A) that the work and materials described in the accompanying certificate of Lessee were satisfactorily performed and furnished and were necessary, appropriate or desirable to the restoration or replacement of the damaged or destroyed Improvements, in accordance with the plans and specifications therefor; (B) that the amount specified in such Lessee's Repair Certificate is not in excess of the cost of such work and materials; and (C) the estimated additional amount, if any, required to complete the restoration or replacement of the damaged or destroyed Improvements;

(iii) A written opinion of counsel, who may be counsel for Lessee, reasonably satisfactory to Lessor, dated not earlier than Lessee's Repair Certificate, or, at the option of Lessee, an endorsement of Lessor's title insurance policy or an updated title insurance policy from a title insurance Lessee acceptable to Lessor, to the effect that, as of the date thereof the Demised Premises is not subject to any mechanics' lien or other lien or encumbrance (other than the Leasehold Mortgage) caused by Lessee, its subcontractors, or their respective employees, contractors or agents; the Insurance Trustee shall pay to Lessee the amount requested; provided, however, that the balance of insurance monies deposited with the Insurance Trustee shall not be reduced below the amount specified in such certificate of the independent engineer or the independent architect as the amount required to complete the restoration or replacement of the damaged or destroyed Improvements. Each such payment shall be held by Lessee in trust and shall be used solely for the payment of the costs described in Lessee's Repair Certificate (or to reimburse Lessee for any portion of such costs which Lessee has advanced from its own funds). If there shall remain on deposit with the Insurance Trustee any balance of insurance monies after any damaged or destroyed portions of the Improvements shall have been completely restored or replaced, as evidenced by a certificate of such independent engineer or independent architect delivered to the Insurance Trustee, such balance of insurance monies shall

be paid to Lessee, provided no Event of Default shall then exist hereunder. Concurrently with Lessee's delivery to the Insurance Trustee of each of the foregoing certificates and/or legal opinions, Lessee shall deliver duplicate copies thereof to Lessor. Notwithstanding anything to the contrary set forth in this subsection, the Insurance Trustee shall make no further payment of insurance proceeds to Lessee following receipt of a notice from Lessor that an Event of Default exists under this Agreement until and unless instructed by Lessor that such Event of Default has been cured. Lessor shall promptly endorse any checks payable to the order of Lessor in connection with such insurance proceeds and shall deliver the same to Lessee or to the Insurance Trustee, as the case may be.

(d) Anything contained in this Section to the contrary notwithstanding, in the event that either (i) a total or substantial destruction of the Project shall occur at any time during the last two (2) years of the Term of this Agreement, or (ii) at any time during the Term a total or substantial destruction occurs but, by reason of a change in law, the Lessee is unable to build the Project as large as existed formerly and Lessee shall notify Lessor that Lessee's Board of Directors has determined in good faith that the leasable area after reconstruction will not be sufficient to make the operation of the Project economically viable, Lessee may elect not to repair, restore or reconstruct the Improvements by sending written notice of such election to Lessor within ninety (90) days after the destruction shall have occurred. In the event that Lessee shall so elect not to repair, restore or reconstruct, the lease hereby created shall cease as of the date of said destruction, Lessee shall pay all Rent due as of the date of said destruction, and there shall be no further liability of either Party except for those obligations which expressly survive the expiration or termination of this Agreement. In such event, the insurance proceeds shall be applied in the following order of priority:

- (1) To payment of the Leasehold Mortgage;
- (2) Remainder to Lessor.

(e) In the event any restoration contemplated in this Section is required during the term of any sublease and the subcontractors Entity thereunder is obligated therefor, provided such subcontractors does not exercise any right to terminate its sublease on account of the casualty necessitating such restoration, the provisions governing such casualty under the applicable sublease shall control provided that such sublease provisions provide for the restoration of the subleased premises to a condition comparable to their condition immediately preceding such casualty, subject to applicable law at the time of such restoration.

13. USE OF DEMISED PREMISES

The Demised Premises may be used for the permitted uses described in Schedule C hereto and for purposes ancillary thereto (collectively, the "Permitted Uses"). Lessee's use of the Demised Premises shall also be reasonably consistent with the provisions of the "Start UP NY Act" and its implementing regulations.

14. EMINENT DOMAIN

(a) If at any time during the Term of this Agreement, title to the whole or materially all of the Demised Premises shall be taken by the exercise of any right of condemnation or eminent domain or, in lieu or anticipation thereof, by agreement between Lessor and those authorized to exercise such right, or by Lessor pursuant to its authority under law to do so, Lessee, at its option may cancel this Agreement by notice to Lessor and Lessee's liability to

perform the terms and conditions of this Agreement shall cease, and the aggregate of awards collected, after the payment of fees and expenses incurred in the establishment and collection of such awards, shall be paid and applied in the following order of priority:

(i) To payment to Lessor of the value of the land so taken, subject to this Agreement and subject to the limitation on use of the land for campus purposes;

(ii) To payment of the Leasehold Mortgage; and

(iii) To pay Lessee such amounts, if any, as are payable to subcontractors under subleases; and

(iv) Remainder to Lessee.

(b) For purposes of this Section, "materially all of the Demised Premises" shall be deemed to have been taken if (i) prior to or during initial construction of the Project, part of the net leasable space of the Project shall be so taken and Lessee has determined that Lessee and its present or potential sublessees are unable to develop the remainder of the Demised Premises for the Project to its reasonable satisfaction, or (ii) after initial construction of the Project, more than ten percent (10%) of the rentable square footage of the Project has been so taken and Lessee reasonably determines that the remaining leasable area of the Project is not sufficient to make the continued operation of the Project economically viable.

(c) Subject to the provisions of any Leasehold Mortgage, if at any time during the Term of this Agreement, title to less than materially all of the Demised Premises shall be taken as aforesaid, all of the award or awards or other proceeds shall be paid over to Lessee, or, at Lessee's request, to its sublessee, provided the amount of the award does not exceed \$100,000, or, if it does exceed \$100,000, then to the Insurance Trustee, for release during restoration in the same manner as the proceeds of casualty insurance are to be released for repair and rebuilding under the provisions of Section 10 hereof. Lessor shall promptly endorse any checks payable to the order of Lessor in connection such with awards and shall deliver the same to Lessee or to the Leasehold Mortgagee, as the case may be. Any portion of the award remaining after restoration of the Project and/or Improvements shall be paid to the Leasehold Mortgagee, if required, and the balance of the award shall be paid to Lessor. If title to less than materially all of the Demised Premises shall be taken as aforesaid, this Agreement shall continue in full force and effect.

15. EVENTS OF DEFAULT

An Event of Default shall be deemed to have occurred if: (a) Lessee fails to pay any amount of Base Rent payable hereunder when due and such sum remains unpaid for ten (10) days after notice from Lessor (provided, however, that Lessee shall not be entitled to more than one such notice in any twelve month period); (b) Lessee fails to pay any sum (other than Base Rent) when due hereunder and such sum remains unpaid for ten (10) days after notice from Lessor; (c) Lessee shall default in fulfilling any of the other covenants or agreements of this Agreement beyond the notice and grace periods permitted herein, or, if no notice and grace periods are specified herein, if any such default shall not be cured within thirty (30) days after notice from Lessor specifying the default (provided, that if such default cannot with reasonable diligence be cured within such thirty (30) day period, then Lessee's time to cure shall be extended as long as Lessee commences to cure within such thirty (30) day period and continues to cure with due diligence); or (d) Lessee is adjudicated a bankrupt or makes a general assignment for the benefit of creditors or takes the benefit of any insolvency act, or if a

permanent receiver or trustee or custodian be appointed for Lessee's property, and such proceeding shall not be dismissed or stayed or such receivership or trusteeship or custodianship vacated or stayed within one hundred twenty (120) days after such institution or appointment, or Lessee admits in writing its inability to pay its debts when due.

16. CERTAIN REMEDIES OF LESSOR

If an Event of Default occurs, Lessor may immediately, or at any time thereafter, subject to the rights that Lessor may grant to a Leasehold Mortgagee, terminate this Agreement, reenter the Demised Premises and remove all persons and all or any property therefrom, either by summary dispossess proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and repossess and enjoy the Demised Premises, together with all Improvements. In such event, Lessee shall remain liable as hereinafter provided, subject to the provisions of Section 25 hereof.

17. OTHER REMEDIES OF LESSOR

(a) In addition to the legal remedies of Lessor herein referred to, if an Event of Default occurs, Lessor shall have all other legal and equitable remedies for the enforcement of the provisions of this Agreement available hereunder, at law and/or in equity.

(b) After an Event of Default, this Agreement shall continue in effect so long as Lessor does not terminate this Agreement, and, while such Event of Default exists, Lessor may enforce its rights and remedies hereunder, including the right to recover Rent and/or other monetary consideration accruing to the Sponsoring Camps under this Agreement from Lessee as it becomes due hereunder and, subject to the rights of any Leasehold Mortgagee, from any subcontractors. In such event, (i) Lessee shall be deemed to have assigned to Lessor Lessee's right to collect and receive rent and other payments from any subtenants and (ii) Lessor shall apply any such rents and other payments to the discharge of Lessee's obligations under any such sublease or subleases. After an Event of Default (other than with respect to payment of monthly Base Rent), Lessor may, without waiving Lessee's performance of its obligations hereunder, make the defaulted payment or perform such act on Lessee's behalf. All costs incurred by Lessor in taking such action shall be deemed Additional Rent and/or other monetary consideration due under this Agreement and shall be paid to Lessor on demand. Lessee shall reimburse Lessor for all expenses incurred by Lessor (including reasonable attorneys' fees and disbursements), by reason of any breach by Lessee, or its agents, servants or employees, of any covenant or provision of this Agreement.

18. MECHANIC'S LIEN

If any mechanic's lien or other lien or orders for the payment of money shall be filed against the Demised Premises or any part thereof by reason of or arising out of labor or material furnished or alleged to have been furnished or to be furnished to or for the account of Lessee or any subcontractors or operator at the Demised Premises or for or by reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against Lessor as owner thereof, Lessee shall, within forty-five (45) days after written notice from Lessor, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee shall also defend on behalf of Lessor, at Lessee's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the enforcement of such lien

or orders. Lessee shall pay any damage and discharge any judgment entered therein and save harmless Lessor from any claim or damage resulting therefrom. Lessor shall also have the right to bond the lien itself at Lessee's expense after reasonable notice to Lessee.

19. RIGHTS OF LESSEE TO MORTGAGE LESSEE'S INTEREST UNDER THIS LEASE AND RIGHTS OF LEASEHOLD MORTGAGEE THEREUNDER

Lessee or its sublessee shall have the right to grant one or more Leasehold mortgages to a lending institution authorized to make Leasehold mortgage loans in the State of New York ("Leasehold Mortgage") encumbering Lessee's (or its sublessee's) Leasehold interest in the Demised Premises ("Leasehold Mortgage"). Each such Leasehold Mortgage by its terms shall be expressly subject and subordinate in all respects to Lessor's fee estate in the Demised Premises.

20. LESSOR'S FEE SIMPLE TITLE NOT TO BE SUBORDINATED; RESTRICTIONS ON ENCUMBRANCES

(a) In the event that Lessee shall mortgage Lessee's Leasehold interest in this Agreement, it is specifically understood and agreed that Lessor shall not be required to subordinate or subject Lessor's interest in the fee simple title to the Demised Premises to any Leasehold Mortgage contemplated by Section 18 hereof.

(b) During the Term, except for: (i) rights reserved in Section 7 hereof, (ii) rights granted in connection with Lessor's reserved mineral, gas and petroleum estate (subject to the prohibition on extracting same in Section 2 hereof), and (iii) such easements and rights of way that may be necessary or desirable for the benefit of the Lessor that do not and will not materially interfere with the use or enjoyment of the Demised Premises for the Permitted Uses, Lessor shall not record or file or allow to be recorded or filed any mortgage, lien, covenant, easement, and/or any other encumbrance or restriction on the fee simple title to the Demised Premises, except as set forth in Section 22 hereof.

21. ASSIGNMENT AND SUBLEASE

(a) Lessee may assign this Agreement with the prior written consent of Lessor. Such assignment shall also be subject to the regulatory and transactional approval requirements set forth for the consideration and approval of applications for Start UP NY Businesses provided in the Act and its implementing regulations. Upon such permitted assignment of this Agreement and upon the delivery to Lessor of an instrument in writing duly executed by the then assignee, by which the assignee shall expressly assume and agree to perform all of the terms, conditions and covenants hereof accruing from and after the date of assignment and for the remainder of the Term hereof, Lessee, or any subsequent assignee which shall further assign this Agreement, shall be released from all further liability or responsibility hereunder, except as to obligations which are (i) then due and unpaid or (ii) then in default (notice of which has been previously given to Lessee by Lessor, if such notice is required under the terms of this Agreement).

(e) In the event that Lessee shall sell or assign its Leasehold interest as set forth herein (other than on the foreclosure of the Leasehold Mortgage or an assignment in lieu thereof) in exchange for a valuable consideration, then, in that event, (i) Lessor shall be entitled to receive fifty percent (50%) of the net amount received and (ii) Lessee shall retain fifty percent (50%) of the net amount received, that is, after reduction by the reasonable expenses of the assignment.

22. RECORDATION

Lessor and Lessee agree to execute a Memorandum of Agreement in compliance with Section 291-c of the Real Property Law of the State of New York to be recorded in the County Clerk's Office under whose jurisdiction the Demised Premises is located. Upon any modification of the legal description of the Demised Premises made pursuant to the terms of Section 4 hereof, Lessor and Lessee agree promptly to execute an amended Memorandum of Agreement to reflect a modification of the Demised Premises and record the amended Memorandum of Agreement in the said County Clerk's Office.

23. COVENANTS, EASEMENTS AND RESTRICTIONS OF RECORD

Lessor and Lessee acknowledge that the Demised Premises are or will be subject to certain covenants, easements and restrictions recorded against the Demised Premises as of the date hereof or after the date hereof with Lessee's reasonable approval, and provided any such covenant, easement or restriction does not unreasonably increase any obligations or reduce any rights of Lessee or any subcontractors. Lessee acknowledges that any such covenants, easements and/or restrictions recorded against the Demised Premises may contain provisions which are enforceable against Lessee, and subject to Section 8(b) hereof, Lessee agrees to perform and comply with same as if Lessee were the owner of the Demised Premises. Lessee agrees, further, to include a provision in each sublease that it may grant in accordance with this Agreement which obligates each subcontractors of the Demised Premises (or portion thereof) to perform and comply with such covenants, easements and restrictions recorded against the Demised Premises as of the date hereof or after the date hereof to the same extent that Lessee is obligated hereby. To the extent that Lessor is obligated by the terms of any of the aforesaid covenants, easements and restrictions (including wetlands conservation covenants), or by the terms of any separate agreement, to enforce such covenants, easements and restrictions (including wetlands conservation covenants), Lessor covenants and agrees that it will enforce the same consistent with such obligation to do so. In any action to enforce any such covenant, easement and/or restriction, Lessee hereby waives for the benefit of the holder of such covenant, easement or restriction, the following defenses: that it is not appurtenant to an interest in real property; that it is not of a character that has been recognized traditionally at common law; that it imposes a negative burden; that it imposes affirmative obligations upon the owner of any interest in the burdened property; that the benefit does not touch or concern real property; that there is no privity of estate or of contract; or that it imposes an unreasonable restraint on alienation.

24. RECOGNITION AND ATTORNMENT

Lessor agrees within twenty (20) days after request of Lessee to execute and deliver to Lessee for delivery to any sublessee of all or part of the Demised Premises a recognition agreement stating, in effect, in recordable form and otherwise in form reasonably satisfactory to Lessee, that it will not terminate the sublease or evict the sublessee, and will recognize the subcontractors's rights under the sublease and the rights of subcontractors's leasehold Mortgagee as if Lessor were the original sublessee, notwithstanding any default under and termination of this Agreement; provided, that there is no uncured event of default then existing under the sublease which entitles the Lessor thereunder immediately to terminate the sublease; and provided, further, that the sublessee has agreed in the sublease and, if requested, reconfirms in writing, at the time, its agreement to attorn to Lessor. Such recognition agreement shall require such subcontractors, at Lessor's request, to enter into a direct Agreement with Lessor upon all of the terms of the sublease (but subject to the terms of this Section 23 and the

recognition agreement). Any such recognition agreement shall provide at Lessor's request that neither Lessor nor anyone claiming under Lessor shall be:

(a) liable for any act or omission of any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or

(b) subject to any offsets or defenses which such subcontractors Entity may have against any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or

(c) bound by any payment of rent which such subcontractors Entity might have paid for more than the current month to any prior sub-landlord (including, without limitation, the then defaulting sub-landlord), or

(d) bound by any covenant to undertake or complete any construction of the Demised Premises or any portion thereof demised by such sublease, or

(e) bound by any obligation to make any payment to such subcontractors Entity provided, however, that Lessor shall continue to procure and deliver, or cause to be delivered, any grant provided by the Dormitory Authority of the State of New York and any related allowance which Lessee is obligated to procure and deliver under any sublease, or

(f) bound by any sublease or amendment thereto or modification thereof of which Lessor shall not have been provided copies of and approved as set forth in Section 21 hereof.

25. RIGHT OF ENTRY

Lessor shall have the right to enter upon the Demised Premises during business hours upon one (1) days' notice to Lessee for purposes of inspecting the Demised Premises and for purposes of determining whether Lessee is performing the terms, covenants and conditions of this Agreement to be performed by Lessee. Such right of entry, with respect to portions of the Demised Premises to the subtenants of Lessee or operated by a managing agent shall be limited by the reasonable rules and regulations of Lessee's subcontractors or manager.

26. BROKERAGE

Lessor and Lessee each represents to the other that it has not employed or negotiated with any broker, finder or similar agent with respect to this Agreement which might be entitled to a commission.

27. NOTICES OR DEMANDS

All notices, demands, requests, waivers and other communications required or permitted under this Agreement shall be in writing, shall be provided to Lessor and Lessee, and shall be deemed properly given, serviced and received (a) on the date received, if delivered by hand; (b) one (1) day after the date sent, if delivered by overnight delivery service; (c) on the date sent, if delivered via facsimile at the numbers set forth below, on or before 5:00 P.M. local time, with a hard copy to follow by overnight delivery service; (d) on the date received with proof of receipt to Lessor or Lessee to whose attention it is directed or when Lessor or Lessee refuses to accept receipt if sent, postage prepaid, by registered or certified mail, return receipt requested, postage prepaid. In the case of subsections (a)

through (d) above, in each case, addressed as follows, unless and until Lessor or Lessee notifies the other Party in accordance with this Section 28 of a change of address:

In the case of Lessor:

State University of New York at _____
Address _____
Attention: _____
Telephone Number: _____
Email: _____

With a copy (which shall not constitute notice) to:

State University of New York
State University Plaza
Albany, New York 12246
Attention: General Counsel and Vice
Chancellor for Legal Affairs
Facsimile Number: (518) 320-1541

In the case of Lessee:

Address _____
Attention: _____
Telephone Number: _____
Email: _____

28. QUIET ENJOYMENT

Lessor covenants that Lessee, upon performing the covenants on its part to be performed, shall and may peaceably and quietly have, hold and enjoy the Demised Premises for the Term hereof.

29. OBLIGATIONS AND BENEFITS

Except as herein specifically provided to the contrary, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Lessor and Lessee, and their respective successors and assigns.

30. TITLES

The titles to Sections are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect this Agreement.

31. REPRESENTATIONS

This Agreement represents the entire agreement of the Parties concerning the Agreement of the Demised Premises. Neither Party has made any representation or promises except as herein contained, nor shall no modification of any provision hereof be valid unless in writing and signed by the Parties hereto. In the event of any conflict between this Agreement and any other agreement between the Parties, this Agreement shall govern.

32. COMPLIANCE WITH LAW

Subject to the provisions of Section 4(e), Lessee shall comply or cause compliance with all applicable laws and regulations of governmental authorities having jurisdiction of the Demised Premises, but nothing contained in this Agreement shall be deemed to confer such authority over the Demised Premises which by reason of the State of New York's ownership of the Demised Premises or for any other reason does not otherwise exist. Lessee may defer compliance as long as it is diligently contesting or causing to be contested the applicability or validity of any such law or regulation provided the Demised Premises are not in any imminent danger of forfeiture or becoming subject to a material lien and provided Lessor is not thereby subjected to any criminal liability.

33. ESTOPPEL CERTIFICATES

(a) Lessee agrees at any time and from time to time, upon not less than twenty (20) days' prior notice by Lessor, to execute, acknowledge and deliver, without charge, to Lessor, or to any person designated by Lessor, a statement in writing certifying that this Agreement is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature to execute, thereof), that Lessee has not received any notice of default or termination of this Agreement (or if Lessee has received such a notice, that it has been revoked, if such be the case), that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), that Lessee to its knowledge has no claims against Lessor hereunder (or if Lessee has any such claims, specifying the same), and the dates to which the rent and the other sums and charges payable by Lessee hereunder have been paid.

(b) Lessor agrees at any time and from time to time, upon not less than twenty (20) days' prior written notice by Lessee, to execute, acknowledge and deliver, without charge, to Lessee, or to any person designated by Lessee, a statement in writing certifying that this Agreement is unmodified (or if there be modifications, identifying the same by the date thereof and specifying the nature thereof), that Lessor has not received any notice of default or termination of this Agreement (or if Lessor has received such a notice, that it has been revoked, if such be the case), that no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), that Lessor to its knowledge has no claims against Lessee hereunder (or if Lessor has any such claims, specifying the same), and the dates to which the rent and the other sums and charges payable by Lessee hereunder have been paid.

34. MISCELLANEOUS

(a) Incorporating Schedule D and Schedule D-1. Schedule D and Schedule D-1 hereto are hereby incorporated into and made a part of this Agreement to the extent applicable. In addition, each sublease, management agreement or other contract or agreement relating to the Demised Premises (including, but not limited to, any contract or agreement for any construction, alteration, rehabilitation, demolition, reconstruction, excavation, repair, renovation or

improvement work performed by personnel of Lessee or contractors or subcontractors of Lessee or is otherwise performed on the Demised Premises), shall contain the following:

(i) the provisions of Schedule D hereto, expressly or by incorporation by reference, to the extent applicable, except that Schedule D paragraphs 1, 2, 3, 7 and 9 shall not apply to any such sublease, management agreement or other contract or agreement unless a party thereto is a New York State entity and in which case the applicable provisions of Schedule D hereto shall apply:

(b) Further Assurances. During the Term and upon the request of either Party, Lessor or Lessee shall take such action and execute and deliver to the other Party such further instruments, documents or agreements as such requesting Party may reasonably require in order to complete or otherwise effect and carry out the terms and intentions of this Agreement; provided, however, that such activity is done without detriment, cost or additional obligation to the other Party.

(c) Governing Law; Service. All matters arising out of or relating to this Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York, without reference to its choice of law rules or principles. Unresolved disputes arising from the implementation of this Agreement shall be heard in a New York Court with competent jurisdiction to adjudicate such matters. Lessor and Lessee hereby agree to accept service of process by registered mail addressed to its designated legal counsel at such legal counsel's addresses indicated in Section 27 hereof.

(d) No Third Party Beneficiaries. Except as otherwise provided herein, this Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

(e) Waiver. No waiver by Lessor or Lessee of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by either Party of the same, or any other provision or the enforcement thereof. A Party's consent to or approval of any act by the other Party requiring the other Party's consent or approval shall not be deemed to render unnecessary the obtaining of such Party's or any other Party's consent to or approval of any subsequent consent or approval of either Party, whether or not similar to the act so consented to or approved. The failure of Lessor or Lessee to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that Party of the right to insist later on adherence thereto, or thereafter to insist upon strict adherence to that term or any other term of this Agreement. To be effective, any waiver must be in a writing signed by an authorized representative of the Party granting such waiver.

(f) Entire Agreement; Changes to Agreement. This Agreement (including the Exhibits A and A-1 and Schedules hereto) contains the entire agreement of Lessor and Lessee with respect to the subject matter hereof and no oral statement or written matter prior to the date of this Agreement shall have any effect or force. This Agreement may not be changed, modified, amended, waived, superseded, renewed, extended or terminated orally, but only by an agreement in writing signed by Lessor and Lessee or, in the case of a waiver, by the Party waiving compliance.

(g) Counterparts. This Agreement may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same Agreement.

(h) No Right to Publicize. Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of Lessor or Lessee (including any contraction, abbreviation or simulation of any of the foregoing). Nothing is intended to preclude Lessor and Lessee from disclosing the existence of this Agreement and the relationship described herein. The initial announcement of this relationship shall be mutually coordinated and agreed upon by the Parties.

(i) Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement of which time is an element.

(j) Prevailing Party. In the event of a dispute between the Parties, with respect to the interpretation, enforcement, construction or operation of the terms and conditions of this Agreement or any other documents or instruments contemplated hereby to be executed and delivered, the prevailing Party (where statutorily authorized) in connection with the resolution of such dispute, shall be entitled to collect from the other Party its reasonable attorneys' fees, costs and expenses, including its costs, fees and expenses in connection with any appeals or enforcement of an attorneys' fee award.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, Lessor and Lessee have executed and delivered this Amended and Restated Ground Agreement as of the day and year first above written.

STATE UNIVERSITY OF NEW YORK CONTRACT # _____

START UP NY BUSINESS CERTIFICATION:

In addition to acceptance of this agreement, I certify that all information provided to SUNY is complete, true and accurate.

_____ (NAME OF START UP NY BUSINESS)

President

Date

STATE UNIVERSITY OF NEW YORK CERTIFICATION:

I certify that original copies of this signature page will be attached to all other exact copies of this agreement.

STATE UNIVERSITY OF NEW YORK SYSTEM ADMINISTRATION ON BEHALF OF SUNY AT _____

Robert Haelen
Vice Chancellor for Office of Capital Facilities

Date

APPROVED: DEPARTMENT OF ECONOMIC DEVELOPMENT OF NEW YORK

By: _____

Dated: _____

ACKNOWLEDGMENT – LESSEE

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the ___ day of _____ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
My commission expires: _____

(Seal)

ACKNOWLEDGMENT – DEPARTMENT OF ECONOMIC DEVELOPMENT

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the ___ day of ___ in the year 201_ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
My commission expires: _____

(Seal)

SCHEDULE A

LEGAL DESCRIPTION OF DEMISED PREMISES

SCHEDULE B

SURVEY MAP OF DEMISED PREMISES

SEE ATTACHED

SCHEDULE C

PERMITTED USES

To develop, construct and operate, or cause or permit to be developed, constructed and operated on the Demised Premises, a _____ (nature and description of the START UP NY business and other facilities related to or ancillary to any of the foregoing that is consistent with the academic mission of Lessor and START UP NY Act.

SCHEDULE D

STANDARD CONTRACT CLAUSES – STATE UNIVERSITY OF NEW YORK

SEE ATTACHED

SCHEDULE D-1

STANDARD AFFIRMATIVE ACTION CLAUSES – STATE UNIVERSITY OF NEW YORK

SEE ATTACHED

§ 74. Code of ethics.

1. **Definition.** As used in this section: The term "*state agency*" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the finance law or their successors.

The term "*legislative employee*" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. **Rule with respect to conflicts of interest.** No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

- a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.
- b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he by reason of his official position or authority.
- c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
- d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his or her official position to secure unwarranted privileges or exemptions for himself or herself or others, including but not limited to, the misappropriation to himself, herself or to others of the property, services or other resources of the state for private business or other compensated non-governmental purposes.
- e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
- f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
- g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

- h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.
- i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.


 Category: HR / Labor Relations Legal and Compliance Responsible Office: University Counsel	Policy Title: Conflict of Interest Document Number: 6001 Effective Date: October 01, 1995 This policy item applies to: State-Operated Campuses
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Summary

Faculty and staff of the State University of New York (University) are encouraged to foster an atmosphere of academic freedom by promoting the open and timely exchange of scholarly knowledge independent of personal interests and are required to avoid conflicts of interest. Where potential or actual conflicts exist, faculty and staff are expected to consult with appropriate University officers and abide by University policy. This policy represents a restatement of existing University policy and pertinent state and federal law and regulations.

Policy

Faculty and staff of the State University of New York (University) are encouraged to foster an atmosphere of academic freedom by promoting the open and timely exchange of scholarly knowledge independent of personal interests. In keeping with this obligation, they are also required to avoid conflicts of interest.

In instances where potential or actual conflicts exist, faculty and staff are expected to consult with appropriate University officers and abide by this University policy. It is the responsibility of campus officials charged with implementing this policy to identify potential or actual conflicts of interest and take appropriate steps to manage, reduce, or eliminate them.

This policy represents a restatement of existing University policy and pertinent state and federal law and regulations.

1. University faculty and staff may not engage in other employment which interferes with the performance of their professional obligation.

2. University faculty and staff are expected to comply with the New York State Public Officers Law provisions on conflict of interest and ethical conduct.
3. University faculty and staff, to the extent required by law or regulation, shall disclose at minimum whether they (and their spouses and dependent children) have employment or financial interests or hold significant offices, in external organizations that may affect, or appear to affect, the discharge of professional obligations to the University.
4. University campuses shall ensure that all faculty and staff subject to pertinent laws and regulations disclose financial interests in accordance with procedures to be established by the Chancellor or designee. Campuses shall retain the reported information as required, identify actual or apparent conflicts of interest and seek resolution of such conflicts.
5. Each campus president shall submit to the chancellor's designee the name and title of the person or persons designated as financial disclosure designee(s) and shall further notify the chancellor's designee when a change in that assignment occurs. The chancellor's designee shall also be notified of any reports regarding conflict of interest that are forwarded to state or federal agencies.

Definitions

Conflict of interest — any interest, financial or otherwise, direct or indirect; participation in any business, transaction or professional activity; or incurring of any obligation of any nature, which is or appears to be in substantial conflict with the proper discharge of an employee's duties in the 'public interest. A conflict of interest is also any financial interest that will, or may be reasonably expected to, bias the design, conduct or reporting of sponsored research.

Other Related Information

[Outside Activities of University Policy Makers](#)

[Ethics in State Government - A Guide for New York State Employees](#)

[National Science Foundation, Grant Policy Manual](#)

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

[42 CFR 50, Subpart F](#)

The following link to FindLaw's [New York State Laws](#) is provided for users' convenience; it is not the official site for the State of New York laws.

[NYS Public Officers Law, Section 73-a, and 73 and 74](#)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of [New York State Consolidated](#).

[Board of Trustees Policies - Appointment of Employees \(8 NYCRR Part 335\)](#)

State University of New York Board of Trustees Resolution adopted June 27, 1995

History

Memorandum to presidents from the office of the University provost, dated June 30, 1995 regarding revision to University conflict of interest policy to bring it in conformity with federal guidelines issued by the National Science Foundation and the Public Health Service.

Appendices

There are no appendices relevant to this policy.



Conflict of Interest Policy

Effective Date: March 15, 2013
Supersedes: Conflicts of Interest Policy pursuant to 95-5 Resolution and the Procedure of Investigating Conflict of Interest Policy
Policy Review Date: February 2016
Issuing Authority: Research Foundation President
Responsible Party: Chief Compliance Officer
Contact Information: (518) 434-7145
rfcompliance@rfsuny.org

Reason for Policy

As Research Foundation Board Members, Officers, and Employees, we hold positions of trust and must act in the best interests of the Research Foundation. We must avoid any activity that impairs or would reasonably appear to impair the ability to perform our duties with independence and objectivity. A conflict of interest arises if our personal relationships, activities, or finances interfere, or appear to interfere, with our ability to act in the best interests of the Research Foundation.

Research Foundation Board Members, Officers, and Employees must incorporate, where necessary and possible, the following rules into their services on behalf of the Research Foundation. Research Foundation Officers and Employees must adhere to the standards outlined in the New York State Public Officers Law Section [74](#). This policy incorporates the key standards outlined in Section [74](#).

Statement of Policy

Research Foundation Board Members, Officers, and Employees may not have any interest or engage in any outside activity which results in an unmanaged conflict of interest. To this end, Board Members, Officers, and Employees must disclose their interests and outside activities, and those of a Related Party, which may affect their ability to perform their duties with independence and objectivity. A conflict of interest must be managed so the conflict is reduced or eliminated, and compliance with conflict of interest management plans should be monitored where necessary.

Prohibited Conflicts of Interest

A conflict of interest exists if you or a Related Party has a Financial or Other Interest that will or may reasonably be expected to:

- substantially conflict with the proper discharge of your duties in the Research Foundation's best interests;
- result in the disclosure of the Research Foundation's information that you have gained by reason of your position or authority; or

- impair your ability to exercise independent judgment in the performance of your duties and responsibilities.

Conflicts of Interest Posed By Outside Employment, Investments, or Other Business Activities

As a Research Foundation Board Member, Officer or Employee, you must not make personal investments in enterprises that you have reason to believe may be directly involved in decisions to be made by you or will otherwise create substantial conflict between your duty on behalf of the Research Foundation and your private interest.

If you or a Related Party has a Financial or Other Interest in any business entity, you may not represent the Research Foundation in any transaction with that entity and must disclose the interest in accordance with this policy and the Procedure for Managing Conflicts of Interest.

Procurement of goods or services by the Research Foundation shall be conducted consistent with the Foundation's established procurement policy.

You may not accept employment or engage in any business or professional activity that will impair the independence of your judgment in the exercise of your duties for the Research Foundation or require you to disclose confidential information that you gained by reason of your affiliation with the Research Foundation.

Prohibition Against Disclosure or Use of Confidential Material for Personal Gain

The Research Foundation prohibits disclosure of information that is confidential to the Research Foundation, acquired by any Board Member, Officer, or Employee in the course of his/her duties, except as required by law or as expressly authorized in writing by an Officer or other designated representative of the Research Foundation.

Board Members, Officers, and Employees may only use such confidential information in furtherance of their duties as a representative of the Research Foundation and shall not use such confidential information to further their personal interests or that of a Related Party.

You must not accept employment or engage in any business or professional activity that will require you to disclose confidential information that you gained by reason of your official position or affiliation with the Research Foundation.

Use of Research Foundation or State Resources

You may not misappropriate the property, services or other resources of the Research Foundation, SUNY, or others, whether for yourself or someone else.

Avoiding the Appearance of Impropriety

Board Members, Officers, and Employees shall not, by their conduct, give reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in performance of their duties, or that they are affected by the kinship, rank, position, or influence of any party or person.

You may not use, or attempt to use, your position to secure unwarranted privileges or exemptions for yourself or others.

Similarly, bribery, extortion, and other attempts to exert undue influence are strictly prohibited. The Research Foundation expects Research Foundation Board Members, Officers, and Employees to avoid any conduct that may give the appearance of engaging in acts that are in violation of their trust.

Disclosing a Real, Apparent, or Potential Conflict of Interest

Board Members, Officers, and Employees must disclose all real, apparent, or potential conflicts of interest for review as described below. At an Operating Location, those disclosures should be made to the operations manager or his/her designee in accordance with this policy and the Procedure for Managing Conflicts of Interest. Disclosures are required in three instances:

1. **Annual Disclosures By Research Foundation Board Members, Officers, and Key Employees.** Board Members, Officers, and Key Employees must report Direct or Indirect Financial or other Interests that pose or may pose a real, apparent, or potential conflict of interest on an annual basis. These disclosures must be updated both annually and as new reportable interests are obtained or as new reportable activities occur.
2. **Grant-Related Disclosures.** Principal investigators must follow the policy at their respective campus locations.
3. **Situational Disclosures.** Board Members, Officers, and Employees must report any Direct or Indirect Financial Interest or other activity that may pose a conflict of interest under this policy. Such situational disclosures must be made as soon as practicable after the individual learns of the potential conflict.

When a disclosure is made under this policy, the actual, apparent, or potential conflict of interest will be reviewed pursuant to Procedure for Managing Conflicts of Interest. If a conflict of interest is found to exist, the Research Foundation must take steps to manage, reduce, or eliminate the conflict of interest. Individuals may appeal determinations with which they disagree. Please consult the Procedure for Managing Conflicts of Interest for more information.

Violation

In addition to any penalty contained in any provision of law or federal or state policy, individuals who knowingly and intentionally violate any of these provisions may be subject to action by the Research Foundation. For employees, this may include action under the Research Foundation's progressive discipline policy, including suspension or termination from employment.

Recordkeeping

The operating location operations manager must designate an appropriate office of record and must ensure that records related to the disclosure, review, and management of a potential, apparent, or actual conflict of interest are retained and documented. In addition to any recordkeeping process established by the operations manager, all final determinations or management plans must be included in the personnel file of the individual with potential, apparent, or actual conflict of interest.

At the central office, the chief compliance officer must ensure that records related to the disclosure, review, and management of a potential, apparent, or actual conflict of interest for all disclosures, at the central office or otherwise brought to the attention of the chief compliance officer, are retained and documented. In addition to any recordkeeping process established by the chief compliance officer, all final determinations or management plans must be included in the personnel file of the individual with potential, apparent, or actual conflict of interest.

Campus Policy

An Operating Location may adopt a policy no less restrictive than this Policy. If a local policy is adopted, then a copy of that policy must be filed with the RF's chief compliance officer.

Staffing Services

Employees employed by the RF under an agreement or contract, other than the 1977 Agreement between the RF and SUNY must adhere to the conflicts of interest policy in place by the entity the employees are employed to support. In the absence of a policy, the conflicts of interest policy effective at the associated operating location must govern.

Responsibilities

The following table outlines the responsibilities for compliance with this policy:

Responsible Party	Responsibility
Board Members, Officers, and Key Employees	Annual Disclosures
Principal Investigators	Grant-Related Disclosures
Employees	Situational Disclosures as needed

Definitions

Board Member: A member of the Research Foundation's board of directors.

Direct or Indirect Financial or Other Interests: Financial or Other Interests held by the Research Foundation Employee or by their spouse, domestic partner, significant other, family member, dependent, member of household, or business partner.

Employee: Officers, Key Employees, and any individual compensated employee of the Research Foundation.

Financial or Other Interests: Shall include, but are not limited to, the following:

- ownership or investment in any outside enterprise;
- serving as a director, officer, partner, consultant, broker, agent, or representatives of any outside enterprise;
- outside professional activity; or
- outside employment.

Key Employee: A "Key Employee" for purposes of this Policy includes:

1. Vice presidents;
2. Operations managers;
3. Deputy operations managers;
4. Chief research officers;
5. Technology transfer directors;
6. Sponsored program office directors or equivalent;
7. Other appointed officers

8. At the central office:
 1. Vice presidents
 2. Senior directors;
 3. Assistant Vice-Presidents; and
 4. Directors;
 5. Other appointed officers; and

9. Any other persons who have procurement authority equal to or exceeding \$100,000 per transaction.

Officer: An officer elected under the Research Foundation’s bylaws, including the Research Foundation’s president, general counsel, secretary, and chief financial officer and those appointed pursuant to Article IV Section 13 of the RF’s bylaws as appointed officers.

Operating Location: Research Foundation office located at a SUNY campus location or other SUNY location supporting the Research Foundation mission and SUNY operations overseen by an operations manager.

Operations Manager: An individual appointed to the position of operations manager by the Research Foundation.

Principal Investigator: Primary individual(s) in charge of a research grant or other project administered by the Research Foundation. The term “Principal Investigator” includes those individuals serving as co-principal investigators.

Related Party: A Research Foundation Employee’s spouse, domestic partner, significant other, family member, dependent, member of household, or business partner.

Research Foundation (or Foundation or RF): The Research Foundation for The State University of New York.

Related Information

[Management of Conflicts of Interest Procedure](#)

[Managing Conflicts of Interest Guidelines](#)

NYS Public Officer’s Law Sections [73](#) & [74](#)

[Conflicts of Interest in Public Health Service Sponsored Programs](#)

[Nepotism Policy](#)

[Gifts to Employees from Non-RF Sources Policy](#)

Forms

[Conflict of Interest Annual Disclosure Statement](#)

[Conflict of Interest Situational Disclosure Statement](#)

Change History

Date	Summary of Change
December 7, 2012	Clarifies who is required to disclose conflicts, how, and when. Also allows for locations to use their own conflicts of interest policies and procedures, provided the policy is submitted to the compliance office and is no less restrictive than RF policy. Effective 3/15/2013



Statement on Research Integrity The State University of New York March, 2013

The value of research for human society, and the trust that the public places in science and the scientific and technological process, are vitally dependent on research integrity.^{1,2}

The State University of New York (SUNY) and the Research Foundation for SUNY (RF) are committed to excellence, objectivity, accountability, professional courtesy, fairness, good stewardship, and – above all – integrity in the conduct of scholarly research.

Research university systems, such as SUNY, are special places where *knowledge creation* through research and scholarship expands and enriches the process of *knowledge dissemination* through teaching and learning, each component acting together to amplify the co-benefits for people and society. It is in such institutions that the “leaders of each new generation are nurtured; it is there that boundaries to our existing knowledge are explored and crossed; it is there that unfettered thinking can thrive and unconstrained intellectual partnerships can be created. It is there, within each new class, within each new generation, that the future is forged.”³

It is a privilege to be able to conduct research and scholarship at SUNY and connect these vital activities with the academic and public service missions of the system. In this light, the research process itself must be transparent and our researchers must take responsibility for assuring the trustworthiness of their research. Freedom of inquiry, openness to new ideas, a love of learning, and a commitment to rigorous study are the necessary components for first-class research and scholarship. SUNY researchers should not avoid difficult or controversial areas, since it is often in these areas that the greatest societal contributions are made. It is professional integrity that allows such new scholarship to be debated, criticized, attacked, defended, digested, and accepted by the scientific community and society, thereby adding to the corpus of human knowledge. When properly exercised, academic freedom, and the concomitant commitment to rigor and excellence, yields the knowledge base on which tomorrow’s society depends. SUNY seeks to reaffirm and maintain its full commitment to integrity in research. This commitment will incorporate regular review and update of existing policies with the following principles in mind.

¹ Singapore Statement on Research Integrity, 2nd World Conference on Research Integrity, 21-24 July, 2010, Singapore
<http://www.icsu.org/publications/cfrsstatements/singaporeresearchintegrity>

² Scientific Integrity; Presidential Memorandum for Heads of Executive Departments and Agencies, the White House, March 9, 2009
<http://www.whitehouse.gov/thepressoffice/memorandumheadsexecutivedepartmentsandagencies3909>

³ Duderstadt, James, J. et al., *A University for the 21st Century*, University of Michigan press, 2003, p324

SUNY Principles of Research Integrity

1. Integrity: Researchers and scholars should take responsibility for the integrity of their work and results. Campus and system administrators should take responsibility for the formulation and implementation of policies related to research integrity

2. Compliance with regulations: Researchers and scholars should be aware of and comply with regulations and policies related to research..

3. Research methods: Researchers and scholars should employ appropriate research methods, base conclusions on critical analysis of the evidence and report findings fully and objectively.

4. Transparency: Basic research should be open to review and vetting. Known potential conflicts of interest should be disclosed along with funding sources and affiliations.

5. Independence: Researchers must be free of undue outside influence when conducting or reviewing research. Many science and technology issues are closely related to and may influence a number of public policy issues and priorities, making “high quality objective scientific advice” vital and in the public interest.

6. Free and Open Communication: SUNY researchers and scholars are free to express their personal opinions in areas of particular expertise, so long as it is clear those opinions are theirs and not SUNY’s or the RF’s. This is true no matter how controversial the subject, even if there are public policy implications. When engaged in public discussions about the importance and application of their research findings, researchers should clearly distinguish professional comments from opinions based on personal views. In their outside communications, employees have an obligation to indicate that they are not institutional spokespersons.

7. Authorship: Researchers and scholars must have the ability to review, comment, and amend a final version of a document or publication that relies on their research or represents their scientific opinion. Researchers should take responsibility for their contributions to all publications, funding applications, reports and other representations of their research. Lists of authors should include all those and only those who meet applicable authorship criteria. All authors must review and approve the document prior to submission. All those (including funders) who made significant contributions (but do not meet applicable authorship criteria) should be acknowledged in publications and reports.

8. Information Sharing: Sharing information and research data is a key component of the scientific process. Researchers should keep clear, accurate records of all research in ways that will allow verification and replication of their work by others. Researchers should share data and findings openly and promptly, as soon as they have had an opportunity to establish priority and ownership claims. Researcher should be aware of and comply with policies with regard to disclosures, patents and intellectual property rights.

9. Peer Review: Unbiased peer review is essential in research and provides for credibility and important quality assurance for the many stakeholders involved. Researchers should provide fair, prompt, and rigorous evaluations and respect confidentiality when reviewing others’ work. Researchers should not claim that a piece has been peer reviewed if accepted disciplinary norms and standards have not been followed.

10. External Pressure and Biases: Undue external pressure must be absent from the research process. Scientists and researchers must be protected from undue external pressures from private and public sponsors, government officials, and university administrators.

11. Conflicts of Interest: Policies and procedures governing disclosure and management of conflicts of interest must be well developed and rigorously observed. Researchers should disclose financial and other conflicts of interest that could compromise the trustworthiness of their work in research proposals, publications and public communications, as well as in all review activities.

12. Misconduct Allegations: Allegations of fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results must be reviewed pursuant to applicable policies. Individual whistleblowers must be protected from retaliation. When misconduct or other irresponsible research practice is confirmed, appropriate actions should be taken promptly, including correcting the research record.

13. Protecting Human Subjects and Humane Use of Animals: All researchers must protect the rights and welfare of any human research subjects and must obtain prior approval from their Institutional Review Board for such work to go forward. All research on animals must be conducted in a humane manner. Researchers planning to use live vertebrate animals for research or education must obtain prior approval from their Institutional Animal Care and Use Committee

14. Scientific Basis for Public Policy and Discourse: When researchers or scientists have reason to believe that policy makers may utilize their research or publications as the basis of supporting or rejecting a policy initiative, researchers and the university should make every effort to present or disclose information related to the underlying research, the findings, the scientific approach and process used to develop the underlying scientific information.⁴

15. Research Environments: Research institutions should create and sustain environments that encourage integrity through education, clear policies, and reasonable standards for advancement, while fostering work environments that support research integrity.

16. Societal Considerations: Researchers, scholars and the SUNY institutions that support them should recognize that they bear an important ethical obligation to appropriately weigh societal benefits against risks inherent in their work. This is especially important in areas that touch on public health and safety.

⁴ United States Department of Agriculture, Secretary’s Memorandum 1074001, USDA Scientific Integrity Policy p2

