

FILED

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

2019 JUN 24 AM 10: 50

HOWARD G. HOGAN

In the Matter of )  
 THE UNIVERSITY OF TENNESSEE, )  
 )  
 As devisee of a charitable gift of )  
 real property under the Last Will and )  
 Testament of Eugenia F. Williams, )  
 Deceased. )  
 )  
 )  
 )  
 Petitioner. )

Case No. 198 278-1

**PETITION OF THE UNIVERSITY OF TENNESSEE PURSUANT TO TENN. CODE ANN. § 35-15-413 and § 35-13-114**

The University of Tennessee (the “University”), the Petitioner in this action, as devisee of a charitable testamentary gift of real property from Miss Eugenia F. Williams (“Miss Williams”), deceased, alleges as follows:

**INTRODUCTION**

1. The University is a public institution of higher education with several campuses in Tennessee. The University brings this petition pursuant to Tenn. Code Ann. § 35-15-413 and § 35-13-114 to modify the restrictions on the disposition of certain real property given to the University by devise from Miss Williams.

2. The Attorney General of the State of Tennessee has an interest in the subject matter of this petition pursuant to Tenn. Code Ann. § 35-13-110. A courtesy copy of this Petition has been served on the Office of the Attorney General & Reporter, and immediately after filing the Petition, the University will notify the Attorney General of that fact.

3. This Court has subject matter jurisdiction pursuant to Tenn. Code Ann. § 35-15-203.

4. The Last Will and Testament of Miss Williams, a copy of which is attached hereto as Exhibit A (the “Will”), was executed in, and the real property granted thereby is located in, Knox County, Tennessee. Accordingly, venue is proper in Knox County according to Tenn. Code Ann. § 35-15-204.

### **FACTUAL ALLEGATIONS**

5. On May 13, 1981, Miss Williams executed the Will, in which she devised her home at 4848 Lyons View Pike, Knoxville, Tennessee, and the surrounding acreage (approximately 24 acres) (collectively, the “Property”) to the University. Upon Miss Williams’s death in 1998, the University accepted the Property.

6. The Will specified that the Property was to be designated as the “Dr. David Hitt Williams Memorial” in honor of Miss Williams’s father and that

said land will not be subdivided nor sold, in whole or in part, so long as there is a state operated university in the vicinity of Knoxville. Said home and acreage may be used as the Board of Trustees of The University of Tennessee may determine, such use to be commensurate with the retention of the natural beauty of the land, it being my desire that the residence on said land will be used for some educational, residential, social, cultural or business purpose as will promote an interest of The University of Tennessee System or of The University of Tennessee Knoxville, and it being my further desire that any additions to said residence or other structures or buildings built on the premises will be constructed in such a manner and location as will

maintain the present architectural integrity of the residence. At such time in the distant future as the Board of Trustees of The University of Tennessee may determine that said residence can no longer be used for a purpose that will be of practical benefit to The University of Tennessee System or to The University of Tennessee Knoxville, then it is my desire that the residence be demolished and replaced by another building or buildings, or that the vacant property be utilized for The University of Tennessee System or The University of Tennessee Knoxville without buildings.

7. As quoted above, Miss Williams provided for the Property to “be used as the Board of Trustees of The University of Tennessee may determine” and suggested a wide variety of possible uses of the Property by the University, thus demonstrating a general charitable intent by the devise. Miss Williams’s desire that the Property be of “practical benefit” to the University, with or without buildings, is further evidence of an intention to provide a general charitable benefit to the University. Miss Williams did not elect to have the Property revert to her estate or go to another purpose if the Property was not of practical benefit to the University.

8. At the time of Miss Williams’s death, on February 26, 1998, the house had been vacant and boarded up for a number of years and was in substantial disrepair.

9. On June 18, 1998, the University administration recommended to the Board of Trustees that the house be converted to a residence for the President of the University, that private gift funds be raised to remodel and furnish the house, and that the surrounding grounds be designated for demonstration gardens that the University’s ornamental horticulture program would help to develop and operate. The Board

approved the recommendation, and the administration began a campaign to raise the necessary private gift funds. An excerpt from the minutes of the Board of Trustees meeting on June 18, 1998, is attached as Exhibit B hereto. The campaign raised several hundred thousand dollars, but the amount raised was wholly insufficient to remodel and furnish the house as the President's residence.

10. After the University failed to raise money to convert the Property into a residence for the President, the President continued to live in another University-owned residence. On October 9, 2009, the Board of Trustees decided to sell the then-existing President's residence and since that time the Board has provided a housing allowance to the President. An excerpt of the minutes of the October 9, 2009 Board meeting is attached as Exhibit C hereto. The University also provides a housing allowance for the Chancellor of the Knoxville campus, instead of providing a University-owned residence. See excerpts of the minutes of the June 21, 2007 Board meeting, attached as Exhibit D hereto. Thus, there is no longer a need for the University to own a residence in Knoxville for either the President of the University or the Chancellor of the Knoxville campus.

11. Budgetary constraints have prevented renovation of the house for any purpose. It is estimated that it would cost from four to five million dollars (\$4-5 million) to renovate the structure to make it suitable as a single family residence and substantially more to retrofit it for another educational, social, cultural, or business purpose that would be of "practical benefit" to the University. The house has now been vacant for almost 30 years, and all the major systems are in disrepair.

12. The University has explored many other possible uses for the Property, but none has been successful. The University has explored long-term leases for the Property

with third parties, including issuing a Request for Proposals attached as Exhibit E hereto, which did not receive any bids. The University's negotiations with a non-profit organization for a long-term lease did not result in an agreement. The University has formed two committees to identify University uses for the Property, but the committees did not identify a financially viable use for the Property that, in the terms of Miss Williams's Will, "will promote an interest of The University of Tennessee System or of The University of Tennessee Knoxville."

13. Although the Will expressly provides that the University may demolish the house if the Board of Trustees determines it "can no longer be used for a purpose that will be of practical benefit to The University of Tennessee System or to The University of Tennessee Knoxville," the University does not have another use for the Property even without the house.

14. The University has significant "educational," "social," "cultural," and "business" needs that could be "promoted" and funded with proceeds from the sale of the Property and named in a manner to memorialize Miss Williams's father, Dr. David Hitt Williams.

15. The best way to realize Miss Williams's charitable intent to benefit the University would be to sell the Property and use the proceeds to fund an endowment in a way that memorializes her father.

16. While the Will sets forth several expressions of desire regarding use of the Property, evidenced by the use of the words "may" and "desire," only the prohibition against sale or subdivision of the Property "so long as there is a state operated university in the vicinity of Knoxville" is mandatory.

17. Tenn. Code Ann. § 35-14-413 provides that if a particular charitable purpose specified by a trust becomes “unlawful, impracticable, impossible to achieve or wasteful,” the Court may apply *cy pres* “to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor’s charitable purposes.” Tenn. Code Ann. § 35-13-114 provides that Tenn. Code Ann. § 35-15-413 shall apply to charitable gifts on the same basis as charitable trusts.

18. As set forth above, use of the Property in accordance with the terms of the Will has become impracticable. Although Miss Williams suggested possible uses of the Property, the language of her gift makes it clear that she wished to benefit the University and recognize her father. The Will does not contain a reverter clause. The Will expresses a general charitable intent.

19. The University asks the Court for permission to sell the Property with the following restriction: The property be subdivided into no more than two parcels and each parcel may contain no more than one house. If the purchaser decides to keep the current house, only one additional house may be built. If the purchaser decides to demolish the current house, two houses—one on each parcel—may be built. This restriction will honor Miss Williams’s desire that the “natural beauty of the land” be retained.

20. An encroachment of approximately 3,000 square feet by an owner of land adjacent to the Property currently exists near the southeastern corner of the Property. The University asks the Court for permission to sell that piece of land to the encroaching landowner.

## **REQUEST FOR RELIEF**

The University incorporates the allegations contained in Paragraphs 1-20 as if fully set forth herein.

21. For the foregoing reasons, the University requests that this Court enter an Order:

1. Approving the sale of the Property with the following restriction: The property may be subdivided into no more than two parcels and each parcel may contain no more than one house. If the purchaser decides to keep the current house, only one additional house may be built. If the purchaser decides to demolish the current house, two houses—one on each parcel—may be built.

2. Approving the sale of the 3,000 square foot encroachment to the encroaching landowner.


3. Authorizing the University to use the proceeds from the sale of the Property to fund an endowment that will serve as a memorial to Miss Williams's father, Dr. David Hitt Williams; and

4. Granting the University all other further and general relief as appears just on the facts and law of the case.

Respectfully submitted this 24<sup>th</sup> day of June, 2019.

**THE UNIVERSITY OF TENNESSEE**

Matthew Scoggins (BPR # 023126)  
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Office of the General Counsel  
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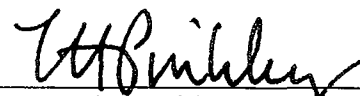
  
\_\_\_\_\_  
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Attorneys for The University of Tennessee

BECAUSE THE UNIVERSITY OF TENNESSEE IS AN AGENCY OF THE STATE OF TENNESSEE, NO SECURITY FOR COSTS IS REQUIRED PURSUANT TO TENN. CODE ANN. § 20-13-101.

**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was served via email and U. S. Mail upon Janet M. Kleinfelter, Deputy Attorney General of the State of Tennessee, the 24<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
T. Harold Pinkley



# EXHIBIT A

ATTEST:  
Certified a True Copy

*John F. Weaver*  
Clerk and Master Chancery Court

By *Jean Doucet*  
Deputy Clerk

LAST WILL AND TESTAMENT

OF

EUGENIA F. WILLIAMS

I, EUGENIA F. WILLIAMS, of Knoxville, Knox County, Tennessee, being of sound mind and disposing memory, do hereby make, publish and declare this instrument to be my Last Will and Testament, hereby revoking all other Wills and Codicils thereto at any time heretofore made by me.

I

I hereby nominate, constitute and appoint UNITED AMERICAN BANK, of Knoxville, Tennessee, a banking institution organized under the laws of the State of Tennessee, and having full trust powers, or any successor or successors of such bank, whether by way of consolidation, merger or otherwise, as Executor of my estate, and I hereby excuse my said Executor from giving bond and filing inventory and from any and all other requirements, statutory or otherwise, from which it may be lawfully excused.

My Executor shall have full power and authority during the administration of my estate to sell any assets in my estate, including any real estate I own at the time of my death, to manage, mortgage, lease, sell, invest, reinvest, or retain under such conditions as it deems advisable all of the property in my estate, and to pay and compromise claims against the estate, and to collect and compromise claims held by the estate, without leave of court or order of court.

I further authorize my Executor to make such sale or sales, either publicly or privately, upon such terms and conditions as it may deem most advantageous to my estate.

I further authorize my Executor to borrow money from any person, firm or corporation, including any corporation acting as Executor hereunder, for the purpose of protecting, preserving or improving my estate, and to execute

*Eugenia F. Williams*

Eugenia F. Williams

promissory notes or other obligations for amounts so borrowed, and to secure the payment of such amounts by mortgage or pledge of any property which I may own at the time of my death or which may thereafter be included in my estate, upon such terms and conditions as it may deem advisable.

I hereby direct my Executor to pay all of my just debts and funeral expenses as soon as practical after my death, and I direct my Executor to pay all Federal estate and State inheritance, transfer, legacy or succession taxes or death duties imposed upon my estate, all of which shall be considered debts of my estate and paid from the residuary portion thereof without pro-ration; provided, however, that the bequest of the Roddy Manufacturing Company stock to J. P. Roddy, Jr. and his descendants shall bear its pro rata part of all such taxes.

II

I hereby give and bequeath to J. P. RODDY, JR. for his lifetime, and after his death, to his children or to the issue of deceased children, in equal shares, per stirpes, all of the shares of common stock in Roddy Manufacturing Company, a Tennessee corporation, which are issued in my name and owned by me in my individual capacity at the time of my death.

I hereby give to OLD GRAY CEMETERY, of Knoxville, Tennessee, the sum of TEN THOUSAND DOLLARS (\$10,000.00) cash.

My home at 4848 Lyons View Pike, Knoxville, Tennessee, and the surrounding acreage (approximately 24 acres), left to me by paragraph 4th of my father's Will, I hereby give and devise to THE UNIVERSITY OF TENNESSEE as a memorial presented by me in memory of my father, David Hitt Williams, to be designated as the "Dr. David Hitt Williams Memorial", on condition that said land will not be subdivided nor sold, in whole or in part, so long as there is a state operated university in the vicinity of Knoxville. Said home and acreage may be used as the Board of Trustees of The University of Tennessee may determine, such use to be commensurate with the retention of the natural beauty of the land, it being my desire that the residence on said land will be used for some educational, residential, social, cultural or business purpose as will promote an interest of The University of

Tennessee System or of The University of Tennessee Knoxville, and it being my further desire that any additions to said residence or other structures or buildings built on the premises will be constructed in such a manner and location as will maintain the present architectural integrity of the residence. At such time in the distant future as the Board of Trustees of The University of Tennessee may determine that said residence can no longer be used for a purpose that will be of practical benefit to The University of Tennessee System or to The University of Tennessee Knoxville, then it is my desire that the residence be demolished and replaced by another building or buildings, or that the vacant property be utilized for The University of Tennessee System or The University of Tennessee Knoxville without buildings.

I hereby give and bequeath to MRS. ANTHONY R. CARDONE, if she survives me, who presently lives at 132-35 41st Road, Flushing, New York, 11355, my marquise diamond ring and one (1) set of flat silverware. In the event Mrs. Cardone does not survive me for at least ninety (90) days, I direct that said ring and flat silverware will be included in the bequest contained in the next succeeding paragraph of this Will.

I hereby give and bequeath to J. P. RODDY, III, MARY ELLEN RODDY MITCHELL, and THOMAS R. RODDY all other silver, chinaware, and all jewelry not hereinabove disposed of, all of my household furniture and furnishings, and all articles of personal use and adornment which I may own at the time of my death. It is my request that should MRS. ANTHONY R. CARDONE desire to have any portion of the household furniture and furnishings for her own personal use in her home, but not for disposition by sale or otherwise, such shall be given to her. All such property not delivered to Mrs. Cardone pursuant to the preceding sentence shall be retained by J. P. RODDY, III, MARY ELLEN RODDY MITCHELL, and THOMAS R. RODDY and divided between them in such manner as they may agree upon, and should there be any of such property that is not desired by any of them, then I leave such property to THE UNIVERSITY OF TENNESSEE. It is my express desire and instruction that no part of my estate disposed of by this paragraph be sold, publicly, privately, or at auction.

Eugenia P. Wickham

I hereby give and bequeath to TULLY R. CORNICK, presently residing at 231 First Street, Sparks, Nevada, or to his oldest descendant living at the time of my death, my two Family Bibles containing records of the Cornick family, and any papers that may remain in my estate which he considers of historical value.

III

ALL OF THE REST, RESIDUE AND REMAINDER of my estate, of whatever kind and nature, and wheresoever situate, or to which I may in any way be entitled at the time of my death, whether real, personal or mixed, remaining after payment of all of my debts, administration expenses and taxes, and the specific bequests heretofore made, I hereby give, devise and bequeath as follows:

One-fourth (1/4) of my residuary estate I give, devise and bequeath to the Directors or Governing Body of ST. MARY'S MEMORIAL HOSPITAL, Knoxville, Tennessee, IN TRUST, to have and to hold the same as an endowment for the benefit of said hospital, the principal to be held intact and the income therefrom used for purchase and maintenance of any equipment or furnishings that may be necessary or desirable for the operation of said hospital, or for such medical and surgical research as may be promoted or engaged in by said hospital.

One-fourth (1/4) of my residuary estate I give, devise and bequeath to the Directors or Governing Body of the PRINTING HOUSE FOR THE BLIND, its principal office being in Louisville, Kentucky, IN TRUST, to have and to hold the same as an endowment for the benefit of said PRINTING HOUSE FOR THE BLIND, the principal to be left intact and the income therefrom used for the purpose of carrying out the primary work of the corporation and providing reading material for the blind.

One-fourth (1/4) of my residuary estate I give, devise and bequeath to the Trustees or Governing Body of VANDERBILT UNIVERSITY, Nashville, Tennessee, to have and to hold the same IN TRUST, with the principal to be

Eugenia W. Williams

EUGENIA F. WILLIAMS

held intact and to use the net income derived therefrom according to the best judgment of the Trustees or Governing Body of said university to assist worthy and deserving students who have made application for enrollment, or are enrolled in the Medical College of said university, by awarding them scholarships in amounts established by the Trustees or Governing Body. If the university has a scholarship fund for the benefit of medical students at its Medical College, then the income may be placed in said scholarship fund and used for the purpose for which said fund has been established. This fund provided by this paragraph shall be known as the "Dr. David Hitt Williams' Memorial Fund".

One-fourth (1/4) of my residuary estate I give, devise and bequeath to the Trustees or Governing Body of the EAST TENNESSEE CHILDREN'S HOSPITAL, Knoxville, Tennessee, IN TRUST, to have and to hold the same as an endowment for the benefit of said hospital, the principal to be held intact and the income therefrom used for purchase and maintenance of any equipment or furnishings that may be necessary or desirable for the operation of said hospital, or for such medical and surgical research as may be promoted or engaged in by said hospital.

IV

I hereby direct my said Executor to consult and advise with some member of the firm of FRANTZ, McCONNELL & SEYMOUR, attorneys, Knoxville, Tennessee, regarding all matters of the administration of my estate.

IN WITNESS WHEREOF, I have hereunto set my hand on this, the 13<sup>th</sup> day of May, 1981.

Eugenia F. Williams  
Eugenia F. Williams

We, the undersigned, hereby certify that EUGENIA F. WILLIAMS produced and signed the foregoing Will in our presence, and at the time declared the same to be her Last Will and Testament, and at her request and in her presence, and in the presence of each other, we signed our names as subscribing witnesses thereto on the date the same bears date.

Name	Address
<u>E. Bruce Porter</u>	<u>Knoxville, Tennessee</u>
<u>Paul M. Gyle</u>	<u>Knoxville, Tennessee</u>

# EXHIBIT B

June 16, 1998

Office of the President  
800 Andy Holt Tower  
Knoxville 37996-0150  
Telephone (423) 974-2241  
Fax (423) 974-3753

**MEMORANDUM**

TO: The University of Tennessee Board of Trustees  
FROM: Joe Johnson ✓  
SUBJECT: Gift Property of the Late Mrs. Eugenia Williams

In her will the late Mrs. Eugenia Williams left The University of Tennessee a wonderful piece of property at 4848 Lyons View Pike in Knoxville, consisting of 24 acres of land with Tennessee River frontage and a 6,000 square feet architecturally designed house.

Under terms of the will, UT must use this gift property for a UT purpose and, hence, cannot sell it. A decision was made to accept this gift because it is 24 acres of well situated land less than ten minutes from campus. It could be used for recreation, ornamental horticulture, a unique conference center, or a graceful home for the President of The University of Tennessee.

After considerable thought and exploration, the following recommendation is presented to the UT Board of Trustees:

1. The Eugenia Williams house be converted to a residence for the President of UT, giving the President a place to entertain UT Trustees, UT Development Council, UT Alumni Board, prospective donors, student and faculty leaders from throughout Tennessee, and state, federal, and local leaders. Virtually all major universities have proper residences for their campus and systems CEOs.
2. Private gifts will be secured to remodel and to furnish the Williams house.
3. Designated areas of the grounds will be developed into demonstration gardens, relying partially on the talent in the UT Department of Ornamental Horticulture.
4. Appropriate State of Tennessee approval will be sought for the project to remodel and to renovate the Williams house.

JEJ/cp *Mtn - Johnson*  
*second - Harlan*



# EXHIBIT C

BOARD OF TRUSTEES  
THE UNIVERSITY OF TENNESSEE

ACTION ITEM

DATE: October 9, 2009

COMMITTEE: Finance and Administration

CAMPUS/UNIT: The University of Tennessee

ITEM: Proposal to Sell Residence, 940 Cherokee Boulevard, Knoxville

RECOMMENDATION: Approval

PRESENTED BY: Gary W. Rogers  
Senior Vice President and Chief Financial Officer

The administration recommends sale of the property located at 940 Cherokee Boulevard in Knoxville. This property previously served as the Knoxville Chancellor's residence and most recently as the President's residence.

This proposal is consistent with the decision of the Board of Trustees of June 21, 2007 to provide housing allowances rather than housing for Chancellors. With the Board's approval, the University has sold the Chancellor's residence in Memphis and has designated the Chancellor's residence in Martin for other uses. The University leases a house from the UC Foundation for use as the Chancellor's residence in Chattanooga, and that arrangement will end with the next Chancellor transition. The Chancellors at Knoxville and Martin are provided housing allowances by the University. This proposal is also consistent with the Board's discussion on June 17, 2009.

The administration will seek all necessary state approvals to dispose of the property. The property has been appraised and will be sold at or above the appraised value.

# EXHIBIT D

MINUTES OF THE ANNUAL MEETING  
BOARD OF TRUSTEES  
THE UNIVERSITY OF TENNESSEE

June 21, 2007

The Annual Meeting of the Board of Trustees of The University of Tennessee was held at 1:30 p.m. EDT, Wednesday, June 21, 2007 in the Hollingsworth Auditorium, Ellington Plan Science Building on the Agricultural Campus in Knoxville.

**I. CALL TO ORDER AND INVOCATION**

Ms. Andrea J. Loughry, Vice Chair of the Board, called the meeting to order. Reverend Heather Godsey, Campus Minister, Wesleyan Center, offered the invocation.

**II. ROLL CALL**

Ms. Catherine Mizell, Secretary, called the roll, and the following members were present:

Ms. Johnnie Amonette  
Ms. Anne Holt Blackburn  
Mr. William Y. Carroll  
Ms. Barbara Castleman  
Mr. Spruell Driver, Jr.  
Mr. James Hall  
Mr. James Haslam, II  
Dr. Rhynette Hurd  
Mr. Jerry L. Jackson  
Ms. Andrea J. Loughry  
Ms. Brittany McGruder  
Mr. James L. Murphy, III  
Dr. John D. Petersen  
Dr. Richard G. Rhoda  
Mr. Karl A. Schledwitz  
Prof. John Schommer  
Mr. Don C. Stansberry, Jr.  
Mr. William B. Stokely, III  
Mr. Charles Wharton  
Mr. James L. "Bucky" Wolford  
Ms. Anna York

The Secretary announced the presence of a quorum. Governor Bredesen, Commissioner Givens, Commissioner Seivers, Ms. Williams, and Professor Kennedy were absent from the meeting.

**III. INTRODUCTIONS**

is poised to be a major metropolitan University and leader in its area. He stated that he feels this program is the right thing to do to achieve UTC's goals and he hoped the program could be extended further in the future similar to other peer university programs.

The Vice Chair asked for a vote on the motion, and it was unanimously approved.

#### **VIII. ACTION ITEMS FROM THE FINANCE AND ADMINISTRATION COMMITTEE**

Mr. Stokely reported that there are three action items from the Committee meeting. He noted that the third item resulted from the discussions regarding the Chancellors' residences and was not included on the Board agenda. He stated that he will seek approval from the Board to include it on the agenda.

##### **A. Approval of FY 2008 Operating and Capital Plans for President and Chancellor Residences**

Mr. Stokely stated that this item (Exhibit 7) was discussed in detail at the Committee meeting and a resolution was passed to recommend it for approval by the Board. Mr. Stokely moved approval of the FY 2008 Operating and Capital Plans for President and Chancellor Residences. Mr. Jackson seconded the motion and it was unanimously approved.

##### **B. Approval to Sell the Chancellor's Residence in Memphis**

Mr. Stokely stated that the Committee resolved that the University should begin providing housing allowances to Chancellors instead of housing. He stated that the Committee recommends that UT make preparations to sell the Memphis house in an orderly fashion and direct the administration to propose an appropriate housing allowance for the next chancellor.

Mr. Murphy moved that the agenda be amended to add the proposal to sell the Chancellor's Residence in Memphis and determine an appropriate housing allowance. Mr. Haslam seconded the motion and it was unanimously approved.

Mr. Stokely stated that it was the consensus of the Committee to start moving away from offering housing to Chancellors. In light of the Chancellor search in Memphis, it is an appropriate time to address the residence situation in Memphis. He moved that the Board approve the sale of the Chancellor's residence in Memphis under the appropriate terms and conditions satisfactory to the University and that the administration determine an appropriate allowance to utilize in the search for the Memphis Chancellor. Mr. Stansberry seconded the motion, and it was unanimously

approved.

Mr. Schledwitz asked that consideration be given in the future to possibly use any one-time money resulting from the proceeds of the sale of the Memphis residence for improving space on campus that could be used for entertaining by the Chancellor.

**C. Promulgation of Campus Parking Rules Under the Tennessee Uniform Administrative Procedures Act**

Mr. Stokely stated that the Committee recommended that the Board approve the parking fine structure presented at the meeting (Exhibit 8) for campus parking under the Promulgation of Campus Parking Rules Under the Tennessee Uniform Administrative Procedures Act. He moved approval of the Promulgation of Campus Parking Rules Under the Tennessee Uniform Administrative Procedures Act. Mr. Haslam seconded the motion. The Vice Chair called a roll call vote and it was unanimously approved.

**IX. ACTION ITEMS FROM THE GOVERNANCE COMMITTEE**

The Vice Chair recognized Mr. Stansberry to present the action items from the Governance Committee

**A. Approval of Bylaw Amendments**

Mr. Stansberry stated that the Governance Committee met in conjunction with the Executive and Compensation Committee on the previous day. He stated that the first action item corresponds to the Bylaw changes recommended by the Academic Affairs and Student Life Committee (Exhibit 9). The first Bylaw amendment changes the mission of the Academic Affairs and Student Life Committee to more closely reflect the Strategic Plan to support the student access and success goals of that plan. The second proposed amendment is to change the name of the Committee to the Academic Affairs and Student Success Committee. Mr. Stansberry moved approval of the Bylaw Amendments, Mr. Haslam seconded the motion. The Vice Chair called for a roll call vote, and the motion was unanimously carried.

**X. ACTION ITEMS FROM THE ACADEMIC AFFAIRS AND STUDENT SUCCESS COMMITTEE**

**A. Promulgation of UT Knoxville Housing Rules under the Tennessee Uniform Administrative Procedures Act.**

Dr. Hurd stated the Committee recommends Board approval of amendments to the UT Knoxville Housing Rules (Exhibit 10). She stated that amendments were made to

# EXHIBIT E

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# REQUEST FOR PROPOSALS

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## Lease of Residential Property

4848 Lyons View Pike

Located in:  
**Knoxville, Knox County, Tennessee**

**RFP TRANSACTION NUMBER:**

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**UNIVERSITY OF TENNESSEE**

### RFP CONTENTS

#### SECTIONS:

1. INTRODUCTION
2. RFP SCHEDULE OF EVENTS
3. PROPOSAL REQUIREMENTS
4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS
5. PROPOSAL EVALUATION & LEASE AWARD

#### ATTACHMENTS:

- 6.1.1. Proposal Package Cover Sheet
- 6.1.2. Proposal Statement of Certifications & Assurances
- 6.2. Qualitative Proposal & Evaluation Guide
- 6.3. Rent Proposal
- 6.4. Proposal Score Summary matrix
- 6.5. Standard Form of Lease including Exhibits A through F

RFP Release Date: \_\_\_\_\_, 20\_\_



## 1. INTRODUCTION

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### 1.1. Statement of Procurement Purpose

The University of Tennessee, hereinafter referred to as the "University" or "Landlord," is seeking proposals for the lease of residential property owned by the University and located at 4848 Lyons View Pike, Knox County, Tennessee (the "Leasable Property"). The University has issued this Request for Proposals ("RFP") to define the University's leasing requirements; solicit proposals; detail proposal requirements; and outline the University's process for evaluating proposals and selecting a Proposer for the Leasable Property.

Through this RFP, the University seeks to lease the Leasable Property to the individual (Proposer occupied for a single residence) with the best plan for restoration and care of the property who will provide the highest rental payments to the University and to give ALL qualified Proposers each individually, a "Proposer" and collectively, the "Proposers" including those that are or are owned by minorities, women, Tennessee service-disabled veterans, opportunity to do business with the University as Landlord. See RFP Attachment 6.2 for Qualitative and Rent Proposal Evaluation Criteria.

As an agency of the State of Tennessee, there are certain terms and conditions The University of Tennessee cannot legally accept. PROPOSALS INCLUDING OR REFERENCING TERMS AND CONDITIONS OTHER THAN THOSE REFERENCED BY THE UNIVERSITY IN THIS RFP MAY BE REJECTED.

### 1.2. Scope of Lease, Lease Term, and Terms & Conditions

The University has residential property with improvements and hereby invites proposals for a lease in accordance with the requirements and conditions contained in this RFP.

#### 1.2.1. LOCATION

The Leasable Property is legally described in Deed Book 117, Page 1012 and is improved with two-story brick residence with partial basement designed by John Fanz Staub containing approximately 7,400 +/- contiguous useable square feet and a two-story horse barn. The Leasable Property contains approximately 23 acres +/- between Lyons View Pike and the Tennessee River and is commonly known as the Eugenia Williams Estate.

#### 1.2.2. Intentionally Deleted

#### 1.2.3. Intentionally deleted.

#### 1.2.4. INITIAL TERM

The University requests proposals for the lease of the Leasable Property for a period of fifty (50) years, with one (1) fifty (50) year option for renewal which must be mutually agreed upon by the University and Proposer. Proposer shall provide University with written notice of its election to renew at least one (1) year prior to the expiration of the initial term.

The University, in its sole discretion, reserves the right to negotiate a one-hundred (100) year lease with a possible upfront payment for the full 100 years.

#### 1.2.5. TERM COMMENCEMENT

The Leasable Property will be made available to the Proposer in its current condition and the lease shall commence on the date the Lease Agreement is fully executed.

1.2.6. TERMS AND CONDITIONS

1.2.6.1 STANDARD FORM OF LEASE AND RENT PROPOSAL

The RFP Attachment 6.5, Lease Agreement including Exhibits A-F detail the University's desired terms and conditions and substantially represents the lease that the successful Proposer must sign. By proposing in response to the RFP, Proposer agrees to be governed by the terms and conditions set forth in this RFP and Lease. The terms and conditions described in this RFP shall survive the execution of the Lease Agreement. Where there is a conflict between the terms of the lease and this RFP, the terms of the Lease Agreement will govern.

In order to submit a Proposal on the University's desired Terms and Conditions, the proposal response in RFP Attachment Section 6.3, Rent Proposal, must be filled out in its entirety and exactly as requested.

1.2.6.2 RELATIONSHIP OF THIS RFP AND RESPONSE TO RFP TO LEASE

The RFP and the response to RFP that is selected will be incorporated by reference into the lease. Where there is a conflict between the terms of the lease and the RFP, the terms of the lease will govern. Where there is a conflict between the terms of the lease and/or RFP and the terms of the response to the RFP, the terms of the lease shall govern.

1.2.6.3 RENT MINIMUM

None.

1.2.6.4 VIEWING THE LEASABLE PROPERTY

Interested Proposers who have completed the Notice of Intent process and are determined to be qualified Proposer's as outlined in Section 1.2.6.5 below will be allowed to schedule a viewing/inspection of the property through the RFP Coordinator on the dates specified in the RFP Section 2, Schedule of Events.

1.2.6.5 QUALIFICATION OF PROPOSER

Proposals must be made in the official name of an individual or entity with a joint and several personal guaranty (no brokers or realtors) and must be signed by a person or persons authorized to legally bind the person or entity submitting the proposal.

Every proposal shall be binding upon the Proposer for one hundred twenty (120) calendar days following the deadline date for the submission of proposals. Proposals will be on file and open to public inspection after the evaluation is completed. The successful Proposer shall have an additional sixty (60) days following the date of award to enter into the lease agreement with the University.

The University will require the Proposer or Proposers to provide sufficient information to establish proof of liquidity of \$2,500,000 plus any other information requested by the University which it deems necessary to establish

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the Proposer's or Proposers' financial ability to perform. The proof of liquidity may be in the form of a letter of credit from a financial institution, establishment of an escrow account, a certificate of deposit or other form deemed acceptable to the University. The proof of liquidity will be required for the longer of five years from the date of the proposal or until the stabilization and renovation of the Leasable Property are substantially complete. The information provided shall be a public record under T.C.A. § 10-7-501 et seq.)

**1.3. Nondiscrimination**

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a lease pursuant to this RFP or in the employment practices of the University under such lease, on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The successful Proposer pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

**1.4. RFP Communications**

1.4.1. The University has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

**RFP TRANSACTION NUMBER** \_\_\_\_\_

1.4.2. **Unauthorized contact about this RFP with employees, officials, or consultants of the University of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Potential Proposers must direct communications relating to this RFP to the following person designated as the RFP Coordinator during the proposal process:

University of Tennessee  
Purchasing Department, Suite 106  
Attn: Brandon Herriage  
5723 Middlebrook Pike  
Knoxville, TN 37996  
Phone: (865) 974-3540  
Email: wherriag@tennessee.edu

1.4.2.2. Intentionally Deleted.

1.4.2.3. Notwithstanding the foregoing, potential Proposers may contact:

- a. Intentionally deleted
- b. the following individual designated by the University to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

University of Tennessee  
Purchasing Department, Suite 106

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Attn: Brandon Herriage  
5723 Middlebrook Pike  
Knoxville, TN 37996  
Phone: (865) 974-3540  
Email: wherriag@tennessee.edu

- 1.4.3. Only the University's official, written responses and communications will be binding with regard to this RFP. All oral communications of any type will be unofficial and non-binding.
- 1.4.4. Proposers must ensure that the University receives all written comments, including questions and requests for clarification, no later than the Written Questions and Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Proposers must assume the risk of the method of dispatching any communication or proposal to the University. The University assumes no responsibility for delays or delivery failures resulting from the method of dispatch. Actual or digital "postmarking" of a communication or proposal to the University by a specified deadline date will not substitute for the University's actual receipt of a communication or proposal.
- 1.4.6. The University will convey all official responses and communications related to this RFP to the potential Proposers from whom the University has received a Notice of Intent to Propose (RFP Section 1.8).
- 1.4.7. The University reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, Internet posting, or any other means deemed reasonable by the University.
- 1.4.8. The University reserves the right to determine, at its sole discretion, the appropriate and adequate responses to written comments, questions, and requests related to this RFP. The University's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the University (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The University will make reasonable efforts to ensure the accuracy of such data or information; however it is within the discretion of Proposers to independently verify any information before relying thereon.

#### **1.5. Assistance to Proposers With a Handicap or Disability**

Potential Proposers with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Potential Proposers may contact the RFP Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

#### **1.6. Proposer Required Review & Waiver of Objections**

- 1.6.1. Each Proposer must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.5., Lease Agreement including Exhibits A-F, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively, "Questions and Comments").

1.6.2. Any Proposer having Questions and Comments concerning this RFP must provide such in writing to the University no later than the Written Questions and Comments Deadline detailed in the RFP Section 2, Schedule of Events.

1.6.3. Protests based on any objection shall be considered waived and invalid if the objection has not been brought to the attention of the University, in writing, by the Written Questions and Comments Deadline.

**1.7. Pre-Proposal Conference**

A Pre-Proposal Conference will be held at the time and date detailed in the RFP Section 2, Schedule of Events. Pre-Proposal Conference attendance is not mandatory, and potential Proposers may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

University of Tennessee – Purchasing Department  
5723 Middlebrook Pike, Suite 106  
Knoxville, TN 37996

The purpose of the conference is to review the terms of the RFP and lease. The University will entertain questions; however potential Proposers must understand that the University's response to any question at the Pre-Proposal Conference shall be tentative and non-binding. Potential Proposers should submit questions concerning the RFP in writing and must submit them prior to the Written Questions and Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The University will send the official response to questions to potential Proposers as indicated on the date detailed in the RFP Section 2, Schedule of Events.

**1.8. Notice of Intent to Propose**

Before the Notice of Intent to Propose Deadline detailed in the RFP Section 2, Schedule of Events, potential Proposers are required to submit to the RFP Coordinator a Notice of Intent to Propose (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

**A Notice of Intent to Propose creates no obligation for making a proposal relating to this RFP.**

**1.9. Proposal Deadline**

A Proposer must ensure that the University receives a proposal no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events. The proposal must respond, as required, to this RFP (including its attachments), as may be amended. The University will not accept late proposals, and a Proposer's failure to submit a proposal before the deadline will result in disqualification of the proposal. Proposals may be delivered in person, by United States mail, or other couriers. Facsimile and electronically transmitted (email) Proposals are not acceptable. It is the Proposer's responsibility to ensure that its proposal is mailed or delivered in sufficient time to arrive at the University's Purchasing Department by the submission deadline.

**2. SCHEDULE OF EVENTS**

**2.1. RFP Schedule of Events**

EVENT	TIME (eastern time zone)	DATE (all dates are University business days)
1. RFP Advertised		11/23/14 11/30/14
2. Disability Accommodation Request Deadline		12/05/14
3. Pre-proposal Conference		12/12/14
4. Notice of Intent (NOI) to Propose and Qualification of Proposer		NOI – 1/09/15 Qualification – 1/23/15
5. Property Viewing/Inspection		1/26/15 – 2/06/15
6. Written "Questions & Comments" Deadline		2/06/15
7. University Response to Written "Questions & Comments"		2/20/15
8. Proposers due diligence period including final request for property viewing/inspection		1/26/15-3/06/15

9. <b>Proposal Deadline</b>	3:00 p.m.	3/06/15
10. University Opening of Proposals		3/09/15
11. University Completion of Qualitative Requirement Proposal Evaluations		3/23/15
12. University Completion of Rent Proposal Evaluations		3/31/15
13. If applicable, University Completion of Negotiations and Negotiated Rent Proposal Evaluations		complete by 4/14/15
14. University Notice of Intent to Award Issued <u>and</u> RFP Files Opened for Proposer Inspection		4/15/15
15. Executive Sub Committee of the State Building Commission Approval Sought		6/22/15
16. Lease is circulated to successful Proposer for signature		6/29/15-7/06/15
17. Lease is circulated to University and State for signature		7/07/15-7/24/15
18. Lease Commencement/Occupancy Date		TBD

2.2. **The University reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events, except for changes to the

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Lease Commencement/Occupancy Date agreed to with the Best Evaluated Proposer, shall constitute an RFP amendment, and the University will communicate such to potential Proposers from whom the University has received a Notice of Intent to Propose (refer to RFP Section 1.8).

### 3. PROPOSAL REQUIREMENTS

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#### 3.1. Proposal Form

A response to this RFP must consist of a Qualitative Proposal (including any supporting documentation) and a separately sealed Rent Proposal.

- 3.1.1. **Qualitative Requirements Proposal.** The RFP Attachment 6.2., Qualitative Proposal requires that the Proposer provide certain information and documents.

**NOTICE: A Qualitative Proposal should not include any pricing or rent information. If any pricing or rent information amounts of any type are included in any part of the Qualitative Proposal, the University may deem the proposal to be non-responsive and reject it**

3.1.1.1. A Proposer must duplicate and use RFP Attachment 6.2., completed with proposal page numbers, to cover (as a table of contents), organize, reference, and complete the Qualitative portion of the proposal.

3.1.1.2. All information and documentation included within a proposal must address a specific requirement of RFP Attachment 6.2. and must be clearly referenced. The University will deem any information not meeting these criteria to be extraneous and will not review it.

3.1.1.3. A Proposer must sign and date the Qualitative Proposal.

- 3.1.2. **Rent Proposal.** Rent Proposals may be submitted in the following form: A Rent Proposal for the desired Terms and Conditions ("Base Rent Proposal")

**NOTICE: If a Proposer fails to submit a Base Rent Proposal exactly as required, the University may deem the proposal to be non-responsive and reject it.**

3.1.2.1. A Base Rent Proposal must be submitted on an exact duplicate of the RFP Attachment 6.3., Rent Proposal.

- 3.1.2.1.1. The Base Rent Proposal shall incorporate ALL rental payments for the total lease term. Proposer accepts the Leasable Property as-is where is and is solely responsible for any and all alterations, improvements, and repairs to meet applicable federal, state, and local codes and regulations. Any and all renovations, alterations, improvements, repairs must be approved by the University.

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3.1.2.1.2. A Proposer must sign and date the Base Rent Proposal.

3.1.2.3. A Proposer must submit the Rent Proposal to the University in a sealed package separate from the Qualitative Proposal (as detailed in RFP Sections 3.3.3., *et seq.*).

### 3.2. STATEMENT OF FINANCIAL INTERESTS

It is a requirement of Tennessee Code Annotated Section 12-2-114 that a statement listing the names of any and all persons financially interested in the available space be contained in the Lease Proposal. This requirement includes the interests of the owner/agent, any lienholders or any known future purchasers or lienholders. This information is to be provided in RFP Attachment 6.3, Rent Proposal.

### 3.3. SUBMISSION OF PROPOSALS

A Proposer must deliver a proposal in response to this RFP as detailed below. The University may not accept a proposal delivered by any other method. Each Proposal should include a Proposal Package Cover Sheet in the form of RFP Attachment 6.1.1., which shall reference any amendments to the RFP.

3.3.1. A Proposer must ensure that both the original Qualitative Proposal and Rent Proposal documents meet all form and content requirements detailed within this RFP for such proposals including but not limited to required signatures.

3.3.2. A Proposer must ensure that the University receives a proposal in response to this RFP no later than the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address.

University of Tennessee  
Purchasing Department  
Attn: Brandon Herriage  
5723 Middlebrook Pike, Suite 106  
Knoxville, TN 37996  
Phone: (865) 974-3540  
Email: wherriag@tennessee.edu

3.3.3. A Proposer must submit original Qualitative Proposal and Rent Proposal documents and copies in separate sealed envelopes or packages as specified below.

3.3.3.1 One (1) original Qualitative Proposal paper document must be placed in a sealed package labeled:

**“RFP TRANSACTION # [RFP NUMBER] QUALITATIVE PROPOSAL ORIGINAL”**

and one (1) copy of the Qualitative Proposal in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard file storage medium such as a CD or flash drive labeled:

**“RFP TRANSACTION # [RFP NUMBER] QUALITATIVE PROPOSAL COPY”**

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In the event of a discrepancy between the original Qualitative Proposal document and the digital copy, the original, signed document will take precedence.

- 3.3.3.2. One (1) original of the Base Rent Proposal paper document must be placed in a sealed package labeled:

**“RFP TRANSACTION # [RFP NUMBER] RENT PROPOSAL ORIGINAL”**

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard file storage medium such as a CD or flash drive labeled:

**“RFP TRANSACTION # [RFP NUMBER] RENT PROPOSAL COPY”**

In the event of a discrepancy between the original Rent Proposal document and the digital copy, the original, signed document will take precedence.

- 3.3.3.3. The separately sealed Qualitative Proposal and Rent Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

**“RFP TRANSACTION # [RFP NUMBER] SEALED QUALITATIVE PROPOSAL & SEALED RENT PROPOSAL(S) FROM [PROPOSER LEGAL ENTITY NAME]”**

- 3.3.4. A Proposer must separate, seal, package, and label the documents and copy file storage mediums for delivery as follows.

- 3.3.4.1. The Qualitative Proposal original document and copy file storage medium must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... RFP TRANSACTION # [RFP NUMBER] QUALITATIVE PROPOSAL FROM [PROPOSER LEGAL ENTITY NAME]”**

- 3.3.4.2. The Base Rent Proposal original document and copy file storage mediums must be placed in a separate, sealed package that is clearly labeled:

**“DO NOT OPEN... RFP TRANSACTION # [RFP NUMBER] RENT PROPOSAL(S) FROM [PROPOSER LEGAL ENTITY NAME]”**

### **3.4 Proposal & Proposer Prohibitions**

- 3.4.1. A Proposal must not result from any collusion between Proposers. The University will reject any Proposal that was not prepared independently without collusion, consultation, communication, or agreement with any other Proposer. Regardless of the time of detection, the University will consider any such actions to be grounds for proposal rejection or lease termination.
- 3.4.2. A Proposer shall not provide, for consideration in this RFP process or subsequent lease negotiations, incorrect information that the Proposer knew or should have known was materially incorrect. If the University determines that a Proposer has provided such incorrect information, the University may deem the Proposer's proposal non-responsive and reject it.

3.4.3. A Proposer shall not be (and the University will not award a lease to):

- a. an individual who is, or within the past six months has been, an employee of the University of Tennessee or who is a volunteer member of a University board or commission that votes for, lets out, overlooks, or in any manner superintends the services being procured in this RFP;
- b. a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee of the University of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity);
- c. a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee of the University of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person; or,
- d. any individual, company, or other entity involved in assisting the University in the development, formulation, or drafting of this RFP or its scope of services (such person or entity being deemed by the University as having information that would afford an unfair advantage over other Proposers).

For the purposes of applying the requirements of this RFP subsection 3.4.3., the University will deem an individual to be an employee of the University of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid, but the term "employee of the University of Tennessee" shall not include individuals performing volunteer services for the University of Tennessee.

### **3.5. Proposal Errors & Revisions**

A Proposer is liable for any and all proposal errors or omissions. A Proposer will not be allowed to alter or revise proposal documents after the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the University.

### **3.6. Proposal Withdrawal**

A Proposer may withdraw a submitted proposal at any time before the Proposal Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Proposer representative. After withdrawing a proposal, a Proposer may submit another proposal at any time before the Proposal Deadline.

**NOTICE: If a Proposer fails to submit a Rent Proposal exactly as required, the University may deem the proposal non-responsive and reject it.**

### **3.7. Proposal Preparation**

This RFP does not commit the University to award a lease or to pay any costs associated with the preparation, submittal, or presentation of any proposal incurred by any Proposer or Proposers.

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### **3.8 Proposal Evaluation and Award**

- 3.8.1 The award made shall be in the best interests of the University, as determined solely by the University to the best evaluated proposal. The University reserves the right to accept or reject any and all proposals, to waive any informalities in a proposal, and, unless otherwise specified in writing by the Proposer, to accept any items in the proposal. The University may require oral presentation of one or more Proposers for the purposes of discussion or clarification. The award document will be the University of Tennessee's lease form that will incorporate the terms and conditions of the successful Proposer's proposal as negotiated. Only proposals from financially responsible Proposers, as determined by the University, shall be considered.
- 3.8.2 All responses become a matter of public record after the evaluation is completed. The University accepts no responsibility for maintaining the confidentiality of any information submitted in a response to the RFP, whether labeled as confidential or not.

## **4. GENERAL LEASING INFORMATION & REQUIREMENTS**

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### **4.1. RFP Amendment**

The University reserves the right to amend this RFP at any time prior to award, provided that it is amended in writing. However, prior to any such amendment, the University will consider whether it would negatively impact the ability of potential Proposers to meet the proposal deadline and will revise the RFP Section 2, Schedule of Events if deemed appropriate. If an RFP amendment is issued, the University will convey it to potential Proposers who submitted a Notice of Intent to Propose (RFP Section 1.8). A Proposer must respond, as required, to the RFP, including all attachments and amendments.

### **4.2. RFP Cancellation**

The University reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFP in accordance with applicable laws and regulations.

### **4.3. University Right of Rejection**

- 4.3.1. Subject to applicable laws and regulations, the University reserves the right to reject, at its sole discretion, any and all proposals.
- 4.3.2. The University may deem as non-responsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFP.

### **4.4. Disclosure of Proposal Contents**

- 4.4.1. Each proposal and all materials submitted to the University in response to this RFP become the property of the University of Tennessee. Selection or rejection of a proposal does not affect this ownership right. By submitting a proposal, a Proposer acknowledges and accepts that the full proposal contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.4.2. The University will hold all proposal information in confidence during the evaluation process.
- 4.4.3. Upon completion of proposal evaluations, indicated by public release of an Evaluation Notice or Notice of Intent to Award as applicable, the proposals and associated materials

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will be open for review by the public in accordance with *Tennessee Code Annotated*, Section 10-7-504(a)(7).

**4.5. Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the University and Proposers will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

**5. PROPOSAL EVALUATION & LEASE AWARD**

5.1 The evaluation criteria for responses to this RFP, including the qualitative factors for evaluation and their respective weights have been determined in advance and have been sealed for confidentiality and placed with the University of Tennessee Purchasing Department for safe keeping until the proposal deadline.

**5.2. Evaluation Categories & Maximum Points**

The University will consider each Proposers qualitative aspects and the proposed rent in the evaluation of proposals and will award points in each of the categories detailed below to each apparently responsive proposal.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
<b>Qualitative Factors</b> (refer to RFP Attachment 6.2., Section B)	<b>700</b>
<b>Rent Proposal</b> (refer to RFP Attachment 6.3.)	<b>300</b>

**5.3. Evaluation Process**

The proposal evaluation process is designed to award the lease resulting from this RFP to the Responsive and Responsible Proposer offering the best combination of attributes based upon the evaluation criteria. The term "Responsive" means a person or entity which has submitted a proposal which conforms in all material respects to the RFP. The term "Responsible" means a person or entity which has the capacity in all material respects to perform fully the Lease requirements, and the integrity and reliability that will assure good faith performance.

5.3.1. **Qualitative Proposal Evaluation.** The Proposal Evaluation Team (consisting of three or more University employees) will use the RFP Attachment 6.2., Qualitative Proposal & Evaluation Guide to manage the Qualitative Proposal Evaluation and maintain evaluation records.

5.3.1.1. The University reserves the right, at its sole discretion, to request Proposer clarify information in a Qualitative Proposal and/or to conduct clarification discussions with any or all Proposers. Any such clarification or discussion will be limited to specific sections of the proposal identified by the University and shall be in accordance with all policies of the University and/or State of Tennessee

5.3.1.2. The RFP Coordinator will review each Qualitative Proposal to determine compliance with RFP Attachment 6.2., Qualitative Proposal & Evaluation Guide, Section A—Mandatory Requirements. If the RFP Coordinator

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determines that a proposal may have failed to meet one or more of the mandatory requirements, the RFP Coordinator shall seek the advice of an attorney on the staff of the University of Tennessee who will review the proposal and document his/her determination of whether:

- a. the proposal adequately meets requirements for further evaluation;
- b. the University will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the University will determine the proposal non-responsive to the RFP and reject it.

5.3.1.3. Proposal Evaluation Team members will independently evaluate each Qualitative Proposal (that the RFP Coordinator has determined appears responsive to the RFP) in light of the qualitative factors and will score each in accordance with the RFP Attachment 6.2., Qualitative Proposal & Evaluation Guide, Section B.

5.3.1.4. For each proposal evaluated, the RFP Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Qualitative Proposal & Evaluation Guide, Section B and record each average as the proposal score for the respective Qualitative Proposal section.

5.3.1.5. Before Rent Proposals are opened, the Proposal Evaluation Team will review the Qualitative Proposal Evaluation record and any other available information pertinent to whether or not each Proposer is Responsive and Responsible. If the Proposal Evaluation Team identifies any Proposer that appears not to meet the Responsive and Responsible thresholds such that the team would not recommend the Proposer for Rent Proposal Evaluation and potential lease award, the RFP Coordinator will fully document the determination in accordance with the Department's legal counsel.

5.3.2. **Rent Proposal Evaluation.** The RFP Coordinator will open for evaluation the Base Rent Proposal of each apparently Responsive and Responsible Proposer after completion of the Qualitative Proposal Evaluation. The RFP Coordinator will then evaluate each rent proposal based on the net present value of the total rent to the University over the term of the lease. Upon completion of the analysis, the RFP Coordinator who will in turn calculate the Rent Proposal Score in accordance with the RFP Attachment 6.3, Rent Proposal & Scoring Guide.

5.3.3. **Preliminary Total Proposal Score.** The RFP Coordinator will calculate the sum of the Qualitative Proposal section scores and each Base Rent Proposal score and record the resulting number as the total score for the subject Proposal (refer to RFP Attachment 6.4., Proposal Score Summary Matrix).

5.3.4. **Proposal Negotiation.** The University may elect to negotiate by requesting revised Rent Proposals and other supplemental materials from apparently Responsive and Responsible Proposers. However, the University reserves the right to award a lease on the basis of initial proposals received. Accordingly, each proposal should contain the Proposer's best terms from a price, terms, and qualitative standpoint. The University may negotiate in accordance with University and/or State policy.

5.3.5 **Final Total Proposal Score.** The RFP Coordinator will calculate the sum of the Qualitative Proposal section scores and each Base Alternate or Negotiated Rent

Proposal scores and record the resulting number as the total score for the subject Proposal (refer to RFP Attachment 6.4., Proposal Score Summary Matrix).

**5.4. Lease Award Process**

- 5.4.1. After the evaluation process and any negotiations are complete, the RFP Coordinator will forward the Final Total Proposal Scores to the proper officials of the University and/or State who will consider the same to determine which Proposal should be accepted. The University shall issue a notice of intent to award the lease to all Proposers.
- 5.4.2. Upon issuance of the Notice of Intent to Award, the University will make the RFP files available for public inspection.

**NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the Proposer with apparent best-evaluated proposal or any other Proposer.**

- 5.4.3. The Proposer identified in the Notice of Intent to Award must sign a lease drawn by the University pursuant to this RFP. The lease shall be substantially the same as the RFP Attachment 6.5., Standard Form of Lease including Exhibit A except as modified by the University after taking into account the results of the negotiations, if any. The Proposer must sign the lease no later than Lease Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Proposer fails to provide the signed lease by the deadline, the University may determine that the Proposer is non-responsive to this RFP and reject the proposal.

**5.5. RFP Files Open**

The University will make the RFP files available for public inspection on the date specified in the RFP Section 2, Schedule of Events. The files will remain open for public review from that date.

**5.6. Protest Process**

Any protests or appeals of protests pursuant to this RFP or the Notice of Intent to Award shall be handled in accordance with State Building Commission By-laws, Policy and Procedure Item 18.

**5.7. Lease Approval and Lease Payments**

- 5.7.1. This RFP and its Proposer selection processes do not obligate the University and do not create rights, interests, or claims of entitlement in either the Proposer with the apparent best-evaluated proposal or any other Proposer. University obligations pursuant to a lease award shall commence only after the lease is signed by the University/State and the Proposer and after the lease is approved by all other University and State officials as required by applicable laws and regulations.
- 5.7.2. No payment will be obligated or made until the relevant lease is approved as required by applicable statutes and rules of the University of Tennessee.