



JUSTIN P. WILSON  
*Comptroller*

JASON E. MUMPOWER  
*Deputy Comptroller*

## TENNESSEE STATE SCHOOL BOND AUTHORITY

November 12, 2020

### AGENDA

1. Call meeting to order
2. Approval of the Minutes from the TSSBA meeting of October 19, 2019
3. Approval of Projects for:  
**The University of Tennessee**
  - University of Tennessee, Knoxville – Haslam Field Expansion; Cost: \$21,600,000 of which \$5,000,000 will be funded by TSSBA; Term of Financing: 5 years as short-term financing at an assumed tax-exempt rate
4. Consideration and approval of the Resolution to Approve the Borrowing of Money by Another Method by the University of Tennessee Knoxville
5. Consideration and approval of the Resolution to Approve the Borrowing of Money by Another Method by the University of Tennessee Martin
6. Consideration and approval of the Resolution to Approve the Borrowing of Money by Another Method by the University of Memphis
7. Adjourn

**TENNESSEE STATE SCHOOL BOND AUTHORITY**  
**October 19, 2020**

The Tennessee State School Bond Authority (“TSSBA”, or the “Authority”) met on Monday, October 19, 2020, at 3:00 p.m. in the Executive Conference Room, Ground Floor, State Capitol, Nashville, Tennessee, with certain members attending electronically via Webex Events. Interested members of the public were able to observe and listen to the meeting through electronic means. The Honorable Justin Wilson, Comptroller of the Treasury, was present and presided over the meeting.

The following member was physically present:

Commissioner Butch Eley, Department of Finance and Administration

The following members participated electronically via Webex Events:

The Honorable Tre Hargett, Secretary of State  
Kevin Bradley, proxy for the Honorable David Lillard, State Treasurer  
Mark Paganelli, proxy for Randy Boyd, President, University of Tennessee  
Danny Gibbs, proxy for Dr. Flora Tydings, Chancellor, Tennessee Board of Regents

The following member was absent:

The Honorable Bill Lee, Governor

Mr. Wilson called the meeting to order and asked Ms. Sandi Thompson, Director of the Division of State Government Finance (SGF) and Assistant Secretary of the TSSBA, to verify that she had distributed to the members copies of the documents to be discussed at the meeting in substantially the same form as to be considered. Ms. Thompson confirmed that her office had distributed the documents to the members. Mr. Wilson then asked for Ms. Thompson to call the roll and for members to identify themselves and announce if any persons were present with them. Ms. Thompson called the roll:

Mr. Eley – Present  
Mr. Wilson – Present  
Mr. Hargett – Present  
Mr. Bradley – Present  
Mr. Paganelli – Present  
Mr. Gibbs – Present

Recognizing a quorum present, Mr. Wilson called the meeting to order and stated that Governor Lee, a member of the Authority, had previously declared a state of emergency to facilitate Tennessee’s response to the coronavirus disease. He stated that Governor Lee’s Executive Order No. 16, as amended by Executive Order No. 34, and further amended by Executive Order 60, allowed governing bodies to meet electronically regarding essential business in light of COVID-19, so long as they provided electronic access to the public and met certain safeguards established in that Order to ensure the openness and transparency of the proceedings. Mr. Wilson stated that the Notice for this meeting indicated the meeting would be conducted through Webex Events and provided information for the public to participate electronically. Mr. Wilson stated that the Authority needed a motion pursuant to the provisions of Executive Order 16, as amended by Executive Order No. 34, and further amended by Executive Order 60, that meeting electronically without a physical location was necessary to protect the health, safety, and welfare of Tennesseans in light of the COVID-19 outbreak, that the matters listed on the agenda of the meeting related to the essential business of the Authority, and that the necessary safeguards had been taken. Mr. Wilson made such a motion, Mr. Eley seconded the motion, and Ms. Thompson called the roll:

Mr. Eley – Aye  
Mr. Wilson – Aye  
Mr. Hargett – Aye  
Mr. Bradley – Aye  
Mr. Paganelli – Aye

Mr. Gibbs – Aye

The motion was approved unanimously.

Mr. Wilson called stated that the first item on the agenda was the approval of the minutes of the meetings held on August 28, 2020, and September 10, 2020. Mr. Wilson stated that he had read the minutes, and everything appeared to be in order. Mr. Wilson asked if there were any comments, questions, or discussion on the minutes. Hearing none, Mr. Eley moved approval of the minutes, Mr. Wilson seconded the motion, and Ms. Thompson called the roll:

Mr. Eley – Aye  
Mr. Wilson – Aye  
Mr. Hargett – Aye  
Mr. Bradley – Aye  
Mr. Paganelli – Aye  
Mr. Gibbs – Aye

The motion was approved unanimously.

Mr. Wilson stated that the next item on the agenda was consideration of a project by Middle Tennessee State University (“MTSU”), for the School of Concrete and Construction Management. Mr. Wilson recognized Mr. Bill Waits, Assistant Vice President, Campus Planning, to present the project.

- Middle Tennessee State University – School of Concrete and Construction Management (456); Cost: \$40,100,000 of which \$2,000,000 will be financed from TSSBA; Term of Financing: 5 years as short-term financing at an assumed taxable rate.

Mr. Waits stated that the project was for construction of a 54,000 square foot facility to house the School of Concrete and Construction Management. Mr. Waits stated that the project would entail demolishing two vacated dormitories, Abernathy and Ezell Halls. Mr. Waits stated that the project would also include a renovation to the satellite chiller plant to increase chilled water capacity to service the new facility. Mr. Waits explained that as part of the \$40,100,000 project, MTSU was requesting \$2,000,000 of short-term TSSBA funding to be repaid with gift funding.

Mr. Wilson asked if the requested TSSBA funding was for the institutional match that MTSU was required to provide. Mr. Waits confirmed that it was. Mr. Waits explained that MTSU had \$3,015,000 in gift funding, \$1,000,000 in plant funds, and \$2,000,000 in TSSBA bridge funding to be repaid with gifts. Mr. Waits stated that these funds completed MTSU’s institutional match of \$6,015,000. Mr. Wilson asked if MTSU planned to finance the \$2,000,000 over 5 years. Mr. Waits confirmed that term of financing would be 5 years. Mr. Wilson asked if there were any further questions. Hearing none, Mr. Wilson made a motion to approve the project, Mr. Eley seconded the motion, and Ms. Thompson called the roll:

Mr. Eley – Aye  
Mr. Wilson – Aye  
Mr. Hargett – Aye  
Mr. Bradley – Aye  
Mr. Paganelli – Aye  
Mr. Gibbs – Aye

The motion was approved unanimously.

Mr. Wilson stated that the next item on the agenda was consideration of a resolution to approve the borrowing of money by another method by the University of Memphis. Mr. Wilson stated that the item had been deferred.

Mr. Wilson stated that the next item on the agenda was consideration of a resolution to approve the borrowing of money by another method by the University of Tennessee Health Science Center. Mr. Wilson recognized Mr. Austin Oakes, Executive Director of Capital Projects at the University of Tennessee, who presented the request. Mr. Oakes stated that the University was seeking approval of a lease amendment with a waiver of advertisement for property located at 298 Acorn Circle in Chattanooga. Mr. Oakes explained that this request was for the amendment of an existing lease of 16 units extending the term by 5 years which was contemplated in the original agreement. Mr. Oakes stated that the amendment would increase the fee to \$1,440 per month per unit, or \$276,480 per year. Mr. Oakes explained that the location and setup of the apartments had worked well for medical and dental students on clinical rotations over the past 5 years. Mr. Oakes stated that the pricing was competitive in the market. Mr. Oakes stated that the State Building Commission's Executive Subcommittee ("ESC") had approved the transaction on its consent agenda in September. Mr. Wilson asked if there were any questions, hearing none, Mr. Wilson moved approval of the resolution, Mr. Eley seconded the motion, and Ms. Thompson called the roll:

Mr. Eley – Aye  
Mr. Wilson – Aye  
Mr. Hargett – Aye  
Mr. Bradley – Aye  
Mr. Paganelli – Aye  
Mr. Gibbs – Aye

The motion was approved unanimously.

Mr. Wilson stated that the next item on the agenda was discussion of a Request for Information ("RFI") for the TSSBA short-term facility. Mr. Wilson recognized Ms. Thompson to present the item. Ms. Thompson explained that as the members were aware, the Authority's Revolving Credit Facility ("RCF") would expire on March 18, 2021. Ms. Thompson stated that the Authority had a need to seek information and explore what options there were for short-term financing of the Authority's projects. Ms. Thompson explained that the Authority expected the facility to continue to provide up to \$300,000,000 of short-term funding. Ms. Thompson stated that they had worked with the Authority's Financial Advisor, PFM Financial Advisors, and the Attorney General's ("AG's") Office to prepare a request for information in order to evaluate the Authority's short-term financing options. Ms. Thompson stated that the board materials provided a draft of the RFI which included an estimated timeline of events and outlined the process. Ms. Thompson stated there was also a memo from PFM Financial Advisors that recommends the Authority proceed with a new RFI process and provides the goals and considerations of the 2020 RFI. Ms. Thompson explained that the RFI was a report item that did not require action.

Mr. Wilson asked if there were any questions on the RFI process. Mr. Eley asked what the term of the current short-term financing agreement was that was ending in March. Ms. Thompson stated that the agreement had a 3-year term. Mr. Eley asked if the next short-term financing agreement was contemplated to have a 3-year term. Ms. Thompson stated that a 5-year term was contemplated for the next agreement. Mr. Wilson stated that \$300,000,000 appeared to be the right amount for the short-term facility and asked if any of the members had any comments on the amount of the facility.

Mr. Wilson asked if there were any other matters to come before the Authority. Hearing none, Mr. Wilson declared the meeting adjourned.

The meeting was adjourned.

Approved on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Respectfully submitted,

Sandra Thompson  
Assistant Secretary

# Tennessee State School Bond Authority Feasibility Study

## UTK Haslam Field Expansion (Revised)- A87

### Individual Project Summary

Revenue Source:	Gift Funds (and/or UTK Athletic funds)	\$	1,060,793.00
	<b>Total Revenue Source:</b>	<b>\$</b>	<b>1,060,793.00</b>
Assumptions:	TSSBA Funding Requested	\$	5,000,000.00
	Status		Tax-Exempt
	Term of Financing		5
	Interest Rate		2.00%

Feasibility Test	
	Annual Short-Term Pmt
Pledged Revenue	\$1,060,793
New Max Annual DS	\$1,060,792
<b>Feasible</b>	<b>Yes</b>

\*TSSBA staff conducts a feasibility test on a project-by-project basis to ensure that each individual project has sufficient revenue pledged to cover the projected maximum annual debt service charged to the project. On an annual basis, and prior to the issuance of long-term debt, an assessment is performed pursuant to Article 2.01 (b) which requires that the aggregate amount of the Fees and Charges collected by an Institution in the preceding Fiscal Year is not less than two times the amount required for the payment of the aggregate of the maximum amount of Annual Financing Charges.

## EXECUTIVE SUMMARY

The UTK Haslam Field Expansion project was a FY 16/17 Disclosed Capital Budget request for \$5M, funded solely by TSSBA bond funds. The scope included renovation to the existing outdoor football practice field and additions of a pavilion, storage shed, sand pit, exercise ramp, dumpster enclosure, and fencing. The project was approved by the SBC in June 2016.

During 2016 the Athletic Director announced his future retirement which began a string of changes to the Football program through December of 2018 which placed this project on hold until original scope of work could be validated with new staff changes.

In September 2019 the SBC approved the project budget increase to \$14M and the scope was revised to include renovations to the interior training and equipment areas and staff offices, along with a new 2-story addition with multi-use space, and player's lounge. The project funding remained \$5M. The designer fee was updated to align with the new MACC, so that planning (design through Design Development) for the \$14M could begin. The SBC Executive Subcommittee selected Johnson Architecture, Inc. as the designer in September 2019.

As design work for the main scope began, the State Architect approved the use of System Procurement and Campus Resources for improvements on a couple of separate phases.

- In December 2019, updates to the locker room were completed for approximately \$1M.
- In May 2020, approved to allow for finishing upgrades in existing spaces that are outside of the main focus of the major renovation, consisting solely of finishes in offices and conference room spaces. This work totals \$275K and is underway.

Through discussions with the users along with the commitment of donor gifts, a more enhanced scope has been defined which increases the estimated cost to \$21.6M. The redefined scope includes:

- Renovate existing outdoor football practice field including additional exterior exercise and storage space, and fencing (original scope)
- Renovations of the interior training and equipment areas; and staff offices
- A new 1-story addition with an outdoor players' patio; locker room support areas; and a high-bay addition to the existing weight room.

The project funding is sourced primarily through donor commitments of the full \$21.6M; however, the university is seeking approval of \$5M TSSBA bonds with \$12.6M Plant Funds (Non-Aux) and \$4M donor funds in order to cash flow the beginning of construction.

Campus has the following donor commitments spanning through 2020-2024 equaling approximately \$18.3M. These are in addition to the \$4M donor funds currently available:

2020 = \$7,250,000  
2021 = \$4,000,000  
2022 = \$4,000,000  
2023 = \$1,500,000  
2024 = \$1,500,000

**Tennessee State School Bond Authority**  
**UTK Haslam Field Expansion Revised Project Application**

DEPARTMENT: University of Tennessee

INSTITUTION/LOCATION: Knoxville

PROJECT: UTK Haslam Field Expansion

SBC PROJECT #: 540/009-08-2016

**PROJECT BUDGET:**

		Original	Revised	Total
<b>Funding Sources:</b>	<u>TSSBA</u>	\$5,000,000	\$-0-	\$5,000,000
	<u>Plant Funds (Aux-Athletics)</u>	-0-	12,600,000	12,600,000
	<u>Gifts</u>	-0-	4,000,000	4,000,000
	<b>Total</b>	\$5,000,000	\$16,600,000	\$21,600,000

**PROJECT REVENUES:** (Describe sources and projected levels)

Annual debt service of \$1,060,793 will be funded by pledged gifts and/or UTK Athletic funds amortized over 5 years.

**PROJECT LIFE:**

Anticipated Useful Life of Project: 30+ years

Desired Term for Financing (if less than useful life): 5 years

**ESTIMATED ANNUAL FINANCING CHARGE:**

\$1,060,793 (5yr TSSBA  
Tax Exempt RCF Paper  
at 2%)

**PROJECT APPROVAL DATES:**

**BOARD:** 10/9/2015

**THEC:** 11/20/2015

**SBC:** 06/09/2016

Disclosed in the Governor's Budget:  Yes  No If yes, what year? 2016

**PROJECT DESCRIPTION:** Physical description, including land, buildings and equipment with approximate dollar value. (If a renovation or repair project, please provide information with respect to the renovated or improved portion as well as the entire structure).



This project will renovate existing outdoor football practice field including additional exterior exercise and storage space, and fencing. Renovations also include interior training and equipment areas; and staff offices. A new 1-story addition with an outdoor players' patio; locker room support areas; and a high-bay addition to the existing weight room.

**REAL ESTATE:**

Owner of real property The University of Tennessee

           To be acquired                                 To be leased or other arrangement

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The purpose of the following questions are to determine the tax status of this project to be financed with the proceeds of Tennessee State School Bond Authority Bonds and/or Bond Anticipation Notes and the amount of private use associated with this project. Private use means the direct or indirect use of the project by any entity other than a state or local government entity, including use by the Federal Government (including its agencies and instrumentalities) or a Section 501(c)(3), (c)(4), or (c)(6) organization. When the project consists of an improvement that does not involve space that is being used directly by governmental or private users (for example, a re-roofing, air conditioning or energy efficiency improvement), all questions involving uses and users of the project should be answered by reference to all portions of the facility or facilities benefited by the improvement.

The questions below relate to the project referenced above. Attach additional sheets as required. **Please make a copy of this document for your files.**

1. Project Status: (If the project has already been completed, and the proceeds are being used to reimburse the department, please so indicate and include date of project completion.) Planning and design

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2. Project completion estimated to be: 2022
3. Project Owner: University of Tennessee
4. Project Operator (see also item 8 below): University of Tennessee
5. Intended Use of the Project: Football practice field for student athletes

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6. Intended Users of the Project (excluding use by the general public): Student Athletes, Coaches, and staff

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7. Indicate whether any of the following activities will take place at the project. Indicate whether the activities are operated by a private entity or will indirectly benefit a private entity. Include all incidental private uses. For each direct or indirect private use of the project, indicate the total amount of space the private use occupies in relation to the entire project. (For example, if an area of vending machines operated by a private contractor

occupies 50 square feet of a 5,000 square foot area financed, indicate the relationship in terms of the ratio of square footage used.)

Gross Square Footage of Building 30,586 (See Supporting Data Sheet if more than one building is involved.)

A. Vending Machines:

Square Footage N/A  
Operator \_\_\_\_\_

Are any vending areas separated by walls, night gates, etc. so that they are under the control of the service provider/operator? \_\_\_\_\_

B. Wholesalers or retailers (e.g., Newsstand, Book Store, Pharmacy, etc.):

Square Footage N/A  
Type \_\_\_\_\_  
Operator \_\_\_\_\_

C. Pay Telephones:

Square Footage N/A

D. Laundry Services:

Square Footage N/A  
Operator \_\_\_\_\_

Are any laundry service areas separated by walls, night gates, etc. so that they are under the control of the service provider/operator? \_\_\_\_\_

E. Cafeteria or other food services areas:

Square Footage N/A  
Operator \_\_\_\_\_

F. Provision of health care services:

Square Footage N/A  
Operator \_\_\_\_\_

G. Laboratory research performed on behalf of or for the benefit of a private entity or pursuant to a cooperative research agreement:

Square Footage N/A  
Recipient \_\_\_\_\_

H. Office space utilized by or on behalf of private entities:

Square Footage N/A  
Occupant \_\_\_\_\_

I. Provision of housing for persons or entities other than enrolled students:

Square Footage N/A

8. Attach copies of any management contracts or incentive payment contracts entered into, or to be entered into, in connection with the operation of the project. (Do not include contracts for services that are solely incidental to the primary governmental functions of the facility (for example, contracts for janitorial, office equipment repair or similar services). Indicate the portion of the project to which the contracts relate. Give the usable square feet involved compared to the total usable square feet of the facility being financed. If a contract has not been entered into but is anticipated, indicate that fact.

N/A

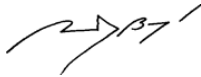
9. Will any debt proceeds be used to make or finance loans to any private entity? If so, indicate the amount of such loans, the length and payment terms of such loans: No

10. Indicate any expected payments (direct or indirect) to be made by non-governmental entities, separately and in the aggregate, to the State or any other governmental entity, with respect to the project.

N/A

11. Additional information not explained above. None

Completed this 28<sup>th</sup> day of October, 2020.



Randy Boyd  
President

DocuSigned by:

*Austin Oakes*  
Austin Oakes, Executive Director  
Office of Capital Projects



David Miller  
Chief Financial Officer

*To be filled out by the Authority*

BOND COUNSEL APPROVAL:	DATE	_____
	GOOD	_____
	5%	_____
	10%	_____

UNIVERSITY OF TENNESSEE

University of Tennessee, Knoxville, Knox County, Tennessee

**Requested Action:** Approval of a revision in project budget, scope, and funding, and utilizing Construction Manager/General Contractor alternative delivery method

**Project Title:** Haslam Field Expansion

**Project Description:** Renovate existing outdoor football practice field including additional exterior exercise and storage space, and fencing. Renovations also include interior training and equipment areas; and staff offices. *A new 1-story addition with an outdoor players' patio; locker room support areas; and a high-bay addition to the existing weight room.*

**SBC Number:** 540/009-08-2016

**Total Project Budget:** \$21,600,000.00

<b>Source of Funding:</b>	<u>Original</u>	<u>Change</u>	<u>Revised</u>		
	\$ 5,000,000.00	\$0.00	\$5,000,000.00	TSSBA	(A)
	0.00	12,600,000.00	12,600,000.00	Plant Funds (Aux-Athletics)	(A)
	0.00	4,000,000.00	4,000,000.00	Gifts	(O)
<b>Original Project Budget:</b>	<b>\$ 5,000,000.00</b>				
<b>Change in Funding:</b>		<b>\$16,600,000.00</b>			
<b>Revised Project Budget:</b>			<b>\$21,600,000.00</b>		

**Comment:** This request increases the Total Project Budget from \$14,000,000 and covers the revised scope for a new 1 story addition instead of 2 stories with an outdoor *players' patio; locker room support areas; and a high-bay addition to the existing weight room.* The Construction Manager/General Contractor is requested due to possible phasing required since the building will remain open during construction, along with the expertise needed in the remaining phases of design.

**Previous Action:**

06/09/2016	SBC	Approved project and to select a designer
09/12/2019	SBC	Approved revision in project budget and scope
09/23/2019	ESC	Approved designer selection (Johnson Architecture, Inc.)
12/16/2019	ESC	Approved utilizing System Procurement for a portion of the work
06/11/2020	SBC	Approved utilizing Campus Resources and System Procurement for a portion of the work

1. DEPARTMENT : The University of Tennessee  
 PROJECT TITLE: Haslam Field Expansion  
 INSTITUTION : UTK  
 CITY/COUNTY : Knoxville, Knox

SBC NO: 540/009-08-2016

2. FISCAL YEAR: 2016-2017 APPROVAL DATE: 11/12/2020

3.	Capital Outlay:	NEW		RENO
	Capital Maintenance	17,867	GROSS SF	12,719
X	Other:		NET SF	
X	Designer Required	\$447.00	COST / SF	\$214.00

4. PROJECT DESCRIPTION: Renovate existing outdoor football practice field including additional exterior exercise and storage space, and fencing. Renovations also include interior training and equipment areas; and staff offices. *A new 1-story addition with an outdoor players' patio; locker room support areas; and a high-bay addition to the existing weight room.*

5.	TOTAL PROJECT	ALLOCATION	SF X \$/SF = S
	\$10,708,000.00	\$10,708,000.00	Building Construction
	3,792,000.00	3,792,000.00	Site & Utilities
	0.00	0.00	Built-in Equipment
	<b>\$14,500,000.00</b>	<b>\$14,500,000.00</b>	<b>BID TARGET</b>
	1,200,000.00	1,200,000.00	Contingency
	<b>\$15,700,000.00</b>	<b>\$15,700,000.00</b>	<b>MACC</b>
	999,769.00	999,769.00	Fee
	1,904,000.00	1,904,000.00	Movable Equipment
	2,025,000.00	2,025,000.00	In-House Work
	210,000.00	210,000.00	Data/Telecom
	<u>761,231.00</u>	<u>761,231.00</u>	Admin. & Misc.
	<b>\$21,600,000.00</b>	<b>\$21,600,000.00</b>	<b>TOTAL COST</b>

6.	FUNDING	THIS REQUEST	
	\$0.00	\$0.00	STATE Funds
	\$0.00	\$0.00	FEDERAL Funds
	\$21,600,000.00	\$21,600,000.00	OTHER: TSSBA \$5M; Plant Funds (Aux-Athletics) \$12.6M; Gifts \$4M
	<b>\$21,600,000.00</b>	<b>\$21,600,000.00</b>	<b>TOTAL</b>

7.	SOURCE OF AVAILABLE FUNDS:	TSSBA	\$ 5,000,000.00
		Plant Funds (Aux-Athletics)	\$12,600,000.00
		Gifts	\$ 4,000,000.00

8. SBC ACTION: 06/09/2016 Approved project, budget, scope, funding and source of funding, and proceeding to select a designer  
 09/12/2019 Approved a revision in project budget and scope  
 09/23/2019 Approved designer selection  
 12/02/2019 Approved utilizing System Procurement for a portion of the work. Will be reported at December ESC.  
 05/15/2020 Approved utilizing Campus Resources and System Procurement for a portion of the work. Will be reported at June SBC.

9. DESIGNER: Johnson Architecture, Inc.

1. DEPARTMENT : The University of Tennessee  
 PROJECT TITLE: Haslam Field Expansion  
 INSTITUTION : UTK  
 CITY/COUNTY : Knoxville, Knox

SBC NO: 540/009-08-2016

2. FISCAL YEAR: 2016-2017

APPROVAL DATE: 05/15/2020

3.	Capital Outlay:	NEW		RENO
	Capital Maintenance	24,453	GROSS SF	11,241
X	Other:		NET SF	
X	Designer Required	\$190.20	COST / SF	\$138.90

4. PROJECT DESCRIPTION: Renovate existing outdoor football practice field including additional exterior exercise and storage space, and fencing. Renovations also include interior training and equipment areas; and staff offices. A new 2-story addition with multi-use space, and players' lounge.

5.	TOTAL PROJECT	ALLOCATION	SF X \$/SF = S
	\$6,212,000.00	\$411,000.00	Building Construction
	3,328,000.00	3,328,000.00	Site & Utilities
	0.00	0.00	Built-in Equipment
	<b>\$9,540,000.00</b>	<b>\$3,739,000.00</b>	<b>BID TARGET</b>
	763,000.00	380,000.00	Contingency
	<b>\$10,303,000.00</b>	<b>\$4,119,000.00</b>	<b>MACC</b>
	676,561.00	676,561.00	Fee
	1,204,000.00	0.00	Movable Equipment
	1,100,000.00	0.00	Field Replacement
	210,000.00	0.00	Data/Telecom
	<u>506,439.00</u>	<u>204,439.00</u>	Admin. & Misc.
	<b>\$14,000,000.00</b>	<b>\$5,000,000.00</b>	<b>TOTAL COST</b>

6.	FUNDING	THIS REQUEST	
	\$0.00	\$0.00	STATE Funds
	\$0.00	\$0.00	FEDERAL Funds
	\$14,000,000.00	\$5,000,000.00	OTHER: TSSBA
	<b>\$14,000,000.00</b>	<b>\$5,000,000.00</b>	<b>TOTAL</b>

7.	SOURCE OF AVAILABLE FUNDS:	TSSBA	\$5,000,000.00
			\$
			\$

8.	SBC ACTION:	06/09/2016	Approved project, budget, scope, funding and source of funding, and proceeding to select a designer
		09/12/2019	Approved a revision in project budget and scope
		09/23/2019	Approved designer selection
		12/02/2019	Approved utilizing System Procurement for a portion of the work. Will be reported at December ESC.
		05/15/2020	Approved utilizing Campus Resources and System Procurement for a portion of the work. Will be reported at June SBC.

9. DESIGNER: Johnson Architecture, Inc.

## **CERTIFICATION OF FUNDS**

Please be advised that The University of Tennessee has adequate resources that are not encumbered, or otherwise obligated, from which to cover the expenses of **twelve million six hundred thousand dollars** associated with the **UTK Haslam Field Expansion project, located in Knoxville.**



Date: 10/26/2020

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David L. Miller  
Senior Vice President and Chief Financial Officer  
The University of Tennessee

**UTK Haslam Field Expansion (Original Scope Items Allocation)**  
**SBC No. 540/009-08-2016**

Outdoor Football Field Renovation

Fill and Grade	\$920,393.00
New turf field	\$1,000,000.00

Utilities associated with Field work	\$384,595.00
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Pavilion (Players Patio)	\$1,084,549.00
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Storage Shed (included in building Construction 511 sq. ft.)	\$214,984.00
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Sand Pit	Deleted
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Exercise Ramp	Deleted
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Dumpster Enclosure	Deleted
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Fencing	Included in Field Renovation
	<hr/>
	\$3,604,521.00



**RESOLUTION TO APPROVE THE BORROWING OF  
MONEY BY ANOTHER METHOD BY THE  
UNIVERSITY OF TENNESSEE**

**Recitals**

Whereas, the University of Tennessee-Knoxville (“UT-K”) entered into a three (3) month lease (the “Hilton Lease”) with a term beginning August 30, 2020 and ending November 30, 2020 for the rental of up to one hundred fifty (150) hotel rooms (collectively, the “Rooms” or, individually, a “Room”) with RB Knoxville, LLC d/b/a Hilton Knoxville (the “Hilton”) in Knoxville, Tennessee; and

Whereas, UT-K desires to amend the Hilton Lease (the “Amended Hilton Lease”) and extend the term for four (4) months for the spring 2021 semester to begin on January 15, 2021 and end on May 15, 2021; and

Whereas, the Rooms will be for use by students who need to be isolated due to possible exposure to Covid-19 but who have tested negative or have not been tested but are not symptomatic; and

Whereas, the Rooms were chosen because of the location of the Hilton and the availability of the Rooms for this use; and

Whereas, the terms of the Amended Hilton Lease are: a four (4) month lease term beginning January 15, 2021 and ending May 15, 2021 with a nightly Room rate of one hundred three dollars (\$103.00) and total estimated Room charges of one million, eight hundred thirty-eight thousand, five hundred fifty dollars (\$1,838,550.00). In addition, a five-dollar (\$5.00) per stay fee will be assessed for providing in-Room microwaves and a one hundred fifty dollar (\$150.00) cleaning fee will apply each time a student checks out of a Room; and

Whereas, the payments for the Amended Hilton Lease will be funded by UT-K through plant funds (Non-Auxiliary)(R).

**BE IT RESOLVED BY THE TENNESSEE STATE SCHOOL BOND AUTHORITY:**

1. In accordance with the authority provided by Tennessee Code Annotated Section 49-3-1205(11), the Authority gives its approval to the University of Tennessee to enter into the Amended Hilton Lease.

BE IF FURTHER RESOLVED that all resolutions or parts of resolutions in conflict are repealed, and the resolution shall be effective as of November 12, 2020.

Adopted by the Authority at its meeting on November 12, 2020.

\_\_\_\_\_  
JUSTIN P. WILSON, SECRETARY  
TENNESSEE STATE SCHOOL BOND AUTHORITY

## **EXECUTIVE SUMMARY**

### **BACKGROUND:**

For the Fall 2020 semester, the University of Tennessee, on behalf of its Knoxville campus (UTK), entered into an agreement with Hilton Knoxville at 501 W Church Avenue, Knoxville, TN for up to 150 rooms for UTK's use related to Covid-19. The University proposes to amend this agreement for the Spring 2021 semester.

The rooms will be used by UTK residential students who are not positive or symptomatic for Covid-19 and are in isolation due to possible exposure. The rooms will be limited to one person and routine housekeeping items including linens and towels will be provided as requested by a student. Students will not be allowed to use the hotels amenities.

Similar to the Fall semester, UTK Housing will arrange for transportation to and from the hotel, will provide daily meals and will provide periodic checks on the students.

This hotel was selected because of the location and the availability of rooms for this use.

All other hotel agreements have either been terminated or will terminate at the end of the lease period.

### **TERMS:**

The University proposes a term beginning January 15, 2021 through May 15, 2021. At a maximum of 150 rooms, the total number of room nights would be 17,850 over this period. The nightly room rate is \$103 and the total estimated maximum charge of \$1,838,550.00. In addition, the University will be charged a \$5.00 per stay microwave fee and a \$150 cleaning fee each time a student moves out.

It is anticipated that 50 rooms will be reserved initially with adjustments made as needed up to 150 rooms.

The University may cancel rooms with 72 hours prior notice.

### **FUNDING:**

Funding for the lease payments will be funded by UTK through Plant Funds (Non-Auxiliary)(R).

### **REQUEST:**

Request for approval to amend the agreement for hotel rooms.

UNIVERSITY OF TENNESSEE

**Acquisition - Lease Amendment**

**Requested Action:**                   **Approval of a lease amendment**

**Transaction Description:**       Transaction No. 2020-08-02

- **Proposed**

- **Amendment**

- **Term:**

August 30,2020 – November 30, 2020 / January 15, 2021 – May 15, 2021

- **Current Lease**

- **Location:**

University of Tennessee – Knoxville (UTK)  
Knox County – 501 W Church Avenue, Knoxville, TN

- **Landlord:**

RB Knoxville, LLC dba Hilton Knoxville

- **Term:**

August 30, 2020 – November 30, 2020

- **Area / Costs:**

Up to 150 hotel rooms

Cost per room

\$/room  
\$103.00/night

Estimated  
Total Cost  
\$1,838,550.00

- **Source of Funding:**

Plant Funds (Non-Aux) (R)

- **FRF Rate:**

\$18.00/sf (for reference only)

**Comment:**

In August 2020, ESC approved the lease of rooms for students that need to be isolated due to possible exposure to Covid-19. This amendment is requested to extend the agreement into the Spring semester. It is anticipated that 50 rooms will initially be reserved.

In addition to the nightly room rate, a \$5.00 per stay fee will be assessed for providing in-room microwaves and a \$150 cleaning fee will apply each time a student checks out.

This hotel was selected because of the location and the availability of rooms for this use. Advertising is not required since the term of this lease is for one year or less. The University may cancel rooms with 72 hours prior approval.

**Previous Action:**                   08/24/2020   Approval of a lease.

**SSC Report:**                       11/16/2020   [Action taken at Staff Sub meeting]

THIS INSTRUMENT PREPARED BY:  
THE UNIVERSITY OF TENNESSEE  
301 ANDY HOLT TOWER  
KNOXVILLE, TN 37996

## AMENDMENT II TO AGREEMENT

This AMENDMENT II to the AGREEMENT (also referred to as Hotel Event Order Form) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between **the University of Tennessee, an instrumentality of the State of Tennessee** (hereinafter referred to as "University") and **Hilton Knoxville LLC** (hereinafter referred to as "Hotel").

### WITNESSETH:

WHEREAS, the University and Lessee entered into the Agreement (the "Agreement") dated August 27, 2020; and

WHEREAS, Hotel provides rooms for University students for isolation protocol for students that are not positive or symptomatic of Covid-19;

WHEREAS, Amendment I increased the number of rooms leased by University from 100 per night to 150 per night effective September 3, 2020;

WHEREAS, the room count was later reduced from 150 per night to 100 per termination rights in the Agreement and effective October 10, 2020

WHEREAS, the Agreement was structured to provide room for University's Fall semester and expires November 30, 2020;

WHEREAS, University desires to amend the Agreement and provide rooms for students during the Spring 2021 semester; and

WHEREAS, capitalized terms used but not defined herein shall have the same meanings as capitalized terms used in the Lease.

NOW THEREFORE, in consideration of the mutual covenants made herein, the receipt and sufficiency of which are acknowledged, the parties agree to amend the Lease as follows:

1. **Group Room Block, Page 2 of Agreement**, is hereby amended to include the following

"Beginning January 15, 2021 and ending May 15, 2021 (the "Extension Period"), University's Group Room Block will include 50 rooms. Subject to availability, University will have the right to lease an additional 100 rooms per night on a room by room basis."

2. **Additional Information, page 5 of Agreement**, is hereby amended as follows

“During the Extension Period, University shall have the right to cancel or adjust the number of rooms leased with a minimum of seventy-two (72) hours prior notice to each arrival date.”

3. **Amendments** Any further amendments to the Lease shall be in writing and executed by the parties or their respective successors in interest.
4. **Governing Law.** This Amendment II shall be governed by the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment II as of the day and date first above written.

**SIGNATURE PAGE FOLLOWS**

**Lessor: Hilton Knoxville:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Lessee: University of Tennessee**

By: \_\_\_\_\_  
Austin Oakes  
Executive Director, Capital Projects

**Approved as to Form and Legality:**

\_\_\_\_\_  
Herbert H. Slatery III  
Attorney General and Reporter

**LESSOR NOTARY**

STATE OF TENNESSEE

COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, Notary Public in and for the County and State aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself/herself to be, the within named Landlord, and that he/she, executed the foregoing instrument for the purposes therein contained

Witness my hand and seal, at office in \_\_\_\_\_, Tennessee, this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**LESSEE NOTARY**

STATE OF TENNESSEE

COUNTY OF KNOX

Before me, \_\_\_\_\_, Notary Public in and for the County and State aforesaid, personally appeared **Austin Oakes**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be, the **Executive Director, Capital Projects** of the University of Tennessee, and that he executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal, at office in \_\_\_\_\_, this the \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_



**Hotel Event Order Form**

<b>Department Name:</b>	University of Tennessee				
<b>Meeting Name:</b>	Housing Requirements for Students – Phase I				
<b>Address:</b>	Magnolia Hall, G040 2107 Andy Holt Avenue				
<b>City:</b>	Knoxville	<b>State:</b>	TN	<b>Zip:</b>	37996
<b>Group Contact:</b>	Chandra Myrick, Executive Director, University Housing				
<b>Phone Number:</b>	(850) 694-1380	<b>Email:</b>	cmyrick1@utk.edu		
<b>Alt. Group Contact:</b>					
<b>Alt. Phone Number:</b>		<b>Email:</b>			

**Method of Reservations:** *Choose Method:*

Rooming List/Housing Form     X    

**Billing Instructions:** *Choose Method:*

**Direct bill Only:** *(Individuals will pay their own incidentals)* \$103.00 per room, per night room rate, one time cleaning fee upon every departure of \$150.00.

**Individuals Pay Own Charges:** Incidentals will be turned off in the student rooms unless valid method of payment is provided by the individual in which they will be responsible.

**Other:** *(please specify)* Hotel will provide a microwave in each student guest room. U.T. is responsible for the \$5.00 one time charge, per guest stay.

**Billing Contact:** *(University contact responsible for processing payments):*

<b>Name:</b>	Kay Sisco	<b>Phone:</b>	
<b>Email:</b>	ssisco@utk.edu		

**Hotel will bill the University of Tennessee in 1 week increments for the number of nights in the contract for the preceding 7 days. The billing will include the nightly room rate**



based on the schedule in the Group Room Block below, the \$5.00 microwave charge added per each guest stay and the \$150.00 cleaning fee when a guest checks out.

**Group Room Block:**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	08/30/2020	08/31/2020	09/01/2020	09/02/2020	09/03/2020	09/04/2020	09/05/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/06/2020	09/07/2020	09/08/2020	09/09/2020	09/10/2020	09/11/2020	09/12/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/13/2020	09/14/2020	09/15/2020	09/16/2020	09/17/2020	09/18/2020	09/19/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/20/2020	09/21/2020	09/22/2020	09/23/2020	09/24/2020	09/25/2020	09/26/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/27/2020	09/28/2020	09/29/2020	09/30/2020	10/01/2020	10/02/2020	10/03/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/04/2020	10/05/2020	10/06/2020	10/07/2020	10/08/2020	10/09/2020	10/10/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

**Group Room Block (continued):**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/11/2020	10/12/2020	10/13/2020	10/14/2020	10/15/2020	10/16/2020	10/17/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/18/2020	10/19/2020	10/20/2020	10/21/2020	10/22/2020	10/23/2020	10/24/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/25/2020	10/26/2020	10/27/2020	10/28/2020	10/29/2020	10/30/2020	10/31/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/01/2020	11/02/2020	11/03/2020	11/04/2020	11/05/2020	11/06/2020	11/07/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/08/2020	11/09/2020	11/10/2020	11/11/2020	11/12/2020	11/13/2020	11/14/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/15/2020	11/16/2020	11/17/2020	11/18/2020	11/19/2020	11/20/2020	11/21/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/22/2020	11/23/2020	11/24/2020	11/25/2020	11/26/2020	11/27/2020	11/28/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

(continue)

**Group Room Block (continued):**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/29/2020	11/30/2020					
Room Type							
Rate	\$103.00	END					
# of Rooms	100						

As the host Hotel, the Hilton is requesting that any additional room night needs be directed to the Hotel. It is understood by both parties that other lodging arrangements have been coordinated for similar use and will also be utilized for such services. The Hotel will provide the University with the flexibility to cancel any rooms reserved for check-in on or after September 20, 2020 with 72 hours prior to arrival. Additionally, the Hotel in good faith, will honor the University with the proposed rate of \$103.00/night, even through previously mentioned and quoted Blackout Dates.

What separates us from other Lodging options:

- Location within the city and to the University of Tennessee campus
- Conus rate provided through the length of the Agreement
- Room commitment beyond September 20, 2020 thru the end of November, provides flexible cancellation without penalty of 72 hours prior notice to arrival.
- Complimentary Self-Parking
- Complimentary WiFi

**Meeting and Catering Requirements:**

**Describe Your Proposed Meeting/Set-up Requirements by Day or by Meeting:**

At this time the University of Tennessee does not require any meeting or banquet space.

**Describe Your Audio/Visual Requirements by Day:**

N/A

**Hotel Features:**

- Complimentary Wireless Internet Throughout the Hotel
- Refrigerators in all rooms
- Full Service Starbucks Coffee in the Lobby (hours may vary)
- State-of-the Art Fitness Center
- Full Service Restaurant (hours may vary)
- Within 5 minute walk to University of Tennessee Campus
- Located on complimentary City Trolley Line

**Additional information:**

- ✓ Hotel to provide housing option for students for isolation protocol (students not positive or symptomatic of COVID-19)
- ✓ Organization will not knowingly secure arrangements at the Hotel for any infected or positively tested COVID-19 patron. Organization's liability will be governed by the Tennessee Claims Commission Act.
- ✓ The University of Tennessee acknowledges that the Hotel maintains the right to remove guests who violate the hotel's policies.
- ✓ The University of Tennessee Housing Administration understands that it is responsible for payment of (100) guest rooms per night starting August 30, 2020 (check-in) through September 20, 2020 (check-out). Rooms will be invoiced whether the room is occupied or not.
- ✓ Subject to hotel availability, the University has the right to lease up to an additional 50 rooms, on a room by room basis for a total of 150 rooms, at the same nightly rate and terms and conditions in this agreement.
- ✓ Additionally, the Hotel has committed to providing 100 rooms per night, starting on or with the arrival date of September 20, 2020 thru November 30<sup>th</sup>, 2020. The University of Tennessee has been granted a flexible option in which to cancel or adjust its room night requirement(s) with a minimum of 72 hours prior notice to each arrival date. Should a committed room night not be cancelled prior to this 72 hour requirement, the University of Tennessee will be responsible for payment of committed room allocation held by the Hotel, per the original request. All changes and cancellations must be received in writing by the University of Tennessee to the Hotel.
- ✓ The University of Tennessee understands a one-time \$150.00 cleaning fee will apply and be charged upon every guest departure.
- ✓ U.T. to provide housing form or rooming list to secure housing (forms are attached for reference)
- ✓ Hotel offers student limited contact (no longer than 10 minute contact with any individual)
- ✓ Hotel to shut off incidentals all guest rooms
- ✓ Hotel understands no meals to be provided however the Hotel offers a full service restaurant and/or meeting facilities, that can accommodate any requested needs, following CDC guidelines of Social Distancing. Special meal packages have been established by the Hotel to provide a well-balanced, healthy and safe option should student not have a standing meal plan.
- ✓ Hotel will provide minimal housekeeping services, to include but not limited to, scheduled pick up and drop off of bed linens and towels from guest room doorways.
- ✓ Hilton & Lysol Clean Stay Program (see attached for details)

**Rooming Lists/Housing Form:**

Please be advised housing forms submitted to the Hilton Knoxville must be provided on the designated hotel approved housing form. These forms will be provided to the group prior to the group arrival for completion.

**Taxes:** The University is tax exempt and all applicable taxes will be removed at the conclusion of the stay and/or event.

*By submitting this document, I acknowledge that the information on this document is correct. The hotel and the University agree that the person listed below is not an authorized signature for contract or purchase order purposes. Rather, the person below only signifies that the information in this document is accurate and approved for processing by the hotel. Furthermore, this order is governed by the terms and conditions of*

**UT Hotel Rewards Number:** 146985097

**University's maximum financial obligation for room nights:** \$103.00, in addition to the \$150.00 cleaning fee and \$5.00 microwave fee per check-out.

**Responsibility:** University is only responsible for the acts of its employees. Hotel acknowledges that University is not liable for the acts of its students or their invitees.

**Governing Law:** The laws of the state of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement. The University's liability will be governed by the Tennessee Claims Commission Act.

**Self-Insurance:** The University is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq., which covers certain tort liability for actual damages of up to \$300,000 per claimant and \$1,000,000 per occurrence.

**Force Majeure:**

- i. If a Force Majeure Event prevents a party from complying with any one or more obligations under this agreement, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under section this section.
- ii. For purposes of this agreement, "Force Majeure Event" means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party and any consequences of that event or circumstance.
- iii. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

**Conflicts of Interest:**

- i. Hotel states that no part of the Hotel's compensation will be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Hotel in connection with any work contemplated or performed under this agreement.
- ii. Hotel states that this agreement is immediately void if the Hotel is, or within the past 6 months has been, an employee of the State of Tennessee or if the Hotel is an entity in which a controlling interest is held by an individual who is, or within the past 6 months has been, an employee of the State of Tennessee.

**Iran Divestment Act:** The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, are a material provision of this agreement. Hotel hereby certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**Illegal Immigrants:** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Hotel hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.

**Tennessee Department of Revenue:** In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Hotel hereby attests that it has registered with the State of Tennessee's Department of Revenue for the

collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.

**Debarment:** Hotel hereby attests that the following are true statements:

- i. Hotel is not currently debarred by the U.S. federal government.
- ii. Hotel is not currently suspended by the U.S. federal government.
- iii. Hotel is not currently named as an “excluded” Hotel by the U.S. federal government.

**Records Audit:**

Records: Hotel shall maintain records for all expenses for which Hotel invoices the University under this agreement. Hotel shall maintain its records for at least 5 years, and shall maintain its records in accordance with generally accepted accounting principles.

Audit: During the term of this agreement and for 5 years after the last payment from the University to Hotel under this agreement, the State of Tennessee Comptroller or the University’s internal audit, or both, may audit Hotel’s records that relate to this agreement.

Assistance: Hotel shall provide the University with any documentation, access to information, or other assistance necessary for the University to ensure that Hotel complies with its obligations under this agreement.

SIGNATURE PAGE FOLLOWS

**The University of Tennessee**

Signature: *Austin Oakes*

Name: Austin Oakes

Title: Executive Director

**Hilton Knoxville**

Signature: *Shelley L. Helton*

Name: Shelley L. Helton

Title: DIRECTOR OF SALES & MARKETING

**State of Tennessee**

Approved as to form and legality:

*Herbert H. Slatery III*

Herbert H. Slatery III, Attorney General and Reporter



**Hotel Event Order Form**

<b>Department Name:</b>	University of Tennessee				
<b>Meeting Name:</b>	Housing Requirements for Students – Phase I				
<b>Address:</b>	Magnolia Hall, G040 2107 Andy Holt Avenue				
<b>City:</b>	Knoxville	<b>State:</b>	TN	<b>Zip:</b>	37996
<b>Group Contact:</b>	Chandra Myrick, Executive Director, University Housing				
<b>Phone Number:</b>	(850) 694-1380	<b>Email:</b>	cmyrick1@utk.edu		
<b>Alt. Group Contact:</b>					
<b>Alt. Phone Number:</b>		<b>Email:</b>			

**Method of Reservations:** *Choose Method:*

Rooming List/Housing Form     X    

**Billing Instructions:** *Choose Method:*

**Direct bill Only:** *(Individuals will pay their own incidentals)* \$103.00 per room, per night room rate, one time cleaning fee upon every departure of \$150.00.

**Individuals Pay Own Charges:** Incidentals will be turned off in the student rooms unless valid method of payment is provided by the individual in which they will be responsible.

**Other:** *(please specify)* Hotel will provide a microwave in each student guest room. U.T. is responsible for the \$5.00 one time charge, per guest stay.

**Billing Contact:** *(University contact responsible for processing payments):*

<b>Name:</b>	Kay Sisco	<b>Phone:</b>	
<b>Email:</b>	ssisco@utk.edu		

**Hotel will bill the University of Tennessee in 1 week increments for the number of nights in the contract for the preceding 7 days. The billing will include the nightly room rate**



based on the schedule in the Group Room Block below, the \$5.00 microwave charge added per each guest stay and the \$150.00 cleaning fee when a guest checks out.

**Group Room Block:**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	08/30/2020	08/31/2020	09/01/2020	09/02/2020	09/03/2020	09/04/2020	09/05/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/06/2020	09/07/2020	09/08/2020	09/09/2020	09/10/2020	09/11/2020	09/12/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/13/2020	09/14/2020	09/15/2020	09/16/2020	09/17/2020	09/18/2020	09/19/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/20/2020	09/21/2020	09/22/2020	09/23/2020	09/24/2020	09/25/2020	09/26/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	09/27/2020	09/28/2020	09/29/2020	09/30/2020	10/01/2020	10/02/2020	10/03/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/04/2020	10/05/2020	10/06/2020	10/07/2020	10/08/2020	10/09/2020	10/10/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

**Group Room Block (continued):**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/11/2020	10/12/2020	10/13/2020	10/14/2020	10/15/2020	10/16/2020	10/17/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/18/2020	10/19/2020	10/20/2020	10/21/2020	10/22/2020	10/23/2020	10/24/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	10/25/2020	10/26/2020	10/27/2020	10/28/2020	10/29/2020	10/30/2020	10/31/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/01/2020	11/02/2020	11/03/2020	11/04/2020	11/05/2020	11/06/2020	11/07/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/08/2020	11/09/2020	11/10/2020	11/11/2020	11/12/2020	11/13/2020	11/14/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/15/2020	11/16/2020	11/17/2020	11/18/2020	11/19/2020	11/20/2020	11/21/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/22/2020	11/23/2020	11/24/2020	11/25/2020	11/26/2020	11/27/2020	11/28/2020
Room Type							
Rate	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00	\$103.00
# of Rooms	100	100	100	100	100	100	100

(continue)

**Group Room Block (continued):**

Day	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Date	11/29/2020	11/30/2020					
Room Type							
Rate	\$103.00	END					
# of Rooms	100						

As the host Hotel, the Hilton is requesting that any additional room night needs be directed to the Hotel. It is understood by both parties that other lodging arrangements have been coordinated for similar use and will also be utilized for such services. The Hotel will provide the University with the flexibility to cancel any rooms reserved for check-in on or after September 20, 2020 with 72 hours prior to arrival. Additionally, the Hotel in good faith, will honor the University with the proposed rate of \$103.00/night, even through previously mentioned and quoted Blackout Dates.

**What separates us from other Lodging options:**

- Location within the city and to the University of Tennessee campus
- Conus rate provided through the length of the Agreement
- Room commitment beyond September 20, 2020 thru the end of November, provides flexible cancellation without penalty of 72 hours prior notice to arrival.
- Complimentary Self-Parking
- Complimentary WiFi

**Meeting and Catering Requirements:**

**Describe Your Proposed Meeting/Set-up Requirements by Day or by Meeting:**

At this time the University of Tennessee does not require any meeting or banquet space.

**Describe Your Audio/Visual Requirements by Day:**

N/A

**Hotel Features:**

- Complimentary Wireless Internet Throughout the Hotel
- Refrigerators in all rooms
- Full Service Starbucks Coffee in the Lobby (hours may vary)
- State-of-the Art Fitness Center
- Full Service Restaurant (hours may vary)
- Within 5 minute walk to University of Tennessee Campus
- Located on complimentary City Trolley Line

**Additional information:**

- ✓ Hotel to provide housing option for students for isolation protocol (students not positive or symptomatic of COVID-19)
- ✓ Organization will not knowingly secure arrangements at the Hotel for any infected or positively tested COVID-19 patron. Organization's liability will be governed by the Tennessee Claims Commission Act.
- ✓ The University of Tennessee acknowledges that the Hotel maintains the right to remove guests who violate the hotel's policies.
- ✓ The University of Tennessee Housing Administration understands that it is responsible for payment of (100) guest rooms per night starting August 30, 2020 (check-in) through September 20, 2020 (check-out). Rooms will be invoiced whether the room is occupied or not.
- ✓ Subject to hotel availability, the University has the right to lease up to an additional 50 rooms, on a room by room basis for a total of 150 rooms, at the same nightly rate and terms and conditions in this agreement.
- ✓ Additionally, the Hotel has committed to providing 100 rooms per night, starting on or with the arrival date of September 20, 2020 thru November 30<sup>th</sup>, 2020. The University of Tennessee has been granted a flexible option in which to cancel or adjust its room night requirement(s) with a minimum of 72 hours prior notice to each arrival date. Should a committed room night not be cancelled prior to this 72 hour requirement, the University of Tennessee will be responsible for payment of committed room allocation held by the Hotel, per the original request. All changes and cancellations must be received in writing by the University of Tennessee to the Hotel.
- ✓ The University of Tennessee understands a one-time \$150.00 cleaning fee will apply and be charged upon every guest departure.
- ✓ U.T. to provide housing form or rooming list to secure housing (forms are attached for reference)
- ✓ Hotel offers student limited contact (no longer than 10 minute contact with any individual)
- ✓ Hotel to shut off incidentals all guest rooms
- ✓ Hotel understands no meals to be provided however the Hotel offers a full service restaurant and/or meeting facilities, that can accommodate any requested needs, following CDC guidelines of Social Distancing. Special meal packages have been established by the Hotel to provide a well-balanced, healthy and safe option should student not have a standing meal plan.
- ✓ Hotel will provide minimal housekeeping services, to include but not limited to, scheduled pick up and drop off of bed linens and towels from guest room doorways.
- ✓ Hilton & Lysol Clean Stay Program (see attached for details)

**Rooming Lists/Housing Form:**

Please be advised housing forms submitted to the Hilton Knoxville must be provided on the designated hotel approved housing form. These forms will be provided to the group prior to the group arrival for completion.

**Taxes:** The University is tax exempt and all applicable taxes will be removed at the conclusion of the stay and/or event.

*By submitting this document, I acknowledge that the information on this document is correct. The hotel and the University agree that the person listed below is not an authorized signature for contract or purchase order purposes. Rather, the person below only signifies that the information in this document is accurate and approved for processing by the hotel. Furthermore, this order is governed by the terms and conditions of*

**UT Hotel Rewards Number:** 146985097

**University's maximum financial obligation for room nights:** \$103.00, in addition to the \$150.00 cleaning fee and \$5.00 microwave fee per check-out.

**Responsibility:** University is only responsible for the acts of its employees. Hotel acknowledges that University is not liable for the acts of its students or their invitees.

**Governing Law:** The laws of the state of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement. The University's liability will be governed by the Tennessee Claims Commission Act.

**Self-Insurance:** The University is self-insured under the Tennessee Claims Commission Act, Tenn. Code Ann. §§ 9-8-301 et seq., which covers certain tort liability for actual damages of up to \$300,000 per claimant and \$1,000,000 per occurrence.

**Force Majeure:**

- i. If a Force Majeure Event prevents a party from complying with any one or more obligations under this agreement, that inability to comply will not constitute breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under section this section.
- ii. For purposes of this agreement, "Force Majeure Event" means, with respect to a party, any event or circumstance, whether or not foreseeable, that was not caused by that party and any consequences of that event or circumstance.
- iii. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

**Conflicts of Interest:**

- i. Hotel states that no part of the Hotel's compensation will be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Hotel in connection with any work contemplated or performed under this agreement.
- ii. Hotel states that this agreement is immediately void if the Hotel is, or within the past 6 months has been, an employee of the State of Tennessee or if the Hotel is an entity in which a controlling interest is held by an individual who is, or within the past 6 months has been, an employee of the State of Tennessee.

**Iran Divestment Act:** The requirements of Tenn. Code Ann. § 12-12-101 et. seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, are a material provision of this agreement. Hotel hereby certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**Illegal Immigrants:** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Hotel hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.

**Tennessee Department of Revenue:** In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Hotel hereby attests that it has registered with the State of Tennessee's Department of Revenue for the

collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.

**Debarment:** Hotel hereby attests that the following are true statements:

- i. Hotel is not currently debarred by the U.S. federal government.
- ii. Hotel is not currently suspended by the U.S. federal government.
- iii. Hotel is not currently named as an “excluded” Hotel by the U.S. federal government.

**Records Audit:**

Records: Hotel shall maintain records for all expenses for which Hotel invoices the University under this agreement. Hotel shall maintain its records for at least 5 years, and shall maintain its records in accordance with generally accepted accounting principles.

Audit: During the term of this agreement and for 5 years after the last payment from the University to Hotel under this agreement, the State of Tennessee Comptroller or the University’s internal audit, or both, may audit Hotel’s records that relate to this agreement.

Assistance: Hotel shall provide the University with any documentation, access to information, or other assistance necessary for the University to ensure that Hotel complies with its obligations under this agreement.

SIGNATURE PAGE FOLLOWS

**The University of Tennessee**

Signature: Austin Oakes

Name: Austin Oakes

Title: Executive Director

**Hilton Knoxville**

Signature: Sherri L. Helton

Name: Sherri L. Helton

Title: DIRECTOR OF SALES + MARKETING

**State of Tennessee**

Approved as to form and legality:

Herbert H. Slatery III

Herbert H. Slatery III, Attorney General and Reporter

**HILTON KNOXVILLE NOTARY**

STATE OF TENNESSEE TN  
COUNTY OF Sevier

Before me, the undersigned notary of the State and County aforesaid, personally appeared Sherri L. Helton, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself/herself to be Sherri L. Helton of Hilton Knoxville the within-named bargainer, a limited liability company, and that he/she as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself/herself as such officer.

WITNESS my hand and seal at office in Knoxville this 25<sup>th</sup> day of August, 2020.

A. Melissa Gonzales



My Commission Expires: 2/23/21

**UNIVERSITY OF TENNESSEE NOTARY**

STATE OF TENNESSEE  
COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, Austin Oakes, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged that he/she is the Executive Director of the University of Tennessee and that he/she as officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the University of Tennessee by himself as officer.

Witness my hand and seal, at office in, this 27<sup>th</sup> day of August, 2020.

Austin Oakes

Notary Public.



My Commission Expires: My Commission Expires June 6, 2023



**HILTON KNOXVILLE NOTARY**

STATE OF TENNESSEE TN  
COUNTY OF Sevier

Before me, the undersigned notary of the State and County aforesaid, personally appeared Sherril L. Helton, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself/herself to be Sherril L. Helton of Hilton Knoxville, the within-named bargainer, a limited liability company, and that he/she as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself/herself as such officer.

WITNESS my hand and seal at office in Knoxville this 25<sup>th</sup> day of August, 2020.

A. Melissa Gonzales

My Commission Expires: 2/23/21



**UNIVERSITY OF TENNESSEE NOTARY**

STATE OF TENNESSEE  
COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, Austin Oakes, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged that he/she is the Executive Director of the University of Tennessee and that he/she as officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the University of Tennessee by himself as officer.

Witness my hand and seal, at office in, this 27<sup>th</sup> day of August, 2020.

Anthony Hopson  
Notary Public.

My Commission Expires: My Commission Expires June 6, 2023



**RESOLUTION TO APPROVE THE BORROWING OF  
MONEY BY ANOTHER METHOD BY THE  
UNIVERSITY OF TENNESSEE AT MARTIN**

**Recitals**

Whereas, the University of Tennessee at Martin (“UT-M”) has a Rodeo Program (the “Program”) with a tradition of success; and

Whereas, the Program has a need for a practice facility and UT-M has a need for a facility to serve students in its Equine Science courses; and

Whereas, since 2010 UT-M has leased property located at 546 (house) & 548 (barns) Littrell Road in Martin, Tennessee (the “Property”) and the Property is comprised of approximately 45 acres, and is situated approximately six miles west of the UT-M campus; and

Whereas, the Property includes a house, horse facility and indoor arena, tack shop, and other barns which are well suited to the needs of the Program and Equine Science programs; and

Whereas, the Property also serves as a laboratory for students enrolled in Equine Science courses and a place for students to board their horses nearby while attending UT-M; and

Whereas, the Wooten Family Partnership donated the Property to the University of Tennessee Foundation, Inc. (“UTFI”) subject to a \$259K Deed of Trust; and

Whereas, UTFI subsequently leased (the “Lease”) the Property to UT-M with payments on the Lease equal to payments on the Deed of Trust, \$2,000 per month or \$24,000 per year; and

Whereas, the Deed of Trust is scheduled to be paid off by UTFI in December 2020; and

Whereas, the Lease also expires in December 2020 and UT-M proposes to extend the Lease (the “Lease Extension”) for one year, allowing time for due diligence on the Property to evaluate acquiring the Property from UTFI; and

Whereas, the proposed terms of the Lease Extension are an extension for one year, from January 1, 2021 through December 31, 2021, with a rental rate of \$18,000 per year to be made as a one-time payment and a thirty (30) day termination provision for convenience with UT-M being responsible for utilities, janitorial, and maintenance; and

Whereas, UT-M proposes to fund the costs associated with the Lease Extension with revenues from horse stall rentals and UT-M’s athletic operating budget.

**BE IT RESOLVED BY THE TENNESSEE STATE SCHOOL BOND AUTHORITY:**

1. In accordance with the authority provided by Tennessee Code Annotated Section 49-3-1205(11), the Authority gives its approval to the University of Tennessee at Martin to enter into the Lease Extension.

BE IF FURTHER RESOLVED that all resolutions or parts of resolutions in conflict are repealed, and the resolution shall be effective as of November 12, 2020.

Adopted by the Authority at its meeting on November 12, 2020.

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JUSTIN P. WILSON, SECRETARY  
TENNESSEE STATE SCHOOL BOND AUTHORITY

# **EXECUTIVE SUMMARY**

## **BACKGROUND**

The University' of Tennessee – Martin Rodeo Program has grown in to a competitive, successful program. The rodeo program's tradition-rich history dates back to 1968 and remains the only collegiate rodeo program in Tennessee. Over time, the program's growth generated the need to develop a practice facility for the Rodeo Program which would also serve as a laboratory for students enrolled in Equine Science courses.

Since 2010, the University has leased property located at 546 (house) & 548 (barns) Littrell Road in Martin, Tennessee. It is comprised of approximately 45 acres, and is situated approximately six miles west of the UT Martin campus in the Mt. Pelia community.

The property includes a house, horse facility and indoor arena, tack shop, and other barns which are well suited to the needs of the Rodeo and Equine Science programs. Additionally, it serves as a laboratory for students enrolled in Equine Science courses and a place for many to board their horses nearby while attending school.

The Wooten Family Partnership donated the property to the University of Tennessee Foundation, Inc. (UTFI) subject to a \$259K Deed of Trust. UTFI subsequently leased the property to the University with the lease payment equal to the payment on the debt, \$2,000 per month or \$24,000 per year. The debt is scheduled to be paid off by UTFI on December 2020.

The lease also expires in December 2020 and the University proposes to extend the agreement for one year, allowing time for due diligence on the property to evaluate acquiring the property from UTFI. Request for approval to acquire the property will be brought forward to SBC under separate action.

## **LEASE TERMS**

The lease will be extended for one year, from January 1, 2021 through December 31, 2021. The rental rate will be \$18,000 per year made as a one-time payment.

The current lease includes a thirty (30) day termination provision for convenience. The University is responsible for utilities, janitorial, and maintenance.

## **FUNDING**

The University proposes to fund the costs associated with the lease with revenues from horse stall rentals and the Athletic operating budget.

## **REQUESTED SBC ACTION**

Request for approval of the attached lease amendment for the rental of real property as required by TCA 12-2-115.

UNIVERSITY OF TENNESSEE

**Acquisition - Lease Amendment**

**Requested Action:**                   **Approval of a lease amendment**

**Transaction Description:**       Transaction No. 09-12-900

● **Proposed Amendment**

- **Term:**                               January 1, 2010 – December 31, 2021
- **Area / Costs:**                   45+/- acres with improvements/\$18,000 per year

● **Current Lease**

- **Location:**                       University of Tennessee – Martin (UTM)  
Weakley County – 546 & 548 Littrell Road, Martin, TN
- **Landlord:**                       University of Tennessee Foundation, Inc. (UTFI)
- **Term:**                               January 1, 2010 – December 31, 2020
- **Area / Costs:**                   45+/- acres with improvements/\$24,000.00 per year
- **Source of Funding:**           Rodeo Event Revenue, Stall Rentals and Athletics Operating Budget
- **FRF Rate:**                       \$14.00/sf (for reference only)

**Comment:**

The University leases this property for the UTM Rodeo Team and Rodeo and Equine Science Programs. A one-year lease extension is requested to allow time for due diligence to evaluate acquiring this property from UTFI. UTFI acquired this property subject to a Deed of Trust that will be paid off in December 2020. Request for approval to acquire the property, subject to satisfactory due diligence, will be brought to SBC as a separate action. The rental rate will be \$18,000 per year made as a one-time payment.

The University is responsible for utilities, janitorial and maintenance. The lease may be terminated for convenience with thirty (30) days prior notice. Advertising is not required since the term of this lease is one year or less.

**Previous Action:**                   12/21/2009   Approval of a lease.

**SSC Report:**                       11/16/2020

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (“Amendment”) is made as of the \_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) by and between **UNIVERSITY OF FOUNDATION, INC.**, (“LESSOR”) and **THE UNIVERSITY OF TENNESSEE**, an instrumentality of the State of Tennessee (“University”).

### RECITALS:

- A. Lessor and University entered into that certain Lease Agreement dated March 8, 2010 (the “Lease”) for certain premises with the appurtenances located at 546 Littrell Road and 548 Littrell Road, Martin, Tennessee. (the “Premises”).
- B. While both the Commissioner of Finance and Administration for the State of Tennessee and the University of Tennessee signed the Lease, the Commissioner’s signature is no longer required and this Amendment will be executed by the University;
- C. The parties desire to amend the Lease as provided herein.
  - 1. Extension of Term: The term of this Lease shall be extended one (1) year, commencing January 1, 2010 and ending December 31, 2021.
  - 2. Rent. Beginning January 1, 2021, University’s annual rent shall be \$18,000 per year and made as a one-time payment or as credit to transfers from the University to Lessor.
  - 3. Application and Ratification. The capitalized terms as defined in the Lease are applicable herein. Except as expressly set forth herein, all the terms and provisions of the Lease are hereby ratified and affirmed.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment as of the date first above written.

SIGNATURE PAGE FOLLOWS

**LESSOR:**

**University of Tennessee Foundation, Inc.**

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

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

Date: \_\_\_\_\_

**UNIVERSITY:**

**THE UNIVERSITY OF TENNESSEE,  
an instrumentality of the State of Tennessee**

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

Its: Executive Director, Capital Projects

Date: \_\_\_\_\_

**STATE OF TENNESSEE**

**Approved for Form and Legality:**

\_\_\_\_\_  
Herbert H. Slatery III, Attorney General & Reporter

**LESSOR NOTARY**

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, the undersigned notary of the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged himself/herself to be \_\_\_\_\_ of the University of Tennessee Foundation, Inc. the within-named bargainor, and that he/she as such officer, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by himself/herself as such officer.

WITNESS my hand and seal at office in \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**UNIVERSITY NOTARY**

STATE OF TENNESSEE  
COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, \_\_\_\_\_, with whom I am personally acquainted or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged that he is the Executive Director of the University of Tennessee and that he as officer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the University of Tennessee by himself as officer.

Witness my hand and seal, at office in, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public.

My Commission Expires:  
\_\_\_\_\_



THIS INSTRUMENT WAS PREPARED BY:  
UNIVERSITY OF TENNESSEE

Office of Real Estate Administration

711 Andy Holt Tower

Knoxville, TN 37996

THE UNIVERSITY OF TENNESSEE

THIS LEASE, entered into as of this 8<sup>th</sup> day of March, 2010, by and between UNIVERSITY OF TENNESSEE FOUNDATION, INC., hereinafter called the Lessor, and the UNIVERSITY OF TENNESSEE, hereinafter called the University:

WITNESSETH:

1. **LOCATION.** The Lessor hereby leases unto the University those certain premises with the appurtenances situated in the Counties of Weakley & Obion, City of Martin, located at 546 Littrell Road (House) & 548 Littrell Road (Barns), Martin, Tennessee 38237.
2. **DESCRIPTION.** The premises above are more particularly described as follows: SEE EXHIBIT A
3. **TERM.** The term of this lease shall commence on January 1, 2010, and shall end on December 31, 2020 with such right of termination as are hereinafter expressly set forth.
4. **RENTAL.** The University shall pay rental in arrears on the last day of the payment period as follows: annual rent of \$24,000.00 (Twenty-four thousand dollars) payable in installments of \$2,000.00 (Two thousand dollars) per month. Rent payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental herein specified, based on the actual number of days in the month. Rental shall be paid to the Lessor at the address specified in Paragraph 6 or to such other address as the Lessor may designate by a notice in writing.
- 5A. **TERMINATION.** For convenience, the University may terminate this lease at any time by giving written notice to the Lessor at least 30 days prior to the date when such termination becomes effective. Said notice shall commence on the day after the date of mailing.
- 5B. **TERMINATION FOR CAUSE:** The University may in its sole discretion terminate this lease at any time for any of the following causes: (a) Failure of the Lessor to provide any of the services required under the terms of this lease; (b) Failure by the Lessor to make such modifications, alterations or improvements as may be necessary to insure that the leased premises are brought up to, and maintained at, codes for building construction, health, fire and life safety, and handicapped accessibility applicable to the leased premises, except where deficiencies are caused by the University (c) Failure to disclose any conflict or potential conflict of interest existing at the date of this lease or hereafter created; (d) Termination or consolidation of the University operations or programs housed in the leased premises because of loss of funding; (e) Misrepresentation contained in the response to the request for proposal or committed during the negotiation, execution or term of this lease; (f) Lack of funding by the appropriate Legislative Body for obligations required of the State under this lease; (g) The availability of space in University-owned property, provided that no cancellation for this reason may take place until the lease has been effect for one year; and (h) Any other breach of the terms of this lease by Lessor which is not adequately remedied within twenty (20) days of the mailing of a written notice thereof to Lessor.
6. **NOTICES.** All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:
 

<p>To the Lessor at:</p> <p><u>University to Tennessee Foundation, Inc.</u> <u>100 Conference Center Bldg.</u> <u>600 Henley Street</u> <u>Knoxville, TN 37996</u></p>	<p>To the University at:</p> <p><u>Office of Treasurer</u> <u>301 Andy Holt Tower</u> <u>Knoxville, TN 37996</u></p>
--	--
7. **ASSIGNMENT AND SUBLETTING.** The University shall not assign this lease without the written consent of the Lessor, but shall in any event have the right to sublet the leased premises.
8. **INSPECTION.** The Lessor reserves the right to enter and inspect the leased premises, at reasonable times and to render services and make any necessary repairs to the premises.
9. **ALTERATIONS.** The University shall have the right during the existence of this lease to make alterations, attach fixtures and erect additions, structures, or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the University and may be removed therefrom by the University prior to the termination or expiration of this lease or any renewal or extension thereof, or within a reasonable time thereafter.
10. **SURRENDER OF POSSESSION.** Upon termination or expiration of this lease, the University will peaceably surrender to the Lessor the leased premises in as good order and condition as when received, reasonable use and wear thereof and damage by earthquake, fire, public calamity, the elements, acts of God, or circumstances over which the University has no control or for which Lessor is responsible pursuant to this lease, excepted. The University shall have no duty to remove any improvements or fixtures placed by it on the premises or to restore any portion of the premises altered by it, save and except in the event the University elects to remove any such improvement or fixture and such removal causes damages or injury to the leased premises and then only to the extent of any such damages or injury.
11. **QUIET POSSESSION.** The Lessor agrees that the University, keeping and performing covenants contained herein on the part of the University to be kept and performed, shall at all times during the existence of this lease peaceably and quietly have, hold and enjoy the leased premises, without suit, trouble or hindrance from the Lessor, or any person claiming under Lessor.
12. **REPAIR AND MAINTENANCE.** During the lease term, the University shall maintain the leased premises and appurtenances in good repair and tenantable condition
13. **APPROPRIATIONS.** All terms and conditions of this lease are made subject to the continued appropriations by the appropriate legislative Body.
14. **DESTRUCTION.** If the leased premises are totally destroyed by fire or other casualty, this lease shall terminate. If such casualty shall render ten (10) percent or less of the floor space of the leased premises unusable for the purpose intended, Lessor shall effect restoration of the premises as quickly as is reasonably possible, but in any event within thirty (30) days.

In the event such casualty shall render more than ten (10) percent of such floor space unusable but not constitute total destruction; Lessor shall forthwith give notice to University of the specific number of days required to repair the same. If Lessor under such circumstances shall not give such notice within (15) calendar days after such destruction, or if such notice shall specify that such repairs will require more than ninety (90) days to complete from date such notice is given, University, in either such event, at its option, may terminate this lease or, upon notice to Lessor, may elect to undertake the repairs itself, deducting the cost thereof from the rental due or to become due under this lease and any other lease between Lessor and University.

In the event of any such destruction other than total, where the University has not terminated the lease as herein provided, or pursuant to the terms hereof has not elected to make the repairs itself, Lessor shall diligently prosecute the repair of said leased premises and, in any event, if said repairs are not completed within the period of thirty (30) days for destruction aggregating ten (10) percent, or within the period specified in Lessor's notice in connection with partial destruction aggregating more than ten (10) percent, the University shall have the option to terminate this lease or complete the repairs itself, deducting the cost thereof from the rental due or to become due under this lease and any other lease between Lessor and University.

In the event University remains in possession of said premises though partially destroyed, the rental as herein provided shall be reduced by the same ratio as the net square feet the University is thus precluded from occupying bears to the total net square feet in the leased premises. "Net square feet" shall mean actual inside dimensions and shall not include public corridors, stairwells, elevators, and restrooms.

OVER

- 15. **SERVICES AND UTILITIES.** The University shall furnish, during lease term, all services, utilities, and supplies.
- 16. **TIME OF ESSENCE.** Time is of the essence of this lease, and the terms and provisions of this lease shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns to the respective parties hereto.
- 17. **HOLDING OVER.** In the event the University remains in possession of the premises after the expiration of the lease term, or any extension thereof, this lease shall be automatically extended on a month to month basis, subject to thirty (30) days termination by either party, and otherwise on the terms and conditions herein specified, so far as applicable.
- 18. **FINANCIAL INTEREST.** The Lessor will provide to the University a list of names and addresses of persons, associations, or corporations who hold any financial interest in the above leased property; such list shall be immediately revised in the event of a transfer of any such interest.
- 19. **CODES.** The Lessor shall maintain the leased premises in accordance with all fire, building, and life safety codes and other applicable laws and regulations, including The Americans With Disabilities Act.
- 20. **PEST CONTROL.** The University shall maintain the premises in a condition that is free of pests, rodents, and other vermin.
- 21. **NON BINDING.** The Lessor fully understands that this lease is not binding except and until all appropriate University officials' signatures have been fully obtained, approval of this agreement has been given by the State Building Commission, if applicable, and the fully executed document returned to the Lessor.
- 22. **INSURANCE.**

The Lessor shall provide property insurance in an amount to cover the value of the real property and any improvements on the property. Such insurance shall name the University as an additional insured as our interest might appear. Lessor shall provide evidence of same via a Certificate of Insurance from the Lessor's insurance company.

The Lessor shall provide a minimum of \$1,000,000.00 liability insurance on the premises and name the University as a certificate holder. The University has liability coverage solely under the Tennessee Claims Commission Act, which provides coverage in the amount of \$300,000.00 per claimant and \$1,000,000.00 per occurrence.

IN WITNESS WHEREOF, this lease has been executed by the parties hereto:

LESSOR  
BY: [Signature] 3-8-10  
Date

Its: President

STATE OF TENNESSEE  
BY: [Signature] 3/1/10  
University of Tennessee Date

BY: [Signature] 3/16/10  
Commissioner, Finance and Administration Date

BY: [Signature] 4-12-10  
Attorney General Date  
(Approved as to Form and Legality)

STATE OF TENNESSEE  
COUNTY OF KNOX

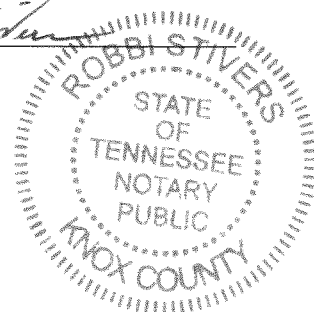
Before me, the undersigned Notary Public for the state and county mentioned above, personally appeared Henry Nemeik (NAME), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence) and who, upon oath, acknowledged that he/she is the President (TITLE) of UT Foundation, Inc (ORGANIZATION) and that he/she as such President (TITLE), being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the organization by himself/herself as President (TITLE).

Witness my hand and seal, at office in, this 8<sup>th</sup> day of March, 2010.

Robbi Stivers  
Notary Public.

My Commission Expires:

My Commission Expires June 2, 2012

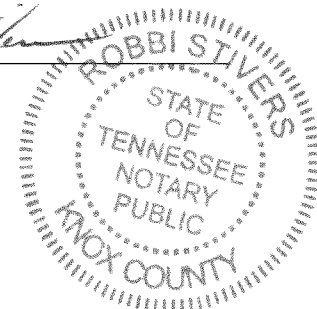


STATE OF TENNESSEE  
COUNTY OF KNOX

Personally appeared before me, the undersigned Notary Public for Knox County, *Charles M. Peccolo*, Vice-President or Treasurer of the University of Tennessee, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged that he/she is the Vice-President or Treasurer of the University of Tennessee and that he/she as Vice-President or Treasurer, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State by himself as Vice-President or Treasurer.

Witness my hand and seal, at office in, this 1<sup>st</sup> day of March, 2010.

*Robbi Stivers*  
\_\_\_\_\_  
Notary Public.



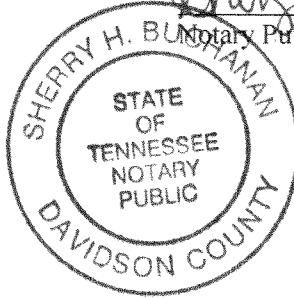
My Commission Expires:  
my Commission Expires June 2, 2012

STATE OF TENNESSEE  
COUNTY OF DAVIDSON

Personally appeared before me, the undersigned, Notary Public for Davidson County, **M. D. Goetz, Jr.**, with whom I am personally acquainted and who, upon oath, acknowledged that he is the Commissioner of Finance and Administration and that he as Commissioner, being authorized so to do, executed the foregoing instrument for the purpose therein contained by signing the name of the State of Tennessee, by himself as Commissioner.

Witness my hand and seal, at office in, this 16<sup>th</sup> day of March, 2000.

*Sherry H Buchanan*



My Commission Expires:

May 2, 2011

**RESOLUTION TO APPROVE THE BORROWING OF  
MONEY BY ANOTHER METHOD BY THE  
UNIVERSITY OF MEMPHIS AUXILIARY SERVICES  
FOUNDATION**

**Recitals**

Whereas, the University of Memphis (“UofM”), as is the case across the nation with institutions of higher education, has seen significant negative financial impacts on its units which rely on fees and other self-generated revenues to support operations; and

Whereas, UofM Athletics (“Athletics”), is heavily reliant on self-generated revenues to include funds from sale of tickets to athletic events, media rights revenues, conference distributions, and donor support (collectively, the “Revenues”); and

Whereas, with the onset of COVID-19 in spring semester 2019, the Revenues declined significantly and while Athletics was able to close its fiscal year 2020 on a balanced budget with increased support from UofM, the Revenues are dropping significantly in FY2021 as compared to prior years; and

Whereas, Athletics, working with UofM leadership, has taken concrete steps to reduce costs, wherever practical, to reflect this decline in the Revenues; and

Whereas, despite such decisive actions, Athletics is expected to end FY2021 with a deficit projected at slightly above ten million dollars (\$10,000,000); and

Whereas, UofM and Athletics expect that such deficit shall only occur in FY2021; and

Whereas, the University of Memphis Auxiliary Services Foundation (“ASF”) is a nonprofit corporation established separate and apart from UofM under the Tennessee Nonprofit Corporation Act, Tennessee Code Annotated Section 48-51-101, et seq. within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

Whereas, the sole purpose of ASF is to engage in activities which support UofM; and

Whereas, for financial statement purposes, ASF is considered a discretely presented component unit of UofM and presented as such; and

Whereas, a specific purpose of ASF as set forth in its bylaws is “[t]o pursue alternative financing and funding to support institutional operating needs and capital investment and projects of [ASF] or [UofM]”; and

Whereas, by virtue to the fact that ASF is a component unit of UofM for financial reporting purposes, ASF’s bylaws require that any borrowing by ASF of money for any purpose and by any method, must first be approved by the Tennessee State School Bond Authority (the “Authority”); and

Whereas, ASF's Board of Directors has considered the current financial circumstances of UofM and of Athletics; and

Whereas, ASF's Board of Directors has unanimously voted to enter into an agreement to borrow funds from a local commercial bank (the "Loan") and donate such funds as may be needed to support Athletics; and

Whereas, the total amount of the Loan shall not exceed twelve million dollars (\$12,000,000.00) and the Loan's term shall not exceed seven (7) years with quarterly principal and interest payments beginning as of September 1, 2021; and

Whereas, the source of funds to repay the Loan shall be unrestricted donor contributions in support of the Athletics which funds are deposited to the Tiger Scholarship Fund held on account and for the sole benefit of the Athletics at the University of Memphis Foundation ("UofM Foundation"), a separate nonprofit corporation; and

Whereas, ASF and UofM Foundation have entered into an Agreement to Transfer Funds (the "Agreement") whereby funds equal to the annual principal and interest payments for the Loan shall be transferred into an account at ASF designated for such purposes; and

Whereas, the Boards of both ASF and UofM Foundation have reviewed the documents related to the Loan and also have reviewed the Agreement, understand the proposed transaction and were advised by counsel of its potential consequences for both ASF and UofM Foundation and are willingly entering the Loan and the Agreement in the case of ASF and the Agreement in the case of UofM Foundation.

**BE IT RESOLVED BY THE TENNESSEE STATE SCHOOL BOND AUTHORITY:**

1. In accordance with the authority provided by the bylaws of ASF, the Authority gives its approval to ASF to enter into the Loan and also the Agreement.

BE IF FURTHER RESOLVED that all resolutions or parts of resolutions in conflict are repealed, and the resolution shall be effective as of November 12, 2020.

Adopted by the Authority at its meeting on November 12, 2020.

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JUSTIN P. WILSON, SECRETARY  
TENNESSEE STATE SCHOOL BOND AUTHORITY

**Executive Summary**  
**UofM Auxiliary Services Foundation Loan to support UofM Athletics**  
**October 2020**

**Overview:**

The University of Memphis, as is the case across the nation with institutions of higher education, has seen significant negative financial impacts on its units which rely on fees and other self-generated revenues to support operations. Examples of these units include Auxiliary Enterprises such as the Holiday Inn, Housing and Residence Life, Dining Services, etc. UofM Athletics, while not an Auxiliary Enterprise, is also heavily reliant on self-generated revenues to include funds from sale of tickets to athletic events, media rights revenues, conference distributions, and donor support. With the onset of COVID-19 in spring semester 2019, revenues from many of these sources declined significantly. While the Athletics program was able to close our fiscal year 2020 on a balanced budget with increased support from the University, FY2021 is proving to be extremely challenging with all the said revenue categories seeing deep drops as compared to prior years.

UofM Athletics, working with University leadership, including the Office of the CFO, has taken concrete steps to reduce costs, wherever practical, to reflect this decline in revenue. Details on the actions taken both on the expense side and revenue side are detailed in Attachment B. In spite of these decisive actions, the program is expected to end the year with a deficit projected at slightly above \$10M. With most sports continuing programming with limited fan attendance, costs that remain are primarily to support a minimal staff and key expenditures required to support our student athletes, with the largest line item being Scholarships (see attached financial projections – Attachment A).

The University and the Athletics program is confident that this is a short-term issue (one-year) and fully expects to bounce back quickly next fiscal year. (Note: Ticket sales for next season are already strong as many of our season ticket holders have purchased their tickets but given current circumstances, we have credited those tickets to next season and as such cannot recognize the revenue until FY2022).

**Request:**

The University of Memphis Auxiliary Services Foundation (the ASF) is a separate Nonprofit Corporation established under the Tennessee Nonprofit Corporation Act, T.C.A. – 48-51-101, et seq within the meaning of Section 501 (c)(3) of Internal Revenue Code of 1986, as amended. The sole purpose of the ASF is to engage in activities which support the University of Memphis. For financial statement purposes, the ASF is considered a discretely presented component unit of the University of Memphis and presented as such.

A specific purpose of the foundation as enumerated in its bylaws is:

“Section 2. Purpose and Limitations. (c) To pursue alternative financing and funding to support institutional operating needs and capital investment and projects of the Foundation or the University;”

By virtue to the fact that the ASF is a component unit of the University of Memphis, its bylaws require that any borrowing of funding shall be subject to review and approval by the Tennessee State School Bond Authority (TSSBA) as articulated under:



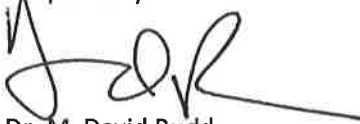
“Section 2. Purpose and Limitations. (w) To enter into any contract or agreement necessary or incidental to accomplish the purposes set forth hereinabove (to the extent such a contract or agreement includes the borrowing of money for any purpose any by any method, such borrowing must first be approved by the Tennessee State School Bond Authority), to pay all costs and expenses associated therewith, and to do and perform all acts necessary to accomplish the purposes of the Foundation or otherwise permitted by law; notwithstanding any other provision in the Charter, the Foundation shall not engage in any activity not permitted to be carried on by an organization exempt from federal income tax under Section 501 (c)(3) of the Code;”

The Auxiliary Foundation Board of Directors has considered the current circumstances of the University of Memphis Athletics Program and also the impact of COVID-19 on the University of Memphis resulting in its ability to increase support for the Athletics program also being severely limited. The ASF Board of Directors unanimously voted to enter into a borrowing of funds from local commercial banks and donate such funds, as may be needed to support the University of Memphis Athletics program. The total amount of such borrowing shall not exceed Twelve Million Dollars (\$12,000,000). The term of the loan shall not exceed Seven (7) years with the amount being repaid in quarterly principal and interest payments beginning September 1, 2021 at the prevailing market interest rate for similar borrowings. A copy of the general terms of such a borrowing from First Bank is provided as Attachment B for reference.

The source of repayment of the borrowing shall be unrestricted donor contributions in support of the University of Memphis Athletics Program which are deposited to the Tiger Scholarship Fund held on account and for the sole benefit of the University of Memphis athletics program at the University of Memphis Foundation. Funds equal to the annual principal and interest payments for this borrowing shall be transferred into an account at the University of Memphis Auxiliary Services Foundation designated for such purposes with the first such payment being made on or before June 30, 2021.

The University of Memphis President, M. David Rudd, the EVP of Business and Finance & CFO, Raaj Kurapati and the members of the University of Memphis Auxiliary Services Foundation hereby request the favorable consideration and approval of this borrowing and donation of the proceeds of such borrowing to the University of Memphis Athletics Program.

Respectfully submitted:



Dr. M. David Rudd  
President  
University of Memphis

Mr. Thomas Kadien  
President  
UofM Auxiliary Services Foundation



Raaj Kurapati  
EVP & CFO  
University Memphis

**From:** [Thomas Kadien](#)  
**To:** [Melissa Norris \(mlnrris1\)](#); [Ladonnal Curry \(lcurry\)](#)  
**Cc:** [Raaj Kurapati \(kurapati\)](#)  
**Subject:** ASF Board Approval for Athletics Loan  
**Date:** Monday, October 12, 2020 2:46:25 PM

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Hello,

University of Memphis Auxiliary Services Foundation has considered and unanimously approved this Loan / Report. While I am not in a position where I can place my physical signature on the Executive Summary document, please accept this email as confirmation of my support.

Thomas G. Kadien  
President  
University of Memphis Auxiliary Services Foundation

Sent from my iPad

# **ATTACHMENT A**

The impact of COVID-19 on the UofM Athletics Program was immediate and significant with almost all sources of revenues seeing a steep drop off. Initial projections put the FY21 overall net deficit between \$16-18 million. The Athletics department, working with University Leadership, took immediate action to adjust operations to reflect the circumstances. Below is a summary of actions taken both on the revenue and expenditure fronts. These actions inform the proforma financial statements presented herewith.

#### Revenues:

- Major Gifts Campaign:
  - For years starting in 2020-21, Athletics will set out to raise funds as part of a philanthropic gifts campaign. Conservative estimates are \$1M annually, but there is potential for greater amounts.
- NCAA/Conference Revenues:
  - NCAA: NCAA Revenues should continue to steadily increase over the next several years. Their primary revenue source is the annual Men's Basketball Tournament.
  - Conference Revenues: These revenues were scheduled to increase due to a new media rights agreement with ESPN that takes effect this year. The initial increase is approximately \$3.5M and will continue to increase over the term of the deal. These revenues could further increase depending on the conference members success in the College Football Playoff.
- Multi-Media Rights:
  - Our contract spells out annual guaranteed revenue amounts. This agreement is set to expire in 2021-22, at which time an open bidding process will likely result in increased guarantee/revenue thresholds.
- Other Revenues:
  - Projected to stay flat. This includes bowl revenues in historical numbers but was not included in future projections as the revenues are offset by expenses. Actual net income/expense depends on the actual bowl game attended.
- University Support:
  - Projected to stay flat at \$9M beginning in 2020-21. The increase in 19-20 was to assist with the unforeseen financial impacts of COVID-19.

#### Expenses:

- Payroll:
  - 20-21: Significant measures were taken to reduce costs in this area including a reduction in force and mandatory furloughs/pay cuts. This resulted in approximately \$2M in savings.
- Travel:
  - 20-21: Travel costs will be significantly reduced due to shorted or cancelled seasons and extended recruiting restrictions. Internally, measures were taken to minimize expenses while considering safety and competitive impacts.
- Operations:
  - 20-21: Operating costs were reduced by roughly 15% after thorough review of expenditure needs for each unit.
- Scholarship:

- 20-21: Due to NCAA rulings regarding extending eligibility due to COVID-19 impacts on competitive seasons, financial aid costs will likely rise due to having larger rosters on some teams.

Summary:

While the impacts of COVID-19 on Athletic finances have been significant, they are now within measure and expected to be a temporary. The Memphis Tigers program is primed to rebound from this situation due to the success of our athletic programs, primarily Football and Men's Basketball, and enhanced fundraising efforts. New guaranteed revenues from the American Conference and future revenue opportunities including multi-media rights show potential to exceed these future projections. Department operations will continue to be scrutinized to ensure sound fiscal management within funding levels.

## RESOLUTION

This is a resolution of the Board of Directors of the AUXILIARY SERVICES FOUNDATION as evidenced by the signatures below.

WHEREAS, as a direct result of the COVID-19 pandemic, the UNIVERSITY OF MEMPHIS ATHLETIC PROGRAM projects a shortfall for fiscal year 2021 slightly in excess of Ten Million (\$10,000,000) Dollars; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION are both charitable foundations established for the purpose of providing financial assistance to the UNIVERSITY OF MEMPHIS; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION have reached an Agreement to Transfer Funds (attached as Exhibit A) ("Agreement") which will result in the AUXILIARY SERVICES FOUNDATION procuring a loan from one or more financial institutions in an amount not to exceed Twelve Million (\$12,000,000) Dollars, plus any applicable interest, for the purpose of assisting the UNIVERSITY OF MEMPHIS, specifically the Athletic Program, in dealing with its financial shortfall for fiscal year 2021; and

WHEREAS, an Agreement has been prepared by counsel for both foundations calling for the UNIVERSITY OF MEMPHIS FOUNDATION, which holds the Tiger Scholarship Fund, to transfer funds to the AUXILIARY SERVICES FOUNDATION as needed in order to fund the repayment of the loan obligations as they come due; and

WHEREAS, said Agreement has been presented to the Board of Directors and/or Executive Board of both said foundations and has been approved by same. The approval of the Agreement by the UNIVERSITY OF MEMPHIS FOUNDATION was obtained on the \_\_\_14\_\_\_ day of October, 2020. The approval of the Agreement by the AUXILIARY SERVICES FOUNDATION was obtained on the \_\_\_9\_\_\_ day of October, 2020; and

WHEREAS, the President of the AUXILIARY SERVICES FOUNDATION is hereby authorized and directed to execute said Agreement.

WHEREAS, the President of the AUXILIARY SERVICES FOUNDATION is hereby authorized and directed to execute and enter into any ancillary documents associated with the Agreement in order to effectuate the resolutions set forth herein, on advice of counsel.

[Signature Page to Follow]

WITNESS our hands the 15 day of October, 2020.

AUXILIARY SERVICES FOUNDATION  
Board of Directors

DocuSigned by:  
By: Thomas G. Kadien  
Thomas G. Kadien

Title: Board President

## **AGREEMENT TO TRANSFER FUNDS**

THIS AGREEMENT TO TRANSFER FUNDS is made and entered into on the date set forth below, by and between the UNIVERSITY OF MEMPHIS FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "UMF"), and the AUXILIARY SERVICES FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "ASF").

WHEREAS, both the UMF and the ASF are nonprofit charitable organizations which operate under the provisions of Internal Revenue Code § 501(c)(3). Both exist for the principal purpose of supporting the University of Memphis; and

WHEREAS, the University of Memphis, specifically the Athletic Program, has experienced a significant negative financial impact as a result of COVID-19; and

WHEREAS, the ASF Board of Directors unanimously voted to provide assistance to the University of Memphis Athletic Program by borrowing funds from local commercial banks (the "Loan(s)") and utilizing the Loan(s) to support the University of Memphis Athletic Program; and

WHEREAS, the source of repayment of the Loan(s) will be unrestricted donor contributions in support of the University of Memphis Athletics Program which are deposited into the Tiger Scholarship Fund held for the benefit of the University of Memphis Athletics Program by the UMF; and

WHEREAS, the ASF Board of Directors has asked the UMF Board of Directors to assist it in obtaining the Loan(s) and has requested that the UMF enter into this Agreement for the benefit of the University of Memphis Athletic Program, which will result in the transfer of funds from UMF to ASF from funds held from the Tiger Scholarship Fund as needed to meet the financial obligations of ASF in repaying the Loan(s); and

WHEREAS, the UMF and the ASF enter into this Agreement in order to facilitate the ability of ASF in obtaining the Loan(s) and to provide a source and resource to allow ASF to repay the Loan(s).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. ASF will take such actions as its board of directors shall determine in order to borrow funds from local commercial banks in a principal amount not to exceed Twelve Million (\$12,000,000) Dollars. The term of the Loan(s) shall not exceed seven (7) years



with the Loan(s) being repaid in periodic payments of principal and interest beginning September 2021 at interest rates as shall be negotiated by representatives of the ASF consistent with prevailing market rates for similar borrowings.

2. Upon receipt of the Loan(s) by ASF, funds from the Loan(s) shall be transferred from time to time to or for the benefit of the University of Memphis Athletic Department to provide assistance to cover revenue shortfalls, all as determined by the ASF board and the University of Memphis Athletic Department.

3. The UMF agrees to timely transfer, from time to time, funds held by the UMF in the Tiger Scholarship Fund to ASF in order to allow ASF to meet the obligations of the ASF to repay the Loan(s) it obtains upon the terms and conditions of the loan agreements entered into with the commercial banks.

4. The parties state that they have been advised by the University of Memphis that the Athletic Department has a plan to raise funds as a part of a philanthropic gift campaign designed to produce at least One Million (\$1,000,000) Dollars annually which will be added to the Tiger Scholarship Fund, in addition to sums that are held in the fund and contributed to the Tiger Scholarship Fund each and every year in order to provide funds needed to fund the transfer of the assets from UMF to ASF. The parties recognize that there is no guarantee of the amount that will be raised through the new philanthropic endeavors. The parties also acknowledge and agree that regardless of the success of this philanthropic gift campaign, UMF must meet its obligations in Section 3 to transfer the necessary funds to ASF to repay the Loan(s).

5. This Agreement may be assigned by ASF to the commercial banks as collateral for the Loan(s) set forth in Section 1 of this Agreement.

6. This Agreement is made and entered into in the State of Tennessee and shall be governed under the laws of the State of Tennessee.

7. Any amendment or modification to this Agreement shall only be accomplished through a written document executed by representatives of UMF and ASF and duly approved by the Board of Directors for ASF and the Executive Board for UMF.

Signature Page Following

WITNESS our hands this 15 day of October, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION

By: Harry Smith  
Harry Smith

Title: President

AUXILIARY SERVICES FOUNDATION

DocuSigned by:  
By: Thomas G. Kadien  
544ACC41EF7743D  
Thomas G. Kadien

Title: President

## RESOLUTION

This is a resolution of the Executive Board of the UNIVERSITY OF MEMPHIS FOUNDATION as evidenced by the signatures below.

WHEREAS, as a direct result of the COVID-19 pandemic, the UNIVERSITY OF MEMPHIS ATHLETIC PROGRAM projects a shortfall for fiscal year 2021 slightly in excess of Ten Million (\$10,000,000) Dollars; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION are both charitable foundations established for the purpose of providing financial assistance to the UNIVERSITY OF MEMPHIS; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION have reached an Agreement to Transfer Funds (attached as Exhibit A) ("Agreement") which will result in the AUXILIARY SERVICES FOUNDATION procuring a loan from one or more financial institutions in an amount not to exceed Twelve Million (\$12,000,000) Dollars, plus any applicable interest, for the purpose of assisting the UNIVERSITY OF MEMPHIS, specifically the Athletic Program, in dealing with its financial shortfall for fiscal year 2021; and

WHEREAS, an Agreement has been prepared by counsel for both foundations calling for the UNIVERSITY OF MEMPHIS FOUNDATION, which holds the Tiger Scholarship Fund, to transfer funds to the AUXILIARY SERVICES FOUNDATION as needed in order to fund the repayment of the loan obligations as they come due; and

WHEREAS, said Agreement has been presented to the Board of Directors and/or Executive Board of both said foundations and has been approved by same. The approval of the Agreement by the UNIVERSITY OF MEMPHIS FOUNDATION was obtained on the \_\_12\_\_ day of October, 2020. The approval of the Agreement by the AUXILIARY SERVICES FOUNDATION was obtained on the \_\_12\_\_ day of October, 2020; and

WHEREAS, the President of the UNIVERSITY OF MEMPHIS FOUNDATION is hereby authorized and directed to execute said Agreement.

WHEREAS, the President of the UNIVERSITY OF MEMPHIS FOUNDATION is hereby authorized and directed to execute and enter into any ancillary documents associated with the Agreement in order to effectuate the resolutions set forth herein, on advice of counsel.

[Signature Page to Follow]

WITNESS our hands the 14 day of October, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION  
Executive Board

By: Harry Smith  
Harry Smith

Title: President

## **AGREEMENT TO TRANSFER FUNDS**

THIS AGREEMENT TO TRANSFER FUNDS is made and entered into on the date set forth below, by and between the UNIVERSITY OF MEMPHIS FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "UMF"), and the AUXILIARY SERVICES FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "ASF").

WHEREAS, both the UMF and the ASF are nonprofit charitable organizations which operate under the provisions of Internal Revenue Code § 501(c)(3). Both exist for the principal purpose of supporting the University of Memphis; and

WHEREAS, the University of Memphis, specifically the Athletic Program, has experienced a significant negative financial impact as a result of COVID-19; and

WHEREAS, the ASF Board of Directors unanimously voted to provide assistance to the University of Memphis Athletic Program by borrowing funds from local commercial banks (the "Loan(s)") and utilizing the Loan(s) to support the University of Memphis Athletic Program; and

WHEREAS, the source of repayment of the Loan(s) will be unrestricted donor contributions in support of the University of Memphis Athletics Program which are deposited into the Tiger Scholarship Fund held for the benefit of the University of Memphis Athletics Program by the UMF; and

WHEREAS, the ASF Board of Directors has asked the UMF Board of Directors to assist it in obtaining the Loan(s) and has requested that the UMF enter into this Agreement for the benefit of the University of Memphis Athletic Program, which will result in the transfer of funds from UMF to ASF from funds held from the Tiger Scholarship Fund as needed to meet the financial obligations of ASF in repaying the Loan(s); and

WHEREAS, the UMF and the ASF enter into this Agreement in order to facilitate the ability of ASF in obtaining the Loan(s) and to provide a source and resource to allow ASF to repay the Loan(s).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. ASF will take such actions as its board of directors shall determine in order to borrow funds from local commercial banks in a principal amount not to exceed Twelve Million (\$12,000,000) Dollars. The term of the Loan(s) shall not exceed seven (7) years

with the Loan(s) being repaid in periodic payments of principal and interest beginning September 2021 at interest rates as shall be negotiated by representatives of the ASF consistent with prevailing market rates for similar borrowings.

2. Upon receipt of the Loan(s) by ASF, funds from the Loan(s) shall be transferred from time to time to or for the benefit of the University of Memphis Athletic Department to provide assistance to cover revenue shortfalls, all as determined by the ASF board and the University of Memphis Athletic Department.

3. The UMF agrees to timely transfer, from time to time, funds held by the UMF in the Tiger Scholarship Fund to ASF in order to allow ASF to meet the obligations of the ASF to repay the Loan(s) it obtains upon the terms and conditions of the loan agreements entered into with the commercial banks.

4. The parties state that they have been advised by the University of Memphis that the Athletic Department has a plan to raise funds as a part of a philanthropic gift campaign designed to produce at least One Million (\$1,000,000) Dollars annually which will be added to the Tiger Scholarship Fund, in addition to sums that are held in the fund and contributed to the Tiger Scholarship Fund each and every year in order to provide funds needed to fund the transfer of the assets from UMF to ASF. The parties recognize that there is no guarantee of the amount that will be raised through the new philanthropic endeavors. The parties also acknowledge and agree that regardless of the success of this philanthropic gift campaign, UMF must meet its obligations in Section 3 to transfer the necessary funds to ASF to repay the Loan(s).

5. This Agreement may be assigned by ASF to the commercial banks as collateral for the Loan(s) set forth in Section 1 of this Agreement.

6. This Agreement is made and entered into in the State of Tennessee and shall be governed under the laws of the State of Tennessee.

7. Any amendment or modification to this Agreement shall only be accomplished through a written document executed by representatives of UMF and ASF and duly approved by the Board of Directors for ASF and the Executive Board for UMF.

Signature Page Following

WITNESS our hands this 15 day of October, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION

By: Harry Smith  
Harry Smith

Title: President

AUXILIARY SERVICES FOUNDATION

DocuSigned by:  
Thomas G Kadien  
544ACC41EF7743D  
Thomas G. Kadien

Title: President



**TERM SHEET**  
**For Discussion Purposes Only**

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*This information represents summary indicative terms and conditions for credit facilities to University of Memphis Auxiliary Services Foundation. These terms are for discussion purposes between the parties, are based upon our review of information furnished to date, are subject to further due diligence, and do not represent a final commitment to lend by FirstBank (Lender). This information is confidential and may not be released without the prior consent of FirstBank.*

<b>Date:</b>	October 14, 2020
<b>Borrower:</b>	University of Memphis Auxiliary Services Foundation
<b>Line Amount:</b>	\$7,000,000 Revolving Line of Credit
<b>Purpose:</b>	Support University of Memphis Athletics
<b>Collateral:</b>	The Line will be unsecured
<b>Maturity:</b>	The Line may be drawn upon until June 30, 2021, at which time the line will convert to an up to 7-year amortizing loan.
<b>Repayment:</b>	Interest due monthly until June 30, 2021, followed by quarterly payments of principal and interest.
<b>Interest Rate:</b>	LIBOR + 1.95% Floating  Fixed Rate option at conversion based on the 6- or 7-year Treasury rate + 2.15%.
<b>Fees &amp; Expenses:</b>	All fees and expenses to be paid by Borrower, including but not limited to all legal fees.
<b>Other Conditions:</b>	Closing of the subject loan will be subject to all documentation acceptable to bank, including but not limited to: <ul style="list-style-type: none"><li>- Annual audited financial statements prepared by an independent CPA firm.</li><li>- No adverse change in the financial condition of the Borrower.</li></ul>

*This Summary of Terms and Conditions is intended as an outline only, is non-binding and is not intended to completely define all terms and conditions that would be contained in definitive legal documentation.*



- The subject loan is to be evidenced and secured by Bank's standard Promissory Note, Loan Agreement and such other documentation as may be required by Bank, all of which will be prepared by counsel selected by Bank.

This term sheet is for your confidential use only and is sent to you on the condition that neither the existence of this term sheet nor its contents will be disclosed publicly or privately to any person or entity, except to those of the Borrower's officers, employees, agents, counsel or accountants directly involved with this proposed financing and then only on the basis that it not be further disclosed.

# DRAFT PROMISSORY NOTE

## PROMISSORY NOTE

\$12,000,000.00

November \_\_, 2020  
Memphis, Tennessee

FOR VALUE RECEIVED, UNIVERSITY OF MEMPHIS AUXILIARY SERVICES FOUNDATION, a \_\_\_\_\_, ("Maker"), promises to pay to the order of FIRSTBANK, Memphis, Tennessee ("Bank"), its successors and assigns, the principal sum of TWELVE MILLION and NO/100 DOLLARS (\$12,000,000.00), together with interest thereon, or so much thereof as shall remain outstanding from time to time, at the rate or rates hereafter provided.

This Promissory Note (this "Note") shall initially be a revolving line of credit which subsequently converts to a term note (as provided below), and it is contemplated that the full principal amount of this Note shall not be advanced on the date hereof and that further advances shall be disbursed subsequent to the date hereof. Any advance shall be conclusively agreed to have been made to or for the benefit of and at the request of Maker when deposited or credited to an account of Maker with Bank in accordance with the Loan Agreement (hereafter defined).

### Interest Rates.

(a) From the date of this Note until November 30, 2021 (the "Conversion Date"), this Note shall accrue interest on the outstanding principal balance of this Note at a variable rate (the "Initial Rate") per annum equal to the thirty (30) day LIBOR Rate (hereafter defined) plus one and ninety-five hundredths percent (1.95%), changes in the rate to be charged hereunder to become effective without notice to Maker on the effective date of any change in the LIBOR Rate. The term "LIBOR Rate" shall mean the rate per annum equal to the offered rate for deposits in U.S. Dollars for a one (1) month period, which rate appears on the Reuters Screen LIBOR01 Page, or such similar service as determined by Bank, as of 11:00 A.M., London, England time, on the day that is two (2) London business days preceding the reset date. If the LIBOR Rate becomes unavailable during the period prior to the Conversion Date, the Initial Rate shall convert to a variable rate per annum equal to the prime rate posted in the Wall Street Journal minus one percent (1.00%) until the Conversion Date.

(b) From and after the Conversion Date until Maturity (as defined below), this Note shall accrue interest on the outstanding principal balance of this Note at a fixed rate (the "Converted Rate") per annum equal to the 7-year Treasury rate, as determined on the Conversion Date, plus two and fifteen hundredths percent (2.15%). Maker will enter into an Interest Rate Swap with the Initial Rate converted into the Converted Rate.

Payment Schedule. The outstanding principal balance of this Note and the accrued interest thereon are payable in the following manner, to-wit:

(a) Commencing December 1, 2020 and continuing thereafter on the same day of each consecutive month thereafter until and including Conversion Date, installments of accrued interest calculated at the Initial Rate shall be due and payable;

(b) On the Conversion Date, this Note shall convert to a term note, and on January 1, 2021 and continuing thereafter on the same day of each consecutive month thereafter until and including November 1, 2028, equal installments of principal and interest calculated on the Conversion Date as necessary to fully amortize the sum of the outstanding principal balance and accrued but unpaid interest thereon over a period of seven (7) years utilizing the Conversation Rate shall be due and payable; and

(c) The final installment of the entire remaining outstanding principal balance of this Note plus all accrued and unpaid interest shall be due and payable on December 1, 2028 ("Maturity").

Place of Payment. All installments of principal and interest of this Note are payable in lawful money of the United States of America, at the main office of Bank in Memphis, Tennessee, or such other place as the holder of this Note may designate in writing. Interest shall be calculated on the basis of a 360 day year on actual days elapsed.

Late Charge. Maker shall pay a "late charge" equal to the greater of (i) \$25.00 or (ii) five percent (5%) of any payments of principal and/or interest due when paid more than fifteen (15) days after the due date thereof (provided that in no event shall said "late charge" result in the payment of interest in excess of the maximum interest permitted by law) to cover the extra expenses involved in handling delinquent payments.

Past Due Payments. All sums of principal or interest payable hereunder not paid when due shall bear interest after maturity (whether by acceleration or otherwise) at the "Default Rate", which shall be lesser of: (a) if prior to the Conversion Date, (i) the Initial Rate plus four percent (4%) per annum, or (ii) the maximum rate of interest which Bank is permitted to contract for and charge under applicable law, on the date such payment became due; or (b) if on or after the Conversion Date, (i) the Converted Rate plus four percent (4%) per annum, or (ii) the maximum rate of interest which Bank is permitted to contract for and charge under applicable law, on the date such payment became due.

Prepayments. This Note may be prepaid, in whole or in part, without premium or penalty. Any prepayment shall be applied first to interest accrued on the outstanding principal balance and currently due and payable, and the remainder if any shall be applied to reduce the outstanding principal balance of this Note in the inverse order of maturity.

Loan Agreement. Proceeds of this Note are advanced pursuant to the terms and conditions of a certain Loan Agreement (the "Loan Agreement"), dated of even date herewith, executed by and between Maker and Bank to which Loan Agreement reference is hereby made for all purposes.

Default: Remedies. The entire outstanding and unpaid principal balance of, and all accrued and unpaid interest on, this Note shall immediately be due and payable at the option of Bank upon the occurrence of any one or more of the following events of default ("Events of Default"):

(a) The failure by Maker to make any payment of principal or interest hereunder within fifteen (15) days of when the same becomes due and payable in accordance with the terms hereof;

(b) If default shall be made in the observance or performance of any other of the covenants, agreements and conditions on the part of Maker contained in this Note, the Loan Agreement or any other documents in connection with this Note, and such default is not cured within thirty (30) days after written notice thereof to Maker; provided, however, if such default is not susceptible of cure within thirty (30) days, then Maker shall have an additional period of sixty (60) days within which to cure such default, provided further that Maker commences such cure promptly upon receipt of notice and thereafter diligently pursues the same; or

(c) If the Maker (i) shall generally not pay or shall be unable to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors or petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made and such case or proceeding is not dismissed for a period of sixty (60) days or more; or (v) shall indicate, by any act or omission, its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more.

In the event that any one or more of the Events of Default specified above shall have happened, the holder of this Note may proceed to protect and enforce its rights either by suit in equity and/or by action at law, or by other appropriate proceedings, whether for the specific performance of any covenant or agreement contained in this Note or the Loan Agreement, or in aid of the exercise of any power or right granted by this Note or the Loan Agreement, or proceed to enforce the payment of this Note or to enforce any other legal or equitable right of the holder of this Note.

Limitation of Interest. Notwithstanding any provision herein to the contrary, it is the intent of the Bank and the Maker that neither the Bank nor any subsequent holder shall be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the maximum lawful rate of interest permitted to be charged by applicable law or regulations, as amended or enacted from time to time. In the event the Note calls for an interest payment that exceeds the maximum lawful rate of interest then applicable, such interest shall not be received, collected, charged, or reserved until such time as that interest, together with all other interest then payable, falls within the then applicable maximum lawful rate of interest. In the event Bank, or any subsequent holder, receives any such interest in excess of the then maximum lawful rate of interest, such amount which would be excessive interest

shall be deemed a partial prepayment of principal and treated hereunder as such, or, if the principal indebtedness evidenced hereby is paid in full, any remaining excess funds shall immediately be paid to Maker.

Cumulative Rights. No delay on the part of the holder of this Note in the exercise of any power or right under this Note, the Loan Agreement, or any other instrument executed pursuant hereto shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or in the exercise of any other power or right. Enforcement by the holder of this Note of any security for the payment hereof shall not constitute any election by it of remedies so as to preclude the exercise of any other remedy available to it.

Waiver. Maker waives demand, presentment, protest, notice of nonpayment, notice of protest, and any and all lack of diligence or delay in collection or the filing of suit hereon which may occur.

Attorneys' Fees and Costs. In the event one or more Events of Default shall occur, and in the event that thereafter this Note is placed in the hands of an attorney for collection, or in the event this Note is collected in whole or in part through legal proceedings of any nature, then, and in any such case, there shall be added to the unpaid principal balance hereof all costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with the exercise of any rights under this Note and/or the Loan Agreement incurred by the holder hereof on account of such collection, whether or not suit is filed, provided Bank is deemed the prevailing party in any such proceeding.

Governing Law. This Note shall be construed in accordance with the laws of the State of Tennessee.

Headings. The headings of the Sections of this Note are inserted for convenience only and shall not be deemed to constitute a part hereof.

Successors and Assigns. All of the stipulations, promises, and agreements in this Note contained by or on behalf of Maker and Bank shall bind their successors and assigns, whether so expressed or not, and shall inure to the benefit of the successors and assigns of Maker and Bank.

*[Signature Page to Follow]:*

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed as of the date first set forth above.

UNIVERSITY OF MEMPHIS  
AUXILIARY SERVICES FOUNDATION,  
a \_\_\_\_\_

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

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

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

## LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of November, 2020, by and between **UNIVERSITY OF MEMPHIS AUXILIARY SERVICES FOUNDATION**, a \_\_\_\_\_ ("Borrower"), and **FIRSTBANK**, an Tennessee state banking corporation ("Bank"),

### WITNESSETH:

WHEREAS, as of even date herewith, Bank has extended a revolving line of credit loan to Borrower in the maximum principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00) which will convert to a fully amortized term loan on November 30, 2021 (the "Loan") to be used by Borrower to support University of Memphis athletics, but for no other purposes; and

WHEREAS, the parties hereto desire to set forth the terms of the Loan and the parties' rights and obligations thereto.

NOW, THEREFORE, in consideration of the agreement of Bank to enter into this Agreement, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

1.01 Defined Terms. As used herein the following terms shall have the following meanings:

"Advance" shall mean a separate and distinct portion of the principal indebtedness of the Note.

"Agreement" shall mean this Loan Agreement, as the same may from time to time be amended, supplemented or otherwise modified from time to time.

"Closing Date" shall mean the date hereof.

"GAAP" shall mean generally accepted accounting principles.

"Loan Documents" shall mean this Agreement, the Note, and any and all other documents, instruments, certificates or other agreements securing the Loan.



“Loan” shall mean that certain revolving line of credit loan to the Borrower of even date herewith, in the maximum principal amount of Twelve Million and No/100 Dollars (\$12,000,000.00), which shall convert pursuant to the terms of the Note to a fully amortized term loan upon November 30, 2021.

“Maturity Date” shall mean December 1, 2028.

“Note” shall mean that certain Promissory Note in the form annexed hereto as Exhibit A executed by the Borrower in favor of Bank in connection with the Loan together with all renewals, modifications, amendments, or restatements thereof.

“Person” shall mean any individual, partnership, firm, corporation, association, joint venture, trust, corporation or other entity, or any government or political subdivision or agency, department or instrumentality thereof.

1.02 Accounting Terms. As used in this Agreement, the Note, or any certificate, report or other Loan Document made or delivered pursuant to this Agreement, accounting terms not defined herein, shall have the respective meanings given to them under generally accepted accounting principles.

## ARTICLE II

### CONDITIONS PRECEDENT

2.01 Conditions to the Execution of this Agreement. The obligation of Bank to enter into this Agreement shall be subject to the fulfillment prior to or contemporaneously with the execution of this Agreement of the following conditions to the satisfaction of Bank:

(a) Delivery of Documents. Bank shall have received (i) an original of the Note duly executed by Borrower, and (ii) originals (or, if permitted by Bank, true and complete copies) of the remaining Loan Documents duly executed by Borrower.

(b) Existence and Authority/Borrower. Bank shall have received (i) a copy of the Bylaws for the Borrower (including copies of any and all amendments thereto), (ii) a copy of the Memorandum of Action of the Directors evidencing the consent of the Board of Directors of Borrower authorizing the execution, delivery and performance of each of the Loan Documents executed by the Borrower as of the date hereof and the borrowings provided for herein, (iii) a certified copy of the Charter (and all amendments) of Borrower issued by the Secretary of State of the State of [\_\_\_\_]; and (iv) a current Certificate of Existence issued by the Secretary of State of the State of [\_\_\_\_], with respect to the Borrower.

(c) UCC Search. A UCC Search of the Borrower from the [\_\_\_\_] Secretary of State acceptable to Bank.

(d) Fees. All fees required to be paid on or prior to the Closing Date shall have been paid, including, without limitation, an origination fee in the amount of \$[\_\_\_\_\_], which shall be fully earned and non-refundable, and all attorneys' fees and expenses incurred by Bank in documenting and closing the Loan.

(e) Representations and Warranties. The representations, warranties and disclosures made by the Borrower in this Agreement or in any certificate, Loan Document or financial or other statement furnished in connection herewith or therewith, shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on such date.

(f) Material Adverse Change. There shall have been (i) no material adverse change in the business, operations, properties, assets or financial condition of Borrower and (ii) no occurrence or event which shall have a material adverse effect on the rights and remedies of the Bank or on the ability of Borrower to perform its obligations to the Bank. The Bank shall not have become aware of any undisclosed materially adverse information with respect to (i) the business, operations, properties, assets or financial condition of Borrower, (ii) the ability of Borrower to perform its obligations under the Loan Documents or (iii) the rights and remedies of the Bank under the Loan Documents.

2.02 Non-Default. At the time of any borrowings hereunder, no Event of Default as specified herein or in the Note or any event which upon notice of lapse of time or both would constitute such an Event of Default shall have occurred and be continuing at the time of such borrowings.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

In order to induce Bank to enter into this Agreement, Borrower hereby represents and warrants to Bank as follows:

3.01 Violation of Other Agreements. The execution of this Agreement and the Note, and the performance of the undersigned pursuant to this Agreement, the Note and other related documents will not violate any provision of law, or any agreement, indenture, note or other instrument binding upon Borrower or give cause for the acceleration of any obligations of Borrower.

3.02 Existence of Borrower. The Borrower is a corporation under the laws of the State of [\_\_\_\_\_] and has the power to own and operate its properties on behalf of the Borrower, to carry on its business and to enter into and to perform its obligations under the Loan Documents.

3.03 Authorization. Borrower has full legal right, power and authority to conduct its business and affairs in the manner contemplated by the Loan Documents and to enter into and perform its obligations thereunder, without the consent or approval of any other Person. The execution and delivery of this Agreement, the borrowing hereunder, the execution and delivery of

each Loan Document and the performance by Borrower of its obligations thereunder are within its powers and have been duly authorized by all necessary action properly taken, have received all necessary governmental approvals, if any were required, and do not and will not contravene any provision of law, any applicable judgment, ordinance, regulation or order of any court or governmental agency, the bylaws, operating agreements or any agreement binding upon Borrower or its properties. The parties executing this Agreement and all of the other Loan Documents are duly authorized to act.

3.04 Validity and Binding Effect. This Agreement and the other Loan Documents are the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms.

3.05 Asset Ownership. Borrower has good and marketable title to all of the properties and assets reflected on the balance sheets and financial statements supplied Bank, and all such properties and assets are free and clear of mortgages, pledges, liens, charges, and all other encumbrances, except as otherwise disclosed by the financial statements submitted to Bank.

3.06 Litigation. Except as set forth on Schedule 3.06 attached hereto, there are no actions, suits or proceedings pending, or, to the knowledge of Borrower, threatened, against or affecting Borrower or involving the validity or enforceability of any of the Loan Documents, at law or in equity, or before any governmental or administrative agency; and Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

3.07 Financial Statements. The financial statement(s) of the Borrower heretofore delivered to Bank are true and correct in all respects and fairly present the financial condition of the Borrower, as of the date(s) thereof. The financial statements of the Borrower have been prepared in accordance with GAAP consistently applied. No material adverse change has occurred in the financial condition of the Borrower since the date(s) thereof, and no additional borrowings have been made by the Borrower since the date(s) thereof.

3.08 No Defaults. No Default or Event of Default by the Borrower exists under this Agreement or any of the other Loan Documents, or under any other instrument or agreement to which Borrower is a party or by which Borrower or its properties may be bound or affected, and no event has occurred and is continuing that with notice or the passage of time or both would constitute a default or event of default thereunder.

3.09 Compliance With Law. The Borrower has obtained, or will obtain prior to opening for business, all necessary licenses, permits and governmental approvals and authorizations necessary or proper in order to conduct its respective business and affairs as heretofore conducted and as hereafter intended to be conducted. Borrower is in compliance with all laws, regulations, decrees and orders applicable to it (including, but not limited to, laws, regulations, decrees and orders relating to environmental, occupational and health standards and controls, antitrust, monopoly, restraint of trade or unfair competition), except to the extent that noncompliance, in the aggregate, cannot reasonably be expected to have a material adverse effect on its business,

operations, property or financial condition and will not materially adversely affect its ability to perform its obligations under the Loan Documents. Borrower has not received, and does not expect to receive, any order or notice of any violation or claim of violation of any law, regulation, decree, rule, judgment or order of any governmental authority or agency relating to the ownership and/or operation of its properties, as to which the cost of compliance is or might be material and the consequences of noncompliance would or might be materially adverse to its business, operations, property or financial condition, or which would or might impair its ability to perform its obligations under the Loan Documents.

3.10 No Burdensome Restrictions. No instrument, document or agreement to which Borrower is a party or by which it or its properties may be bound or affected materially adversely affects, or may reasonably be expected to so affect, the business, operations, property or financial condition thereof.

3.11 Taxes. Borrower has filed or caused to be filed all tax returns that to its knowledge are required to be filed (except for returns that have been appropriately extended), and has paid all taxes shown to be due and payable on said returns and all other taxes, impositions, assessments, fees or other charges imposed on it by any governmental authority, agency or instrumentality, prior to any delinquency with respect thereto (other than taxes, impositions, assessments, fees and charges currently being contested in good faith by appropriate proceedings, for which appropriate amounts have been reserved). No tax liens have been filed against Borrower or the properties thereof.

3.12 Regulation U. None of the proceeds of the Loan made pursuant to this Agreement shall be used directly or indirectly for the purpose of purchasing or carrying any stock in violation of any of the provisions of Regulation U of the Board of Governors of the Federal Reserve Systems.

3.13 ERISA. Each employee benefit plan, as defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") maintained by Borrower meets, as of the date hereof, minimum funding standards of Section 302 of ERISA, all applicable requirements of ERISA and of the Internal Revenue Code of 1954, as amended, and no "Reportable Event" (as defined by ERISA) has occurred with respect to any such plan.

## ARTICLE IV

### LOAN

4.01 Loan. Subject to the terms and conditions set forth herein, Bank hereby agrees to extend a revolving line of Credit loan to be used by Borrower to support University of Memphis athletics, but for no other purposes. Upon request of the Borrower, Bank agrees to make Advances under the Loan for such purposes in accordance with the terms hereof. This is a revolving line of credit subject to the terms and conditions of this Agreement and the Note, provided, however, that the aggregate principal outstanding hereunder shall never exceed Twelve Million and No/100 Dollars (\$12,000,000.00).

4.02 Repayment Terms. The Note shall bear interest and shall be payable in accordance with the terms thereof.

## ARTICLE V

### COVENANTS

5.01 Certain Affirmative Covenants. So long as Bank has a commitment under the Loan or the Note shall remain unpaid, Borrower will:

(a) Payment of Secured Obligations. Pay the indebtedness evidenced by the Note according to the tenor thereof, and shall timely pay or perform, as the case may be, all of the other obligations of Borrower under the Loan Documents.

(b) Maintenance of Books and Records; Inspection. Maintain its books and records in accordance with generally accepted accounting principles consistently applied, and permit any person designated by Bank in writing, at Bank's expense, to visit and inspect any of their properties, books and financial records, and to discuss its accounts, affairs and finances with Borrower or the principals of Borrower during reasonable business hours, all at such times as Bank may reasonably request.

(c) Taxes and Assessments; Tax Indemnity. (i) File all tax returns and appropriate schedules thereto that are required to be filed under applicable law, prior to the date of delinquency, (ii) pay and discharge all taxes, assessments and governmental charges or levies imposed upon such party, upon their income and profits or upon any properties belonging to them, prior to the date on which penalties attach thereto, and (iii) pay all taxes, assessments and governmental charges or levies that, if unpaid, might become a lien or charge upon any of their properties; provided, however, that any party may, in good faith, contest any such tax, assessment, governmental charge or levy so long as appropriate reserves are maintained with respect thereto.

(d) Compliance with Law and Other Agreements. Borrower shall maintain its business operations and property owned or used in connection therewith in compliance with (i) all applicable federal, state and local laws, regulations and ordinances governing such business operations and the use and ownership of such property, and (ii) all agreements, licenses, franchises, indentures and mortgages to which each is a party or by which any of their properties are bound.

(e) Notice of Default. Give written notice to Bank of the occurrence of any default, event of default or Event of Default under this Agreement or any other Loan.

(f) Business Continuity. Conduct its business in substantially the same manner and in substantially the same areas as such business is now and have heretofore been carried on and conducted.

(g) Existence and Properties. Comply fully with all applicable statutes, laws and regulations, their existence, and shall maintain, preserve and keep their property and assets in

good repair, working order and condition, making all needed replacements, additions, improvements and renewals thereto, to the extent allowed by this Agreement.

5.02 Reporting Covenants. So long as Bank has a commitment under the Loan or the Note shall remain unpaid, Borrower will furnish Bank with such financial statements and other related information at such frequencies and in such detail as Bank may reasonably request. Without limiting the foregoing, Borrower shall provide to Bank (i) on a quarterly basis, company prepared financial statements; and (ii) on an annual basis, audited financial statements prepared by an independent CPA, certified by an officer of Borrower as being accurate and complete, within one hundred twenty (120) days of the end of Borrower's fiscal year. In addition to the foregoing, Borrower shall furnish to Bank on an annual basis copies of federal and state income tax returns of Borrower within one hundred twenty (120) days of the period then ended.

5.03 Negative Covenants. Until the Loan is paid in full Borrower will not, without the prior written consent of Bank:

(a) Use of Loan Proceeds. Use any proceeds of the Loan for any purpose other than to support University of Memphis athletics. Loan proceeds may not be used for any other purpose, including, but not limited to, distribution to shareholders of Borrower, debt service, refinance of intercompany debt or equipment purchases.

(b) Sale and Encumbrance of Assets. (a) Sell, exchange or lease any of its assets except in the ordinary course of business or (b) create, assume or permit to exist any mortgage, pledge, lien, charge or other encumbrance on any of the assets of Borrower without Bank's prior written consent, in Bank's sole and absolute discretion, except for (i) liens accruing by law for employee benefits; or (ii) existing liens as disclosed to Bank in the financial statements heretofore submitted to Bank.

(c) Management/Ownership. Make or allow to be made any change in the controlling ownership or controlling management structure of Borrower without the express prior written consent of Bank. Changes in ownership or management structure of Borrower which involve non-controlling Persons shall be permitted without the prior written consent unless such change can reasonably be determined to have an adverse effect to Bank, in which case Bank's prior written consent shall be required.

(d) Other Indebtedness. Incur any other indebtedness in excess of \$\_\_\_\_\_.

5.04 Interest Rate Swap. Borrower will enter into an Interest Rate Swap with the floating rate set forth in the Note converted into a fixed rate equivalent to the 7-year Treasury rate, as determined on November 30, 2021, plus two and fifteen hundredths percent (2.15%).

## ARTICLE VI

### INTENTIONALLY OMITTED





## ARTICLE VII

### DEFAULT AND REMEDIES

7.01 Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Failure by Borrower to make any payment of principal or interest on the indebtedness evidenced by the Note within fifteen (15) days of when the same becomes due and payable in accordance with the terms of the Note;

(b) Any misrepresentation by Borrower as to any material matter hereunder or under any of the other Loan Documents, or delivery by Borrower of any schedule, statement, resolution, report, certificate, notice or writing to Bank that is untrue in any material respect on the date as of which the facts set forth therein are stated or certified;

(c) Failure of Borrower to perform any of its obligations under this Agreement, the Note or any of the other Loan Documents and such failure continues for more than thirty (30) days after written notice by Bank to Borrower; provided, however, provided, however, if such default is not susceptible of cure within thirty (30) days, then Borrower shall have an additional period of sixty (60) days within which to cure such default, provided further that Borrower commences such cure promptly upon receipt of notice and thereafter diligently pursues the same; or

(d) Borrower (i) shall generally not pay or shall be unable to pay its debts as such debts become due; or (ii) shall make an assignment for the benefit of creditors or petition or apply to any tribunal for the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made and such case or proceeding is not dismissed for a period of sixty (60) days or more; or (v) shall indicate, by any act or omission, its consent to, approval of or acquiescence in any such petition, application, proceeding or order for relief or the appointment of a custodian, receiver or trustee for it or a substantial part of its assets; or (vi) shall suffer any such custodianship, receivership or trusteeship to continue undischarged for a period of thirty (30) days or more.

7.02 Acceleration of Maturity; Remedies. Upon the occurrence of any Event of Default described in subsection 7.01(d) hereof, the indebtedness evidenced by the Note shall be immediately due and payable in full; and upon the occurrence of any other Event of Default described above and while such Event of Default continues, Bank at any time may at its option accelerate the maturity of the indebtedness evidenced by the Note. Upon the occurrence of any such Event of Default and the acceleration of the maturity of the Indebtedness evidenced by the Note:

(a) Bank shall be immediately entitled to exercise any and all rights and remedies possessed by Bank pursuant to the terms of any of the Loan Documents;

(b) Bank shall have any and all other rights and remedies that Bank may now or hereafter possess at law, in equity or by statute.

7.03 Remedies Cumulative; No Waiver. No right, power or remedy conferred upon or reserved to Bank by this Agreement or any of the other Loan Documents is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, under any of the other Loan Documents or now or hereafter existing at law, in equity or by statute. No delay or omission by Bank to exercise any right, power or remedy accruing upon the occurrence of any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or an acquiescence therein, and every right, power and remedy given by this Agreement and the other Loan Documents to Bank may be exercised from time to time and as often as may be deemed expedient by Bank.

7.04 Proceeds of Remedies. Any or all proceeds resulting from the exercise of any or all of the foregoing remedies shall be applied as set forth in the Loan Document(s) providing the remedy or remedies exercised; if none is specified, or if the remedy is provided by this Agreement, then as follows:

First, to the costs and expenses, including reasonable attorney's fees, incurred by Bank in connection with the exercise of its remedies;

Second, to the expenses of curing the default that has occurred, in the event that Bank elects, in its sole discretion, to cure the default that has occurred;

Third, to the payment of the obligations, including, but not limited to, the payment of the principal of and interest on the Indebtedness evidenced by the Note, in such order of priority as Bank shall determine in its sole discretion; and

Fourth, the remainder, if any, to Borrower or to any other person lawfully thereunto entitled.

## ARTICLE VIII

### MISCELLANEOUS

8.01 Performance By Bank. If Borrower shall default in the payment, performance or observance of any covenant, term or condition of this Agreement, Bank may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Bank in connection therewith (including, but not limited to, reasonable attorney's fees), with interest thereon at the default rate provided in the Note (if none, then at the maximum rate from time to time allowed by applicable law), shall be immediately repaid to Bank by Borrower and shall constitute a part of

the obligations and be secured hereby until fully repaid. Bank shall be the sole judge of the necessity for any such actions and of the amounts to be paid.

8.02 Successors and Assigns Included in Parties. Whenever in this Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors, successors-in-title and assigns of such parties shall be included, and all covenants and agreements contained in this Agreement by or on behalf of Borrower or by or on behalf of Bank shall bind and inure to the benefit of their respective heirs, legal representatives, successors-in-title and assigns, whether so expressed or not.

8.03 Costs and Expenses. Bank shall not incur any direct cost or expense whatsoever in connection with the making, administration, servicing or collection of the Loan. Borrower agrees to pay any and all such direct costs and expenses, including, but not limited to, filing fees, recording taxes, insurance premiums and reasonable attorney's fees, promptly upon demand of Bank.

8.04 Assignment. The Note, this Agreement and the other Loan Documents may be endorsed, assigned and/or transferred in whole or in part by Bank, and any such holder and/or assignee of the same shall succeed to and be possessed of the rights and powers of Bank under all of the same to the extent transferred and assigned. Borrower shall not assign any of its rights nor delegate any of its duties hereunder or under any of the other Loan Documents without the prior express written consent of Bank.

8.05 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower hereunder and under all of the other Loan Documents.

8.06 Severability. If any provision(s) of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

8.07 Article and Section Headings; Defined Terms. Numbered and titled article and section headings and defined terms are for convenience only and shall not be construed as amplifying or limiting any of the provisions of this Agreement.

8.08 Notices. Any and all notices, elections or demands permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, telecopied, or sent by certified mail or nationally recognized courier service (such as FedEx), to the other party at the address set forth below, or at such other address as may be supplied in writing and of which receipt has been acknowledged in writing. The date of personal delivery or telecopy or the date of mailing (or delivery to such courier service), as the case may be, shall be the date of such notice, election or demand. For the purposes of this Agreement:

The Address of Bank is:

FirstBank  
6815 Poplar Avenue, Suite 100  
Memphis, Tennessee 38138  
Attention: Jeff Hudson

With a copy to:

Glankler Brown, PLLC  
6000 Poplar Avenue, Suite 400  
Memphis, TN 38119  
Attention: George Nassar, Jr.

The Address of the Borrower is:

University of Memphis Auxiliary Services Foundation

\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

8.09 Interest and Loan Charges Not to Exceed Maximum Amounts Allowed by Law. Anything in this Agreement, the Note, or any of the other Loan Documents to the contrary notwithstanding, in no event whatsoever, whether by reason of advancement of proceeds of the Loan, acceleration of the maturity of the unpaid balance of the Loan or otherwise, shall the interest and loan charges agreed to be paid to Bank for the use of the money advanced or to be advanced hereunder exceed the maximum amounts collectible under applicable laws in effect from time to time. It is understood and agreed by the parties that, if for any reason whatsoever the interest or loan charges paid or contracted to be paid by Borrower in respect of the Loan shall exceed the maximum amounts collectible under applicable laws in effect from time to time, then ipso facto, the obligation to pay such interest and/or loan charges shall be reduced to the maximum amounts collectible under applicable laws in effect from time to time, and any amounts collected by Bank that exceed such maximum amounts shall be applied to the reduction of the principal balance of the Loan and/or refunded to Borrower so that at no time shall the interest or loan charges paid or payable in respect of the Loan exceed the maximum amounts permitted from time to time by applicable law.

8.10 No Waivers. No course of dealing between the Bank and the Borrower or any failure or delay by Bank in exercising any right, power or privilege hereunder or under the Note or any other Loan Document shall operate as a waiver or any right, power or privilege hereunder or under the Note or other Loan Document.

8.11 Expenses: Documentary Taxes. Whether or not the Loan is made hereunder, the Borrower shall pay (i) all out-of-pocket expenses of the Bank including reasonable and actual fees and disbursements to legal counsel for the Bank in connection with the preparation of this Agreement, the Note and the other Loan Documents, any waiver or consent hereunder or thereunder,

any amendment hereof or thereof, any default or alleged default hereunder, and (ii) if an Event of Default occurs, all reasonable and actual out-of-pocket expenses incurred by Bank, including fees and disbursements of its counsel in connection with such Event of Default and collection and other enforcement proceedings resulting therefrom. The Borrower shall indemnify and hold harmless Bank against any transfer taxes, excise taxes, indebtedness taxes, documentary taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement the Note or any other Loan Document or in connection with the Loan.

8.12 Miscellaneous. This Agreement shall be construed and enforced under the laws of the State of Tennessee. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.

8.13. Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together constitute but one and the same agreement. The delivery by any party of an executed signature page to this Agreement by DocuSign, facsimile transmission or by electronic email with an executed signature page attached thereto in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be, and shall be enforceable to the same extent as, an original signature page hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Loan Agreement, or have caused this Loan Agreement to be executed by their duly authorized officers, as of the day and year first above written.

**BORROWER:**

UNIVERSITY OF MEMPHIS AUXILIARY  
SERVICES FOUNDATION,

a \_\_\_\_\_

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

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

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

**BANK:**

FIRSTBANK,  
a Tennessee state banking corporation

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

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

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

EXHIBIT A

PROMISSORY NOTE

*(insert form of Promissory Note)*

Schedule 3.06

Litigation

NONE.



# FOUNDATION RESOLUTIONS

## RESOLUTION

This is a resolution of the Board of Directors of the AUXILIARY SERVICES FOUNDATION as evidenced by the signatures below.

WHEREAS, as a direct result of the COVID-19 pandemic, the UNIVERSITY OF MEMPHIS ATHLETIC PROGRAM projects a shortfall for fiscal year 2021 slightly in excess of Ten Million (\$10,000,000) Dollars; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION are both charitable foundations established for the purpose of providing financial assistance to the UNIVERSITY OF MEMPHIS; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION have reached an Agreement to Transfer Funds (attached as Exhibit A) ("Agreement") which will result in the AUXILIARY SERVICES FOUNDATION procuring a loan from one or more financial institutions in an amount not to exceed Twelve Million (\$12,000,000) Dollars, plus any applicable interest, for the purpose of assisting the UNIVERSITY OF MEMPHIS, specifically the Athletic Program, in dealing with its financial shortfall for fiscal year 2021; and

WHEREAS, an Agreement has been prepared by counsel for both foundations calling for the UNIVERSITY OF MEMPHIS FOUNDATION, which holds the Tiger Scholarship Fund, to transfer funds to the AUXILIARY SERVICES FOUNDATION as needed in order to fund the repayment of the loan obligations as they come due; and

WHEREAS, said Agreement has been presented to the Board of Directors and/or Executive Board of both said foundations and has been approved by same. The approval of the Agreement by the UNIVERSITY OF MEMPHIS FOUNDATION was obtained on the \_\_\_14\_\_\_ day of October, 2020. The approval of the Agreement by the AUXILIARY SERVICES FOUNDATION was obtained on the \_\_\_9\_\_\_ day of October, 2020; and

WHEREAS, the President of the AUXILIARY SERVICES FOUNDATION is hereby authorized and directed to execute said Agreement.

WHEREAS, the President of the AUXILIARY SERVICES FOUNDATION is hereby authorized and directed to execute and enter into any ancillary documents associated with the Agreement in order to effectuate the resolutions set forth herein, on advice of counsel.

[Signature Page to Follow]

WITNESS our hands the 15 day of October, 2020.

AUXILIARY SERVICES FOUNDATION  
Board of Directors

DocuSigned by:  
By: Thomas G Kadien  
544ACC41FF7743D  
Thomas G. Kadien

Title: Board President

## **AGREEMENT TO TRANSFER FUNDS**

THIS AGREEMENT TO TRANSFER FUNDS is made and entered into on the date set forth below, by and between the UNIVERSITY OF MEMPHIS FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "UMF"), and the AUXILIARY SERVICES FOUNDATION, a nonprofit corporation established under the Tennessee Non-Profit Corporation Act (hereinafter referred to as "ASF").

WHEREAS, both the UMF and the ASF are nonprofit charitable organizations which operate under the provisions of Internal Revenue Code § 501(c)(3). Both exist for the principal purpose of supporting the University of Memphis; and

WHEREAS, the University of Memphis, specifically the Athletic Program, has experienced a significant negative financial impact as a result of COVID-19; and

WHEREAS, the ASF Board of Directors unanimously voted to provide assistance to the University of Memphis Athletic Program by borrowing funds from local commercial banks (the "Loan(s)") and utilizing the Loan(s) to support the University of Memphis Athletic Program; and

WHEREAS, the source of repayment of the Loan(s) will be unrestricted donor contributions in support of the University of Memphis Athletics Program which are deposited into the Tiger Scholarship Fund held for the benefit of the University of Memphis Athletics Program by the UMF; and

WHEREAS, the ASF Board of Directors has asked the UMF Board of Directors to assist it in obtaining the Loan(s) and has requested that the UMF enter into this Agreement for the benefit of the University of Memphis Athletic Program, which will result in the transfer of funds from UMF to ASF from funds held from the Tiger Scholarship Fund as needed to meet the financial obligations of ASF in repaying the Loan(s); and

WHEREAS, the UMF and the ASF enter into this Agreement in order to facilitate the ability of ASF in obtaining the Loan(s) and to provide a source and resource to allow ASF to repay the Loan(s).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. ASF will take such actions as its board of directors shall determine in order to borrow funds from local commercial banks in a principal amount not to exceed Twelve Million (\$12,000,000) Dollars. The term of the Loan(s) shall not exceed seven (7) years

with the Loan(s) being repaid in periodic payments of principal and interest beginning September 2021 at interest rates as shall be negotiated by representatives of the ASF consistent with prevailing market rates for similar borrowings.

2. Upon receipt of the Loan(s) by ASF, funds from the Loan(s) shall be transferred from time to time to or for the benefit of the University of Memphis Athletic Department to provide assistance to cover revenue shortfalls, all as determined by the ASF board and the University of Memphis Athletic Department.

3. The UMF agrees to timely transfer, from time to time, funds held by the UMF in the Tiger Scholarship Fund to ASF in order to allow ASF to meet the obligations of the ASF to repay the Loan(s) it obtains upon the terms and conditions of the loan agreements entered into with the commercial banks.

4. The parties state that they have been advised by the University of Memphis that the Athletic Department has a plan to raise funds as a part of a philanthropic gift campaign designed to produce at least One Million (\$1,000,000) Dollars annually which will be added to the Tiger Scholarship Fund, in addition to sums that are held in the fund and contributed to the Tiger Scholarship Fund each and every year in order to provide funds needed to fund the transfer of the assets from UMF to ASF. The parties recognize that there is no guarantee of the amount that will be raised through the new philanthropic endeavors. The parties also acknowledge and agree that regardless of the success of this philanthropic gift campaign, UMF must meet its obligations in Section 3 to transfer the necessary funds to ASF to repay the Loan(s).

5. This Agreement is made and entered into in the State of Tennessee and shall be governed under the laws of the State of Tennessee.

6. Any amendment or modification to this Agreement shall only be accomplished through a written document executed by representatives of UMF and ASF and duly approved by the Board of Directors for ASF and the Executive Board for UMF.

Signature Page Following

WITNESS our hands this \_\_15\_\_ day of \_\_October\_\_\_\_\_, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION

By: Harry Smith  
Harry Smith

Title: President

AUXILIARY SERVICES FOUNDATION

DocuSigned by:  
By: Thomas G. Kadien  
544ACC41FF7743D  
Thomas G. Kadien

Title: President

## RESOLUTION

This is a resolution of the Executive Board of the UNIVERSITY OF MEMPHIS FOUNDATION as evidenced by the signatures below.

WHEREAS, as a direct result of the COVID-19 pandemic, the UNIVERSITY OF MEMPHIS ATHLETIC PROGRAM projects a shortfall for fiscal year 2021 slightly in excess of Ten Million (\$10,000,000) Dollars; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION are both charitable foundations established for the purpose of providing financial assistance to the UNIVERSITY OF MEMPHIS; and

WHEREAS, the UNIVERSITY OF MEMPHIS FOUNDATION and the AUXILIARY SERVICES FOUNDATION have reached an Agreement to Transfer Funds (attached as Exhibit A) ("Agreement") which will result in the AUXILIARY SERVICES FOUNDATION procuring a loan from one or more financial institutions in an amount not to exceed Twelve Million (\$12,000,000) Dollars, plus any applicable interest, for the purpose of assisting the UNIVERSITY OF MEMPHIS, specifically the Athletic Program, in dealing with its financial shortfall for fiscal year 2021; and

WHEREAS, an Agreement has been prepared by counsel for both foundations calling for the UNIVERSITY OF MEMPHIS FOUNDATION, which holds the Tiger Scholarship Fund, to transfer funds to the AUXILIARY SERVICES FOUNDATION as needed in order to fund the repayment of the loan obligations as they come due; and

WHEREAS, said Agreement has been presented to the Board of Directors and/or Executive Board of both said foundations and has been approved by same. The approval of the Agreement by the UNIVERSITY OF MEMPHIS FOUNDATION was obtained on the \_\_12\_\_ day of October, 2020. The approval of the Agreement by the AUXILIARY SERVICES FOUNDATION was obtained on the \_\_12\_\_ day of October, 2020; and

WHEREAS, the President of the UNIVERSITY OF MEMPHIS FOUNDATION is hereby authorized and directed to execute said Agreement.

WHEREAS, the President of the UNIVERSITY OF MEMPHIS FOUNDATION is hereby authorized and directed to execute and enter into any ancillary documents associated with the Agreement in order to effectuate the resolutions set forth herein, on advice of counsel.

[Signature Page to Follow]

WITNESS our hands the 15 day of October, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION  
Executive Board

By: Harry Smith  
Harry Smith

Title: President



## **AGREEMENT TO TRANSFER FUNDS**

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WHEREAS, both the UMF and the ASF are nonprofit charitable organizations which operate under the provisions of Internal Revenue Code § 501(c)(3). Both exist for the principal purpose of supporting the University of Memphis; and

WHEREAS, the University of Memphis, specifically the Athletic Program, has experienced a significant negative financial impact as a result of COVID-19; and

WHEREAS, the ASF Board of Directors unanimously voted to provide assistance to the University of Memphis Athletic Program by borrowing funds from local commercial banks (the "Loan(s)") and utilizing the Loan(s) to support the University of Memphis Athletic Program; and

WHEREAS, the source of repayment of the Loan(s) will be unrestricted donor contributions in support of the University of Memphis Athletics Program which are deposited into the Tiger Scholarship Fund held for the benefit of the University of Memphis Athletics Program by the UMF; and

WHEREAS, the ASF Board of Directors has asked the UMF Board of Directors to assist it in obtaining the Loan(s) and has requested that the UMF enter into this Agreement for the benefit of the University of Memphis Athletic Program, which will result in the transfer of funds from UMF to ASF from funds held from the Tiger Scholarship Fund as needed to meet the financial obligations of ASF in repaying the Loan(s); and

WHEREAS, the UMF and the ASF enter into this Agreement in order to facilitate the ability of ASF in obtaining the Loan(s) and to provide a source and resource to allow ASF to repay the Loan(s).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. ASF will take such actions as its board of directors shall determine in order to borrow funds from local commercial banks in a principal amount not to exceed Twelve Million (\$12,000,000) Dollars. The term of the Loan(s) shall not exceed seven (7) years

with the Loan(s) being repaid in periodic payments of principal and interest beginning September 2021 at interest rates as shall be negotiated by representatives of the ASF consistent with prevailing market rates for similar borrowings.

2. Upon receipt of the Loan(s) by ASF, funds from the Loan(s) shall be transferred from time to time to or for the benefit of the University of Memphis Athletic Department to provide assistance to cover revenue shortfalls, all as determined by the ASF board and the University of Memphis Athletic Department.

3. The UMF agrees to timely transfer, from time to time, funds held by the UMF in the Tiger Scholarship Fund to ASF in order to allow ASF to meet the obligations of the ASF to repay the Loan(s) it obtains upon the terms and conditions of the loan agreements entered into with the commercial banks.

4. The parties state that they have been advised by the University of Memphis that the Athletic Department has a plan to raise funds as a part of a philanthropic gift campaign designed to produce at least One Million (\$1,000,000) Dollars annually which will be added to the Tiger Scholarship Fund, in addition to sums that are held in the fund and contributed to the Tiger Scholarship Fund each and every year in order to provide funds needed to fund the transfer of the assets from UMF to ASF. The parties recognize that there is no guarantee of the amount that will be raised through the new philanthropic endeavors. The parties also acknowledge and agree that regardless of the success of this philanthropic gift campaign, UMF must meet its obligations in Section 3 to transfer the necessary funds to ASF to repay the Loan(s).

5. This Agreement is made and entered into in the State of Tennessee and shall be governed under the laws of the State of Tennessee.

6. Any amendment or modification to this Agreement shall only be accomplished through a written document executed by representatives of UMF and ASF and duly approved by the Board of Directors for ASF and the Executive Board for UMF.

Signature Page Following

WITNESS our hands this 15 day of October, 2020.

UNIVERSITY OF MEMPHIS FOUNDATION

By: Harry Smith  
Harry Smith

Title: President

AUXILIARY SERVICES FOUNDATION

DocuSigned by:  
By: Thomas G. Kadien  
544ACC41FF7743D  
Thomas G. Kadien

Title: President

# PROCEDURE FOR TRANSFER OF FUNDS

**Procedures for Transfer of Funds From  
the University of Memphis Foundation (UMF)  
to the Auxiliary Services Foundation (ASF)  
for the Debt Service on the Athletics Loan**

1. ASF will prepare a written request on a quarterly basis to the UMF from the Tiger Scholarship Fund at UMF. The request will require the approval of the ASD President and Treasurer. In addition, the request from ASF will require documentation attached from the bank to support the debt service amount to be transferred to ASF. No transfers will be allowed from UMF except for debt service payments made by ASF.
  
2. The ASF Board and UMF Board will be provided quarterly reports showing transfers and the balance of the loan. All transactions associated with the loan and transfers will be subject to audit by the external auditors as part of the annual audit of both UMF and ASF which is conducted annually under contract with the Tennessee State Audit Office.

# ATHLETICS FINANCIAL OUTLOOK



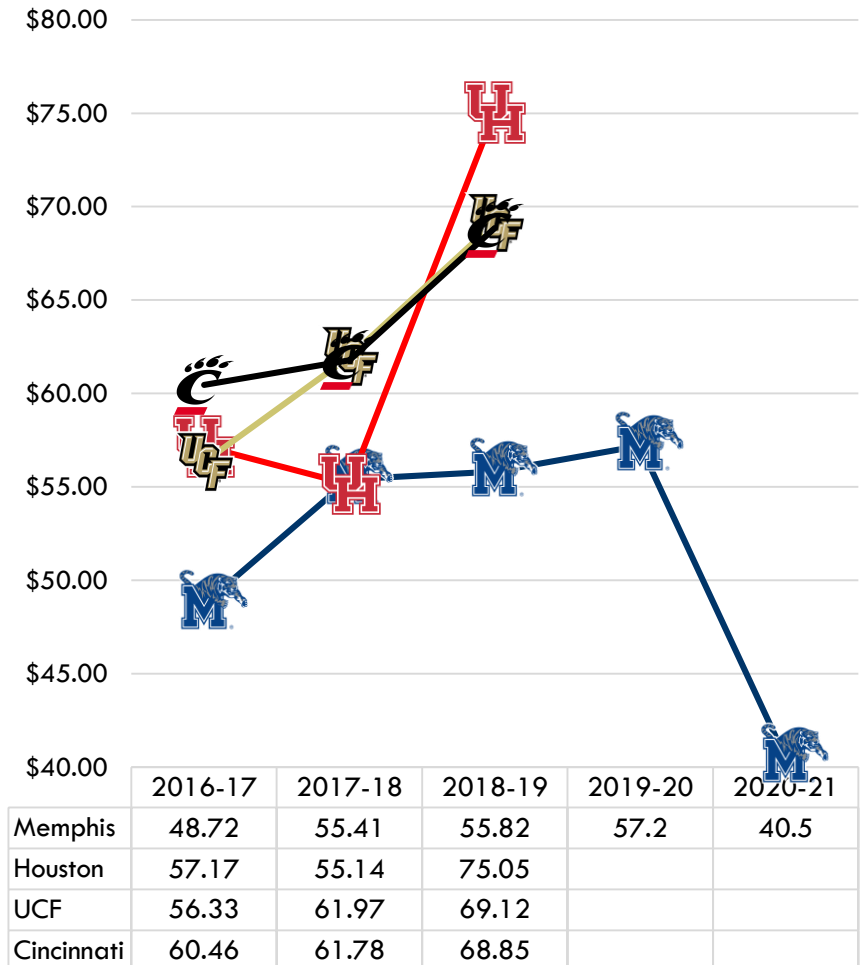
# **FINANCIAL OUTLOOK**

# COVID-19 Revenue Impacts

**Memphis Athletics Cash Revenue**  
3-Year Norm vs. Current Year Projection  
(In Millions)



**Memphis Athletics Revenue Trend**  
Conference Peer Comparison (In Millions)





## ***COVID-19 Revenue Details***

Revenue Stream	3-Year Norm	% of Total	2020-21 Projection	+/- Change	Notes
<b>CASH REVENUE STREAMS</b>					
Event Related Revenues <i>(Tickets, Parking, TSF, Other)</i>	\$17,800,000	38%	\$5,300,000	- \$12,500,000	Estimated ticket & TSF losses
External Revenues <i>(AAC, NCAA, Media)</i>	\$6,900,000	15%	\$9,900,000	+ \$3,000,000	Earmarked for capital project support
University Support <i>(Activity Fees &amp; Other Support)</i>	\$19,000,000	41%	\$16,000,000	- \$3,000,000	
Other Revenues <i>(Merchandise, Licensing, FEF, Bowl Revenue, Game Guarantees)</i>	\$2,900,000	6%	\$1,400,000	-\$1,500,000	FedExForum revenue loss & Purdue contract in question
<b>Total Cash Revenues</b>	<b>\$46,600,000</b>	<b>100%</b>	<b>\$32,600,000</b>	<b>-\$14,000,000</b>	
<b>NON-CASH REVENUE STREAMS</b>					
Add: Non-Cash Revenues	\$9,400,000		\$7,900,000	-\$1,500,000	Comp tickets, in-kind, indirect university support
<b>TOTAL REVENUE</b>					
<b>Total Revenues</b>	<b>\$56,000,000</b>		<b>\$40,500,000</b>	<b>-\$15,500,000</b>	



## COVID-19 Expense Reduction Details

Expenses	3-Year Norm	% of Total	2020-21 Projection	+/- Change	Notes
Salaries (All Sports & Administration)	\$19,800,000	40%	\$17,300,000	-\$2,500,000	Salary reductions, RIF & furloughs
Scholarships	\$9,200,000	18%	\$9,500,000	\$300,000	Spring '20 Senior Scholarships increase
Student-Athlete Support (Dining, Nutrition, Medical & Insurance)	\$2,000,000	4%	\$2,000,000	\$0	
Sport Operations (Uniforms, Equipment, Team Travel & Recruiting)	\$7,500,000	15%	\$6,500,000	-\$1,000,000	Travel reductions offset by COVID expenses
Department Operations (Marketing, Development, Broadcasting, Game Management, Facility Maintenance, Debt Service, Etc.)	\$5,200,000	10%	\$4,900,000	-\$300,000	Savings offset by AAC TV production expenses
Other Expenses (Game guarantees, bowl expenses, severance, other)	\$6,400,000	13%	\$5,900,000	-\$500,000	
<b>Total Expenses</b>	<b>\$50,100,000</b>	<b>100%</b>	<b>\$46,100,000</b>	<b>-\$4,000,000</b>	
<b>NON-CASH EXPENSE OFFSETS</b>					
Add: Non-Cash Expense	\$5,900,000		\$5,400,000	-\$500,000	Comp tickets, GIK credit
<b>TOTAL EXPENSES</b>					
<b>Total Expenses</b>	<b>\$56,000,000</b>		<b>\$51,500,000</b>	<b>-\$4,500,000</b>	

**Net Deficit 2020-21 = \$11,000,000**

