

Department of  
**Community Investment**

**Memorandum**

Monday, August 24, 2015

TO: Redevelopment Commission  
FROM: Chris Fielding  
SUBJECT: ND Turbo Lease Agreement

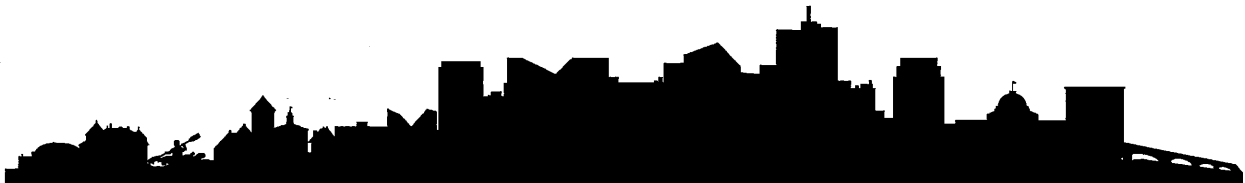
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On August 28, 2014, a Development Agreement was executed between the RDC and the University of Notre Dame Du Lac. The Agreement called for a 50,000 sq. ft. facility to be constructed in Ignition Park to house a Turbo Machinery Research and Development Center. An unexecuted version of the Equipment Lease Agreement was included in the Development Agreement to be revised and executed upon the successful procurement of the equipment.

Included in the Commission packet is an executed Equipment Lease Agreement between UNIVERSITY OF NOTRE DAME DU LAC and the RDC. This Equipment Lease Agreement outlines the negotiated terms for the lease of city procured equipment as detailed in Exhibit A.

Under the terms of the agreement, the University of Notre Dame agrees to pay rent due on the equipment to the RDC in the amount of \$48,335. The agreement calls for rent to be paid in full upon delivery of the first piece of equipment, currently estimated to be September 15, 2015.

Staff is requesting the approval and execution of the enclosed Equipment Lease Agreement.



## EQUIPMENT LEASE AGREEMENT

**THIS EQUIPMENT LEASE AGREEMENT** (this "Lease") is made as of the 19<sup>th</sup> day of August, 2015, by and between the **SOUTH BEND REDEVELOPMENT COMMISSION** ("Lessor"), organized and existing under Indiana Code 36-7-14, and **UNIVERSITY OF NOTRE DAME DU LAC**, an Indiana nonprofit corporation having its principal place of business in Notre Dame, Indiana ("Lessee").

### RECITALS

- A. Lessor, the governing body of the City of South Bend, Indiana, Redevelopment District and the City of South Bend, Indiana, Department of Redevelopment, exists and operates under the provisions of Indiana Code Section 36-7-14, as amended from time to time (the "Act").
- B. Lessor desires to foster redevelopment and economic development within the City of South Bend, Indiana (the "City").
- C. Lessee is an institution of higher education which, among other things engages in various scientific research projects.
- D. Lessee desires to lease upon construction a building and the surrounding real estate (the "Facility") to be located within such real estate commonly known as Ignition Park and the Airport Economic Development Area of the City (the "Area") and to develop, equip and operate at the Facility a state-of-the-art gas turbine research facility to be known as "Notre Dame Turbomachinery Facility" (collectively, the "Project")
- E. In order to more fully develop and complete the Project, Lessee requires certain equipment, more particularly described in the attached Exhibit A (the "Equipment") to be used in connection with the Project.
- F. Lessor has acquired the Equipment, at a cost not exceeding Five Million Five Hundred Thousand (\$5,500,000), from tax increment finance revenues ("TIF Revenues") from the Area.
- G. As a material inducement for Lessor to enter into this Lease upon the terms provided herein, and in connection with that certain Economic Development Agreement ("Development Agreement"), by and between Lessor and Lessee, the Lessee shall (i) upon delivery of the first piece of Equipment, prepay to the Lessor any rent due and owing under the Lease, not to exceed Forty-Eight Thousand Three Hundred Thirty-Five Dollars (\$48,335.00); (ii) promptly proceed with the Project by negotiating a lease with a landlord for the project site, and (iii) will create 57 new jobs within St. Joseph County, Indiana, with expected average hourly wages between Eighteen Dollars (\$18) per hour and Twenty-Eight Dollars (\$28) per hour.
- H. In connection with the foregoing, Lessee now desires to lease the Equipment from Lessor, and Lessor now desires to lease the Equipment to Lessee, upon the terms and subject to the conditions set forth in this Lease.

## AGREEMENT

NOW THEREFORE, in consideration of the foregoing, the mutual covenants and agreements set forth in this Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Lease of Equipment. Subject to the terms and conditions of this Lease, Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, the equipment as described on the attached Exhibit A (collectively, the "Equipment"). As used in this Lease, the term "Equipment" refers to all items and/or units of Equipment collectively and to each item or unit of Equipment individually, as the context requires, and includes any and all Additions (as defined below) and any amendments, modifications and additions to Exhibit A to which the parties may agree from time to time.

2. Term. The term of this Lease (the "Term") shall commence on the date in which the first piece of Equipment is delivered to Lessee, no later than December 31, 2018 (the "Commencement Date"). The Term shall end on the date that is ten (10) years after the Commencement Date, unless the Lessee exercises the purchase option pursuant to Section 9(c) hereof, in which case the Lease shall terminate upon Lessee's payment of the Option Purchase Price as detailed in Section 9(c) of this Lease.

3. Inspection and Acceptance. Lessee shall have a period of seven (7) calendar days from the date of delivery of the Equipment (the "Inspection Period") to (i) inspect the Equipment to ensure it is in good condition and repair and (ii) notify Lessor, in writing, that the Equipment is not in good condition and repair, in which case Lessor shall have a period of twenty-one (21) days from the date of such notice to cure the same or otherwise provide (or cause the manufacturer to provide) Lessee with Equipment that is in good condition and repair. If Lessee does not notify Lessor in writing during the Inspection Period that any of the Equipment is not in good condition and repair, then Lessee shall be deemed to have inspected, be satisfied with and accepted the Equipment in such good condition and repair.

4. Rental Payments and Other Lease Charges.

(a) Rental Payments. Lessee agrees to pay to Lessor, during the Term, as rent for the Equipment, the total sum of Forty-Eight Thousand Three Hundred Thirty-Five Dollars (\$48,335), payable as set forth herein (the "Rental Payment"). The Rental Payment and any other amounts due under this Lease by Lessee to Lessor shall be paid without relief from valuation and appraisal laws. Total rent for the Term shall not exceed Forty-Eight Thousand Three Hundred Thirty-Five Dollars (\$48,335.00).

(b) Rental Payment Prepayment. Upon delivery of the first piece of Equipment, Lessee shall prepay Lessor the Rental Payment due and owing under this Lease, an amount equal to Forty-Eight Thousand Three Hundred Thirty-Five Dollars (\$48,335.00).

(c) Late Payments. If the Rental Payment or any other amount owed under this Lease is not paid to and received by Lessor within three (3) business days after the date such payment is due,

then in addition to all amounts payable by Lessee as a result of Lessor's exercise of any remedies provides in this Lease, Lessee shall immediately pay to Lessor a late payment charge equal to the greater of one and one-half percent (1.5%) of all outstanding amounts due or the maximum amount allowed by applicable law ("Late Payment Charge"). The Late Payment Charge shall accumulate and be reapplied each month that any amount due under this Lease remains due, outstanding and unpaid by Lessee.

5. **Delivery and Installation.** Lessee at its expense will pay for transportation, packing, taxes, duties, insurance, installation, testing and other charges in connection with the delivery, installation, use and return of the Equipment. Shipping terms shall be free on board shipping point and, as such, risk of loss shall pass from Lessor to Lessee when the Equipment is delivered to the shipment courier for delivery to Lessee. Lessor and Lessee acknowledge that Lessor has obtained an Industrial Development Grant from the Indiana Economic Development Corporation (the "IEDC") in connection with Lessor's provision of the Equipment for the Project and that Lessor is or will be obligated to accommodate the IEDC's review of the Equipment's installation. Lessee agrees to cooperate with Lessor in good faith to satisfy the IEDC's review process. Specifically, Lessee agrees to provide to the IEDC and/or the Commission (a) any documentation relating to the installation of the Equipment in Lessee's possession during the Term, and (b) access to the Facility for inspection of the Equipment as requested by the IEDC during the Term, subject to the notice requirement set forth in Section 8 of this Lease.

6. **Title and Identification.** This Lease is a true lease and does not convey to Lessee any right, title, or interest in the Equipment, except as a lessee. Title to the Equipment shall remain with Lessor at all times. All replacement parts and non-severable additions, attachments, accessories, modifications and repairs of or to the Equipment (collectively, "Additions") shall be deemed part of the Equipment and shall thereupon belong to Lessor. All of the Equipment shall remain personal property (even if any or all of the Equipment is hereafter attached or affixed to realty). At any time during the Term, upon the written request of Lessor, Lessee will promptly affix to any item or unit of Equipment, in a prominent place, or as directed by Lessor, labels or other markings supplied by Lessor indicating Lessor's ownership of the Equipment. To the extent that under the provisions of the Indiana Uniform Commercial Code, as amended, this Lease shall be considered to be a secured transaction, Lessee hereby grants to Lessor a purchase money security interest in the Equipment and all Additions. Lessor, in the exercise of its sole discretion and at Lessee's expense, may file any Uniform Commercial Code financing statements with respect to the Equipment and the lease transaction(s) evidenced by this Lease. Lessee hereby authorizes Lessor to file, at Lessee's expense, such financing and continuation statements, amendments and supplements thereto, and other documents which Lessor may from time to time deem necessary to perfect, preserve and protect its right, title and interests in or to the Equipment and all Additions. Lessee agrees, at Lessee's expense, to execute promptly and deliver any statement or instrument reasonably requested by Lessor for the purpose of showing or protecting Lessor's interest in the Equipment, including, without limitation, security agreements and waivers with respect to rights in the Equipment from any owners or mortgagees of any real estate wherein the Equipment and all Additions may be located. In the event Lessee fails or refuses to execute any such document, Lessee hereby irrevocably authorizes Lessor and any officer of Lessor as its attorney-in-fact, to prepare and execute any such document in the name of and on behalf of Lessee, at Lessee's expense.

7. Disclaimer of Warranties and Limitation on Damages. LESSOR MAKES NO WARRANTIES OTHER THAN THOSE SET OUT IN THIS LEASE. NO WARRANTIES (OTHER THAN WARRANTY OF TITLE AS PROVIDED BY THE UNIFORM COMMERCIAL CODE) SHALL BE IMPLIED OR OTHERWISE CREATED AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. AUTHORIZATION FROM LESSOR IS REQUIRED PRIOR TO THE PERFORMANCE OF ANY MANUFACTURER WARRANTY WORK PERFORMED ON THE EQUIPMENT. LESSOR RESERVES THE RIGHT TO MODIFY, ALTER AND IMPROVE ANY PART OR PARTS OF THE EQUIPMENT WITHOUT INCURRING ANY OBLIGATION TO REPLACE ANY PARTS OR PARTS PREVIOUSLY SUPPLIED. NO DEFECT, REGARDLESS THE CAUSE OR CONSEQUENCE, SHALL RELIEVE LESSEE FROM PERFORMANCE UNDER THIS LEASE, INCLUDING, WITHOUT LIMITATION, ITS OBLIGATION TO MAKE THE RENTAL PAYMENT. LESSOR, OR THE PRODUCT MANUFACTURER, AS THE CASE MAY BE UNDER ANY EXISTING WARRANTY, IN ITS OR THEIR REASONABLE DISCRETION, WILL DETERMINE WHETHER A PART NEEDS TO BE REPAIRED OR REPLACED. LESSOR SHALL NOT BE LIABLE TO LESSEE HEREUNDER UNDER ANY CIRCUMSTANCE FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR OPPORTUNITIES.

8. Care, Maintenance, and Use of the Equipment. Lessee shall not permit the Equipment to be used or operated in violation of any applicable law, rule or regulation. Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair and condition and shall perform or cause to be performed all maintenance and repairs to the Equipment, as and when required, all in strict accordance with the written specifications for such Equipment. Lessee agrees that any service, maintenance or repairs which Lessee causes to be undertaken or performed with respect to the Equipment shall be performed only by competent persons approved by Lessor to service or repair the Equipment. Lessee shall keep the Equipment only at the locations identified in the attached Exhibit A (the "Equipment Locations"), and shall not remove items of the Equipment from the Equipment Locations to which it is designated in Exhibit A (or any other place as may subsequently be permitted by the written consent of Lessor) without the express written consent of Lessor, which consent shall not be unreasonably withheld. Under no circumstance shall any item of the Equipment be relocated outside of city limits of South Bend, Indiana or the Facility. Lessor shall have the right during Lessee's normal business hours and upon no less than twenty-four (24) hours prior notice and subject to applicable laws and regulations, to enter Lessee's premises where the Equipment is located in order to inspect, observe, affix labels or other markings, to confirm that the Equipment's use and condition are in compliance with the terms of this Lease, and to otherwise protect Lessor's interest therein.

9. Option to Purchase Equipment.

(a) During the Term. Subject to provisions of Section 10 below, beginning with the fourth Reporting Date (as such term is defined in Section 3.04 of the Development Agreement), if, for a period of twelve (12) consecutive months, Lessee meets the Employment Obligation (as defined

in the Development Agreement) for two (2) consecutive Reporting Dates, Lessee shall immediately have the option, but not the obligation, to purchase the Equipment for the purchase price of One Dollar (\$1.00) ("Option Purchase Price"), which Lessee may exercise by providing written notice to Lessor at the address set forth in Section 22 of this Lease.

(b) End of Term. Subject to the provisions of Section 10 below and Sections 3.02 and 3.03 of the Development Agreement, upon the expiration of the term and upon Lessee's compliance with Sections 3.02 and 3.03 of the Development Agreement, Lessee shall have the option, but not the obligation, to purchase the Equipment at the end of the Term for the Option Purchase Price.

(c) Transfer of Title. Upon Lessee's payment in full of the Option Purchase Price to Lessor, title to the Equipment being purchased pursuant to said option shall pass to Lessee, and Lessor shall execute such bills of sale, assignments and other instruments and documents necessary to transfer title to the Equipment to Lessee. Upon transfer of title of the Equipment to Lessee, all obligations of the Lessee under Section 3.02 and 3.03 of the Development Agreement shall terminate.

10. Obligation to Purchase Equipment. Notwithstanding the provisions contained in Section 9, in the event that (i) Lessee breaches its obligations under Section 3.02 or Section 3.03 of the Development Agreement (regarding Lessee's obligations with respect to the creation of specified jobs) and fails to cure such breach in accordance with Section 5.03 of the Development Agreement or (ii) an Event of Default occurs hereunder, Lessee shall be obligated to promptly, within fifteen (15) days, purchase the Equipment for a cash purchase price equal to one and one half (1.5) times the amount of the investment per job of \$35,000.00 multiplied by the number of jobs by which the Lessee missed its goal of 57 jobs (the "Equipment Purchase Price"). Upon Lessee's payment in full of the Equipment Purchase Price to Lessor, title to the Equipment shall pass to Lessee, and Lessor shall execute such bills of sale, assignments and other instruments and documents necessary to transfer title to the Equipment to Lessee. Lessee acknowledges and agrees that Lessee's conditional obligation to purchase the Equipment for the Equipment Purchase Price, as set forth in this Section 10, is a material inducement for Lessor to enter into this Lease upon the terms provided herein, including, without limitation, the amount of the Rental Payment.

11. Taxes and Other Charges. All taxes, assessments, license fees, and other charges (including, without limitation, personal property taxes and sales, use and leasing taxes) imposed, levied or assessed on or with respect to the ownership, possession, rental, operation or use of the Equipment during the Term shall be paid by Lessee before the same shall become delinquent, whether such taxes would ordinarily be assessed against Lessor or Lessee. If Lessee fails to make such payments, then Lessor may, in its discretion, and in addition to all other remedies available to it under this Agreement or by law, pay the same and seek full reimbursement from Lessee plus costs and interest at the Default Rate.

12. Indemnification; Limitation of Liability.

(a) Indemnification by Lessee. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any claims, damages, losses or expenses (including reasonable attorney's fees) ("Losses") by third parties arising out of, connected with, occurring by virtue of or relating

in any way to the installation, possession, maintenance, operation or use of the Equipment. This indemnity shall not be affected or terminated by, and shall survive, termination of this Lease, for any reason, with respect to all or any part of the Equipment.

(b) Indemnification by Lessor. Lessor agrees to assign to Lessee any indemnification rights it was provided by the manufacturer of any item of the Equipment related to any claims, losses or expenses arising out of or relating to:

(1) any claim that the Equipment infringes, violates, or misappropriates the intellectual property rights of any third party; and/or

(2) any claim for personal injury or property damage for Equipment that has been negligently designed or manufactured.

(c) Indemnification Procedures. A party seeking indemnification hereunder (the "Indemnified Party") shall promptly notify the other party (the "Indemnifying Party") in writing of any claim and shall provide the Indemnifying Party any related documents constituting the basis for such claim. The failure by an Indemnified Party to timely furnish the Indemnifying Party any notice or documentation under this Section 12(c) shall not relieve the Indemnifying Party from any responsibility for the matters relating to such notice or documentation, except to the extent such failure materially and adversely prejudices the ability of the Indemnifying Party to defend such claim.

(d) Limitation of Liability. Except for liability for third party claims, in no event shall either party be liable for any indirect, incidental, special, exemplary, punitive or consequential damages of any kind whatsoever (including lost profits or loss of goodwill) even if the party has been advised of the possibility of such damages.

13. Insurance. Lessee shall obtain and maintain in full force and effect during the Term and until the Equipment is returned to Lessor, at Lessee's expense, a policy or policies of insurance insuring against all risks of loss or damage from every and any cause whatsoever, including, without limitation, damage to or loss of the Equipment by extended casualty, fire, theft, vandalism and malicious mischief, and with such other coverages as Lessor may reasonably require from time to time, all such insurance to be issued by financially secure and reputable insurers acceptable to Lessor and in amounts not less than One Hundred Percent (100%) of the full replacement value of the Equipment naming Lessor as loss payee, and providing by the policy terms that Lessor shall be given not less than thirty (30) days' prior notice of any cancellation or decrease in coverage ("Required Insurance"). Lessee shall also, at its own expense, carry public liability insurance, in such amounts with such companies and in such form as is reasonably satisfactory to Lessor, and which name Lessor as an additional insured, with respect to injury to person or property resulting from or based in any way upon or in any way connected with or relating to the installation, use, or alleged use, or operation of any or all of the Equipment, or its location or condition. Lessee shall, upon request by Lessor, provide Lessor with a certificate of insurance or other certified evidence that Lessee is in compliance with the terms of this Section 13. All policies of insurance required under this Section 13 shall clearly indicate that Lessor is the owner of the insured Equipment and that Lessee holds only a leasehold interest in the Equipment.

14. Risk of Loss. From and after the time the Equipment is delivered to the shipment courier for delivery to Lessee or directly to Lessee, and until such time as the Equipment is returned to Lessor in Returnable Condition, Lessee hereby assumes and shall bear the entire risk of loss, damage, malfunction, accident, theft and destruction of and to the Equipment, or any portion thereof, from any cause whatsoever. Lessee shall promptly notify Lessor and provide Lessor with detailed information regarding any such occurrence within two (2) business days of any such occurrence.

15. Events of Default by Lessee. Each of the following events shall constitute an "Event of Default" for purposes of this Lease: (i) Lessee defaults in the payment when due of the Rental Payment or any other amounts owed by Lessee to Lessor under the terms of this Lease, (ii) Lessee fails to perform any obligation or observe any covenant or condition to be performed or observed by Lessee, or breaches any representation or provision contained herein and such failure shall continue un-remedied for thirty (30) consecutive calendar days; (iii) Lessee ceases to operate the Facility during the term of the Lease; (iv) Lessee: (a) makes an assignment for the benefit of creditors; (b) becomes insolvent; (c) admits in writing an inability to pay its debts as they become due; (d) becomes the subject of a voluntary or involuntary case commenced under the United States Bankruptcy Code, as now constituted or hereafter amended, or any other applicable Federal or state bankruptcy, insolvency or similar law; (e) is dissolved or liquidated, or any action is taken which could result in the dissolution or liquidation of Lessee; (f) a receiver, trustee or liquidator is appointed with respect to Lessee's assets; (v) any lien is created with respect to the Equipment (other than a lien created by Lessor); or (vi) the occurrence of any sale, transfer, conveyance or other disposition of all or any part of the Equipment or any attempt to sell, transfer, convey or otherwise dispose of all or any part of the Equipment.

16. Remedies. Upon the occurrence of an Event of Default by Lessee under this Lease, Lessor may, at its option, take any one or more of the following courses of action:

- (i) terminate this Lease;
- (ii) proceed by appropriate judicial action to enforce this Lease and recover damages caused by the breach, including, without limitation, attorneys' fees, court costs and other collection costs;
- (iii) demand that Lessee return the Equipment to Lessor in Returnable Condition within thirty (30) days;
- (iv) require Lessee to purchase the Equipment pursuant to Section 10 hereof; and/or
- (v) accelerate all sums due under this Lease plus interest at the Default Rate. In addition, Lessee shall be liable for all reasonable attorneys' fees and other costs and expenses resulting from the occurrence of any Event of Default or the exercise by Lessor of any of the remedies available to it.

17. Representations of Lessee. Lessee represents and warrants to Lessor that:

- (a) The execution, delivery and performance of this Lease have all been duly authorized by all necessary action on the part of Lessee; and
- (b) This Lease constitutes a legal, valid and binding agreement of Lessee and is enforceable in accordance with its terms.



18. Representations of Lessor. Lessor represents and warrants to Lessee that:

(a) The execution, delivery and performance of this Lease have all been duly authorized by all necessary action on the part of Lessor; and

(b) This Lease constitutes a legal, valid and binding agreement of Lessor and is enforceable in accordance with its terms.

19. Assignment and Subletting. Without Lessor's prior written consent (which it may withhold in its sole discretion), Lessee shall not (i) assign, transfer, pledge, hypothecate, or otherwise dispose of the Equipment or any interest therein; or (ii) sublet or lend the Equipment. If Lessor's consent to such assignment or subletting is given pursuant to this Section 19, Lessee shall remain primarily liable to perform all of the covenants and obligations contained in this Lease, including, without limitation, the payment of rent.

**LESSEE AGREES THAT LESSOR MAY ASSIGN OR TRANSFER THIS LEASE OR LESSOR'S INTEREST IN THE EQUIPMENT WITHOUT NOTICE TO LESSEE.**

Lessee acknowledges that any assignment or transfer by Lessor will not materially change Lessee's duties or obligations under this Lease nor materially increase the burdens or risks imposed on Lessee. Lessee shall cooperate with Lessor in executing any documentation reasonably required by Lessor or any assignee of Lessor to effectuate any such assignment.

20. Force Majeure. Notwithstanding any other provision of the Lease, neither party shall be liable for its failure to perform any of its obligations under this Agreement during any period in which its performance is delayed by conditions, in whole or in part, beyond the reasonable control of such party, including, without limitation, the occurrence of fire, explosion, flood, earthquake, drought, embargo, war, riot, act of God or of public enemy, an act of governmental authority, agency or entity, shortages of fuel, power, materials or supplies, transportation delays, or any other contingency, delay, failure or cause beyond the reasonable control of such party, irrespective of whether such contingency is specified herein or is presently occurring or anticipated by such party ("Force Majeure"), notwithstanding reasonable efforts to overcome such matter, provided that a lack of financial resources shall not be considered an event of Force Majeure. Such party shall notify the other party within fifteen (15) days of the onset and fifteen (15) days of the end of the event of Force Majeure.

21. Further Assurances. Lessee shall execute and deliver such documents and take such other actions as Lessor may from time to time reasonably request as necessary or appropriate to carry out the intent and purpose of this Lease or to establish or protect the rights and remedies intended to be created in favor of Lessor hereunder.

22. Notices. Except as expressly provided otherwise in this Lease, any notice, request, claim or other communication required to be given pursuant to this Lease shall be in writing and shall be either: (i) delivered personally to the party to be notified, (ii) sent by registered or certified United States Mail, first-class postage prepaid, return receipt requested, to the party to be notified at such party's address specified below, or (iii) delivered by an overnight delivery courier service to the party to be notified at such party's address specified below:

To Lessee:

University of Notre Dame du Lac  
203 Main Building  
Notre Dame, Indiana 46556  
Attn: Marianne Corr, Esq.  
Vice President & General Counsel

To Lessor:

To the Redevelopment Commission:  
South Bend Redevelopment Commission  
c/o Scott Ford, Executive Director of Community Investment  
227 West Jefferson Boulevard, Suite 1400S  
South Bend, Indiana 46601

With a copy to:

Office of Corporation Counsel  
227 W. Jefferson Boulevard, Suite 1200S  
South Bend, Indiana 46601  
Attn: Cristal Brisco, Esq.

Notices or other communications given or required to be given under this Lease shall be effective only if rendered or given in writing, sent by certified mail with a return receipt requested, or delivered in person or by reputable overnight courier (e.g., Federal Express, DHL, etc.) or by telecopier or facsimile (with confirmation by one of the other methods specified herein): (a) to Lessee at the address specified in this Section, or (b) to Lessor at Lessor's address set forth in this Section or (c) to such other address as either Lessor or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section. Any such notice or other communication shall be deemed to have been rendered or given five (5) days after the date mailed, if sent by certified mail, or upon the date of delivery if delivered in person or by courier, or when delivery is attempted but refused.

23. Entire Agreement. This Lease, together with the attached Exhibit A, as may be modified from time to time in the future, and the Development Agreement, together constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements, representations, and understandings of the parties, written or oral.

24. Amendments and Waivers. No modification, amendment, extension or alleged waiver of this Lease or any provision hereof will be binding on either party unless in writing and signed by the party sought to be bound.

25. Severability. If any provision of this Lease is held or declared to be unenforceable, invalid or void, then such provision shall be deemed to be severable from the remaining provisions of this

Lease, and such declaration or holding shall in no way impair or affect the validity or enforceability of the remaining provisions of this Lease, which shall then be construed as if such invalid or unenforceable provision were omitted.

26. **Controlling Law.** This Lease and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule (whether of the State of Indiana or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Indiana. The parties hereto agree that the exclusive forum for any litigation or dispute related to, arising under or in connection with this Lease shall be in a court of competent jurisdiction located in South Bend, Indiana, and the parties hereby waive any claim to lack of personal jurisdiction thereof.

27. **Successors and Assigns.** Subject to Section 19, this Lease shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

28. **Construction of this Lease.** The parties have participated jointly in the negotiation and drafting of this Lease. If an ambiguity or question of intent or interpretation arises, this Lease shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Lease. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated hereunder, unless the context requires otherwise. The headings of Sections and paragraphs in this Lease are for descriptive purposes only and shall not control, alter or otherwise affect the meaning, scope or intent of any provisions of this Lease. Except as expressly provided otherwise in this Lease, any reference to a Section or Schedule shall mean and refer to a Section or Schedule of this Lease. Except where the context of their use clearly requires a different interpretation, wherever they appear in this Lease: (i) singular terms shall include the plural, and masculine terms shall include the feminine or neuter, and vice versa, to the extent necessary to give the defined terms or other terms used in this Lease their proper meanings; (ii) the terms "herein," "hereof," "hereunder," "hereto," "hereinafter," "hereinbefore," and similar words shall mean and refer to this Lease in its entirety and not to any specific Section, Subsection, or paragraph of this Lease; and (iii) the word "including" shall mean "including, without limitation." The lease of the Equipment hereunder is for commercial purposes, and this Lease shall not be construed as a consumer contract. Time is of the essence with respect to this Lease.

29. **Incorporation by Reference.** The Recitals and the attached Exhibit A are hereby incorporated into this Lease by this reference.

30. **Counterparts.** This Lease may be executed in counterparts, in the original or by facsimile or other electronic means, including PDF, each of which when so executed shall be deemed an original, but all of such counterparts together shall constitute one and the same instrument.

*[signature page follows]*

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

**LESSOR:**

**CITY OF SOUTH BEND,  
DEPARTMENT OF REDEVELOPMENT**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

**ATTEST:**

\_\_\_\_\_  
*Signature*

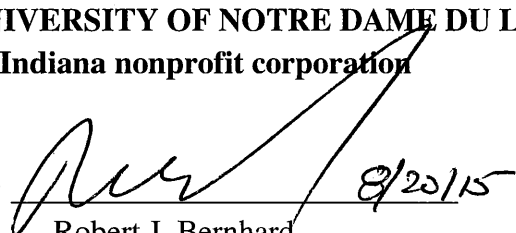
\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

**LESSEE:**

**UNIVERSITY OF NOTRE DAME DU LAC,  
an Indiana nonprofit corporation**

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

  
Robert J. Bernhard

8/20/15

Title: Vice President for Research

(Signature Page to EQUIPMENT LEASE AGREEMENT)

**Exhibit A**

List of Equipment

Sigma Thermal – Gas Fired Compressed Air Heater. Serial Number # J15035-001

Baltimore Air Coil – (1) Closed Circuit Cooling Tower. Model PF2-2436AB-71-200

Howden North America – (2 pieces) Vacuum Blower System. (1) HAXrK-63/1464 & (1)  
2xHAXrK-63/1542

Ingersoll Rand – Air Compressor. Model #TA6000 Cameron Serial #19182-6