

**BOARD OF TRUSTEES  
UNIVERSITY OF THE DISTRICT OF COLUMBIA  
UDC RESOLUTION NO. 2019 - 19**

**SUBJECT: Approval of the First Amendment to the Lease Agreement for the property located at 4340 Connecticut Avenue, NW, Washington, DC between the District of Columbia, through the Department of General Services (DGS) as Tenant and the University of the District of Columbia (“University”) as Landlord (the “First Amendment”)**

**WHEREAS**, pursuant to D.C. Code § 38-1202.1(a)(5) and (6), the Board of Trustees (“Board”) possesses all powers necessary or convenient to accomplish its statutorily prescribed objects and duties, including the power to make, deliver, and receive deeds, leases and other instruments and to take title to real and other property in its own name; and

**WHEREAS**, pursuant to 8B DCMR §2100.1, the President of the University, subject to Board approval, is authorized to enter into real estate lease agreements with any person, partnership, corporation, or other entity; and

**WHEREAS**, pursuant to 8B DCMR §2101.1 the President of the University, subject to the approval of the Board of Trustees, is authorized and empowered to rent any building or land belonging to the University or under jurisdiction of the President, or any available space therein, whenever such building, land or space is not then required for the purpose for which it was acquired; and

**WHEREAS**, pursuant to 8B DCMR §2100.9, approval of the Board is required for all leases and lease renewals; and

**WHEREAS**, the University is currently leasing the retail space to the Tenant and the lease term is expected to expire on July 24, 2019; and

**WHEREAS**, the Tenant has requested an amendment to the original lease agreement to extend the lease term through December 31, 2019; and

**WHEREAS**, the retail space proposed to be occupied by the Tenant is not required for any other purpose during the proposed lease term; and

**WHEREAS**, the Board of Trustees authorizes the President of the University to enter into the First Amendment in order to extend the lease term through December 31, 2019.

**NOW THEREFORE, BE IT RESOLVED**, that the First Amendment, substantially in the form attached hereto as Appendix A, is hereby approved by the Board in accordance with 8B DCMR §2100.1, and the President is hereby authorized to

enter into the First Amendment, substantially in the form attached hereto as **Appendix A**.

Submitted by the Operations Committee:

April 23, 2019

Approved by the Board of Trustees:

April 30, 2019

*Christopher D. Bell*

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Christopher Bell  
Chairperson of the Board

**Appendix A**

**FIRST AMENDMENT TO LEASE AGREEMENT**

**FIRST AMENDMENT TO LEASE AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this “**First Amendment**”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2019 (the “**First Amendment Effective Date**”) by and between the DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services (“**Tenant**” or the “**District**”), and the UNIVERSITY OF THE DISTRICT OF COLUMBIA, an independent agency of the District of Columbia government (“**Landlord**”). Landlord and the District are each referred to hereinafter as a “**Party**” and collectively referred to as the “**Parties**”.

**WITNESSETH:**

**WHEREAS**, pursuant to that certain Lease Agreement, by and between Landlord and the District, dated as of August 12, 2016 (the “**Original Lease**”, and together with this First Amendment, the “**Lease**”), the District leases from Landlord, and Landlord leases to the District, those certain Premises located at 4340 Connecticut Avenue, N.W. in Washington, D.C., as is more particularly set forth in the Original Lease;

**WHEREAS**, pursuant to Section 6.1 of the Original Lease, the District exercised its Option Right by notice dated June 5, 2018, extending the Initial Lease Term by the Extension Term (i.e., extending the Initial Lease Term by 9 months to expire at 11:59 p.m. on July 24, 2019); and

**WHEREAS**, the Parties desire to amend and modify the terms of the Original Lease as set forth herein in order for the Premises to be utilized as swing space for the Martin Luther King, Jr. Memorial Library.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals and Exhibits.** The above recitals and any exhibits hereto are incorporated in, and made a part of, this First Amendment.
2. **Defined Terms.** Capitalized terms used but not defined herein shall have the meanings given to them in the Original Lease.
3. **Term Extension.** The Lease Term is hereby extended from July 25, 2019 to December 31, 2019 (the “**Second Extension Term**”). As such, the Lease Term shall expire at 11:59 p.m. on December 31, 2019.
4. **Permitted Use.** The definition of “Permitted Use” set forth in the Original Lease is hereby deleted and replaced with: “library related uses (including associated office and administrative uses)”.

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5. Counterparts. This First Amendment may be executed in several counterparts each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Execution and delivery of this First Amendment by facsimile signature (including without limitation by an e-mailed .pdf document) shall be sufficient for all purposes, and shall be binding on the Parties hereto.

6. Binding; Choice of Law. This First Amendment shall be (a) binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and permitted assigns, and (b) governed by, and construed in accordance with, the laws of the District of Columbia, without regard to conflicts of law provisions.

7. Miscellaneous. The Parties, intending to be bound, acknowledge and agree that: (a) the Lease contains and embodies the entire agreement of the Parties with respect to the matters set forth herein, and supersedes and revokes any and all negotiations, arrangements, letters of intent, representations, inducements or other agreements, oral or in writing with respect to such matters; (b) no representations, inducements or agreements, oral or in writing, between the Parties with respect to such matters, unless contained in this First Amendment, shall be of any force or effect; and (c) in the event of any conflict between any terms of this First Amendment and those of the Original Lease, the terms of this First Amendment shall control.

8. Absence of Interest. Landlord represents and warrants that no officer, agent, employee, elected official or representative of the District of Columbia, including of the Council of the District of Columbia, has received any payment or other consideration for the making of the Lease, and that no such person has any interest, direct or indirect, in the Lease, or the proceeds thereof or related thereto.

9. Authority. By executing this First Amendment, Landlord represents to the District that: (i) it is authorized to enter into, execute and deliver this First Amendment and perform its obligations hereunder; (ii) this First Amendment is effective and enforceable against Landlord in accordance with its terms; (iii) the person signing on behalf of Landlord is duly authorized to execute this First Amendment and thereby bind Landlord; and (iv) no other signatures or approvals are necessary in order to make all of the representations of Landlord contained in this Section true and correct in all material respects.

10. Severability. Each provision of this First Amendment shall be valid and enforceable to the fullest extent permitted by law. If any provision of this First Amendment or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this First Amendment and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. Nothing contained in this First Amendment shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate allowed by law.

11. No Partnership; No Third Party Beneficiaries. Nothing contained in the Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and the District, or to create any other relationship between the Parties hereto other than that of landlord and tenant. Nothing contained in the Lease shall be deemed or construed to create any third party beneficiaries. The only entities that the Parties intend to be benefitted by the Lease are Landlord and the District.

12. Not a Contract for Goods or Services. The Lease is not intended to be, nor shall it be deemed or construed to be a contract for goods or services. Nothing contained in the Lease, and no future action or inaction by the District under the Lease, shall be deemed or construed to mean that the District has contracted with Landlord to perform any activity at the premises or the property that is not ancillary to the conveyance of an interest in real property. Landlord expressly acknowledges that the District is prohibited by law from entering into contracts for goods and services without following the procedures set forth in the Procurement Practices Reform Act of 2010, D.C. Official Code § 2-351.01, *et seq.*, as may be amended from time to time, or any other applicable procurement authority.

13. The District's Authority to Execute and Deliver this First Amendment. Landlord acknowledges that the execution of this First Amendment by the District may be subject to authorization by the Council of the District of Columbia pursuant to Section 451 of the District of Columbia Home Rule Act (D.C. Official Code § 1-204.51 (2001)), as may be amended from time to time.

14. No Brokers. Landlord and the District each represent and warrant to the other that no real estate agent, broker, or finder has acted for it in connection with the negotiation, execution or procurement of this First Amendment.

15. Anti-Deficiency Limitations. The following limitations exist as to each and every purported obligation of either the District or Landlord set forth in the Lease, whether or not expressly conditioned:

(a) Whether expressly or impliedly qualified or limited in any Section of the Lease, the obligations of either the District or Landlord to fulfill any financial obligation pursuant to the Lease or any subsequent agreement entered into pursuant to the Lease to which the District or Landlord is a party (an "**Other Agreement**"; and together with the Lease, any "**Applicable Agreement**"), or referenced in any Applicable Agreement, are and shall remain subject to the provisions of: (a) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2012 Repl.); (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 *et seq.* (2012 Repl. and 2014 Supp.) ((a) and (b) collectively, the "**Anti-Deficiency Acts**"); and (c) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2012 Repl.), as each may be amended from time to time and each to the extent applicable to any Applicable Agreement. Pursuant to the Anti-Deficiency Acts, nothing in the Lease shall create an obligation of the District or Landlord in anticipation of an appropriation by the United States Congress ("**Congress**") for

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such purpose, and the legal liability of either the District or Landlord for the payment of any financial obligation, including but not limited to any Annual Rental or Additional Rent, under any Applicable Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references in this Section to "District of Columbia" shall mean the District of Columbia as a sovereign entity, and not as a tenant or landlord under the Lease). During the term of the Lease, the District of Columbia agency authorized and delegated by the Mayor of the District of Columbia to administer the Lease shall, for each corresponding District of Columbia fiscal period, include in the then-current services funding level package a request sufficient to fund the District's known financial obligations under the Lease for such fiscal period. Landlord confirms that it has read and familiarized itself with the Anti-Deficiency Acts and has full knowledge of such laws and the impact on the District's financial obligations hereunder.

(b) If no appropriation is made by the District of Columbia or Congress to pay any financial obligation, including, but not limited to any rental components under any Applicable Agreement for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, neither the District nor Landlord shall be liable to make any payment under such Applicable Agreement upon the expiration of any then-existing appropriation.

(c) Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District or the District of Columbia shall have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by the District or Landlord under any Applicable Agreement.

(d) No Applicable Agreement shall constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No Agent of the District is authorized to obligate or expend any amount under any Applicable Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

*[Signature Pages to Follow]*

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IN WITNESS WHEREOF, Landlord and the District have executed this First Amendment as of the First Amendment Effective Date.

**LANDLORD:**

UNIVERSITY OF THE DISTRICT OF  
COLUMBIA, an independent agency of the  
District of Columbia government

By: \_\_\_\_\_  
Ronald F. Mason, Jr., J.D., President

*Approved as To Legal Sufficiency for the University of the District of Columbia by:*  
The Office of the General Counsel for the University of the District of Columbia

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

***[District's Signature Page to Follow]***



**EXECUTION COPY**

**DISTRICT:**

**DISTRICT OF COLUMBIA, a municipal corporation, by and through its Department of General Services**

By: \_\_\_\_\_  
Keith A. Anderson, Director

*The Form of this First Amendment Approved as to Legal Sufficiency for the District of Columbia by:*  
Office of the General Counsel for the Department of General Services

By: \_\_\_\_\_  
Assistant General Counsel

**MEMORANDUM**

**TO:** Troy Lemaile-Stovall, Chief Operating Officer

**FROM:** Erik Thompson, Vice President

**DATE:** April 12, 2019

**SUBJECT:** District of Columbia Public Library (DCPL) Interim Space Lease Extension

The University of the District of Columbia ("University") is seeking Board of Trustees' approval to extend the existing lease with the Department of General Services (DGS) on behalf of DCPL. The space is located on the ground floor space (Retail #1) at 4340 Connecticut Avenue N.W. ("Property"). The Property currently serves as interim swing space for DCPL. DGS desires to extend the agreement from July 25, 2019 through December 31, 2019 as a continued use of swing space.

**Key Terms**

1. The size of the space currently leased is approximately 3,100 rentable square feet.
2. Seven (7) parking spaces in a University parking facility is included in the rent for the Property.
3. The extension period ends December 31, 2019.
4. The rent is based on an annual rate of \$125,000 or monthly rate of \$10,416.67.
5. The above Rent is exclusive of the cost of cleaning, maintaining and repairing the Premises and inclusive of all other costs, including, but not limited to, operating costs, real estate taxes, water, gas, electricity, building operating expenses, trash costs, building cleaning (excluding the Premises). The Rent does not include the cost of security service for the area that DCPL will occupy. If the DCPL's service hours are beyond the University's building hours, DGS shall cover the cost of heating, ventilating, and air conditioning (HVAC) services at \$60.00 per hour without mark-ups, additional fees, engineer fees, or any other additional costs.
6. DCPL will be responsible for maintenance, cleaning and repairs for the Premises and tenant improvements (excluding base building infrastructure and equipment (e.g. HVAC, IT, electricity, water, etc.) The University will be responsible for maintenance, cleaning, and repairs for the base building, building systems, and common areas.

If you have questions or need additional information, feel free to contact my office at your convenience.



## Fiscal Impact Statement

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**TO:** The Board of Trustees  
**FROM:** Managing Director of Finance *David A. Franklin*  
**DATE:** April 23, 2019  
**SUBJECT:** District of Columbia Public Library (DCPL) Interim Space Lease Agreement

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### **Conclusion**

It is concluded that the University is positioned to collect rent payments associated with leasing space to the Department of General Services (DGS) on behalf of DCPL on the ground floor space, Retail #1, located at 4340 Connecticut Avenue N.W. (the "Property"). The proposed lease will not have a negative financial impact to the University.

### **Background**

The University currently leases space that serves as interim swing space for DCPL. DGS desires to extend the agreement from July 25, 2019 through December 31, 2019 as a continued use of swing space.

### **Fiscal Impact**

The Property is approximately 3,100 rentable square feet, currently used as an interim DCPL facility. The terms of the Lease and other key costs anticipated are summarized below.

#### Annual Rent

The proposed base annual rent is \$125,000 or monthly rent of \$10,416.67. The rent amount will be prorated for the extension period. The rent is also inclusive of seven (7) parking spaces in the University's parking facility for use of employees and agents of the tenant.

### **Financial Impact**

This request has been approved this request based on the information provided. There are no anticipated risks at this time.