AMENDED AND RESTATED
AGREEMENT FOR OPERATING AND MAINTAINING
THE OTSEGO COUNTY UNIVERSITY CENTER

THIS AGREEMENT dated as of Oct 23, 2015 by and among the County of Otsego, Michigan (the "County" and the "Commissioners"), organized and existing under the constitution and law of the State of Michigan, and the University Center Gaylord ("UNIVERSITY CENTER"), a Michigan non-profit corporation which amends and replaces the agreement dated July 1, 2000.

In consideration of the mutual agreement contained herein, the parties agree as follows:

I. GENERAL AGREEMENT

Under the provisions of this Agreement, the County hereby contracts with the UNIVERSITY CENTER to operate the University Center Gaylord Facility ("FACILITY") located at the County's J. Richard Yuill Alpine Center Complex. The UNIVERSITY CENTER shall maintain a 501 (c)(3) status per Internal Revenue Code of 1986, as amended (the "Code").

II. TERMS AND AMENDMENT

A. TERMS

This Agreement contains the entire understanding and Agreement of the parties regarding the subject matter contained herein.

B. DURATION

The terms of this Agreement shall be for a five (5) year term commencing with the date of execution.

C. EXTENSION

(i) Further, the terms of this Agreement shall be automatically extended, unless otherwise modified in accordance with the terms set forth herein, upon renewal of the UNIVERSITY CENTER millage. This automatic extension shall be for the period of the millage renewal.

(ii) Further, this Agreement may be extended for such lengths or periods of time as the parties may mutually agree upon in writing.

D. AMENDMENT

Further, the terms and conditions of this Agreement, as provided herein, may be amended at any time during the above stated period with the express mutual written consent of the parties who are then bound by the terms hereof.

III. FINANCIAL GOVERNANCE

A. ANNUAL BUDGET

(i) UNIVERSITY CENTER will present an annual budget to the Commissioners prior to October 1st of each year, unless additional time is given by the County, in the format required by the Finance Committee, along with any associated information requested, for the operations of UNIVERSITY CENTER for the following year beginning January 1st.

(ii) Prior to December 31st of each year, the Commissioners shall consider for approval the final budget for the operation of the University Center.

(iii) BUDGET AMENDMENTS: Budget amendments must be approved by the UNIVERSITY CENTER Board and then forwarded to the Otsego County Finance Department. UNIVERSITY CENTER shall provide an updated copy of its annual budget to the Otsego County Finance Department each time the UNIVERSITY CENTER budget is amended, ensuring that the County has a current, updated budget at all times during the fiscal year.

B. FINANCIAL REPORTING

(i) Beginning with the quarter ended December 2015, UNIVERSITY CENTER shall provide the following quarterly accounting reports to the Otsego County Finance Department, for all funds of the UNIVERSITY CENTER, including the Restricted and UCMAN funds, and the For-Profit "University Center Advertising, Inc.", but not to include the Unrestricted funds:

(1) Balance Sheet – including all assets, liabilities, and fund equity

(2) Budget Report – including the amended budget and actual amounts for all revenues and expenditures.

(3) Quarterly reports must be submitted no later than the last day of the month following quarter-end.

(ii) Beginning with the month ended October 2015, UNIVERSITY CENTER shall provide the following monthly accounting reports to the Otsego County Treasurer:

(1) Report reconciling the general ledger balances in the Restricted Fund general ledger maintained by the UNIVERSITY CENTER to the balances in the operating fund.

(2) Monthly reports must be submitted no later than the last day of the next month.

(iii) UNIVERSITY CENTER shall attest to the completeness and accuracy of all financial information. The County will rely on the reports to be complete and accurate upon submission.

(iv) All corporate and financial records of UNIVERSITY CENTER shall be available to the County or its auditors upon reasonable request.

(v) AUDITS – UNIVERSITY CENTER will be audited under the umbrella of the County, as a discretely presented component unit. The County may, at its discretion, engage the auditors to perform additional procedures. UNIVERSITY CENTER and the County may find it desirable for UNIVERSITY CENTER to be audited under separate cover (still included in the County's audit report as a discretely presented component unit). In such an instance, the County must approve the auditing firm.

C. CUSTODY OF CASH AND INVESTMENTS

(i) All UNIVERSITY CENTER monies from Restricted and UCMAN shall be deposited with a bank or trust company designated by the County and approved by UNIVERSITY CENTER. The monies shall be kept in separate bank accounts, and shall be invested as practical by the Otsego County Treasurer as authorized by law.

(ii) All deposits must be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.

(iii) All transfers out for UNIVERSITY CENTER disbursements must also be accompanied by supporting documentation, in the format required by the Otsego County Treasurer.

(iv) UNIVERSITY CENTER shall attest to the completeness and accuracy of the supporting documentation submitted for all deposits and disbursement transfers. The County will rely on the documents to be complete and accurate upon submission. UNIVERSITY CENTER further attests that the deposits and disbursement transfers have been subject to the appropriate level of review before submission.

D. FUNDS

(i) Unrestricted Fund

a. All revenues raised by rates, fees, and charges of UNIVERSITY CENTER shall be used primarily to compensate full-time staff and shall be used at the sole discretion of the UNIVERSITY CENTER. The unrestricted fund general ledger shall be maintained by UNIVERSITY CENTER.

(ii) Restricted Fund

a. Millage revenues shall be deposited in this Fund as follows:

(1) Prior to March 1st, and as soon as received by the County Treasurer such taxes as have been received by the County Treasurer shall be deposited in accordance with applicable Michigan Law, and

(2) On May 1st, or as soon thereafter as the County Treasurer receives such taxes from the delinquent tax revolving fund, the balance of such taxes.

b. The revenues in the Restricted Fund shall provide for the payment of the UNIVERSITY CENTER's current expenses of building operation and maintenance as may be necessary to maintain UNIVERSITY CENTER building and contents in good repair and working order, and to satisfy the long-term debt obligations of the UNIVERSITY CENTER's bonded debt.

c. The Restricted Fund general ledger shall be maintained by the County and the UNIVERSITY CENTER. A general ledger activity report for the Restricted Fund will be forwarded to UNIVERSITY CENTER monthly by the County. UNIVERSITY CENTER shall reconcile the balances per this report to the balances in its general ledger on a monthly basis.

(iii) UCMAN Fund

a. The UNIVERSITY CENTER, through fees and contributions, realizes revenue for the purpose of providing select fiber and wireless internet service within a fifteen mile radius of Otsego County's Alpine Center Complex.

b. A separate enterprise fund shall account for the activities of UCMAN.

c. The UCMAN general ledger shall be maintained the UNIVERSITY CENTER.

(iv) University Center Advertising, Inc.

a. University Center Advertising, Inc. is a for-profit corporation formed for the purpose of advertising the University Center, community events, and for selling advertising space on a billboard located along I-75 in the County.

b. A separate enterprise fund shall account for the activities of University Center Advertising, Inc.

c. The University Center Advertising, Inc. general ledger shall be maintained by the UNIVERSITY CENTER.

E. SURPLUS/DEFICIT

(i) Surplus

a. Any surplus realized by UNIVERSITY CENTER will be retained by UNIVERSITY CENTER. Any uses of surplus funds shall be included in the University Center's budget.

(ii) Deficits

a. Should any year's operations result in a deficit (other than a planned reduction of fund balance that has been previously approved by the Commissioners), UNIVERSITY CENTER agrees to:

i. Immediately meet with the Otsego County Budget and Finance Committee to develop a satisfactory deficit correction plan, which may include increased fees or reduced expenses.

ii. Should this action prove to be insufficient to correct the deficit operations, UNIVERSITY CENTER agrees to revise the plan, and

further increase fee revenue or cut expenditures to ensure that the deficit will be repaid in the next three quarters.

iii. Failure to operate without a deficit may result in termination of this agreement by the County.

F. ASSETS

(i) All assets of UNIVERSITY CENTER are the property of the County. This includes (but is not limited to) the building and contents, all assets of UCMAN, including the fiber, and the electronic billboard.

(ii) Accordingly, UNIVERSITY CENTER shall follow the Otsego County Capital Asset Disposal Policy.

(iii) UNIVERSITY CENTER will provide an updated list of all Capital Assets to the Otsego County Finance Department annually, each January for the preceding year.

(iv) The County shall provide property insurance, addressed in the PROPERTY INSURANCE section of this document.

G. LONG-TERM DEBT

(i) All long-term debt incurred by UNIVERSITY CENTER must first be approved by the Commissioners, along with a financial plan to satisfy all debt requirements, submitted by UNIVERSITY CENTER.

(ii) In the event of default of payments of long-term debt, refer to the EVENTS AND REMEDIES OF DEFAULT section of this document.

H. CAPITAL IMPROVEMENT PLAN

(i) UNIVERSITY CENTER shall submit annually, along with its proposed budget, by October 1st, a five-year plan containing a list of planned building, equipment, and other such purchases and major repairs and maintenance on such items.

(ii) The plan and all such capital expenditures shall be approved by the Commissioners by December 31st, as part of the budget approval process.

I. FIXING AND REVISING CHARGES

The UNIVERSITY CENTER shall propose rates and charges to the COUNTY for the use of the Facility by residents of the County, the general public and educational institutions. After approval of the County, rates shall be fixed and revised from time to time by the UNIVERSITY CENTER to produce the foregoing amounts, and the UNIVERSITY CENTER covenants and agrees to maintain at all times such rates for services furnished by the Facility as shall be sufficient to provide for the foregoing.

J. OPERATING YEAR

(i) It is the expectation of the County to levy the full UNIVERSITY CENTER millage permitted by law beginning in **December of 2015**.

(ii) UNIVERSITY CENTER shall have, as its operating year, one which shall coincide with the County's fiscal year which is the calendar year beginning in January. With the consent of the UNIVERSITY CENTER, the County may levy less than the full millage.

IV. MAINTENANCE AND REPAIRS

A. REPAIRS - PREMISES

(i) UNIVERSITY CENTER shall, at its own expense, at all times during the term of this Agreement, keep the equipment and premises in good condition and repair, and shall make all necessary and desirable repairs, restorations and replacements, both structural and nonstructural, foreseen or unforeseen, and shall use all reasonable precautions to prevent waste, damage or injury.

B. REPAIRS - EXTERNAL

(i) UNIVERSITY CENTER shall, at its own expense, also maintain in good repair and free from dirt, snow, ice, rubbish and other obstructions or encumbrances, the sidewalks, parking areas, yards, plantings, gutters and curbs in front of and adjacent to the premises.

V. OPERATION AND MAINTENANCE

A. OPERATION AND MAINTENANCE

UNIVERSITY CENTER shall, at its own expense, at all times during the term of this Agreement, operate and maintain the equipment and the premises.

VI. ALTERATIONS

A. ALTERATIONS TO THE PREMISES

Upon approval of the Commissioners, UNIVERSITY CENTER shall make such alterations, changes, additions or improvements in or to the interior or exterior of the premises as it shall determine to be beneficial.

B. COSTS AND EXPENSES OF ALTERATIONS

All alterations and improvements shall be at UNIVERSITY CENTER's sole expense.

C. OWNERSHIP OF IMPROVEMENTS

All alterations and improvements shall be the property of the County.

VII. PROPERTY INSURANCE

A. COST OF INSURANCE

The County, shall provide property insurance, which shall cover all real and personal property on the premises on a 100% replacement cost basis. Premiums for insurance required to be carried upon or with respect to the premises or the use thereof shall be deemed operation and maintenance expenses.

B. POLICY TYPE

Such policy shall be an all risks policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without limitation, flood, theft, vandalism, wind, lightning, act of war or terrorism, and malicious mischief. Coverage shall also include the cost of extra expense, for a period of 12 months, incurred by reason of the total or partial loss or damage to the premises caused by an insured peril.

VIII. LIABILITY INSURANCE

A. COST OF INSURANCE

UNIVERSITY CENTER, at its expense, shall provide comprehensive/commercial general liability insurance protecting UNIVERSITY CENTER, the County and the Commissioners of the County, the members of the UNIVERSITY CENTER Board and their respective agents, officers and employees.

B. POLICY TYPE

(i) Such insurance shall provide coverage for the defense of actions brought against UNIVERSITY CENTER, its Board, Officers, and Employees for, including but not limited to, general liability, negligence, malfeasance, misfeasance, errors, omissions, neglect, damages, intentional acts, or other actions arising out of the operation, maintenance and activities of UNIVERSITY CENTER.

(ii) Such insurance shall be in limits of not less than $1,000,000 per occurrence for injury or death to any one person, not less than $3,000,000 per occurrence for injury or death to more than one person, and not less than $500,000 per occurrence for property damage.

C. NAMED INSUREDS

(i) UNIVERSITY CENTER and the County shall all be named insureds on all insurance policies required hereunder and all insurance proceeds shall be payable to UNIVERSITY CENTER and the County according to their respective interests.

(ii) Upon request, the UNIVERSITY CENTER or UNIVERSITY CENTER Board shall provide the County with certified copies of the insurance policies or other evidence indicating that the insurance is in effect.

(iii) In addition, UNIVERSITY CENTER or the UNIVERSITY CENTER Board shall be notified in writing at least thirty (30) days prior to cancellation, non-renewal or any material reduction of the any coverage.

(iv) All insurance maintained pursuant to this Agreement shall contain a clause or endorsement under which the insurer waives all rights of subrogation against any and all of the parties to this Agreement and their respective officers, commissioners, agents, and employees, with respect to losses payable under the policy.

(v) Claims for loss due to damage to the premises under any policies maintained pursuant to this Agreement shall be adjusted with the insurance companies by the County after advice from UNIVERSITY CENTER or the UNIVERSITY CENTER Board.

(vi) The proceeds of any insurance shall be paid to the County, which shall deposit the funds in the capital improvement fund for the purpose of paying the cost of repair and restoration of the UNIVERSITY CENTER premises and equipment.

(vi) All policy forms, limits and deductibles shall be subject to approval by the County and UNIVERSITY CENTER.

IX. FACILITY TO BE OPERATED IN CONNECTION WITH M-TEC: COUNTY RIGHTS TO USE THEREOF: M-TEC RIGHTS OF ACCESS

The parties hereto acknowledge that the Facility was constructed as a part of a joint building the balance of which shall be owned and operated by Kirtland Community College. The County shall have the right to utilize that part of the facilities located in the Facility comprising the University Center. It is understood and agreed that Kirtland Community College shall be permitted to have ingress and egress to and through the Facility.

X. OPERATIONAL INTEGRITY

A. OPERATIONS

The County covenants and agrees with UNIVERSITY CENTER, subject to the performance by UNIVERSITY CENTER of all of the terms, covenants, and conditions of this Agreement to permit UNIVERSITY CENTER to operate the service for the County. UNIVERSITY CENTER may employ such persons in such capacities as it deems advisable and may make such rules and regulations as it deems advisable and necessary to assure the efficient management and operation of UNIVERSITY CENTER, except that any vacancy in the University Center Director Position shall be filled in accordance with subsection B, subparagraph (ii) stated below. Further, UNIVERSITY CENTER, with the approval of the UNIVERSITY CENTER Board, shall have the authority, power, and ability to obtain, lease, purchase, acquire or transfer, sell, or dispose of such equipment as is necessary to carry out its obligations to the citizens of Otsego County.

B. BOARD MEMBERSHIP

Recommendations for UNIVERSITY CENTER Board Membership shall be forwarded to the County Board for approval.

C. PERSONNEL

(i) All personnel staffing UNIVERSITY CENTER equipment and premises shall be deemed to be employees of UNIVERSITY CENTER.

(ii) The County Administrator (or designee(s) of the County Administrator) shall be on the hiring committee for the UNIVERSITY CENTER Director position in the event of a vacancy. The Commissioners shall have the final approval on selecting the new Director.

(iii) If applicable, the County Administrator (or designee(s) of the County Administrator) shall take part in the union negotiation process. The Commissioners shall have final approval of all union contracts.

C. CONTRACTING

UNIVERSITY CENTER, with the approval of the UNIVERSITY CENTER Board, shall have the exclusive authority to enter into contracts or agreements for services as deemed necessary to carry out its obligations to the citizens of Otsego County.

XI. INSPECTION

Without notice and at reasonable times of the day, the County, through its officers, employees or agents, may enter upon the premises at any time during the term of this Agreement for the purpose of inspecting the premises and determining whether UNIVERSITY CENTER is complying with the covenants, Agreements, terms, and conditions of this Agreement.

XII. EVENTS AND REMEDIES OF DEFAULT

A. EACH OF THE FOLLOWING SHALL CONSTITUTE AN EVENT OF DEFAULT:

(i) UNIVERSITY CENTER fails to submit and operate within the budget required by Section III.

(ii) Any representation or warranty made by UNIVERSITY CENTER in this Agreement, or which is contained in any certificate or other document delivered at any time pursuant to this Agreement proves to have been false, incorrect or incomplete in any material respect when made or deemed to be made.

(iii) UNIVERSITY CENTER fails to observe or perform any covenant or Agreement contained in this Agreement or in any certificate or other document delivered pursuant to this Agreement (other than those covered by clause (i) above) for thirty (30) days after written notice, as set forth herein, thereof shall have been given to UNIVERSITY CENTER by the County.

(iv) UNIVERSITY CENTER files a petition in bankruptcy, insolvency, dissolution or for reorganization or arrangement under the laws of the United States or of any state, or voluntarily takes advantage of any such law, or act, or is dissolved, (voluntarily or involuntarily) or makes an assignment for the benefit of creditors.

(v) If involuntary proceedings under any bankruptcy law or insolvency act or for the dissolution of a corporation are instituted against UNIVERSITY CENTER, or if a receiver or trustee is appointed for all or substantially all of the property of UNIVERSITY CENTER, and such proceedings are not dismissed or such receivership or trusteeship vacated within ninety days after such institution or appointment.

(vi) UNIVERSITY CENTER ceases to operate or indicates its intention to do so.

(vii) UNIVERSITY CENTER defaults on any long-term debt covenants or payments.

B. REMEDIES IN EVENT OF DEFAULT

If any event of default as defined in this Agreement shall occur and be continuing for a period of 90 days or more following written notice of default:

(i) The County shall have the right, but not the obligation, to take any of the following action:

(a) The County may terminate this Agreement.

(b) The County, through its Commissioners, officers, agents or employees, shall, at all times, have the right to enter the premises for inspection as set forth above, and to prevent waste, damage or destruction.

(c) In the event of financial insolvency, bankruptcy, or cessation of operations, all assets (including but not limited to: cash, investments, receivables, and capital assets), all liabilities (including long-term debt), and fund balances for all UNIVERSITY CENTER funds shall revert to the County immediately.

(ii) The rights provided for in this Section are cumulative and are not exclusive of any other right, privilege, or remedy provided by law or in equity.

XIII. WAIVERS

A. FAILURE TO DELAY OR EXERCISE

No failure or delay on the part of the County or UNIVERSITY CENTER in exercising any right, power, or remedy contained in this Agreement shall operate as a waiver of any right, duty, requirement, or obligation provided by this Agreement.

B. PARTIAL EXERCISE

No single or partial exercise by the County or UNIVERSITY CENTER of any right or remedy shall preclude other or future exercise thereof or the exercise of any other right or remedy.

XIV. ASSIGNMENT

UNIVERSITY CENTER and the County agree not to sell, assign, mortgage, pledge or in any way transfer this Agreement.

XV. NOTICE

All notices, requests, and other communications to any party to this Agreement shall be in writing and shall be given to each party at its address set forth below or such other address as such party may hereafter specify, in writing:

If to UNIVERSITY CENTER:	UNIVERSITY CENTER GAYLORD 80 Livingston Blvd Gaylord, MI 49735 Attn: Executive Director
If to the County:	County of Otsego 225 West Main Street Gaylord, MI 49735 Attn: Otsego County Administrator

XVI. SEVERABILITY

If any one or more of the provisions contained in this Agreement or any document, instrument or Agreement required pursuant to this Agreement should be declared invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired. The document shall be read as if the provision or provisions are null, void, non-existent, and severed from this Agreement.

XVII. GOVERNING LAW

This Agreement, and the rights and obligations of the parties under this Agreement, shall be governed by, construed, and interpreted in accordance with the laws of the State of Michigan.

XVIII. CAPTIONS

The captions contained in this Agreement are for convenience, for reference only and shall not limit or define the provisions of this Agreement, or affect the interpretation or construction thereof.

XIX. OTHER AGREEMENTS

This Agreement, once properly executed, supersedes, replaces and abrogates all prior agreements between the parties regarding this same subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the day and year first above written.

OTSEGO COUNTY UNIVERSITY CENTER

By:_____
LARRY EDWARDS
Its: Chairman

COUNTY OF OTSEGO

By:_____
KENNETH BORTON
Chairman, Otsego County Board of Commissioners