

In response to several requests for its publication, the Office of the General Counsel has released the following text of the 1984 agreement between the University and The Daily Pennsylvanian. Under the agreement, which was occasioned by the DP's intention to incorporate as an entity independent of the University, the DP took full responsibility for its operations, including the content of its newspaper. Appropriately, the University agreed not to discipline DP staff for the content of the publication. The agreement, which runs through June 30, 2004, also specifies the terms of the DP's lease of University office space and permits the DP to distribute newspapers in campus buildings. — Office of the General Counsel

Agreement for the Separate Incorporation of The Daily Pennsylvanian

[January 20, 1984, with Amendment Agreement June 30, 1984]

This Agreement is made this 20th day of January, 1984 by and between The Trustees of the University of Pennsylvania (the "University"), a Pennsylvania non-profit corporation, and The Daily Pennsylvanian (the "DP"), an unincorporated association of students which publishes a daily newspaper;

Witnesseth

Whereas, the University and the DP have entered into a Memorandum of Agreement dated July 21, 1980 and effective as of July 1, 1980 (the "Memorandum of Agreement") which sets forth the respective rights and obligations of the parties thereto; and

Whereas, the DP and the University desire that the DP incorporate separate and apart from the University and the DP fully intends to so incorporate as of July 1, 1984; and

Whereas, the DP and the University desire to terminate the Memorandum of Agreement and enter into a new arrangement taking into account the impending separate incorporation of the DP;

Whereas, the University recognizes the substantial educational benefits to the student members of the University community of the maintenance of an independent student newspaper such as the Daily Pennsylvanian;

Now Therefore, the parties hereto, intending to be legally bound hereby, agree as follows:

I. Agreement to Incorporate—Obligations of DP in Connection with Incorporation.

1.01. The DP shall properly incorporate, taking all necessary and appropriate steps to establish itself as a separate non-profit corporation under Pennsylvania law, as of July 1, 1984. Should the DP, after good faith effort, fail to obtain tax exempt status under Section 501(c)(3) of the Internal Revenue Code, the DP shall promptly notify the University in writing. Upon such notification, the parties shall meet within a reasonable time to renegotiate this Agreement in light of the changed circumstances. Until a new agreement is reached, or until July 1, 1985 whichever is earlier, the terms of this Agreement shall govern.

1.02. The DP shall pay all costs of incorporation including, without limitation, legal cost, filing fees and accounting fees.

1.03. Effective July 1, 1984, the DP shall assume all payroll functions and payroll services presently performed by the University. The incorporated DP shall pay its own employees and shall be responsible for any pension benefits or other benefits due or to become due at anytime for its past, current or future employees.

1.04. The incorporated DP shall have no right to use University work-study students or funds for its operations. Should the DP, upon its incorporation, desire to apply for eligibility as a work-study status employer through the Commonwealth of Pennsylvania, the DP shall bear any cost of such application. The University shall cooperate with the DP in its efforts, if any, to obtain work-study status but shall not be liable for the costs thereof or for any failure to obtain work-study status.

1.05. The incorporated DP shall be responsible for the payment of any and all taxes assessed against it, including, without limitation, unemploy-

ment tax, state and federal corporation income taxes, state sales tax and city mercantile and business tax.

1.06. The incorporated DP shall be responsible for any payment due for Worker's Compensation.

1.07. The University recognizes the DP as a valid student activity.

1.08. The term of this Agreement shall be from the date hereof to June 30, 2004.

II. University Payment Obligations to DP— DP Obligations to Provide Newspaper on Campus.

2.01. The DP agrees to distribute on the University campus at least twelve thousand (12,000) newspapers on at least ninety percent (90%) of the class days between September 1 and May 31 every year up to and including the year 2004. The University will allow the DP to distribute newspapers in campus buildings and facilities in a nondisruptive fashion at any time such buildings or facilities are open.

It is understood and agreed, however, that the DP shall have no obligation to distribute said newspapers and no liability for failure to do so if such failure is caused by strikes, lockouts, labor disputes, government acts, government rules or regulations, acts of God or acts of war or any other cause beyond the DP's control.

For purposes of this section 2.01, "campus" means those buildings on or between 33rd and 41st Streets and on or between Chestnut and Spruce streets.

2.02. The University, in consideration of the distribution of newspapers on campus and the rental payments under Section 3.03, agrees to pay the DP the following amounts:

on or within ten (10) days of July 1, 1984 — \$14,500

on or within ten (10) days of July 1, 1985 — \$ 8,500

on or within ten (10) days of July 1, 1986 — \$ 5,500

The University shall have no obligation to make such payments or payments of a similar nature after July 1, 1986.

2.03. The University agrees to purchase, at a minimum, \$8,000 worth of advertising space in the DP "Campus Events" listings (or its equivalent as mutually agreed upon in writing) during each of the three (3) periods from (i) July 1, 1984 through June 30, 1985, (ii) July 1, 1985 through June 30, 1986 and (iii) July 1, 1986 through June 30, 1987. The University will be charged the DP's applicable "University rate" at the time of ordering for all such advertising and will be billed bi-annually.

It is understood and agreed that for purposes of this Section 2.03, "University rate" shall mean the discount rate customarily charged students, faculty and administration for items placed in the DP, such rate being lower than the DP's "local open" rate for outside advertisers.

Advertisements placed by the University in columns other than "Campus Events" or its equivalent as above described do not count towards fulfillment of the University's \$8,000 minimum obligation. It is agreed, however, that the DP shall charge the "University rate" for such other advertising, if any, placed by the University.

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2.04. The DP represents and warrants that it intends to remain student-controlled, which means that students do and will constitute at least two-thirds (2/3) of the DP's Board of Directors, at least two-thirds (2/3) of its officers, at least two-thirds (2/3) of its editors and at least two-thirds (2/3) of its reporters.

Should the DP cease to be student-controlled, as defined above, the University shall have the right to terminate this Agreement upon sixty (60) days' written notice of the election to terminate and of its reasons for terminating. The DP shall, however, have a thirty day period from the date of said notice to cure the reason(s) for said termination. In the event the DP effects such a cure, this Agreement shall continue as if there had been no notice of termination.

2.05. The editors of the DP shall have the right to publish material without the prior approval of the University. The DP shall have the sole responsibility to determine the suitability and legality of material to be published and provide appropriate protection and defense against any and all claims against it arising out of its activities. The DP shall indemnify the University against all claims brought against it as a result of the actions of the DP, and the newspaper shall contain a disclaimer acceptable to the University describing the independence of the DP from the University.

2.06. The DP has sole responsibility and authority to answer, if it deems appropriate, criticisms of its editorial policy. Other members of the University community have no authority to answer, and are not responsible for, criticisms of the DP and may forward such complaints to the DP.

2.07. The materials and records of the DP are confidential and shall not be subject to review by the University without prior consent of the DP except for the access to financial records permitted by Section 3.03 hereof.

2.08. No one other than the Board of Managers of the DP has the authority to discipline in any way a staff or Board member for the content of materials published in the DP. Furthermore, the University may not discipline in any way a staff or Board member of the DP for other actions except in accordance with the University Judicial System Charter or other established University procedures.

III. Rental of Space to the DP/University's Obligation to Provide Services

3.01. The University hereby leases to the DP and the DP hereby leases from the University the space described in Exhibit A hereto (the "Leasehold") under the terms and conditions of this Agreement.

3.02. The University retains the right to require the DP to vacate the Leasehold and to occupy a mutually agreeable comparable and suitable space upon nine (9) months' written notice to the DP.

Should the parties fail to agree upon a comparable and suitable space within three (3) months of written notice to vacate the DP, the University may require the DP to vacate the Leasehold and occupy a space chosen by the University and located on campus of substantially the same or greater square footage and containing substantially the same accoutrements as the Leasehold.

The costs of preparing the comparable and suitable space and all moving and relocation expenses shall be borne by the University. The preparation of the comparable and suitable space shall be complete before the DP shall be required to vacate the Leasehold.

Hereinafter the term "Premises" shall be used to mean whichever space, the Leasehold or comparable and suitable space under this Section 3.02, is occupied by the DP.

For purposes of this Section 3.02, "campus" shall have the same meaning as recited in Section 2.01 hereinabove.

3.03. In consideration of its right to occupy the Premises, the DP shall pay rent in the following amounts:

July 1, 1984 - July 1, 1988 — \$1.00

July 1, 1989 - July 1, 1993 — One percent (1%) of DP "Gross Receipts" (as hereinafter defined) of the fiscal year ending June 30 of the previous calendar year payable on or within ten (10) days of July 1, 1989 and on or within ten (10) days of each July 1 thereafter up to and including July 1, 1993.

July 1, 1994 - July 1, 1998 — One and one-half Percent (1.5%) of DP Gross Receipts (as hereinafter defined) of the fiscal year ending June 30 of the previous calendar year payable on or within ten (10) days of July 1, 1994 and on or within ten (10) days of each July 1 thereafter up to and including July 1, 1998.

July 1, 1999 - July 1, 2003 — Two Percent (2%) of DP Gross Receipts (as hereinafter defined) of the fiscal year ending June 30 of the previous calendar year payable on or within ten (10) days of July 1, 1999 and within ten (10) days of each July 1 thereafter up to and including July 1, 2003.

In lieu of the payment schedule set forth in the three paragraphs immediately above, the DP may, at its option, make quarterly payments to the University, said quarterly payments to be one-fourth of the amount which, under the payment schedule set forth in the three paragraphs immediately above, would have been due to the University on the previous July 1.

For purposes of this Agreement, Gross Receipts shall mean all gross revenues, receipts, incomes, payments, offsets, or fees received by the DP or to which the DP shall become entitled, from whatever source derived, including, without limitation, grant, advertising, subscription, and DP Graphics revenues, excepting only donations, alumni contributions or grants to a specifically delineated endowment fund. It is understood and agreed, however, that donations, alumni contributions or grants utilized in the DP operating budget (whether direct or taken from any endowment fund) constitute Gross Receipts under this Agreement. Interest on any endowment fund which remains in the endowment fund does not constitute Gross Receipts under this Agreement. Interest on any endowment fund utilized in the DP operating budget shall constitute Gross Receipts under this Agreement.

The DP shall provide a statement of Gross Receipts and operating expenses for the previous fiscal year on or before every June 1st, beginning June 1, 1984 and ending June 1, 1988. The DP shall provide the University with a statement of Gross Receipts from the previous fiscal year on or before every June 1st, beginning June 1, 1989 and ending June 1, 2004 consisting of a detailed statement of Gross Receipts and the manner of computation thereof.

Upon reasonable notice during regular business hours, the University or its agents or accountants may inspect all financial books and records of the DP, including tax returns for any fiscal year between July 1, 1987 and June 30, 2002, for the purpose of verifying the statement of Gross Receipts. The DP may, at its option, provide the University with audited financial statements (prepared by an independent auditor acceptable to the University in accordance with generally accepted accounting principles) in lieu of the University's inspection right. Upon good cause shown, the University may exercise its right to audit regardless of the offer of DP financial statements.

Should the inspection disclose an understatement (greater than 10%) of Gross Receipts, the DP shall pay all University inspection expenses. In any event, upon the finding of a discrepancy between the statement of Gross Receipts and actual receipts, the percentage rent provided in this Section 3.03 shall be paid upon the basis of actual receipts.

3.04. So long as it is not in default hereunder and subject to the University's termination rights under Section 2.04, the DP shall have the right to occupy the Premises for a term beginning on the date hereof and ending on June 30, 2004 (the "Term").

3.05. During the Term, the University shall provide the DP Premises, at no additional cost or rental, those utilities, maintenance, security and housekeeping services customarily supplied in the ordinary course of business by the University to its own administrative offices. It is understood and agreed, however, that with respect to damage to property of the DP of less than \$3,000 in any single instance, the University shall not be in breach hereof or be liable for temporary failures to provide electricity, regardless of cause. In no event shall the University be liable for consequential or incidental damages arising from any failure to provide electricity or for damages arising from any failure to provide electricity for causes outside the University's control. In choosing its equipment and property, the DP shall take into consideration the expectation that it may experience temporary losses of electricity. The University shall not be liable for damage to equipment and property that is caused by the DP's choice of equipment or property unreasonably sensitive to temporary losses of electricity.

During the Term, the University shall provide intramural and other mail services and access to the campus telephone system at its customary rates charged to the budgets of University administrative offices.

During the Term, the University shall make available six (6) parking spaces for the DP at the parking lot owned by the University nearest the Premises, if practicable, or, in any event, taking security considerations into account, at a parking lot owned by the University reasonably close to the Premises, with the rental rate for such space to be no more than the rate charged to University employees for such spaces.

It is understood and agreed, however, that the University shall have no obligation to provide the utilities and services above and no liability for any failure to so provide if such failure is caused by strikes, lockouts, labor disputes, government acts, governmental rules or regulations, acts of God or acts of war or any other cause beyond the University's control.

3.06. The DP shall not assign, mortgage or pledge this Agreement or sublet the Premises or any part thereof without prior written consent of the University.

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3.07. The DP shall not use or occupy, or permit others to use or occupy, the Premises or any part thereof for any purpose other than the normal operations of the DP.

3.08. No material alterations, additions or improvements to the Premises or any part thereof shall be made without first submitting a detailed description thereof to the University and obtaining the University's prior written approval; provided, however, that such approval shall not be unreasonably withheld.

3.09. Upon reasonable notice to the DP, the DP shall permit the University's agents or employees or any other person authorized in writing by the University to enter the Premises, should the University so elect, for the purposes of making alterations, improvements and repairs to the building or for any purpose in connection with the operation and maintenance of the building, so long as such actions will not materially interfere with the normal operations of the DP. In the event such alterations, improvements, repairs or maintenance materially interfere with the DP's normal operations, the University shall be required to provide alternate comparable and suitable space as provided in Section 3.02 above.

3.10. This Agreement, insofar as it constitutes a lease of the Premises, shall be subject and subordinate to the lien of any mortgages, ground rents and other encumbrances now existing or hereafter created on the Premises and/or the building of which the Premises forms a part without the necessity of any further instrument or act on the part of the DP. The DP agrees, upon the request of the University, to execute, acknowledge and deliver such instruments confirming that the Agreement is subordinate as shall be desired by any mortgagees or proposed mortgagees or by any person holding or about to acquire a ground rent or other encumbrance. Nothing in this Section shall affect the DP's right to notice under Section 3.02 hereof prior to requiring the DP to vacate the Leasehold.

3.11. The DP shall have the right to terminate this Agreement only insofar as it constitutes a lease of the Premises (i.e. Sections 3.01-3.10) upon nine (9) months written notice to the University. Any such lease termination shall have no effect upon the remaining obligations of the DP hereunder.

3.12. The University recognizes and hereby acknowledges that it has no claim to or title in the assets identified in Exhibit "B" to be attached hereto within thirty (30) days and made a part hereof. The DP accepts full responsibility for all liabilities identified in Exhibit "C," to be attached hereto within thirty (30) days and made a part hereof. The DP shall indemnify the University from and against any and all claims arising from such liabilities.

IV. Miscellaneous

4.01. The DP shall acquire and maintain at all times publishers' libel and slander insurance in the amount of not less than one million dollars (\$1,000,000), naming the University as an additional insured. During the Term, the DP shall maintain a comprehensive general liability insurance policy of not less than five million dollars (\$5,000,000), naming the University as an additional insured. The University shall bear any additional cost or premium by having it named as an additional insured.

4.02. The DP and the University hereby release each other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation for any loss or damage to property caused by fire or any casualty covered by the releasor's insurance policies, provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice or affect the right of the releasor to recover thereunder.

The DP and the University each agrees that it will request its insurance carriers to include in its policies such a clause or endorsement. If extra cost shall be charged therefor, each party shall advise the other thereof and of the amount of the extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so.

4.03. The DP's current indebtedness to the University for the balance of a \$50,000 loan with interest at 12% per year under a loan agreement executed by the DP on April 28, 1980 (the "Loan") is in no way affected by this Agreement. The incorporated DP shall assume liability for the Loan immediately upon incorporation and execute any document necessary to effectuate such assumption.

4.04. The DP represents that this Agreement has been approved by the DP Board of Managers and has been executed by a duly authorized officer of the DP with full authority to bind the DP.

4.05. The University represents that this Agreement has been executed by a duly authorized officer of the University with full authority to bind the University.

4.06. Notwithstanding the provisions as to the term of this Agreement contained in Section 1.08, so long as the DP remains student-controlled, as defined in Section 2.04, the University will not object to the DP's using "The Daily Pennsylvanian" as the name of its student newspaper. For the Term and so long as the DP is not in default hereunder, the University will not object to the DP's use of the University seal (and its variations) as part of its logo(s) and further does not object to the DP's use of the phrase "The Independent Newspaper of the University of Pennsylvania" to describe itself.

4.07. Notices hereunder shall be directed in writing to the following address or such other address as one party shall notify the other in writing:

University:

President
Office of the President
100 College Hall/CO
University of Pennsylvania
Philadelphia, PA 19104

with a copy to:

General Counsel
Office of the General Counsel
110 College Hall/CO
University of Pennsylvania
Philadelphia, PA 19104

DP:

Daily Pennsylvanian
4015 Walnut Street/TP
Philadelphia, PA 19104

with a copy to:

Daniel Segal, Esquire
Hangley Connolly Epstein Chicco Foxman & Ewing
429 Walnut Street
Philadelphia, PA 19102

4.08. The parties hereto agree that at any time upon the reasonable request of a party, the parties shall meet for the purpose of reviewing the terms of this Agreement and shall undertake, in good faith, to renegotiate the terms hereof in light of their experiences hereunder.

Neither party shall be obligated to revise any term of this Agreement or to terminate the Agreement in order to fulfill the obligation of good faith renegotiation under this Section 4.08.

4.09. The incorporated DP, by a duly authorized officer and pursuant to a valid resolution of the corporation, shall execute this Agreement promptly upon incorporation and shall assume in writing all of the DP's obligations and liabilities hereunder.

Should the incorporated DP refuse to assume in writing the obligations or liabilities of this Agreement, the University shall have the right immediately to terminate the Agreement upon written notice to the DP.

4.10. The Memorandum of Agreement is hereby terminated as of June 30, 1984.

4.11. This Agreement may be executed in separate counterparts.

4.12. This Agreement contains the entire agreement between the parties with respect to the subject matter covered herein. It shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

In Witness Whereof, the parties have executed this Agreement as of the day and year first above-written.

Witness (*signed*)
Michael E. Weiner

Witness (*signed*)
Marianne Fogarty

The Trustees of the
University of Pennsylvania
By: Sheldon Hackney,
President (*signed*)

The Daily Pennsylvanian
By: Peter S. Canellos,
[Executive Editor] (*signed*)

Agreement for the Separate Incorporation of The Daily Pennsylvanian Amendment Agreement and Exhibits

Amendment Agreement

This agreement, made this 30th day of June, 1984, is by and among The Trustees of the University of Pennsylvania (the "University"), a Pennsylvania non-profit corporation, and The Daily Pennsylvanian, Inc. (the "incorporated DP"), a Pennsylvania corporation; and The Daily Pennsylvanian, an unincorporated association of students which publishes a daily newspaper (the "unincorporated DP").

Witnesseth

Whereas, the University and the unincorporated DP have entered into an Agreement dated January 20, 1984 (the "DP Agreement") which provides for the separate incorporation of the DP and sets forth the respective rights and obligations of the parties herein and thereto;

Whereas, pursuant to the DP Agreement, the unincorporated DP has formed the incorporated DP, which desires to receive the benefits of the DP Agreement and assume the duties and obligations of the unincorporated DP thereunder;

Whereas, the parties desire to amend the DP Agreement to substitute the incorporated DP for the unincorporated DP as a party to the DP Agreement on the terms and conditions set forth below;

And Now, Therefore, the parties hereto, intending to be legally bound, agree as follow:

1. Except as otherwise provided below, the incorporated DP shall be substituted for the unincorporated DP as a party to the DP Agreement and shall perform and assume all obligations, duties and liabilities of the unincorporated DP set forth in the DP Agreement and shall receive from the University all benefits and perquisites accorded to the unincorporated DP under the DP Agreement. The executed DP Agreement is attached hereto as Exhibit "A".

2. The unincorporated DP shall have no further rights or obligations under the DP Agreement.

3. Exhibit "B", which was to be attached to the DP Agreement, is attached hereto as Exhibit "B".

4. Exhibit "C", which was to be attached to the DP Agreement, is attached hereto as Exhibit "C".

5. Section 4.06 of the DP Agreement shall be amended to read as follows:

Notwithstanding the provisions as to the term of this Agreement contained in Section 1.08, so long as the DP remains student controlled, as defined in Section 2.04, the University will not object to the DP's use of "The Daily Pennsylvanian" as the name of its student newspaper, or to the DP's use of the name "34th Street" as the name of a magazine supplement to the student newspaper or to the DP's use of the name "DP Graphics" as the name of its printing business. For the Term and so long as the DP is not in default hereunder, the University will not object to the DP's use of the University shield (and its variations) as part of its logo(s) and further does not object to the DP's use of the phrase "The Independent Newspaper of the University of Pennsylvania" to describe itself.

6. This Agreement contains the entire agreement among the parties with respect to the subject matter covered herein. It shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

In Witness Whereof, the parties have executed this Agreement as of the day and year first above-written.

The Trustees of the University Of Pennsylvania
By: Sheldon Hackney, President (*signed*)

The Daily Pennsylvanian, Inc.
By: Gwen Freyd, President (*signed*)

The Daily Pennsylvanian
By: Gwen Freyd, Executive Editor (*signed*)

Exhibit A

The Daily Pennsylvanian Leasehold

The Leasehold shall be the entire second floor of 4015 Walnut Street, Philadelphia, PA, 19104, which is approximately 7,630 gross square feet.

Exhibit B

The Daily Pennsylvanian Schedule of Assets

[A list of furniture, equipment and receivables, current as of 1984, made up the whole of Exhibit B.]

Exhibit C

The Daily Pennsylvanian Schedule of Liabilities

[A list of accounts payable and long-term obligations, current as of 1984, made up the whole of Exhibit C.]