



**ITN 14-004 DEVELOPMENT OF RESIDENTIAL HOUSING**

**ADDENDUM # 7**

**Subject: Draft Legal Documents Used for Potential Transaction**

**Date: December 9, 2014**

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ALL RESPONDENTS MUST ACKNOWLEDGE RECEIPT OF THIS ADDENDUM BY SIGNING BELOW AND SUBMITTING THIS EXECUTED DOCUMENT WITH YOUR PHASE II RESPONSE. FAILURE TO EXECUTE AND RETURN THIS ADDENDUM FORM MAY DISQUALIFY YOUR FIRM'S RESPONSE.

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This Addendum shall become part of your firm's Phase II response and the subsequent documents if applicable.

The following items are issued to, add to, delete from, modify and clarify the ITN and all associated documents. These items shall have full force and effect as the ITN and all associated documents.

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Signature: \_\_\_\_\_

**Invitation to Negotiate**  
**14-004 Development of Residential Housing**  
**Addendum No. 7**

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Attached are the following draft legal documents pertaining to the ITN:

- Ground Lease Agreement
- Operating Agreement

The University has prepared these documents and issued them at this date so that the Qualified Proposers and their legal counsel can review the documents fully and attend the January 2015 meetings fully prepared to discuss the legal terms. This review is an integral part of the meetings to be held with the Evaluation Committee prior to the formal negotiation of these two documents with the Negotiations Team.

These two documents are expected to be fully negotiated with the Qualified Proposers, with the Evaluation Committee on January 29, 2015 approving a Best and Final Offer recommended by the Negotiating Team. The documents are then submitted to the University's Board of Trustees on January 30, 2015. The documents then are issued in the Project Package to the Florida Board of Governors for their review and approval during their meeting on March 18-19, 2015. The documents are then expected to be executed by the University Board of Trustees on March 20, 2015.

**GROUND LEASE AGREEMENT**

**between**

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**

**and**

[\_\_\_\_\_]

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Exhibit H	Memorandum of Ground Lease
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## GROUND LEASE AGREEMENT

This **GROUND LEASE AGREEMENT** ("**Ground Lease**") is made as of the Effective Date (as hereinafter defined), by and between **FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, created pursuant to Chapter 2012-129, Laws of Florida ("**Landlord**") and [\_\_\_\_\_] ("**Tenant**"), a [\_\_\_\_\_]. Landlord and Tenant are each referred to herein as a "**Party**" and together, the "**Parties**".

### RECITALS:

**WHEREAS**, Landlord is an institution of higher education in the State of Florida;

**WHEREAS**, Landlord's institutional missions include teaching, research and service on the main campus of Florida Polytechnic University (the "**University**"), consisting of approximately one hundred seventy-one (171) acres (the "**Campus**");

**WHEREAS**, the availability of safe, quality on-campus student housing facilities on the Campus of the University which encompass convenient, well-appointed accommodations within proximity to classrooms, offices, and campus amenities is Landlord's objective in entering into this Ground Lease and related agreements;

**WHEREAS**, Landlord does not have sufficient student housing facilities available on the Campus to meet the current or projected demand for student housing facilities;

**WHEREAS**, Landlord's objectives include addressing student needs and the institutional mission by creating an environment which promotes a living/learning community concept; providing facilities and resources supportive of residents in and out of class activities; assuring residents a level of comfort and security in housing facilities either provided by Landlord or others on the Campus; accommodating a staffing structure which supports attainment of these goals; and satisfies housing needs in a cost-effective timely manner;

**WHEREAS**, Landlord, in an effort to use its resources in an efficient and effective manner, has determined that it is in Landlord's best interest to pursue an arrangement whereby a qualified private entity shall provide planning, programming and financial analysis, private financing, design, construction, operation and management of a state-of-the-art student housing facility and related improvements on the Campus;

**WHEREAS**, Landlord issued Florida Polytechnic University Development of Residential Housing ITN No.14-004 including the above terms, and Tenant submitted the best and final offer;

**WHEREAS**, Landlord desires to lease the Property (defined below) to Tenant, and Tenant desires to lease the Property from Landlord pursuant to the terms, conditions, covenants, and provisions of this Ground Lease and the terms of the Operating Agreement

dated \_\_\_\_\_, 2015 by and between Landlord and Tenant, as may be amended from time to time (the "**Operating Agreement**"); and

**NOW THEREFORE**, for and in consideration of the covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I  
PROPERTY

A. Demise and Description of the Property. Landlord does hereby lease, demise and let unto Tenant, and Tenant does hereby lease, rent and hire from Landlord, certain real property (the "**Property**") described on **Exhibit A**, being a portion of the Campus, for purposes of financing, designing, constructing, operating, and managing a resident student housing facility and related improvements (collectively referred to herein as the "**Student Housing Project**") on the terms outlined herein. The Property is leased by Landlord to Tenant in its current condition, "AS-IS, WHERE-IS, AND WITH ALL FAULTS". Tenant acknowledges and agrees that Tenant has had the opportunity to fully inspect the Property and accepts the Property "AS-IS, WHERE-IS, AND WITH ALL FAULTS".

B. Reservations With Respect to Demise. Tenant acknowledges that the demise under this Ground Lease is subject to any and all of the terms and provisions of the Operating Agreement, Management Agreement and Construction Contract (each of the foregoing being a "**Binding Agreement**" and collectively, the "**Binding Agreements**").

C. Use of Student Housing Project. Tenant shall use and occupy the Student Housing Project only for the Permitted Use (as defined herein) in accordance with the provisions of this Ground Lease and the Operating Agreement. The Permitted Use shall be: (1) designing, engineering, constructing, and operating the Student Housing Project that will include in the aggregate no less than [\_\_\_\_\_] gross square feet of space containing at least [\_\_\_\_\_] beds, approximately \_\_\_\_\_ square feet of University Designated Space, as hereinafter defined for Landlord's exclusive use and with a building footprint of approximately [\_\_\_\_\_] total square feet, (2) using the Student Housing Project to house Eligible Residents, as defined herein; (3) the provision of related services and amenities to Eligible Residents and for operating and managing the Student Housing Project and for no other purpose (collectively, the "Permitted Use"). "**Eligible Residents**" shall mean, in order of acceptance priority, (i) students registered in an academic program at the University, (ii) regular full time faculty of the University; (iii) visiting faculty serving at the University on a temporary basis; (iv) regular full-time staff of Landlord that Landlord has pre-approved in writing; and (v) groups participating in any activity sponsored by Landlord, or a conference, or program by a third party that Landlord has pre-approved in writing. The Student Housing Project shall not be used for any purpose other than a Permitted Use without the advance written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion and without regard to any

reasonableness standard or other limitation on such discretion. Specifically excluded from the Permitted Use is the use for providing food service, vending and retail operations.

D. Title to Improvements and Personalty.

(i) Landlord acknowledges and agrees that title to (i) all improvements comprising the Student Housing Project, including, but not limited to, all buildings, structures, Building Systems, as defined in (iv) below, fixtures, utility lines, pipes, connections and other infrastructure constructed or installed on the Property by Tenant, other than the utility lines, connections and other infrastructure which Tenant is required to transfer by any governmental authority to any governmental authority or to Landlord and (ii) any and all equipment, furniture, furnishings, appointments and other personal property to be located therein, regardless of whether such items are affixed or attached to the Property in any manner (collectively, the “**Personalty**”), whether now or hereafter acquired during the Initial Term or any Renewal Term (collectively, the “**Term**”), is and shall remain the sole property of Tenant during the Term. After the date the Term expires or this Ground Lease is terminated if it is terminated prior to the natural expiration of the Term, any Personalty left on the Property shall be deemed to be a part of the Student Housing Project unless Landlord provides Tenant notice of Landlord’s desire that Tenant remove the Personalty from the Property.

(ii) The Property is being leased by Landlord to Tenant, subject to all easements, restrictions and other matters recorded in the public records of Polk County which encumber the Property as of the Effective Date, and as may be amended from time to time, which are listed on **Exhibit B** attached hereto, and any agreements entered into by Landlord that encumber the Property and future documents of record as long as such future documents (i) do not unreasonably impair Tenant’s ability to use the Student Housing Project for the Permitted Use and (ii) do not unreasonably impair Tenant’s other rights under this Ground Lease (collectively, the “**Permitted Exceptions**”). Tenant has the sole right to claim all depreciation with respect to the Student Housing Project and Personalty during the Term.

(iii) Except as specifically provided herein, upon the expiration or the earlier termination of this Ground Lease, title to the Student Housing Project and any Personalty that Tenant has not been removed from the Property within the time period permitted for such removal shall automatically be transferred to Landlord or if Landlord requests, transferred by bill of sale or other documents reasonably requested by Landlord.

(iv) If and when Tenant transfers the Student Housing Project to Landlord, Tenant shall represent and warrant the following: (a) Tenant owns the Student Housing Project, (b) no other party holds a lien or any other interest related to the Student Housing Project, and (c) the Student Housing Project and the Property have been maintained as required by this Ground Lease. Tenant shall deliver the Property to Landlord in good condition, ordinary wear and tear excepted, with all Building Systems (hereinafter defined) in good working order, ordinary wear and tear excepted. As used herein, the term “**Building Systems**” shall mean the collective reference to the HVAC, mechanical, electrical and plumbing components of the

Student Housing Project; [expressly excluding any audio/visual system, any telephone system, any internet system and any security/alarm system in the Student Housing Project]. Upon the expiration or the earlier termination of this Ground Lease, Tenant shall provide Landlord with copies of maintenance records for the Student Housing Project and any information in Tenant's possession or control relating to the non-compliance of the Property or the Student Housing Project thereon with Applicable Laws pertaining to life-safety, if any, for the five (5) years prior to the date of expiration or earlier termination of the Term.

(v) Tenant shall cooperate in the execution of any documents (in form and substance reasonably acceptable to Tenant and Landlord) which are deemed desirable by Landlord to confer title to the Student Housing Project to Landlord, upon expiration or the earlier termination, and shall warrant that the Student Housing Project is in good working order and has been maintained as required by this Ground Lease.

(vi) Tenant shall hold a leasehold interest in the Property. During the Term, Tenant shall own the Student Housing Project. In no event shall Tenant be deemed to hold a fee simple interest in the Property.

E. University Designated Space

(i) [Landlord hereby reserves unto itself the right to occupy, use and possess certain space (which will consist of approximately \_\_\_\_ square feet of space), to be located in the Student Housing Project (the "**University Designated Space**"). Landlord may use the University Designated Space for any purpose not inconsistent with its educational purposes, including (without limitation) (i) for classroom or administrative office space; and/or (ii) to provide goods and services at retail to residents of the Student Housing Project. In this regard, Landlord may enter into concession agreements, ground leases and/or license agreements with third-party vendors and service providers for the delivery of goods and services.]

(ii) The location of the University Designated Space shall be as depicted in Exhibit C attached hereto.

(iii) Landlord further reserves unto itself from this Ground Lease (and from Tenant's leasehold interest under this Ground Lease), for the use of Landlord and its employees, representatives, subtenants, licensees, and vendors, and their respective invitees, unlimited rights of access to (and the right to use) the parking areas, sidewalks, entrances, hallways, restrooms and other common amenities located upon (or within) the Property and the Student Housing Project as are reasonable and appropriate in connection with the intended use of the University Designated Space by Landlord (collectively, the "**Access Rights**"). The Access Rights include the right to install and/or use and have access to all necessary electrical, water and sewerage utilities, telephone and IT lines and the HVAC system serving the Student Housing Project.

(iv) It is expressly understood and agreed that, upon construction of the Student Housing Project, the University Designated Space (along with the Access Rights) shall automatically be severed and excluded from the description of the land and improvements constituting the Property and the Student Housing Project under this Ground Lease. Tenant shall have no leasehold rights to or interests in the University Designated Space and/or the Access Rights, and may not mortgage or encumber the same without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion.

## ARTICLE II TERM

A. Initial Term: Tenant shall have and hold the Property subject to the conditions, covenants, and agreements herein set forth for a term commencing on the Effective Date and ending on the date (the "**Expiration Date**") that is the last day of the [\_\_\_\_\_] annual anniversary of the date of Substantial Completion (as defined in this Ground Lease). Upon the request of either Party, the other Party shall execute and deliver a written acknowledgment of the Expiration Date when such date is established in the form of the "**Acknowledgement of Expiration Date**" attached to this Ground Lease as Exhibit E, provided, however, a Party's failure to execute and deliver such acknowledgment shall not affect either Party's rights hereunder.

B. Renewal Term: On or before the expiration of the Initial Term, the Parties may agree to extend the Initial Term for an additional term of years at the absolute and sole discretion of the Landlord and on terms that are mutually agreeable to the Parties.

C. Option to Purchase. Landlord shall have the option to purchase the Student Housing Project from Tenant, any time after [\_\_\_\_\_] by delivering written notice to Tenant. The purchase price for the Student Housing Project shall be the then-current Fair Market Value (as hereinafter defined).

As used herein, "**Fair Market Value**" shall mean the price at which the applicable transaction would occur between two willing parties, neither being under any compulsion to enter into such transaction, and both having reasonable knowledge of the relevant facts, as to properly estimate the fair market value at such time. In the event that Landlord gives notice to Tenant and Landlord and Tenant are unable to agree upon the Fair Market Value of the Student Housing Project within thirty (30) days after such notice, then the Fair Market Value shall be determined by an MAI appraiser who is mutually satisfactory to Landlord and Tenant with not less than ten (10) years' experience appraising properties similar to the Student Housing Project in the metropolitan area in which the Student Housing Project are located (an "**Appraiser**"). Landlord and Tenant shall attempt in good faith for a period of ten (10) days to agree upon a single Appraiser; and if Landlord and Tenant are so able to agree, the determination by such single Appraiser of the Fair Market Value for the Student Housing Project shall be final and binding on the Parties. If Landlord and Tenant are unable to agree upon a single Appraiser within the above-stated ten (10) day period, then the following procedures shall apply:

(i) Within seven (7) days after the conclusion of the ten (10) day period, each Party shall submit to the other Party an independent third-party Appraiser who must satisfy the qualifications for an Appraiser in this Ground Lease, and neither of whom (i) may be a present or former employee or business associate (or a relative of any such employee or business associate) of either Landlord or Tenant, or (ii) shall have any other financial or economic interest in, or relationship with, Landlord or Tenant.

(ii) The two Appraisers so selected shall promptly proceed to determine the Fair Market Value of the Student Housing Project; and if the two Appraisers agree on such Fair Market Value, their determination shall be final and binding on the Parties. If the two Appraisers so selected are unable to agree on the Fair Market Value but the appraisals are no more than ten percent (10%) apart, computed from the base of the higher appraisal, the two appraisals shall be averaged and the average shall constitute the Fair Market Value of the Student Housing Project. If the appraisals differ by more than ten percent (10%), such two Appraisers shall select a third Appraiser (who must satisfy the qualifications for an Appraiser in this Ground Lease); and if the two Appraisers are unable to agree upon a third Appraiser within fifteen (15) days, then they shall in lieu thereof each select the names of two willing persons qualified to be Appraisers hereunder and from the four persons so named, one name shall be drawn by lot by a representative of Landlord in the presence of a representative of Tenant, and the person whose name is so drawn shall be the third Appraiser. If either of the first two Appraisers fail to select the names of two willing, qualified Appraisers and to cooperate with the other Appraiser so that a third Appraiser can be selected by lot, the third Appraiser shall be selected by lot from the two Appraisers which were selected by the other Appraiser for the drawing. Any vacancy in the office of the first two Appraisers shall be filled by the party who initially selected that Appraiser, and if the appropriate party fails to fill any vacancy within fifteen (15) days after such vacancy occurs, then such vacancy shall be filled by the other party. Any vacancy in the office of the third Appraiser shall be filled by the first two Appraisers in the manner specified above for the selection of a third Appraiser. The third Appraiser shall, within fifteen (15) days after having been selected, render his or her opinion of which of the amounts proposed by the original two Appraisers most closely represents the actual Fair Market Value of the Student Housing Project, and the amount so selected by the third Appraiser shall be the Fair Market Value of the Student Housing Project. The fees of such Appraisers shall be shared equally by Landlord and by Tenant. Within seven (7) days after the conclusion of the ten (10) day period, each Party shall submit to the other Party an independent third-party Appraiser who must satisfy the qualifications for an Appraiser in this Ground Lease, and neither of whom (i) may be a present or former employee or business associate (or a relative of any such employee or business associate) of either Landlord or Tenant, or (ii) shall have any other financial or economic interest in, or relationship with, Landlord or Tenant.

ARTICLE III  
RENT

A. Base Rent: Throughout the Term of this Ground Lease, Tenant covenants and agrees to pay to Landlord as Base Rent an amount equal to [\_\_\_\_\_] (\_\_\_\_%) of the Net Available Cash Flow. **[NOTE: The percentage of net cash flow and the definition of net available cash flow will need to be negotiated]** “Net Available Cash Flow” shall mean (a) the gross amount of all rents and all other revenues received in any way or manner from the ownership, use and operation of the Student Housing Project during each Annual Period over (b) the aggregate of all costs and expenses of the Student Housing Project paid or incurred during that same Annual Period in connection with the ownership, use, management, operation, maintenance, repair, marketing, promotion and furnishing of the Student Housing Project, including, but not limited to, the cost and expense of any electric, telephone, internet, cable television, water, sanitary sewer, gas and any other utility service to the Student Housing Project, all debt service payments to the holders of all leasehold mortgages encumbering the Student Housing Project permitted by this Ground Lease, and all reserves required or permitted under the terms of this Ground Lease and the Operating Agreement or under the terms of any leasehold indebtedness secured by Tenant’s leasehold interest under this Ground Lease. If the Net Available Cash Flow for any year is zero (0) or a negative amount, no Base Rent shall be paid to Landlord hereunder, and it is understood that Landlord is under no obligation, express or implied, to contribute or pay Tenant for any such deficit in Net Available Cash Flow. Payment of all Base Rent and all other sums due to Landlord under this Ground Lease shall be made payable to Landlord and delivered to Landlord at the address shown in Section XXVI hereof or at such other place as Landlord may notify Tenant from time to time.

B. Additional Rent and Tenant Payments. The term “**Additional Rent**” shall mean all amounts required to be paid by Tenant under this Ground Lease other than the Base Rent identified above. The term “**Rent**” shall mean collectively, Base Rent and Additional Rent. Tenant is also responsible for and shall pay at the same time as the payment of Rent, all sales and use taxes assessed by the State of Florida or any other governmental entity on the amount of such Rent or the value of the leasehold interest created hereby or on any other sums due under this Ground Lease.

C. Net Lease. This Ground Lease is a net lease. The parties acknowledge and agree that Landlord would not enter into this Ground Lease if the Rent described in this Ground Lease were not absolutely net to Landlord and if Landlord were to incur any current or future cost, expense or liability whatsoever, foreseen or unforeseen, with respect to (i) the Student Housing Project, (ii) the Property or any portion thereof, (iii) the entitlement of the Property, (iv) other costs related to or necessary for the development of the Property, (v) the construction of the Student Housing Project or any portion thereof, (vi) Tenant’s use of the Property, or (vii) Tenant’s exercise of any other of its rights under this Ground Lease. Accordingly, Tenant shall pay all expenses, costs, taxes, fees and charges of any nature whatsoever arising in connection with or attributable to the Property or the Student Housing Project (collectively, the “**Property**”

**Costs**") (in each case, arising from and after the Effective Date), or in any manner whatsoever arising as a result of Tenant's exercise of, or Landlord's grant of, the rights described in this Ground Lease, including, without limitation, all fees of consultants, documentary stamp taxes, sales taxes, intangible personal property taxes, ad valorem real estate taxes, costs of design, permitting and construction of the Student Housing Project, accounting and attorney's fees, capacity charges, connection fees, impact fees, utility charges and insurance premiums. Notwithstanding the foregoing, in the event the construction and installation of the Student Housing Project necessitates the enhancement, replacement, upsizing, repair or improvement of utilities infrastructure or stormwater facilities, including, without limitation, water, sewer, stormwater, chilled water, telephonic and/or electrical lines or other facilities, servicing other portions of the Campus (in addition to the Property) (collectively, the "**Utility Lines**"), then (i) Tenant shall be required to pay, and shall pay, for the costs to connect to the existing Utility Lines to service the Student Housing Project, and Tenant's obligations shall specifically include, but not be limited to, paying its share of any concurrency obligations, on-site infrastructure improvements, off-site infrastructure improvements, proportionate share payments, and other costs payable with respect to the construction or use of the Student Housing Project.

D. Payment Provisions. Tenant shall pay all Rent and all other charges due under this Ground Lease without notice or demand and without any deductions, set-offs, counterclaims, abatements, suspensions or defenses of any kind. It is the intention of the Parties that the obligations of Tenant shall be separate and independent covenants, that the Rent and all other costs, expenses and charges payable by Tenant shall continue to be payable in all events, and that the obligations of Tenant shall continue unaffected unless the requirement to pay or perform the same shall have been terminated or modified pursuant to an express provision of this Ground Lease. Tenant shall pay and is responsible for all costs, expenses, obligations, liabilities and acts necessary to and for the proper use, operation, maintenance, repair, replacement, care, occupancy or use (as appropriate) of the Property, the Student Housing Project, and any other landscape or hardscape elements related to the Property or the Student Housing Project arising from and after the Effective Date. Tenant waives all rights now or in the future conferred by law to quit, terminate or surrender this Ground Lease or the Property or to any abatement, suspension, deferment, or reduction of the Rent or any costs, expenses, obligations, or charges under this Ground Lease, except as expressly provided in this Ground Lease.

E. Default Rate. If Tenant fails to pay as and when due any amounts due to Landlord, then, in addition to any other remedies available to Landlord under this Ground Lease, Tenant shall pay Landlord interest on any amount due at the Default Rate (hereinafter defined), from the date the amount is due until it is paid by Tenant.

F. Payment Obligations. Tenant shall pay or reimburse Landlord for other costs or expenses incurred by Landlord in connection with this Ground Lease, the Property, or the Student Housing Project.

G. Survival. This Article shall survive the expiration or earlier termination of this Ground Lease.

ARTICLE IV  
DESIGN AND CONSTRUCTION OF THE IMPROVEMENTS

A. Minimum Requirements. Tenant shall at its sole cost and expense, finance, construct, and operate the Student Housing Project shall consist of a first-class state-of-the-art resident housing facility on the Student Housing Project in accordance with Plans and Specifications (defined below). The Student Housing Project must at a minimum: (a) be developed as one or more buildings containing approximately [\_\_\_\_\_] aggregate gross square feet; open no later than for the 2016 Fall semester to accommodate at least [\_\_\_\_] Eligible Residents; and (c) be designed to be compatible with the Campus as reasonably determined by Landlord, which determination shall not be unreasonably delayed, withheld or conditioned, as long as Tenant complies with the terms of this Ground Lease. A site plan and floor plan layout of the Student Housing Project are attached hereto as **Exhibit F**.

B. Design. Tenant shall is obligated to engage architects, space planners, engineers, and other design personnel licensed to practice in the State of Florida and coordinate the production of drawings and specifications for the Student Housing Project. All design work will be done by an architect or firm of architects licensed by the State of Florida that is selected by Tenant (the “**Architect**”) and that executes an architect’s agreement (the “**Architect’s Agreement**”) with the Tenant. The cost of all professional engineering, surveying, design, and architectural services required by Tenant to prepare the site, design, and construction plans will be paid by Tenant. The design and construction shall meet all design and construction standards and requirements for a State of Florida public facility set forth in: (i) the University’s established architectural design standards, (ii) the University’s Campus Master Plan in effect on the Effective Date, (iii) the State Requirements for Educational Facilities (Nov. 19, 2012), (iv) the University’s general conditions and insurance requirements, (v) the University’s Construction Standards, and (vi) the University’s Information Technology Standards (the University’s established architectural design standards, the University’s Campus Master Plan, the State Requirements for Educational Facilities (Nov. 19, 2012), the University’s general conditions and insurance requirements, the University’s Construction Standards, the University’s Information Technology Standards and other policies, rules and regulations of Landlord, each as may be amended from time to time, being referred to collectively herein as the “**University Standards**”), and the Florida Building Codes applicable to buildings owned and occupied by Landlord of a similar type and nature. The most current versions of the components of the University Standards specifically referenced herein are specifically set forth on and located at [website address]. Notwithstanding the foregoing, Tenant may submit written requests for reasonable variances from University Standards, and Landlord and Tenant shall work in good faith to resolve any such issues, provide that such variances shall not impact the structural integrity of the construction of the Student Housing Project, shall not be contrary to the Florida Building Code, and shall not impact any life safety requirements under Applicable Law. In

addition to any sets of Plans and Specifications (hereinafter defined) or other design documents that must be provided to Landlord's codes personnel in connection with permitting and otherwise exercising its legal responsibilities relating to the Student Housing Project and to Landlord's committees which will review the Plans and Specifications as provided below, design documents related to the Student Housing Project will be made reasonably available to Landlord's Construction and Campus Development Department personnel for review at a central file room maintained by Tenant during all phases of the design effort in [\_\_\_\_\_] located on the Campus. Landlord's Construction and Campus Development Department personnel shall provide reasonable prior written notice to Tenant before accessing such central file room. In designing the Student Housing Project, Tenant shall take into account architectural designs and ambiance of the Campus, the location of the Student Housing Project, and the necessity that the final design complements other buildings and facilities on the Campus.

The Plans and Specifications shall be subject to the approval of the University's President or the President's designee with respect to the site orientation, location, and exterior appearance and compliance with the design requirements of this Ground Lease, such approval not to be unreasonably withheld or delayed provided the Plans and Specifications comply with the requirements of this Ground Lease. Landlord shall have fifteen (15) Business Days from receipt of three sets of the Plans and Specifications to notify Tenant in writing of its approval or rejection. Landlord's failure to respond within the fifteen (15) Business Days shall be deemed an approval. If Landlord rejects the Plans and Specifications, Landlord shall deliver to Tenant, within such fifteen (15) Business Day period, detailed written objections with specific changes proposed by Landlord. Tenant shall incorporate such revisions as are reasonably acceptable to Tenant and submit the same for Landlord's approval or rejection, Landlord shall have an additional five (5) Business Days in which to approve or reject. Landlord's failure to respond within five (5) Business Days shall be deemed an approval. The parties shall follow the foregoing procedures for approving the Plans and Specifications until the same are finally approved by Landlord and its Landlord's Construction and Campus Development Department (such final approval, the "**Landlord's Plans Approval**"). The term "**Plans and Specifications**" shall mean the final construction drawings and specifications for the Student Housing Project and any other exterior alterations to the Property or any area on which any work is to be done.

Tenant hereby grants a security interest in, and collaterally assigns to the Landlord, any and all of its respective right, title and interest in and to all Plans and Specifications, drawings, renderings, studies, contracts and marketing material of any kind relating to the Student Housing Project and the potential development of the Property, now or hereafter existing (collectively, "**Development Work Product**"), effective automatically and without further action. This Ground Lease shall constitute a security agreement with respect to the aforementioned security interest, and authorizes Landlord to file Uniform Commercial Code financing statements with respect thereto, so that Landlord can perfect its security interest therein. Landlord's rights under this Article IV are subordinate to the rights in favor of any leasehold mortgage. Tenant shall cause all Development Work Product expressly to provide that

Landlord has the right to use the Development Work Product without further approval or compensation; and Tenant hereby authorizes Landlord's use of same. Promptly upon request of the Landlord from time to time, Tenant shall execute such assignments and assurances as the Landlord may request to perfect the assignment of the Development Work Product to the Landlord. Tenant will indemnify, defend and hold harmless the Landlord from and against any and all costs, claims or liabilities, including mechanic's and materialmen's liens, caused by the failure of Tenant to fully pay for all Development Work Product or any adverse claim to or lien upon the Development Work Product. Tenant's obligations pursuant to this Article IV shall survive termination of this Ground Lease.

Tenant is required to obtain all zoning type authorizations necessary to construct the Student Housing Project and any associated infrastructure through Landlord's committee review process and building permits through Landlord's codes office. Landlord shall use cooperative efforts to assist Tenant in obtaining all zoning type authorizations and building permits necessary to construct the Student Housing Project (collectively, the "**Landlord Building Permits**"); provided, that, no representative of Landlord shall be obligated to exercise any undue or otherwise inappropriate influence on Landlord's committees or on representatives of Landlord's codes office to issue such authorizations and permits. For purposes hereof, a "**Landlord Delay**" means any delay in the performance of Landlord's obligations under this Ground Lease beyond the time periods permitted hereunder for such performance, including but not limited to failure to review Plans and Specifications within the time provided, and any other failure to act in accordance with the terms of this Ground Lease which actually delays Tenant, all such delays being subject to Force Majeure (as hereinafter defined).

If the Parties cannot agree on the Plans and Specifications (or the conditions of approval in connection therewith), this Ground Lease may be terminated by Tenant upon written notice to Landlord prior to commencement of construction. Thereafter, the parties shall have no further obligation to the other hereunder except any terms and conditions which expressly survive the termination of this Ground Lease. Tenant's right to terminate this Ground Lease pursuant to this Article IV, Section B. shall terminate and be of no further force and effect unless Tenant has exercised such right on or before the Commencement Deadline Date (as hereinafter defined) .

C. Construction.

(i) Commencement Covenant. Tenant shall use commercially reasonable efforts to obtain all required federal, state, and local land use and building permits, approvals, licenses and consents (collectively, the "**Governmental Building Permits**") as soon as reasonably practicable after Landlord's Plans Approval and the issuance of Landlord's Building Permits. All applications and related materials must be submitted to Landlord no later than five (5) Business Days prior to submitting, but Landlord will waive this requirement in writing for a discrete submittal or application if Tenant has ensured that Landlord has been involved in

the process of such that Landlord is comfortable with the subject matter and specifics of a submittal or application. Subject to Landlord Delay and delay for Force Majeure, Tenant shall commence the construction (i.e., construction of the footers for the Student Housing Project) of the Student Housing Project set forth in the Plans and Specifications on or before [\_\_\_\_\_] (\_\_) days following the Effective Date of this Ground Lease (such date, the “**Commencement Deadline Date**”). If Tenant has not commenced the construction of the Student Housing Project prior to the Commencement Deadline Date, then Landlord shall have the right to terminate this Ground Lease by providing written notice of termination to Tenant. Thereafter, the Parties shall have no further obligation to the other hereunder except any terms and conditions which expressly survive the termination of this Ground Lease. Provided that if Landlord does not terminate this Ground Lease as set forth in the prior sentence, Tenant shall be responsible for and shall pay all costs and expenses set forth in this Ground Lease.

(ii) General Contractor. All construction work will be done by a general contractor licensed by the State of Florida that is selected by Tenant (the “**Contractor**”) and that executes a construction contract (the “**Construction Contract**”) with the Tenant.

(iii) Bond. Prior to commencement of the Student Housing Project or work by Tenant at or on the Property, Tenant shall provide Landlord with a performance and payment bond in an amount equal to one hundred ten percent (110%) of all contracted costs of construction of the Student Housing Project under the Construction Contract naming Landlord as co-obligor, in addition to the payment and performance bonds required under Florida Statutes Section 255.05 and Landlord’s policies and procedures (“**P&P Bonds**”) procured by the Contractor. All P&P Bonds shall be issued on behalf of [\_\_\_\_\_] and recorded and certified in accordance with Florida Statutes Section 255.05. The P&P Bonds will cover the faithful performance of the construction contract with the Contractor and subcontractors holding contracts in excess of \$500,000, the strict compliance with the Plans and Specifications, and the payment of all obligations in the full amount of the construction contract with the Contractor.

(iv) Release. Prior to the Commencement Deadline Date, Contractor must deliver to Landlord, in a form reasonably acceptable to Landlord’s attorney, a waiver and release stating the following: an acknowledgment by Contractor that all portions of the Campus are owned by the State of Florida; a waiver of any right Contractor may have to a claim of lien of any kind or nature upon any part of the Campus, and a release of Landlord from all claims that Contractor might have arising out of the construction contract.

(v) Tenant Responsibility. Tenant is required to make, and be responsible for, all site inspections and payment authorizations.

(vi) Obligation to Minimize Disruption to Adjacent Properties. During the course of Tenant’s work, Tenant shall cause those working on the Student Housing Project to park trucks and delivery vehicles solely in the staging site described on Exhibit D (the “**Staging Site**”) and to store materials and temporary structures and other matters incidental to

construction in the Staging Site. Tenant shall reasonably cooperate with Landlord to ensure that use and enjoyment of the area surrounding the Property by the occupants thereof, including, but not limited to, Landlord's faculty, students and staff, and the customers and patrons of Landlord shall be interfered with as little as reasonably possible. Landlord shall reasonably cooperate with Tenant to provide access over portions of the Campus to the Property for construction and acknowledges such access will cause unavoidable disruption to portions of the Campus, but such access will not by itself constitute a breach of this subsection, provided Tenant (i) complies with its obligations hereunder, (ii) promptly pays for any and all damage done to the Campus as a result of Tenant's construction activities, and (iii) restores all portions of the Campus that were so damaged to a condition no less than the condition that existed immediately prior to the commencement of the construction activities (including, without limitation, removal of all equipment, tools, vehicles, supplies and materials located, stored or installed on the Campus, including, but not limited to, the Staging Site). Any such repair or restoration shall be performed at the sole cost and expense of Tenant in accordance with generally accepted construction practices and in full compliance with all Applicable Laws (as hereinafter defined).

(vii) Compliance with Laws and University Standards. Tenant's construction of the Student Housing Project and any other approved construction on/or within the Student Housing Project shall be performed in a good and workmanlike manner and in accordance with (i) all laws, statutes, regulations, codes, ordinances, orders, permits, and requirements of any federal, state, or local governmental authority having jurisdiction over the Campus or the Student Housing Project as well as the orders of the fire marshal, board of fire underwriters, and similar bodies affecting the Campus or the Student Housing Project or the management, leasing, use, occupancy, construction, maintenance, repair, or reconstruction thereof (collectively, "**Applicable Laws**"), (ii) the University Standards in effect as of the date the Plans and Specifications are approved by Landlord, and (iii) the Plans and Specifications which are approved by Landlord in accordance with this Ground Lease.

(viii) Insurance Requirements. Tenant shall require Contractor to procure and maintain the following insurance coverages throughout the course of site preparation and construction and shall require all subcontractors providing services in relation to this Ground Lease to carry any and all insurance coverage that adequately covers each subcontractor's exposure based on the type of services each will provide. All policies shall be with insurance companies authorized to do business in the State of Florida and meeting the requirements for insurance companies set forth in this Ground Lease. Tenant agrees to furnish a current Certificate(s) of Insurance to Landlord prior to commencement of construction and at the later written request of Landlord as evidence that the following coverages remain in effect:

(a) Builders Risk Insurance. Completed value form in amount of protection of not less than 100% of the completed value of the Student Housing Project covering "all risk" perils of loss that includes Windstorm and Flood as covered causes of loss. The Bond Trustee, Tenant, Contractor, and all subcontractors shall be named insureds.

(b) Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be obtained in accordance with Chapter 440 Florida Statutes with the prescribed limits of liability for all employees who will be working on the Student Housing Project whether working for Contractor or any subcontractor.

(c) Commercial Liability Insurance. Commercial General Liability including property products/completed operations, contractual and explosion, collapse and underground (XCU) coverages where required by the risks. The limits of liability must be at least \$2,000,000.00 each occurrence, \$5,000,000.00 annual aggregate for bodily injury and property damage liability. The limit may include umbrella or excess liability insurance. The policy shall carry an endorsement which names Landlord and Florida Board of Governors as **"Additional Insureds."**

(d) Comprehensive Automobile Liability Insurance. All owned, hired, leased or non-owned vehicles used on the construction project shall be covered. Policy limits shall be at least combined single limit of \$2,000,000 each accident, for bodily injury and property damage liability. This limit may include umbrella or excess liability insurance. The policy shall carry an endorsement which names Landlord and Florida Board of Governors as **"Additional Insureds."**

(e) Professional Liability Insurance. For Contractor/Subcontractor's such as an architect/engineer/consultants/etc. providing the design services related to the construction of the Student Housing Project on the Campus) \$5,000,000 per claim and aggregate liability limit. Policies written on a claims made form shall continue for five (5) years following the completion of the performance or the attempted performance of the construction provisions of this Ground Lease. If the coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the effective date or coinciding with the effective date of this Ground Lease, the Contractor/Subcontractor must purchase extended reporting ("Tail") coverage for a minimum of five (5) years following the completion of the performance or the attempted performance of the construction provisions of this Ground Lease.

The above sub-paragraphs establish minimum insurance requirements. It remains the responsibility of Tenant and/or Contractor to secure and maintain any additional insurance that may be necessary in connection with the Construction Contract. The absence of a demand for any type of insurance policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of Tenant's, Contractor's and all subcontractor's obligation to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Ground Lease. Landlord does not represent that coverage and limits specified herein will necessarily be adequate to cover Tenant's, Contractor's and all subcontractor's liability.

Tenant waives all rights and claims against Landlord for all losses covered by Tenant's policies, and waives all rights of subrogation of its insurers. Tenant hereby represents and

warrants that Tenant's insurance policies are now, or shall be prior to the Effective Date, endorsed so that such waiver of subrogation shall not affect Tenant's rights to recover thereunder.

(ix) Completion Deadline. Once commenced, subject to Landlord Delays and delays for Force Majeure, Tenant shall prosecute the construction of the Student Housing Project to completion with all due diligence. If Tenant has not received a certificate of occupancy of the Student Housing Project included in the Plans and Specifications by July 15, 2016 (the "**Completion Deadline**"), then Tenant shall provide temporary housing for Eligible Residents who have executed leases with respect to the Student Housing Project, a portion of the cost and expenses of such temporary housing may be recovered from rental payments made by Eligible Residents under such leases, who, as a result of such delay, are prevented from occupying their residences in the Student Housing Project (collectively, "**Affected Residents**") until such time as Affected Residents are no longer prevented from occupying their residences in the Student Housing Project. For purposes of this Article, the Term of this Ground Lease shall be deemed to have commenced as of the date of the Completion Deadline. If Tenant fails after the Completion Deadline to continue to diligently prosecute construction of the Student Housing Project for any period in excess of thirty (30) days, subject to Landlord Delay and delay for Force Majeure, then, in the event Tenant fails to prosecute construction of the Student Housing Project within fifteen (15) days after receiving written notice from Landlord, then, Landlord shall have the right to terminate this Ground Lease, at no cost to Landlord, by giving Tenant written notice of termination.

If Tenant is required to provide temporary housing for Affected Residents hereunder, Tenant shall also pay (i) the cost of reasonable transportation of Affected Residents to and from the Campus, until such time as Affected Residents are no longer prevented from occupying their residences in the Student Housing Project, (ii) the cost of relocating the Affected Residents to temporary housing, including the management of the relocation process, and (iii) the costs of moving the Affected Residents into the Student Housing Project upon completion of the same (collectively, with the cost of providing temporary housing, "**Temporary Housing Costs**"). In the event an action or inaction of Landlord causes the Completion Deadline to be extended beyond July 15, 2016, Landlord shall be responsible to pay Tenant, Tenant's Temporary Housing Costs in an amount equal to the costs associated with the number of days the Completion Deadline was extended beyond July 15, 2016 that were caused by Landlord Delay.

Tenant shall provide information and documents reasonably requested by Landlord to enable Landlord to monitor the performance and progress of the design, permitting and construction of the Student Housing Project. Landlord has the right to attend meetings involving Tenant and Contractor, subcontractors, consultants and vendors relating to the Student Housing Project and the performance and progress of the work and activities related to the Student Housing Project. Tenant shall promptly notify Landlord in the event of the occurrence of any fact or circumstance reasonably likely to cause the delay in completion of the

Student Housing Project and achievement of requirements for occupancy beyond the Completion Deadline.

(x) If Tenant has not achieved Substantial Completion of the Student Housing Project included in the Plans and Specifications by the date which is [\_\_\_\_\_] following the Completion Date, taking into account any extension of such date for each day of Landlord Delay and delay for Force Majeure (as extended, the “**Outside Completion Deadline**”), then Landlord shall have the right to (i) terminate this Ground Lease, at no cost to Landlord, by giving Tenant written notice of termination, and (ii) recover liquidated damages in the amount of One Thousand Dollars (\$1,000) per day until Substantial Completion is achieved. In the event Landlord terminates this Ground Lease on the terms set forth in this Ground Lease then, at the option of Landlord to be exercised within sixty (60) days after such termination, Landlord may, but is not obligated to, complete the Student Housing Project.

(xi) The remedies set forth in the preceding subsection, shall not affect Landlord’s rights and remedies in the event of any other Event of Default by Tenant under this Ground Lease. The Completion Deadline and the Outside Completion Deadline shall be extended on a day-for-day basis for each day of Landlord Delay and delay for Force Majeure. In the event this Ground Lease is terminated by Landlord as provided herein, Landlord shall not require, and shall not be entitled to require, Tenant to remove or demolish any of the Student Housing Project made within the Property.

(xii) The terms “**Substantial Completion**” and/or “**Substantially Complete**” shall mean date upon which Tenant’s architect executes and delivers, for the benefit of Tenant and Landlord, a Certificate of Substantial Completion in the form of the American Institute of Architects (“**AIA**”) document G704, indicating completion of all building and site work construction to the Student Housing Project as indicated on the Plans and Specifications, including change order work, and Tenant has obtained from the governing authority a Certificate of Occupancy allowing occupancy of the Student Housing Project. The foregoing definition of Substantial Completion shall be exclusive of immaterial “punch list” work that does not prevent Tenant from occupying, on a permanent basis, the constructed facilities within the Student Housing Project. Within one hundred and eighty (180) days after Substantial Completion, Tenant shall provide Landlord with a complete set of the “as built” Plans and Specifications. The “as built” plans shall be subject to the rights of the parties preparing such plans under copyright and other Applicable Laws and shall not be construed to grant Landlord any rights to any trademarked or proprietary elements shown on such plans.

(xiii) In the event of a default by the Contractor or the Architect in connection with the design and/or construction of the Student Housing Project, Tenant shall exercise all of the rights and remedies available to Tenant in each such agreement in consultation with Landlord. If an Event of Default shall occur and be continuing or if Tenant shall default under the Construction Contract or the Architect’s Agreement, Landlord may assert the rights of Tenant under the terms of the Construction Contract or the Architect’s Agreement.

D. Installations. Other than Landlord's obligations to grant utility easements, rights of way and licenses, Tenant shall be solely responsible for the costs of obtaining necessary utility service at its own expense, including, without limitation, the cost of all reservation charges, capacity charges, taxes and other charges incurred in connecting the Student Housing Project to existing utility infrastructure.

E. Utility Charges. Until the expiration or earlier termination of the Term of this Ground Lease, Tenant shall pay for all utility charges for the Student Housing Project and the Property, including without limitation, electricity, stormwater, water, gas and sewage used in the construction and operation of the Student Housing Project.

F. Construction Access. Landlord shall reasonably cooperate with Tenant in defining and coordinating the ingress and egress routes that all construction traffic must use to access the Property. Until the construction of the Student Housing Project has been finally completed, Landlord shall provide to Tenant non-exclusive licenses and rights of ways over the sidewalks, parking lots and roadways on the Campus in order to provide ingress and egress of pedestrians and vehicles to and from the Property and/or to and from a duly open public street. Landlord has the right to change the locations of any such licenses or rights of way, as it sees fit, as long as such changes do not unreasonably interfere with the construction of the Student Housing Project or prohibit Tenant's access to an open public street.

G. Other Easements, Licenses or Rights of Way. The Student Housing Project may require easements, licenses or rights of way for utilities and surface water drainage, detention, and retention over portions of the Campus, as required by Landlord and any other governmental agencies having jurisdiction over the Property. To effect this provision, Landlord shall grant (or cause to be granted) temporary construction easements, licenses, rights of way, or easements for utilities or surface water drainage, detention, and retention, co-terminous with this Ground Lease, upon request by Tenant and on terms consistent with this Ground Lease or any other licenses or easements granted contemporaneously herewith. By way of illustration and not limitation, any documents granting such rights to Tenant shall provide that Tenant shall bear all costs related thereto and to the exercise of the rights granted therein, and Landlord shall have no obligation to expend funds, indemnify or hold harmless any party. Tenant, at its sole cost and expense, shall provide Landlord with the legal descriptions and sketches of the areas to be subject to the easements, licenses and rights of way. Landlord's failure to grant (or to cause to be granted) within a reasonable period of time (which generally will not exceed thirty (30) days after written request, but may exceed such thirty (30) day period by a reasonable time period in the event the parties have no prior agreement regarding the location to be encumbered by such document) such required easements, licenses or rights of way after Tenant's request, shall be deemed a "**Landlord Delay**" hereunder. After the execution of such documents, Landlord shall have the right to change the locations of any such easements, licenses or rights of way, as it sees fit, as long as such changes do not create a material, adverse impact on Tenant's ability to construct and use the Student Housing Project.

H. Construction Related Parking. Tenant's employees, representatives, vendors, invitees, guests, agents, and contractors (which includes all contractors, subcontractors of all levels, materialmen, and suppliers performing work or supplying material related to the Student Housing Project) must comply with all rules and regulations of Landlord and the University Standards; provided that cranes, heavy machinery, dump trucks, concrete trucks and other heavy construction vehicles and equipment that are used on the Student Housing Project site shall not require parking decals subject to the condition that all such vehicles are parked on and within the Staging Site. If Tenant's contractors and subcontractors park elsewhere on the Campus, they are obligated to comply with Landlord's applicable parking regulations. All vehicles not parked within the Staging Site will require a Landlord issued parking decal. Landlord shall sell all parking decals for Tenant's employees and Contractor's and subcontractor's employees and staff at the rates charged by Landlord from time to time to its students, employees, and vendors for similar parking decals.

I. Changes to Plans and Specifications. Tenant shall be permitted to request changes and modifications to the Plans and Specifications from time to time following their initial approval by Landlord. No Significant Changes shall be made to the Plans and Specifications without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed though the Student Housing Project must at all times continue to comply with the requirements of this Ground Lease, including, but not limited to, the University Standards and Applicable Laws, in each case, in effect as of the date of such change, modification or alteration is approved by Landlord. Within ten (10) Business Days after written request from Tenant, Landlord shall either approve the proposed changes to the Plans and Specifications or specify the particular changes with reasonable detail, if possible, which must be made to such document(s) for them to be reasonably acceptable to Landlord. Tenant shall incorporate such reasonable revisions as are reasonably acceptable to Tenant and submit the same for Landlord's approval or rejection, Landlord having ten (10) Business Days in which to respond.

For the purposes hereof "**Significant Changes**" shall mean (i) a change in any material respect in size or design, affecting exterior walls and elevations, building bulk, coverage or floor area ratio or number of floors from the last approved conceptual design, schematic design, design development, construction drawings, the Plans and Specifications, as applicable, or otherwise previously approved by Landlord; and/or (ii) a change in any material respect in colors, size or design or use of exterior finishing materials substantially affecting architectural appearance from those shown and specified in the last Landlord approved conceptual design, schematic design, design development, construction drawings or the Plans and Specifications, as applicable, or otherwise previously approved by Landlord; (iii) a change in any material respect in the functional use and operation of the Student Housing Project from those shown and specified in the Landlord approved Plans and Specifications or otherwise previously approved by Landlord; and (iv) a change in any material respect in the placement or size of service facilities or in the number of elevators, stairs or ramps or changes in general pedestrian or vehicular circulation in, around or through the Student Housing Project from the last

Landlord approved conceptual design, schematic design, design development, construction drawings or the Plans and Specifications, as applicable, or otherwise previously approved by Landlord.

If Landlord does not notify Tenant in writing within ten (10) Business Days of any changes Landlord desires to be made to the proposed changes to the Plans and Specifications, then Tenant shall deliver a second notice to Landlord requesting Landlord's approval. If Landlord does not notify Tenant in writing within five (5) Business Days of any changes Landlord desires to be made to the proposed Plans and Specifications after such second notice has been sent to Landlord, then, Landlord shall be deemed to have approved the requested changes and modifications to the Plans and Specifications. The Parties shall follow the foregoing procedures for approving changes and modifications to the Plans and Specifications until the same are finally approved by Landlord and Tenant.

J. Capital Contributions for Parking and Chilled Water. As a condition precedent to this Ground Lease, Tenant shall deposit with Landlord (i) its proportionate share of all construction costs for the parking lot to be constructed by Landlord on the Campus to accommodate the Student Housing Project, in accordance with Applicable Laws (including, without limitation, any of the foregoing relating to handicapped access or parking), and (ii) its proportionate share of the cost of the expansion by Landlord of the University's chilled water production and distribution system (the "**Capital Contribution**"). Tenant's payment of the Capital Contribution shall be agreed upon by the Landlord and Tenant pursuant to the Capital Contribution Agreement attached hereto as Exhibit G.

## ARTICLE V

### USE AND CARE OF PROPERTY BY TENANT

A. Tenant's Use of Property. Tenant shall operate the Student Housing Project on the Campus during the Term under such name as designated by Landlord, and shall use the Property solely for the Permitted Use, and for no other purpose. Landlord has the unconditional right to initially name and subsequently modify the name of the Student Housing Project. Tenant shall pay the costs of all initial signage and such signage shall conform to the University's existing signage design requirements.

B. Nature of Use. Tenant shall use and occupy the Student Housing Project in a careful, safe and proper manner, in compliance with the requirements of this Ground Lease and in compliance with University Standards and Applicable Laws. Tenant shall keep the Student Housing Project in a clean and safe condition. Tenant shall not do or permit any act or thing which is contrary to any Applicable Laws or which would materially impair the value of the Property, the Student Housing Project, the Campus, or any part thereof, or which constitutes a public or private nuisance. Tenant, at its sole expense, after obtaining Landlord's consent, shall have the right to contest or review by legal, administrative or other proceedings the validity of any such Applicable Laws or the application thereof to Tenant, as long as Tenant initiates such action as early as reasonably possible and diligently pursues it without interruption. During

any such proceedings, compliance with any such Applicable Laws may be challenged by Tenant upon the condition that (a) Landlord or Eligible Residents shall not be in any danger of any civil or criminal liability for failure to comply therewith, (b) the Property shall not be subject to the imposition of any lien as a result of such noncompliance that has not been bonded, (c) the ultimate imposition of or compliance with such Applicable Laws shall not extend beyond the last day of the Term, (d) failure to comply therewith will not adversely impact Landlord's operations on the rest of the Campus, (e) any such action will not reflect unfavorably upon Landlord, and (f) the failure to comply with any such Applicable Laws does not increase the risk of injury to person or property during the pendency of the challenge. Landlord may elect to join in such proceedings, and shall join in such proceedings if required by law in order to prosecute such proceedings. Tenant shall pay to Landlord any third-party costs or expenses (including Landlord's reasonable legal fees and costs) and Landlord's internal costs or expenses that are customarily charged by any department of Landlord to other departments of Landlord for similar services provided by such department of Landlord in the ordinary course of the operations of Landlord. If there shall be any refund or damages payable in connection with any proceeding pursued in accordance with this Section, Tenant shall be entitled to receive and retain same. The proceedings referred to herein shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings.

Tenant shall repair, replace, and maintain all elements of the Student Housing Project, the Student Housing Project, any service drive areas, any infrastructure supporting the Student Housing Project or constructed or installed by Tenant which is located in, on or under the Property or is used by any party in connection with the Student Housing Project; provided however that Tenant is not required to repair or replace or maintain any roadway, service road, driveway, parking lot, parking space or sidewalk which is not located on the Property, unless damage to such areas is caused by Tenant or Tenant's employees, agents, contractors, licensees or invitees. Tenant shall also keep the Student Housing Project reasonably lighted at all times during the conduct of its business and as required by the University Standards and any Applicable Laws. Landlord shall maintain such areas reasonably clear of litter.

C. Signs and Other Advertising. Tenant shall not place, erect, or maintain or suffer to be placed, erected or maintained on any doors or any other surface visible from the outside or any roof of the Property or any vestibule, or anywhere else visible from the outside, any sign, lettering, decoration or advertising without first obtaining Landlord's written consent, which Landlord may withhold in its sole and absolute discretion. The parties anticipate agreeing to monument signage on the Property in conformity with University Standards and any other Applicable Laws, and subject to the prior approval of Landlord of the location, plans and specifications therefore. Upon the expiration or earlier termination of this Ground Lease, if directed by Landlord, Tenant shall remove all such signs and repair all damage caused by such removal. Such signs shall relate solely to the Permitted Use of the Student Housing Project. All Tenant signage shall be designed, constructed, installed and maintained at Tenant's sole cost

and expense. The University's general signage requirements are summarized on the University Standards.

D. Parking. Following Substantial Completion during the Term, Landlord agrees to provide access to parking places for the Eligible Residents consistent with Landlord's plan for the development of a parking and transportation system for Landlord as provided in the Operating Agreement. Landlord shall cause sufficient parking spaces to be available for Eligible Residents on the Campus in accordance with this Article V, and Landlord shall have the exclusive right to establish the terms and conditions of the occupancy and use of parking places and the exclusive right to set the fees and charges to be imposed for the use of parking places by Eligible Residents and to receive and collect such fees and charges. Parking places available to Eligible Residents will be operated and maintained by the Landlord consistent with its plan for development and operation of a parking and transportation system for the Campus.

## ARTICLE VI OPERATIONS AND ADVISORY COMMITTEE

A. Aesthetic and Operational Standards. Without limitation of any of the other obligations in this Ground Lease, Tenant stipulates and acknowledges that a material condition to Landlord's entering into this Ground Lease is the agreement by Tenant to maintain and operate the Student Housing Project at a building standard which is consistent with the University Standards. It is the intent of the parties that the Student Housing Project will be operated as a well-maintained facility with all Building Systems in good, working condition for the Permitted Use in all material respects in accordance with the provisions of the Operating Ground Lease. Tenant shall not use or permit the Student Housing Project to be used for any unlawful, disreputable or immoral purpose or in any way which may adversely reflect upon the name or reputation of Landlord.

B. Insurance Requirements During Operation of Facility. Tenant shall, immediately after the Student Housing Project is constructed, obtain and maintain at its expense, the following policies of insurance covering activities performed under and contractual obligations undertaken during the Term:

(i) Commercial Property Insurance (Building & Personal Property). The Student Housing Project shall be insured against loss by fire, lightning, windstorm, flood, sinkhole, vandalism, malicious mischief and other hazards customarily insured by extended coverage, all risk (now known as causes of loss-special form) coverage for their full replacement value, which shall be adjusted from time to time to reflect current replacement value.

(ii) Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be obtained in accordance with Chapter 440 Florida Statutes with the prescribed limits of liability for all employees who will be working on the Property whether working for Tenant, Contractor or any subcontractor.

(iii) Commercial General Liability Insurance. Commercial general liability insurance including property, products, completed operations and contractual liability. Limits of coverage shall be at least \$5,000,000.00 each occurrence limit for bodily injury and property damage liability. The policy shall carry an endorsement which names Landlord and the Florida Board of Governors as “**Additional Insured.**”

(iv) Comprehensive Automobile Liability Insurances. All owned, hired, leased or non-owned vehicles used by Tenant shall be covered. Policy limits shall be at least \$1,000,000 each accident combined single limit for bodily injury and property damage liability. The policy shall carry an endorsement which names Landlord and the Florida Board of Governors as “**Additional Insured.**”

(v) Boiler and Machinery. Commencing on the date on which Student Housing Project contains a steam boiler, pressure vessels, or pressure piping, boiler explosion insurance on steam boilers, if any, pressure vessels, and pressure piping in an amount not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations, but without deduction for depreciation) of the Student Housing Project (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence).

(vi) Liquor Liability. Liquor liability insurance in an amount of at least \$1,000,000 only when and if an event is held that involves the sale, distribution or serving of alcoholic beverages at the Student Housing Project.

All policies of insurance provided for herein shall be issued by insurance companies authorized to do business in the State of Florida and with general policy holder's rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available “Best's” insurance reports. Certificates of insurance shall be delivered to Landlord within ten (10) Business Days after the Effective Date, and thereafter certificates of renewal policies shall be delivered to Landlord upon expiration of the term of each existing policy. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. If available, all policies of insurance required hereby must contain a provision that the company writing said policy will endeavor to give to Landlord thirty (30) days' notice in writing in advance of any cancellation or lapse or of any reduction in the amounts of coverage.

Tenant shall carry such additional insurance which may be required to meet any requirements of Applicable Laws. In addition, the liability insurance requirements under this Section B shall be reviewed by Landlord and Tenant every five (5) years for the purpose of reducing or increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. The replacement value of the buildings and other insurable improvements of the Property shall

be re-evaluated from time to time (but no more frequently than once every five (5) years) at the request of either Landlord or Tenant.

Tenant is entitled to adjust, collect and compromise, in its sole discretion, all claims under any of the insurance policies required under this Section B and/or relating to the Student Housing Project to insurers with respect to such claims and to receive the proceeds of any such claims.

In addition to the insurance required to be obtained and maintained by Tenant, if Tenant assigns any portion of the duties under the Operating Agreement in accordance with the terms thereof, each subcontractor or assignee is required to purchase and maintain insurance coverage that adequately covers each subcontractor's or assignee's exposure based on the type of services they are providing in connection with this Ground Lease.

Tenant's procuring of the required insurance shall not relieve Tenant of any obligation or liability assumed under the Operating Agreement, including specifically the indemnity obligations. Tenant may carry, at his own expense, such additional insurance, as Tenant deems necessary. On or before \_\_\_\_\_, \_\_\_\_\_ Tenant shall obtain and maintain a policy of business interruption insurance in amount of at least [\_\_\_\_\_]. Tenant shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of Tenant's operations within the scope provided for under the Operating Agreement, and shall cooperate in all litigated claims and demands, arising from said operations, which its insurance carrier or carriers are requested to respond.

The absence of a demand for any type of insurance policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of Tenant's obligation to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this agreement. Landlord does not represent that coverage and limits specified herein will necessarily be adequate to cover Tenant's liability.

C. Operation of Student Housing Project. Upon Substantial Completion of the Student Housing Project, Tenant shall operate the Student Housing Project as a student housing facility to serve Eligible Residents, and shall enter into a management agreement (the "**Management Agreement**") related to the Student Housing Project on or before the date of Substantial Completion. Tenant shall not enter into any other management agreement of the Student Housing Project without Landlord's consent, which consent shall not be unreasonably withheld. It is the intention of the parties hereto that the Student Housing Project be treated at all times as part of the University's student housing program on an equal basis, whether or not the Student Housing Project is managed by the University. To such end, Landlord agrees to:

(i) include the Student Housing Project in all information and marketing materials regarding general student housing that it provides to students and prospective students;

(ii) to the extent possible, provide to students residing at the Student Housing Project the same services and access Landlord provides to students in on-campus housing facilities, including, without limitation, access to Landlord's computer network and student transportation system and assist students in applying for residence at the Student Housing Project;

(iii) take into account the Student Housing Project and its occupancy in any planning for future housing projects on the Campus;

Tenant shall provide information regarding the Student Housing Project appropriate to assist Landlord in carrying out its undertakings pursuant to this Section, and provide in any management contract for the Student Housing Project provisions requiring the manager to implement appropriate procedures to facilitate Landlord's undertakings pursuant to this Section.

D. Payment of Taxes. Tenant covenants and agrees to pay prior to delinquency all municipal, county, state, federal and other taxes assessed against the Property are due and owing during the term of this Ground Lease ("**Real Property Taxes**"), Tenant's leasehold interest and Tenant's Personalty of any kind owned, installed and existing in the Property and on any other matters related to the Student Housing Project assessed or incurred during the Term of this Ground Lease. Real Property Taxes include all taxes and assessments levied against the Student Housing Project. Tenant shall provide Landlord, upon Landlord's request, with evidence of payment of all taxes which may be due. Tenant shall have the right, at its sole cost and expense, with Landlord's consent, to contest or review by legal, administrative or other proceedings the validity and amount of any taxes (whether Real Property Taxes assessed against the Student Housing Project or personal property taxes assessed against the Student Housing Project as specified above on Tenant's Personalty). Tenant may make such challenge upon the condition that (a) Landlord shall not be in danger of any civil or criminal liability for failure to comply therewith, and (b) the Student Housing Project shall not be subject to the imposition of any lien as a result of such noncompliance that has not been bonded. Landlord may elect to join in such proceedings, and shall join in such proceedings if required by law in order to prosecute such proceedings. Tenant shall pay Landlord for any third-party or internal costs or expenses incurred by Landlord in connection therewith. If there shall be any refund or damages payable in connection with any proceeding pursued in accordance with this Section, Tenant shall be entitled to retain fifty percent (50%) of such refund or damages and the remaining fifty percent (50%) shall be payable to Landlord as Additional Rent. The proceedings referred to herein shall include, but shall not be limited to, appropriate appeals from any judgments, decrees or orders made in any such proceedings. Landlord has the right to have the Student Housing Project assigned a separate tax parcel ID number and may elect to have Tenant pay all Real Property Taxes directly.

If Tenant fails to pay any taxes which it is required to pay within the time period provided above, Landlord may pay said taxes, together with any and all penalties, at its option,

following written notice to Tenant demanding that Tenant pay said taxes and provided Tenant fails to make such payment prior to the expiration of a thirty (30) day cure period following such written notice. All amounts so paid by Landlord shall bear interest at the Default Rate from the date Landlord makes such payment, and said amounts with all interest accrued thereon shall become Additional Rent and payable immediately.

E. Other Taxes. In the event there is currently in effect any law providing for the taxation of leases or if any law is enacted or adopted after the date of this Ground Lease, which changes the laws now in force for taxation of leases, including but not limited to a Goods and Services Tax (GST), or the manner of the operation of any such taxes, or which otherwise imposes a tax either directly or indirectly on this Ground Lease or the Rent payments received herefrom, Tenant will pay such tax at the same time that Tenant pays the related Rent payments. This provision shall not be deemed to impose liability for any income tax owed by Landlord, whether by reason of this Ground Lease or otherwise. Tenant's obligation under this VI shall terminate with respect to any Real Property Taxes or any other taxes accrued even if not then due with respect to the Student Housing Project from and after the expiration or termination of the Term.

F. Advisory Management Committee. There is hereby created by the Parties for the purposes of this Ground Lease an Advisory Management Committee (the "**Committee**") composed of three (3) members, as follows: one person designated by Tenant (initially, its President), one person designated by Landlord (initially, the Director for Student Affairs, or such officer's designee), and one person designated by [\_\_\_\_\_] (initially, \_\_\_\_\_). **[Note: Need to negotiate who will be designated third committee member]**

The Committee shall render non-binding advice to Tenant in order that Tenant may fulfill its obligations under this Ground Lease, any applicable leasehold mortgage, the Operating Agreement and the Management Agreement. The Committee shall also render non-binding advice to the Tenant or manager, as the case may be, in order that the Tenant or manager may fulfill its obligations under the Management Agreement. Without limiting the generality of the foregoing, the Committee shall render non-binding advice to Tenant with respect to matters pertaining to this Ground Lease and with respect to (i) the Operating Budget; (ii) the expenditure of the repair and replacement fund and any other needed reserve; (iii) the amount and type of rental rates and other charges to Eligible Residents; (iii) the Management Agreement and the manager; (iv) the residential student lease form; (v) policies and procedures governing student conduct and guest conduct; and (vi) any other matters to be agreed upon by Landlord and Tenant. Unless waived by Landlord for any Annual Period as provided below in this Article, Tenant shall provide Landlord and the Committee copies of the annual audited financial statements of Tenant not more than six (6) months after the close of each Annual Period of Tenant.

Landlord's appointee is designated to serve as the chairman of the Committee, shall preside over meetings of the Committee and shall have such other duties and responsibilities as may be determined by the Committee. The designee of Tenant shall serve as Vice Chairman. The Committee shall meet not less often than quarterly during the term of this Ground Lease and all Committee actions, decisions and recommendations to Tenant or the manager, as the case may be, shall require the affirmative vote of at least two (2) members of the Committee.

Tenant shall submit to Landlord and the Committee, by not later than April 1<sup>st</sup> of each Annual Period, commencing [\_\_\_\_\_, 2015], an annual plan for the ensuing Annual Period that includes the following:

G. Annual Plan. Tenant shall submit to Landlord and the Committee, by not later than April 1<sup>st</sup> of each Annual Period, commencing [\_\_\_\_\_, 2015], an annual plan for the ensuing Annual Period that includes the following:

(a) A proposed budget (each, an "**Annual Budget**") for the operation of the Student Housing Project for the next ensuing Annual Period, including, but not limited to, line items for proposed rents, charges, fees and other projected Revenues, proposed maintenance, utility, housekeeping and other Expenses of the Student Housing Project, proposed use of reserves from the repair and replacement fund, capital improvements and furniture, fixtures and equipment, including sufficient information to explain the basis for the budgeted Revenues, capital expenditures, and Expenses. To the extent supported by prevailing market conditions and subject to any applicable requirements or restrictions imposed by law, Tenant shall use commercially reasonable efforts to establish and charge rental rates for the residential units in the Student Housing Project (other than units occupied by any maintenance and security personnel, community assistants, residence assistants or other staff of the Tenant or the Landlord) and charges for other revenue producing facilities of the Student Housing Project at a level sufficient to maintain maximum practicable occupancy and use of the Student Housing Project and the services related thereto, and to satisfy the applicable debt service payments, reserve requirements and other financial covenants contained in any Bond Documents and any mortgage encumbering Tenant's leasehold interest under this Ground Lease.

From time to time during or in respect to an Annual Period, the Tenant shall have the right to modify the Annual Budget, which amendment shall be subject to the Landlord's consent unless: (i) the amendment is to reflect additional Revenues or the receipt of insurance or condemnation proceeds; (ii) the amendment shall be for an amount in respect to a line item (A) that does not increase or decrease, when added to all other changes to that line item, either the original amount of that line item or an increased amount approved by the Landlord and then in effect by more than ten percent (10%), and (B) that does not increase the original total amount of Expenses or an increased amount approved by the Landlord and then in effect by more than ten percent (10%) or (iii) the amendment shall be necessary to preserve life or property. An Annual Budget for an Annual Period, as so amended, shall, after such amendment, be the Annual Budget for such Annual Period. Notwithstanding the above, any increase in Revenues during

an Annual Period due to a proposed increase in rates, fees or charges to Eligible Residents shall require the prior written consent of the Landlord.

For each month within an Annual Period, Tenant shall submit to the Landlord not later than fifteen (15) days after the end of such month, a budget reconciliation statement.

It shall not be necessary to amend this Ground Lease in order to amend the Annual Budget.

(b) A proposed management and marketing plan (each, a “**Management and Marketing Plan**”) for the Student Housing Project for such Annual Period, including proposed changes in any policies, staffing, staff training inclusive of fair housing and nondiscrimination training and awareness, facilities management, Eligible Subtenant satisfaction and retention measurements, marketing and promotional plans, and student and student’s guest conduct regulations, insurance program, and other programs or activities in discharge of Tenant’s duties under the Management and Marketing Agreement. It shall not be necessary to amend this Ground Lease in order to amend the Management and Marketing Plan.

(c) Any additional information that may be reasonably requested by Tenant, Landlord, or the Committee.

H. Annual Meeting. Prior to April 30 of each year, the Committee will meet to review and comment on the proposed Annual Budget and Management and Marketing Plan and may vote to recommend changes to the same. Each Annual Budget and Management and Marketing Plan is subject to approval in writing by both Tenant and Landlord. In the event the Parties are unable after consultation to agree upon a mutually-acceptable Annual Budget or Management and Marketing Plan for any Annual Period, the Parties shall exercise the dispute resolution procedure set forth below, and the Annual Budget and/or Management and Marketing Plan, for the preceding Annual Period shall remain in effect. Tenant shall ensure that the operation, maintenance, repair and marketing of the Student Housing Project by Tenant will be in accordance with the approved Annual Budgets, Management and Marketing Plans and Operating Agreement, as amended from time to time.

I. Dispute Resolution. The prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating the Operating Budget and/or Management and Marketing Plan, shall be resolved as set forth in this Section (d).

(a) Direct Communication. The Parties shall set forth their respective positions in the dispute in correspondence. Each Party shall respond within seven (7) days after receipt of a letter from the other until an agreement is reached.

(b) Mediation. If the dispute cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. Either party may request that the mediation be conducted through

JAMS (Judicial Arbitration and Mediation Services). Both parties shall participate in the mediation in good faith until the dispute is resolved for a period not to exceed thirty (30) days without the consent of all parties. The cost of the mediation shall be divided equally between the Parties.

(c) Arbitration.

(i) Method. If the dispute is not resolved through mediation, either party may request arbitration to resolve the dispute. If the parties cannot agree on a single arbitrator within fifteen (15) days following the request for arbitration, then the parties will obtain the appointment of an arbitrator through JAMS who is a retired federal judge from any level of the federal judiciary each party shall appoint one arbitrator and the two appointed arbitrators shall select the third arbitrator. Each arbitrator shall be properly credentialed with expert knowledge and practical experience regarding the subject in dispute. The initiating party shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty (30) days after the conclusion of the presentations of the parties and receipt of requested materials and documents.

(ii) Costs. The arbitrator(s) shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any attorneys' fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "**prevailing party**" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00).

(iii) Location. The alternative dispute resolution proceeding shall be held in the City of Lakeland unless otherwise mutually agreed by the Parties.

(iv) Binding Nature; Applicable Law. The consideration of the Parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding other than for the reasons set forth in § 682.20 of the Florida Statutes. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

Upon conclusion of the alternative dispute resolution proceedings, Landlord and Tenant shall adopt the Operating Budget and/or Management and Marketing Plan in accordance with

the findings of the mediator or arbitrator as the case may be, for the new Annual Period within fifteen (15) days of such findings.

J. Financial Statements, Access to Tenant's Books, and Audits. Within thirty (30) days following each Annual Period quarter during the Lease Term and also within thirty (30) days following the expiration of the Lease Term, Tenant shall provide to Landlord and the Committee financial statements with respect to the results of operations of the Student Housing Project during such quarter. Such statements shall present fairly the financial position and results of the operations of the Student Housing Project and shall be reasonably detailed, including cash flow statements reflected operating results, supporting schedules of revenues and expenditures, and a balance sheet showing Tenant's cash position at the end of such quarter. Such statements shall be accompanied by an update with respect to the occupancy of the Student Housing Project at the end of such quarter.

Except to the extent waived in writing for any Annual Period by Landlord, each Annual Period, Tenant shall cause its books and records with respect to the Student Housing Project to be audited by a certified public accountant or firm of such accountants and shall provide to Landlord and the Committee, within six (6) months following the expiration of such Annual Period, a copy of its financial statement as of the end of such Annual Period and its statement of income and expenses for the Annual Period then ended, certified by the financial advisor of Tenant and accompanied by a copy of the report thereon of the accountant or firm of accountants performing such audit, certifying the Net Available Cash Flow for the Annual Period.

Tenant shall keep, or cause to be kept, accurate, full and complete books and accounts showing exclusively its assets and liabilities, operations, transactions and the financial condition of the Student Housing Project. All financial statements shall be accurate in all material respects, shall present fairly the financial position and results of the operations of the Student Housing Project and shall be prepared in accordance with generally accepted accounting principles consistently applied. Tenant, Landlord and the Committee shall determine the presentation of such financial reports consistent with generally accepted accounting principles consistently applied. The books, accounts and records of the Student Housing Project shall be maintained at the office of the Tenant at the Project.

Landlord may, at its option and at its own expense and during customary business hours, conduct internal audits of the books, records and accounts of the Student Housing Project. Audits may be made on either a continuous or a periodic basis, or both, and may be conducted by employees of Landlord, or by independent auditors retained by Landlord. All such audits shall be conducted without materially or unreasonably interrupting or interfering with the normal conduct of business affairs by Tenant. Should such audit disclose a material underpayment of Rent due Landlord hereunder, Tenant shall immediately reimburse Landlord for the expense of the audit.

ARTICLE VII  
ALTERATIONS OR IMPROVEMENTS BY TENANT

During the Term, but subject to the terms, conditions and restrictions set forth in this Ground Lease, Tenant shall have the right to make alterations or improvements to the Student Housing Project; provided Tenant shall pay all costs, expenses and charges thereof and that all work be performed in a safe and good and workmanlike manner and in compliance with Applicable Laws, University Standards, this Ground Lease and any easement agreement, license agreement or other agreement to which Landlord or Tenant are parties. Tenant shall not make, nor permit to be made, any alterations, additions or improvements that would (i) materially affect the structure of the Student Housing Project, (ii) impact the operations of the Student Housing Project or increased or decrease the number of Eligible Residents in the Student Housing Project, (iii) affect the external aesthetic appearance of any component of the Student Housing Project as described in the Plans and Specifications, (iv) materially change the Property as opposed to the Student Housing Project, (v) resulting in the installation of signage on the Student Housing Project or (vi) involve any improvement outside the Property, without prior written approval of Landlord as set forth in this Ground Lease, which approval shall not be unreasonably withheld, delayed or conditioned. Landlord shall have fifteen (15) Business Days to review such requested changes and approve or disapprove the proposed plans.

In reviewing any such requests, Landlord shall apply the University Standards to the proposed alteration, addition or improvement and all elements of landscaping. All alterations, additions and improvements shall comply with the requirements of this Ground Lease. Notwithstanding the foregoing, Tenant is permitted to make changes, improvements, modifications, and additions to the interior space of the Student Housing Project, the rooftop equipment, Building Systems, HVAC, exhaust, fans, back-up generators and other building service equipment that are not visible from the exterior of the Student Housing Project and do not otherwise trigger Landlord's review rights under this Article or replacements of such equipment which are the same or substantially the same and in the same location as the equipment being replaced, without the prior approval of or prior notice to Landlord. Alterations to the interior of the Student Housing Project not triggering Landlord's review rights under this Article due to their non-structural nature shall not require Landlord's consent or prior notice.

ARTICLE VIII  
REMOVAL OF PERSONALTY AND OTHER PERSONAL PROPERTY FROM THE  
IMPROVEMENTS

All Personalty, trade fixtures which are not affixed to the Student Housing Project, furniture, furnishings and signs installed in or to the Student Housing Project by Tenant and paid for by Tenant shall remain the property of Tenant and may be removed by Tenant prior to the expiration or early termination of this Ground Lease. If Tenant fails to remove such personal property items from the Student Housing Project within this time-frame, such trade

fixtures, furniture, furnishings and signs shall become the property of Landlord, unless Landlord elects to require the removal in which case Tenant shall promptly remove the same and restore the Student Housing Project to its prior condition at Tenant's sole cost and expense. All lighting fixtures, heating and cooling equipment and all other installations and construction to be furnished or performed by Tenant constituting a fixture to the Student Housing Project shall become the property of Landlord on the ending term hereof and shall not be removed from the Student Housing Project. Provided that Tenant has achieved Substantial Completion of the construction of the Student Housing Project pursuant to the terms of this Ground Lease and has maintained the Student Housing Project as required by this Ground Lease, Tenant shall not be required to remove or demolish any of the Student Housing Project from the Property at the expiration or earlier termination of this Ground Lease.

#### ARTICLE IX ACCESS TO PROPERTY

Landlord has free access to the Student Housing Project at all reasonable times, at its own risk and expense and upon not less than forty-eight (48) hours prior written notice, for the purpose of making any alterations or repairs to the Student Housing Project which Tenant has failed to make in accordance with this Ground Lease, after applicable notice and cure periods expire, or to examine or inspect the Property. Such action shall not be deemed an eviction or disturbance to Tenant nor shall Tenant be allowed any abatement of Rent or damages for any injury or inconvenience occasioned thereby. Neither Landlord nor its agents shall direct or require the Contractor or any subcontractors or any other consultant of Tenant regarding the Student Housing Project to perform or not perform any act pertaining to the Student Housing Project or the construction thereof outside of the presence of a Tenant representative. Such access shall be (a) during normal business hours and (b) subject to Tenant's right to escort Landlord during such access. Notwithstanding the foregoing, in the event of an emergency or in the event Landlord has specific and legitimate concerns regarding safety of persons or property, on or off the Student Housing Project, Landlord shall have access to the Student Housing Project at all times and upon reasonable oral notice to the Tenant, if any is reasonably possible, given the circumstances. This Article is not meant to imply that Landlord has any obligation to provide any services or make any alterations or repairs to the Property or the Student Housing Project. Landlord and Tenant acknowledge and agree that nothing in this Ground Lease is intended to diminish Landlord's rights to access the Property under Applicable Laws in its capacity (i) as a building permitting authority and (ii) as the provider of security services to the Student Housing Project.

#### ARTICLE X ALL MAINTENANCE AND REPAIRS BY TENANT

Tenant, at its sole cost and expense, shall keep and maintain the Student Housing Project, the Student Housing Project and every part of each, including, but not limited to, the structure, foundations, roof, fixtures, paved areas, sidewalks, Building Systems, utility/service

lines, pipes and conduit, security grills, facilities, hardscaping, or equipment contained therein, in good condition and repair and making such replacements as are necessary to keep all components of the Student Housing Project in first class condition and repair.

#### ARTICLE XI

##### NO REPAIRS BY LANDLORD; NO PRE-EXISTING CONDITIONS

A. Landlord's Duties. No duties are or shall be imposed upon Landlord to inspect the Student Housing Project and Landlord has no duty or obligation to make any repairs whatsoever to the Student Housing Project or any improvements located on the Student Housing Project or on the Campus.

B. Tenant's Duties. During the Term of this Ground Lease, Tenant is responsible for any violations of Applicable Laws on the Student Housing Project or related to the Student Housing Project. If Tenant becomes aware of any such violations of Applicable Laws or the presence of Hazardous Substance or Materials (as hereinafter defined) it shall promptly notify Landlord in writing.

#### ARTICLE XII

##### DEFAULT

A. Events of Default. This Ground Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements to be performed by it as herein set forth. If any of the following events shall occur, Tenant is deemed to be in default of this Ground Lease ("**Default**" or an "**Event of Default**").

(i) Any payment of Rent or any other sums required to be paid to Landlord pursuant to this Ground Lease, is at any time in arrears and unpaid within ten (10) Business Days after receipt of written notice from Landlord that such amount is past due, or

(ii) Any default beyond all applicable notice and cure periods under any other Binding Agreement;

(iii) Any payment required to be made by Tenant pursuant to the terms of this Ground Lease, is at any time be in arrears and unpaid within fifteen (15) Business Days after receipt of written notice form Landlord that such amount is past due, or

(iv) There is any default on the part of Tenant in the observance or performance of any of the other terms, covenants, agreements, conditions or provisions of this Ground Lease on the part of Tenant to be kept and performed, and such default continues for thirty (30) days after notice thereof in writing to Tenant; provided, however, that if such default is of a nature that it cannot reasonably be cured within such thirty (30) day period, then Tenant shall have such time as is reasonably required to cure such default; provided that such reasonable time period shall not exceed 180 days and provided further that Tenant commences

the cure within such thirty (30) day period and continues thereafter to diligently pursue completion of such cure, or

(v) Tenant fails to operate and maintain the Student Housing Project such that it is safe and secure for occupancy by Eligible Residents and any such occurrence or failure continues for a period of thirty (30) days after written notice thereof is given by Landlord to Tenant and the holder of any leasehold mortgage encumbering Tenant's leasehold interest hereunder, or

(vi) Tenant files a petition in bankruptcy or is adjudicated bankrupt or files any petition or answer seeking a reorganization, liquidation, dissolution or a similar relief for itself under any present or future federal, state or other statute, law or regulation related to bankruptcy, or makes an assignment for the benefit of creditors, or

(vii) Tenant fails to achieve the construction Commencement Deadline Date or the Completion Deadline Date within the time periods set forth in this Ground Lease;

(viii) Any trustees, receiver or liquidator of Tenant is appointed and action, suit or proceeding is instituted by or against Tenant, such preceding or action has not been dismissed within sixty (60) days after such appointment, or

(ix) Any representation or warranty of Tenant made in this Ground Lease fails to be correct in any material respect on the date made or deemed made and same is not cured within five (5) days of Tenant's receipt of notice thereof, or

(x) The leasehold estate hereby created shall is taken (by any governmental entity other than by Landlord) by execution or other process of law, or

(xi) A Transfer is made without the prior written consent of Landlord as described in Article XV, Section B, or

(xii) Cessation of operations or abandonment of the Student Housing Project.

B. Notice and Remedies During Tenant's Default. Except for monetary defaults as described above, in the event of Default by Tenant under this Ground Lease, Landlord shall provide Tenant with written notice of such Default (a "**Default Notice**") and Tenant shall have the time period set forth above (if any) to cure such Default. If Tenant fails to cure the Default within any cure period as herein provided, Landlord shall provide Tenant with a second notice in writing notifying Tenant of Landlord's intention to terminate this Ground Lease. Tenant shall have ten (10) days from receipt of Landlord's second notice to cure such breach. Upon the expiration of such additional ten (10) day cure period, Landlord, as its sole and exclusive remedies under this Ground Lease, shall be entitled to (i) terminate this Ground Lease and reenter the Student Housing Project and take possession thereof, and terminate all rights to use the Student Housing Project, (ii) terminate all leases between Tenant and Eligible Residents,

provided, the rent is prorated as of the date of the termination, (iii) sue Tenant for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the date of such termination of this Ground Lease (including, without limitation, amounts due under the provisions which survive such termination), (iv) sue Tenant under the provisions of this Ground Lease for any holdover obligations of Tenant, if any, and (iv) require Tenant to document the conveyance and transfer set forth in this Ground Lease.

C. Landlord's Optional Cure Rights. In addition to the foregoing rights of Landlord, if Tenant is in default hereunder beyond applicable notice and cure periods, if any, Landlord shall have the option, but not the obligation, to cure the act or failure constituting such default for the account of, at the expense of, Tenant. All such reasonable costs or expenses incurred by Landlord shall be considered Additional Rent hereunder and shall be paid by Tenant to Landlord within thirty (30) days following written demand. Landlord shall provide Tenant with thirty (30) days written notice prior to curing any default, provided, however (i) no such notice shall be required for emergency repairs, and (ii) if Tenant's default would result in the imposition of a lien or the issuance of a tax sale certificate, Landlord shall provide, if possible, notice at least ten (10) days before such lien would be created or tax sale certificate be issued. If Landlord has already terminated this Ground Lease pursuant to this Article, Landlord's cure, or attempt to cure, any act or failure constituting a default by Tenant (which act or failure occasioned the termination of this Ground Lease) shall not result in a waiver of such termination by Landlord.

D. Performance by Landlord of Tenant's Obligation; Interest. If Tenant at any time fails to pay any taxes, assessments, or, fails to make any payment or perform any act required by this Ground Lease to be made or performed by it, Landlord, without waiving or releasing Tenant from any obligation or default under this Ground Lease, may (but shall not be obligated to) at any time thereafter make such payment or perform such act for the account and at the expense of Tenant. All sums to be paid by Landlord and all costs and expenses so incurred, shall accrue interest at the Default Rate from the date of payment or incurring thereof by Landlord and shall constitute Additional Rent payable by Tenant under this Ground Lease and shall be paid by Tenant to Landlord within thirty (30) days following written demand.

E. Waiver. Tenant waives and releases Landlord from any claims and/or liability for any special, consequential, incidental or punitive damages arising under or in connection with the Student Housing Project or this Ground Lease.

F. No Damages. Tenant shall not seek an award of damages or the return of any amounts paid by Tenant in connection with the foregoing remedies.

### ARTICLE XIII DAMAGE AND DESTRUCTION

Tenant agrees to provide such insurance coverage as required in this Ground Lease. In the event the Student Housing Project is damaged ("**Damage**"), Tenant shall give notice to

Landlord within five (5) Business Days of such Damage. If the Student Housing Project has been Substantially Damaged (as defined hereinafter), then within sixty (60) days, or such longer period as is reasonably required under the circumstances (but not to exceed one hundred twenty (120) days), following any Damage, Tenant, in its sole and absolute discretion, may elect in writing to rebuild or repair such Damage, at Tenant's expense, or to terminate this Ground Lease. If Tenant fails to timely make such election, then Landlord may send a written notice to Tenant requesting that Tenant make such election. Tenant's failure to respond within twenty (20) days after receipt of such written request shall be deemed to be an election by Tenant not to rebuild or repair such Damage. For purposes hereof, "**Substantially Damaged**" shall mean if the cost of repairing or replacing the same exceeds fifty percent (50%) of their replacement cost immediately prior to the casualty (excluding the value of foundations, footers and paving). If Tenant elects to not rebuild or restore any such Improvement or part thereof, Tenant agrees to deliver the Student Housing Project to Landlord clear of debris, and, at Landlord's option, Tenant shall demolish/remove any improvements remaining on the Student Housing Project, or those specified in writing by Landlord, no later than two hundred ten days (210) days after the date of the casualty and this Ground Lease shall terminate on the date Tenant completes the demolition/removal but in any event no later than two hundred ten (210) days after the date of the Damage. If the Student Housing Project is not substantially damaged, Tenant shall promptly rebuild or repair such Damage at Tenant's sole cost and expense. Repairs and replacements shall be made in accordance with this Ground Lease. Tenant shall be entitled to adjust, collect and compromise, in its sole discretion, all claims under any applicable insurance policies carried by Tenant, to execute and deliver all necessary proofs of loss, receipts, vouchers and releases required by the insurers and to use any such proceeds as Tenant shall elect in its sole discretion, subject to its obligations under this Article.

#### ARTICLE XIV

##### ASSIGNMENT AND SUBLETTING; CHANGE IN OWNERSHIP

A. General Prohibition. Tenant shall not have the right at any time to assign (whether by operation of law or otherwise) any rights granted by this Ground Lease or sublet any portion of the Property (each, a "**Transfer**") without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion.

B. Change in Ownership of Tenant. During the Term, the following shall be deemed a Transfer: [ ] (the "**Corporation**") ceases to own 100% of the membership interests in Tenant, or if the Corporation is dissolved, or the Corporation is merged, consolidated, liquidated, or the occurrence of an assignment for the benefit of creditors or by operation of law. Unless Tenant has obtained Landlord's written consent prior to such a Transfer, which consent Landlord may withhold in its sole and absolute discretion, such a Transfer shall constitute an Event of Default for purposes of this Ground Lease.

ARTICLE XV  
ACCORD AND SATISFACTION

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided for in this Ground Lease or available at law or in equity.

ARTICLE XVI  
MECHANICS AND MATERIALMENS' LIENS

Tenant shall not suffer any mechanics or materialmens' liens or other liens to be filed against the Student Housing Project or any other portion of the Campus by reason of work, labor, services or materials performed or furnished to Tenant during the Term of this Ground Lease or related to the Student Housing Project during the Term. If any such lien or any notice of intention to file a lien shall at any time be filed against the Student Housing Project, Tenant shall at Tenant's cost, within fourteen (14) days after the lien or other document is filed, commence and diligently pursue the same to be removed or discharged of record by payment, bond, order of a court of competent jurisdiction or otherwise and shall thereafter diligently pursue such removal or discharge. If Tenant is not able to cause any lien to be removed or discharged of record within thirty (30) days after Tenant becomes aware of such lien, Tenant shall cause the lien to be bonded off within ten (10) days.

If Tenant fails to remove or discharge any such lien or any notice of intention to file a lien within the prescribed time, then in addition to any other right or remedy of Landlord, Landlord may, at its option, procure the removal or discharge of the same by payment or bond or otherwise. Any amount paid by Landlord for such purpose, including but not limited to, attorney fees, together with interest thereon at the Default Rate is due and payable by Tenant to Landlord as Additional Rent.

Nothing contained in this Ground Lease shall be construed as a consent or agreement on the part of Landlord to subject Landlord's estate in the Student Housing Project to any lien or liability arising out of Tenant's use or occupancy of the Student Housing Project. Tenant covenants and agrees to give any required notices or disclosures to Tenant's contractors advising that Landlord's interest in the Student Housing Project is not subject to liens arising from Tenant's construction of improvements on the Property.

ARTICLE XVII  
LEASEHOLD MORTGAGES

During the Term and subject to the terms of this Ground Lease, Tenant has the right to pledge, hypothecate or otherwise encumber from time to time its leasehold interest under this

Ground Lease as security for one or more loans the proceeds of which are used exclusively for the purpose of funding the performance and satisfaction of Tenant's obligations under this Ground Lease. Except to the extent expressly agreed to in writing by Landlord, no such leasehold mortgage loan, or any extension, renewal, re-financing or replacement thereof, obtained by or on behalf of Tenant shall impose any obligation or liability whatsoever on Landlord or attach to, encumber or otherwise affect Landlord's interest in the Student Housing Project or the Student Housing Project. The sole recourse of any leasehold mortgagee shall be against Tenant and Tenant's interest in the Student Housing Project and this Ground Lease. The underlying fee simple title to the Property shall not be mortgaged or encumbered by Tenant. All loans secured by Tenant's interest in the Student Housing Project and this Ground Lease shall be paid in full before the expiration or earlier termination of the Term, including in connection with Landlord's exercise of its option to purchase pursuant to Paragraph C of Article II hereunder.

If, from time to time, Tenant or Tenant's successors and assigns shall encumber the leasehold estate created by this Ground Lease and/or Tenant's in the Student Housing Project with a mortgage (a "**Leasehold Mortgage**"), and if the holder thereof (a "**Leasehold Mortgagee**") delivers to Landlord an executed counterpart of such Leasehold Mortgage, together with each assignment thereof certified by such Leasehold Mortgage to be true together with written notice specifying the name and address of such holder and the pertinent recording data with respect to such Leasehold Mortgage, Landlord agrees that, anything in this Ground Lease to the contrary notwithstanding, from and after the date of receipt by Landlord of such notice and for the term (duration) of such Leasehold Mortgage, the following provisions shall apply:

(a) Consent to Amendment. Except as provided below, there shall be no cancellation, surrender or modification of this Ground Lease by Landlord or Tenant without the prior written consent of any Leasehold Mortgagee, which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing (but, in any event, subject to a Leasehold Mortgagee's curative rights set forth in paragraphs (c) and (d) of this Article), nothing herein shall be deemed to prohibit Landlord from terminating this Ground Lease in accordance with its terms or exercising its option to purchase as provided for in this Ground Lease. Except for a refinancing pursuant to this Article XVIII, there shall be no material modification in the Leasehold Mortgage or related documentation without Landlord's prior written consent.

(b) Notices to Leasehold Mortgagees. Landlord, upon serving Tenant with any notice of an Event of Default, breach of a covenant or failure to perform, or termination, shall simultaneously serve a copy of such notice on any Leasehold Mortgagee. In the event Landlord serves Tenant with a notice of a failure to comply with any term, covenant, condition, or provision hereof, the Leasehold Mortgagee shall then have the same period after service of the notice on it as is given to Tenant hereunder to remedy or cause to be remedied such failure, and Landlord shall accept performances by or at the instigation of any Leasehold Mortgagee as if it

had been done by Tenant. Any notice required to be given to any Leasehold Mortgagee shall be posted in the United States mail, postage prepaid, certified, return receipt requested (and wired by telegraphic means or transmitted by facsimile transmission) and addressed to the Leasehold Mortgagee at the address and to the attention of the person designated to Landlord by such Leasehold Mortgagee to receive copies of such notices and shall be deemed to have been served as of the soonest date that one of the said notice (mailed or wired or faxed) is received or refused by such Leasehold Mortgagee.

(c) Curative Rights of Leasehold Mortgagees. In addition to the rights granted to any Leasehold Mortgagee under paragraph (b) of this Article XVIII, a Leasehold Mortgagee shall have an additional period of ninety (90) days to remedy or cause to be remedied any Event of Default of which it shall receive notice other than an Event of Default described in paragraph A. (iv) of Article XIII for which an additional 10 days to remedy may be provided by Landlord.

(d) Limitation Upon Termination Rights of Landlord. If Landlord elects to terminate this Ground Lease upon the occurrence of an Event of Default, the Leasehold Mortgagee shall also have the right to postpone and extend the date of termination as fixed by the provisions of this Ground Lease for a period of not more than six (6) months from the expiration of the ninety (90) day period specified in subsection (c) hereof, provided that the Leasehold Mortgagee (i) shall cure the Event of Default under this Ground Lease during such period, and provided further, that the Leasehold Mortgagee shall forthwith take steps necessary to acquire Tenant's interest and estate in this Ground Lease by foreclosure of its Leasehold Mortgage, or otherwise, and shall prosecute such action to completion with due diligence, or (ii) shall cause the Tenant to terminate the Management Agreement and provide Landlord with a remedial plan acceptable to the Landlord setting forth in reasonable detail how the Leasehold Mortgagee and the proposed substitute manager shall cure the Event of Default. If at the end of the six (6) month period, the Leasehold Mortgagee is actively engaged in steps to acquire or sell Tenant's interest in this Ground Lease, the time for Leasehold Mortgagee to comply with the provisions of this subsection (d) shall be extended for a period, acceptable in the sole discretion of the Landlord, as shall be reasonably necessary to complete the remedial plan with reasonable diligence and continuity.

(e) Assignment. Landlord agrees that in the event of any foreclosure under any Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein all right, title and interest encumbered by such Leasehold Mortgage may, without the consent of Landlord, be assigned to and vested in the purchaser at such foreclosure sale subject and subordinate, however, to the rights, title and interests of Landlord; and, notwithstanding that Landlord's consent to said assignment shall not have been obtained, any such assignee shall be vested by virtue of such assignment with any and all rights of the party whose estate was encumbered by such Leasehold Mortgage as though Landlord had consented thereto; provided, however, the assignee or purchaser at such foreclosure sale shall be required to provide a remedial plan that sets out in reasonable detail such party's plan to cure the Event of Default which caused the foreclosure to take place.

(f) Mortgagee Leases. Landlord agrees that in the event of a termination of this Ground Lease by reason of any Event of Default, and subject to the rights herein granted to Leasehold Mortgagees, the Leasehold Mortgagee shall have the option, but not the obligation, to enter into a ground lease agreement directly with Landlord (a “**Mortgagee Lease**”); provided:

(i) the Leasehold Mortgagee shall enter into a Mortgagee Lease within the six (6) month period specified in subsection (d) of this Section;

(ii) the Leasehold Mortgagee shall perform and observe all covenants contained in the Mortgagee Lease on Tenant’s part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Student Housing Project under the said Mortgagee Lease;

(iii) the Leasehold Mortgagee terminates the Management Agreement with the then current manager and appoints a substitute manager acceptable to the Landlord; and

(iv) the Leasehold Mortgagee, as lessee under the Mortgagee Lease, shall have the same right, title and interest in and to the Student Housing Project and the right to use the Student Housing Project as Tenant had under this Ground Lease.

(g) Agreement Between Landlord and Leasehold Mortgagee. Landlord, upon request, shall execute, acknowledge, and deliver to each Leasehold Mortgagee an agreement, in form reasonably satisfactory to the Leasehold Mortgagee and Landlord, by and among Landlord, Tenant, and the Leasehold Mortgagee (provided the same has been previously executed by Tenant and Leasehold Mortgagee) agreeing to all of the provisions of this Section XXVII.

(h) Limitation on Liability of Leasehold Mortgagee. Notwithstanding any other provision of this Ground Lease, Landlord agrees that any Leasehold Mortgagee permitted under this Ground Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of Tenant’s obligations or covenants under this Ground Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), or (ii) required to cure any Event of Default, provided; however, that if such Leasehold Mortgagee becomes the owner of the leasehold estate created hereunder or becomes the lessee under a Mortgagee Lease, then such Leasehold Mortgagee shall be responsible and liable for all obligations and covenants accruing during such Leasehold Mortgagee’s tenure as owner of such leasehold estate or as lessee under a Mortgagee Lease. Notwithstanding the foregoing, the liability of a Leasehold Mortgagee with respect to its obligations under this Ground Lease or any Mortgagee Lease shall be “non-recourse” and, accordingly, Landlord’s source of satisfaction of such obligations shall be limited to its rights to terminate the Ground Lease as provided herein and/or the Net Available Cash Flow, and Landlord shall not seek to obtain payment through any judicial process or otherwise from any person or entity comprising such

Leasehold Mortgagee or from any assets of such Leasehold Mortgagee other than the Net Available Cash Flow.

## ARTICLE XVIII

### WAIVER

No waiver of any condition or legal right shall be implied by the failure of Landlord or Tenant to take action or for any other reason, and no waiver of any condition or covenant shall be valid unless it is in writing signed by the party against whom the waiver is asserted. The mention in this Ground Lease of any specific right or remedy shall not preclude Landlord or Tenant from exercising any other right or from having any other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity except to the extent such right or remedy is waived herein. For the purpose of any suit by Landlord brought or based on this Ground Lease, this Ground Lease shall be construed to be a divisible contract, to the end that successive actions may be maintained as successive periodic sums shall mature under this Ground Lease and it is further agreed that failure to include in any suit or action any sums or sums then matured shall not be a bar to the maintenance of any suit or action for the recovering of said sum or sums so omitted.

## ARTICLE XIX

### WAIVER OF LIABILITY/INDEMNIFICATION

A. Limitation of Liability. Notwithstanding anything herein to the contrary, Landlord is not and shall not be liable for any claims for damage to property or injuries to persons in, on or about the Campus or elsewhere occurring during the Term. This limitation on liability shall apply without limitation to claims by Tenant, its representatives, contractors, employees, agents, invitees, licensees, customers, guests, or related entities. Furthermore, in no event shall Landlord have any liability to Tenant on account of any consequential, incidental, special, punitive, exemplary or any other indirect damages, whether in contract, tort (including without limitation negligence and strict liability) or under any other legal or equitable principles whatsoever, or for any loss of profits or revenue. Tenant further acknowledges that nothing contained in this Ground Lease shall be construed as waiving or in any way modifying any statutory or sovereign immunity to which Landlord is entitled.

B. Indemnification by Tenant. Tenant agrees that from and after the Effective Date: Tenant shall indemnify, defend (with counsel reasonably acceptable to the Indemnified Parties) and hold harmless Landlord, and the Florida Board of Governors, and their respective employees, trustees, and governors (collectively, the “**Indemnified Parties**”) from suits, actions, damages, liability and expense, including, but not limited to, attorney fees and court costs, which may be asserted against, imposed upon or incurred by the Indemnified Parties (i) to the extent arising from or out of any occurrence at, in, or from the Student Housing Project or any part thereof during the Term by reason of the construction, occupancy, or use of the Student Housing Project, (ii) by reason of Tenant’s breach under any provision hereof during the Term, or (iii) by reason of any act or omission by Tenant, its employees, representatives, agents,

contractors, partners, employees, servants, licensees, or invitees during the Term, except to the extent resulting from the gross negligence or willful misconduct or violation of Applicable Law by any Indemnified Party.

C. Miscellaneous Provisions. Tenant shall store its Personalty in the Student Housing Project and Tenant shall occupy and use the Student Housing Project at its own risk. The Indemnified Parties are not responsible or liable at any time and Tenant expressly releases them from any loss or damage to Tenant's Personalty. Tenant shall give prompt notice to Landlord in case of fire or accidents at the Student Housing causing material damage thereto.

D. Violation of Requirements. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from and against any and all loss, cost, damage or claim arising during the Term out the failure of any portion of the Student Housing Project or Student Housing Project to comply with all requirements (including, but not limited to, applicable terms of the Americans With Disabilities Act of 1990 (the "ADA"), as modified and supplemented from time to time) which shall impose any violation, order or duty upon Landlord or Tenant arising from, or in connection with, the Student Housing Project, the Property, Tenant's occupancy, use or manner of use of any portion of the Property or the Student Housing Project (including, without limitation, any occupancy, use or manner of use that constitutes a "place of public accommodation" under the ADA), or any installations in the Property/Student Housing Project or improvements required by reason of a breach of any of Tenant's covenants or agreements under this Ground Lease, whether or not such requirements shall now be in effect or hereafter enacted or issued. Tenant's indemnification obligation hereunder shall not extend to the gross negligence or willful misconduct or violation of any Applicable Laws by Landlord or its employees, trustees, or agents.

E. Survival. This Article will survive the termination of, or the expiration of the Term of, this Ground Lease.

## ARTICLE XX SURRENDER AND HOLDING OVER

Tenant shall deliver up and surrender to Landlord possession of the Student Housing Project and the Student Housing Project, and shall execute mutually agreeable documentation of the termination upon the expiration or earlier termination of this Ground Lease, in the condition required by this Ground Lease. Should Tenant or any party claiming under Tenant remain in possession of the Student Housing Project , or any part thereof, after any termination of this Ground Lease, no tenancy or interest in the Student Housing Project or the Student Housing Project shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Tenant shall, upon demand, pay to Landlord, as liquidated damages, a sum equal to 200% of the prevailing market rent as determined by Landlord of the Property and the Student Housing Project for any period during which Tenant shall hold the Property after the stipulated term of this Ground Lease may have expired or terminated.

ARTICLE XXI  
CONDEMNATION

In case of a Taking, as hereinafter defined, or the commencement during the Term of this Ground Lease of any proceedings or negotiations which might result in a Taking, Landlord and Tenant shall give notice thereof to the other. Landlord and Tenant shall have the right to appear in such proceedings and be represented by their respective counsel. Tenant shall be authorized to collect, settle and compromise, in its discretion, the amount of Tenant's award related to the leasehold estate created by this Ground Lease and the Student Housing Project. Each of the parties will cooperate in good faith with the other parties in all such proceedings, and to execute any and all documents that may be required in order to facilitate the collection of the maximum award to which each party shall be entitled thereunder. Notwithstanding anything to the contrary set forth in this Article, Landlord is prohibited from exercising any power of condemnation it may now or hereafter have and condemning the Property, the leasehold estate created by this Ground Lease (the "**Ground Lease Estate**") or the Student Housing Project thereon; and from exercising undue influence on the condemning authority against the Property, the Ground Lease Estate and any improvements thereon. "Taking" shall mean any condemnation, requisition or other taking or sale of the use or occupancy of or title to the Property, the Ground Lease Estate and/or the Student Housing Project in, by or on account of any actual or threatened eminent domain proceeding or other action by any governmental authority or other person or entity under the power of eminent domain or otherwise; provided however that Landlord shall be prohibited from exercising any such Taking. A Taking shall be deemed to have occurred on the earliest to occur of the dates that use, occupancy or title is taken.

If at any time during the Term of this Ground Lease there shall be a Taking of the whole or substantially all of the Property and/or the Student Housing Project by any governmental entity other than Landlord, then, this Ground Lease shall terminate and expire on the date title is transferred to such Taking entity. No Rent shall be apportioned in connection with such Taking. For the purpose of this section "substantially all of the Property/Student Housing Project and/or the Student Housing Project" shall be deemed to have been taken if the remaining part of the Property/Student Housing Project and/or the Student Housing Project not so taken cannot be adequately restored, repaired or reconstructed, in the reasonable opinion of Tenant, so as to constitute a complete, architecturally sound facility of substantially the same usefulness, design and construction as the Student Housing Project prior to the Taking.

If this Ground Lease is terminated as a result of such Taking, then Tenant shall at Tenant's election and Tenant's sole discretion either restore the Student Housing Project on the Property to complete, architecturally sound buildings, or demolish/remove any remaining improvements on the Property, provided Landlord shall have the right, at its option, to receive ownership of the remaining improvements in their as-is, where-is condition, with all faults (and without representation or warranty, express or implied).

If this Ground Lease is terminated as result of such Taking by any governmental entity other than Landlord, then as between Landlord and Tenant, the parties agree that each shall be entitled to its fair and equitable share of any award or awards which such awards shall be allocated as follows: (a) to Tenant in an amount equal to the fair market value of the Ground Lease Estate and the physical facilities of the Student Housing Project apportioned to the remaining Term and any Personalty of Tenant so taken; and (b) to Landlord in an amount necessary to compensate it for the fair market value of the Property (subject to, and burdened by, this Ground Lease for the entire Term and any Renewal Term (it being agreed that such Renewal Terms shall be assumed to have been exercised by Tenant) and excluding improvements apportioned to the remaining Term). The Ground Lease Estate and the Student Housing Project award shall be deemed to be that part of the award which shall be specifically attributable by the condemnation court (or condemnation commissioner or other body authorized to make the award) to the Ground Lease Estate and the Student Housing Project on the Property. If any such awards are made without explicit allocation of an amount representing Tenant's interest under this Ground Lease and/or the Student Housing Project and Personalty, Landlord and Tenant shall use good faith efforts to agree thereupon. If this Ground Lease shall continue after any such Taking, this Ground Lease shall remain unaffected except that this Ground Lease shall terminate as to the part of the Student Housing Project so taken (unless such Taking is a temporary taking, in which case this Ground Lease shall terminate with respect to the portion of the Student Housing Project Taken only so long as it remains taken) and except that Tenant shall, promptly after such Taking and at its expense, restore such improvements to a complete architectural unit to the reasonable satisfaction of Landlord. The portion of the Student Housing Project remaining shall thereafter be referred to as the "**Student Housing Project.**"

## ARTICLE XXII EXCEPTIONS TO DEMISE

A. Pre-Existing Recordings. Notwithstanding anything to the contrary herein contained with respect to the University Standards, this Ground Lease is subject to all University Standards, and the easements and the Permitted Exceptions, and documents that are imposed from time to time after the Effective Date as long as such future matters do not materially impair Tenant's rights under this Ground Lease. Landlord, under this Ground Lease, does not warrant or guaranty title, right or interest in the Property to Tenant; provided however that Landlord does warrant and guaranty title, right and interest in and to the leasehold estate created by this Ground Lease in favor of Tenant. Tenant acknowledges that it has performed whatever due diligence it deems advisable into the ownership, title, and condition of the Property and will obtain, at its discretion, a title insurance policy or other protection concerning Tenant's leasehold interest provided in this Ground Lease.

B. Subordination. Landlord shall have the right to cause this Ground Lease (and any renewals, amendments, replacements, modifications and extensions thereof) to be and become and remain subject and subordinate to any and all ground or underlying leases,

mortgages or deeds of trust (or any renewals, modifications, consolidations, replacements or extensions thereof) covering the Property for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advances, together with interest thereon and subject to all the terms and provisions thereof; provided, however, that such lender or other party shall agree in a written subordination agreement, in form and substance reasonably acceptable to such lender, to Landlord and to Tenant, not to disturb Tenant's right of possession under this Ground Lease pursuant to the terms of this Ground Lease, unless an Event of Default has occurred and is continuing. Notwithstanding anything to the contrary herein, Landlord shall not have the right to cause any mortgage, lien or encumbrance to be placed on or against the Student Housing Project, the Student Housing Project, the other improvements or the Personalty.

ARTICLE XXIII  
GROUND LEASE INURES TO BENEFIT OF ASSIGNEES

This Ground Lease and all the covenants, provisions and conditions herein contained shall inure to the benefit of and be binding upon the permitted assigns, if any, of the parties hereto, provided, however, that no assignment by, from, through or under Tenant in violation of this Ground Lease shall vest in the assigns any right, title or interest whatever. **It is expressly understood and agreed that, subject to Section B of Article XXII entitled, "Exceptions to Demise", this Ground Lease and all rights of Landlord hereunder shall be fully and freely assignable by Landlord without notice to or the consent of Tenant.**

ARTICLE XXIV  
QUIET ENJOYMENT

Subject to the provisions of Article XXII entitled, "**Exceptions to Demise**", Landlord hereby covenants and agrees that if Tenant perform all the covenants and agreements herein stipulated to be performed on Tenant's part, subject to the notice and cure rights in favor of Tenant set forth in this Ground Lease, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Student Housing Project without any manner of let or hindrance from Landlord, or any party claiming by or through Landlord.

ARTICLE XXV  
NO PARTNERSHIP

By entering into this Ground Lease, Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship other than Landlord and Tenant. By entering into this Ground Lease, Tenant does not, in any way or for any purpose, become a partner of Landlord in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Landlord, it being understood and agreed that neither the method of

computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship other than Landlord and Tenant.

ARTICLE XXVI  
NOTICES

All notices, requests, consents, waivers and approvals, under this Ground Lease shall be effective only if given or made in writing addressed to a party to the attention of the offices or individual(s) and at the address or to the facsimile number specified for that party in this clause and to such additional or other addressees, addresses, and/or facsimile numbers, as any party may designate by notice to the other party in accordance with this clause, and shall be effective at the times, and only if given by the means, specified below:

(i) By nationally recognized overnight delivery service or by government certified or registered mail return receipt requested, effective upon delivery or refusal of delivery by or on behalf of the intended recipient, as evidenced by the delivery receipt;

(ii) By hand delivery using a commercial courier service, effective upon delivery or refusal of delivery by or on behalf of the intended recipient, as evidenced by the delivery receipt, or by other hand delivery effective upon delivery or refusal of delivery by or on behalf of the intended recipient according to all relevant evidence; or

The addressees', addresses and facsimile numbers for notice shall be:

If to Landlord:

Florida Polytechnic University  
Office of the President  
4700 Research Way  
Lakeland, Florida 33805-8531

With copy to:

Florida Polytechnic University  
Office of the General Counsel  
4700 Research Way  
Lakeland, Florida 33805-8531

If to Tenant:

[\_\_\_\_\_]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

ARTICLE XXVII  
LANDLORD'S AND TENANT'S MARKS

A. Landlord's Marks. Tenant shall not use the name of Landlord or any of its symbols, logos, trademarks or other representations of those of its affiliated organizations ("**Landlord's Marks**") without the express written consent of Landlord and the applicable affiliated organization(s). Tenant shall not, during the Term of this Ground Lease, change the name of the Student Housing Project without the prior written consent of the Landlord, and if such new name would include use of any Landlord's Marks, without the express written consent of Landlord, which consent may be granted or withheld in Landlord's sole and absolute discretion.

B. Tenant's Mark's. Landlord shall not use the name of Tenant or any of its symbols, logos, trademarks or other representations of those of its affiliated organizations ("**Tenant's Marks**") without the express written consent of Tenant and the applicable affiliated organization(s). Landlord shall not, during the Term, change the name of the Student Housing Project if such new name would include use of any Tenant's Marks, without the express written consent of Tenant, which consent may be granted or withheld in Tenant's sole and absolute discretion. Upon the expiration or early termination of this Ground Lease, Tenant may require that the name of the Student Housing Project be changed to remove Tenant's Marks.

ARTICLE XXVIII  
INTEREST

All sums payable by Tenant to Landlord under this Ground Lease, if not paid when due, shall accrue interest at the greater of: (i) the sum of the prime rate (published by the Wall Street Journal or similar publication) plus seven percent (7%) (700 basis points) per annum, and (ii) the highest rate allowed under the laws of the State of Florida (the "**Default Rate**"), from their due date until paid, said interest to be Additional Rent under this Ground Lease and shall be paid to Landlord by Tenant upon written demand.

ARTICLE XXIX  
WAIVER OF JURY TRIAL

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GROUND LEASE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE STUDENT HOUSING PROJECT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS GROUND LEASE.

ARTICLE XXX  
NOT CONSENT TO SUE; GOVERNING LAW

A. Consent to Enforce Ground Lease. The provisions, terms or conditions of this Ground Lease shall not be construed as a consent of the State of Florida to be sued and no such consent is granted except as provided by Florida Statutes or case law; provided however that Landlord expressly consents to Tenant enforcing the obligations of Landlord under this Ground Lease pursuant to (i) an action for specific performance, (ii) an action for injunctive relief, (iii) an action for mandamus, and/or (iv) an action for declaratory judgment.

B. Governing Law; Venue. This Ground Lease is governed by Florida law without regard to its choice of law provisions. Venue for any litigation arising hereunder shall lie in the appropriate court located in Polk County, Florida.

ARTICLE XXXI  
FORCE MAJEURE

In the event that Landlord or Tenant is delayed or prevented from performing any of their respective obligations during the Term by reason of, or related to or arising out of: acts of God, fire, flood, tornado, hurricane, or similar unforeseeable, extreme weather or accident, shortages, casualty, strikes, lockouts or other labor disputes, inability to procure equipment or labor, or inability to obtain utilities necessary for performance, governmental restrictions or orders, national emergencies, enemy or hostile governmental action, terrorism, insurrection, embargoes and quarantines, reasons of a like nature not the fault of the party delayed in the performance of such obligation (collectively, “**Force Majeure**”), then, the period of such delays shall be deemed added to the time herein provided for the performance of any such obligation and the defaulting party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid by Tenant hereunder or any obligation of Landlord or Tenant that can be satisfied by the payment of money. Landlord and Tenant acknowledge that normal and customary rain in Polk County, Florida shall not constitute Force Majeure.

ARTICLE XXXII  
ENVIRONMENTAL MATTERS

A. Environmental Site Assessment. Landlord and Tenant hereby acknowledge that Tenant has performed all environmental due diligence desired by Tenant with respect to the Property and surrounding areas. Any contamination by Hazardous Substance or Materials located in, on or under the Property or any violations of Applicable Laws arising or occurring after the Effective Date is the responsibility of Tenant.

B. Definitions. For purposes hereof, the following definitions shall apply: (i) “**Environmental Law**” means and includes the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA” or the Federal Superfund Act) as amended by the

Superfund Amendments and Reauthorization Act of 1986 ("SARA") 42 U.S.C., Sections 9601-9675; the Federal Resource Conservation and Recovery Act of 1976 ("RCRA"); the Clean Water Act, 33 U.S.C., Section 1321, et seq.; the Clean Air Act, 42 U.S.C., Section 7401, et seq., all as the same may be from time to time amended and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance; and (ii) "**Hazardous Substance or Materials**" means asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products or other dangerous, toxic, or hazardous pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or contaminant in, or the release or disposal of which is regulated by, any Applicable Law.

C. Environmental Compliance Requirements. Tenant agrees that the Student Housing Project will remain free from contamination by Hazardous Substance or Materials in excess of amounts permitted by Environmental Laws and that the Property and the activities conducted or to be conducted thereon do not and will not violate any Environmental Laws. Tenant shall not cause or permit the Student Housing Project to be used for the generation, handling, storage, transportation, disposal or release of any Hazardous Substance or Materials except as specifically exempted or permitted at all times under applicable Environmental Laws. Tenant shall not cause or permit the Student Housing Project or any activities conducted thereon to be in violation of any current or future applicable Environmental Laws. Tenant will promptly notify Landlord of any violation of any Environmental Laws relating to the use of the Student Housing Project or the Student Housing Project or the release or suspected release of Hazardous Substance or Materials in, under or about the Property/Student Housing Project in violation of Environmental Laws, and Tenant shall promptly deliver to Landlord a copy of any notices, filings or permits sent or received by Tenant, or on behalf of Tenant, with respect to the foregoing. Tenant shall have the right to direct decisions regarding remediation activities affecting the Student Housing Project which are the responsibility of Tenant under this Ground Lease all of which shall be performed at Tenant's cost, but Landlord shall have reasonable input into decisions regarding remediation activities. Notwithstanding the foregoing, in no event is Tenant entitled to agree to any lesser clean-up standard than is required by Applicable Law (without reliance on any risk based corrective action measures) or to any limitation on use that would bind the Student Housing Project following the expiration of the Term without Landlord's consent, which may be withheld in Landlord's sole and absolute discretion. In the event Landlord suffers any claims or loss pursuant to this Ground Lease, Tenant shall immediately reimburse Landlord hereunder, any such amounts shall constitute Additional Rent due from Tenant to Landlord, and are due and payable in full within thirty (30) days following receipt of written notice. Tenant's liability under this provision for matters existing on or prior to the expiration or termination of this Ground Lease shall survive the expiration or any termination of this Ground Lease.

ARTICLE XXXIII  
RADON GAS

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

ARTICLE XXXIV  
BROKERS

Tenant and Landlord each represents and warrants to the other that no real estate broker, agent, commission salesman, or other person has represented the warranting party in the negotiations for and procurement of this Ground Lease (collectively, a “**Broker**”), and that no commissions, fees or compensation of any kind are due and payable in connection herewith to any Broker. To the extent permitted by law, each of Tenant and Landlord hereby agree to indemnify and hold harmless the other party for any claims made for the payment of any commissions, fees or other compensation of any kind whatsoever which may be due and payable with respect to the negotiation and/or procurement of this Ground Lease and of the Property by any Broker claiming by, through or under, the indemnifying party.

ARTICLE XXXV  
LANDLORD’S APPROVALS

With respect to Landlord’s review and approval of building code and Plans and Specifications and any required inspections of the Student Housing Project (including, state fire marshal inspections), Tenant shall reimburse Landlord for the actual, out-of-pocket costs incurred by Landlord from (i) costs and administrative fees incurred related to building compliance and inspections, and (ii) a third party vendor retained by Landlord for such review and approval, including but not limited to, approval of building permits and monthly inspections. If Tenant requests Landlord’s consent or approval under this Ground Lease or requests that Landlord provide an estoppel certificate, and Landlord deems it necessary or desirable to seek the advice of its attorneys, architects and/or other experts, then Tenant shall pay the reasonable fees of such persons and firms in connection with the consideration of such request and/or the preparation of any documents pertaining thereto. Landlord’s consent or approval shall only be valid if in writing and Landlord shall not unreasonably withhold or delay the granting of such consent or approval, unless expressly indicated to the contrary in this Ground Lease with respect to a particular consent or approval. In any request for consent or approval, Tenant shall endeavor to indicate the time period for review, recognizing that Landlord’s internal processes and procedures may require a longer review and approval time than that of private parties. Unless otherwise expressly provided under this Ground Lease, no failure by Landlord to respond within a time period for review shall be deemed approval of, or consent to, a request.

ARTICLE XXXVI  
MEMORANDUM OF GROUND LEASE

Landlord and Tenant agree to execute and deliver a memorandum or short form lease (hereinafter “**Memorandum of Ground Lease**”) in a form sufficient to put all contractors, materialmen, and suppliers on notice that neither the underlying fee, interest, nor Landlord’s interest in the Property is subject to construction liens as set forth in Chapter 713, Florida Statutes. The Memorandum of Ground Lease shall otherwise be substantially similar to the form attached hereto and incorporated herein as **Exhibit F**, and it shall be recorded in the Official Records of Polk County, Florida. No copy of this Ground Lease shall be filed of record. Tenant shall pay all costs charged by the state and county to record the Memorandum of Ground Lease. Tenant agrees that upon the expiration or earlier termination of this Ground Lease and within ten (10) days of Landlord’s written request, Tenant shall remove, at Tenant’s sole cost and expense, the Memorandum of Ground Lease from the public records by executing a termination of the Memorandum of Ground Lease.

ARTICLE XXXVII  
OFAC

Without limiting the general requirements under this Ground Lease for the parties to comply with Applicable Laws, to the extent applicable to each party and/or its operations, each party shall comply with (i) all regulations promulgated by the Office of Foreign Assets Control, Department of the Treasury which are applicable to Tenant or any occupant of the Property, (ii) the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et seq., (iii) the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and (iv) the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism.

ARTICLE XXXVIII  
RIGHTS OF WAY AND LICENSES

Tenant shall deliver written requests to Landlord and provide sufficient advance notice of any utility rights of way and licenses required in connection with the construction, operation and use of the Student Housing Project. All such utility rights of way and licenses shall be non-exclusive. Each such right of way or license shall (a) not materially impair the value, utility and remaining useful life of the Campus, any portion thereof, any improvements thereon, the Property/Student Housing Project or the Student Housing Project, (b) be reasonably necessary in connection with the construction, operation or use of the Student Housing Project, (c) not cause any part of the Campus, the Property, or the Student Housing Project to fail to comply with all material requirements of Applicable Laws, and (d) be permitted by and subject to all recorded easements and other restrictions, encumbrances and agreements affecting the Property in effect as of the Effective Date. No such right of way or license shall extend beyond the Term (and any Renewal Term) of this Ground Lease.

ARTICLE XXXIX  
TENANT'S REPRESENTATIONS AND WARRANTIES

Tenant represents and warrants to and agrees with Landlord that, as of the Effective Date:

A. No Conflict. The execution and delivery of this Ground Lease, the performance of covenants, conditions and obligations herein contemplated and compliance with the terms of this Ground Lease will not conflict with, or, with or without notice or the passage of time or both, result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, deed of trust, mortgage, loan agreement, or other document, or instrument or agreement, oral or written, to which Tenant is a party or by which Tenant is bound, or any applicable regulation of any governmental agency, or any judgment, order or decree of any court having jurisdiction over Tenant.

B. Due Formation. Tenant is a limited liability company duly formed under the laws of the State of [\_\_\_\_\_], authorized to do business in Florida, and existing in good standing under the laws of the State of Florida, with its principal place of business in the State of [\_\_\_\_\_]. All requisite corporate action has been taken by Tenant in connection with entering into this Ground Lease. No consent of any partner, director, shareholder, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party is required in connection herewith which has not been obtained.

C. Authority. Tenant has full right, power and authority to enter into this Ground Lease and to carry out its obligations hereunder. The individual(s) executing this Ground Lease and the instruments referenced herein on behalf of Tenant have the legal power, right and actual authority to bind Tenant to the terms hereof and thereof. This Ground Lease is and all other documents and instruments to be executed and delivered by Tenant in connection with this Ground Lease shall be duly authorized, executed and delivered by Tenant and shall be valid, binding and enforceable obligations of Tenant.

D. Rules and Regulations. Except as otherwise specifically provided for in this Ground Lease, Tenant agrees for itself and for its employees, contractors, agents, invitees, licensees, guests and/or any other representatives (collectively referred to in this Article as "**Tenant's Related Parties**") to comply with, and Tenant shall use reasonable efforts to cause Tenant's Related Parties to comply with, all regulations, policies, procedures, and guidelines, as may be now or hereinafter adopted or amended, which are applicable to the Campus generally and Tenant's use and operations thereunder, on a non-discriminatory and reasonable manner and which include but are not limited to, those implemented by the Florida Polytechnic University, The Florida Polytechnic Board of Trustees, The Florida Board of Governors, The State of Florida, and/or The State of Florida Board of Education.

E. Capital Contributions. Tenant shall deposit with Landlord all sums required under Section J of Article IV as agreed upon by Tenant and Landlord upon execution of the Capital Contribution Agreement attached hereto as **Exhibit G**.

F. Existing Exclusive Agreements of Landlord. Tenant shall not enter into any contracts or arrangements which would place Landlord in violation of any of Landlord's exclusive agreements listed on **Exhibit I** hereof.

#### ARTICLE XL MISCELLANEOUS

A. Effective Date. As used herein, the term "**Effective Date**" shall mean the date on which the last one of Landlord and Tenant has executed this Ground Lease and delivered a copy of the fully-executed Ground Lease to Tenant via email.

B. Counterparts. This Ground Lease may be executed in multiple counterparts each of which taken together shall constitute one and the same instrument.

C. Business Day. For purposes of this Ground Lease, "**Business Day**" means all days, excluding Saturdays, Sundays, and all days observed as legal holidays by the University.

D. Waiver of Landlord's Lien. Landlord hereby expressly waives and releases any and all contractual liens and security interests or constitutional and/or statutory liens and security interests arising by operation of law to which Landlord might now or hereafter be entitled on the Personalty or any other property of Tenant which Tenant now or hereafter places in or upon the Property (except for judgment liens that may arise in favor of Landlord). The waiver and release contained herein shall not waive, release or otherwise affect any unsecured claim Landlord may have against Tenant.

E. Interpretation. Wherever either the word "**Landlord**" or "**Tenant**" is used in this Ground Lease, it shall be considered as meaning the parties respectively, wherever the context permits or requires, and when the singular and/or neuter pronouns are used herein, the same shall be construed as including all legal entities designated respectively as Landlord or Tenant in the heading of this instrument wherever the context requires. Time is of the essence with regard to the obligations of both parties herein.

F. Paragraph Headings. The paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent neither of this Ground Lease nor in any way affect this Ground Lease.

G. Entire Agreement. This Ground Lease and all Exhibits attached hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the Parties in connection therewith.

H. Amendment to this Ground Lease. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Ground Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by the parties. Each party to this Ground Lease agrees that the other party and its agents have made no representations or promises with respect to this Ground Lease, the Property or the Student Housing Project except as expressly set forth in this Ground Lease.

I. Recitals. Each of the Recitals to this Ground Lease is true and correct in all respects and is hereby incorporated into this Ground Lease for all purposes.

J. No Option. The submission of this Ground Lease for examination does not constitute a reservation of or option for the Property, and shall vest no right in any party. This Ground Lease becomes effective only upon execution and delivery thereof by Landlord and Tenant.

K. No Merger of Title. There shall be no merger of this Ground Lease or of the leasehold estate created by this Ground Lease by reason of the fact that the same person, firm or corporation or other entity may acquire or own or hold directly or indirectly (a) this Ground Lease or the leasehold estate created by this Ground Lease or any interest in this Ground Lease or in any such leasehold estate, and (b) the fee estate in the Property/Student Housing Project or any part thereof or any interest in such fee estate and no such merger shall occur unless and until all corporations, firms and other entities having any interest in (i) this Ground Lease or the leasehold estate created by this Ground Lease, and (ii) the fee estate in the Property or any part thereof shall join in a written instrument effecting such merger and shall duly record the same.

L. Severability of Provisions. The provisions of this Ground Lease are severable, and if any provision, or any portion thereof, is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, any remaining portions of that provision, and all other provisions of this Agreement, shall remain valid and enforceable to the fullest extent permitted by law and equity in order to give effect to the parties' intentions under this Ground Lease.

M. Negation of Partnership. Nothing contained in this Agreement is intended to create any partnership, joint venture or association between the parties hereto or in any way make the either party a co-principal with the other party with reference to the property or the agreements referenced herein and any inferences to the contrary are hereby expressly negated.

N. No Third Party Beneficiary. Except as expressly set forth to the contrary in this Agreement, each of the parties agree that no individual and/or entity is intended to have, nor shall such individual and/or entity be deemed to have, any rights or remedies as a third party beneficiary to, or under, this Agreement or otherwise and each of the parties acknowledge and agree that any benefit conferred to any such individual and/or entity is, and shall be deemed for all purposes to be, merely incidental.

O. Anti-Bribery Provision. Each of Landlord and Tenant represents, warrants and agrees with the other party that it: (a) will comply with all anti-corruption laws applicable to its business operations; (b) has not and will not offer, promise, give or authorize the payment of anything of value (e.g. cash or cash equivalents, gifts, travel and entertainment, stock, offers of employment, etc.), directly or indirectly, to any Government Official (hereinafter defined) with the intention of inducing him or her to engage in improper or unlawful conduct or to secure an improper business advantage; (c) has not and will not make facilitation payments or “grease payments” to Government Officials or others in a position of authority to expedite routine non-discretionary government or lawful actions (e.g. processing permits, visas and licenses, scheduling inspections, clearing customs, etc.); and (d) has not and will not offer, promise, give, request, receive or accept anything of value, directly or indirectly, to or from any person for the purpose of influencing, inducing or rewarding the improper performance of an act or decision. For purposes of this clause, the term “**Government Official**” means any (a) officer or employee of government, department, agency, or instrumentality of a government (government-controlled enterprise); (b) officer or employee of a public international organization; (c) political party or party official; (d) candidate for political office; or (e) other person acting in an official capacity. Landlord and Tenant agree that failure to comply with this section will constitute a material breach of this Ground Lease.

P. Survival: Tenant’s obligations which by their nature should survive or which this Ground Lease expressly states will survive will remain in full force and effect following termination or expiration of this Ground Lease.

Q. Funding Contingency: Landlord’s performance and obligations under this Ground Lease shall be subject to the appropriation of funds sufficient for the purpose. Landlord shall provide Tenant notice of the non-availability of funds for this promptly after Landlord has knowledge thereof.

R. Sovereign Immunity: This Agreement does not affect the immunities, exemptions and limitations of liability of Landlord under Florida Statute Section 768.28 and other Applicable Laws of the State of Florida. Nothing in this Ground Lease shall be deemed to affect the rights, privileges and immunities afforded Landlord, The Florida Polytechnic Board of Trustees, the Florida Board of Governors and the State of Florida by law. Nothing herein shall be construed as consent by Landlord to be sued by third parties in any manner arising out of this Ground Lease.

*[Signatures on Following Page]*

IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their hands and seals as of the day and year first above written.

WITNESSES:

LANDLORD:

THE FLORIDA POLYTECHNIC  
UNIVERSITY BOARD OF TRUSTEES

\_\_\_\_\_  
Signature of First Witness

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

By:

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

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

Date Signed: \_\_\_\_\_, 2015

\_\_\_\_\_  
Signature of Second Witness

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

STATE OF FLORIDA )

) ss:

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

The foregoing Ground Lease was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by\_\_\_\_  
\_\_\_\_\_, as the \_\_\_\_\_ of THE  
FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES. Said person [ ] is personally  
known to me or [ ] produced \_\_\_\_\_ as  
identification.

Notary Stamp:

\_\_\_\_\_  
Signature of Notary Public

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

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

[Signature Page]

**WITNESSES:**

**TENANT:**

\_\_\_\_\_  
Signature of First Witness

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

By:

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

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

\_\_\_\_\_  
Signature of Second Witness

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

STATE OF FLORIDA )

) ss:

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

The foregoing Ground Lease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_ of \_\_\_\_\_ a Florida corporation, Said person [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

Notary Stamp:

\_\_\_\_\_  
Signature of Notary Public

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

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

[Signature Page]

**EXHIBIT A**

**Description of Property**

**EXHIBIT B**  
**Permitted Exceptions**

**EXHIBIT C**

**University Designated Space**

[See attached]

**EXHIBIT D**

**Staging Site**

[See attached]

## EXHIBIT E

### **Acknowledgement of Expiration Date**

#### **Form of Certificate of Acknowledgement of Expiration Date**

THIS CERTIFICATE, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, created pursuant to Chapter 2012-129, Laws of Florida ("**Landlord**") and [\_\_\_\_\_] a [\_\_\_\_\_] ("**Tenant**").

#### RECITALS

By Ground Lease Agreement (hereinafter the "**Ground Lease**") made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_, Landlord demised and leased unto Tenant that certain Property located on the Campus of Florida Polytechnic University located in the City of Lakeland, Polk County, Florida (said terms "**Property**" and "**Campus**" as used herein having the meanings set forth in the Ground Lease).

Landlord and Tenant now desire to set forth the Expiration Date (as such term is defined in the Ground Lease).

**NOW, THEREFORE**, Landlord and Tenant do hereby agree and certify to one another as follows:

The Effective Date was \_\_\_\_\_, 20\_\_.

The Ground Lease Expiration Date is hereby established to be \_\_\_\_\_, 20\_\_.

This Certificate shall be binding on the Parties hereto, their successors and permitted assigns.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Certificate of Acknowledgement of Expiration Date to be duly executed the day and year first above written.

**WITNESSES:**

\_\_\_\_\_  
Signature of First Witness

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

\_\_\_\_\_  
Signature of Second Witness

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

\_\_\_\_\_  
Signature of First Witness

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

\_\_\_\_\_  
Signature of Second Witness

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

**LANDLORD:**

**THE FLORIDA POLYTECHNIC  
UNIVERSITY BOARD OF TRUSTEES**

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

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

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

Date Signed: \_\_\_\_\_, 20\_\_

**TENANT:**

[\_\_\_\_\_]

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

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

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

Date Signed: \_\_\_\_\_, 20\_\_

**EXHIBIT F**

**Site Plan and Floor Plan**

[See attached]

## EXHIBIT G

### **Capital Contribution Agreement**

#### **Form of Capital Contribution Agreement**

This **CAPITAL CONTRIBUTION AGREEMENT** ("**Agreement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, created pursuant to Chapter 2012-129, Laws of Florida ("**Landlord**") and [\_\_\_\_\_] ("**Tenant**"), a [\_\_\_\_\_]. Terms used but not defined in this Agreement shall have the meaning ascribed to them in the Ground Lease.

#### **WITNESSETH:**

WHEREAS, Landlord, as landlord and Tenant, as tenant entered into that certain Ground Lease Agreement dated \_\_\_\_\_, 20\_\_.

WHEREAS, under the terms and conditions set forth in the Ground Lease, Tenant will develop, construct, operate and maintain the Student Housing Project on the Campus;

WHEREAS, pursuant to the Ground Lease, Tenant is obligated pay to Landlord its proportionate share of the costs of construction related to the parking area, which will accommodate the Student Housing Project and the initial expansion of the University's chilled water production and distribution system chilled water system which will service the Student Housing Project (each of the foregoing being a "Capital Contribution, and collectively, "**Capital Contributions**"); and

WHEREAS, Landlord and Tenant now desire to establish the amount of the Tenant's Capital Contribution.

**NOW, THEREFORE**, Landlord and Tenant do hereby agree and certify to one another as follows:

1. The Capital Contribution for the parking area is hereby established to be [\$\_\_\_\_\_].

2. The Capital Contribution for the expansion of the chilled water system production and distribution system is hereby established to be [\$\_\_\_\_\_].

This Agreement shall be binding on the Parties hereto, their successors and permitted assigns.

[signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Capital Contribution Agreement to be duly executed the day and year first above written.

**WITNESSES:**

\_\_\_\_\_  
Signature of First Witness

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

\_\_\_\_\_  
Signature of Second Witness

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

\_\_\_\_\_  
Signature of First Witness

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

\_\_\_\_\_  
Signature of Second Witness

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

**LANDLORD:**

**THE FLORIDA POLYTECHNIC  
UNIVERSITY BOARD OF TRUSTEES**

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

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

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

Date Signed: \_\_\_\_\_, 201\_\_

**TENANT:**

[\_\_\_\_\_]

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

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

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

Date Signed: \_\_\_\_\_, 20\_\_

**EXHIBIT H**

**Memorandum of Ground Lease**

**Form of Memorandum of Ground Lease**

PREPARED BY AND MAIL TO:

Bryant Miller Olive P.A.  
135 West Central Boulevard, Suite 700  
Orlando, Florida 32801  
Attn: Kenneth R. Artin, Esq.

---

(Space Above Reserved for Recording Clerk's Use)

**MEMORANDUM OF GROUND LEASE AGREEMENT**

THIS MEMORANDUM OF GROUND LEASE AGREEMENT ("Memorandum") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, created pursuant to Chapter 2012-129, Laws of Florida ("**Landlord**") and [\_\_\_\_\_] a [\_\_\_\_\_] ("**Tenant**").

**RECITALS**

A. Landlord, as landlord and Tenant, as tenant, have entered into a Ground Lease Agreement dated \_\_\_\_\_, 20\_\_ ("**Ground Lease**") with respect to real property described on Exhibit A attached hereto and incorporated herein ("**Property**").

B. Under the terms set forth in the Ground Lease, Tenant will develop, construct, operate and maintain a student housing facility on the Property.

C. Landlord and Tenant desire to give public notice of the existence of the Ground Lease in the land records of Polk County, Florida.

NOW THEREFORE, Landlord and Tenant hereby give notice of the following:

1. Landlord has leased the property to Tenant pursuant to the Ground Lease.
2. The term of the Ground Lease commenced on the date hereof and expires, unless earlier terminated or later extended or renewed, on [\_\_\_\_\_].
3. This Memorandum shall not modify the terms of the Ground Lease. In the event of any inconsistency between the provisions of this Memorandum and the provisions of the Ground Lease, the provisions of the Ground Lease shall govern.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Ground Lease to be executed and their respective seal hereto affixed the day and year first above written.

**WITNESSES:**

\_\_\_\_\_  
Signature of First Witness

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

\_\_\_\_\_  
Signature of Second Witness

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

**LANDLORD:**

**THE FLORIDA POLYTECHNIC  
UNIVERSITY BOARD OF TRUSTEES**

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

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

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

Date Signed: \_\_\_\_\_, 201\_\_

STATE OF FLORIDA )

) ss:

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

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_, as the \_\_\_\_\_

\_\_\_\_\_ of THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF

TRUSTEES. Said person [\_\_] is personally known to me or [\_\_] produced

\_\_\_\_\_ as identification.

Notary Stamp:

\_\_\_\_\_  
Signature of Notary Public

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

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

(NOTARY SEAL ABOVE)

Notary Public - State of \_\_\_\_\_

*[signatures continue on following page]*

**TENANT:**

\_\_\_\_\_  
Signature of First Witness

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

[\_\_\_\_\_]

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

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

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

\_\_\_\_\_  
Signature of Second Witness

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

Date Signed: \_\_\_\_\_, 20\_\_

STATE OF FLORIDA            )

) ss:

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

The foregoing Lease Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, [by \_\_\_\_\_, as the [\_\_\_\_\_] of [\_\_\_\_\_] a [\_\_\_\_\_]. Said person [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

Notary Stamp:

\_\_\_\_\_  
Signature of Notary Public

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

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

**EXHIBIT A**

Legal Description of Property

**EXHIBIT I**

**Landlord's Exclusive Agreements**

{26239/002/00943969.DOCXv5}

**OPERATING AGREEMENT**

**BETWEEN**

**FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**

**AND**

[\_\_\_\_\_]

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Exhibit A - Legal Description

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## OPERATING AGREEMENT

This **OPERATING AGREEMENT** (this "**Agreement**") is made and entered into as of \_\_\_\_\_, 2015, between **FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, created pursuant to Chapter 2012-129, Laws of Florida (the "**Landlord**") and [\_\_\_\_\_,] a [\_\_\_\_\_] (together with its successors and assigns, the "**Tenant**"). The Landlord and the Tenant are each referred to herein as a ("**Party**") and together, (the "**Parties.**")

### RECITALS:

**WHEREAS**, the Landlord is the owner of that certain parcel of land, as more particularly described in **Exhibit A** attached hereto (the "**Property**");

**WHEREAS**, the Landlord and the Tenant have entered into that certain Ground Lease Agreement dated \_\_\_\_\_, 2015 (the "**Ground Lease**"), wherein the Landlord has leased the Property to the Tenant and the Tenant has agreed to develop, improve, and use the Property in accordance with terms set forth therein;

**WHEREAS**, the Tenant intends to design, permit, finance, construct, operate and maintain certain student housing facilities and associated systems, fixtures, furnishings and equipment to be installed, constructed, operated and maintained by the Tenant on the Property, as described more particularly in the Ground Lease and in **Exhibit B** attached hereto (the "**Student Housing Project**");

**WHEREAS**, Tenant intends to operate and maintain certain improvements related to the Student Housing Project (the "**Improvements**"); and

**WHEREAS**, in furtherance of the Ground Lease, the Landlord and the Tenant desire to establish certain standards relating to the operation, management, and maintenance of the student housing facility and the Property in accordance with the terms and conditions set forth in this Agreement.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, the Parties agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 **Definitions.** The following capitalized terms have the meanings assigned to them in this Article I:

"**Agreement**" means this Operating Agreement.

**“Annual Period”** means the year commencing on July 1 of each year and ending on the following June 30.

**“Architectural Design and Safety Guidelines”** means the guidelines maintained by the Landlord which set forth standards, criteria, guidelines, and policies for the design, maintenance, and safety of improvements and facilities on the Campus.

**“Binding Agreement”** has the meaning set forth in the Ground Lease.

**“Business Days”** means all weekdays except Holidays.

**“Campus”** means the Florida Polytechnic University main campus of approximately 171 acres located in City of Lakeland, County of Polk, Florida.

**“Commercially Reasonable Efforts”** means diligent and professional efforts consistent with the standards of other first class operators performing similar services for projects similar to the Student Housing Project. The requirement that the Tenant use Commercially Reasonable Efforts to complete a task shall in no event be deemed to reduce the Tenant’s obligation to complete such task to the extent completion thereof is within the control of the Tenant, even if completion will require more time or resources than originally contemplated in the initial estimates, budgets, or projections of required time or resources, but only to the extent that such efforts would be considered reasonable and prudent among first class operators.

**“Completion Deadline”** means the date of Substantial Completion, as defined in the Ground Lease, of the Student Housing Project, as may be extended as provided in the Ground Lease.

**“CPI,”** means the Consumer Price Index for All Urban Consumers 1967 = 100 for all cities, presently published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor, provided, that if said index shall no longer be published, the substitute index designated by said Bureau, or if none, then an index generally recognized as authoritative shall be substituted by agreement of the Parties.

**“Defaulting Party”** has the meaning set forth in Section 6.1.

**“Effective Date”** means the date that is sixty (60) days prior to the Completion Deadline.

**“Eligible Residents”** means, in order of acceptance priority, students registered in an academic program at the University, (ii) regular full time faculty of the University; (iii) visiting faculty serving at the University on a temporary basis; (iv) regular full-time staff of the University that the University has pre-approved in writing; and (v) groups participating in any activity sponsored by the University, or a conference, or program sponsored by a third party that the University has pre-approved in writing.

**“Emergency Repairs”** has the meaning set forth in Section 4.2(b).

**“Event of Default”** has the meaning set forth in Section 6.1.

**“Facility”** means the Student Housing Project, together with the Improvements.

**“General Contractor”** means [\_\_\_\_\_].

**“General Construction Contract”** means that certain [Construction Contract] dated [date] between the Tenant and the General Contractor pursuant to which the General Contractor will install and construct the Student Housing Project on a guaranteed maximum price, turnkey basis.

**“Ground Lease”** has the meaning set forth in the Recitals.

**“Holidays”** means New Year’s Day, Easter, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving, and the day after Thanksgiving, and Christmas and any other days recognized as holidays by the Landlord.

**“Landlord”** means the Board of Trustees of the Florida Polytechnic University and its successors and assigns.

**“Landlord Representative”** means the University’s Vice President of Student Affairs, or such officer’s designee.

**“Laws”** means all laws, statutes, regulations, codes, ordinances, orders, permits, and requirements of any federal, state, or local governmental authority having jurisdiction over a Party or the Student Housing Project as well as the orders of the fire marshal, board of fire underwriters, and similar bodies affecting the Student Housing Project or the management, leasing, use, occupancy, construction, maintenance, repair, or reconstruction thereof.

**“Non-Defaulting Party”** has the meaning set forth in Section 6.1(a).

**“Party”** or **“Parties”** have the respective meaning set forth in the Recitals.

**“Performance Standard”** has the meaning set forth in Article II.

**“Plans and Specifications”** has the meaning set forth in the Ground Lease.

**“Property”** has the meaning set forth in the Recitals.

**“Student Housing Project”** has the meaning set forth in the Recitals.

**“RAs”** has the meaning set forth in Section 4.12.

**“Repair and Replacement Fund”** has the meaning set forth in Section 4.1(e).

**“Residence Life Program”** means the University’s residence life program, as amended from time to time.

“**Rules**” has the meaning set forth in Section 4.6.

“**Tenant**” has the meaning set forth in the first paragraph.

“**Term**” has the meaning set forth in Article III.

“**University**” means Florida Polytechnic University.

“**University Designated Space**” means an area or areas of approximately [\_\_\_\_\_] aggregate square feet within the Facility that is to be occupied by the University and completed in accordance with the Plans and Specifications.

Section 1.2 **Interpretation.** The headings of Articles and Sections in this Agreement are provided for convenience of reference only and will not affect the construction, meaning or interpretation of this Agreement. All references to “Articles,” “Sections,” or “Exhibits” refer to the corresponding Articles, Sections, or Exhibits of or to this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. Any reference to a Person includes its permitted successors and assigns. A reference to a document, Law, code, contract, or agreement, including this Agreement, or the Landlord’s rules, regulations, standards, and policies is a reference to that document, code, contract, or agreement as amended, modified, supplemented, or restated from time to time in accordance with its terms. If any payment or act hereunder would occur on a day that is not a Business Day, then such payment or act shall occur on the next succeeding Business Day unless it involves an emergency. The words “hereof,” “herein,” and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.

## ARTICLE II PERFORMANCE STANDARD

The Tenant agrees to cause the Student Housing Project to be designed, permitted, financed, acquired, installed, constructed, furnished, and equipped to serve as residential housing for students at the University and other Eligible Residents consistent with the Plans and Specifications. The Landlord and the Tenant agree that the Student Housing Project shall be occupied only by Eligible Residents. The Tenant shall manage, operate, and perform its obligations, covenants, duties, and agreements in accordance with the following: (a) the terms of this Agreement; (b) all applicable Laws; (c) the standards and practices of first class operators that operate and manage student housing facilities similar to the Student Housing Project on behalf of institutional lessors; (d) applicable rules, regulations, standards, and policies of the Landlord, including its Residence Life Program, and (e) the terms and conditions of applicable policies of insurance and surety bonds (the “**Performance Standard**”).

## ARTICLE III TERM

This Agreement commences on the Effective Date and is coterminous with the Ground Lease unless earlier terminated as provided herein (the “**Term**”). The initial Term may only be amended, extended, or renewed by an amendment to this Agreement made in accordance with the terms hereof except as otherwise expressly set forth herein.

#### ARTICLE IV TENANT’S AND LANDLORD’S DUTIES AND PROJECT SERVICES

##### Section 4.1     **Tenant’s General Duties.**

(a)     The Tenant has full responsibility for leasing or licensing the Student Housing Project residential units. The Tenant shall enter into a lease, residence, or license agreement with each Eligible Resident occupying a unit in the Student Housing Project. The form and substance of the agreement shall be approved by the Landlord Representative.

(b)     The Tenant is responsible for the management, operation, maintenance, and repair of the Student Housing Project as a student housing facility at its sole cost and expense. The hiring of a manager or contractors or vendors by the Tenant shall not affect the duties and obligations of the Tenant hereunder. The Tenant shall require any contractor or vendor to adhere strictly to all policies, procedures, and regulations of the Landlord while on the Student Housing Project site, including parking, smoking, security, and drug and alcohol policies. The Tenant is responsible for the all acts and omission of any of its contractors, or vendors.

(c)     The Tenant shall perform its duties, obligations and activities in accordance with the Performance Standard. The Tenant’s duties include the duties and obligations specifically designated as the Tenant’s duties or obligations below in this Article IV. The Tenant shall furnish all equipment, tools, supplies, material, personnel, and resources necessary or useful to perform its duties and obligations hereunder.

(d)     Within thirty (30) days after the end of each calendar month, the Tenant shall provide the Landlord unaudited, accrual basis financial reports, including a statement of cash flows, for the Student Housing Project for such month. Such monthly financial reports shall include a balance sheet, the income and expenditures for the month, as compared to the approved annual budget for the month and as compared to the same month in the prior annual period, and the income and expenditures for the current annual period to date, all in sufficient detail to indicate the financial condition of the Student Housing Project and a statement of cash flows.

(e)     The Tenant shall include in the annual operating plan and budget for the Student Housing Project the funding of a reserve for costs of repair and replacement of the Student Housing Project and its major systems, equipment, components and facilities (the “**Repair and Replacement Fund**”), which shall be funded in the initial amount of \$185.00 (CPI indexed) per bed per year, shall be in addition to any debt reserve fund or other account

required by the finance documents. The funds in such Repair and Replacement Fund shall be used solely for purposes of funding repairs and replacements in accordance with applicable maintenance plans and schedules.

(f) The Parties acknowledge that areas designated as University Designated Space on **Exhibit C** may be occupied and used by the Landlord and third parties designated by the Landlord for any purpose or function consistent with the Landlord's mission, and that no rent, license, fee, or other charge shall be imposed by the Tenant upon the Landlord or its third parties for the occupancy and/or use of the University Designated Spaces, provided, however, that the Tenant has the right to collect and the Landlord or the Landlord's third parties occupying and using the University Designated Space shall pay the direct costs incurred by the Tenant to provide services to support activities at the University Designated Spaces. As between the Parties, any and all rent, license, fee, charge, revenue, and other amount charged and/or collected in connection with activities at the University Designated Spaces shall be for the Landlord.

#### Section 4.2 **Repair and Maintenance.**

(a) The Tenant shall maintain and repair the Student Housing Project in a manner consistent with standards comparable to on-campus student housing and the findings contained in a facilities condition assessment undertaken by the Tenant at least annually by Tenant and the Landlord Representative. The scope of the Tenant's duties includes interior and exterior cleaning, caulking, painting, decorating, system and equipment servicing, plumbing, carpentry, and other predictive, preventive, and routine maintenance and repair work. The Parties agree that no change in the character or use of the Student Housing Project or alteration of any structure or component thereof or otherwise constituting a new construction program shall be made without the prior written approval of the Landlord of the plan, design, and specifications and the issuance of all necessary permits and other authorizations by the Landlord and governmental authorities.

(b) The Tenant shall make regular periodic inspections of the Student Housing Project to verify that the Student Housing Project is safe and maintained in accordance with this Agreement. Except for emergency repairs necessary for the preservation and safety of the Student Housing Project, the avoidance of the suspension of any service to the Student Housing Project, or the protection of life or property from serious injury or damage ("**Emergency Repairs**"), the Tenant shall first confer with the Landlord Representative regarding the schedule for and scope of any material repair to the Student Housing Project and furnish a complete written report as soon as practicable. In the event the Tenant fails to address any Emergency Repairs immediately, the Landlord has the right, but not the duty, to make such Emergency Repairs and to charge all costs associated therewith to the Tenant.

(c) The Tenant shall give the Landlord notice of any material, recurring, serial, or latent defect in the Student Housing Project or any systems, equipment, components, or part thereof immediately upon discovery thereof by the Tenant, including defects in the roof,

foundation, and/or walls of the Student Housing Project or any equipment system or component thereof and in the sewer, water, electrical, structural, plumbing, heating, ventilation, air conditioning, security, information, cables, internet communication, fire prevention or suppression, or other systems.

(d) The Tenant shall make provision in the Student Housing Project's annual budget for repairs of, and Capital Improvements to, the Student Housing Project. "**Capital Improvements**" means [\_\_\_\_\_]. The Tenant shall provide advance written notification of, and shall submit applications and requests for, permits and authorizations to, the Landlord Representative relating to any proposed work to be done as capital improvements at the Student Housing Project as far in advance of the commencement of the work as possible (but in any event not less than ninety (90) days prior to the commencement of such work), and the Tenant shall coordinate with the Landlord Representative to assure the minimum disruption to the University and Eligible Residents at the Student Housing Project.

Section 4.3 **Eligible Resident Complaints/Requests.** The Tenant shall maintain business-like relationships with Eligible Residents and receive and investigate in a timely manner all reasonable resident complaints and requests for services and to the extent necessary, take reasonable action thereon. The Tenant shall keep systematic records, which shall be available to the Landlord at anytime for inspection, audit, and copying, detailing the findings of any investigations of, and action(s) taken with respect to, each material complaint (including an alleged breach or non-performance by the Tenant with respect to a lease obligation). The Tenant shall promptly report any material complaints to the Landlord Representative with an appropriate recommendation or an itemization of alternatives for the Landlord's review and comment. Representatives of the Parties shall meet quarterly and upon the request of either Party to conduct a walk-through of the Student Housing Project and review of any pending complaints or issues. If at any time the University determines that the residential life or other aspects of the operation of the Student Housing Project are not adequately supporting the living/learning community envisioned by the Performance Standard, the Tenant shall evaluate, within a reasonable time thereafter (not to exceed 180 days), its operations through the use of an industry standard survey for university student housing or other tool reasonably acceptable to University and, if needed, take steps to improve the operation of the Student Housing Project in accordance with the results of the assessment to achieve similar outcomes, data, and comments to those consistent with other University on-campus student housing facilities.

Section 4.4 **Services/Communications to Eligible Residents.** The Tenant shall provide to Eligible Residents (a) the utilities and other services stipulated in the leases, (b) mass notifications and communications from the University, as directed by the Landlord and integrated into the University's emergency management system, including with respect to health, safety, security, evacuation, cessation or curtailment of classes, activities, or access to facilities, and (c) at the Landlord's cost, any other services the Landlord may request or specify in writing.

Section 4.5 **Adherence to the Landlord's Policies and Procedures.** The Tenant agrees to adhere to all rules, regulations, policies, and procedures of the Landlord and the Florida Board of Governors (the "BOG"), as they may be adopted, modified, and supplemented by the Landlord and the BOG in their absolute and sole discretion from time to time, including, but not limited, to the policies dealing with student code of conduct, firearms, smoke free campus and alcoholic beverages (the "Rules"), in performing all duties required by this Agreement. The Rules, which are subject to change by the Landlord at any time and from time to time, are located on the University's website.

Section 4.6 **Notices to the Landlord.** The Tenant shall promptly (but in all events, no later than five (5) Business Days after receipt) forward to the Landlord copies of all notices, demands, summonses, subpoenas, citations, or similar communications received by the Tenant that claim a violation, non-compliance, breach or default by the Tenant, the Landlord, or the Student Housing Project with applicable Laws or relate to claims or proceedings that might have an adverse effect on the Tenant's performance of its obligations. The Tenant shall notify the Landlord promptly (which notice shall include copies of supporting documentation) of any notice of violation of any Laws, any material defect, deficiency, or limitation in use or occupancy of the Student Housing Project, any condemnation action, rezoning, or other governmental order, and any tax assessment notices.

Section 4.7 **Parking.** Except as provided in the Ground Lease regarding parking during construction of the Student Housing Project, the Tenant shall require its employees, agents, and contractors to abide by the Landlord's vehicle access, use, and parking policies applicable to contractors and vendors conducting business on the Campus, including the purchase of required parking permits. The Landlord's parking rules as of the Effective Date are located on the University's website and are subject to change by the Landlord at any time and from time to time. The Tenant shall arrange to obtain all necessary parking permits. Parking fees must be paid directly to the University. The Tenant's employees must purchase parking permits and comply with all parking and vehicle use policies. The Tenant agrees to pay for parking fees and fines assessed to the Tenant's employees that go uncollected for a period of greater than thirty (30) days; however, such fees and fines paid by the Tenant may be charged as an expense to the housing operations. All fees, charges, fines, and other amounts charged, received, or collected in connection with the operation of parking facilities on the Campus and enforcement of applicable rules shall be for the Landlord. The Tenant shall contribute its proportionate share of the construction costs of the parking area that will accommodate the Facility, as more specifically set forth in the Ground Lease.

Section 4.8 **Hours of Operation.** The Tenant shall manage, operate, and maintain the Student Housing Project twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year.

Section 4.9 **Licenses.** The Tenant is responsible for all matters pertaining to the employment, payment, supervision, promotion, and discharge of the Tenant's employees. The Tenant and its personnel are and must continue to be fully licensed, certified, registered, and

qualified, to the extent required by licenses, permits, or other governmental authorizations, to perform the Tenant's obligations, functions, and duties hereunder.

Section 4.10 **Allocation of Responsibility and Provision of Utility and Other Services.** The following provisions provide an outline of the responsibilities for the delivery of utilities and other services to the Student Housing Project.

(a) **Landscape.** The Tenant is responsible for the maintenance of all landscaping and all irrigation systems and equipment on the Facility.

(b) **Electricity.** The Tenant will procure the Student Housing Project's electric supply directly from the local utility company, which as of the date hereof is Tampa Electric Company. Electric service to the Student Housing Project is separately metered and all costs for electric are the responsibility of the Tenant.

(c) **Sanitary Sewer.** The Student Housing Project's sanitary sewer services are provided by the local wastewater utility, which, as of the date of this Agreement, is the City of Lakeland Water Utilities. Services will be separately metered at the Student Housing Project and all fees, rentals, charges, and costs to the Student Housing Project are the responsibility of Tenant.

(d) **Chilled Water System.** The Landlord operates a chilled water production and distribution system which delivers building cooling capabilities to its facilities on the Campus (the "**Chilled Water System**"). The Parties acknowledge mutual benefits to integrating the Student Housing Project into the Lessor's Chilled Water System. To effect this integration, Tenant, at Tenant's expense, is designing and constructing the Student Housing Project to include all necessary equipment within the Student Housing Project to connect to the Chilled Water System. Landlord shall maintain the Chilled Water System. Tenant, at its expense, shall operate, maintain and replace the equipment within the Student Housing Project. Landlord shall cause chilled water to be made available to the Student Housing Project in a manner identical to that available to its other main campus facilities. Landlord and Tenant agree to cause the Student Housing Project to maintain the environment of the Student Housing Project at temperatures mutually acceptable to the Parties and consistent with environments of similar projects within the Florida State University System. Tenant shall pay to Landlord a monthly amount mutually acceptable to the Parties as payment for chilled water to be supplied to the Student Housing Project, increased annually by adjustments to the CPI.

(e) **Potable Water and Reuse Water.** The Student Housing Project's water services are provided to the Tenant by the local water utility, which, as of the date of this Agreement, is the City Lakeland. In the event Landlord elects to provide or is required to provide by any governmental agency of Polk County reuse water services, Tenant shall pay the applicable usage rate. Water service and reuse at the Student Housing Project service shall be separately metered and all costs, fees, and charges are the responsibility of the Tenant.

(f) Stormwater. The Tenant, at the Tenant's expense, shall maintain and repair all stormwater structures, swales, equipment, and improvements related to the Student Housing Project, including the catch basins and detention installations constructed by the Tenant on the Property at a location coordinated with the Landlord.

(g) Security. The Landlord and the Tenant agree that, as the agency of primary jurisdiction, the University's Department of Public Safety & Police (the "**Police**") is responsible for all law enforcement activity including enforcement of law and University policies on the Campus, as mandated by existing BOG regulations. The Landlord is responsible for providing security service to the Student Housing Project. No later than sixty (60) days prior to the Effective Date, the Tenant and the Landlord shall develop protocols and systems to facilitate entry of the Police to the Student Housing Project on a daily basis as well as in exigent circumstances. The Tenant shall obtain all permits and governmental authorization to install and operate all security systems and equipment at the Student Housing Project. The Tenant shall provide copies of the Tenant's periodic security reports regarding the Student Housing Project, and shall permit reasonable direct communication between the Tenant's representatives and the Police in accordance with applicable Laws. The Landlord and the Tenant may agree to make changes to the nature, scope, and allocation of security services provided to the Student Housing Project. The Parties shall cooperate and coordinate in the development of procedures and communication protocols to accomplish security measures and actions to address threats to the health and safety of Eligible Residents.

(h) Trash and Recyclables. Trash and recyclables collection and removal at the Student Housing Project is the responsibility of the Tenant at its expense. The Tenant shall enter into a separate contract(s) with a waste management company for the collection, removal and disposal of all trash and recyclables.

(i) Surveillance. The Landlord has provided information to the Tenant with respect to equipment, systems, policies, and procedures in use on the Campus that is utilized for surveilling the Campus, recording, storing and retrieving images. Tenant is responsible for the cost of maintaining and monitoring the Student Housing Project's security camera system utilized for surveilling the interior common areas and exterior perimeter doors of the Student Housing Project. In the event that the Parties agree upon the terms and conditions whereby security camera images would be stored on University information technology systems, the Tenant shall pay the Landlord, on a monthly basis, the cost of storage of such images and information. Representatives of the Landlord are permitted access to all security cameras for purposes of inspection and retrieval of relevant surveillance footage as required for the performance of its duties with respect to providing security services at the Campus.

(j) Internet and Data. The Tenant, through a third party provider, is responsible for the operation and maintenance of an internet and data system. Life safety and emergency communications and/or vending solutions will exclusively interconnect to an University-secured and managed backbone installed at Tenant's sole cost and expense.

(k) Cable. Cable television services to the Student Housing Project are supplied by the Tenant. The Tenant shall enter into an agreement with a cable provider of its choice, which may include the Landlord, and shall pay the cable provider the per hook-up cost, monthly service fees, and other fees and charges imposed pursuant to such agreement.

(l) Fire Alarm System. The Tenant at its expense shall maintain and operate a Class B addressable fire monitoring system within the Student Housing Project that is monitored by the Tenant's third party alarm monitoring service provider. The installed system shall also be capable of simultaneously signaling the University's campus monitoring system.

(m) Distress Alarms. The Tenant shall install in all residential units of the Student Housing Project and in prominent locations in the common areas call boxes that are connected directly to the University's security force's communication system and 911 emergency services system. The Tenant shall service, maintain, repair, and replace all call boxes in a timely manner to assure reliability and functionality.

(n) Exterior Door Access Control. The exterior security door system of the Facility must be compatible with and connect to the Landlord's access control system. Access must be controlled to all exterior entrances of the Facility as well as access to elevators and stairwells located inside the Facility. The Tenant, at its expense, shall maintain and replace electronic locks on all Student Housing Project exterior doors (and interior doors requiring such locks for code compliance or as agreed by the Parties). The Tenant, at its expense, shall monitor the activity at the doors and control the doors upon an event requiring such security measure.

(o) Registration And Other Services. The Tenant is responsible for the administration of Eligible Resident and guest registration procedures, student identification, front desk operations (at minimum, either 24 hour duty phone or an on-call staff member), and mail and package delivery at the Facility, generally consistent with University operations for other student housing facilities. The Tenant is responsible for installing, maintaining and monitoring access and entry to the Student Housing Project and activities therein. The Parties shall cooperate and share information, to the extent permitted by privacy laws, in order that University students residing at the Facility are able to utilize their University issued identification credentials with the same level of functionality as exists at other University student housing facilities. The Parties shall establish a communication protocol for the coordination of security information and availability of images from security cameras.

(p) Tenant Policies & Procedures. No later than sixty (60) days prior to the Effective Date, Tenant shall provide University with a complete set of its policies and procedures relating to the rental program, including, but not limited to, its move-in policies, damage policies and security deposit policies for its review and approval, not to be unreasonably withheld, qualified or delayed. The policies and procedures are deemed approved by the University if the University does not provide comments to the policies and procedures within thirty (30) days after the receipt thereof. Any University comments to the policies and procedures shall be addressed by the Tenant to the reasonable satisfaction of

University. The parties will re-visit the Tenant's policies and procedures from time to time to address any material increases in complaints related thereto, to review any proposed major changes in the policies and procedures, and to ensure the policies and procedures reflect industry standard practices. Tenant shall provide clear and adequate communication regarding its policies and procedures to Eligible Residents for the purpose of ensuring Eligible Residents are well-informed of the same.

(q) Monitoring/Notification and Other Fees. The Tenant shall pay for the following services: security, exterior door access control, surveillance monitoring at all entrance doors, public hallways and certain exterior locations to be agreed upon by the Parties and fire notification. The Parties agree to enter into formal agreements prior to the commencement of construction of the Student Housing Project setting forth the rights, obligations, and limitations related to the aforementioned services.

Section 4.11 Resident Assistants. The Tenant shall assign to the Student Housing Project an appropriate number of student resident advisors ("RAs"), but in any event not less than one RA per 35 beds in the Student Housing Project. Residential units occupied by RAs are designated to optimize the location and availability of RAs on the wings and floors of the Student Housing Project. The RAs are selected by the Tenant with coordination with the Landlord Representative and shall be students enrolled at the University. Tenant shall not charge RAs any rent, fee or other charge for the occupancy of the residential unit.

Section 4.12 University Use of Student Housing Project. The Landlord reserves all naming rights and associated rights, interests, property, privileges and benefits in any way related to the Student Housing Project. The Parties agree that, once built, the University Designated Space and certain rooms, facilities, and space at the Student Housing Project designated by the Parties are available for occupancy and use by the Landlord, related organizations and/or third parties pursuant to lease or license agreements between the Landlord and such third parties. The Tenant shall not charge any fee, rent, or other charge for the use of such space provided, however, the Tenant has the right to collect all direct costs incurred by the Tenant associated with such use.

Section 4.13 Emergency. The Parties acknowledge that the Campus must be evacuated in the event that a notice to evacuate is issued by or at the direction of state/county officials or through the Police to Tenant. Tenant shall follow evacuation directives closely and promptly in order to achieve the evacuation of the Student Housing Project by all persons at the Student Housing Project. The Landlord shall make any of its shelters located on its Campus available for all evacuated persons of the Student Housing Project and the Tenant shall organize, publicize, and provide transportation to such shelter for all such evacuated persons.

## ARTICLE V INDEMNIFICATION

Section 5.1 Indemnitees.

(a) Notwithstanding that joint or concurrent liability may be imposed upon the Landlord, by applicable Law, the Tenant shall, upon demand, indemnify, defend, hold harmless, and reimburse the Landlord, and its officers, employees, contractors, and agents (the “**Indemnitees**”) from and against and for any and all losses, damages, claims, actions, investigations, liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs, and expenses of any kind or nature (including reasonable architects’, engineers’, and attorneys’ fees), that may arise out of, relate to, result from or are imposed upon or asserted against Indemnitees by reason of the Tenant’s occupancy, operation maintenance, repair, replacement, restoration, construction, alteration, and/or use of the Student Housing Project, including the occurrence of any one or more of the following events (unless and except to the extent caused by the gross negligence or willful misconduct of the Landlord), or of facts or events that result in any one or more of the following:

(i) Any breach, violation, or non-performance of any obligation, covenant, duty, or agreement in this Agreement or the Ground Lease by the Tenant, including any failure of the Tenant to maintain or renew any surety bond or insurance policy required by the terms of the Ground Lease or this Agreement;

(ii) Any accident, injury, or damage to person and/or property, arising from any operation, maintenance, use, or occupancy of the Student Housing Project;

(iii) Any negligence or wrongful act or omission on the part of the Tenant or any of its agents, contractors, vendors, servants, employees, licensees, subtenants, or invitees, or anyone claiming by or through the foregoing; or

(iv) Any construction, work, service, activity, task, or thing done by or for Tenant in, on, or about or affecting the Student Housing Project and/or on any sidewalk, street, alley, curb, passageway, or space adjacent thereto, or any part thereof.

(b) If the Tenant is required to defend any action or proceeding pursuant to this Article, the Landlord is also entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and to the extent the Landlord is indemnified under this Article, the Tenant shall bear the cost of the Landlord’s defense, including attorneys’ fees.

## ARTICLE VI DEFAULT AND TERMINATION

Section 6.1 **Events of Default.** The occurrence of any of the following events is an event of default (an “**Event of Default**”) by a Party (the “**Defaulting Party**”):

(a) Failure of the Defaulting Party to duly and punctually make any payment owing to the other Party (the “**Non-Defaulting Party**”), as and when the same becomes due and payable, and the continuation of such failure for a period of thirty (30) days after written notice thereof is given by the Non-Defaulting Party to the Defaulting Party;

(b) The occurrence of an Event of Default under the Ground Lease or any other Binding Agreement that is the result of any action or inaction by the Defaulting Party;

(c) Any other material breach of or failure to perform terms, conditions, provisions, any covenants, obligations, or agreements to be performed by the Defaulting Party under this Agreement that is not cured within thirty (30) days after written notice of noncompliance from the Non-Defaulting Party; provided, however, that, if a breach or failure cannot reasonably be cured within such thirty (30) day period, then an Event of Default shall not be deemed to have occurred, so long as the Defaulting Party shall commence to cure such breach or failure within such thirty (30) day period, shall pursue the completion thereof with diligence and continuity, and shall cure such breach or failure within sixty (60) days after receipt of the notice of noncompliance;

(d) The Defaulting Party makes an assignment for the benefit of creditors, files a petition in bankruptcy, petitioning, or applying to any court or tribunal for the appointment of a custodian, liquidator, receiver, or any trustee for it or a substantial part of its assets, or commences any proceedings under any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or if there having been filed any such petition or application, or any such proceeding having been commenced against such Defaulting Party, in which an order for relief is entered or that remains pending for a period of one hundred and twenty (120) days after written notice thereof has been given by the Non-Defaulting Party and the holder of any leasehold mortgage encumbering the leasehold interest under the Ground Lease; or

(e) The Defaulting Party is dissolved or otherwise voluntarily avails itself of any federal or state laws for the relief of debtors, admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of creditors.

#### Section 6.2 **Termination.**

(a) Upon the occurrence of an Event of Default, the Non-Defaulting Party has the right to terminate this Agreement upon written notice to the Defaulting Party. The effective date of such termination may not be less than thirty (30) days or more than sixty (60) days after the date of the notice of termination.

(b) The Landlord may terminate this Agreement for convenience by sending written notice of termination to Tenant in connection with, and effective simultaneously with, the exercise of the Purchase Option under the Ground Lease.

(c) Notwithstanding termination, neither Party shall be released from any outstanding obligations under this Agreement or any obligations that continue beyond the term or termination of this Agreement, including, without limitation, indemnity obligations.

Section 6.3 **Duties Upon Termination.** Upon termination, the Tenant shall promptly and in any event within five (5) Business Days:

(a) vacate and surrender the Student Housing Project to the Landlord and thereafter provide reasonable services and resources to facilitate an orderly transition that minimizes interruption of and interference with residents and activities at the Student Housing Project;

(b) deliver to the Landlord all materials, supplies, keys, documents, books, records, drawings, manuals, logs, accounts, Repair and Reserve Fund, reserve funds, and reports related to the Student Housing Project;

(c) assign to the Landlord all existing contracts (including leases with Eligible Residents) relating to the operation and maintenance of the Student Housing Project, which the Landlord may elect at its sole discretion to receive assignment of, and

(d) provide to the Landlord hard copies and electronic copies of all Student Housing Project related information in a format acceptable to the Landlord.

Section 6.4 **Waiver.** The waiver of any right or remedy arising from a breach of an obligation, covenant or failure of performance shall not constitute a waiver of any right or remedy arising from either a subsequent default of the same obligation or covenant or by breach or failure of any other obligation or covenant. Acceptance by either Party of any payment made by the other Party shall not be a waiver of the right of the recipient to contest whether or not the full amount due shall have been paid, nor a waiver of any other rights or remedies hereunder. Failure by either Party to complain of any action, non-action, non-compliance, breach, default, or Event of Default of the other Party shall not be a waiver of any rights hereunder. A waiver must be in a writing signed by the Party to be bound thereby in order to be effective.

Section 6.5 **Specific Performance.** The Parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach or threatened breach of one or more of the provisions of this Agreement, any Party who may be injured (in addition to any other remedies that may be available to that Party) shall be entitled to one or more preliminary or permanent orders (a) restraining and enjoining any act that would constitute a breach or (b) compelling the performance of any obligation that, if not performed, would constitute a breach.

Section 6.6 **Consequential Damages.** Except in connection with third party claims covered by the indemnity provisions of Article V hereof, neither the Tenant nor the Landlord shall be liable to the other Party for any lost profits or special, incidental, punitive, exemplary, or consequential damages in connection with this Agreement except as shall arise out of, relate to, or be caused by the unlawful release disclosure or use of personal identifiable information.

## ARTICLE VII MISCELLANEOUS

Section 7.1 **Entire Agreement; Modification.** This Agreement and all Exhibits attached hereto constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the Parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement shall affect, or shall be effective to interpret, change, or restrict, the express provisions of this Agreement. No amendment, change, or modification of this Agreement shall be valid unless it shall be in writing and signed by duly authorized representatives of the Landlord and the Tenant. A waiver or a right or remedy shall only be enforceable if made in writing by the Party to be bound thereby.

Section 7.2 **Headings.** The Article and Section headings in this Agreement are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

Section 7.3 **Governing Law.** This Agreement is governed by the laws of the State of Florida, without regard to choice of law provisions, and applicable federal laws.

Section 7.4 **Legal Costs.** If a dispute arises out of, or concerns the terms of, this Agreement, then the prevailing Party in the dispute shall be, to the extent permitted by law, entitled to recover its reasonable legal fees, costs, and expenses, whether at the trial or appellate level.

Section 7.5 **Third Party Beneficiaries.** Except as expressly set forth to the contrary in this Agreement, each of the parties agrees that no individual and/or entity is intended to have, nor shall such individual and/or entity be deemed to have, any rights or remedies as a third party beneficiary to, or under, this Agreement or otherwise and each of the parties acknowledge and agree that any benefit conferred to any such individual and/or entity is, and shall be deemed for all purposes to be, merely incidental.

Section 7.6 **Binding Effect.** This Agreement and all of its terms and provisions is binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

Section 7.7 **Notices.** All notices, demands, requests and communications hereunder to the Tenant or to the Landlord must be validly and sufficiently served, given or made only if mailed by registered mail, postage prepaid, or by overnight delivery service, addressed as follows: (a) if to Tenant, [ ] Attention: \_\_\_\_\_; or (b) if to the Landlord, Florida Polytechnic University, Office of the President located at 4700 Research Way, Lakeland, FL 33805-8531; with a copy to Florida Polytechnic University, Office of the General Counsel located at 4700 Research Way, Lakeland, FL 33805-8531. Either Party may designate, by notice in writing, new or additional addresses to which any such notice, demand or communication shall thereafter be sent.

Section 7.8 **Severability.** If any provision of this Agreement is declared or found to be illegal, invalid, unenforceable, or void, in whole or in part, then the Parties shall be relieved of their respective obligations arising under such provision, but only to the extent that it shall be

illegal, invalid, unenforceable, or void, it being the intent and agreement of the Parties that this Agreement shall be deemed amended by modifying the provision to the extent necessary to make it legal, valid, and enforceable while preserving its intent or, if that shall not be possible, by substituting therefor another provision that shall be legal, valid and enforceable and shall achieve the same objectives.

Section 7.9 **Performance.** Time is of the essence in the performance of all duties, covenants, and obligations hereunder.

Section 7.10 **Exhibits.** All Exhibits attached to this Agreement are incorporated herein by reference.

Section 7.11 **Relationship of Parties.** Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership, joint venture, or association between the Landlord and the Tenant or between the Landlord and any other party, or cause the Landlord to be responsible in any way for debts or obligations of the Tenant or any other party. The Tenant is responsible for the hiring, training, supervision, management, promotion, and terms of employment of all persons employed by it.

Section 7.12 **Survival.** Any provisions that by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement shall, in fact, survive.

Section 7.13 **Successors and Assigns.** The Tenant may not directly or indirectly assign or transfer, or permit the direct or indirect assignment or transfer of, this Agreement, any rights or benefits under this Agreement, or any interest in Tenant without the prior written approval of the Landlord, which approval may be granted or withheld in the Landlord's absolute and sole discretion.

Section 7.14 **Security Reporting.** The Tenant shall provide information sufficient for the Landlord to meet its obligations with respect to reporting on security, including but not limited to reporting required under The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act at 20 U.S.C. § 1092(f).

Section 7.15 **Limitation of Recourse; No Liens.**

(a) There shall be no liability under this Agreement of, or any recourse under this Agreement to, any official, officer, director, member, shareholder, partner, employee, or agent of either Party. This Agreement shall not create an interest in real property and it shall not be recorded in the public records of any jurisdiction. Notwithstanding anything to the contrary contained herein, neither the Tenant, nor any officer, shareholder, partner, member, representative, or agent thereof, is entitled to place, file, or record a lien or *lis pendens* upon or against the Student Housing Project on account of any sums alleged to be due and payable to the Tenant, unless such claim is reduced to a judgment, and if the Tenant does so in violation of

this provision, such circumstance shall be an Event of Default and without limiting any other rights or remedies of the Landlord, entitle the Landlord to terminate this Agreement.

(b) Notwithstanding anything herein to the contrary, the liability of the Tenant hereunder (including, but not limited to its indemnity obligations) is “non-recourse” and, accordingly, the Landlord’s and the University’s sole source of satisfaction of such obligations shall be limited to the Tenant’s interest in the Student Housing Project and the rents, issues and surplus related thereto, and the Landlord shall not seek to obtain payment from any person or entity comprising the Tenant or from any assets of the Tenant other than those described herein, notwithstanding the survival of any obligation of the Tenant beyond the term hereof.

Section 7.16 **Weekends and Holidays.** Whenever any time limit or date provided herein falls on a Saturday, a Sunday, or designated Holiday, then that date shall be extended to the next Business Day that is not a Saturday, a Sunday, or a Holiday.

Section 7.17 **University’s Obligations Subject to Appropriation.** The obligation of the Landlord to perform its covenants under this Agreement in any Annual Period is subject to the appropriation of funds sufficient for the purpose. If sufficient funds are not available and appropriated to enable the Landlord to perform its covenants under this Agreement, the Tenant shall have the right, but shall not be obligated, to pay or advance amounts for payment of the expenses associated with those covenants.

Section 7.18 **Sovereign Immunity.** This Agreement does not affect the immunities, exemptions and limitations of liability of the Landlord under Florida Statute 768.28 and other Applicable Laws of the State of Florida. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities afforded the Landlord, the Florida Board of Governors and the State of Florida by law. Nothing herein shall be construed as consent by Landlord to be sued by third parties in any manner arising out of this Agreement.

Section 7.19 **Counterparts.** This Agreement may be executed in one or more counterparts with the same effect as if all Parties had signed the same document. All counterparts shall be construed together and constitute the same instrument. In making proof of this Agreement, it shall not be necessary to account for more than one counterpart executed by the Party against whom enforcement shall be sought.

Section 7.20 **Expenses.** All costs, fees, and expenses incurred by the Tenant, except for costs to be paid by the University under Sections 4.1(f) and 4.13 hereof related to University Designated Space, and costs incurred by the Landlord as a result of Landlord’s undertaking of any or Tenant’s obligations hereunder or Landlord’s enforcement of this Agreement (including any indemnification expenses), shall be expenses of the Student Housing Project.

Section 7.21 **Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES

THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE PROJECT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the date and year first above written

**LANDLORD:**

**FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**

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

Date: \_\_\_\_\_, 2015

**TENANT:**

[\_\_\_\_\_]

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

Date: \_\_\_\_\_, 2015

[Signature Page]

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**  
**DESCRIPTION OF STUDENT HOUSING PROJECT**

**EXHIBIT C**  
**UNIVERSITY DESIGNATED SPACE**

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