

Student Housing Project at the Current University Park Apartments Site- 5. Resolution, Implementing Agreements and Funding Plan, UNLV

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BOARD OF REGENTS BRIEFING PAPER

1. Agenda Item Title: Student Housing Project at the Current University Park Apartments Site – Implementing Agreements

Meeting Date: April 24, 2015

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

At the December 4, 2014 meeting of the Investment and Facilities Committee approval was given to an MOU (see attached) to define the parameters for a public/private partnership for student housing on the University Park Apartments 14 acre site (the “Project”). We indicated at that time we would be bringing back these implementing agreements to the March 5-6, 2015 Board of Regents meeting.

This Project is consistent with UNLV’s 2012 Maryland Campus Master Plan. (See attached Overall Summary of University Park Apartments Redevelopment Plan.) The Board approval of the MOU was the first step in moving the Project forward. UNLV is now requesting approval of the implementing agreements, explained in the attached Summary of Implementing Agreements, to finalize the contractual details and move forward with the Project. The implementing agreements presented for Board approval are: (1) Assignment and Assumption Agreement for the purchase of University Park Apartments, (2) Lease Agreement for University Park – First Phase, (3) Lease Agreement for the University Park - Future Phases, (4) Project Development Agreement.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

UNLV President Len Jessup presents for approval the following Implementation Agreements: (1) Assignment and Assumption Agreement for the purchase of University Park Apartments, (2) Lease Agreement for University Park – First Phase, (3) Lease Agreement for the University Park - Future Phases, (4) Project Development Agreement.

President Jessup also presents the following funding plan to pay for UNLV’s portion of the purchase price for the property (\$18.5 million): \$6.4 million balance in Land Acquisition Reserve Account; \$4.8 million in Capital Improvement Funds; \$6.9 million in General Improvement Funds; and \$400,000 in additional non-state institutional funds.

UNLV further requests approval of Resolution No. 1 making certain findings related to existing bond covenants for student housing and the University Park Apartments project.

Finally, UNLV requests that the Board authorize the Chancellor to approve amendments or revisions to the Implementation Agreement that he, in consultation with the Board Chair, determines to be minor.

4. IMPETUS (WHY NOW?):

- Midby Companies has been awarded the opportunity to purchase University Park Apartments from Wells Fargo and wishes to collaborate with UNLV on a student housing project.
- The Board approved the MOU at the December 4-5, 2014 meeting and UNLV wishes to finalize the agreements and move forward with the Project.
- Midby Companies would like to have the redeveloped phase 1 units open for occupancy for Fall, 2016.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- The proposed project is consistent with UNLV’s Campus Master Plan, which was approved by the Board at the November 29-30, 2012 meeting.

- The Board approved the MOU at the December 4-5, 2014 meeting.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- The University should not be involved with student housing.
- The funding to purchase the property could be better used for other needs.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

The Board does not approve the Project's implementing agreements and thus UNLV would not pursue this current opportunity.

8. COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____

Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____

Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____

Other: _____

X Fiscal Impact: Yes X _____ No _____

Explain: UNLV will purchase the property for \$18.5M and lease it back to the Midby Companies for development and operation, consistent with the Board approved MOU and implementing agreements.

RESOLUTION NO. _____

RESOLUTION NO. 1

A RESOLUTION PERTAINING TO A PROJECT INVOLVING THE CONSTRUCTION OF HOUSING FACILITIES FOR STUDENTS AT THE UNIVERSITY OF NEVADA, LAS VEGAS; APPROVING CERTAIN IMPLEMENTING AGREEMENTS FOR THAT PROJECT AS CONTEMPLATED BY A MEMORANDUM OF UNDERSTANDING PREVIOUSLY APPROVED BY THE BOARD; MAKING CERTAIN FINDINGS IN CONNECTION WITH THAT PROJECT; AND PROVIDING OTHER DETAILS PERTAINING THERETO.

WHEREAS, the Constitution and laws of the State of Nevada, including, without limitation, NRS 496.425 and 496.430, authorize the Board of Regents (the "Board") of the Nevada System of Higher Education ("NSHE") to acquire and to lease property; and

WHEREAS, pursuant to a Memorandum of Understanding (the "MOU") approved by the Board on December 5, 2014 with the University Park, LLC ("Midby"), substantially final forms of the following Agreements between Midby and the Board have been filed with the Acting Secretary of the Board:

- (a) Two Leases (the "Leases") as described in Section 2.3 of the MOU, relating to student housing facilities for UNLV Students (the "Project" as defined in the MOU);
- (b) A Project Development Agreement regarding the development of the Project and the Site (as defined in the MOU) on which the Project is located, as described in Section 2.2 of the MOU,
- (c) An "Assignment and Assumption Agreement" related to the acquisition of the Site by the Board, as described in Section 2.1 of the MOU;

(collectively, the "Implementing Agreements"); and

WHEREAS, in connection with the review and consideration of the Implementing Agreements:

- (a) Midby has provided a demand study for the Project (the "Demand Study," as defined in the MOU) prepared by Brailsford & Dunlavey ____,

dated as of December 2014;

(b) Pursuant to NRS 396.431, Midby has provided a disclosure setting forth the name of any person who holds an ownership interest of 1 percent or more in Midby (the “NRS 396.431 Disclosure”);

(c) Hobbs Ong & Associates, Inc., and Public Financial Management (“HOA & PFM”) were engaged to review the Project, the Demand Study, a financial/business plan and operational pro-forma for the Project prepared by Midby (the “Financial Plan”), a memorandum entitled “Midtown Bond Report/Tech Memo” (the “Memo”) dated August 16, 2013 prepared by RCG Economics relating to a similar project proposed in 2013 to be located on the Site; and HOA & PFM have provided their written review entitled Report of Proposed Public Private Partnership Review (the “Review”), dated March 9, 2015

(The Demand Study, the NRS 396.431 Disclosure, the Memo and the Review are herein collectively, the “Supplemental Project Information”); and

WHEREAS the Supplemental Project Information has been filed with the Acting Secretary of the Board.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION:

Section 1. The forms of the Implementing Agreements on file with the Acting Secretary of the Board are hereby approved and the Chair of the Board and the Chancellor of NSHE and any other officers of the Board or NSHE designated in the Implementing Agreements (collectively, the “Signatory Officials”) are hereby authorized to execute the Implementing Agreements in substantially the form now on file with the Acting Secretary of the Board, with such insubstantial changes therein as may be approved by the Signatory Official executing the same, such approval of an insubstantial change in a document to be conclusively evidenced by the execution of that documents by A Signatory Official. The Implementing Agreements, after their execution as provided in this section, are authorized to be delivered to Midby.

Section 2. Based, in part, on the contents of the Implementing Agreements and the

MOU, on the Supplemental Project Information and on other information and presentations provided to the Board at the meeting at which the MOU was considered and at the meeting at which this resolution is being considered, the Board hereby finds that (i) the Project will not compete with the student housing projects whose revenues secure bonds (the “Bonds”) issued by the Board in a way such that, or to a degree such that, the revenues pledged to the Bonds will not be sufficient to meet the covenants in the resolutions authorizing the Bonds (the “Bond Resolutions”); and (ii) the Leases and the Project, and any agreements contemplated thereby or to be entered into in connection therewith will not adversely affect the Board’s ability to comply with all covenants in the Bond Resolutions.

Section 3. The following UNLV funding sources are approved to pay, and authorized to be used to pay, the \$18.5 Million to be paid by the Board for the purchase of the Site under the Assignment and Assumption Agreement:

- A. \$6.4 Million of the balance in Land Acquisition Reserve Account
- B. \$4.8 Million in Capital Improvement Funds
- C. \$6.9 Million in General Improvement Funds
- D. \$0.4 Million in additional non-state institutional funds

The \$2 Million balance of such purchase price is to be paid with monies provided by Midby as provided in the Assignment and Assumption Agreement

Section 4. The officers of the Board, NSHE and UNLV are hereby authorized to take all action necessary or appropriate to effectuate the provisions of this resolution.

Section 5. All action, proceedings, matters and things heretofore taken, had and done by the Board, and the officers thereof (not inconsistent with the provisions of this resolution) directed toward the purposes of this resolution be, and the same hereby are ratified, approved and confirmed.

Section 6. This resolution shall be effective on its passage and approval.
PASSED AND ADOPTED on this April 24, 2015.

Chairman
Board of Regents of the
Nevada System of Higher Education

(SEAL)

Attest:

Acting Secretary

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, University Park, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in University Park, LLC:

Name of person holding interest:

1. TMG Development, LLC

Dated as of March 2nd, 2015.

University Park, LLC

By:  _____

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, TMG Development, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in TMG Development, LLC:

Name of person holding interest:

1. The Midby Group, LLC

Dated as of March 2nd, 2015.

TMG Development, LLC

By:  _____

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, The Midby Group, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in The Midby Group, LLC:

Name of person holding interest:

1. The Midby Companies, LLC

Dated as of March 2nd, 2015.

The Midby Group, LLC

By: _____



Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, The Midby Companies, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in The Midby Companies, LLC:

Name of person holding interest:

1. Eric S. Midby
2. The Midby Family Trust

Dated as of March 2nd, 2015.

The Midby Companies, LLC

By:  _____

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

Pursuant to NRS 396.431, The Midby Family Trust hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in The Midby Family Trust:

Name of person holding interest:

1. John H. Midby
2. Bonny J. Midby

Dated as of March 2nd, 2015.

The Midby Family Trust

By: _____

Name: John H. Midby

Title: Trustee

Overall Summary of University Park Apartments Redevelopment Plan

Existing Property - University Park Apartments:

- ~14 acres of land immediately north of the main campus (across Cottage Grove Avenue).
- 280 existing units (part of 4-plexes) which are over 50 years old (built in 1963). Approximately 15% of current occupants are UNLV students and/or related directly to UNLV (data is as of 2013).
- Last purchased in June 2006 and ownership of property taken back by lender (Wells Fargo) in January, 2014.
- University Park Apartment site is within the UNLV Campus Master Plan area for student housing priority and the recent Master Plan update noted UNLV is well below housing numbers compared with peer institutions.

Wells Fargo/CBRE Process for Marketing the Site:

Wells Fargo hired CBRE as their broker for this property. Initially there were meetings with Wells Fargo and CBRE to talk about their marketing plan for the property, and the role of UNLV. CBRE set up many meetings with UNLV (G. Bomotti) and interested parties (19, both in person and on the phone). CBRE and Wells Fargo solicited bids/responses on the purchase of the property and the development of the site for student housing. Wells Fargo alerted UNLV that John Midby of the Midby Companies (Midby) was the winner of their process to purchase the property.

Overall UNLV Goals for University Park Apartments Project:

- *Support the purchase of a strategic property in our current campus masterplan.
- *Create a public/private partnership that allows us to deliver new student housing units, but where UNLV does not take on the risk to finance or operate them.
- *Create an “Arms-Length” structure whereby UNLV can have reasonable confidence the development will meet our needs, but such that it is not considered our debt for ratings purposes.

Due-Diligence Activities:

1. Property Appraisal. Completed by the DiFederico Group and value determined to be \$20.97M based on market value of the fee simple estate with the assumption that the improvements are of average condition.
2. Phase 1 Environmental Site Assessment has been completed and no recognized environmental concerns were identified. The report recommended that the property be tested for asbestos containing materials prior to demolition which will be conducted by the developer. Midby Companies provided previously completed asbestos and lead based paint reports that are fairly comprehensive in identifying the scope of these materials on-site, so it was felt that there's not great value in conducting additional testing for these items. However was believed that conducting a mold assessment made sense due to the age, use, configuration and condition of the property. The property was surveyed and sampled in several locations for water intrusion and fungal growth and the findings were that no significant issues were identified.

3. Title. A review was completed and no major issues were identified. The title commitment identifies some set back and utility encroachment issues that exist at the property. Many of the encroachment issues will ultimately be resolved as part of redevelopment of the site, as the developer will be required by Clark County to meet current zoning and set back regulations.
4. Independent review of Developer financial and business plan. This review was commissioned by UNLV and we used Guy Hobbs and his team (Hobbs, Ong and Associates, Inc. Please see attached background information on this firm)
5. Previous independent report (by John Restrepo – see attached) that this type of development would not represent “competition” for existing on campus housing, as per the previous bond covenants (Hobbs also reviewed this as part of their overall evaluation of the project). A copy of the Restrepo report is attached.
6. Any “Internet Liability” associated with residents of the Midby project using the UNLV network. The agreements indicate that Midby could use our internet structure to serve the residents of the housing units, if we can agree upon price terms and provisions of such connection (pursuant to the terms of a separate agreement to be executed by the Parties), The separate agreement shall include, among other things, a requirement that Tenant permit and pay for the cost of managing user compliance with Landlord’s rules, regulations and policies in place from time to time on the same basis as other Campus users in general and other on-campus housing, specifically. Further, the Agreement will assure that use of the UNLV internet structure will comply with Federal Regulations.
7. Student Housing Market Demand Study. This study was commissioned by Midby and was completed by Brailsford & Dunlavey, a national group that has specific expertise in student housing markets and has been utilized in connection with other NSHE housing projects. The current design of Phase 1 is based on the results of this study, as is the review conducted by Hobbs and Ong. (copy of report attached).

Summary Outline of Proposed Development Project and Agreement on University Park Apartment Project with the Midby Team.

1. Current assumption is three (3) phases for the project. First phase is 6 acres (~40%) of property starting at Maryland Parkway and going west. Approximately 215 units and 730 beds and 425 parking spaces (.58 ratio). First phase delivery projected for Fall semester 2017. Future phases for the remaining part of the property (approximately 8 of the total of 14 acres) would be developed based on a schedule that tracks the success of Phase 1 (and existing units would be transitioned to support UNLV students).
2. Current assumptions on the full build-out described as approximately 806 secure and private student housing units amongst three, five story wrap-style student housing buildings (2,500 - 3,000 beds). The project includes an on-site convenience and retail store, a resort style central pool and clubhouse complex, as well as onsite covered parking (1,250 – 1,500 spaces). In addition each building will include study cubes, team rooms, exercise rooms and media lounges.
3. Phase 1 is projected to include three specific unit types: 2 bedroom, 2 bath units with double occupancy bedrooms, 2 bedroom, 2 bath units with single occupancy bedrooms, and 4 bedroom, 4 bath units with single occupancy bedrooms.
4. UNLV would purchase the property for \$18.5M, and subject to a 40 year lease for the project. The full purchase price is \$20.5M and Midby will pay \$2M of this total. UNLV must have clear

title to the property, the financing must be non-recourse to UNLV (and non-subordination of land) and we would not backstop the financing in any way or have financial responsibility for any aspect of the project. Our goal is to keep an arms-length distance from this so as not to have it impact our financial statements or our debt rating. Note: Midby would receive a \$200k credit towards deferred repairs to existing units, and we would tie this expense into the improvement of existing units (fire damage repair), and they will be required to make the repairs and replacements as soon as reasonably possible following the Closing.

5. Midby would also operate the limited retail/commercial improvements on the property, and the remaining units on the property.
6. Proposed 40 year land and improvements lease term (for Phase 1 the start date would be the earlier of two years after the date the land is acquired or C of O for the first phase), after which the improvements would be fully transferred to UNLV for operations. Midby would have two years to start Phase 1 (financing and all permits and start construction) or the Phase 1 lease becomes terminable by UNLV (however, Midby would have 3 years remaining on the future phases lease in this case, in order to allow Midby to recover their prepaid costs). The existing units would be under a separate ground lease, and managed by the Developer towards the overall financial benefit of the entire project. Future development phases would also have 40 year land leases, but the Developer would have a total of 10 years from the commencement of the Phase 1 lease in which to fully develop the entire property (or the undeveloped portion would revert to UNLV).
7. Lease/Rent rate for land at \$550k/year, which first goes against \$2M developer cash on the land purchase (~3.6 year period). The land rent rate would increase by 3% every four (4) years.
8. Freshman Housing: This project would not meet the requirements of our freshman live on campus policy. UNLV would retain that authority and the flexibility to build any additional freshmen housing capacity. We understand the need to limit additional non-freshman housing in order to assure this project is successful and we would allow an exclusive right to market this property as on campus housing. UNLV would not negotiate with anyone else for non-freshman housing for up to a 10 year period (depending on performance of the Phase 1 project, which could reduce this time period, and Midby would then have a maximum of 18 months/up to the total 10 years maximum for the development of the site, to start on Phase 2, or UNLV could consider other options). UNLV could add freshmen housing at any time. This restriction would not apply to Shadow Lane Campus projects.
9. UNLV would not have any responsibility for pre-development costs.
10. This development would be subject to the recent CC&R's developed by UNLV relative to "Midtown" and as part of the Gateway project.
11. The Phase 1 project to be designed and constructed to meet or exceed the standard for modern campus student housing being constructed at peer institutions (e.g. the specific property used as the model is Sterling Alvarado, a private off-campus development near SDSU). Although this SDSU housing project achieved "LEED GOLD", our requirement is "LEED Silver or equivalent"
12. The project is subject to all applicable provisions of NRS Chapter 338 (Public Works and Planning).
13. The existing units retained are not part of Phase 1 and would be transitioned over to student/University centric housing and Midby must provide UNLV a detailed transition plan for these units. The transition plan will also address how Midby will work with existing residents so they can relocate in a reasonable manner, and not feel somehow the University was at fault for their requirement to move very quickly. The transition agreement would be finalized by Midby no later than 12/31/15 and submitted to UNLV for review and approval.

14. Parking would be provided by the Developer, but UNLV would agree to offer up to 300 residential parking passes for UNLV students to purchase but only once the Developer's parking is fully utilized.
15. The Developer (UNLV recommends this be done through AVS, who has our contract for housing marketing and leasing, as this would be the most efficient method to market to our students) would market and lease the new apartments to eligible students, bill and collect rent, and operate and maintain the project. Priority would be given to students, however, in the absence of student demand the units could be rented to non-students. The Developer would also market and manage the existing units that would remain on the site, as well as the limited retail activity that would be part of the Phase 1 project. UNLV would receive ground rent for the entire property, and there is a water fall of the overall cash flow that depending on project success would provide rebates for UNLV students living in the new units.
16. UNLV is not responsible for backstopping the financing of the property or the operation and maintenance (O&M) of the property.
17. UNLV would be protected that the project will be fully completed and operational after financing is approved and purchase of land is made (completion guarantee).
18. What happens if the Phase 1 project is built but ends up not performing? – Recourse is to Developer and lender remedies under the ground lease.
19. The Proposed project waterfall of gross revenue is as follows:
 - a. Monthly Trustee and servicing fee (estimated at about \$500/month)
 - b. Payment of land rent to UNLV
 - c. Payment of interest on the Financing
 - d. Payment of principal and other amounts due on the Financing, including debt service and other reserves required by the Financing.
 - e. Payment of Maintenance and Renewal reserve
 - f. Budgeted monthly operating expenses
 - g. On a monthly basis, pay the Management Fee
 - h. Surplus Fund/Project Success Fund (25% allocated to benefit UNLV students in the housing)
20. The Project Success fund is essentially a portion of the net income of the entire property (Phase 1 new construction and Phase 2 and 3 existing income) which would be directed back to rebates/reductions in rent for UNLV students. Success funding to begin after repayment of preferred equity amount to investors (\$3.9M+) in phase 1 (~ year 7).
21. Tier 1 and 2 Disadvantaged Business reporting requirements will be required by Midby, per Board policy.
22. Restrepo report on competition relative to existing bonds. The Regents will have to make a finding that the new project will not affect the System's ability to meet its coverage requirement under existing bond covenants. The report provided from an independent consultant for the 2013 evaluation combined with the new demand/feasibility studies will likely provide enough backup for the Regents to make their determination. The existing study is not very old and it concluded a new project of this type will not take away from the demand for the existing dorm rooms. The Hobbs, Ong and Associates, Inc. review did not identify any errors in the Restrepo report and findings.
23. Assumption that internet connected to UNLV if we can agree on price and other terms. No other utilities would be connected into UNLV systems (meaning no utilities would have billings come to UNLV and have it as our responsibility to recover costs from Midby).

24. Base level Police services provided by UNLV, since we will own this land.
25. Prohibited uses – the standard ones we exclude from all agreements and as defined by UNLV’s CC&R’s that will be incorporated in the development agreement.
26. Restricted use under the ground lease of only being able to use it for housing and agreed upon retail.
27. Major R&M reserve level. The lender will have requirements for R&M reserves and Midby will develop an engineering review of each phase of development at the 30 year mark of the lease so as to identify major R&M needs through the end of the lease and assure funds are set aside to meet these requirements. This is done to help assure UNLV will be getting an asset at the end of the lease term.
28. Can't refinance without our approval.
29. Building official – SPWB.
30. **Four Implementing Agreements:** Approval by the Board of Regents for the MOU was the first step in moving this project forward, however, several other implementing agreements are now presented to the Board of Regents for action before the project could be fully approved. These implementing agreements include the documents noted below.

***Ground and Improvement Leases.** Two in total: one for the Phase 1 development and one for the remaining property. Assumes the “transition agreement assumptions” about the transition of existing housing units over to serving UNLV student/staff are covered in the lease for the remaining property.

***Assignment Agreement for Purchase and Sale Agreement between Midby and Wells.** Grants UNLV the right to purchase the property from Wells Fargo subject to certain terms and conditions.

***Project Development Agreement** (addressing demolition of existing apartments, parking issues and design, development and construction of new units).

30. **How would UNLV come up with \$18.5M to pay for the purchase of the property?** We would seek Board approval to use existing balances. The main sources are as follows:
 - *Allocate the balance in our land acquisition reserve account, which was built up since the GIF fee was established and the President could allocate \$1/SCH for any purpose (the purpose defined, which continues today, was land acquisition). When we account for the Police Station purchase, the remaining balance in this account is \$6.4M
 - *CIF funds. We would need to use a significant amount of CIF funds towards this purchase. \$4.8M
 - *GIF funds. We would need to use a significant amount of GIF funds towards this purchase. \$6.9M
 - *Additional non-state institutional funds. We would piece together the remainder of the funding needed. \$.4M
31. **What are the major risks of this project to UNLV?** The structure of this proposal attempts to limit our risks, but some always exist, including the following:
 - *The project could be unsuccessful, and this would at least be a reputation risk to UNLV. The lender could come in and take over the project, subject to the ground lease.
 - *The new housing could end up having a negative impact on existing campus housing, although we have received an independent review of this issue (as this is a required action item by the Board based on existing bond covenants) and it was not deemed to be a risk. Since our existing

campus housing is at full capacity with a waiting list, we do not believe this is a significant risk.

*While the principals of the Midby Companies have extensive relevant experience with financing and delivering projects, this would be their first “student housing” project.

*The schedule proposed could be delayed, given the fact that public/private partnerships are complex by their nature.

University Park Project Summary of Implementing Agreements

Attached are the implementing agreements for the University Park Project. These agreements are summarized below:

1. Assignment and Assumption Agreement: provides for assignment from the Midby Company (Midby) of its right to purchase the 14 acre parcel currently held by Wells Fargo Bank (WFB). The Purchase and Sale Agreement with WFB provides for a purchase price of \$20,500,000 and the Assignment and Assumption Agreement provides for UNLV to pay \$18,500,000 and for the remaining \$2,000,000 to be funded by Midby. UNLV's obligations are contingent on concurrent execution of the Leases described below.

2. Two Leases – (i) Lease covering land for the Phase One development (Phase One Lease) and (ii) Lease covering land for Future Phases of development (Future Phases Lease): Both Leases provide for UNLV's lease as Landlord to two separate Midby entities of the entire 14-acre parcel. The Phase One Lease runs for 40 years from the earlier of the issuance of a Certificate of Occupancy or 2 years after execution of the Lease and covers approximately 40% of the 14 acres (the Phase 1 Land). The Future Phases Lease runs for 40 years from the earlier of the issuance of a Certificate of Occupancy or 10 years after execution of the Lease and covers the remaining 60% of the 14 acres (the Future Phases Land). The Future Phases Lease provides for the subdivision of the Future Phases Land and for part of the Land to be subject to a third Lease in the event that the Future Phases Land should be split into separate Phase 2 and Phase 3 development. The portion of the Future Phases Land to be developed as Phase 3 shall be transferred to and subject to a third Lease which shall be substantively identical to the Future Phases Lease except as to the definition of the premises. The total Rent for the land will be \$550,000, i.e. approximately 3% of the UNLV cost and apportioned among the Phase One Lease and the Future Phases Lease. The \$2,000,000 contributed to the purchase price by Midby will be treated as a credit against the first 4 years rent due under the Leases. The Lease restricts UNLV from developing non-freshman housing for 10 years unless the project governed by the Phase One Lease meets certain basic success criteria. The Tenant intends to construct student housing type residential units with some Maryland Parkway frontage retail to support the residential units

3. Project Development Agreement: provides the specific criteria for development and construction of the Project. The Project Development Agreement (PDA) includes specifics regarding the process for design review, permitting, construction controls, code compliance, Tier 1 and Tier 2 compliance and Insurance requirements. The form of the PDA is based on Development Agreements previously approved by the Board.

4. Master CC&R's: While not a new and distinct "Implementing Agreement", the PDA requires that the Land be subject to the Master CC&R's which were previously approved in connection with the University Gateway project and set forth the design/construction standards that UNLV will require for all properties to be developed in the UNLV/Midtown area in which UNLV participates. The Master CC&R's serve as a kind of zoning overlay that will, among other things: (i) outline design standards including signage, building materials, exterior lighting, (ii) outline a design review process and design approval by UNLV, (iii) restrict or prohibit a range of specific uses which are inconsistent with the University's needs and its mission; and (iv) permit reasonable amendments and variances as approved by UNLV.

PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (the “**Development Agreement**”) is made by and between University Park, LLC (“**University Park, LLC**”), Future Phases, LLC (“**Future Phases, LLC**”) and the Board of Regents of the Nevada System of Higher Education (“**Board of Regents**”), on behalf of the University of Nevada, Las Vegas (the “**University**” or “**UNLV**”). University Park, LLC and Future Phases, LLC are affiliates of The Midby Companies and shall collectively be referred to as “**Developers**.” University Park, LLC, Future Phases, LLC and UNLV shall each be referred to as a “**Party**” and collectively be referred to as the “**Parties**.”

This Development Agreement shall become effective when executed by University Park, LLC and Future Phases, LLC and approved by the Board of Regents at a publically noticed meeting (the “**Effective Date**”).

As used herein, the term “**Developer**” is used in the singular to refer to University Park, LLC, Future Phases, LLC, or the assignee of either of them who shall assume the obligations of a lessee from UNLV for a portion of the Land to construct its respective Phase of the University Park Project. The obligations and rights of each Developer under this Development Agreement shall pertain only to that portion of the Land to which such Developer holds a leasehold interest. No Developer shall have any obligation with respect to a portion of Land that it does not lease from UNLV except as explicitly provided herein or in one of the Project Implementation Agreements executed by such Developer.

The Parties desire to develop the University Park Project (as defined below) subject to the terms and conditions of this Development Agreement and therefore agree as follows:

ARTICLE 1. UNIVERSITY PARK PROJECT DESCRIPTION

1.1 **Background.** University Park, LLC has entered into an agreement with Wells Fargo N.A. for the purchase and redevelopment of approximately fourteen (14) acres of land described in Exhibit A located immediately north of the UNLV campus on Cottage Grove Avenue (the “**Land**”). The Land currently has 280 apartment units arranged as 4-plexes (the “**Existing Improvements**”) that are approximately 50 years old. The Parties have agreed that University Park, LLC will assign its rights and UNLV will assume the Purchase Contract (defined below), acquire the Land and lease the Land back to University Park, LLC and Future Phases, LLC.

1.2 **The University Park Project.** The plan and agreement of the Parties now contemplates UNLV purchasing the Land and Existing Improvements and leasing portions of the same to each of the Developers and all of the Land to a combination of the Developers. Each Developer, by entering into a lease agreement with UNLV, shall have agreed to fund, construct, maintain, and operate student housing and certain commercial establishments on its portion of the Land. The overall development of all of the Land is referred to herein as the “**University**”

Park Project” and the individual portions of the University Park Project for which a Developer is responsible are referred to as a “**Project Phase**”). Conceptual drawings and schematics of the University Park Project are depicted in **Exhibit B** (the “**Schematic Plans**”). Full built out of the University Park Project could include up to 3,400 beds in wrap style buildings with apartment-like amenities, a limited amount of retail space, and 1,500 structured parking spaces.

1.3 **Phases.** The University Park Project will consist of two or more development phases, which are depicted on **Exhibit C** and identified as the “**Phase One Land**”, comprising approximately 6 acres on the east end of the Land along the frontage of Maryland Parkway, and the remainder of the Land (the “**Future Phases Land**”), which will contain all subsequent phases.

1.4 **The Project Implementation Agreements.** This Development Agreement is one of several agreements (collectively the “**Project Implementation Agreements**”) that, upon execution by the Parties, will govern the University Park Project. The Project Implementation Agreements also include:

(a) That certain **Purchase Contract** (the “**Purchase Contract**”) between University Park, LLC, and Wells Fargo Bank, NA with an Effective Date (as defined therein) of October 14, 2014 for the purchase of the Land and Existing Improvements as amended by a series of amendments dated ____, ____, and _____. By the terms of the Third Amendment, University Park, LLC is entitled to a credit in the amount of \$200,000 from Wells Fargo at the Closing to make certain deferred repairs to the Existing Improvements (the “**Deferred Repairs Credit**”);

(b) that certain **Assignment and Assumption Agreement** (“**Assignment Agreement**”) by which University Park, LLC, assigns and UNLV assumes certain of its rights and obligations under the Purchase Contract;

(c) that certain **Lease Agreement for University Park Phase One** by which UNLV leases the Phase One Land and the Existing Improvements located on the Phase One Land to University Park, LLC (the “**Phase One Lease**”);

(d) that certain **Lease Agreement for University Park Future Phases** by which UNLV leases the Future Phases Land and the Existing Improvements located on the Future Phase Land to Futures Phases, LLC (the “**Future Phases Lease**”), and

(e) any other agreements and documents the Parties enter into that are or become necessary to complete the University Park Project.

1.5 **This Development Agreement.** As detailed herein, this Development Agreement establishes certain design standards and construction requirements and related approval processes for the Land and University Park Project. University Park, LLC and Future Phases, LLC agree and any future lessees of the Land agree by accepting such leasehold, to design and construct, and require their respective architects, engineers and contractors to design

and construct, that portion of the University Park Project for which it is responsible, consistent with this Development Agreement.

1.6 **Midtown CC&R's.** Each Developer understands and acknowledges that UNLV, as property owner and Master Declarant, intends to burden and record against the Land that certain Master Plan Declaration of Covenants, Conditions & Restrictions for UNLV Midtown Corridor (the "**Midtown CC&R's**"). The Midtown CC&R's set forth certain guidelines and recommendations for the massing, materials, hardscaping, landscaping and other elements for development projects within the Midtown Corridor. Following the construction of the University Park Project in accordance with the Implementing Agreements, any future development and construction on the Land and all portions thereof shall be subject to all applicable processes and requirements set forth in the Midtown CC&R's except as otherwise set forth herein. To the extent reasonably practicable, UNLV will endeavor to avoid the duplication of any processes or approval required of both this Development Agreement or the other Project Implementation Agreements and the Midtown CC&R's providing such processes and approvals are substantially similar.

1.7 **Exceptions to Midtown CC&Rs.** Notwithstanding the terms of the Midtown CC&R's, UNLV agrees, with respect to all Phases of the development of the University Park Project, as follows:

(a) to the extent that any provision of any Project Implementation Agreement is inconsistent with the Midtown CC&R's, the terms contained in the Project Implementation Agreement shall prevail.

(b) If any approval, submission, review, consent, or other matter is required under the Midtown CC&R's and any Implementing Agreement or this Development Agreement, the terms of this Development Agreement or the Implementing Agreement shall supersede the Midtown CC&R's.

(c) In the event that UNLV has waived a requirement of any provision of the Project Implementation Agreements, the same waiver will be deemed to be effective with respect to any similar requirement of the Midtown CC&R's.

(d) any design document approved by UNLV pursuant to the terms of this Development Agreement shall automatically and conclusively be presumed to be approved by the Master Declarant for all purposes under the Midtown CC&R's

(e) Notwithstanding the terms of Section 8.2 of the Midtown CC&R's, the University Park Project shall not be subject to design review by the Master DRC or subject to the Master DRC Rules until the completion of the construction of the University Park Project.

(f) Notwithstanding the paragraph at the bottom of Exhibit D, no amendment or modification to Exhibit D shall be effective with respect to any portion of the Land

unless the Developer of such portion of the Land shall approve such modification in writing.

(g) With respect to the fourth (4th) bulletpoint of Exhibit D of the Midtown CC&R's, which reads as follows:

“Building Materials and Colors (connection and relationship to existing Midtown UNLV quality buildings such as Greenspun Hall — glazing, metal panels, storefront systems, sandstone/sandstone colors, etc...) — greater emphasis on west façade.”;

the Parties agree that the references to building materials will not apply to the University Park Project.

(h) With respect to the eleventh (11th) bulletpoint of Exhibit D of the Midtown CC&R's, each Developer will consider installing public art but shall be under no obligation to do so.

(i) With respect to the twelfth (12th) bulletpoint of Exhibit D of the Midtown CC&R's, the University Park Project is not subject to any requirements that may be contained in a web page unless such requirement is explicitly set forth in writing in the Midtown CC&R's or in the Project Implementation Agreements.

(j) The following uses that are listed as “MDA” in the Midtown CC&R's will be permitted on the Land without further approval from UNLV or Master Declarant:

- (1) Beer Sales, (only as a part of a convenience store or grocery store)
- (2) Liquor Sales (only as a part of a convenience store or grocery store)
- (3) Wine Sales (only as a part of a convenience store or grocery store)

(k) Notwithstanding the paragraph at the bottom of Exhibit E of the Midtown CC&R's, no amendment or modification to Exhibit E shall be effective with respect to any portion of the Land unless the Developer of such portion of the Land shall approve such modification in writing.

(l) Notwithstanding the terms of Section 8.2 of the Midtown CC&R's, the Land shall not be subject to any association fees unless all other on-Campus housing is subject to and paying fees to the Master Association computed on the same basis.

(m) The construction and development contemplated by each of the Developers or their successors on the Land as contemplated by the Project Implementation Agreements and this Development Agreement shall not be subject to the terms of Article 3 of the Midtown CC&R's.

1.8 **Leases and Rent Allocation.**

(a) Concurrently with the execution of this Development Agreement, (i) University Park, LLC and UNLV will execute that certain Lease Agreement for the Phase One Land, and (ii) Future Phases, LLC and UNLV will execute that certain Lease Agreement for the Future Phases Land.

(b) The Base Rent due for the leases of the Land has been determined for all of the Land without distinction for the various Phases ("University Park Base Rent") as follows:

Lease Years	University Park Annual Base Rent	University Park Monthly Base Rent
1 through 4	\$550,000	\$45,833
5 through 8	\$566,500	\$47,208
9 through 12	\$583,495	\$48,625
13 through 16	\$601,000	\$50,083
17 through 20	\$619,030	\$51,586
21 through 25	\$637,601	\$53,133
26 through 30	\$656,729	\$54,727
31 through 35	\$676,431	\$56,369
36 through 40	\$696,724	\$58,060
41 through 45	\$717,625	\$59,802
46 through 50	\$739,154	\$61,596

(c) **Allocation of Total University Park Base Rent to Phases.** University Park Base Rent will be allocated to the various Phases of University Park, LLC on the basis of net acreage of the Phases as follows:

$$\square\square\square\square \square\square\square\square \square\square\square \square/h\square\square\square \square = \square\square\square\square.\square\square\square\square \square\square\square\square \square\square\square\square \times \frac{\square\square\square \square\square\square\square\square\square\square \square\square \square/h\square\square\square \square}{\square\square\square \square\square\square\square\square\square\square \square\square \square\square\square\square.\square\square\square\square}$$

(d) **University Park Base Rent Credit.** UNLV acknowledges that University Park, LLC made or is obligated to make a prepayment of University Park Base Rent in the amount of Two Million Dollars (\$2,000,000) (the "Prepaid Rent") at the Closing of the Land acquisition described in Purchase Agreement. Such Prepaid Rent shall be credited against the Base Rent for each of the various Phases in installments in the order of Base Rent payments due until such amount is exhausted. The Prepaid Rent will be allocated to the various Phases in the same proportions as University Park Base Rent is allocated in Section 1.8(c). Neither any Developer nor any lessee of a future Phase shall be responsible for cash payments of Base Rent until the first month of the Lease Term in which the balance remaining of the Prepaid Rent is insufficient to fully cover the University Park Base Rent payment due. In the event that any new Phase or Phases have been created prior to the exhaustion of the Prepaid Rent, the Developers may make such allocation of Prepaid Rent between Phases as the Developers determines in their sole discretion.

(e) **Deferred Repairs Credit.** Developers agree to use the full amount of the Deferred Repairs Credit to make repairs and replacements to the Existing Improvements on the Future Phases Land as soon as reasonably possible following the Closing.

ARTICLE 2. DESIGN AND CONSTRUCTION STANDARDS.

2.1 **General Intent and Covenant.** Each Developer shall, at its own expense, design and construct its respective portion of the University Park Project in accordance with the provisions of the Project Implementation Agreements and this Development Agreement. Each Project Phase shall be constructed in substantial conformance with the Construction Documents (as defined in Section 2.6(a)) for that portion of the University Park Project and in a good and workmanlike manner with good quality new or recycled materials, in compliance with Applicable Law (as defined herein). Furthermore, the provisions and requirements of this Development Agreement touch and concern the Land, shall constitute covenants running with the Land, and shall be binding upon the Land and inure to the benefit of UNLV, the Developers as well as their respective successor and assigns.

“Applicable Laws” means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Land or University Park Project, which are in effect from time to time.

2.2 **Design Standards.** Each Developer agrees to design and construct its Project Phase to the following standards:

(a) **Design Quality Standard.** The University Park Project shall be consistent with “Upper-Class” or “Move-Up” housing at UNLV’s peer institutions and be of similar quality to Sterling Alvarado; a private off-campus apartment complex marketed to students at San Diego State University (the **“Quality Standard”**). Notwithstanding the foregoing, the Parties acknowledge that the architectural styles and construction materials used at UNLV’s peer institutions and Sterling Alvarado are different from that contemplated at the University Park Project but the design concepts, floor plans and interior layouts and finishes, and exterior finishes and building system components of the University Park Project will be of comparable quality.

(b) **Sustainability Standard.** Each Developer shall incorporate sustainable development principles and materials into the design and construction process for its Project Phase and shall design and construct its Project Phase to a standard of sustainability that is equivalent to the criteria of “LEED Silver” standards (Leadership in Energy and Environmental Design) criteria established by United States Green Building Council, or to any successor standard at the time of the development of the University Park Project or portion thereof (the **“Sustainability Standard”**); provided, that Developer is under no obligation to apply for or obtain any certification from LEED or

otherwise subject its Project Phase to any review by LEED. UNLV may recommend to a Developer the use of certain sustainable development principles and materials in the design and construction of its Project Phase or portion thereof that would cause the Project Phase or portion thereof to meet the Sustainability Standard, but Developer shall be under no obligation to incorporate any such recommendation if the Developer determines, in its reasonable discretion, that such recommendations will materially increase the design and construction costs of the Project Phase or portion thereof or have any adverse effect on the construction schedule.

2.3 **Schematic Plans.** If a Developer makes any material changes to the Schematic Plans that affect its Project Phase, the Developer shall deliver to UNLV a copy of any such revised Schematic Plan (the “**Revised Schematic Plans**”) for UNLV’s review and reasonable approval.

(a) UNLV shall provide any objections to the Revised Schematic Plans in writing to the appropriate Developer within fifteen (15) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(b) To the extent necessary and provided that UNLV’s objection is based on objective and reasonable grounds and not merely a subjective difference of opinion or aesthetic judgment, the Developer will amend the Revised Schematic Plans to address the objections and deliver a copy of the Revised Schematic Plans to UNLV. Developer may proceed as if the Revised Schematic Plans are approved unless UNLV delivers written notice to Developer within ten (10) days that the Revised Schematic Plans do not address the objections raised on UNLV’s first review and provide a detailed explanation of UNLV’s continued objection sufficient to permit an architect to understand and address the continued objection.

(c) If the Parties are not able to resolve the objections to the Revised Schematic Plans within five (5) days following UNLV’s written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(d) The Revised Schematic Plans, if any, as approved by UNLV in accordance with this Section 2.3 shall be initialed and dated by the Parties and attached as counterparts of this Development Agreement.

(e) The Executive Director of Planning and Construction or his or her designee is authorized to issue any approvals or take any other action on behalf of UNLV required or authorized by this Section 2.3.

2.4 **Design Development Documents Progress Review.** Each Developer may submit draft versions of the Design Development Documents (as defined herein) for its respective Project Phase or any portion thereof to UNLV for its preliminary review and

comment. In developing the Design Development Documents for its Project Phase or any portion thereof, each Developer will consider input from and reasonably cooperate with UNLV and meet with UNLV representatives from time to time as reasonably requested to facilitate UNLV's review of the Design Development Documents. During the review process, UNLV may make suggestions regarding elements, scope item, materials, construction, layout and other matters; provided, however, the Developer shall not be required to implement any such suggestion. Only those objections by UNLV that are raised in the context of Section 2.5 shall require any formal response by the Developer. UNLV shall not be obligated to provide any written or formal response to any Design Development Document progress review request.

2.5 **Design Development Documents Approval.**

(a) Upon their completion, each Developer shall provide the Design Development Documents to UNLV for its review and approval, which approval shall be based solely upon conformance with the Schematic Plans, the Quality Standard, Sustainability Standard, or other applicable requirements of this Development Agreement.

(b) UNLV shall provide any objections to the Design Development Documents in writing to the appropriate Developer within twenty (20) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) To the extent necessary and provided that UNLV's objection is based on objective and reasonable grounds and not merely a subjective difference of opinion or aesthetic judgment, the Developer will amend the Design Development Documents to address the objections and deliver a copy of the Design Development Documents to UNLV. Developer may proceed as if the Design Development Documents are approved unless UNLV delivers written notice to Developer within five ten (10) days that the Design Development Documents do not address the objections raised on UNLV's first review and provide a detailed explanation of UNLV's continued objection sufficient to permit an architect to understand and address the continued objection.

(d) If the Parties are not able to resolve the objections to the Design Development Documents within five (5) days following UNLV's written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(e) The Executive Director of Planning and Construction or his or her designee is authorized to issue any approvals or take any other action on behalf of UNLV required or authorized by this Section 2.4.

(f) "**Design Development Documents**" shall mean drawings and other documents, including plans, sections, elevations, typical construction details, and diagrammatic layouts of systems to fix and describe the size and character of

architectural, structural, mechanical, electrical, landscaping, signage, and such other elements as appropriate.

2.6 Construction Documents.

(a) Developer shall deliver to UNLV for its review and approval the final construction drawings, detailed specifications, and related documents (the “**Construction Documents**”) required for construction of the Project Phase or any portion thereof. The Construction Documents shall conform to and be consistent with in all material respects the approved Design Development Documents.

(b) UNLV shall provide any objections to the Construction Documents in writing to the appropriate Developer within twenty (20) days after receipt thereof together with a reasonably detailed explanation for the objection sufficient to permit an architect to understand and address the objection, and the Parties shall promptly discuss any disagreements related thereto.

(c) To the extent necessary and provided that UNLV’s objection is based on objective and reasonable grounds and not merely a subjective difference of opinion or aesthetic judgment, the Developer will either (1) modify the Construction Documents to conform to the Design Development Documents as previously approved by UNLV, or (2) modify the Construction Documents to address UNLV’s objections thereto and deliver a copy of the revised Construction Documents to UNLV to confirm that the changes remedy the grounds for UNLV’s objection. Developer may proceed as if the Construction Documents are approved unless UNLV delivers written notice to Developer within ten (10) days that the Construction Documents do not address the objections raised on UNLV’s first review and provide a detailed explanation of UNLV’s continued objection sufficient to permit an architect to understand and address the continued objection.

(d) If the Parties are not able to resolve the objections to the Construction Documents within five (5) days following UNLV’s written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(e) The Developer shall, upon UNLV’s reasonable request, provide UNLV with any information reasonably requested in connection with the Construction Documents and shall meet with UNLV as reasonably required to facilitate its understanding of the Construction Documents. Each Developer shall also, upon UNLV’s request, provide UNLV access to and information concerning any Construction Documents that relate to the Project Phase or any portion thereof to the extent such access and information is reasonably necessary to understand, interpret, or utilize the Construction Documents.

(f) The Executive Director of Planning and Construction or his or her designee is authorized to issue any approvals or take any other action on behalf of UNLV required or authorized by this Section 2.6.

2.7 **Failure to Make Timely Response is Deemed Approval.** In the event UNLV shall fail to respond in writing to any submission within the time periods permitted herein, such failure shall be conclusively deemed to constitute UNLV's approval.

2.8 **Project Milestone Schedule.** Within sixty (60) days of the Effective Date of this Development Agreement, University Park, LLC shall provide UNLV (i) a preliminary schedule setting forth the anticipated timeline for construction and completion of the improvements related to the Phase One Land; provided, such schedule is for planning purposes only and shall not be binding on University Park, LLC. In addition, at least sixty (60) days prior to any construction of any improvements on the Future Phases Land, Future Phases, LLC shall provide UNLV a preliminary schedule setting forth the anticipated timeline for construction and completion of the improvements on the Future Phases Land.

2.9 **Existing Improvements Transition Plan.** The Parties acknowledge that Developer intends to make minor modifications to the Existing Improvements (including application of the Deferred Repairs Credit to apartment units that may not be habitable) and begin marketing the Existing Improvements primarily to UNLV students. Prior to December 31, 2015, FPLLC will submit to Landlord a detailed plan for how the Existing Improvements on the Future Phase Land will be transitioned to student centric housing and an anticipated time for the construction and completion of any improvements to the Existing Improvements necessary to effectuate such plan. The Parties acknowledge that it is not the intent of either Party that FPLLC will expend substantial resources to upgrade the Existing Improvements because it is intended that they be demolished as development of the Future Phases Land progresses.

ARTICLE 3. CONSTRUCTION REQUIREMENTS

3.1 **Requirements for Commencement of Construction.** No Developer shall commence construction of its Project Phase or any portion thereof until:

(a) the Construction Documents related to the Project Phase or any portion thereof are approved in writing or are deemed approved by UNLV in accordance with the terms of this Development Agreement.

(b) Clark County or other governmental authority has issued any permit necessary for the commencement of the appropriate stage of construction, as required by the County Code or state law;

(c) any other government authority having jurisdiction over the construction of the Project Phase or any portion thereof has approved or taken such other action as required by law to permit commencement of construction;

(d) any necessary Governmental Approvals (defined below) of the Project Phase or any portion thereof have been issued and a copy of any and all permits issued in connection with the development and construction of the Project Phase or any portion thereof is provided to UNLV;

3.2 The construction contracts with the general contractor(s) for the Project Phase or any portion thereof shall grant UNLV the right, but not the obligation, to assume the Developers' rights under the construction contracts(s) if the Developer is in material default thereunder, and such default is not capable of being cured by Developers; provided, the right of UNLV to assume the construction contract will be subordinate to any similar right of a Project Phase lender.

3.3 **Code Compliance.** Each Developer and its agents, contractors, sub-contractors and employees shall comply with all requirements for construction of its Project Phase or any portion thereof which include, but are not necessarily limited to, the latest code editions adopted by Clark County and the State of Nevada and other codes and regulations as referenced by them, as follows: International Building Code, the International Fire Code, the National Fire Code, the Uniform Mechanical Code, Uniform Plumbing Code, the National Electrical Code, the International Energy Conservation Code, and the County Street, Utility Standards, and Fire Department access requirements; applicable sections of the NRS and the NAC (www.leg.state.nv.us) including those related to the Energy Policy, State Fire Marshall, the Divisions/Departments of Industrial Relations, Health and Human Services and Environmental Protection; and the American with Disabilities Act Accessibility Guidelines.

3.4 **Payment and Performance Bonds.** Each Developer shall furnish, or arrange for its general contractor(s) to furnish, a 100% performance bond in the amount of the full construction costs of the Project Phase or any portion thereof guaranteeing the faithful performance of the construction, and a payment bond for 100% of the amount of the full construction costs, guaranteeing the payment of claims of the mechanic, material men and others who furnish materials and labor in connection with the construction of the Project Phase or any portion thereof, in a form and with a company acceptable to UNLV in its reasonable discretion. The Executive Director of Planning and Construction or his or her designee is authorized to issue any approvals on behalf of UNLV required by this Section 3.3.

3.5 **Public Works and Planning.** The construction and development of all aspects of the University Park Project shall be subject to the applicable provisions of Chapter 338 of the Nevada Revised Statutes (Public Works and Planning). Each Developer will be responsible for providing reports, statements of compliance and any other forms and records required by law or by the Office of the Labor Commissioner with respect to its Project Phase. Each Developer shall indemnify, defend, save and hold harmless, the Nevada System of Higher Education, UNLV, the Board of Regents, and the agents and employees of each from and against any violations or alleged violation of any of the provisions of Chapter 338 of the Nevada Revised Statutes.

In the event that there is any amendment to NRS Chapter 338 or any other provision of NRS, NAC, federal law, or any judicial decision of a Nevada court or federal court bearing upon the applicability of NRS Chapter 338 to any Phase of the University Park Project, UNLV shall, if requested by a Developer meet with and consult in good faith to determine whether the University Park Project or any portion thereof is subject to the provision or requirement at issue.

If it is determined by the Developer or any Phase and UNLV that the provision or requirement at issue applies to such Developer's Phase, UNLV shall not unreasonably withhold, delay or condition its consent to such Developer being relieved of the obligation previously imposed.

3.6 **Government Regulations/Licenses.** Each Developer is solely responsible for obtaining all required governmental, regulatory or administrative approvals necessary to permit the development, construction and operation of its respective Project Phase or any portion thereof (collectively, the "**Governmental Approvals**"). Each Developer shall pay all plan check fees to Clark County or any other government agency, if applicable. If necessary, Developer will pay UNLV, which will pass on the payment to the State Public Works Board. Each Developer shall design and construct its Project Phase in accordance with all applicable laws and regulations of governmental agencies having jurisdiction over the Project Phase. Each Developer, its employees, agents, contractors, subcontractors and representatives shall comply with all present and future laws, statutes, ordinances, regulations, requirements, rules and orders of all federal, state, county and municipal governments, agencies and government authorities that may be applicable to development, construction and use and/or operation of its Project Phase or any portion thereof. Developers shall maintain all appropriate and necessary business and operating licenses in accordance with the Clark County Business and Licensing office. UNLV shall cooperate with Developers in connection with obtaining the Governmental Approvals and shall provide assistance as reasonably requested by Developers in connection with obtaining such approvals.

3.7 **Right To Inspect Construction.** Upon a minimum of 24 hours advance written notice to the appropriate Developer and its general contractor(s) during the construction period, UNLV, or its designees may inspect the Project Phase under construction or any portion thereof during normal working hours to verify compliance with approved Construction Documents and Governmental Approvals, to confirm any condition under this Development Agreement, or for any other reasonable purpose. UNLV shall strictly comply with all safety precautions prescribed by Developers or their general contractor(s) and shall not enter the construction area unless accompanied by an authorized representative of the general contractor(s). Developers are responsible for making arrangements for inspections by Clark County as the Developers determine appropriate during the construction period.

3.8 **As-Builts, Survey and Title Insurance Endorsement.** Within ninety (90) days of the completion of the construction of each Project Phase, the appropriate Developer, at such Developer's expense, shall furnish to UNLV and to the title company holding the title policy on the Premises a complete set of record documents in electronic format ("CAD" and "PDF") based upon "as built" civil, landscape, architectural, structural, electrical, mechanical, plumbing and similar plans and specifications with respect to the improvements on the Premises and an ALTA "as-built" survey showing the location of the improvements upon the Land, describing the Phase boundaries and showing all easements and other items affecting the Phase or any other information required by the title company for issuing of an extended form owner's

or lender policy including any endorsements requested by UNLV or its lenders so that the title company can issue an appropriate title policy or an endorsement recognizing the Improvements and increasing the coverage of the policy to recognize the completed improvements, by a licensed surveyor. Each Developer shall also furnish to UNLV upon request, at such Developers' expense, copies of any and all other reports which the Developer may have in connection with the appropriate Phase, including, but not limited to, environmental surveys and assessments.

ARTICLE 4. OTHER UNIVERSITY PARK PROJECT REQUIREMENTS

4.1 **Construction Drawings.** All plans and specifications for the construction of each Project Phase shall comply with the State of Nevada regulations as contained in the Nevada Revised Statutes (“**NRS**”) and Nevada Administrative Code (“**NAC**”) in the use of design professionals and contractors for the Project Phase.

4.2 **Licensed and Insured Professionals.** Each Developer shall use only licensed, bonded, and responsible design professionals and contractors to perform any work, repairs, installations, or improvements on its Project Phase or any portion thereof. Unless otherwise approved by UNLV's Insurance and Claims Administration Officer, all design professionals and contractors employed by Developer to perform any work, repair, installation, or improvement on the Project Phase shall carry Workers' Compensation Insurance in accordance with statutory requirements and Commercial General Liability Insurance covering their activities on the Project Phase in amounts at least equal to the limits set forth in the appropriate Lease agreement.

4.3 **Disadvantaged Business Reporting Requirements.** UNLV supports equal opportunity for minority owned (“**MBE**”), women owned (“**WBE**”), disabled veteran owned (“**VBE**”), small business (“**SBE**”), local business enterprises (“**LBE**”) and other disadvantaged business enterprises (“**DBE**”) (collectively “**Disadvantaged Businesses**”) to compete for contracts awarded by UNLV. In some situations Disadvantaged Businesses may not have the depth or full capacity to meet all the requirements of large contracts. Nevertheless, UNLV supports finding opportunities for such Disadvantaged Businesses to participate as subcontractors or Tier 2 suppliers in large contracts. Therefore, the University Park Project will be subject to the following:

(a) If the purchase of goods or services is anticipated to exceed \$1,000,000 at any time during terms of the construction and development of any portion of a Project Phase, then the appropriate Developer must provide, at a minimum, annual reports listing expenditures with Disadvantaged Businesses. These reports pertain only to expenditures that are directly attributable to the Project Phase. The report must be available to UNLV by September 15th of the applicable year, and should contain the following information:

(1) the type of Disadvantaged Business its name, city and state, and any certification of the Disadvantaged Business status including the entity granting the certification;

(2) if the Disadvantaged Business meets more than one definition or category each category should be identified;

(3) a description of the goods or services purchased;

(4) the amount of expenditures with the Disadvantaged Business attributed to the University Park Project for the most recent completed fiscal year (July 1 through June 30).

(b) Definitions.

(1) LBE - Local Business Enterprise is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

(2) DBE - Disadvantaged Business Enterprise is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

(3) MBE - Minority Business Enterprise is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

(4) WBE - Women-Owned Business Enterprise is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

(5) VBE - Disabled Veteran Business Enterprise is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.

(6) SBE - Small Business Enterprise is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

4.4 **Non-Discrimination.** Each Developer agrees it will not discriminate against any worker, employee or applicant, or any member of the public because of race, creed, color, handicap, national origin, age or sex, gender identity, nor otherwise commit an unfair labor practice. Each Developer agrees such clause will be incorporated into any and all contracts entered into with other business organizations or individuals who may perform any labor or services or provide materials in connection with its Project Phase and shall require the same be incorporated into any subcontracts by any such organizations and individuals.

4.5 **Insurance.** Each Developer shall obtain prior to commencement of construction of its Project Phase and maintain until substantial completion of the Project Phase the insurance set forth in the Lease between such Developer and UNLV.

4.6 **Network Services.** At Developer's option and provided that Landlord and Developer are able to reach agreement relative to the cost, terms and provisions of such connection (pursuant to the terms of a separate agreement to be executed by the Parties), Landlord shall allow Developer to connect the network infrastructure of the Premises to UNLV's network infrastructure for use by Residential Sublessees. Connection to UNLV's network infrastructure shall include access to the Internet. Cost shall be determined in the same manner as in other on-Campus housing to the extent the same level of support is provided by UNLV OIT. The separate agreement referred to above shall include, among other things, a requirement that Tenant permit and pay for the cost of managing user compliance with Landlord's rules, regulations and policies in place from time to time on the same basis as other Campus users in general and other on-campus housing, specifically. As used herein, the term "**Network**" means an underlying infrastructure of cabling, equipment, and management software that electronically transmits and directs the flow of information among devices.

4.7 **Utility Connections.** All utilities for each Project Phase will be provided by direct connection to local utility providers and not UNLV's utility infrastructure, except UNLV

may, in its reasonable discretion, allow the University Park Project to connect into UNLV's network pursuant to Section 4.6.

4.8 **Ownership of Utility Improvements.** It is understood and agreed that all utility connections serving the Premises, whether or not located on or under the Land, will be the property of UNLV, or if dedicated to a governmental authority or public utility, such dedication will be made on behalf of UNLV. This Section 4.8 is not intended to imply that UNLV has any obligation to pay for any utility services provided to the Premises. UNLV shall not be financially responsible for any utility services provided to the Premises during the Lease Term and Developer shall take all actions reasonably feasible to ensure that the utility companies or governmental entities providing such services do not attempt collection of fees from UNLV.

ARTICLE 5. EXPEDITED ARBITRATION IF CONSENT WITHHELD

5.1 **Send Disputes to Arbitration.** If there's a dispute between UNLV and A Developer over the reasonableness of Landlord's withholding, delaying or conditioning its consent or approval to any matter for which UNLV's consent or approval is required, then, and only in such events, a Developer may submit such dispute to arbitration in the Clark County, Nevada before one (1) arbitrator by giving UNLV a demand for arbitration on or prior to the date which is ten (10) business days after UNLV refused to grant such consent or approval. In such arbitration UNLV will have the initial burden to show that the Developer's design submittal fails to achieve the Quality Standard, Sustainability Standard, or other applicable requirements of this Development Agreement (the "**Design Standards**"); if UNLV meets this burden, the Developer will then have the burden to show (i) that UNLV's proposed cure is unreasonable and that an alternative cure is available that is less expensive or burdensome and achieves the Design Standards, or (ii) that it is not feasible to achieve the Design Standards because of a change in circumstances since the Effective Date, unavailability or unforeseeable changes in prices of materials or components, or similar reason.

5.2 **Notice via Email.** Notwithstanding the provisions of Section 6.2, any notices, consents, approvals, demands, or requests given by UNLV or a Developer under this Article shall be given by email, with a copy sent by messenger or by overnight courier delivery service.

5.3 **Select Arbitrator.** Within three (3) business days after giving such demand for arbitration, the Parties shall in good faith seek to find a mutually acceptable arbitrator who shall be authorized solely to issue a determination that UNLV was or was not reasonable in withholding consent or approval with respect to the matter in issue; and the decision and award of the arbitrator shall be made within two (2) business days of completion of the arbitration and shall be final and conclusive on the Parties.

5.4 **Dispute to AAA.** If agreement as to a mutually acceptable arbitrator is not reached within such three (3) business-day period, then either Party may, within three (3) business days thereafter, submit such dispute for arbitration before one (1) arbitrator under the

Expedited Procedures provisions of the Commercial Arbitration Rules of the American Arbitration Association (AAA); provided, however, that with respect to any such arbitration:

- (a) The list of arbitrators referred to in Rule 54 shall be returned within three (3) business days from the date of receipt;
- (b) The Parties shall notify the AAA of any objections to the arbitrator appointed by telephone within two (2) business days after notice of the arbitrator designated by the AAA;
- (c) The Notice of Hearing referred to in Rule 55 shall be given at least four (4) business days in advance of the hearing;
- (d) The hearing shall be held within five (5) business days after the appointment of the arbitrator; and the additional hearing, if any, shall be held within two (2) business days after the initial hearing; and
- (e) The decision and award of the arbitrator shall be made within two (2) business days of completion of the arbitration and shall be final and conclusive on the Parties.

5.5 **Resolution and Attorney's Fees.** If any such arbitrator determines that UNLV was unreasonable in not granting or withholding such consent or approval, then UNLV shall be deemed to have given such consent or approval. The prevailing Party in such arbitration shall be entitled to reimbursement of all its costs incurred in any such arbitration, including attorney's fees and disbursements and the fees of all other persons engaged by it in connection with the arbitration.

ARTICLE 6. GENERAL

6.1 **Effectiveness.** This Development Agreement shall become effective on and only on its execution and delivery by each Party hereto.

6.2 **Notices.** Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

TO UNLV:	<p>BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION c/o: Senior Vice President for Business and Finance University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451004 Las Vegas, NV 89154-1004 Attn: Gerry S. Bomotti Phone: (707) 895-3571 Fax: (702) 895-1090 Email: gerry.bomotti@unlv.edu</p>
WITH A COPY TO:	<p>Director for Real Estate: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451027 Las Vegas, NV 89154-1027 Attn: Cherie Garrity Phone: (702) 895-2500 Fax: (702) 895-4960 Email: cherie.garrity@unlv.edu</p>
AND A COPY TO:	<p>General Counsel: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451085 Las Vegas, NV 89154-1085 Attn: Elda Sidhu Phone: (702) 895-5185 Fax: (702) 895-5299 Email: elda.sidhu@unlv.edu</p>
TO UNIVERSITY PARK, LLC OR FUTURE PHASES, LLC :	<p>UNIVERSITY PARK, LLC, and FUTURE PHASES, LLC c/o The Midby Companies 8275 South Eastern, Suite 103 Las Vegas, NV 89123 (702) 362-2111 - Office (702) 637-4227 – Direct Line Attn: Tom George Email: Tomg@midbycos.com</p>

WITH A COPY TO:	The Midby Companies 8275 South Eastern, Suite 103 Las Vegas, NV 89123 (702) 362-2111 - Office (702) _____ – Direct Line Email: Ericm@midbycos.com
AND A COPY TO:	Jeff Geen, Esq. 2422 Granada Bluff Court Las Vegas, Nevada 89135 (702) 985-1800 Email: jeffsgeen@gmail.com

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

6.3 **Amendment.** This Development Agreement may be amended by and only by an instrument executed and delivered by each Party hereto. No amendment of this Development Agreement shall be binding on the Developer unless and until such amendment shall be approved by the Board of Regents in accordance with the policies and procedures thereof as may be established from time to time.

6.4 **Waiver.** No Party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any Party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right.

6.5 **Applicable Law.** This Development Agreement shall be given effect and construed by the law of the State of Nevada without regard to its conflict of law provision, and any action or proceeding arising hereunder shall be brought in the Eight Judicial District Court of the State of Nevada and the Parties hereby agree to exclusive venue in Clark County, Nevada; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the

Parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the State of Nevada.

6.6 **No Partnership; No Joint Venture.** Nothing in this Development Agreement shall be deemed in any way to create between the Parties hereto any relationship of partnership, joint venture or association, and the Parties hereto hereby disclaim the existence of any such relationship.

6.7 **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Development Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

6.8 **Authority.** If Developers are a corporation, partnership, limited liability company or similar entity, the person executing this Development Agreement on behalf of Developer represents and warrants that (a) Developer is duly organized and validly existing and (b) this Development Agreement (i) has been authorized by all necessary Parties, (ii) is validly executed by an authorized officer or agent of Developer and (iii) is binding upon and enforceable against Developer in accordance with its terms.

6.9 **Time of Essence.** Time shall be of the essence with respect to the performance of the Parties' obligations under this Development Agreement.

6.10 **Interpretation.** Developers and UNLV hereby agree that both Parties were equally influential in preparing and negotiating this Development Agreement, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Development Agreement. Therefore, Developers and UNLV agree that no presumption should arise construing this Development Agreement more unfavorably against any one Party.

6.11 **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

6.12 **Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Development Agreement.

6.13 **Exhibits.** Each writing or drawing referred to herein as being attached hereto as a schedule, an exhibit or otherwise designated herein as a schedule or an exhibit hereto is hereby made a part hereof.

ARTICLE 7. DEFINITIONS

7.1 **Closing** has the same meaning as such term has in the Purchase Contract.

7.2 **General Contractor** or **Prime Contractor** have the same meaning as in NRS 108.22164

IN WITNESS WHEREOF, each Party hereto has executed this Development Agreement, or caused it to be executed on its behalf by its duly authorized representatives, as of the Effective Date.

SIGNATURES FOLLOW ON THE NEXT PAGE

**BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON
BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS**

Recommended By:

DATE
Approved By:

DATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This Project Development Agreement was acknowledged before me as of the _____ day of _____, 2015, by _____, as _____ of _____.

Notary Public

UNIVERSITY PARK, LLC , LLC
a Nevada limited liability company
By:

DATE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This Project Development Agreement was acknowledged before me as of the _____ day of _____, 2015, by _____, as _____ of _____.

Notary Public

FUTURE PHASES, LLC DEVELOPER , LLC
a Nevada limited liability company

By:

DATE
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This Project Development Agreement was acknowledged before me as of the _____ day of _____, 2015, by _____, as _____ of _____.

Notary Public

EXHIBIT A

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK, LLC APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RE-RECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, THAT WOULD PASS THROUGH BY OPERATION OF LAW.

EXHIBIT B

EXHIBIT C



University of Nevada Las Vegas

Report of Proposed Public Private Partnership Review



March 9, 2015

Submitted by:
Hobbs Ong & Associates, Inc.
&
Public Financial Management, Inc.

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Appendix

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Introduction/Executive Summary

Public Financial Management and Hobbs, Ong and Associates (together “the Consultants”) were asked by UNLV to review a proposed Public Private Partnership for new student housing with University Park, LLC, an affiliate of the Midby Companies (the Developer). The Consultants reviewed key documents and the financial pro-forma listed in the Appendix, including the Memorandum of Understanding, the draft Lease Agreement for Phase One, the 10-year financial operating proforma, and the housing demand study by Brailsford & Dunlavey (B&D). It should be noted that some of the documents the Consultants reviewed are in draft form and, therefore, subsequent revisions could impact the conclusions of our review.

During our review, we were provided the opportunity to ask questions and provide input on areas that we felt required clarification or changes. The cooperation of both the Developer and the University in providing the materials and addressing questions as they arose was important to the thoroughness of our review, and is hereby acknowledged.

Our review of the financial pro forma, lease, and other related materials did not disclose any material weaknesses in the assumptions or methodology used. While actual results would be expected to vary from projections, we believe that the information contained in the financial pro forma accurately reflects the terms of the Phase One lease. Our review is based upon the funding structure as shown on page 10, and any changes to the funding structure (equity versus debt) may have implications on the project feasibility and Project Success Contributions.

Certain details and terms of the proposed project as reflected in the Memorandum of Understanding have evolved, and this report reflects the terms included in the documents and pro formas that we have reviewed. It will be important to ensure that the final pro formas and plans reflect the University’s understanding of the terms of the transaction, particularly the Developer’s actual financing terms.

Project Goal from UNLV’s perspective

Based on the Memorandum of Understanding, UNLV would like to:

- increase the student housing stock for non-freshman housing;
- secure and expand into a strategically important area north of the current campus;
- minimize UNLV’s financial and operating risk; and
- preserve its debt capacity for other core/academic-related projects.

Description of the Project

UNLV currently owns and manages 1,677 beds, primarily traditional housing, typically targeted for freshmen students. The B&D study estimates that UNLV has demand for 1,125 of freshmen housing and 1,816 of upper-class level housing to support its current enrollment level. UNLV’s 1,677 beds are sufficient to cover the freshman demand but can only satisfy a portion of the upper-class level housing demand. The University Park project will provide additional student housing, generally suites and apartments, for upper-class level students.

Review of UNLV-Midby Companies Public Private Partnership Proposal March 9, 2015

The proposal for University Park includes the following terms:

- UNLV will purchase 14 acres of land with 280 existing (approximately 50-year old) apartment units arranged as 4-plexes for \$20.5 million.
 - \$2 million of the purchase price will come as pre-paid rent from the Developer.
 - \$18.5 million will be funded from existing University funds.
- The Developer will construct up to 3,000 beds of housing with apartment-like amenities, limited retail space and up to 1,500 parking spaces in multiple phases.
- UNLV will lease the land and existing improvements, for a 40-year term, to the Developer as (A) Phase One Land consisting of 6 acres and (B) Future Phases Land consisting of 8 acres.
 - The Memorandum of Understanding had initially intended for approximately 1,200 beds to be included in Phase 1. Based on the lower housing demand of described in the B&D study, the Phase 1 bed count was reduced to 734 beds.
 - Subsequent phases could add up to 2,266 beds for a total of 3,000 beds.
- If future phases are not completed within 10 years of the lease date, the future phases portion of the land will no longer be subject to the lease, and will return to University control.
 - This would have an impact on the rent payments received from the Developer. The Developer is supposed to pay \$330,000 annually for the Future Phases Land, which would discontinue if the lease was terminated after 10 years.
 - However, UNLV would have control of the property again and could either operate the existing units on its own or enter into an agreement with a different party.
- All improvements on the land will be owned by UNLV and financing for those improvements is subject to the ground lease.

University Financial Terms

- The Developer will pay \$550,000 in ground rent annually with percent increases every 4 years for the 14 acres of land (approximately \$220,000 for Phase One Land and \$330,000 for the Future Phases Land).
- Rent payments are superior to all other payments from University Park revenues including operation and maintenance costs, interest and principal on any project financing, and all other costs and expenses related to the project.¹

¹ The only superior expenses are payments of fees due to any trustee holding and making disbursements of gross revenue in accordance with the terms of the project financing agreements

Review of UNLV-Midby Companies Public Private Partnership Proposal

March 9, 2015

- \$2 million of rent is to be pre-paid by the Developer at closing (less a \$200,000 reserve to upgrade the Existing Units) and, together with \$18.5 million of UNLV funds (plus any closing costs), will be used to purchase the land.
- Based on ground rent of \$550,000 per year, the \$2 million of prepaid rent will cover approximately 44 months (3.6 years) of rent payments.
- The Developer is responsible for the financing, construction, management, maintenance, marketing, and operations of the housing facilities.
- The Developer would also manage, maintain and operate the existing apartments that remain on the both the Phase One Land (pending project commencement in late 2015 or early 2016) and on the Future Phases Land until such time as they are demolished as phased redevelopment of the land proceeds.
- Excess revenues from existing apartments are available to cover the operating cost of Phase One improvements.
- The Developer will provide resident students with a rental credit in the event the project exceeds specified financial performance levels. These “Project Success Contributions” are intended to support the University’s goal of encouraging affordable housing rates for resident students, after first ensuring project feasibility.
- UNLV has no obligation to subsidize the operation of the Project.
- UNLV provides no financial guarantee for the Project.

Overview of Business Terms

- All phases of the Project will be targeted to upper-class level and graduate students of UNLV.
- The Developer is responsible for project budget and completion.
- The Developer will renovate the existing apartments to become student centric.
- The Future Phases Land is initially leased to the Developer for ten (10) years². If the Developer demolishes existing units and completes the construction of new student housing units on the land within the ten (10) years, the Developer has the option to extend the lease by 40 years for that land.
- If Phase two or other future phases are completed more than 10 years after commencement, the 40 year term (with then less than 30 years remaining) can only be extended to 40 years after the 10 year anniversary date leaving less than 40 years of operation/cash flow for financing. This may effectively limit the ability to obtain financing.
- All utilities for the Project would be provided by direct connection to local utility providers and not UNLV’s utility network, except UNLV may allow the Project to connect into

² This is based upon a phone conversation with UNLV and the Developer. We have not reviewed the Future Phases Lease Agreement.

Review of UNLV-Midby Companies Public Private Partnership Proposal March 9, 2015

UNLV internet/fiber connection as may be feasible and subject to certain terms and conditions. It is intended that UNLV will charge for these services.

- Parking would be constructed on site and provided by the Developer, although UNLV would offer up to 300 residential parking passes for UNLV-owned parking for UNLV students to purchase. The 300 residential parking passes would only be offered once the on site parking is fully occupied.
- The housing development is intended to serve upper-class level, move-up, and graduate student housing and the Developer or its leasing agent would have the right to market the Project to those groups as “on-campus” housing.
 - This is consistent with B&D Housing Market Study recommendations.
 - UNLV agrees to limit its rights to develop or participate in the development of any other upper-class level, move-up and graduate student housing for up to ten (10) years following the issuance of a certificate of occupancy.
 - If Future Phases of the housing development are commenced, UNLV agrees to an additional (up to) ten (10) years of not developing or participating in competing housing developments unless certain occupation and debt service coverage thresholds are met (as shown in the bullet point below).
 - UNLV can develop competing upper-class level housing, subject to certain conditions, if the average occupancy rate was at least 90 percent for the prior two years, and if the development provides debt service coverage of at least 1.25x based on the past 12-month revenues for the next two calendar years (using fully amortizing debt service payments).
 - UNLV can add freshmen housing at any time, without limitation.
- UNLV has the right to approve financing and refinancing of the project, both initially and at the time of future phases. Such approval may not be unreasonably withheld.
- The Developer is allowed to market the University Park housing project as on-campus housing, but with the normal limitations as to the use of NSHE and UNLV logos and other brands.

Use and Flow of Funds for the Project

The Flow of Funds of the Project are described below:

1. Fees due to any trustee holding and making disbursements of Gross Revenue in accordance with the terms of the Project financing agreements;
2. Payment of rent to UNLV;
3. Payment of interest due to leasehold mortgagees;
4. Payment of principal and all other charges and expenses due to leasehold mortgagees or as otherwise required in any leasehold mortgage, including any debt service reserves;
5. Funding of Project reserves, (e.g. repair and replacement reserves, and reserves required in any financing agreement);
6. Payment of all Project expenses, (e.g. operating expenses);
7. Payment of any asset management fee;
8. Repayment of equity, return on preferred equity, and Project Success Contribution.

Project Success Contribution

- 25 percent of surplus revenues (the “Project Success Contributions”), defined as net revenues after payment of ground rent, operating and maintenance expenses, debt financing cost and the return of equity plus a return on equity, will be applied to reduce student rent.
- The Project Success Contributions are used to offset the rent payments of resident students and, if funds remain, those will be paid out in the form of a check to the resident students by April.

Project Risks

- Any development project includes risk of poor operating performance or default of the project.
 - UNLV has no obligation to subsidize the operations of the project.
 - UNLV has provided no financial or other guarantees.
 - Operating performance will affect the amount of any Project Success Contribution, if any, available for student residents.
- UNLV may not create competing housing facilities for ten (10) years, even if the project is not successful.
- A failed housing project may have a reputational effect on the University despite the transaction structure and, for example, other developers may be discouraged from partnering with UNLV in the future.
- The Developer is an experienced developer but has no student housing development and management experience.
 - UNLV has mitigated the risk by establishing development standards, based on existing student housing facilities, (i.e. comparable to San Diego State University's Sterling Alvarado building).
 - UNLV has recommended that the Developer engage AVS Housing Group ("AVS"), UNLV's existing housing operator, to manage the project, although the Developer is not obligated to use AVS.
 - It may be helpful for UNLV Housing and Residential Life or AVS to provide input on the designs to ensure that the apartments are attractive to UNLV students and provide the environment to be successful at UNLV.
- While the B&D Study supports the initial rent levels, the project pro formas include assumptions about future rent increases which could be higher than the market will support. Similarly, operating expenses could exceed those estimated by the Developer and could increase at a rate greater than assumed in the pro forma.
- UNLV has no option to purchase the project. UNLV has not expressed interest in a purchase option as UNLV does not want to operate the housing facilities.
- A failed project will remain on University-owned land.
- Residential life programming will not be provided by the University.

Benefits and Return to UNLV

- \$550,000 of ground rent increasing by 3 percent every four years provides a return of approximately 3 percent on the \$20.5 million investment (less the \$2 million in pre-paid rent) in the land over the 40-year lease period.
- The Project Success Contributions will directly benefit student residents.
- UNLV acquires strategically valuable land.
- The public-private partnership will support construction of housing for UNLV's students without the University providing operating or financial guarantees, thereby preserving debt capacity for other mission-critical projects of the University.

Detailed Review of Financial Proforma

In addition to a housing demand study, B&D also provided a Student Housing Operations Assessments (B&D's Operations Assessment). B&D's Operations Assessments offered feedback to UNLV and the Developer regarding major operating assumptions for revenues and expenses of the development. The Consultants have reviewed the proforma and financing assumptions for consistency with the legal transaction documents and B&D's Student Housing Operations Assessments. Our review results are summarized below.

Revenue drivers

- Number of beds:
 - Based on a 1.30 Occupancy Coverage Ratio (130 bed demand for every 100 beds available), the B&D Housing Market Study recommended 766 new apartment style beds for UNLV.
 - The recent proforma for Phase 1 provides for 734 beds which represents 96 percent of the B&D recommended number of beds and is thus well within the estimated demand.
- The Developer's proposed unit mix is also within in the recommended mix of the B&D Study and is designed to meet upper-class level demand.

Unit and Occupancy Mix Recommended by B&D Study and Proposed by the Developer

	B&D Recommendation		Developer Proposal (1)	
	Beds	Units	Beds	Units
2-Bedroom / Single Occupancy	174	87	174	87
2-Bedroom / Double Occupancy	80	20	60	15
4-Bedroom / Single Occupancy	512	128	500	125
Total	766	235	734	227

(1) Based on information in the file "Static Proforma - UNLV Midpark - Phase 1 - 012115"

**Review of UNLV-Midby Companies Public Private Partnership Proposal
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- Student Rents
 - The Developer’s proforma rents are within the rental rate ranges recommended by the B&D study as shown in the table below.
 - As the Phase 1 development would not be completed until fall 2016, the Developer’s proforma assumes a 10 percent rental rate increase, approximately 5 percent per year for fall 2015 and fall 2016. It assumes a four (4) percent increase for fall 2017 and three (3) percent annual increases thereafter.
 - The assumed rental growth rates during the construction period and the four (4) percent increase for fall 2017 are higher than the typical 2-3 percent annual rental rate increases described in B&D’s Operations Assessment. While the growth rates are more optimistic in the near term, the long-term growth of three (3) percent is consistent.
 - We note that the net revenues, the repayment of equity capital and also the Project Success Contribution are dependent upon the actual rental revenues. Based on our calculations, the repayment of equity would be delayed by one year (to operations year seven) if the annual rental growth rate in the next two years (2015 and 2016) were only three (3) percent per year.

Monthly Rental Rates per Bed - B&D Recommended and Developer Proforma				
	B&D Recommendation		Developer Proposal (1)	
	9-month lease	12-month lease	9-month lease	12-month lease
2-Bedroom / Single Occupancy	\$900	\$700-\$725	\$870	\$725
2-Bedroom / Double Occupancy	\$692	\$538-\$565	\$678	\$565
4-Bedroom / Single Occupancy	\$800	\$620-\$645	\$768	\$640

(1) Based on information in the file "Static Proforma - UNLV Midpark - Phase 1 - 012115"

- Occupancy Rate for Phase 1 Housing
 - The Developer assumes an occupancy rate of 94 percent in operations year 1 and 95 percent thereafter. The occupancy assumption is in line with 96 percent current occupancy levels at UNLV’s existing on-campus housing. B&D’s Operations Assessment recommends the use of 90 percent occupancy in year 1, 92.5 percent in year two and 95 percent thereafter.
 - While we note that the existing housing benefits from freshmen “live on campus” requirements, the occupancy rate is reasonable given the demand projections by B&D, applying the 1.30x occupancy coverage ratio.

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- Existing Housing Units:
 - The existing units will be renovated with a budget of \$1.44 million.³ The Developer then estimates rental revenues of \$1.2 million, net of an eight percent vacancy rate, based on the rents currently charged for apartments.
 - The Developer assumes ten (10) percent rent increases in each of January 2016 and January 2017, (which the Developer justifies due to the renovations), and three (3) percent thereafter.
 - The rental rates by room configuration are summarized in the table below.

Existing Future Phases Units and Occupancy Mix and Rent Levels (1)

	Beds	Units	9-month lease per bed	12-month lease per bed
2-Bedroom / Single Occupancy	160	80	\$336	\$280
2-Bedroom / Double Occupancy	160	40	\$363	\$303
3-Bedroom / Single Occupancy	120	40	\$284	\$237

(1) Based on information in the file "Proforma - UNLV Midpark - Phase 2-3 011915." Note that the units are currently rented on a per unit basis and not per bed.

- Parking Revenues:
 - The proforma assumes 425 parking spaces at \$38.75 annualized per month. More specifically, it assumes a \$50 per month fee for the nine months of the academic year and only \$15 in total for the three summer months.
 - While this annualized parking fee is over three times higher than UNLV's monthly parking fee of \$11.50 for student residents, B&D's Operations Assessment described this as justifiable based on limited parking available on campus and because the parking spaces would be covered compared to mostly uncovered parking elsewhere on campus.

Base Rent to UNLV, Reserves and Expenses

- Per the Phase One Lease Agreement, payments for Base Rent are superior to all other expenses, other than payment of fees due to any trustee holding and making disbursements of gross revenue in accordance with the terms of the financing agreements. The Base Rent payments are set at \$550,000 and increase by three (3) percent every four years.
- The operating reserve for the Phase 1 housing is funded as one month of operating expenses per year over the first three years, such that from year four on, the reserve equals approximately three months of operating expenses.
- There is no operating reserve for the existing housing units.

³ Based on information in the file "Proforma - UNLV Midpark - Phase 2-3 011915". We have not seen an legal document describing this renovation cost.

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- The replacement reserve is based on \$150 per bed per year. UNLV has stated that AVS has confirmed that \$150 per bed is an appropriate annual reserve contribution.
 - The Phase One Lease Agreement requires the Developer to cause to be conducted a reserve study in year 30 of operations to determine appropriate replacement reserves such that the housing facilities will be in good repair when the lease expires.
- The replacement reserve for the existing housing units is approximately \$111 per bed. A lower replacement reserve is reasonable given that these units will eventually be demolished (in the next 10 years).
- Operating expenses for Phase 1 housing are assumed to grow by 5 percent during the construction phase, and by 3 percent thereafter. Operating expenses for the existing units are expected grow moderately at 2 percent per year.
- The asset management fee is described in the lease as not to exceed 1.5 percent. This fee is expected to be passed through to an asset management company hired by the Developer. Additionally, the proforma assumes a management fee for the Developer of 3.5 percent for the new units and 3.0 percent for the existing units. The management fee is consistent with the recommendations in B&D's Operations Assessment.

Financing Structure

- The proposed funding structure is highly leveraged with only \$3.97 million of preferred equity (5.8 percent) and approximately \$64.17 million of debt (94.2 percent).

Development Cost and Funding Sources

Phase 1	
Pre-paid Lease	\$ 800,000
Soft Cost	21,513,136
Hard Cost	43,180,514
Total Phase 1 Development Cost	\$65,493,649
Existing Units Renovation	
Pre-paid Lease	\$ 1,200,000
Hard Cost	1,440,000
Total Existing Units Renovation Cost	\$ 2,640,000
Total Development Cost	\$68,133,649

Funding Sources	Amount	PCT of Total
Preferred Equity	\$ 3,965,059	5.8%
Debt	64,168,590	94.2%
Total Funding	\$68,133,649	

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- The draft lease (as of February 27, 2015) allows for up to 30 percent equity contribution which, if this amount were to be realized, could affect the timing and/or amount of the Project Success Contribution.
- The pro forma assumes an equity investment preferred return target of 17 percent. The lease contemplates the lesser of 18 percent or the actual; interest rate paid to preferred investors.
 - The Developer expects to solicit interest from equity investors, estimating the return expectations between 14 and 20 percent. A higher preferred return will result in a longer repayment period of the equity.
 - The Developer has represented that the equity investor is going to be an unrelated third party. As such, the Developer should be incentivized to seek equity investors demanding the lowest return.
 - At 17 percent, the repayment of the equity is projected to occur in operations year 6. Moreover, any payments to the equity investor will reduce the net revenue available to the Developer and the Project Success Contribution.
- The interest cost on the debt is assumed at 5.10 percent based on a 2.60 percent spread (premium) over the 30-year Treasury rate. The actual rate will thus depend on the Treasury rate at the time of the closing of the debt financing. The debt is assumed to be amortized over a period of 35.4 years (425 months) and, therefore, the debt would be paid off by the end of the lease term and the project would be transferred debt free to the University.⁴
 - The exact terms for the debt financing have not been finalized, but currently the lender requires a 1.10x debt service coverage starting in calendar year 2018 and then the coverage requirement increases to 1.20x by 2020.
 - The 10-year proforma projected debt service coverage is between 1.37x to 1.55x and is thus above the proposed requirements.

Considerations regarding existing bond covenants

The Consultants reviewed John Restrepo's Midtown Bond Report/Tech Memo (the RCG Economics Memo) dated August 30, 2013 (revised version) addressing the impact of additional housing on the covenants of the existing revenue bonds issued by Nevada System of Higher Education (the System). The covenants are in place to protect the bondholders and ensure the System has enough revenues to pay its debt. The bond covenants cited in the RCG Economics Memo are shown below:

⁴ The Consultants recommended adjusting the Phase One Lease Agreement to clearly state that the development has to be debt free when the lease terminates. While we have not seen an new draft of the lease, we understand that UNLV and the Developer agreed to make this change.

Review of UNLV-Midby Companies Public Private Partnership Proposal

March 9, 2015

Section 816. Competing Facilities.

As long as any of the Bonds hereby authorized are Outstanding, the Issuer shall not grant any franchise or license to any competing facilities, so that the Net Pledged Revenues shall not be sufficient to meet Bond Requirements and the accumulation and maintenance of reserves there

Section 807. Rules and Regulations.

The Issuer, acting by and through the Board, shall also cause to be established and maintained such rules and regulations as may be necessary to assure reasonable occupancy and use of any Facilities and services afforded thereby. The officers of the Issuer are hereby directed to give preference and priority to the use of the Facilities over like University facilities, resulting to the extent practicable in the full occupancy thereof, subject, however, to any similar covenant giving preference and priority to the use of other facilities of the Issuer and heretofore made to secure the payment of Outstanding securities of the Board or the Issuer so long as such securities remain Outstanding. To the extent that any surplus space shall ever become available at any campus of any of the Universities while any of the Bonds remain Outstanding and unpaid, it shall be the duty of the officers of the Issuer to enforce a rule requiring reasonable occupancy and use of any such Facilities, and this provision shall be considered as a rule for the guidance of such officers. It is the intent and meaning of this Instrument to cause the utilization of any such Facilities as shall yield sufficient Student Fees and any other Pledged Revenues which they are reasonably capable of producing to the end that the Bonds may be adequately serviced, recognizing, however, that any rules governing the use of any such Facilities may and should be amended from time to time so as to meet changing conditions, thereby better to assure fulfillment of the pledge herein contained. Nothing herein, however, requires the Board to provide for a greater occupancy and use of any such Facilities and services afforded thereby, or to raise greater revenues there from, so long as the Student Fees and any other Net Pledged Revenues available for the payment of the Bond Requirements of the Outstanding securities payable from Pledged Revenues are sufficient to make the payments required by § 822 hereof.

While RCG Economics reviewed a slightly different proposed housing development, their reasoning for why the new student housing would not be a “competing facility” according to Section 816 still apply. The additional housing of the University Park project will only add upper class level housing and, therefore, not affect the mainly freshman housing on campus. Moreover, the B&D housing demand study demonstrates that there is student housing demand well above the currently available housing stock. Applying a ratio of 130 bed demand per 100 beds, B&D recommended adding 766 new beds. The University Park Project would only add 734 new beds and therefore stay well within in the estimated demand.

RCG Economics also found no need for UNLV to require additional on-campus housing - as provided in the Section 807 Rules and Regulations covenant - beyond the existing on-campus housing requirement for freshmen. The reasons cited in the report that the new development targets different students for housing occupation and would not result in cannibalization of the existing housing facilities. Nevertheless, if the demand for the existing UNLV housing facilities has to be bolstered for any reasons, UNLV has the ability to implement further on-campus housing requirements.

APPENDIX – List of Reviewed Documents

Legal Documents:

- ***“Memorandum of Understanding” (final version)***
- ***“Lease - Phase One (2-25-15)”***

Pro Forma Files:

- ***“Static Proforma - UNLV Midpark - Phase 1 – 012115” – January 21, 2015***
- ***“Proforma - UNLV Midpark - Phase 2-3 011915” – January 19, 2015***
- ***“UPA - 10 YR Cash Flow Projections - 012915 - Guy Hobbs” – January 29, 2015***

Third Party Documents:

- ***Brailsford & Dunlavey “Student Housing Market Analysis” – December 2014***
- ***Brailsford & Dunlavey “Student Housing Operating Analysis” – December 2014***
- ***RCG Economics “Midtown Bond Report/Tech Memo” – August 30, 2013***

Background Information on Hobbs, Ong & Associates, Inc.

Hobbs Ong & Associates, Inc.

Hobbs Ong & Associates (HOA) is the State's premier full service financial advisory firm. When founded in 1996, HOA affiliated with PFM to provide governments, agencies, and business organization with the most comprehensive blend of national and in-state expertise and experience available in Nevada.

The firm's founders are the preeminent consultants in Nevada on the State's governmental tax structure and local government financial administration. They have nearly 70 years of combined experience in Nevada public financial administration. The founders also have significant experience in the development of state and local tax policy and have become a highly regarded source of information and support to the Nevada State Legislature and local governments. The wide-ranging services offered by Hobbs, Ong are backed by unmatched experience in Nevada public finance.

Since founding of HOA, the firm has assisted clients in issuing more than \$25.4 billion in debt and has emerged as a top firm offering financial advisory and financial consulting services to governmental agencies and business. The firm has advised on a variety of debt instruments for some of Nevada's largest issuers including Clark County, McCarran Airport, Washoe County, the Regional Transportation Commission of Southern Nevada, the Las Vegas Convention and Visitors Authority, the Clark County Regional Flood Control District, the Truckee Meadows Water Authority, the Southern Nevada Water Authority, the Las Vegas Valley Water District, and the State of Nevada among others.

Beyond traditional financial advisory services, HOA also provides clients in Nevada with specialized technical support. In concert with PFM, the firm provides technical consulting in the areas of rate analysis, lease *versus* buy analysis, stadium and arena consulting, economic and fiscal impact analysis, legislative strategies for financial initiatives, and various other specialized technical disciplines.

Public Financial Management

PFM is the nation's leading financial advisor to higher education institutions throughout the country. PFM is committing senior professionals to the University who are experienced in all aspects of serving higher education. PFM has ranked first among financial advisors to the higher education sector each year for the past sixteen years, both in terms of dollar volume as well as the number of issues completed. In 2012, PFM completed 65 public transactions totaling over \$3 billion in par amount for higher education institutions and numerous additional direct placements and in 2013, \$3.3 billion for 51 transactions. The PFM is the leading financial advisory firm by number of transactions and par nationwide over the past 15 years.

Independence- PFM's sole business is providing our clients who are issuers of tax-exempt and taxable debt a full line of advisory services. We are not underwriters, nor do we engage in any securities trading or sales for our own account. Our firm was founded on the premise that institutions need and benefit from independent advice. As such, we believe we have the best understanding of the new role of the Municipal Advisor as envisioned by the SEC. Therefore, when we advise the University, you can be assured we have no competing agenda.

Advisory Experience — PFM has served as advisor to numerous colleges, universities and university systems, including many with academic medical centers. Our public institutions include: Oregon State University, the University System of Maryland System, the University of Illinois, Pennsylvania State University, Oregon University System, the University of Massachusetts, the University System of New Hampshire and the University of Tennessee State System, among others. We believe that no other firm offers this level of experience. Broad Array of Services - PFM provides an unmatched depth of expertise in every area of public finance. This broad expertise is of relevance to the University and our clients in higher education because often times financing developments and innovations originate in one sector and then migrate to, or are adapted to, another sector of public finance. We bring expertise, a team of experts in debt management, investments, derivatives, structured products, public-private partnerships and arbitrage rebate.

Project Team

The professionals serving the University will be led by Guy Hobbs, Managing Director of Hobbs, Ong and Associates and Susan Musselman, Director at PFM. Guy has provided advice to UNLV regarding its proposed stadium and is leading engagements for both HOA and PFM for all projects in Nevada. Susan leads PFM's engagements for Washington State University, Oregon State University, and Portland State University and is PFM lead specialist in higher education finance in the West. Susan and Guy will be supported by Thomas Toepfer who brings higher education experience serving institutions in the West including the Oregon public universities stated above, Loyola Marymount University, Seattle-Pacific University and University of San Francisco. Additionally, Thomas is part of PFM's team that serves the many sophisticated Nevada issuers such as the State of Nevada (recently assisted on evaluating a transportation projects P3 delivery versus public funding for NDOT), Clark County and the Las Vegas Valley Water District. Thomas has also supported Guy in the recent engagement with UNLV related to the football stadium.

Susan and Thomas are currently working with Oregon State University (OSU) on public-private partnerships similar to the one proposed for UNLV. For OSU's main campus, PFM is assisting in identifying and evaluating private partners for housing projects with over 300 apartments and additional 500 bed suite-style housing. On OSU's Cascades campus in Bend, we assisted in the procurement of a private partner for development of several new facilities including a new 300 bed residence hall and an international student and dining center. Susan has been Washington State University's advisor for over 15 years and has evaluated several housing private-public partnership proposals as well as P3 proposals for the universities energy infrastructure.

Team Resumes:

Guy Hobbs founded Hobbs, Ong & Associates, Inc. in January 1996 and serves as President and Managing Director. Mr. Hobbs' areas of expertise include financial advisory services, tax policy and administration, budget and capital planning strategies, economic and fiscal analysis, debt management and operations management. He also has significant experience working with the State Legislature and multiple units of regional and local government.

Mr. Hobbs' municipal finance experience includes 12 years as the Comptroller and Director of Finance for Clark County, Nevada. As the chief financial officer, Mr. Hobbs was responsible for accounts payable, accounts receivable, payroll, data control, financial systems development, accounting, financial analysis, budget and control, community and economic development, asset management, and debt issuance and administration. Mr. Hobbs was also responsible for the preparation, administration, and control of an annual operating budget which exceeded \$1.8 billion including capital projects funds, debt service funds, enterprise funds, and a \$450 million general fund.

Since establishing the firm of Hobbs, Ong & Associates, Inc., in 1996, Mr. Hobbs has provided oversight on the sale of more than 250 bond transactions totaling over \$25 billion of taxable and tax-exempt debt. The proceeds funded improvements for airports; convention facilities; flood, water and sewer projects; hospitals; special improvement districts; transportation and general government projects. These issues have included General Obligation, Revenue and Special Improvement District bonds, Refundings and General Obligations with Additionally Secured Revenues. Mr. Hobbs also performs various specialized technical consulting services, including rates and charges analysis, stadium and arena consulting and economic and fiscal impact analyses.

Mr. Hobbs earned a Bachelor of Arts degree in Business Economics from the University of California, Santa Barbara, and a Master of Business Administration degree from UNLV.

Susan Musselman is a Director in PFM's Seattle office and has provided financial advisory and debt underwriting services for public higher education institutions and governmental entities in the Northwest since 1982.

Ms. Musselman has served as an independent financial advisor since 1996, providing financial advisory services to governmental entities in the State of Washington. Prior to that time she served as investment banker at various underwriting firms. Ms. Musselman joined PFM in 2013, at which time she assumed leadership of PFM's Northwest practice.

Ms. Musselman's experience includes lease purchase, real-estate backed and revenue financings, as well as general obligation and assessment backed financings. She has served as financial advisor for Washington State University since 1996; and serves as financial advisor for Oregon State University, Portland State University, Western Washington University, Central Washington University, Eastern Washington University, and The Evergreen State University.

Ms. Musselman has a BA in Business Administration from the University of Washington, with concentrations in Finance and in Business, Government & Society.

Thomas Toepfer has worked in PFM's Seattle office since 2009 and is a member of PFM's Higher Education team.

Mr. Toepfer provides financial advisory services to public and private universities and colleges, state issuing authorities and municipalities located in the Western United States. Mr. Toepfer's expertise includes: structuring, sizing, pricing new money and refunding municipal bond issues, capital structure evaluation, performing analysis of refunding opportunities, cash flow modeling and debt capacity analysis. Mr. Toepfer's experience in higher education includes capital market transactions for the Oregon University System, Loyola Marymount University and the University of San Francisco. In other municipal sectors, Mr. Toepfer has supported issuers as diverse as the Southern Nevada Water Authority, Las Vegas Valley Water District, Clark
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County, Washoe County Regional Transportation Commission, and County of San Luis Obispo, CA.

Mr. Toepfer is a graduate of Humboldt-University of Berlin School of Business and Economics, where he earned the German Diplom-Kaufmann (MBA). He also studied abroad at the University of Washington completing several MBA finance courses.

Memo



To: Gerry Bomotti
From: John Restrepo
CC: John Swendseid
Date: August 16, 2013
Re: Midtown Bond Report/Tech Memo

Dear Gerry,

MEMO OVERVIEW

In this memo,

- RCG discusses UNLV's (also referred to as "the University") on-campus housing supply and demand dynamics, assuming UNLV's current first year on-campus housing requirement for freshmen (bond covenant Section 816) does not change unless UNLV approves an alternative. RCG also discusses how UNLV's existing on-campus housing could potentially perform assuming the development of the Midtown Park housing project ("Midtown" project or development).
- RCG provides a high-level review of Section 807 of the UNLV bond covenants. Specifically, RCG summarily addresses whether or not UNLV may need to require that non-freshman students live in existing UNLV-owned on-campus housing in order to meet Section 807's requirements.
- Furthermore, RCG provides a high-level review of the AVS Housing Study prepared for UNLV in January 2013 (with some reference to an earlier study prepared in April 2011).

COMMENTS ON UNLV'S BOND COVENANTS – SECTION 816

Section 816 of UNLV's bond covenants for the financing and provision of on-campus housing was analyzed by RCG in evaluating the potential impact of the proposed Midtown housing project on the UNLV's existing on-campus housing. RCG understands that Midtown might be considered a

“competing” facility under this covenant, and that the NSHE Board of Regent’s approval of the project could be interpreted as granting a license or franchise to the developers of the Midtown Park.

By general business definition, competition implies targeting the same and/or similar consumer segments.

- Based on the preliminary project parameters, the proposed Midtown project is being positioned as a housing option for upperclassmen and graduate students. Only a very small group of freshmen might be accepted at Midtown (e.g., freshmen students with a spouse and/or dependent(s)), upon the University’s approval.
- Under this assumption, it does not appear at this time that the project would compete for traditional freshmen and sophomores who are currently accommodated in the existing UNLV-owned on-campus housing.
- This targeting of different student groups, however, needs to be strictly enforced and monitored by UNLV through specific policies and procedures. Successful coexistence of the new Midtown project and existing UNLV on-campus housing will depend on the proper housing policies negotiated and agreed-upon by the University and the project’s developer and operator.

Since the pricing for the Midtown project has not yet been determined, and assuming that the project needs to be 100 percent UNLV student-occupied, it is not clear at this time whether the Midtown can be financially viable (have acceptable levels of occupancy at the right rental rates) if it is only limited to UNLV upperclass and graduate students.

- These students do not have any requirements to live on campus and are able to find a cheaper housing alternative somewhere else in the Las Vegas Valley, especially at the time when the apartment/condo/house rental rates are very competitive, resulting from the Las Vegas Valley’s housing demand/supply imbalance created during the recent housing recession.
- Additionally, a portion of these students are employed and might prefer to live closer to their place of work rather than to school.

Rental rates at the Midtown project are a critical piece, which is, unfortunately, not known at the time of this writing. The “Student Housing Market and Demand Study” prepared for UNLV by AVS Housing Group LLC in April 2011 shows that cost is one of the most important factors among UNLV students in their decision where to live.

- Thus, if the pricing at the Midtown project is not attractive for the targeted groups of UNLV students, there might not be enough demand for the project from upperclassmen and graduate students (to keep the project at the desirable occupancy levels).
- It is essential that such a scenario be considered in a future *comprehensive* project feasibility study. Such a study would also need to look for various contingency plans, should the project attract fewer than expected upperclass and graduate students (e.g., opportunities to target other related groups, such as visiting faculty, UNLV faculty and staff, etc. as well as willingness to incentivize the targeted students through scholarships and other housing subsidies or accept non-student residents).
- Phasing of the proposed Midtown project would help minimize some of the potential exposure and help gauge the true demand for this type of housing among UNLV's upperclass and graduate students.

To ensure that Midtown Park is not in conflict with the existing Board-approved bond covenants (Section 816, specifically), the project needs to be limited to housing upperclassmen, graduate, and those undergraduate students who cannot be accommodated by the existing on-campus housing options due to the unit configuration, etc. (as noted, married undergraduate students or students with dependents, etc.). If Midtown Park is built, as currently planned, to accommodate upper-class and graduate students, UNLV can continue to house a comparable share of freshmen and sophomore students on campus as prior to the Midtown development. In this case, the Midtown project would be *complimentary* to existing UNLV-owned on-campus housing facilities and would not compete for the same group of students.

COMMENTS ON AVS DEMAND STUDY (JANUARY 2013 UPDATE)

Based on RCG's review of various research studies regarding the on-campus housing trends nationwide, an emerging trend is for colleges and universities to require upper-class students to live on campus. While the campus culture may long have supported the notion that upperclassmen will live off-campus, schools have now brought some of them back to campus by offering upper-class housing with amenities, such as furnished apartments, apartment and building cleaning, using student billing to pay for housing along with tuition, etc. Schools are also developing working relationships or partnerships with private developers to build and manage graduate student housing.

Considering the nature of UNLV's existing on-campus housing units, there appears to be a need for appropriately priced apartments on or adjacent to the UNLV's campus.

- As shown in the AVS student surveys, upperclass students are seeking apartment-style living and independence.

- UNLV is currently in a growth mode. As UNLV enrollment continues to grow and change, the demand for housing will likely grow and change. If the enrollment does grow and the demographic profile of the student population does not experience significant changes, the demand for housing will likely increase, based on the potential capture rates derived from the survey data. If, however, the profile of the student population changes, as new types of students are recruited to campus, UNLV will need to reevaluate the student housing demand again in the future.

It is critical to understand whether the proposed Midtown project can achieve the necessary levels of occupancy and, thus, can be financially viable if it is only to target the upperclassmen and graduate students. Midtown Park is currently projected to add 1,900 to 2,000 beds available for students in Fall 2015; thus, more than doubling the current UNLV-owned on-campus housing capacity. To put this into perspective, RCG summarily evaluated the AVS Demand Study and, specifically, assessed the assumed current market capture rate for traditional freshman for on-campus housing and for next 5 and 10 years.

- Based on AVS 2011 study, the actual capture rate for UNLV on-campus housing was 6.3% of all full-time undergraduate students (approximately 950 students living on campus in Spring 2011 out of 15,071 full-time undergraduate students. Additionally, the actual capture rate among single full-time undergraduate students was 6.7%, 950 students out of 13,278 single full-time undergraduate students).
- The 2013 AVS report update assumes the baseline capture rate of 13.5% of the projected student headcount, which is twice the observed rate in 2011.
- Additionally, since the assumed capture rate is applied to a higher base, the “total adjusted demand” grows from 2,025 beds in the 2011 analysis to 3,698 beds in the updated 2013 analysis, or by 82.6%.
- The capture rate is assumed to further increase to 16.6% (a 23% jump over the assumed capture rate of 13.5%) when the enrollment headcount reaches 30,000 students and to 22.5% (a 66.7% spike over the assumed capture rate of 13.5% *and* a 35.5% increase over the assumed capture rate of 16.6%) when the University reaches its enrollment goal of 35,000 students.
- The table below demonstrates how an assumed increase in the capture rate coupled with an expected growth in student enrollment leads to very sizeable increases in the estimated demand for on-campus housing.

Student Enrollment	% Change in Student Enrollment	Assumed Capture Rate	% Change in Capture Rate	Estimated Demand (# of Beds)	% Change in Estimated Demand
27,364		13.5%		3,694	
30,000	9.6%	16.6%	23.0%	4,980	34.8%
35,000	16.7%	22.5%	35.5%	7,875	58.1%

Although directionally, this may be correct; the actual size of this demand is not easy to conclude from the study. The current capture rate is a very important assumption in this type of analysis as the results are very sensitive to even slight changes to this assumption.

- To demonstrate potential fluctuation in demand when more conservative capture rates are assumed, the following table is included.

Student Enrollment	Assumed		Illustrative Scenario 1: More Conservative			Illustrative Scenario 2: Very Conservative		
	Capture Rate - AVS Study (2013)	Estimated Demand (# of Beds)	Illustrative Capture Rate	Revised Demand	% Change in Demand Compared to AVS Study (2013)	Illustrative Capture Rate	Revised Demand	% Change in Demand Compared to AVS Study (2013)
27,364	13.5%	3,694	10.0%	2,736	-25.9%	7.5%	2,052	-44.4%
30,000	16.6%	4,980	12.5%	3,750	-24.7%	10.0%	3,000	-39.8%
35,000	22.5%	7,875	15.0%	5,250	-33.3%	12.5%	4,375	-44.4%

- The analysis presented in the 2013 AVS Demand Study derives the demand figures, based on responses from the student survey as well as the University’s enrollment numbers.
- AVS analysis suggests a high capture rate when analyzing all full-time students. However, it is important to understand how the demand pattern shifts once **affordability thresholds** are applied to the target student groups.
- The capture rates assumption used in the 2013 AVS Demand Study reflects the percentages of students in the target market who indicated their intention to live in the proposed Midtown Park units. For example, the number of juniors included in the target market that were interested in living in the proposed units divided by the junior sample size results in the capture rate for the current academic year.
 - Thus, the study assumes that a student’s interest level can represent **actual** demand; however, this portion of demand can be considered speculative. The **actual demand** is represented in the number of students who (1) are interested in and, at the same time, (2) able to afford the newly proposed housing; and (3) willing to pay the asking rental rates for the new housing.

- In other words, in order to measure the potential size of the target market for the new upper-class/graduate student housing at the Midtown project, student respondents need to meet all of the following conditions:
 1. Be enrolled full-time at UNLV;
 2. Be a upperclass/graduate student;
 3. Currently live off campus;
 4. Be very interested / interested in the project/living on campus;
 5. Currently pay more than \$XXX (depending on the proposed pricing structure at Midtown) per month for rent.
- Because of these five actual demand components, significant portion of students who expressed interest in the proposed new housing at Midtown Park will either desire to pay less or will not be able to afford to pay the potential rental rates at the project and, therefore, are not likely to become renters at Midtown. Thus, students who are willing and able to afford the new housing offered by Midtown Park might generate a demand for fewer beds than indicated in the AVS' 2013 demand estimates. And this number could be significant lower depending on the rents that AVS ultimately establishes for the project at opening.
- Although demand for new on-campus housing at UNLV might be evident (based on the students' surveys and an analysis of peer institutions' housing capacity versus student enrollment), the exact size of the new housing development cannot be determined with the information provided in the AVS Demand Study.
- Additionally, potential future student-focused housing projects in the campus area could have potential impact on the demand for on-campus housing and Midtown Park capture rates.

With Midtown likely to serve all other student housing groups in the context of AVS' and UNLV's projected ranges of occupancy and financial performance relative to the existing on-campus housing, and UNLV's current freshmen housing policy restrictions, RCG tried to understand if cannibalization of existing on-campus housing is a potential problem, because of Midtown Park.

- Looking at current on-campus housing capacity and occupancy rates, and assuming a traditional freshman/sophomore restriction from occupancy at Midtown Park, the UNLV's existing on-campus housing is expected to see minimal impact from the Midtown project opening.

Based on the provided resident information at the on-campus housing, only about 1.5% of students currently living on campus are classified as upperclass and graduate students. RCG makes a note that the data might not be conclusive since the majority of students were

assigned a “no type” classification. However, based on the students’ age, these students are likely to be either freshmen and/or sophomore students.

COMMENTS ON UNLV’S BOND COVENANTS SECTION 807

RCG understands that there is another covenant that can potentially be at issue – Section 807, Rules and Regulations. The issue involves whether or not the Midtown project will cause UNLV to require non-freshman students to live in existing UNLV-owned on-campus housing in order to meet Section 807’s requirements. Currently, if a UNLV freshman is coming from a high school outside of Las Vegas, Henderson, North Las Vegas, Boulder City or Pahrump, and is taking six or more credits, the University requires that the student live on campus in a UNLV housing facility during the 1st year of school. Limited exceptions are available for students who:

- Are married;
- graduated high school at least one year prior to entering UNLV and have been living independently or serving in the military;
- transfer to UNLV after completing at least two semesters at another college or university (not freshman transfer WUE recipients);
- are living with a parent or legal guardian within metropolitan Las Vegas; or
- have certified medical/disability limitations beyond accommodations made in collaboration with the Disability Resource Center.

As mentioned above, the Midtown development is expected to attract different groups of students than are currently being served by the existing UNLV on-campus housing. Although the price points at the Midtown project have not been determined, there is sufficient evidence (e.g., student survey data, on-campus housing market overview in the 2013 AVS Demand Study) that there exists ample demand for on-campus housing among upperclassmen and graduate students. Thus, acceptable occupancy levels at Midtown can be achieved without targeting UNLV’s freshmen as potential residents at the Midtown project.

Should there be a need for attracting more residents to on-campus housing, the University might consider revising its exception policy and require that students who are currently waived from the on-campus living requirement live on-campus once the Midtown project is developed. As stated above, based on the review of the third-party information and preliminary information about Midtown Park and its positioning provided to RCG, no cannibalization of UNLV’s existing on-campus housing is expected as a result of the Midtown project. Therefore, it does not appear to be necessary to require non-freshmen students to live on campus to meet the “reasonable occupancy” requirements outlined in Section 807. The existing on-campus housing will continue to service freshmen who are required and/or choose to live on campus. As UNLV’s overall enrollment is projected to increase, the number of freshmen required to live on campus is likely to grow and sustain the desired occupancy levels at UNLV’s existing on-campus housing.

In general, the proposed Midtown project will not only have an impact the on-campus community, but it will potentially enhance the character of the neighborhoods and commercial areas surrounding UNLV, possibly leading to additional private sector investment in the area. Housing demand among UNLV students should be reevaluated periodically to assess the feasibility and attractiveness of the Midtown's recommended implementation phases.

UNLV, which is trying to transition from a commuter campus to a residential university, has long been trying to build apartment-style dorms that would encourage more residents to stay on or near campus and build a stronger student community. In order to serve the diverse population at UNLV, a stratified housing pricing strategy might be necessary. Offering good quality apartment-style units at market rates will allow UNLV to serve diverse population as well as encourage students to live on campus. New and renovated units are likely to be rented at a premium to support the development cost and absorb the cost of additional amenities planned at the project.

KEY TAKEAWAYS

- Based on UNLV student surveys' results, it is a competitive advantage for UNLV to provide quality housing for its students, as housing availability and options play a role in students' admission decisions.
- Apartment-style dorms are favored by upperclassmen and graduate students, who tend to be older and seek the flexibility of apartment living. Currently, the majority of UNLV student residents move off-campus after their freshman and sophomore years. In general, with a limited supply of high quality on- and off-campus housing and favorable demand factors among UNLV students, the future seems quite promising for this type of development.
- The current demand projections, as presented in the AVS Demand Analysis, could be enhanced by adding several sensitivity scenarios to show potential range of expected demand.
- Additional student surveys or focus group discussions need to shed light on students' ability and willingness to pay the rental rates contemplated for the proposed Midtown project. A survey of this type needs to provide a detailed description of the proposed apartment units and associated price points (expressed in current dollars) to truly measure the demand for this type of housing. Willingness and ability to pay were not factored in the current 2013 AVS Demand Analysis.
- To assess all the parameters of the proposed Midtown projects, a *comprehensive* project feasibility study needs to be prepared for the project.
 - The 2011 and 2013 AVS Demand Studies would be one of the most important sections of the project's comprehensive feasibility study as it examines the

marketability of the proposed project and validates whether there is a potential market for the proposed type of housing product.

- Such a study will need to address the feasibility of the proposed Midtown project, based on the development and operating costs required and revenue to be generated by the project. It would also need to include details of the project operations and management, housing policies, financial data, legal requirements, and tax obligations, etc.

###

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Agreement**”) is made and entered into, as of the 24th day of April, 2015 (“**Effective Date**”), by and between UNIVERSITY PARK, LLC., a Delaware Limited Liability Company (“**Assignor**” or the “**Board**”) and the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION (“**Assignee**”) on behalf of the UNIVERSITY OF NEVADA, LAS VEGAS (“**UNLV**”). Assignor and Assignee are referred to herein jointly as the “**Parties**”.

1. RECITALS.

1.1. **Memorandum of Understanding.** The Assignor and UNLV have negotiated a certain Memorandum of Understanding (the “**MOU**”) outlining the general terms and conditions of a public/private development plan pursuant to which (i) Assignor would contract for the purchase of certain property consisting of 14 acres of land, the improvements located thereon and the personal property associated therewith from its current owner, (ii) Assignor would assign its purchase rights to Assignee who would acquire title to such property and lease the same back to Assignor, (iv) Assignor would re-develop the property, in phases, primarily as student housing for rent to students of Assignee, and (v) beneficial ownership of the development would pass to the Assignee upon expiration of the lease, all on the terms and conditions of certain Implementing Agreements (as defined in the MOU). UNLV and Assignor have negotiated certain Implementing Agreements, including this Agreement, as provided in the MOU and subject to approval thereof by the Board.

1.2. **Purchase Contract.** In furtherance of the MOU, Assignor has entered into a certain Purchase and Sale Agreement (the “**Purchase Contract**”) with Wells Fargo Bank, NA (“**Seller**”) with an Effective Date (as defined therein) of October 14, 2014, regarding the purchase of certain real property as set forth in Exhibit “B” of the Purchase Contract (the “**REO Property**”) for a total purchase price of Twenty Million Five Hundred Thousand Dollars (\$20,500,000). A copy of the Purchase Contract and amendments to the Purchase Contract dated October 14, 2014, November 28, 2014, December 15, 2014, January 15, 2015 and March 2, 2015, are attached hereto as **Exhibit “A”**.

1.3. **Assignment and Lease.** Assignor desires to assign its rights to purchase the REO Property on the terms and conditions set forth in this Agreement and to lease the REO Property from Assignee upon consummation of such purchase on the terms and conditions of (a) a certain Lease Agreement for University Park Phase One (the “**Phase One Lease**”) between Assignee as landlord, and Assignor as tenant, (b) a certain Agreement Lease for University Park Future Phases (the “**Future Phases Lease**”) between Assignee as landlord, and [Future Phases, LLC] an affiliate of Assignor, as tenant, and (c) a certain Project Development Agreement (the “**PDA**”) by and between Assignor, Assignee and [Future Phases, LLC] . The Phase One Lease, Future

Phases Lease, and PDA will provide, among other things, for Assignor and [Future Phases, LLC], as lessees under the Phase One Lease and Future Phases Lease, respectively, to collectively prepay rent in the amount of Two Million Dollars (\$2,000,000), which amount Assignor shall deposit in escrow not later than the Closing Date. The Assignee will use such funds together with Eighteen Million Five Hundred Thousand Dollars (\$18,500,000) of its funds to complete the purchase of the REO Property

2. ASSIGNMENT

2.1. **Assignment.** Assignor hereby assigns to Assignee the right to purchase the REO Property from Seller at the Closing (as defined in the Purchase Contract) and Assignee agrees to purchase the REO Property from Seller at the Closing, subject to the terms and conditions set forth in this Agreement.

2.2. **Assumption.** Subject to the conditions limiting Assignor's obligations in the Purchase Contract and the conditions set forth herein, Assignee hereby assumes the following obligations of Assignee under the Purchase Contract:

- (i) At Closing, deposit the Purchase Price (without adjustment for the pro-rations) plus Assignor's (as Purchaser under the Purchase Contract) share of closing costs; and
- (ii) At Closing, accept the Deed, and accept and execute the Bill of Sale, Assignment of Leases, and any other instruments requiring the Purchaser's execution by the terms of the Purchase Contract.

2.3. **Materials.** Assignor has provided or shall provide to Assignee copies of each and every notice, written instrument and other materials received or to be received from Seller by Assignor, provided to Seller by Assignor, or otherwise specified in or contemplated under the Purchase Contract, or in connection with the Purchase Contract or otherwise connected to the REO Property, including but not limited to the following:

- (i) The Due Diligence Materials as referred to in Paragraph 4(a) and (b) of the Purchase Contract;
- (ii) Any notification, whether written or oral as contemplated by Paragraph 4(b), 4(c), 4(d) 4(e), 6(b)(i), 6(c), 11(a), 11(b), 11(d), 31;
- (iii) A copy of any insurance certificate required or provided pursuant to Paragraph 4(g);
- (iv) A copy of any materials obtained by Assignor and referred to in Paragraph 4(h) (whether or not requested by Seller);

- (v) Not later than the Closing, all items referred to in Paragraph 5(b)(i) (to the extent not provided to Assignee at Closing);
- (vi) In the event Seller provides Assignor's with materials contemplated under Paragraph 7(b)(ii), (iii) and (iv), a copy of any materials received from Seller;
- (vii) A copy of the Commitment;
- (viii) A copy of any materials related to or identifying any New Title Exception;
- (ix) Any modification, waiver, change or amendment to the Purchase Contract;
- (x) Any materials provided by Assignor to Seller under Paragraph 16 and/or relating to Paragraph 36, and any consent, confirmation or approval from Seller confirming Assignor's right under the Purchase Contract to assign Assignor's purchase rights;
- (xi) Any confidentiality agreement contemplated under Paragraph 28;
- (xii) Copies of materials, whether prepared by Escrow Agent, Title Company, Seller or Assignor, reflecting the computation of pro-rations and closing costs;

2.4. **Conditions.** In addition to the conditions to the obligations of Assignor's (as Purchaser in the Purchase Contract) to purchase the REO Property contained in the Purchase Contract which are hereby made conditions to Assignee's obligations set forth in Section 2.2 above, Assignee's obligations are also conditioned upon the following:

(a) Timely delivery to Assignee of all items referred to in Section 2.3. Where the Purchase Contract specifies a date for delivery of an item to or by Assignor, then Assignor shall deliver such item to Assignee within two (2) Business Days of Assignor's receipt or delivery as the case may be. With respect to items which Assignor prepares or causes to be prepared in its evaluation of the REO Property, including but not limited to, a survey of the REO Property, a Phase 1 Environmental Assessment, Assignor shall deliver such items within 2 business days after completion thereof.

(b) Assignee's approval of any New Title Exceptions. Assignee hereby approves all of the exceptions to title set forth in the Commitment attached as Exhibit B hereto. Assignor shall notify Assignee of any New Title Exception that is that is not disclosed in the Commitment and Assignee shall provide written notice to Assignor of its disapproval of any matter which is a New Permitted Exception not later than 5 Business Days after receipt by Assignee of such notice..

(c) Assignee's consent to any waiver by Assignor of any termination right. Assignor shall provide timely notice to Assignee of any event or matter which gives rise to a right of Assignor as Purchaser under the Purchase Contract, to terminate its obligation to purchase the REO Property and which termination right Assignor intends to waive. Assignee shall have 5 Business Days to disapprove any such waiver.

(d) Assignee's approval of the purchase. Assignee shall be deemed to have approved the purchase of the REO Property if Assignee shall fail to give notice of its disapproval to Assignor at least 2 Business Days prior to the expiration of the Final Review Period.

(e) Execution of the Phase One Lease. The Assignor and Assignee shall have executed the Phase One Lease which shall remain in full force and effect as of the Closing Date.

(f) Execution of the Future Phases Lease. [Future Phases, LLC] and Assignee shall have executed the Future Phases Lease which shall remain in full force and effect as of the Closing Date.

(g) Approval by the Board. Notwithstanding any provision herein on in the Lease to the contrary, Assignee's obligations hereunder are expressly conditioned upon approval of this Agreement and the Lease by the Board at its meeting on April 24, 2015. Assignor acknowledges that the Board may, in its sole and absolute discretion, (i) approve this Agreement and the Lease Agreements, (ii) condition its approval on modification of the terms of any or all of this Agreement, Lease or PDA, and (iii) disapprove the transaction or the terms of any or all of this Agreement, Lease or PDA. Upon the occurrence of (ii) or (iii) above, Assignor shall have the right to terminate this Agreement and the Lease.

(h) Absence of any uncured breach by Assignor under this Agreement and the Lease; provided, Assignee shall promptly give written notice to Assignor of any breach of which Assignor has knowledge and a reasonable opportunity to cure.

2.5. **Indemnification.** Notwithstanding any provision herein to the contrary, no obligation imposed on Assignor under the Purchase Contract, whether styled as an indemnification obligation, an obligation for damages, an obligation to repair, or otherwise, is assumed by Assignee. Assignee's sole obligations are those set forth in Section 2.3 and subject to the conditions herein specified.

3. **General**

3.1. **Effectiveness.** This Agreement shall become effective on and only on its execution and delivery by each Party hereto.

3.2. **Amendment.** This Agreement may be amended by and only by an instrument executed and delivered by each Party hereto. No amendment of this Agreement shall be binding on the Assignee unless and until such amendment shall be approved by the Board of Regents in accordance with the policies and procedures thereof as may be established from time to time.

3.3. **Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance or any other such right.

3.4. **Applicable Law.** This Agreement shall be given effect and construed by application of the laws of the State of Nevada, and any action or proceeding arising hereunder shall be brought in the courts of that state and the parties hereby agree to exclusive venue in Clark County, Nevada; provided, however, that if any such action or proceeding arises under the Constitution, laws or treaties of the United States of America, or if there is a diversity of citizenship between the parties thereto, so that it is to be brought in a United States District Court, it may be brought only in the United States District Court for the State of Nevada.

3.5. **No Partnership; No Joint Venture.** Nothing in this Agreement shall be deemed in any way to create between the Parties hereto any relationship of partnership, joint venture or association, and the Parties hereto hereby disclaim the existence of any such relationship.

3.6. **Severability.** No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other provision hereof, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by and shall be construed wherever possible as being consistent with, applicable law.

3.7. **Authority.** If Assignor is a corporation, partnership, limited liability company or similar entity, the person executing this Agreement on behalf of Assignor represents and warrants that (a) Assignor is duly organized and validly existing and (b) this Agreement (i) has been authorized by all necessary parties, (ii) is validly executed by an authorized officer or agent of Assignor and (iii) is binding upon and enforceable against Assignor in accordance with its terms.

3.8. **Time of Essence.** Time shall be of the essence with respect to the performance of the Parties' obligations under this Agreement.

3.9. **Interpretation.** Assignor and Assignee hereby agree that both parties were equally influential in preparing and negotiating this Agreement, and each had the opportunity to seek the advice of legal counsel prior to the execution of this Agreement. Therefore, Assignor and Assignee agree that no presumption should arise construing this Agreement more unfavorably against any one party.

3.10. **Headings.** The headings of the sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

3.11. **Construction.** As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders; (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well; and (c) to any section, subsection, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such section, subsection, paragraph or subparagraph of this Agreement.

3.12. **Notices.**

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below (or, if a Transfer Notice has been given, to the person designated in the Transfer Notice):

If to Assignor: University Park, LLC

With a copy to:

If to Assignee: Board of Regents:

With a copy to:

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term "receipt" means the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to Section 12.7 (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

IN WITNESS WHEREOF, each party hereto has executed this Development Agreement, or caused it to be executed on its behalf by its duly authorized representatives, as of the Effective Date.

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS

Recommended By:

DATE

Approved By:

DATE

UNIVERSITY PARK, LLC
a Delaware limited liability company

Approved By:

DATE

EXHIBIT A

**PURCHASE CONTRACT
(University Park Apartments)**

THIS PURCHASE CONTRACT (this "*Contract*"), is entered into as of the Effective Date (as hereinafter defined) by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("*Seller*"), and UNIVERSITY PARK LLC, a Delaware limited liability company ("*Purchaser*").

Recitals

Seller is the owner in fee simple of the REO Property (as hereinafter defined).

Seller desires to sell and Purchaser desires to purchase, Seller's interest in the REO Property, subject to all of the terms and conditions of this Contract.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by Seller and Purchaser, and in consideration of the above recitals and the mutual covenants set forth in this Contract, the parties hereto agree as follows:

1. **Incorporation of Recitals; Certain Definitions**

Each of the Recitals set forth above are hereby incorporated herein by this reference. Initially capitalized terms not otherwise defined herein shall have the respective meanings ascribed thereto in Exhibit A attached to this Contract and hereby incorporated herein by this reference.

2. **Sale and Purchase**

- (a) Seller agrees to sell, convey, and assign to Purchaser, without recourse and without representation or warranty except as expressly set forth herein, and Purchaser agrees to purchase and accept from Seller, for the Purchase Price (as hereinafter defined) on and subject to the terms and conditions set forth in this Contract, the REO Property.
- (b) It is the intention of the parties hereto that the REO Property shall be sold by Seller and purchased by Purchaser at Closing, pursuant to and in accordance with the terms and provisions of this Contract. Purchaser hereby agrees and acknowledges that it shall have no right hereunder to purchase less than the entire REO Property.

3. **Purchase Price, Independent Contract Consideration, and Earnest Money**

- (a) The purchase price ("*Purchase Price*") to be paid by Purchaser to Seller for the REO Property is Twenty Million Five Hundred Thousand and 00/100 Dollars (\$20,500,000.00).

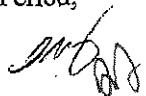
- (b) The Purchase Price shall be payable in cash or via federal funds wire transfer at the Closing (as hereinafter defined).
- (c) Within one (1) Business Day after the execution and delivery of this Contract by the later party to execute and deliver this Contract, Purchaser shall deliver to the Escrow Agent, to the attention of Troy Lochhead of Nevada Title Company or another escrow officer selected and approved by Seller and Purchaser, a copy of this Contract and the sum of Five Hundred Thousand Dollars (\$500,000) ("*Earnest Money*"), to be held in escrow in accordance with the terms hereof. Escrow Agent shall deposit the Earnest Money in an interest-bearing account held at Wells Fargo Bank, N.A.
- (d) Within one (1) Business Day following the end of the Final Review Period, the initial Earnest Money deposited with Escrow Agent shall be disbursed from Escrow Agent to Seller. Except as otherwise expressly set forth herein, the Earnest Money shall be immediately fully earned by Seller, and non-refundable to Purchaser; provided, however, that the entirety of the Earnest Money and interest shall be applied towards payment of the Purchase Price in the event Closing occurs pursuant to and in accordance with the terms hereof. Time is of the essence with respect to Purchaser's obligation to deposit the Earnest Money.

4. **Documents Delivered to or Obtained by Purchaser; Review Periods**

- (a) The parties acknowledge and agree that Seller has delivered and Purchaser has received copies of the Due Diligence Materials on or prior to the Effective Date. The furnishing of the Due Diligence Materials is without any representation or warranty by Seller with respect thereto except as provided in Section 7(a)(iii) below, whether express or implied, or with respect to the right of Purchaser to rely on the Due Diligence Materials, all of which were prepared by third parties.
- (b) During the Preliminary Review Period, Purchaser shall have the opportunity and hereby agrees to review the Due Diligence Materials, to enter upon the REO Property, and to perform such other reviews, investigations and inquiries as it deems appropriate in order to determine that the REO Property is acceptable to Purchaser in its sole discretion and to commence any soils investigations it elects to conduct on the REO Property (collectively, the "*Due Diligence*"); provided, however, Purchaser shall not, without the prior written consent of Seller, in its sole discretion, make any intrusive physical testing (environmental, structural or otherwise) at the REO Property (such as soil borings, water samplings or the like), except (i) for a certain phase I environmental site assessment that may be ordered by the Purchaser at its sole cost and expense and (ii) except that Purchaser shall have the right to take soil borings provided Purchaser notifies Seller at least 2 Business Days in advance and coordinates with Seller to ensure that any activity of its consultants and engineers is performed without undue inconvenience to Affected Tenants. Furthermore, notwithstanding anything in this Contract to the contrary, Purchaser shall not be permitted to perform a phase II environmental site assessment of the REO Property without Seller's prior written approval,

which may be withheld for any reason or no reason. Purchaser shall promptly repair any damage to the REO Property resulting from any physical testing and replace, refill and regrade any holes made in or excavations of any portion of the REO Property used for such physical testing so that the REO Property shall be in substantially the same condition that existed prior to such physical testing. Purchaser, at Purchaser's expense, shall maintain or cause to be maintained the insurance coverages set forth in Section 4(g) below and deliver a copy of a certificate evidencing such insurance to Seller prior to Purchaser's first entry on the REO Property.

- (c) Unless Purchaser terminates this Contract during the Preliminary Review Period, Purchaser shall have the right to present its project proposal for the REO Property to the Board of Regents of the Nevada System of Higher Education (the "Regents") for their approval, which approval shall include approval of a non-binding Memorandum of Understanding between Purchaser and the Regents to proceed with the student housing project on the REO Property and approval of the final and binding implementation documents between Purchaser and the Regents with respect to the student housing project. In the event that Purchaser has not terminated this Contract and the Regents fail to give final approval by the end of the Final Review Period, Purchaser shall have the right to extend the Final Review Period for two consecutive thirty (30) day periods (the "Extension Periods"); provided, in each case Purchaser shall deliver written notice of its election to extend by the first business day following the end of the prior period and also deliver in each case an extension fee of \$50,000 ("Extension Fee"). Each Extension Fee will be immediately released by Escrow Agent to Seller and is fully earned by Seller and non-refundable in the event Purchaser terminates this Contract. The Extension Fees will be applied to the Purchase Price at the Closing. As used herein, the term "Final Review Period" shall include any such Extension Periods as Purchaser elects to exercise.
- (d) Purchaser shall have the right to (i) terminate this Contract in Purchaser's sole discretion, for any reason or no reason at all, at any time prior to the conclusion of the Preliminary Review Period upon written notice thereof to Seller, and (ii) terminate this Contract in Purchaser's sole discretion, for the sole reason of Purchaser having failed to receive final approval from the Regents, at any time prior to the conclusion of the Final Review Period. Notwithstanding anything to the contrary, Purchaser shall have an additional fifteen (15) days from the Preliminary Review Period (the "Soil Approval Date") to approve the soil and subsurface condition of the REO Property, and Purchaser may terminate this Contract prior to the conclusion of the Soil Approval Date if Purchaser objects in good faith to the soil and subsurface condition of the REO Property. In the event of any such termination described in this Section 4(d), the Earnest Money shall be promptly returned to Purchaser (subject to the terms and conditions of Sections 4(h) and 4(i) herein) and neither party shall have any further liability or obligation hereunder (except for any indemnification and other obligations that may survive any termination hereunder). If Purchaser does not give written notice of termination to Seller prior to the expiration of the Preliminary Review Period,



then (i) Purchaser shall be deemed to have approved of the REO Property and all Due Diligence items, subject to Purchaser's receipt of final approval from the Regents and Purchaser's approval of the soil and subsurface condition of the REO Property, which soil and subsurface condition shall be deemed approved upon expiration of the Soil Approval Date, (ii) Purchaser shall no longer have any right to terminate this Contract (except as otherwise provided herein); (iii) Purchaser shall be bound to proceed to Closing under and subject to the terms hereof (except as otherwise provided herein); and (iv) Purchaser shall be bound by all of its obligations under this Contract, each of which shall apply without condition or contingency.

- (e) Purchaser acknowledges and agrees that, if Purchaser does not give written notice of Purchaser's termination prior to the expiration of the Preliminary Review Period, Purchaser shall be deemed to have (i) had sufficient opportunity and access to the Due Diligence Materials and to the REO Property in order to conduct its Due Diligence; (ii) conducted such due diligence activities, inspections, and studies of the REO Property as it deems necessary or appropriate, and (iii) examined and investigated to its full satisfaction all facts, circumstances, and matters relating to the REO Property (including the physical condition and use, availability and adequacy of utilities, access, zoning, compliance with applicable laws, environmental conditions, engineering and structural matters of the REO Property), title and survey matters, and any other matters it deems necessary or appropriate for purposes of consummating the transactions contemplated by this Contract. The Due Diligence shall be conducted at Purchaser's sole cost and expense.
- (f) Purchaser shall defend, indemnify, and hold harmless Seller, the members and affiliates of Seller, and the property manager, if any, of the REO Property from and against all losses, costs, damages, claims, and liabilities (whether arising out of injury or death to persons or damage to any asset or otherwise) including, but not limited to, costs of remediation, restoration and other similar activities, mechanic's and materialmen's liens and reasonable attorneys' fees, resulting from the Due Diligence or the entry by Purchaser or any agent of Purchaser upon the REO Property, unless any of the same are caused by the gross negligence or willful misconduct of Seller. The provisions of this Section 4(f) shall survive the Closing or, if the purchase and sale is not consummated, any termination of this Contract.
- (g) Prior to entering onto the REO Property for any reason, Purchaser, at its sole cost and expense, shall obtain and maintain in effect, and shall cause its agents, contractors, subcontractors and other authorized representatives to obtain and maintain in effect, the following forms of insurance coverage:
 - (i) Workers compensation and employer's liability insurance issued for protection of all employees engaged in Due Diligence activities.



- (ii) Commercial general liability insurance with a minimum combined bodily injury and property damage limit of not less than \$1,000,000 per occurrence. Such insurance shall include the following coverages with respect to such Due Diligence activities: (A) products and completed operations; (B) blanket contractual liability (including, without limitation, with respect to the indemnities in Section 4(f) and Section 30 of this Contract); (C) premises and operations; and (D) broad form property damage. Such insurance shall be written on an occurrence basis (and not on a claims made basis), shall be deemed to be primary and noncontributing with any insurance that may be carried by Seller or its tenants, and shall name Seller and any Affected Tenant as additional insureds.
- (iii) Professional errors and omissions liability for Purchaser's consultants only with a limit of not less than \$1,000,000 per occurrence.
- (iv) Automotive liability for bodily injury with a limit of not less than \$1,000,000 per occurrence.

Prior to entering onto the REO Property for any reason, Purchaser shall deliver to Seller a certificate of insurance with respect to the insurance required under this Section 4(g). The certificate shall provide that the coverage therein evidenced shall not be terminated, amended or canceled, except by written notice to Seller at least thirty (30) days prior to the effective date thereof, regardless of whether such termination, amendment or cancellation is initiated by Purchaser or the insurance carrier. All insurance required of Purchaser hereunder shall be issued by insurance carriers which are authorized to transact business in the State and are rated at least "B+ Class V" by Best's Insurance Reports.

- (h) Notwithstanding anything to the contrary contained in this Contract, in the event of a termination of this Contract for any reason, Purchaser shall, upon request of Seller, forward to Seller copies of all inspections, tests, examinations, investigations and reviews performed by Purchaser pursuant to this Contract without any warranty or representation of any kind to Seller or any other party unless the same are protected by a binding confidentiality agreement, law or court order; and in the event of any such termination entitling Purchaser to a refund of all or any portion of the Deposit, Purchaser shall not be entitled to a refund of any portion of the Deposit unless and until Purchaser has delivered copies of all such requested inspections, tests, examinations, investigations and reviews to Seller.
- (i) Further, notwithstanding anything to the contrary contained in this Contract, in the event of a termination of this Contract entitling Purchaser to a refund of all or any portion of the Earnest Money, Purchaser shall not be entitled to a refund of any portion of the Earnest Money unless and until Purchaser has delivered to



Seller the Due Diligence Materials and any copies thereof (if and to the extent such Due Diligence Materials have been provided to Purchaser prior to the date of such termination).

5. **Closing**

- (a) The Closing shall occur in the offices of Escrow Agent in Clark County, Nevada, or such other location as the parties shall mutually designate, on a mutually agreeable date occurring on or before the Closing Date. Time is of the essence with respect to the Closing Date.
- (b) At the Closing, all of the following shall occur, all of which shall be deemed concurrent conditions:
 - (i) Seller shall deliver or cause to be delivered to Purchaser or Escrow Agent all of the following:
 - (1) The Deed and an executed Declaration of Value Form in the form required by the laws of the State;
 - (2) The Bill of Sale;
 - (3) The Lease Assignment;
 - (4) The General Assignment;
 - (5) All original (or a copy thereof in the event Seller does not possess an original) leases, licenses and permits with respect to the REO Property and in the possession or control of Seller's Representative; provided, however, such items shall not be delivered to Purchaser or Escrow Agent, but shall be available on-site with Seller's property manager;
 - (6) A FIRPTA affidavit of an authorized officer of Seller;
 - (7) Such reasonable notice of change of ownership of the REO Property to tenants and/or service providers as Purchaser shall reasonably require; and
 - (8) Such other documents as Purchaser or the Title Company, in its reasonable discretion, deems necessary or appropriate for the legal transfer of its right, title and interest in and to the REO Property; provided that Seller may object to indemnity, release or owner affidavit requirements imposed by Purchaser or Title Company on Seller that are not customarily required of sellers in real estate transactions in Clark County, Nevada.

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(ii) Purchaser shall deliver or cause to be delivered to Seller or Escrow Agent all of the following:

- (1) The Purchase Price in cash or immediately available wire transferred funds less the amount of the Earnest Money and interest and any Extension Fees paid;
- (2) Evidence reasonably satisfactory to Seller that the person executing any documents at the Closing on behalf of Purchaser has full right, power, and authority to do so;
- (3) An executed Declaration of Value Form in the form required by the laws of the State;
- (4) The Lease Assignment;
- (5) The General Assignment; and
- (6) Such other documents as may be reasonably requested by Seller or the Title Company in connection with Purchaser's acquisition of the REO Property.

(c) At the conclusion of Closing, possession of the REO Property shall be delivered to Purchaser subject to the Permitted Exceptions.

6. **Termination, Default, and Remedies**

- (a) If Purchaser fails or refuses to consummate the purchase of the REO Property, or any portion thereof, pursuant to this Contract at the Closing, Seller's sole and exclusive remedy shall be to retain the Earnest Money, as full, fixed and liquidated damages, not as a penalty, the parties hereby acknowledging the difficulty of ascertaining Seller's damages in such a circumstance and agreeing that this remedy represents a reasonable and mutual attempt by Seller and Purchaser to anticipate the consequence to Seller of such breach by Purchaser, whereupon this Contract shall terminate. Thereafter, unless Purchaser breaches or is in default of this Contract for other than a breach for failure or refusing to consummate the purchase of the REO Property, or any portion thereof, Purchaser and Seller shall be relieved of further liability hereunder, at law or in equity, it being the agreement of the parties that Purchaser shall have no other liability or obligation for default hereunder, except for such indemnification and other obligations as may, under the terms hereof, survive termination of this Contract. In the event of any breach by Purchaser other than for Purchaser's failure or refusal to consummate the purchase of the REO Property, or any portion thereof, pursuant to this Contract at Closing, Seller shall retain the Earnest Money and shall have all other rights and remedies provided hereunder at law or in equity as a result of any such breach or default by Purchaser under this Contract.

(b) If Seller fails or refuses to consummate the sale of the REO Property pursuant to this Contract at the Closing or fails to perform any of Seller's other obligations under this Contract either prior to or at the Closing for any reason other than (i) the termination of this Contract, or (ii) Purchaser's failure to perform Purchaser's obligations under this Contract, on or prior to the Closing Date, then Purchaser shall have the right, as its sole and exclusive remedy, to either:

(i) terminate this Contract by giving written notice of the termination to Seller prior to or at the Closing, whereupon the Earnest Money shall be delivered to Purchaser, free of any claims by Seller (subject to the terms and conditions of Sections 4(h) and 4(i) herein). Thereafter, Purchaser and Seller shall be relieved of further liability hereunder, at law or in equity, except for such indemnification and other obligations as may, under the terms hereof, survive termination of this Contract; or

(ii) commence an action against Seller for specific performance of this Contract or similar legal or equitable action; provided, however, that Purchaser shall not be entitled to pursue any action for specific performance against Seller if (A) Seller is prevented from performing as a result of an order or regulation of any governmental or regulatory authority having jurisdiction over Seller or any affiliate thereof, or (B) performance by Seller would or is likely to result in the levy of a fine, imposition of any reserve requirement or any other action that has a material adverse effect (apart from the act of specific performance) on Seller or any affiliate undertaken by any such governmental or regulatory authority, or (C) Seller has received an opinion of reputable counsel or its internal legal department that Seller's performance hereunder could result in a violation of any law, rule, regulation, or order of any such governmental or regulatory authority or the levy of any fine, imposition of an additional reserve requirement or any other action that has a material adverse effect (apart from the act of specific performance) on Seller or any affiliate.

(c) If either Seller or Purchaser becomes entitled to the Earnest Money upon termination of this Contract in accordance with its terms, and if at such time Escrow Agent is holding the Earnest Money, Purchaser and Seller covenant and agree to deliver a letter of instruction to the Escrow Agent directing disbursement of the Earnest Money to the party entitled thereto. If either party fails or refuses to sign or deliver such instruction letter when the other party is entitled to disbursement of the Earnest Money such party shall pay, upon the final order of a court with appropriate jurisdiction, all reasonable attorneys' fees and expenses (including, without limitation, court costs and fees and expenses of expert witnesses and other professionals) incurred by the party so entitled to the Earnest Money in connection with the recovery of the Earnest Money. This obligation shall survive termination of this Contract.

7. **Seller's Covenants, Agreements, Representations, and Warranties**

(a) Seller represents and warrants to Purchaser that:

(i) Seller has the right, power, legal capacity, and authority to execute and deliver this Contract and to consummate the transactions contemplated by this Contract;

(ii) The individual or individuals executing this Contract and any and all documents contemplated hereby on behalf of Seller has or have the legal power, right, and actual authority to bind Seller to the terms and conditions contained in this Contract and in such documents; and

(iii) To the actual knowledge of Seller's Representative, the Due Diligence Materials are the only documents or other tangible form of data or information in the possession of Seller relating to the REO Property and Seller's Representative does not have any actual knowledge of any false or misleading information contained in the Due Diligence Materials. Seller's Representative is the employee and officer of Seller with responsibility for management and marketing of the REO Property and the person to whom information regarding the REO Property would, in the normal course of business, be delivered by any other employee or agent of Seller.

(b) Seller covenants with Purchaser as follows:

(i) Prior to Closing, Seller shall obtain all such written consents and approvals as may be necessary or required to permit Seller to perform its obligations under this Contract;

(ii) Except as may be required by law or consented to by Purchaser (such consent not to be unreasonably withheld or delayed), Seller agrees that from and after the expiration of the Final Review Period until Closing or earlier termination of this Contract, Seller shall not consent to or enter into any easements or other encumbrances upon the REO Property;

(iii) Seller shall notify Purchaser promptly upon receipt by Seller's Representative prior to Closing of written notice of the institution or pendency of any action, suit, or proceeding against or affecting the REO Property, or relating to or arising out of the ownership of such REO Property; and

(iv) From the expiration of the Final Review Period until Closing or earlier termination of this Contract, Seller shall not (i) enter into, modify, or terminate any lease, license or other permission to occupy the REO Property, except such leases, modifications or terminations that occur in the ordinary course of business and contain a provision permitting landlord to terminate the lease with sixty (60) days prior written notice to the tenant, or (ii) permit any lease to terminate or be terminated (to the extent under the control of Seller), without Purchaser's consent, which consent shall not be unreasonably withheld by Purchaser.

(c) Each of the representations, warranties and covenants made by Seller in this Section 7 hereof shall not merge into the Deed or other closing documents but shall survive Closing for a period of ninety (90) days thereafter. On the date that

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is exactly ninety (90) days after Closing, all such representations, warranties and covenants of Seller, including without limitation those in this Contract, shall terminate and expire and shall thereafter be of no further force or effect. If Purchaser fails to provide written notice to Seller of a breach or default with respect to any of such representations, warranties and covenants of Seller within ninety (90) days after Closing, any and all remedies of Purchaser with respect to any such breach or default on the part of Seller under any such representations, warranties or covenants, shall expire, and thereafter Purchaser shall have no other remedy or recourse against Seller whatsoever.

- (d) For purposes of this Contract and any document delivered at Closing, all references to Seller's knowledge, including, without limitation, whenever the phrase "to Seller's actual knowledge," or the "knowledge" of Seller or words of similar import are used, they shall be deemed to refer to facts within the actual, personal knowledge of Seller's Representative only, and no others, only at the times indicated, without investigation or inquiry, or obligation to make investigation or inquiry, and in no event shall the same include any knowledge imputed to Seller by any other person or entity.
- (e) Each of the representations, warranties and covenants made by Seller herein, including, without limitation, in this Section 7 hereof, is made subject to, and shall be deemed to be modified by, any information to the contrary set forth or referenced in any of the Due Diligence Materials. Purchaser shall be deemed to have knowledge of all information and circumstances set forth, described or otherwise referenced in any of the Due Diligence Materials. In no event shall Seller be deemed to be in breach of any representation, warranty or covenant made by Seller herein, including, without limitation, in this Section 7 hereof, on account of any information or circumstance of which Purchaser has knowledge on or prior to the Closing Date.

8. **Purchaser's Covenants, Agreements, Representations, and Warranties**

- (a) Purchaser hereby makes the following representations, warranties and agreements which shall have been deemed to have been made as of the Closing Date:
 - (i) Purchaser is acquiring the REO Property for its own account only and not for any other Person other than Permitted Assignees.
 - (ii) Purchaser has relied and shall continue to rely solely on its own investigation and other than Seller's express representations and warranties set forth in Section 7 of this Contract, Purchaser has not relied and shall not rely upon any oral or written statements or representations made by Seller or its personnel or agents and acknowledges that no employee or representative of Seller has been authorized to make any statements or representations.
 - (iii) Purchaser represents that it is a knowledgeable, experienced and sophisticated Purchaser of real estate, and that it is relying solely on its own

expertise and that of Purchaser's consultants in purchasing the REO Property. Purchaser acknowledges that all information obtained by Purchaser has been and will be obtained from a variety of sources and Seller will not be deemed to have represented or warranted the completeness, truth or accuracy of any of the Due Diligence Materials or other such information heretofore or hereafter furnished to Purchaser, except as expressly set forth herein. Upon Closing, Purchaser will assume the risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by Purchaser's inspections and investigations.

(iv) Consistent with Section 12 below, Purchaser has not dealt with any broker, investment banker, agent or other person, except the Broker (as defined herein), who may be entitled to any commission or compensation in connection with the sale of the REO Property or any portion thereof.

(v) Purchaser acknowledges and agrees that, except as expressly set forth in this Contract, the REO Property is being sold on an "as is" "where is" and "with all faults" basis on the terms and conditions herein set forth. The Purchase Price reflects the "as is, where is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the REO Property. PURCHASER, WITH PURCHASER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS CONTRACT, AND UNDERSTANDS THE SIGNIFICANCE AND EFFECT THEREOF. PURCHASER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH HEREIN ARE AN INTEGRAL PART OF THIS CONTRACT, AND THAT SELLER WOULD NOT HAVE AGREED TO SELL THE REO PROPERTY TO PURCHASER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS AND ACKNOWLEDGMENTS SET FORTH IN THIS CONTRACT.

(vi) Purchaser expressly agrees and acknowledges that (i) Purchaser's obligations hereunder are not in any way conditional upon, or qualified by, Purchaser's ability to obtain financing of any type or nature whatsoever (i.e., whether by way of debt, financing or equity investment or otherwise) to consummate the transactions contemplated hereby, and (ii) Purchaser shall not use all or any portion of the proceeds of any loan or other credit accommodation from Seller or Seller's parent, subsidiaries or affiliates (including, without limitation, Wells Fargo Bank, N.A.) in order to pay any portion of the Purchase Price without Seller's prior written consent.

(vii) Purchaser represents that it has full power and authority and has taken all action necessary to authorize it to enter into and perform its obligations under this Contract and all other documents or instruments contemplated hereby. Purchaser represents and warrants that this Contract has been duly authorized, executed and delivered by Purchaser. This Contract constitutes the legal, valid and binding obligation of Purchaser, enforceable in accordance with its terms. Purchaser



represents and warrants that the execution, delivery and performance of this Contract by Purchaser does not conflict with the organizational documents of Purchaser, or with any law, statute or regulation applicable to Purchaser, or any mortgage, indenture or other contract or agreement to which Purchaser is a party. Purchaser represents and warrants that no litigation exists against Purchaser that would have a material adverse effect on the transactions contemplated by this Contract.

(viii) Purchaser hereby agrees and acknowledges that Seller shall have no responsibility or liability to Purchaser arising out of or related to any third parties' failure to assist or cooperate with Purchaser. In addition, Purchaser is not relying upon the continued actions or efforts of Seller or any third party in connection with its decision to purchase the REO Property. The risks attendant to the potential failure or refusal of third parties to assist or cooperate with Purchaser and/or Seller in the effective transfer and assignment of the REO Property and/or assigned rights shall be borne by Purchaser.

(ix) Purchaser shall not institute any enforcement or legal action or proceeding in the name of Seller. Purchaser shall not, except where circumstances reasonably require revealing the purchase of the REO Property from Seller, make reference to Seller or Wells Fargo Bank, N.A. in any correspondence to or discussion with any sale, rental or other disposition of the REO Property. Except as specified above, Purchaser shall not use Seller's or Wells Fargo Bank, N.A.'s name, or any name derived therefrom or confusingly similar therewith in connection with Purchaser's management of the REO Property. Purchaser agrees and acknowledges that there may be no adequate remedy at law for a violation of the terms of this Section, and Seller shall have the right to seek the entry of an order by a court of competent jurisdiction enjoining any violation hereof.

(x) Purchaser hereby acknowledges that Purchaser has taken a recent tour and inspection of the REO Property.

(xi) Purchaser hereby agrees and acknowledges that notwithstanding anything to the contrary herein, nothing contained in this Contract shall be construed as authorizing Purchaser to (a) apply for any other zone change, variance, subdivision map, lot line adjustment, or other discretionary governmental act, approval or permit with respect to the REO Property without Seller's prior written approval, which approval may be withheld in Seller's sole and absolute discretion, (b) submit to any government agencies any reports, studies or other documents, including, without limitation, plans and specifications, impact statements for water, sewage, drainage or traffic, environmental review forms, or energy conservation checklists prior to the Closing unless first approved by Seller, which approval Seller may withhold in Seller's sole and absolute discretion, (c) apply for any change to any land use designation or for any permit or variance which would be binding upon Seller or the REO Property if Purchaser terminates the Contract, or (d) represent to any governmental agency that it is the owner of the REO Property, Purchaser acknowledging that it has no authority to bind or

commit Seller or the REO Property to any permanent or affirmative action with respect to the REO Property prior to the Closing Date. In the event that Purchaser terminates the Contract or otherwise fails to consummate the purchase for any reason, Purchaser shall, upon Seller's written request, promptly assign to Seller any rights of Purchaser as the "applicant" for any discretionary approvals that may have been submitted prior to such termination. Purchaser shall, notwithstanding any liquidated damages provisions herein, indemnify, defend and hold Seller harmless from and against all claims, damages and liability arising from the Purchaser hiring and/or engaging any professionals or consultants to perform services on the REO Property, which indemnity shall survive the expiration, cancellation or termination of this Contract.

- (b) Each of the representations, warranties and covenants made by Purchaser in this Contract shall not merge into any Deed or other closing documents but shall survive Closing indefinitely.

9. **No Recording or Filing**

Neither this Contract nor a memorandum thereof shall be filed or recorded by Seller or Purchaser.

10. **Post-Closing Duties / Obligations**

Effective at Closing, Purchaser hereby assumes and shall undertake, comply with and discharge all duties and obligations of Seller under any applicable law, statute, ordinance, order, finding, decree, rule or regulation, with respect to the REO Property, provided that the existence and nature of any such order, finding, decree, rule or regulation that is not public information has been disclosed by Seller to Purchaser during the Review Periods. This Section 10 and all other Sections that contain or relate to obligations to be performed or satisfied post-Closing on the part of either Seller or Purchaser shall survive Closing.

11. **Title**

- (a) **Title Objections.** Within five (5) Business Days following the Effective Date, Purchaser shall obtain the Commitment; provided, however, in no event shall Seller be obligated to pay any premium for a new owner's policy, the cost of obtaining the Commitment, or any other costs related to title insurance. Within two (2) Business Days following the receipt by Purchaser of the Commitment, Purchaser shall notify Seller in writing as to Purchaser's disapproval of any of the title exceptions set forth in such Commitment. Seller shall have five (5) calendar days thereafter ("***Seller Response Period***") to elect whether or not to remove said exceptions at Seller's expense at or prior to the Closing. In the event Seller does not give written notice to Purchaser and Escrow Agent within the Seller Response Period that Seller will remove such disapproved exception(s) at or prior to the Closing, then Purchaser may, by delivery of written notice to Seller and Escrow Agent within two (2) Business Days following expiration of the Seller Response

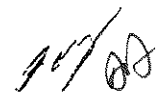
Period, elect to (i) terminate this Contract, in which case Purchaser shall be entitled to a return of the Earnest Money (subject to the terms and conditions of Sections 4(h) and 4(i) herein), or (ii) approve the previously disapproved title exceptions reflected in the Commitment (in which case such exceptions shall become Permitted Exceptions) without any reduction in the Purchase Price and waive Purchaser's right of cancellation. In the event Purchaser fails to give timely written notice of its election to terminate this Contract following expiration of the Seller Response Period, Purchaser shall be deemed to have expressly approved the Commitment and shall take title to the REO Property at Closing subject to all Permitted Exceptions.

- (b) **Title Insurance.** Purchaser shall be entitled to request that, at Closing, with respect to the REO Property, the Title Company (i) issue to Purchaser an ALTA (or other form standard for similar transactions in the State) owner's form title policy (the "*New Title Policy*"), in the amount of the Purchase Price, insuring that fee simple title to the REO Property is vested in Purchaser subject only to the Permitted Exceptions, and (ii) provide such endorsements (or amendments) to such New Title Policy as Purchaser may reasonably require; provided that, if, for any reason, the Title Company declines to so issue the New Title Policy at Closing, Purchaser shall be entitled to request that another title company, selected by Purchaser, issue to Purchaser, at Closing, a New Title Policy; provided further that (a) the New Title Policy and any endorsements thereto shall be at no cost to, and shall impose no additional liability on, Seller, and (b) Purchaser's obligations under this Contract shall be conditioned upon Purchaser's ability to obtain a CLTA or other form of standard coverage owner's policy. Purchaser's obligations under this Contract, however, shall not be conditioned upon Purchaser's ability to obtain such New Title Policy or any endorsements to the New Title Policy and, if Purchaser is unable to obtain a New Title Policy and/or any such endorsements, Purchaser shall nevertheless be obligated to proceed to close the transactions contemplated by this Contract without reduction of or set off against the Purchase Price. The Closing shall not be delayed as a result of Purchaser's aforementioned request
- (c) **Transfer of Title.** At the Closing, Seller shall convey fee title to the REO Property by providing the Deed to Purchaser, subject only to the Permitted Exceptions applicable thereto.
- (d) **New Title Exceptions.** If applicable, Purchaser shall have the right to deliver to Seller a written notice ("*New Title Exception Notice*") at any time after the Preliminary Review Period and prior to the Closing Date, but not more than ten (10) days after the date of Purchaser's discovery of any New Title Exception, stating that a New Title Exception has arisen and that such New Title Exception is unacceptable to Purchaser. If Purchaser timely delivers a New Title Exception Notice to Seller, the following provisions shall apply:
- (i) **Correction Efforts.** If the New Title Exception is due to the acts or omissions of Seller and arose after the expiration of the Preliminary



Review Period, Seller shall use its commercially reasonable efforts to (i) remove or correct the New Title Exception to Purchaser's reasonable satisfaction on or prior to the Closing Date or (ii) cause Title Company to provide, at Closing, title insurance over or with respect to the New Title Exception, all at Seller's sole cost and expense. Notwithstanding the foregoing, Seller shall remove or cause the Title Company to commit to insure against loss or damage which may be incurred by Purchaser as a result of any monetary liens affecting title to the REO Property which are created by Seller, including, without limitation, mortgages, deeds of trust, judgment liens, mechanic's or materialmen's liens (excluding any liens arising in connection with Purchaser's investigation of the REO Property).

- (ii) Not Seller's Responsibility. If the New Title Exception is not due to the acts or omissions of Seller or arose prior to the expiration of the Preliminary Review Period, then, upon Purchaser's delivery to Seller of the New Title Exception Notice, Seller may, but shall not be obligated to, (i) remove or correct the New Title Exception to Purchaser's reasonable satisfaction on or prior to the Closing Date, or (ii) cause Title Company to provide, at Closing, title insurance over or with respect to the New Title Exception, all at Seller's sole cost and expense.
- (iii) Extension. Seller shall have the unilateral right, for the purpose of performing Seller's obligations or exercising Seller's rights under this Section 11(d), to extend the Closing Date for a period of up to sixty (60) days by delivery to Purchaser of written notice to such effect not more than five (5) Business Days after Seller's receipt of a New Title Exception Notice. The period of any such unilateral extension by Seller pursuant to this section shall run concurrently with any other extension periods provided for in this Contract. Notwithstanding any election by Seller to extend the Closing Date as set forth above, Purchaser may elect at any time to waive Purchaser's objection to such New Title Exception by giving written notice thereof to Seller, in which case Seller and Purchaser shall proceed to Closing on or before the Closing Date in accordance with the provisions of this Contract (and such New Title Exception will be a Permitted Exception for all purposes hereunder).
- (iv) Failure to Correct. If Seller is (a) unable either to (i) remove or correct a New Title Exception described in Section 11(d)(i) to Purchaser's reasonable satisfaction or (ii) obtain Title Company's commitment to provide title insurance over or with respect to such New Title Exception on or before the Closing Date, or (b) unable or unwilling either to (i) remove or correct a New Title Exception described in Section 11(d)(ii) to Purchaser's reasonable satisfaction or (ii) obtain Title Company's commitment to provide title insurance over or with respect to such New Title Exception on or before the Closing Date, then Purchaser shall have the right to terminate this Contract by delivering to Seller, on or before the Closing Date, a termination notice fully completed, executed and dated by



Purchaser. If Purchaser timely delivers to Seller a termination notice in accordance with the foregoing provisions, then upon Seller's receipt of such termination notice, Purchaser shall be entitled to a return of the Earnest Money (subject to the terms and conditions of Sections 4(f) and 4(g) herein). Following Purchaser's termination of this Contract pursuant to this section, neither Purchaser nor Seller shall have any further rights or obligations under this Contract except under any provisions of this Contract which, by their terms, expressly survive the termination of this Contract. If Purchaser does not timely exercise Purchaser's right to terminate this Contract under this Section 11(d)(iv), Purchaser shall be deemed to have accepted the New Title Exception, which shall thereupon become a Permitted Exception, and Purchaser shall remain obligated to proceed with Purchaser's purchase of the REO Property in accordance with this Contract without any reduction in the Purchase Price by reason of such new Permitted Exception.

- (v) Closing After Correction. If Seller timely removes or corrects the New Title Exception to Purchaser's reasonable satisfaction or obtains an agreement from Title Company to provide title insurance at Closing over or with respect to the New Title Exception, the parties shall proceed to Closing on the Closing Date, or on such earlier Business Day as may be mutually agreed upon by Seller and Purchaser, without any reduction in the Purchase Price by reason of such New Title Exception and otherwise on the terms provided for in this Contract.

12. **Brokerage Commissions**

Seller and Purchaser acknowledge and represent that the Broker has acted as listing agent and Seller's broker concerning the REO Property and is the only broker that either Purchaser or Seller has dealt with concerning the REO Property and this Contract. Seller shall be responsible for payment to Broker of all compensation due Broker, if and when Closing occurs, pursuant to a separate agreement between Seller and Broker. Should any other claim for commission be asserted or established, the party in breach of its representation in this Section hereby expressly agrees to hold the other harmless with respect to all costs relating thereto (including reasonable attorneys' fees) to the extent that the breaching party is shown to have been responsible for the creation of such claim. Anything to the contrary in this Contract notwithstanding, such agreement of each party to hold the other harmless shall survive the Closing and any termination of this Contract.

13. **Disclaimers**

PURCHASER ACKNOWLEDGES TO AND AGREES WITH SELLER THAT PURCHASER IS PURCHASING THE REO PROPERTY IN AN "AS IS" CONDITION "WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON

BEHALF OF SELLER OTHER THAN THOSE EXPRESSLY STATED IN THIS CONTRACT.

PURCHASER ACKNOWLEDGES THAT PURCHASER HAS NOT RELIED, AND IS NOT RELYING, UPON ANY INFORMATION, DOCUMENT, SALES BROCHURES OR OTHER LITERATURE, MAPS, SKETCHES, DRAWINGS, PLANS, PROJECTION, PROFORMA, STATEMENT, REPRESENTATION, GUARANTEE OR WARRANTY (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, MATERIAL OR IMMATERIAL) THAT MAY HAVE BEEN GIVEN BY OR MADE BY OR ON BEHALF OF SELLER.

PURCHASER HEREBY ACKNOWLEDGES THAT IT SHALL NOT BE ENTITLED TO, AND SHALL NOT, RELY ON SELLER, ITS AGENTS, EMPLOYEES OR REPRESENTATIVES, AND SELLER HEREBY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, EITHER UNDER COMMON LAW, BY STATUTE, OR OTHERWISE, AS TO (I) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE REO PROPERTY INCLUDING, BUT NOT LIMITED TO, ANY STRUCTURAL ELEMENTS, FOUNDATION, ACCESS, LANDSCAPING, SEWAGE OR UTILITY SYSTEMS AT THE REO PROPERTY, IF ANY; (II) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF SOILS AND GROUND WATER OR THE EXISTENCE OF GROUND WATER AT THE REO PROPERTY; (III) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE REO PROPERTY; (IV) THE DEVELOPMENT POTENTIAL OF THE REO PROPERTY, ITS VALUE, ITS PROFITABILITY, ITS HABITABILITY, MERCHANTABILITY OR FITNESS, SUITABILITY OR ADEQUACY OF THE REO PROPERTY FOR ANY PARTICULAR PURPOSE; (V) THE ZONING OR OTHER LEGAL STATUS OF THE REO PROPERTY; (VI) THE COMPLIANCE OF THE REO PROPERTY OR ITS OPERATIONS WITH ANY APPLICABLE CODE, STATUTE, LAW, ORDINANCE, RULE, REGULATION, COVENANT, PERMIT, AUTHORIZATION, STANDARD, CONDITION OR RESTRICTION OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY; (VII) THE QUALITY OF ANY LABOR OR MATERIALS RELATING IN ANY WAY TO THE REO PROPERTY; (VIII) THE SQUARE FOOTAGE OR ACREAGE OF THE REO PROPERTY; OR (IX) THE OPERATION OF THE REO PROPERTY FROM THE DATE OF THIS CONTRACT UNTIL THE CLOSING EXCEPT AS EXPRESSLY CONTAINED IN THIS CONTRACT.

PURCHASER ACKNOWLEDGES THAT BY THE END OF THE FINAL REVIEW PERIOD, PURCHASER WILL HAVE HAD AN ADEQUATE OPPORTUNITY TO MAKE SUCH LEGAL, FACTUAL AND OTHER INQUIRIES AND INVESTIGATIONS AS PURCHASER DEEMS NECESSARY, DESIRABLE OR APPROPRIATE WITH RESPECT TO THE REO PROPERTY. SUCH INQUIRIES AND INVESTIGATIONS OF PURCHASER SHALL BE DEEMED TO INCLUDE AN ENVIRONMENTAL AUDIT OF THE REO PROPERTY, AN INSPECTION OF THE PHYSICAL COMPONENTS AND GENERAL CONDITION OF ALL PORTIONS OF THE REO PROPERTY, SUCH STATE OF FACTS AS AN ACCURATE SURVEY

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AND INSPECTION WOULD SHOW, THE PRESENT AND FUTURE ZONING AND LAND USE ORDINANCES, RESOLUTIONS AND REGULATIONS OF THE CITY, COUNTY AND STATE WHERE THE REO PROPERTY IS LOCATED AND THE VALUE AND MARKETABILITY OF THE REO PROPERTY.

PURCHASER ACKNOWLEDGES THAT THERE HAVE BEEN NO REPRESENTATIONS OR AGREEMENTS REGARDING SELLER'S OBLIGATION TO PROVIDE OR COMPLETE ROADS, SEWER, WATER, ELECTRIC OR OTHER UTILITY SERVICES, ANY DEVELOPMENT OR CONSTRUCTION ACTIVITY, OR ANY OTHER IMPROVEMENTS TO THE REO PROPERTY MADE BY SELLER OR RELIED UPON BY PURCHASER WHATSOEVER.

PURCHASER ACKNOWLEDGES THAT SELLER HOLDS TITLE TO THE REO PROPERTY, THROUGH FORECLOSURE OR OTHERWISE, PRIMARILY TO PROTECT ITS SECURITY INTEREST WITHIN THE MEANING OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"); 42 U.S.C. § 9601 ET SEQ. AND THE RULES AND REGULATIONS PROMULGATED THEREUNDER.

WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING, PURCHASER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT HEREBY WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE IN THE FUTURE AGAINST THE SELLER WITH RESPECT TO COSTS, DAMAGES, OBLIGATIONS, PENALTIES, CAUSES OF ACTION AND OTHER LIABILITIES (WHETHER ACCRUED, CONTINGENT, ARISING BEFORE OR AFTER THIS CONTRACT, OR OTHERWISE) ARISING AS A RESULT OF (I) THE CONDITION OF THE REO PROPERTY, EITHER PATENT OR LATENT, (II) ITS ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE REO PROPERTY, AND/OR CERTIFICATES OF COMPLIANCE FOR THE REO PROPERTY, (III) THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE REO PROPERTY, (IV) THE REAL ESTATE TAXES OR ASSESSMENTS NOW OR HEREAFTER PAYABLE THEREON, (V) THE PAST, PRESENT OR FUTURE CONDITION OR COMPLIANCE OF THE REO PROPERTY, OR COMPLIANCE OF PAST OWNERS AND OPERATORS OF THE REO PROPERTY, IN REGARD TO ANY PAST, PRESENT AND FUTURE FEDERAL, STATE AND LOCAL ENVIRONMENTAL PROTECTION, POLLUTION CONTROL, POLLUTION CLEANUP, AND CORRECTIVE ACTION LAWS, RULES, REGULATIONS, ORDERS, AND REQUIREMENTS (INCLUDING WITHOUT LIMITATION CERCLA, RCRA, AND OTHERS PERTAINING TO THE USE, HANDLING, GENERATION, TREATMENT, STORAGE, RELEASE, DISPOSAL, REMOVAL, REMEDIATION OR RESPONSE TO, OR NOTIFICATION OF GOVERNMENTAL ENTITIES CONCERNING, TOXIC, HAZARDOUS, OR OTHERWISE REGULATED WASTES, SUBSTANCES, CHEMICALS, POLLUTANTS OR CONTAMINANTS), OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, (VI) THE PRESENCE ON, IN,



UNDER OR NEAR THE REO PROPERTY OF (INCLUDING WITHOUT LIMITATION ANY RESULTANT OBLIGATION UNDER CERCLA, THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), 42 U.S.C. § 6973 et seq., ANY STATE STATUTE OR REGULATION, OR OTHERWISE, TO REMOVE, REMEDIATE OR RESPOND TO) ASBESTOS CONTAINING MATERIAL, RADON, MOLD, UREA FORMALDEHYDE OR ANY OTHER TOXIC, HAZARDOUS OR OTHERWISE REGULATED WASTE, SUBSTANCE, CHEMICAL, POLLUTANT OR CONTAMINANT, AND (VII) ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE REO PROPERTY.

PURCHASER ACKNOWLEDGES AND AGREES THAT THE TERMS AND CONDITIONS OF THIS SECTION SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS CONTRACT AND/OR OF THE RECORDATION OF THE DEED FOR THE REO PROPERTY.

14. Notices

Any notice pursuant to this Contract shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth below, or (d) by Federal Express, United Parcel Service or similar private carrier, or (e) by electronic mail to the email address listed below; or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Contract shall be as follows:

If to Purchaser: University Park LLC
8275 South Eastern, Suite 103
Las Vegas, NV 89123
Attention: John H. Midby
Email: johnm@midbycos.com

with an email copy to: Jeff Geen, Esq.
Email: jeffsgeen@gmail.com

If to Seller: Wells Fargo Bank
Wholesale Commercial ORE
8954 Rio San Diego, Suite 402
San Diego, CA 92108
Attention: Dawn Murphy, Vice President
Email: dawn.murphy@wellsfargo.com

with a copy to: Wells Fargo Bank, N.A.
301 S. College Street



D1053-300
Charlotte, North Carolina 28202
Attention: Deborah Snyder
Email: deborah.snyder@wellsfargo.com

and, with a copy to:

Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Attention: Mike Keller
Email: mkeller@swlaw.com

15. **Modifications**

This Contract cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

16. **Assigns**

This Contract shall inure to the benefit of and be binding on the parties and their respective representatives, successors, and assigns. Purchaser may not assign its rights or obligations under this Contract to any party without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Notwithstanding the foregoing, and provided that Purchaser provides Seller with such information as is necessary for Seller to confirm that such entity will meet the requirements set forth in Section 36 below (and the proposed assignee in fact meets such requirements), Purchaser shall have the right, without Seller's consent, to assign its rights in this Contract to any Permitted Assignee. No consent given by Seller to any assignment by Purchaser shall be (i) effective unless and until the assignee under such assignment shall have, pursuant to a written assumption agreement acceptable to Seller in its sole discretion, assumed all of Purchaser's obligations under this Contract, or (ii) deemed to relieve Purchaser of any of its obligations hereunder. If Purchaser consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Purchaser hereunder and all representations, warranties, covenants and agreements made by Purchaser hereunder shall be joint and several.

17. **Time of the Essence**

Time is of the essence in the execution and performance of this Contract and of each of its provisions.

18. **Entire Agreement**

This Contract, including the Exhibits, any confidentiality agreement executed by Purchaser and Seller as contemplated by Section 28 of this Contract, if any, and any intercreditor agreements, escrow agreements, security agreements or other similar agreements entered into by Seller and Purchaser in connection with and as contemplated by this Contract, if any, contain the entire agreement between the parties pertaining to the

subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.

19. **Counterparts**

This Contract may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. Executed copies of this Contract may be delivered between the parties via e-mail.

20. **Severability**

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall nonetheless remain in full force and effect.

21. **Applicable Law/Venue; Waiver of Jury Trial**

THIS CONTRACT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE SUBSTANTIVE FEDERAL LAWS OF THE UNITED STATES AND THE LAWS OF THE STATE. PURCHASER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT. NOTHING CONTAINED IN THIS SECTION SHALL AFFECT THE RIGHT OF SELLER TO BRING ANY ACTION OR PROCEEDING AGAINST PURCHASER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION. PURCHASER AND SELLER AGREE THAT THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS CONTRACT. NOTHING CONTAINED IN THIS SECTION SHALL BE INTERPRETED TO PROVIDE ANY GREATER RIGHTS OR ADDITIONAL CLAIMS TO PURCHASER THAN AS OTHERWISE PROVIDED IN THIS CONTRACT.

To the extent allowed by applicable law, each party to this Contract hereby expressly waives any right to trial by jury of any claim, demand, action or cause of action (each, an "Action") (a) arising out of this Contract, including any present or future amendment thereof or (b) in any way connected with or related or incidental to the dealings of the parties or any of them with respect to this Contract (as hereafter amended) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether such Action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise and regardless of which party asserts such Action; and each party hereby agrees and consents that any such Action shall be decided by court trial without a jury, and that any party to this Contract may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties to the waiver of any right they might otherwise have to trial by jury.

22. **Limited Liability of Seller**

If Seller breaches this Contract, and the breach is discovered prior to Closing, Purchaser's sole remedies are those described in Section 6(b) of this Contract. Except as to a breach by Seller of any warranty, representation or covenant contained in Section 7 of this Contract, if Seller breaches this Contract, and such breach is discovered after Closing, Purchaser shall have no remedy or recourse against Seller. Purchaser has factored this risk into its decision to purchase. If and only if it is determined within ninety (90) days after Closing that Seller breached any warranty, representation or covenant contained in Section 7 of this Contract, and if Purchaser notifies Seller in writing of any such breach within ninety (90) days of the Closing, Purchaser's sole remedy shall be one of the following: (i) cure of the breach by or on account of Seller; or (ii) payment of appropriate monetary compensation by Seller to Purchaser for such breach. Purchaser hereby acknowledges and agrees that in no event will the liability of Seller under this Contract (including, without limitation, any liability of Seller for breach or default under any representation, warranty or covenant made by Seller in Section 7 hereof) exceed, in the aggregate, two percent (2.0%) of the Purchase Price. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT OR OTHERWISE, IN NO EVENT SHALL SELLER BE LIABLE UNDER THIS CONTRACT OR ANY RELATED DOCUMENT FOR ANY PUNITIVE, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES.

23. **No Third Party Beneficiary**

The provisions of this Contract and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party, including, but not limited to any broker described in Section 12, and accordingly, no third party shall have the right to enforce the provisions of this Contract or of the documents to be executed and delivered at Closing.

24. **Exhibits and Schedules**

The following schedules or exhibits attached hereto shall be deemed to be an integral part of this Contract:

- (a) Exhibit A - Certain Definitions
- (b) Exhibit B - Legal Description of REO Property
- (c) Exhibit C - Form of Deed
- (d) Exhibit D - Form of Bill of Sale
- (e) Exhibit E - Form of Assignment of Leases
- (f) Exhibit F - Form of General Assignment
- (g) Exhibit G - Due Diligence Materials

25. **Captions**

The section headings appearing in this Contract are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

26. **Construction**

The parties acknowledge that the parties and their counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any exhibits or amendments hereto. Accordingly, this Contract shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. Whenever required by the context of this Contract, the singular shall include the plural and vice versa. When the context so requires, the neuter gender includes the feminine or masculine.

27. **Termination of Contract**

It is understood and agreed that if either Purchaser or Seller terminates this Contract pursuant to a right of termination granted hereunder, such termination shall operate to relieve Seller and Purchaser from all obligations under this Contract, except for such obligations as are specifically stated herein to survive the termination of this Contract including, without limitation, indemnification obligations and other obligations related to the appropriate distribution of the Earnest Money pursuant to this Contract.

28. **Information and Confidentiality**

If Purchaser and Seller have previously executed one or more confidentiality agreements related to the REO Property, Purchaser's evaluation of the REO Property or the transfer thereof under this Contract, then each such agreement shall remain in full force and effect under the terms therein, survive the Effective Date and, to the extent of inconsistency with the terms and conditions set forth herein, supersede the language in this Section 28. To the extent no such agreement has been executed as of the Effective Date by Purchaser and Seller with respect to the REO Property, or, to the extent any such agreement has been executed but does not cover the agreements set forth in this Section 28 or has since expired, then this Section 28 shall apply.

Except as permitted by this Contract, Purchaser agrees that neither Purchaser nor Purchaser's Representatives (as hereinafter defined) shall, at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, entity or association, other than any Purchaser's Representatives and/or Purchaser's Loan Parties (as hereinafter defined), the Confidential Information (as hereinafter defined). Without Seller's prior written consent, Purchaser shall not disclose, and Purchaser shall direct Purchaser's Representatives and Purchaser's Loan Parties not to disclose, to any person, entity or association (other than among themselves) any of the terms, conditions or other facts with respect to this Contract, including, without limitation, the status hereof, that are not part of the public domain. Notwithstanding the foregoing, Purchaser may disclose such of the Confidential Information and its other reports, studies, documents and other



matters generated by it and the terms of this Contract (i) as Purchaser deems necessary or desirable to Purchaser's Representatives and/or Purchaser's Loan Parties in connection with Purchaser's investigation of the REO Property and the transactions contemplated hereby, provided that those to whom such Confidential Information is disclosed are informed of the confidential nature thereof and agree to keep the same confidential in accordance with the terms and conditions hereof, (ii) if compelled to do so by any Governmental Authority, pursuant to law, or otherwise by legal proceedings, or (iii) in connection with any litigation involving this Contract or the transactions contemplated hereby.

29. **Release**

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS CONTRACT, PURCHASER SHALL RELEASE THE SELLER PARTIES FROM ALL CLAIMS, ABSOLUTE OR CONTINGENT, KNOWN OR UNKNOWN, WHICH PURCHASER OR ANY AGENT, REPRESENTATIVE, AFFILIATE, EMPLOYEE, DIRECTOR, OFFICER, PARTNER, MEMBER, SERVANT, SHAREHOLDER, TRUSTEE OR OTHER PERSON OR ENTITY ACTING ON PURCHASER'S BEHALF OR OTHERWISE RELATED TO OR AFFILIATED WITH PURCHASER HAS OR MAY HAVE ARISING FROM OR RELATED TO ANY MATTER OR THING RELATED TO OR IN CONNECTION WITH THE REO PROPERTY, AND ANY PHYSICAL OR ENVIRONMENTAL CONDITIONS, AND PURCHASER SHALL NOT LOOK TO THE SELLER PARTIES IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. THE TERMS AND PROVISIONS OF THIS SECTION SHALL SURVIVE CLOSING AND ANY TERMINATION OF THIS CONTRACT.

30. **Indemnification of Seller Parties by Purchaser**

Purchaser shall defend, indemnify and hold harmless Seller Parties from and against all losses, causes of action, liabilities, claims, demands, obligations, damages, costs and expenses, including without limitation attorneys' fees and costs, to which Seller Parties may become subject on account of any claim made by a third party arising out of a breach by Purchaser of its obligations, warranties or covenants under this Contract. The obligations in this Section 30 shall survive Closing and any termination of this Contract. The foregoing is not intended to apply to any compensatory damages for breach of contract such as loss of revenue suffered by Seller as a result of failure to consummate the sale; for which damages, if any, the Seller's sole remedy shall be retention of the Earnest Money as provided in Section 6 above.

31. **Risk Of Loss**

Prior to Closing, the risk of loss shall remain with Seller. If, prior to Closing, the REO Property or any part thereof shall be condemned, destroyed or damaged by fire or other



casualty, Seller shall promptly notify Purchaser. If the REO Property or any part thereof shall be condemned such that damages are in excess of an amount equal to two percent (2.0%) of the Purchase Price or if the REO Property or any part thereof shall be destroyed or damaged by fire or other casualty the repair of which would cost in excess of two percent (2.0%) of the Purchase Price, then, at the option of Purchaser, which option shall be exercisable, if at all, by written notice thereof to Seller within three (3) Business Days after Purchaser receives written notice of such fire, earthquake or other casualty or condemnation, this Contract may be terminated. If Purchaser elects to terminate this Contract, the Earnest Money shall be returned to Purchaser (subject to the terms and conditions of Sections 4(h) and 4(i) herein), in which event this Contract shall, without further action of the parties, become null and void, and neither party shall have any rights or obligations under this Contract, except those which expressly survive termination. In the event that Purchaser does not exercise the option to terminate the Contract set forth above, or if the condemnation or casualty is below the threshold described above, then (i) Purchaser's obligations hereunder to purchase the REO Property for the full Purchase Price shall apply without regard to the occurrence or effect of any damage to the REO Property or destruction of any improvements on the REO Property or condemnation of any portion of the REO Property, (ii) Purchaser shall have no right to terminate this Contract or reduce the Purchase Price in the event of any damage to the REO Property or destruction of any improvements on the REO Property or condemnation of any portion of the REO Property, (iii) Purchaser hereby waives any right Purchaser may have at law or in equity to terminate this Contract or seek reduction of the Purchase Price on account of any damage to the REO Property or destruction of any improvements on the REO Property or condemnation of any portion of the REO Property, and (iv) the Closing shall take place on the Closing Date, provided, however that Seller hereby agrees that upon the Closing, there shall be a credit against the Purchase Price due hereunder equal to the amount of any insurance proceeds or condemnation awards collected by Seller, if any, as a result of any such damage or destruction or condemnation, less any sums expended by Seller toward the restoration or repair of the REO Property or in collecting such insurance proceeds or condemnation awards. If the proceeds or awards have not been collected as of the Closing, then such proceeds or awards shall be assigned to Purchaser, except to the extent needed to reimburse Seller for sums expended prior to the Closing to repair or restore the REO Property or to collect any such proceeds or awards.

32. Prorations

(a) **General Prorations.** All amounts set forth in the following numbered paragraphs shall, except as otherwise provided in this Section 32, be prorated to 11:59 p.m. local time on the day before the Closing Date with Purchaser receiving the benefits and burdens of ownership on and after the Closing Date.

(i) The parties shall prorate, as of the Closing Date, all rents (including base, fixed or minimum rent and percentage rent), license fees and other amounts paid in respect of the use or occupancy of the REO Property and all payments with respect to common area maintenance expenses, operating expenses, taxes, insurance and other expenses for or pertaining to the REO Property which are reimbursable by tenants under the terms of their Leases, by licensees under the



terms of their licenses, by parties to reciprocal easement and/or operating agreements under the terms of such agreements or by other parties under the terms of their agreements with Seller (collectively, "Rents"), and which are received by Seller prior to the Closing Date for the period of time as of or subsequent to the Closing Date, or which are due as of or after the Closing Date for any period of time prior to the Closing Date. Seller shall retain all Rents received by Seller prior to the Closing Date, and pursuant to such proration, Purchaser shall receive a credit equal to the amount of Rents allocable to the Closing Date and any period of time thereafter which has been paid prior to the Closing Date; and Seller shall receive a credit equal to the amount of Rents allocable to any period of time prior to the Closing Date which become due after the Closing Date and which are unpaid as of the Closing Date. If any Lease requires any retroactive adjustment to Rents after the Closing Date, the parties shall estimate such adjustment based upon the most current information available to them. Such estimated adjustment shall be final and conclusive between the parties, and the parties shall not recalculate such estimated adjustment when the actual adjustment becomes available. All rights to Delinquent Rents for any period of time prior to the Closing Date shall be and remain the sole property of Seller, Seller shall have the right to attempt to collect such Delinquent Rents, including, but not limited to, through prosecution of a legal action for such purposes, and Purchaser shall have no obligation to attempt to collect such Delinquent Rents after the Closing Date. Purchaser shall, however, promptly pay to Seller any Delinquent Rents which Purchaser may receive after the Closing Date as rental for the period of time prior to the Closing Date. All rights to Delinquent Rents for the Closing Date and any period of time thereafter shall be and remain the sole property of Purchaser, and Seller shall have no obligation to attempt to collect such Delinquent Rents after the Closing Date. Seller shall, however, promptly pay to Purchaser any Delinquent Rents which may be received by Seller after the Closing Date which are allocable to the Closing Date and any period of time thereafter.

(ii) General real estate taxes and assessments against the REO Property not directly paid by tenants under any Leases and not included in any reimbursable common area maintenance expenses paid by tenants under any Leases shall be prorated as of the Closing Date, based on a three hundred sixty-five (365) day year. If the Closing shall occur before the tax rate or the assessed valuation of the REO Property is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation. Subsequent to the Closing, when the tax rate and the assessed valuation of the REO Property is fixed for the year in which the Closing occurs, the parties agree to adjust the proration of taxes and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment, provided, however, the same shall be determined no later than sixty (60) days after receipt of the tax bill/assessed valuation/tax rate for the current year.

(iii) Any cash security deposit under any Lease held by Seller at the time of Closing shall be credited to Purchaser on the Closing Date and Purchaser shall assume Seller's obligations related to such security deposits.

(iv) Seller shall be entitled to a credit for all security deposits held by any of the utility companies providing service to the REO Property for the benefit of Purchaser where such deposits are transferred by the utility to Purchaser's account. Seller shall endeavor to obtain meter readings on the day before the Closing Date, and if such readings are obtained, there shall be no proration of such items and Seller shall pay at Closing the bills therefor for the period to the day preceding the Closing, and Purchaser shall pay the bills therefor for the period subsequent thereto. If any utility company will not issue separate bills, Purchaser will receive a credit against the Purchase Price for Seller's portion and will pay the entire bill prior to delinquency after Closing. Purchaser shall be responsible for making any security deposits required by utility companies providing service to the REO Property.

(v) Payments with respect to any service contracts for the REO Property, if any, shall be prorated as of the Closing Date, based on the actual number of days in the billing period for such respective service contracts.

(vi) Any other operating expenses of the REO Property not directly paid by tenants under any Leases and not included in any reimbursable common area maintenance expenses paid by tenants under any Leases, shall be prorated as of the Closing Date, based on a three hundred sixty-five (365) day year. If the Closing shall occur before the actual amount of all other operating expenses with respect to the REO Property for the month in which the Closing occurs are determined, the apportionment of such other operating expenses shall be upon the basis of the prior month's actual amount of such other operating expenses. Subsequent to the Closing, when the actual amount of such other operating expenses for the month in which the Closing occurs are determined, the parties agree to adjust the proration of such other operating expenses and, if necessary, to refund or repay such sums as shall be necessary to effect such adjustment.

(b) **Final Prorations.** If final prorations cannot be made at the Closing for any item subject to proration under this Section 32, then, Purchaser and Seller agree to allocate such items on a fair and equitable basis as soon as invoices or bills are available and applicable reconciliation with tenants have been completed, with final adjustment to be made as soon as reasonably possible after the Closing, and in any event not later than the date that is one hundred eighty (180) days after Closing. If either party receives any funds which belong to the other party under this Section 32, such receiving party shall pay over and/or deliver such funds to the other party (without interest thereon) within fifteen (15) Business Days after receipt.

(c) **Special Tax Considerations.** Notwithstanding anything to the contrary contained herein, Purchaser acknowledges and agrees that (i) the assessed

valuation of the REO Property for real property tax purposes by one or more of the applicable taxing authorities for one or more tax years (covering the tax year in which the Closing Date is to occur and/or prior tax years) is currently being appealed by Seller, or may be appealed by Seller; and (ii) that Seller has procured, or may procure, the services of a tax consultant to prosecute such appeal; and that Seller shall have the right (but not the obligation) to continue to prosecute such appeal, or to initiate and prosecute such appeal, at any time before or after the Closing Date at Seller's sole cost and expense. Any refund of real property taxes for the tax year in which the Closing occurs, net of the portion of the tax consultant's fees which relate to such tax year, shall be prorated between Seller and Purchaser as of the Closing. If Purchaser shall receive any refund of real property taxes for such tax year in which the Closing occurs, Purchaser shall immediately pay such refund to Seller for distribution to the parties in accordance with the foregoing allocation. Additionally, any refund of real property taxes for any tax year prior to the tax year in which the Closing occurs shall be the property of Seller, and if Purchaser shall receive any refund of real property taxes for such prior tax years Purchaser shall immediately pay such refund to Seller.

- (d) **Closing Costs.** At Closing, Purchaser shall pay (a) one-half of the Escrow Agent's escrow fee, (b) any portion of the premium for the New Title Policy in excess of the cost of a CLTA standard coverage owner's title policy, including any additional premium if Purchaser requests an ALTA extended coverage owner's policy and the costs of any endorsements requested by Purchaser and any other title related expenses, (c) any and all applicable recording fees, and (d) one-half of any and all real property transfer taxes. At Closing, Seller shall pay (i) the portion of the premium for the New Title Policy attributable to the cost of a CLTA standard coverage owner's title policy, (ii) one-half of the Escrow Agent's escrow fee, and (iii) one-half of any and all real property transfer taxes. Seller and Purchaser shall each pay their respective attorneys' fees.

33. **Attorney Fees**

If any action is brought by any party to this Contract to enforce or interpret its terms or provisions, the prevailing party will be entitled to reasonable attorney fees and costs incurred in connection with such action prior to and at trial and on any appeal therefrom.

34. **Related Parties**

Purchaser represents to Seller that neither Purchaser nor any person having control over Purchaser is employed by, or is a family member purchasing directly or indirectly for the benefit of anyone who is employed by, Wells Fargo & Company or any of its subsidiaries. For purposes of this representation "family member" is defined as a spouse, a domestic partner, parents, grandparents, children, grandchildren, brothers and sisters, including in all cases, step-family members.



35. **Existing Security**

To secure the performance of certain obligations relating to the development of the REO Property, Seller and/or certain other parties (collectively or individually, as the context may require, the "*Furnishing Party*") may have furnished to the applicable governmental authorities bonds, letters of credit, cash escrows and/or other security for performance of such obligations ("*Security*") with respect to the REO Property (the "*Existing Security*"). Purchaser hereby acknowledges and agrees that Purchaser shall be obligated to obtain and furnish to the applicable obligees, prior to Closing, Security (the "*Substitute Security*") to Substitute for the Existing Security. As used herein, "*Substitute*" or "*Substitution*" shall mean, as the context requires, the surrender, cancellation, termination, release or replacement of any Existing Security in such a manner as to terminate all rights of the beneficiaries under the Existing Security. Such Substitution shall be evidenced by the physical return of such original Existing Security or such other documentation or evidence satisfactory to the Furnishing Party that effects the Substitution. In the event the Substitution does not occur with respect to all of the Existing Security at or prior to Closing (which at Seller's election may be effected by the beneficiaries' delivery of the Existing Security to Escrow Agent to hold in escrow until the Substitute Security is released, or by the written commitment of the beneficiaries to deliver the Existing Security to the Furnishing Party promptly after Closing), such failure shall constitute a default under this Contract entitling Seller to the remedies set forth in Section 6(a) herein or any other remedies available to Seller hereunder, at law or in equity. The terms and conditions of this Section 35 shall survive closing hereunder.

36. **OFAC Compliance**

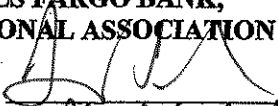
Purchaser represents and warrants that: (i) it is not on an SDN List (defined below), nor is it directly or indirectly owned or controlled by an SDN (defined below); and (ii) the purchase and sale of the REO Property, and the consummation of any other transaction contemplated by this Contract, will not violate any country sanctions program administered and enforced by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury. For the purposes hereof, an "SDN List" is defined as one of the lists published by OFAC of individuals and companies owned or controlled by, or acting for or on behalf of, OFAC targeted countries, as well as individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under OFAC programs that are not country-specific, and an "SDN" is one of the individuals or companies listed on an SDN List.

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IN WITNESS WHEREOF, this Contract is executed as of the Effective Date.

SELLER:

**WELLS FARGO BANK,
NATIONAL ASSOCIATION**

By: 
Name: DAVID L. ASH
Title: Sr. VP
Date: 10/16/14

[Signatures continue on following page]

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PURCHASER:

UNIVERSITY PARK LLC, a Delaware limited liability company *By: master Management LLC*

By: *[Signature]*
Name: ERIC S. MIDBY
Title: MANAGER
Date: 10/14/2014

EXHIBIT A

DEFINITIONS

"Action" has the meaning set forth in Section 21 of this Contract.

"Affected Tenant" means any tenant of the REO Property whose use or occupancy of the REO Property may be affected by Purchaser's entry onto and/or activities conducted upon the REO Property pursuant to this Contract.

"Bill of Sale" means a bill of sale, without representation or warranty, substantially in the form attached to this Contract as Exhibit D.

"Broker" means Keith Spencer of CBRE.

"Business Day" means any day on which Seller is open for business other than a Saturday, a Sunday or a federal holiday.

"CERCLA" has the meaning set forth in Section 13 of this Contract.

"Closing" means the closing of the transaction contemplated under this Contract.

"Closing Date" means the date thirty (30) days from the expiration of the Final Review Period.

"Commitment" means a title commitment issued by the Title Company, setting forth the status of title to the REO Property and showing all encumbrances and other matters affecting the REO Property.

"Confidential Information" shall mean any of the following to the extent supplied by Seller or on behalf of Seller or otherwise made available by or at the direction of Seller to Purchaser or any of Purchaser's Representatives: (i) all written information and documents relating to the REO Property, any portion thereof or the sale thereof, furnished to, or otherwise available for review by, Purchaser or Purchaser's Representatives, and (ii) all written analyses, compilations, data, studies, reports or other information or documents prepared or obtained by Purchaser or Purchaser's Representatives, but only to the extent containing the information or documents described in the preceding clause (i), or otherwise reflecting their review or investigation of the REO Property.

"Contract" means the Purchase Contract to which this Exhibit A is attached and which is more fully described in the introductory paragraph of such Purchase Contract.

"Deed" means a grant, bargain and sale deed sufficient to transfer and convey to Purchaser fee title to the REO Property pursuant to the terms and provisions of this Contract, substantially in the form attached to this Contract as Exhibit C.



"Delinquent Rents" means Rents which are due and unpaid as of the Closing Date.

"Due Diligence" has the meaning set forth in Section 4(b) of this Contract.

"Due Diligence Materials" means those items listed in Exhibit H attached to this Contract.

"Earnest Money" has the meaning set forth in Section 3 of this Contract.

"Effective Date" means October 14, 2014.

"Escrow Agent" means Nevada Title Company, 3993 Howard Hughes Parkway, Suite 120, Las Vegas, NV 89169, Attention: Troy Lochhead, Telephone No. (702) 251-5280, Email: Tlochhead@nevadatitle.com.

"Existing Security" has the meaning set forth in Section 35 of this Contract.

"Final Review Period" means the period beginning on the first business day after the Preliminary Review Period and ending on the day of the Regents meeting to approve the final implementation documents for the proposed student housing project, which date shall not be later than March 6, 2015, subject to any extensions that Purchaser elects to exercise.

"Furnishing Party" has the meaning set forth in Section 35 of this Contract.

"General Assignment" means a general assignment and assumption substantially in the form attached to this Contract as Exhibit F.

"Governmental Authority" means the United States, any State of the United States or any subdivision, agency, department, commission, bureau or instrumentality of any of the foregoing having jurisdiction over the REO Property.

"Land" means that certain real property more particularly described on Exhibit B to this Contract.

"Lease" means any lease currently in effect with respect to the REO Property.

"Lease Assignment" means an assignment and assumption of Seller's interest in any and all Leases, substantially in the form attached to this Contract as Exhibit E.

"New Title Exception" means a title exception which (i) first arises of record following the expiration of the Preliminary Review Period, (ii) was not created due to the acts of Purchaser, (iii) has not been consented to by Purchaser, and (iv) materially adversely affects the REO Property.

"New Title Exception Notice" has the meaning set forth in Section 11(d) of this Contract.

"New Title Policy" has the meaning set forth in Section 11(b) of this Contract.



"**OFAC**" has the meaning set forth in Section 36 of this Contract.

"**Permitted Assignee**" means any entity: (i) which owns or controls the Purchaser or (ii) which is owned or controlled, directly or indirectly, by the Purchaser, or (iii) which is under common ownership of any type with the Purchaser, or (iv) the Board of Regents of the Nevada System of Higher Education.

"**Permitted Exceptions**" mean and includes all of the following: (i) zoning and building ordinances and land use regulations applicable to the REO Property, (ii) such state of facts as are shown on any survey or as would be disclosed by an accurate survey of the REO Property, (iii) the lien of taxes and assessments not yet due and payable, (iv) any standard exclusions from coverage set forth in the jacket of the New Title Policy, (v) any exceptions caused by Purchaser, its agents, representatives or employees, (vi) all Proforma Exceptions, (vii) the Leases, (viii) all other matters which arise as a result of Seller performing its covenants hereunder, and (ix) any other liens or encumbrances of record which do not materially adversely affect title to the REO Property, the value of the REO Property or Purchaser's contemplated use of the REO Property.

"**Preliminary Review Period**" means the period beginning on the Effective Date and ending forty-five (45) days thereafter, or if that day is not a business day, the next business day thereafter.

"**Proforma Exceptions**" means and includes all of the matters set forth as exceptions on Schedule B of the Commitment, excluding only those exceptions which Seller agrees in writing to remove.

"**Purchase Price**" has the meaning set forth in Section 3(a) of this Contract.

"**Purchaser**" has the meaning set forth in the introductory paragraph of this Contract.

"**Purchaser's Loan Parties**" means (A) any lender who contemplates providing or provides financing to Purchaser in connection with the transactions contemplated by this Contract, together with the officers, employees, agents, representatives, consultants and attorneys of such lender or prospective lender, and (B) any broker who is engaged by Purchaser to identify a lender or investor or prospective lender or investor for Purchaser in connection with the transactions contemplated by this Contract.

"**Purchaser's Representatives**" means Purchaser's directors, officers, employees, affiliates, current or prospective partners, current or prospective members, current or prospective shareholders, brokers, agents or other representatives of Purchaser or such parties, including without limitation, attorneys, accountants, contractors, consultants, engineers or financial advisors.

"**RCRA**" has the meaning set forth in Section 13 of this Contract.

"**Rents**" has the meaning set forth in Section 32(a)(1) of this Contract.

"REO Property" means all of Seller's right title and interest in and to (i) the Land, (ii) any and all buildings, improvements, and fixtures located on the Land, (iii) any and all leases of premises upon the Land and/or within any such buildings or improvements, (iv) any personal property that Seller has an interest in located on the Land, and (v) any tradenames, trademarks, and other intangible property Seller has an interest in directly related to the Land and/or any such buildings or improvements located thereon.

"SDN" has the meaning set forth in Section 36 of this Contract.

"SDN List" has the meaning set forth in Section 36 of this Contract.

"Security" has the meaning set forth in Section 35 of this Contract.

"Seller" has the meaning set forth in the introductory paragraph of this Contract.

"Seller Parties" means any manager of the REO Property, each of their respective predecessors in interest and successors and assigns, together with the officers, directors, partners, employees, representatives, affiliates, members, investors, certificate holders and agents of each of the foregoing.

"Seller's Representative" means and shall be limited to Dawn Murphy, a Vice President in the Wholesale ORE Group at Wells Fargo Bank, N.A.

"Seller Response Period" has the meaning set forth in Section 11(a) of this Contract.

"State" means the State of Nevada.

"Substitute" has the meaning set forth in Section 35 of this Contract.

"Substitute Security" has the meaning set forth in Section 35 of this Contract.

"Substitution" has the meaning set forth in Section 35 of this Contract.

"Title Company" means Nevada Title Company, with its title policies underwritten by First American Title Company.



EXHIBIT B

LEGAL DESCRIPTION OF REO PROPERTY

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RERECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

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B-1



EXHIBIT C

FORM OF DEED

APN: 162-22-510-001 through
162-22-510-009

WHEN RECORDED MAIL TO:

MAIL TAX BILL TO:

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE WITNESSETH, that **WELLS FARGO BANK, NATIONAL ASSOCIATION**, for valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey to _____, a _____, whose address is _____, all that real property situated in the County of Clark, State of Nevada, described as follows:

See Exhibit "A" attached hereto and by this reference incorporated herein

TOGETHER WITH all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

SUBJECT TO:

1. General and special taxes and assessments for the current fiscal year, not delinquent, and including the personal property taxes of any former owner, if any; and
2. Restrictions, conditions, reservations, rights, rights-of-way and easements now of record, if any, or any that actually exist on the property.

C-1

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EXHIBIT "A"

Legal Description to the Grant, Bargain and Sale Deed

Real property in the County of Clark, State of Nevada, described as follows:

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS, ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RERECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

C-3

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[Handwritten signature]

EXHIBIT D

FORM OF BILL OF SALE

Bill Of Sale

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, WELLS FARGO BANK, NATIONAL ASSOCIATION ("**Seller**"), does hereby grant, bargain, sell, transfer, convey, assign, and deliver unto [_____], a [_____] ("**Purchaser**"), all of Seller's right, title and interest (if any, none being warranted hereby, and to the extent legally assignable by Seller) in and to the furniture, furnishings, supplies, spare parts, machinery, equipment, tradenames, trademarks, intellectual property and all other personal property located on (and used in connection with) the operation of the certain real property described on Exhibit A attached hereto and by this reference herein incorporated (the "**Real Estate**"), and the improvements located thereon (the "**Improvements**"), including, without limitation, those items listed on Exhibit B attached hereto and by this reference herein incorporated, except for (a) personal property belonging to tenants under existing leases of the Improvements, and (b) any management software installed on the computers located at the Real Estate (collectively, the "**Personalty**").

To have and to hold the Personalty unto Purchaser, its successors and assigns forever.

THE PERSONALTY IS HEREBY CONVEYED TO PURCHASER IN AN "AS IS," "WHERE IS," "WITH ALL FAULTS" CONDITION AND SELLER DOES NOT WARRANT, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES OF TRANSFER, QUALITY, FITNESS AND MERCHANTABILITY RELATING TO ANY OF THE PERSONALTY, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE PERSONALTY OR THE FITNESS OF ANY OF THE PERSONALTY CONVEYED HEREBY FOR A PARTICULAR USE OR PURPOSE OR FOR PURCHASER'S INTENDED USE OR PURPOSE. Further, Seller makes no representation or warranty with respect to the conveyance of any of the items assigned hereby, nor shall Seller be deemed in any event to be a warrantor, guarantor, or surety for the obligations of any maker of any warranties or guaranties assigned or conveyed hereunder. The Personalty conveyed hereby from Seller to Purchaser shall be without recourse to Seller.

[signature page follows]

20____. IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of _____,

“SELLER”

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT E

FORM OF ASSIGNMENT OF LEASES

Assignment and Assumption of Leases

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WELLS FARGO BANK, NATIONAL ASSOCIATION ("*Assignor*") does hereby transfer, assign and convey to [_____], a [_____] ("*Assignee*"), all of Assignor's right, title and interest in and to those certain tenant leases identified in the attached Exhibit B ("*Leases*"), which are in connection with the real property located in Clark County, Nevada, and legally described in the attached Exhibit A.

Assignee hereby accepts the above assignment and assumes all obligations, liabilities, and claims arising out of or relating to the Leases, and Assignee shall indemnify and hold Assignor harmless from and against any and all obligations, liabilities, and claims arising out of or relating to the Leases, prior to, or subsequent to the date hereof.

"ASSIGNOR"

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

"ASSIGNEE"

[_____]

By: _____
Name: _____
Title: _____

EXHIBIT F

FORM OF GENERAL ASSIGNMENT

General Assignment

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WELLS FARGO BANK, NATIONAL ASSOCIATION ("*Assignor*") does hereby transfer, assign and convey to [_____], a [_____] ("*Assignee*"), all of Assignor's right, title and interest in and to the following in connection with certain real property located in _____ and legally described in the attached Exhibit A ("*Real Property*"), those certain improvements located on the Real Property, including the apartment buildings commonly known as University Park Apartments ("*Improvements*"), and any personal property owned by Assignor and located on or in the Real Property or Improvements ("*Personal Property*"), which Real Property, Improvements and Personal Property are collectively referred to as the "*Property*":

1. To the extent assignable at no material cost to Assignor, any unexpired warranties in connection with the construction, installation, maintenance and repair of the Improvements and purchase of the Personal Property.

2. To the extent assignable at no material cost to Assignor, any management agreement, service or supply contracts, broker agreements for tenant leases, equipment leases and any other agreements with independent contractors relating to the management, operation and maintenance of the Improvements and Personal Property.

3. To the extent assignable at no material cost to Assignor, any rights of Assignor in and to all zoning and development entitlements, permits, licenses, approvals and authorizations granted in connection with the Real Property, and all plans, specifications, drawings, surveys and reports relating to the Property and Improvements to the extent that Assignor has the right and ability to convey such rights.

4. To the extent assignable at no material cost to Assignor, any rights of Assignor in any owners association in connection with the Property.

Assignee hereby accepts the above assignments and assumes all obligations and liabilities arising out of or relating to any of the above, accruing on and after the date hereof, and Assignee shall indemnify and hold Assignor harmless from and against any and all liabilities and obligations arising out of or relating to any of the above, accruing on and after the date hereof.



The property conveyed hereby is being conveyed without any warranty whatsoever by Assignor. Further, Assignor makes no representation or warranty with respect to the assignability of any of the items assigned hereby, nor shall Assignor be deemed in any event to be a warrantor, guarantor, or surety for the obligations of any maker of any warranties or guaranties assigned hereunder. The assignment of the property conveyed hereby from Assignor to Assignee shall be without recourse to Assignor.

“ASSIGNOR”

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Name: _____
Title: _____

“ASSIGNEE”

_____]

By: _____
Name: _____
Title: _____



EXHIBIT G

DUE DILIGENCE MATERIALS

1. ALTA survey prepared by Stovall Surveying, LLC, dated December 23, 2013.
2. Phase I Environmental Site Assessment No. 13-2966, University Park Apartments, prepared by Advanced GeoEnvironmental, Inc., dated November 27, 2013.
3. University Park Apartment Lead Report, dated July 7, 2010, prepared by Macrotec Consulting, LLC.
4. "Early Lease Termination" addendum by ConAm Management for University Park tenants.
5. Owners Title Policy No. 5011400-0801754e, dated April 4, 2014 by Nevada Title Company.
6. Asbestos Operations and Maintenance Program No. 85785.012 for University Park Apartments, dated January 9, 2001, prepared by Project Resources, Inc.
7. The following ConAm Management – University Park Apartment Reports:
 - 2014 University Park Apartment Budget dated December 6, 2013;
 - 2014 Capital Improvement Status Report;
 - Rent Roll dated July 8, 2014;
 - August Financials including: Aged Delinquencies, Comparative Cash Flow Statements, Forecast Budget Summary, General Ledger, Monthly Operations, Rent Roll, Standard Income Statement, Trial Balance Sheet.



**FIRST AMENDMENT TO PURCHASE CONTRACT
(University Park Apartments)**

This First Amendment to Purchase Contract (the "Amendment") is entered into as of November 28, 2014 by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("Seller"), and UNIVERSITY PARK LLC, a Delaware limited liability company ("Purchaser"), collectively the "Parties."

RECITALS

A. Purchaser and Seller are parties to that certain Purchase Contract dated and effective as of October 14, 2014 (the "Contract"), for the sale by Seller and the purchase by Purchaser of certain property located in Clark County, Nevada, as more particularly described in the Contract. Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in the Contract.

B. Pursuant to the terms of the Contract, the Preliminary Review Period begins on the Effective Date and ends forty-five (45) days thereafter, and the Soil Approval Date is fifteen (15) days from the Preliminary Review Period.

C. Purchaser and Seller have agreed to extend the Preliminary Review Period and amend the Soil Approval Date definition as provided herein.

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. **AMENDMENTS TO THE CONTRACT:**

A. The Preliminary Review Period shall be extended to December 15, 2014. The definition of Preliminary Review Period in the Contract shall be deleted in its entirety and replaced with the following:

"Preliminary Review Period" means the period beginning on the Effective Date and ending on December 15, 2014.

B. The Soil Approval Date definition shall be amended so that the Soil Approval Date is December 15, 2014. Thus, the second sentence of Section 4(d) of the Contract shall be deleted in its entirety and replaced with the following:

Notwithstanding anything to the contrary, Purchaser shall have until December 15, 2014 (the "*Soil Approval Date*") to approve the soil and subsurface condition of the REO Property, and Purchaser may terminate this Contract prior to the conclusion of

the Soil Approval Date if Purchaser objects in good faith to the soil and subsurface condition of the REO Property.

2. **MISCELLANEOUS PROVISIONS.**

A. Except as specifically amended above, the Contract shall remain in full force and effect and is hereby ratified and confirmed in all respects.

B. In the event of a conflict between the provisions of the Contract and this Amendment, the terms and conditions of this Amendment shall control.

C. This Amendment may be executed in multiple counterparts and through the use of counterpart signature pages (which may be detached) but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures shall be effective for the purpose of binding the parties to this Amendment.

D. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Nevada (without giving effect to any conflicts of law principles thereof).

E. This Amendment represents the final agreement between Seller and Purchaser as to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

F. Headings and titles used in this Amendment are for purposes of reference only and do not control, add to, reduce, or in any way effect the terms, rights, obligations, covenants, representations, warranties and consequences set forth in this Amendment or the Contract.

[Signatures to follow on next page]

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

SELLER:


WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Name: Dawn Murphy
Title: Vice President

PURCHASER:

UNIVERSITY PARK LLC,
a Delaware limited liability company

By: Master Management, LLC,
its managing member

By: 
Name: Eric S Midby
Title: Manager

**SECOND AMENDMENT TO PURCHASE CONTRACT
(University Park Apartments)**

This Second Amendment to Purchase Contract (the "Amendment") is entered into as of December 15, 2014 by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("Seller"), and UNIVERSITY PARK LLC, a Delaware limited liability company ("Purchaser"), collectively the "Parties."

RECITALS

A. Purchaser and Seller are parties to that certain Purchase Contract dated and effective as of October 14, 2014, as amended by that certain First Amendment to Purchase Contract dated as of November 28, 2014 (as amended, the "Contract"), for the sale by Seller and the purchase by Purchaser of certain property located in Clark County, Nevada, as more particularly described in the Contract. Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in the Contract.

B. Pursuant to the terms of the Contract, the Preliminary Review Period begins on the Effective Date and ends on December 15, 2014.

C. Purchaser and Seller have agreed to extend the Preliminary Review Period and Purchaser acknowledges its approval of the soil and subsurface condition of the REO Property as provided herein.

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. AMENDMENTS TO THE CONTRACT:

A. The Preliminary Review Period shall be extended to January 9, 2015. The definition of Preliminary Review Period in the Contract shall be deleted in its entirety and replaced with the following:

"Preliminary Review Period" means the period beginning on the Effective Date and ending on January 9, 2015.

B. The Soil Approval Date has expired and Buyer hereby acknowledges and agrees that it is satisfied with the condition of the soil and the subsurface condition of the REO Property.

2. MISCELLANEOUS PROVISIONS.

A. Except as specifically amended above, the Contract shall remain in full force and effect and is hereby ratified and confirmed in all respects.

B. In the event of a conflict between the provisions of the Contract and this Amendment, the terms and conditions of this Amendment shall control.

C. This Amendment may be executed in multiple counterparts and through the use of counterpart signature pages (which may be detached) but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures shall be effective for the purpose of binding the parties to this Amendment.

D. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Nevada (without giving effect to any conflicts of law principles thereof).

E. This Amendment represents the final agreement between Seller and Purchaser as to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

F. Headings and titles used in this Amendment are for purposes of reference only and do not control, add to, reduce, or in any way effect the terms, rights, obligations, covenants, representations, warranties and consequences set forth in this Amendment or the Contract.

[Signatures to follow on next page]

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

SELLER:

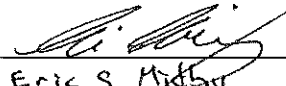
WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Name: Dawn Murphy
Title: Vice President

PURCHASER:

UNIVERSITY PARK LLC,
a Delaware limited liability company

By: Master Management, LLC,
its managing member

By: 
Name: Eric S Mylby
Title: Manager

**THIRD AMENDMENT TO PURCHASE CONTRACT
(University Park Apartments)**

This Third Amendment to Purchase Contract (the "Amendment") is entered into as of January 15, 2015 by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("Seller"), and UNIVERSITY PARK LLC, a Delaware limited liability company ("Purchaser"), collectively the "Parties."

RECITALS

A. Purchaser and Seller are parties to that certain Purchase Contract dated and effective as of October 14, 2014, as amended by that certain First Amendment to Purchase Contract dated as of November 28, 2014, and as further amended by that certain Second Amendment to Purchase Contract dated as of December 15, 2014 (as amended, the "Contract"), for the sale by Seller and the purchase by Purchaser of certain property located in Clark County, Nevada, as more particularly described in the Contract. Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in the Contract.

B. Purchaser and Seller agree to amend the Contract so Purchaser receives a \$200,000.00 credit against the Purchase Price at Closing in light of repairs needed on the REO Property.

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. **AMENDMENTS TO THE CONTRACT:**

A. A new Section 3(e) shall be added to the Contract and shall read in its entirety as follows:

"3(e) Purchaser shall receive a \$200,000.00 credit against the Purchase Price at Closing in light of repairs needed on the REO Property."

B. The Preliminary Review Period has expired and Purchaser hereby acknowledges and agrees that it is satisfied with the condition and its Due Diligence of the REO Property.

2. **MISCELLANEOUS PROVISIONS.**

A. Except as specifically amended above, the Contract shall remain in full force and effect and is hereby ratified and confirmed in all respects.

B. In the event of a conflict between the provisions of the Contract and this Amendment, the terms and conditions of this Amendment shall control.

C. This Amendment may be executed in multiple counterparts and through the use of counterpart signature pages (which may be detached) but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures shall be effective for the purpose of binding the parties to this Amendment.

D. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Nevada (without giving effect to any conflicts of law principles thereof).

E. This Amendment represents the final agreement between Seller and Purchaser as to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

F. Headings and titles used in this Amendment are for purposes of reference only and do not control, add to, reduce, or in any way effect the terms, rights, obligations, covenants, representations, warranties and consequences set forth in this Amendment or the Contract.

[Signatures to follow on next page]

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

SELLER:

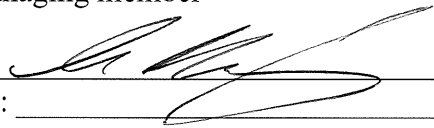
WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____
Name: Dawn Murphy
Title: Vice President

PURCHASER:

UNIVERSITY PARK LLC,
a Delaware limited liability company

By: Master Management, LLC,
its managing member

By:  _____
Name: _____
Title: _____

**FOURTH AMENDMENT TO PURCHASE CONTRACT
(University Park Apartments)**

This Fourth Amendment to Purchase Contract (the "Amendment") is entered into as of March 2, 2015 by and between WELLS FARGO BANK, NATIONAL ASSOCIATION ("Seller"), and UNIVERSITY PARK LLC, a Delaware limited liability company ("Purchaser"), collectively the "Parties."

RECITALS

A. Purchaser and Seller are parties to that certain Purchase Contract dated and effective as of October 14, 2014, as amended by that certain First Amendment to Purchase Contract dated as of November 28, 2014, and as further amended by that certain Second Amendment to Purchase Contract dated as of December 15, 2014, and as further amended by that certain Third Amendment to Purchase Contract dated as of January 15, 2015 (as amended, the "Contract"), for the sale by Seller and the purchase by Purchaser of certain property located in Clark County, Nevada, as more particularly described in the Contract. Capitalized terms not otherwise defined herein shall have the meanings assigned such terms in the Contract.

B. The Contract provides that the Purchaser shall have the right to present its project proposal for the REO Property to the Board of Regents of the Nevada System of Higher Education (the "Regents") for their approval, and further that Purchaser may terminate the Contract "for the sole reason of Purchaser having failed to receive final approval from the Regents, at any time prior to the conclusion of the Final Review Period."

C. The Final Review Period will end "on the day of the Regents meeting to approve the final implementation documents for the proposed student housing project, which date shall not be later than March 6, 2015, subject to any extensions that Purchaser elects to exercise."

D. The Contract provides for two (2) extensions of the Final Review Period, each for thirty (30) days, at Purchaser's option upon payment of an Extension Fee of \$50,000 in each case.

E. Purchaser has become aware and has advised Seller that the Regents will not consider the project proposal until their meeting in April 2015 and, for that reason, Purchaser has elected to exercise its option to extend the Final Review Period as further set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the above recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Purchaser and Seller hereby agree as follows:

1. **AMENDMENTS TO THE CONTRACT:**

A. The definition of "Final Review Period" in Exhibit A of the Contract is deleted in its entirety and replaced with the following:

"Final Review Period": means the period beginning on the first business day after the Preliminary Review Period and ending on May 5, 2015."

B. There are no further options to extend the Final Review Period without the consent of Seller.

C. In consideration of the extension of the Final Review Period to May 5, 2015, Purchaser agrees to pay the sum of \$100,000 to Seller within three (3) business days following Purchaser's receipt of a fully executed copy of this Amendment. Purchaser and Seller acknowledge and agree that the \$100,000 payment constitutes the "Extension Fee" described in the Contract and that such fee (i) is non-refundable in the event Purchaser terminates the Contract, and (ii) will be applied to the Purchase Price at the Closing. Seller hereby waives any conditions precedent to Purchaser's exercise of the right to extend the Final Review Period as may have been contained in the Contract prior to this Amendment.

2. **MISCELLANEOUS PROVISIONS.**

A. Except as specifically amended above, the Contract shall remain in full force and effect and is hereby ratified and confirmed in all respects.

B. In the event of a conflict between the provisions of the Contract and this Amendment, the terms and conditions of this Amendment shall control.

C. This Amendment may be executed in multiple counterparts and through the use of counterpart signature pages (which may be detached) but all such counterparts shall constitute but one and the same agreement. Signature pages bearing facsimile signatures shall be effective for the purpose of binding the parties to this Amendment.

D. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Nevada (without giving effect to any conflicts of law principles thereof).

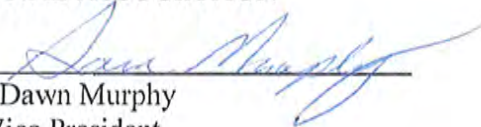
E. This Amendment represents the final agreement between Seller and Purchaser as to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

F. Headings and titles used in this Amendment are for purposes of reference only and do not control, add to, reduce, or in any way effect the terms, rights, obligations, covenants, representations, warranties and consequences set forth in this Amendment or the Contract.

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

SELLER:

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Name: Dawn Murphy
Title: Vice President

PURCHASER:

UNIVERSITY PARK LLC,
a Delaware limited liability company

By: Master Management, LLC,
its managing member


By: 
Name: Eric S Midby
Title: Manager

EXHIBIT B



First American

Reference :

Address : Multiple APNs Las Vegas, NV

Our Order No :

Escrow Officer:

COMMITMENT FOR TITLE INSURANCE

First American Title Insurance Company

INFORMATION

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

This information is not part of the title insurance commitment.

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Conditions	

**YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.
If you have any questions about the Commitment,
please contact the issuing office.**

COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company

Agreement to Issue Policy

We agree to issue a policy to you according to the terms of this Commitment.

When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

The Provisions in Schedule A.

The Requirements in Schedule B-1.


The Exceptions in Schedule B-2.

The Conditions.

This Commitment is not valid without Schedule A and Sections 1 and 2 of Schedule B.

First American Title Insurance Company

BY



PRESIDENT

ATTEST



SECRETARY

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

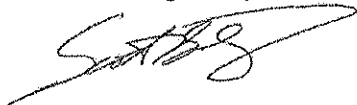
1. Effective Date: July 29, 2014 at 7:30 a.m.
2. Policy or Policies to be issued: Amount
 - a. Owners Policy CLTA: \$TBD

Proposed Insured: TBD
3. The estate or interest in the land described or referred to in this Commitment is
FEE
4. Title to the estate or interest in the land is at the effective date vested in:

Wells Fargo Bank National Association
5. The land referred to in this Commitment is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART
HEREOF

This Commitment shall not be valid or binding until countersigned by a validating officer or
authorized signatory.



Title Officer: Scott M Braatz

American Land Title Association Commitment 2006

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION I

REQUIREMENTS

The following are the requirements to be complied with:

1. Payment of the agreed amounts for the interest(s) to be insured.
2. Payment of all premiums, fees and charges due the Company.
3. Instruments satisfactory to create the estate of interest to be insured must be properly prepared, executed, delivered and filed for record, to wit:

Grant, Bargain Sale Deed from the current owner to the Proposed Insured.
Deed of Trust to be Insured herein, if any.

NOTE: A properly completed, executed and acknowledged State of Nevada Declaration of value form must accompany each deed submitted for recordation; real property transfer tax is calculated at the rate of \$2.55 per \$500.00 of consideration; basic recording fees are \$17.00 for the first page, and \$1.00 per page thereafter; a \$25.00 Nonstandard Document fee may apply.

4. The Company must be advised in writing of the name of any party not referred to in this Commitment who will acquired an interest in the land, or who will either obtain or make a loan or mortgage encumbering the land. The Company may then make additional requirements, or take additional exceptions to coverage on Schedule B, Section II.
5. Pay all taxes, charges, assessments levied and assessed against the land which are already due and payable, or which will be due and payable as of the effective dated of the policy anticipated by this Commitment.
6. Release(s) or Reconveyance(s) of the Following:

NONE

7. Our search in the public record did not disclose any open deeds of trust on the herein described property. Please confirm with your seller/borrower that there are no liens or encumbrances affecting the herein described property other than those shown on the Preliminary Report or Commitment bearing the above referenced escrow number.

8. This transaction is entitled to a Short Term Rate discount on the Title Premiums which expires on March 11, 2017.
9. It is required that Seller furnish a fully executed Owner's Affidavit prior to close of this transaction if ALTA Extended coverage is contemplated.

The right is reserved to make additional exceptions and/or requirements upon examination of said documentation.

10. Prior to the issuance of an ALTA form Policy of Title Insurance, it shall be required that this Company be furnished with an ALTA/ACSM LAND TITLE SURVEY conforming to the minimum standard requirements as revised on February 23, 2011.
11. Underwriter approval is needed to close this transaction; therefore, submit all documentation, including but not limited to requested endorsements, at least ONE WEEK prior to the contemplated closing date.

UNDERWRITER APPROVAL REQ.: The right is reserved to make additional exceptions and/or requirements upon examination of all documents submitted in satisfaction of the requirement above.

12. **The requirement that an inspection of the subject land be made prior to the close of escrow.**

NOTE: Additional exceptions and/or requirements may be added to this report upon completion of said inspection.

13. The requirement that a copy of the documentation together with all supplements, amendment, etc., thereto, of Wells Fargo Bank, National Association be furnished to this company.
14. Please provide the name(s) of the prospective purchaser(s) to the Title Department at least one week prior to the close of escrow so that we may complete this report. Additional requirements may be made at that time.

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
3. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
4. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
7. SUBSEQUENT YEAR TAXES: Taxes for the fiscal year 2014-2015 and subsequent years, a lien not yet due or payable.
Taxes for the fiscal year 2013-2014 are paid in full as to each parcel.

Parcel Nos. 162-22-510-001 thru 009

8. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

9. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.
10. Reservations and Easements in the patent from the State of Nevada, recorded January 24, 1955, in Book 81 as Document No. 68040 of Official Records.
11. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 8 of Plats, Page 27, of Official Records.
12. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, for electrical lines, recorded August 15, 1963, in Book 470 as Document No. 378570 of Official Records.
13. An unrecorded Lease executed by and between the parties named herein, for the terms and upon the subject to all of the terms, covenants, and provisions contained therein;
Dated: July 3, 2001
Lessor: Olympic Circle, a Partnership
Lessee: Web Service Company, Inc.
Term: Not less than 3 years nor more than 20 years from the date of the Lease
Disclosed by: Memorandum Of Lease
Recorded: August 22, 2001 in Book 20010822 as Document No. 02528

The present ownership of said leasehold estate and other matters affecting the interest of the lessee are not shown herein.

14. Any, rights, interest, or claims which may exist or arise by reason of the following facts as disclosed by GRANT, BARGAIN, SALE DEED recorded June 9, 2006 in Book 20060609 as Document No. 0002482 of Official Records, described as follows:

All buildings on all lots encroach into building set back lines as shown on the subdivision plat described in Item 11 herein.

Small out buildings located on Lots 4, 12, 28 and 37 lie within building set back lines as shown on the subdivision plat described in Item 11 herein.

Building located near the West line of Lot 29 encroaches into drainage easement as shown on the subdivision plat described in Item 11 herein.

Building located on Lot 1 encroaches into Nevada Power Company easement described in Item 12 herein.

15. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 of Official Records.

The above document was re-recorded on July 1, 2009 in Book 20090701 as Document No. 0001032.

The above document was re-recorded on August 19, 2009 in Book 20090819 as Document No. 0002948.

16. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for utilities, recorded June 29, 2009, in Book 20090629 as Document No. 0003323 of Official Records.
17. Water rights, claims or title to water, whether or not shown by the public records.
18. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

19. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
20. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as may be disclosed by an inspection of said premises.

Note: Notwithstanding anything to the contrary in this Commitment, if the policy to be issued is other than an ALTA Owner's Policy (6/17/06) or ALTA Loan Policy (6/17/06), the policy may not contain an arbitration clause, or the terms of the arbitration clause may be different from those set forth in this Commitment. If the policy does contain an arbitration clause, and the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.

EXHIBIT "A"
LEGAL DESCRIPTION

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RE-RECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, THAT WOULD PASS THROUGH BY OPERATION OF LAW.

Subject property commonly known as: Multiple APNs, Las Vegas, NV

SCHEDULE C

Privacy Notice (15 U.S.C. 6801 and 16 CFR Part 313): Nonpublic personal information about you is provided to us from information you submit on forms and documents and from others who are involved in your transaction. We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law. We restrict access to nonpublic personal information about you to those employees who need to know that information in order to provide products or services to you. We maintain physical, electronic and procedural safeguards that comply with federal regulations to guard your nonpublic personal information. A fullpage explanation of our privacy policy is being delivered to you separately. If you do not receive it, or if you have questions about it, please call us, and a duplicate copy will be provided to you.

This map is for assessment use only and does NOT represent a survey.
 No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.
 This map is compiled from official records, including surveys and deeds but only contains the information required for assessment. See the recorded documents for more detailed legal information.
USE THIS SCALE FIRST WHEN MAP RELATED FROM TEXT OR SCALE

ASSESSOR'S PARCELS - CLARK CO., NV.
 Michele W. Shafer - Assessor

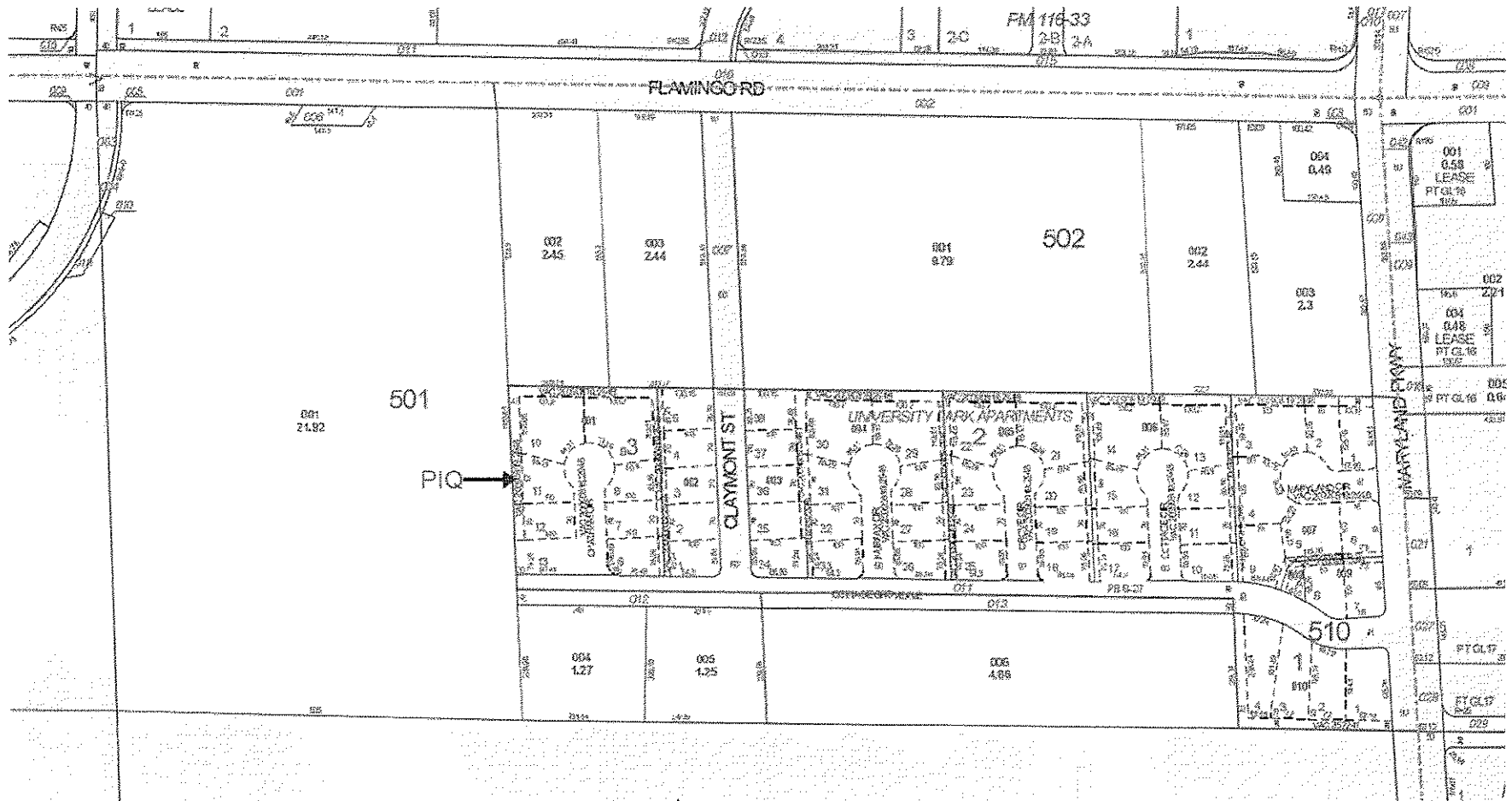
Scale: 1" = 200' Rev. 02/08/2011

MAP LEGEND

PARCEL BOUNDARY	CONDOMINIUM UNIT	001 ROAD PARCEL NUMBER
SUB BOUNDARY	AIR SPACE PCL	001 PARCEL NUMBER
PALM BOUNDARY	RIGHT OF WAY PCL	1.00 ACREAGE
ROAD EASEMENT	SUB-SURFACE PCL	202 PARCEL SUB/SECTION NUMBER
MATCH/LEADER LINE		PR 24.45 PLAT RECORDING NUMBER
HISTORIC LOT LINE		5 BLOCK NUMBER
HISTORIC SUB BOUNDARY		5 LOT NUMBER
HISTORIC PALM BOUNDARY		51.9.0001 LOT NUMBER
SECTION LINE		

T21S R61E	22	N 2 NE 4	162-22-5
139 138 140	6 5 4 3 2 1	5 4 3 2 1	
135 132 131	7 8 9 10 11 12	5 1 5 1	
129 117 116	13 14 15 16 17 18	6 2 6 2	
	19 20 21 22 23 24	7 3 7 3	
	25 26 27 28 29 30	8 4 8 4	
	31 32 33 34 35 36	5 1 5 1	

CLARK COUNTY
 NEVADA



TAX DIST 470

CONDITIONS

1. DEFINITIONS

(a)"Mortgage" means mortgage, deed of trust or other security instrument.

(b)"Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. LATER DEFECTS

The Exceptions in Schedule B - Section Two may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section One are met. We shall have no liability to you because of this amendment.

3. EXISTING DEFECTS

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. LIMITATION OF OUR LIABILITY

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements shown in Schedule B - Section One

or

eliminate with our written consent any Exceptions shown in Schedule B - Section Two.

We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. CLAIMS MUST BE BASED ON THIS COMMITMENT

Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this commitment and is subject to its terms.



First American

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you .

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**LEASE AGREEMENT
FOR
UNIVERSITY PARK
PHASE ONE**

by and between

**THE BOARD OF REGENTS OF THE
NEVADA SYSTEM OF HIGHER EDUCATION**

on behalf of

**THE UNIVERSITY OF NEVADA, LAS VEGAS
("LANDLORD")**

and

**UNIVERSITY PARK, LLC
("TENANT")**

Dated as of _____, 2015

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**LEASE AGREEMENT
FOR
UNIVERSITY PARK PHASE ONE**

This **LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE** (this "Lease") dated for reference purposes only as of _____, 2015, is made by and between the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("Landlord" or "UNLV"), and **UNIVERSITY PARK, LLC**, a Delaware limited liability company, ("Tenant"). Landlord and Tenant are individually sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

I. Background

A. The University of Nevada, Las Vegas is a public, urban research institution founded in 1957; and a part of the Nevada System of Higher Education ("NSHE"). The NSHE is governed by a thirteen person Board of Regents ("Regents") who are elected by the people of the State of Nevada. UNLV exists in accordance with the laws of the State of Nevada; and is a flagship institution of higher learning in the State, offering bachelor's, master's, and doctoral degrees.

B. On November 30, 2012, the Regents approved a comprehensive update to UNLV's Campus master plan (the "Campus Master Plan"). One of the guiding principles of the Campus Master Plan is that expanding Campus housing with both additional and varied types of housing will significantly improve the quality of Campus life. The Campus Master Plan also indicates that UNLV's peer institutions house 20-25% of their student population. UNLV currently houses approximately 6% of its student population, and UNLV is at maximum capacity.

C. A real estate analysis and demand study (the "Demand Study") has been prepared by Brailsford & Dunlavey, Inc. that determined that the demand for student housing at UNLV was significantly underserved.

D. The Campus Master Plan identified privately owned property on the north side of Campus adjacent to Cottage Grove Avenue within an area defined in the Campus Master Plan as the "Midtown District" as a location for future student housing with UNLV potentially involved on a public/private partnership basis.

E. The real property described on **Exhibit A** (the "Land") is a part of the Midtown District, approximately 14 acres in size, and currently owned by Wells Fargo N.A. ("Seller"). The Land currently has 280 apartment units arranged as 4-plexes (the "Existing Improvements") that are approximately 50 years old.

F. In August of 2014, Tenant submitted a proposal to Seller outlining a plan for the purchase and redevelopment of the Land for UNLV student housing. Tenant's proposal was submitted as part of a process in which CBRE on behalf of Seller sought bids/proposals from several developers for the redevelopment of the Land. In September of 2014, Tenant was selected by Seller as the winning bidder with the right to purchase the Land for \$20,500,000.

G. Tenant in turn approached UNLV about redeveloping the Land on a public-private basis consistent with the Campus Master Plan. In October of 2014, representatives of UNLV and Tenant met several times to discuss redevelopment of the Land and UNLV's potential involvement in that process.

H. On October 16, 2014, Tenant entered into a certain Purchase Contract (the "Purchase Contract") with Seller to purchase the Land for a purchase price of \$20,500,000 (the "Purchase Price").

I. As described in more detail below, redevelopment of the Land would involve UNLV purchasing the Land and leasing it back to Tenant and [Future Phases Developer, LLC], a Delaware limited liability company and an Affiliate of Tenant (hereinafter referred to as "FPLLC") for redevelopment. This would expand the Campus footprint in a strategically important area and ensure that UNLV maintains long term control of the Land.

II. Development Plans

J. The Land currently consists of two planning areas, which are depicted on Exhibit B and identified herein as the "Phase One Land" and the "Future Phases Land". The Future Phases Land is the subject of a separate lease agreement (the "Future Phases Lease") executed concurrently with this Lease by Landlord and FPLLC. The Future Phases Land may be further subdivided in accordance with the terms of the Future Phases Lease if there are more than two development Phases of University Park. The overall development to occur on all of the Phases of the Land is hereinafter referred to as "University Park."

K. The plan and agreement of the Parties now contemplates (i) UNLV leasing the Phase One Land to Tenant, concurrent with the Closing under the Purchase Contract, which will develop the first stage of the planned student housing improvements, and (ii) UNLV leasing the Future Phases Land to FPLLC concurrent with the Closing under the Purchase Contract, which will develop the second and subsequent (if any) stages of University Park. .

L. Tenant, FPLLC and UNLV have also entered into that certain Project Development Agreement of even date herewith (the "Project Development Agreement") which describes and governs the design and construction process of University Park in greater detail. Conceptual drawings and schematics of University Park are attached to the Project Development Agreement, which illustrate the overall design concept for University Park (the "Schematic Plans"). Full build-out of University Park is projected to include up to 3,400 Beds in three wrap-style buildings with apartment-like amenities, a limited amount of retail space, and 1,500 structured parking spaces.

The final Bed count and heights of the buildings will depend on market conditions as development of University Park proceeds.

M. It is generally intended by the Parties that University Park, in all of its Phases, will be held out to the public and potential Residents as an integral part of UNLV's On-Campus Housing stock like other On-Campus Housing facilities.

N. The first Phase of University Park development (the "**Phase One Project**") will be constructed by Tenant on the Phase One Land, approximately six (6) acres on the east end of the Land along the frontage of Maryland Parkway. The timing of development of the Phase Two Project and any subsequent Phases of University Park will be tied to the success of marketing and leasing of the Phase One Project. The development of the Future Phases of University Park is referred to in this Lease as the "**Future Phases Project**."

O. Tenant will be responsible for the financing, construction, management, maintenance, marketing, and operations of the Phase One Project. Tenant will also manage, maintain and operate the Existing Improvements that remain on the Phase One Land until such time as they are demolished as phased redevelopment of the Phase One Land proceeds.

P. Subject to certain conditions, Tenant will distribute a portion of the Available Cash of the Phase One Project (the "**Project Success Contributions**") to Student Residents (as defined below) in order to reduce future rental rates or provide other benefits directly to the Student Residents.

Q. University Park is consistent with the Campus Master Plan and the Demand Study and aligns with UNLV's vision for the revitalization of the Midtown District through public private partnerships.

R. The Regents approved a Memorandum of Understanding (the "**Memorandum of Understanding**") at their regular public meeting on December 5, 2014, in which Landlord and Tenant agreed to undertake certain actions resulting in Landlord's acquisition of the Land for the purpose of furthering UNLV's strategic interest to provide its students with safe and affordable housing, along with amenities, in close proximity to the Campus;

S. The Parties, in fulfillment of certain of the undertakings set forth in the Memorandum of Understanding, are now prepared to enter into this Lease for the development, financing, construction of the Phase One Project and management of the Premises, as described and defined below;

T. Pursuant to the terms, conditions, covenants, and provisions of this Lease, (i) Landlord desires to lease the Phase One Land to Tenant; (ii) Tenant desires to lease the Phase One Land from Landlord and construct Improvements, as defined below, upon the Phase One Land, and transfer the Improvements to Landlord; and (iii) Landlord desires to lease the Premises, as defined below, to Tenant, and Tenant desires to lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration,

the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Landlord and Tenant hereby agree as follows with the intent to be legally bound:

**ARTICLE 1.
DEFINITIONS.**

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular; (ii) all accounting terms defined in GAAP and not otherwise defined herein have the meanings assigned to them in accordance with GAAP at the applicable time; (iii) all references in this Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (iv) the word “including” shall have the same meaning as the phrase “including, without limitation,”; and (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision:

1.1. “**Academic Term**” means the spring and fall semesters of UNLV’s academic year, which run from approximately mid-January to mid-May (“**Spring Term**”) and from approximately mid-August to mid-December (“**Fall Term**”) of each calendar year.

1.2. “**Affiliate**” means any Person directly or indirectly controlling, controlled by, or under common control with another Person or a blood relative or spouse of such Person, if such Person is a natural Person. For the purposes of this definition, “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

1.3. “**Applicable Laws**” means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Premises, which are in effect from time to time.

1.4. “**Asset Management Fee**” has the meaning assigned to it in Section 14.6.

1.5. “**Available Cash**” has the meaning assigned to it in Section 5.5.

1.6. “**Beds**” means the maximum number of persons to whom the Tenant is allowed to sublease under all Applicable Laws within University Park (or a Phase or building thereof depending on the context) whether or not all such Beds are in fact leased from time to time.

1.7. “**Building Codes**” means all building codes, ordinances, and other Applicable Laws applicable to the construction of the Improvements.

1.8. “**Business Day**” means any day which is not a Saturday, Sunday, or legal holiday under the laws of the State of Nevada or United States of America.

1.9. “**Campus**” means the main Campus of the University of Nevada, Las Vegas, located at 4504 South Maryland Parkway in Clark County, Nevada.

1.10. “**Campus Master Plan**” has the meaning assigned to it in Recital B.

1.11. “**Certificate of Occupancy**” means an approved final inspection, certificate of occupancy, certificate of completion, or other similar verification from the building division of Clark County, the Public Works Board of the State of Nevada, or similar governmental agency with jurisdiction to inspect the Improvements, indicating the building, structure, or part thereof for which the approved final inspection was made or certificate was issued, was found by the building official at the time of certificate issuance or final inspection to be in substantial compliance with the provisions of Applicable Law and the technical codes.

1.12. “**Closing**” has the meaning assigned to it in the Purchase Contract.

1.13. “**Commercial Premises**” means those portions of the Premises to be used for commercial purposes, to be identified as such on the Construction Documents.

1.14. “**Commercial Sublease**” means a Sublease for space within the Commercial Premises.

1.15. “**Commercial Subtenant**” means a Subtenant of any portion of the Commercial Premises.

1.16. “**Construction Documents**” means the final plans, specifications, and drawings for the construction of the Improvements to be prepared at Tenant’s expense in accordance with the Project Development Agreement.

1.17. “**County Code**” means the Clark County Code of Clark County, Nevada.

1.18. “**Debt Service**” means, for any debt service payment date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on financing permitted under this Lease and required to design, construct, and furnish the Premises pursuant to this Lease.

1.19. “**Default Rate**” means a rate that is one percent (1%) per annum in excess of the the per annum rate of interest announced as the “prime rate” in the Wall Street Journal or its successor, in effect from time-to-time; provided that, in no event shall the Default Rate hereunder exceed the maximum amount or rate that lawfully may be charged in the circumstances, if such a maximum exists.

1.20. “**Default Termination Notice**” has the meaning assigned to it in Section 24.4.

1.21. “**Demand Study**” has the meaning assigned to it in Recital C.

1.22. “**Dwelling**” means a building or portion thereof designed or used exclusively for residential occupancy by a family or by persons residing in a community residence and within which there is interior access to all habitable rooms.

1.23. “**Effective Date**” means the date on which both the Landlord and Tenant shall have executed this Lease as set forth below their respective signatures or the later of such dates if they execute on different days.

1.24. “**Environmental Laws**” means Applicable Laws pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

1.25. “**Event of Default**” means either a Tenant Event of Default or a Landlord Event of Default.

1.26. “**Existing Improvements**” means the buildings and other structures and improvements currently existing on the Phase One Land on the Effective Date. “**Phase One Existing Improvements**” means those Existing Improvements located on the Phase One Land; “**Phase Two Existing Improvements**” means those Existing Improvements located on the Phase Two Land; “**Future Phases Existing Improvements**” means those Existing Improvements located on any of the Future Phases Land. “**Operating Existing Improvements**” means any Existing Improvements, regardless of which Phase they are located on, that remain undemolished at any given time.

1.27. “**Expenses**” means, for any period, all expenses paid in connection with the operation, maintenance and repair of the Premises during such period, including, but not limited to the following:

- (a) Taxes, charges or fees for, and taxes on, the furnishing of electricity, fuel, water, sewer, gas, oil and other utilities; security (provided, neither Tenant nor Landlord is obligated to provide security except as explicitly set forth herein);
- (b) pest control; cleaning of windows and exterior curtain walls; janitorial services; trash and snow removal; landscaping and repair and maintenance of grounds;
- (c) salaries, wages, and benefits for employees of Tenant engaged in the operation, maintenance or repair of the Premises including benefits, payroll taxes and worker’s compensation insurance;
- (d) license fees and governmental permits;
- (e) casualty and liability insurance;
- (f) cleaning supplies; uniforms and dry cleaning service;
- (g) supplies, repairs, replacements and other expenses for maintaining and operating the Premises;
- (h) the cost, including interest, amortized over its useful life or payback period of any capital improvement made to the Premises which is required under governmental law or regulation that was not applicable to the Premises at the time it was constructed or the installation of any device or other equipment which improves the operating efficiency of any system within the Premises and thereby reduces operating

expenses, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder;

(i) Tenant's accounting fees and costs for the preparation of statements of operating expenses or incurred in order to reduce operating expenses;

(j) legal fees and costs relating to the operation, repair or maintenance of the Premises or incurred in order to reduce operating expenses, service or management contracts with independent contractors and;

(k) management fees paid to third parties (provided, if such third party is Affiliated with Tenant the fees to be paid shall be at market rates);

(l) telephone, telegraph and stationery; and the costs of any other items which, under generally accepted accounting principles consistently applied from year to year with respect to the Premises, constitute operating and maintenance costs attributable to any or all of the Premises; and

(m) the Asset Management Fee;

all of the foregoing calculated in accordance with GAAP.

1.28. "Fee Mortgage" means any mortgage or deed of trust given by Landlord in connection with any borrowing or financing by Landlord or any other Person as to which Landlord's interest in the Phase One Project (or any part thereof) is encumbered or given as collateral in any form, and any modifications, extensions, renewals, and replacements thereof; provided, however, that "Fee Mortgage" does not include and specifically excludes any such instrument which is a Leasehold Mortgage.

1.29. "Financing Agreements" means any instrument or agreement between Tenant and a Leasehold Mortgagee providing financing for the Phase One Project, including any Leasehold Mortgage.

1.30. "Fixtures" means any and all equipment, machinery, and other fixtures or improvements that are permanently attached to and made part of the Improvements or that, although they can be removed from the Improvements, are necessary to operate or maintain the Improvements in a normal and ordinary way, such as HVAC systems, electrical systems, plumbing systems, and elevator systems.

1.31. "Freshman" means a UNLV Student with 29 or fewer semester credits based on a standard of 120 semester credits for graduation. If UNLV changes its method of determining graduation requirements in the future, the foregoing definition will be altered accordingly to a standard that requires approximately one-fourth of the graduation requirement. All UNLV undergraduate students with 30 or more semester credits are referred to herein as "**Upper-Class.**" The use of the terms "Freshman" and "freshmen" are used without regard to gender and apply equally to men and women.

- 1.32. **“FPLLC”** has the meaning assigned to it in Recital I.
- 1.33. **“Future Phase”** means each Phase of University Park located on the Future Phases Land.
- 1.34. **“Future Phases Land”** has the meaning assigned to it in Recital J.
- 1.35. **“Future Phases Lease”** has the meaning assigned to it in Recital J.
- 1.36. **“Future Phases Project”** means the Future Phases Land and the mixed-use development (or developments if there are more than two (2) University Park Phases) on the Future Phases Land to be developed by FPLLC or its assignee, consisting primarily of housing facilities for UNLV Students and such other uses as provided in the Future Phases Lease and the Project Development Agreement.
- 1.37. **“GAAP”** means generally accepted accounting principles consistently applied (as such term is used in the American Institute of Certified Public Accountants Professional Standards).
- 1.38. **“General Contractor”** means a contractor engaged by Tenant to perform the Improvement Work or a portion thereof.
- 1.39. **“Governmental Authorities”** means Clark County, the State of Nevada, the United States and their respective agencies but specifically excludes NSHE, the Regents and UNLV for purposes of this Lease.
- 1.40. **“Gross Revenue”** means, for any period, all revenues derived from the operation and leasing of the Premises during such period, including but not limited to any interest earned thereon, as calculated under GAAP; provided, however, that Gross Revenue shall not include: (i) Subtenant Deposits, unless and until such Subtenant Deposits are forfeited to or applied by Tenant toward rental obligations in accordance with the terms of a Sublease with respect to any failure by the Subtenant to perform its obligations; (ii) proceeds or payments under insurance policies (except proceeds of any business interruption or rental loss insurance, which proceeds are hereby deemed included in Gross Revenue); (iii) condemnation proceeds; and (iv) proceeds from any sale or financing of the Premises. Notwithstanding the foregoing, “Gross Revenue” does not include any Subtenant Deposits.
- 1.41. **“Hazardous Substances”** means “hazardous substances,” “regulated substances,” “hazardous wastes” or “solid wastes” (as such terms are defined and/or used in applicable Environmental Laws), including, without limitation, asbestos, lead paint, and polychlorinated byphenyls, or environmentally deleterious material in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to applicable Environmental Laws.
- 1.42. **“Improvements”** means any and all buildings and improvements from time to time hereafter constructed on the Phase One Land, including without limitation all additions, alterations and improvements thereto or replacements thereof, and all fixtures, machinery,

landscaping, signage, and equipment installed therein or affixed thereto necessary for the proper operation of such buildings and improvements; provided that “Improvements” does not include any of the Personal Property, Subtenant Improvements or the Existing Improvements.

1.43. “Improvement Work” means the work of design and construction required by the terms of this Lease to be performed by Tenant to cause the demolition of the Existing Improvements and Substantial Completion of the Improvements and all work of construction to be performed by Tenant and its contractors as required by this Lease and such additional work, if any, as may be required by Clark County, the Public Works Board of the State of Nevada, or other governmental or quasi-governmental agencies and public utilities such as but not limited to, the Las Vegas Valley Water District, Southern Nevada Water Authority, Clark County Water Reclamation District, Clark County School District, NV Energy, Southwest Gas, and Republic Services, as a condition to issuance of building permits or a Certificate of Occupancy or provision of services to the Premises in accordance with the Construction Documents.

1.44. “Land” means the real property described on Exhibit A, together with all rights, easements, and appurtenances thereto or in anywise belonging.

1.45. “Landlord” has the meaning assigned to it in the first paragraph of this Lease.

1.46. “Landlord Event of Default” has the meaning assigned to it in Section 31.4.

1.47. “Lease” has the meaning assigned to it in the first paragraph of this Lease.

1.48. “Lease Commencement Date” has the meaning assigned to it in Section 4.1.

1.49. “Leasehold Estate” means the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

1.50. “Leasehold Mortgage” means and includes any mortgage, deed of trust and any other security instrument or instruments constituting a lien upon Tenant’s interest under this Lease and the Leasehold Estate hereby created, and any modifications, extensions, renewals, and replacements thereof; provided, Landlord has approved or is deemed to have approved such instruments as provided in Section 24.2.

1.51. “Leasehold Mortgagee” means any holder of a Leasehold Mortgage or any interest therein.

1.52. “Lease Term” means the period from the Lease Commencement Date until the Lease Term expires pursuant to Sections 4.2.

1.53. “Lease Year” means a period of twelve (12) months beginning on the Lease Commencement Date and each twelve month period thereafter until the end of the Lease Term.

1.54. “Landlord” has the meaning assigned to it in the first paragraph of this Lease.

1.55. “Major Alterations” has the meaning set forth in Section 6.2.

1.56. “Memorandum of Lease” has the meaning assigned to it in Section 32.7.

1.57. “**Memorandum of Understanding**” has the meaning assigned to it in Recital R.

1.58. “**Net Income**” means, for any period, Gross Revenue less Expenses for such period, determined in accordance with GAAP.

1.59. “**NSHE**” has the meaning assigned to it in Recital A.

1.60. “**New Lease**” has the meaning assigned to it in Section 24.6.

1.61. “**Occupant**” means a Subtenant, licensee, user, owner, and anyone occupying or using any Dwelling or Commercial Premises under or through Tenant, including their employees, agents, contractors and invitees.

1.62. “**Off-Campus Housing**” means student housing that is not, as of the Lease Commencement Date or from time to time in the future, (i) owned, leased, managed, or otherwise controlled by UNLV or an Affiliate of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.

1.63. “**On-Campus Housing**” means student housing that is (i) owned, leased, managed, or otherwise controlled by UNLV, an Affiliate of UNLV or someone under contract with UNLV to lease, manage, or control on behalf of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.

1.64. “**Party**” and “**Parties**” have the meanings assigned to them in the first paragraph of this Lease.

1.65. “**Permitted Exceptions**” means the easements, restrictions, encumbrances, or other exceptions listed on **Exhibit C** hereto.

1.66. “**Permitted Financing**” has the meaning assigned to it in Section 24.1.

1.67. “**Permitted Residents**” has the meaning assigned to it in Section 9.9

1.68. “**Person**” means an individual, corporation, limited liability company, partnership, joint venture, unincorporated association, or other entity.

1.69. “**Personal Property**” means all furniture, furnishings, appliances, equipment, and personal property of any nature whatsoever now or hereafter located or to be located on or in the Premises other than the Fixtures.

1.70. “**Phase**” means a distinct and severable portion of the entire University Park development, including at least (i) the “**Phase One Project**”, which is being developed by Tenant on the Phase One Land; and (ii) the “**Future Phases Project**”, which is being developed by FPLLC or its assigns on the Future Phases Land or a portion thereof. If the Future Phases Project is further divided into any additional and supernumerary Phases in accordance with the Future Phases Lease, the first of such Phases on the Future Phases Land will be the “**Phase Two Project**,” the next will be the “**Phase Three Project**” and the next, if any, will be the “**Phase Four Project**.” A Phase may or may not constitute a legally conveyable parcel.

1.71. **“Phase One Land”** has the meaning assigned to it in Recital J. The boundaries of the Phase One Land may be adjusted in Tenant’s and FPLLC’s reasonable discretion.

1.72. **“Phase One Project”** means the Phase One Land and the mixed-use development on the Phase One Land to be developed by Tenant, consisting primarily of housing facilities for UNLV Students and such other uses as provided in this Lease and the Project Development Agreement..

1.73. **“Preferred Members”** has the meaning assigned to it in Section 5.5(e).

1.74. **“Premises”** has the meaning assigned to it in Section 2.1.

1.75. **“Project”** means, generically, the portion of the entire University Park to be developed by Tenant, FPLLC or any assignee of either.

1.76. **“Project Development Agreement”** has the meaning assigned to it in Recital L.

1.77. **“Purchase Contract”** has the meaning assigned to it in Recital H.

1.78. **“Purchase Price”** has the meaning assigned to it in Recital H.

1.79. **“Regents”** has the meaning assigned to it in Recital A.

1.80. **“Rent”** means Base Rent and any other sum required or stipulated to be paid by Tenant to Landlord hereunder.

1.81. **“Resident”** means any Subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sublease with Tenant, or (b) has applied for residence in the Residential Premises and been accepted by Tenant.

1.82. **“Residential Premises”** means those portions of the Premises to be used as housing facilities, to be identified as such on the Design Development Documents.

1.83. **“Residential Sublease”** means a Sublease for space within the Residential Premises.

1.84. **“Secured Lenders”** has the meaning assigned to it in Section 24.13.

1.85. **“Secured Property”** has the meaning assigned to it in Section 24.13.

1.86. **“Seller”** has the meaning assigned to it in Recital E.

1.87. **“Student Resident”** means a Resident who is also a UNLV Student.

1.88. **“Sublease”** means any lease, sublease, sub-sublease, or license of the Premises or any part thereof by Tenant or Subtenant to another party. The term “Subleases” comprises Residential Subleases and Commercial Subleases.

1.89. **“Substantial Completion”** means, with respect to the Improvements, or any portion thereof, that the fire marshal of jurisdiction has certified them, as applicable, as ready for occupancy, but not including Commercial Subtenant improvements.

1.90. “**Subtenant**” means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a Sublease.

1.91. “**Subtenant Deposits**” means all security deposits or security interests paid by a Subtenant in advance or other deposits received from any Subtenant.

1.92. “**Subtenant Improvements**” means any and all improvements from time to time made to any portion of the Premises by a Commercial Subtenant, including without limitation all additions, alterations, and improvements, or replacements thereof, which may be implemented in one or more phases, and all fixtures, machinery, signage, and equipment installed therein or affixed thereto necessary or desirable for the operation of such portion of the Premises by such Commercial Subtenant.

1.93. “**Tax**” means, individually and collectively, any and all taxes, assessments, license fees, excises and charges of every sort, nature, and kind that during the Lease Term are levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Tenant or Landlord in and to the Premises.

1.94. “**Tenant**” has the meaning assigned to it in the first paragraph of this Lease.

1.95. “**Tenant Event of Default**” has the meaning assigned to it in Section 31.3.

1.96. “**Transfer**” has the meaning assigned to it in Section 26.1.

1.97. “**Unavoidable Delay**” has the meaning assigned to it in 32.11.

1.98. “**University Park**” has the meaning assigned to it in Recital K.

1.99. “**UNLV**” has the meaning assigned to it in the first paragraph of this Lease.

1.100. “**UNLV Police**” has the meaning assigned to it in Section 10.1.

1.101. “**UNLV Student**” means an individual who (a) is enrolled at and attending UNLV for the then current semester, (b) is enrolled as a student at UNLV for a subsequent semester or has applied for acceptance at or been accepted at UNLV for a subsequent semester, or (c) with respect to summer occupancy, (i) was enrolled at and attending UNLV in the previous Spring Term or (ii) is enrolled at UNLV for the upcoming Fall Term or has applied for acceptance at or been accepted at UNLV for the upcoming Fall Term.

ARTICLE 2. LEASE AND TITLE

2.1. Lease Grant. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Phase One Land and Existing Improvements, situated in Clark County, Nevada, more particularly described in Exhibit B, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Phase One Land for pedestrian and vehicular ingress, egress and regress to and from the Phase One Land and to and from any entries and entrances located thereby and connecting with a public right-of-way whether now existing or acquired subsequent to the execution and delivery of

this Lease, together with all Improvements now existing or to be constructed thereon (collectively, the “**Premises**”). Such rights of access granted to Tenant hereunder shall be non-exclusive and extend to all Subtenants of Tenant, and all employees, licensees, and invitees of Tenant and/or Tenant’s Subtenants. The Premises include the Residential Premises and the Commercial Premises.

2.2. Title. Title to the Phase One Land and Existing Improvements shall be free and clear of all title exceptions except the Permitted Exceptions, to be evidenced by a Leasehold Title Insurance Policy, with a no encroachment endorsement, on the Phase One Land and Existing Improvements insuring Tenant’s Leasehold Estate in the Phase One Land and Existing Improvements subject only to the Permitted Exceptions.

2.3. Other Easements. Notwithstanding any other provision of this Lease, Tenant and Landlord shall reasonably cooperate with one another in good faith to define and grant additional necessary easements relating to or benefiting the Premises on or over the Campus. Further, Landlord shall timely grant to Tenant access, temporary access, sidewalk, and/or utility easements (including without limitation electricity, cable, data, gas, water, storm water, and sewer) over and across the Campus as are needed for Tenant’s development, construction, and operation of the Premises. In addition, UNLV shall, from time to time, upon request by Tenant, exercise reasonable efforts and cooperate with Tenant, at no material cost to Landlord, in order to obtain releases, annulments, relocations, or abandonments of existing easements and other Permitted Exceptions that Tenant determines need to be released or abandoned in connection with the development and construction of the Premises.

2.4. Title to Improvements. Ownership of Improvements constructed by Tenant shall vest in UNLV upon Substantial Completion subject, however, to Tenant’s rights under this Lease.

**ARTICLE 3.
[INTENTIONALLY OMITTED]**

**ARTICLE 4.
LEASE TERM.**

4.1. Lease Term Commencement. The term of this Lease (the “**Lease Term**”) shall commence on the later of (a) the Effective Date, or (b) the date Landlord acquires title to the Phase One Land (the “**Lease Commencement Date**”).

4.2. Lease Term Expiration. Subject to the early termination provisions of this lease, including but not limited to Section 4.4, the Lease Term shall expire on the fortieth (40th) annual anniversary of the Lease Commencement Date unless Tenant exercises its Extension Option pursuant to Section 4.3.

4.3. Tenant's Extension Option. If Tenant Commences Construction of the Phase One Project, then Tenant shall have the option (the "**Extension Option**") to extend the Lease Term as follows:

(a) Tenant's Extension Option shall be exercised, if at all, by written notice from Tenant to Landlord within one year of the issuance of the first Certificate of Occupancy for any dwelling unit on the Premises.

(b) If Tenant exercises the Extension Option, the Lease Term shall end on the earlier of (i) or (ii) below:

(i) the fortieth (40th) annual anniversary of the date on which one or more Certificates of Occupancy have been issued with respect to any dwelling unit on the Premises; or

(ii) the forty-second (42nd) annual anniversary of the Lease Commencement Date.

4.4. Failure to Commence Construction.

(a) In the event Tenant shall fail to Commence Construction (as hereinafter defined) within two (2) years following the Effective Date, Landlord shall have the right, by written notice to Tenant, FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease (an "**Intent to Terminate**"), to terminate this Lease. The Intent to Terminate shall contain the effective date of the proposed termination which shall be not less than 180 days after the date of the Intent to Terminate.

(b) In the event Tenant does Commence Construction prior to the termination date specified in the Intent to Terminate, the Intent to Terminate shall be void and the Lease shall continue as otherwise provided. If Tenant shall fail to Commence Construction prior to the expiration of such 180 period, Landlord may terminate this Lease at any time thereafter by written notice to Tenant; FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease; provided, if Tenant does Commence Construction prior to the date Landlord terminates this Lease, Landlord's right to terminate shall expire.

(c) For purposes of the foregoing, the term "**Commence Construction**" refers to Tenant having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Phase One Project, and (c) commenced actual grading of the Phase One Land.

(d) In the event Landlord terminates this Lease in accordance with Section 4.4, the Future Phases Lease shall also terminate in accordance with its terms upon the third anniversary of the termination of this Lease and FPLLC shall have the right to continue to operate the Existing Improvements (as defined in the Future Phases Lease) until that time.

**ARTICLE 5.
RENT.**

5.1. Base Rent. Base Rent shall be payable on the first day of the calendar month immediately following the Lease Commencement Date and on the first day of each calendar month thereafter during the Lease Term. Base Rent will be prorated for any partial month prior to the Lease Commencement Date and any partial month at the end of the Lease Term on the basis of the actual number of days in such month. Base Rent shall be due monthly in advance on the first day of each calendar month as follows:

THE FOLLOWING DOLLAR AMOUNTS ARE APPROXIMATE AND BASED ON PHASE ONE LAND BEING 40% OF TOTAL ACREAGE. IF THE BOUNDARIES OF PHASE ONE ARE ADJUSTED OR IF PHASE ONE LAND IS LESS OR GREATER THAN 40% OF THE TOTAL ACREAGE THE DOLLAR AMOUNTS WILL BE ADJUSTED ACCORDINGLY IN THIS LEASE AND IN THE FUTURE PHASES LEASE SUCH THAT THE SUM OF THE INITIAL (I.E., LEASE YEARS 1 THROUGH 4) TOTAL BASE RENT UNDER BOTH LEASES SHALL BE \$550,000 PER YEAR, AS FURTHER PROVIDED IN THE PROJECT DEVELOPMENT AGREEMENT.

<u>Lease Years</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1 through 4	\$ 220,000	\$ 18,333
5 through 8	\$ 226,600	\$ 18,883
9 through 12	\$ 233,398	\$ 19,450
13 through 16	\$ 240,400	\$ 20,033
17 through 20	\$ 247,612	\$ 20,634
21 through 25	\$ 255,040	\$ 21,253
26 through 30	\$ 262,692	\$ 21,891
31 through 35	\$ 270,572	\$ 22,548
36 through 40	\$ 278,689	\$ 23,224
41 and 42 ¹	\$ 287,050	\$ 23,921

¹ Lease Years 41 and 42 apply only if the Lease Term is extended pursuant to Section 4.3.

5.2. Base Rent Credit. Landlord acknowledges that, by the terms of the Project Development Agreement, Tenant and FPLLC made or are obligated to make a prepayment of the Base Rent under this Lease and under the Future Phases Lease in the amount of Two Million Dollars (\$2,000,000) (the “***Prepaid Rent***”) at the closing of the Land acquisition as described in the Project Development Agreement. Such Prepaid Rent shall be credited against (a) the Base Rent payable by Tenant pursuant to Section 5.1, and (b) the Base Rent payable by FPLLC under the Future Phases Lease in installments in the order that such payments are due until such amount is exhausted as more fully described in the Project Development Agreement. Tenant shall not be responsible for cash payments of Base Rent until the first month of the Lease Term in which the balance remaining of the Prepaid Rent is insufficient to fully cover the Base Rent payment due.

5.3. Application of Gross Revenue. Gross Revenue from the operation of the Premises shall be applied monthly or more frequently as required in the following order:

- (a) Payment of fees due to any trustee holding and making disbursements of Gross Revenue in accordance with the terms of the Financing Agreements;
- (b) Payment of Base Rent;
- (c) Payment of interest due to Leasehold Mortgagees;
- (d) Payment of principal and all other charges and expenses due to Leasehold Mortgagees or as otherwise required in any Leasehold Mortgage, including any debt service reserves;
- (e) Funding of the Project Reserve Fund as provided in Section 14.2 and any other operating and maintenance reserve required in any Financing Agreement;
- (f) Payment of all Expenses not included in Sections 5.3(a) through 5.3(e);
- (g) Payment of any Asset Management Fee as described in Section 14.6;
- (h) The balance in the manner described in Section 5.5.

Without limiting the foregoing, Tenant agrees that, with respect to any payments for which Gross Revenue derived from the operation of the Premises are the source of funds, Base Rent shall have priority of payment over any costs and expenses incurred by Tenant, including payment to Leasehold Mortgagees, and operations and maintenance; provided, Tenant may pay such other costs and contribute to appropriate reserve funds monthly immediately after payment of the monthly installment of Base Rent.

5.4. [Intentionally Omitted]

5.5. Project Success Contributions.

- (a) That portion of Gross Revenue remaining after (a) payment or funding of the sums described in Section 5.3(a) through 5.3(g), and (b) distributions to Preferred Members of Tenant is hereafter referred to as “***Available Cash***.”

(b) Subject to all of the terms and provisions hereof, commencing in the first Lease Year after the later of (i) substantial completion of construction of the Phase One Project, or (ii) the date that all Preferred Members of Tenant have received (or would have received if seventy-five percent of all Available Cash had, in fact, been distributed to Preferred Members) a return of their capital contributions and all additional distributions to which they are entitled (“**Preferred Returns**”), Tenant shall deposit in an interest bearing fiduciary account an amount equal to twenty-five percent (25%) of the Available Cash of the Phase One Project earned in the prior Lease Year, which amount is hereafter referred to as the “**Project Success Contribution.**”

(c) For purposes of the calculations referred to in this Section 5.5 only, the Preferred Returns shall be an amount equal to the sum of:

(i) The total amount of capital contributions made by Preferred Members of Tenant, subject to Section 5.5(d); and

(ii) Interest on the foregoing amount described in Section 5.5(c)(i) on the entire time such funds are held by Tenant as capital contributions from the Preferred Members equal to the lesser of (1) the actual interest paid to or accrued by Preferred Members, or (2) a fixed rate equal to eighteen percent (18%) per annum, compounded annually.

(d) Notwithstanding anything to the contrary, for purposes of the calculation referred to in this Section 5.5 only, the amount of the capital contributions made by Preferred Members to be used in this calculation shall not exceed thirty percent (30%) of the projected total project development cost.

(e) For purposes of the calculations to be made pursuant to this Section 5.5 only, the term “**Preferred Members**” means members of Tenant that contribute capital to Tenant without voting rights but with a right to return of their capital and a stated rate of interest on such contributed capital before distributions may be made to other members of Tenant; provided, entities that are Affiliated with Tenant and natural persons who are descendants (as defined in NRS 132.085) of John H. Midby shall not be deemed Preferred Members for this purpose.

(f) Nothing in this Section 5.5 shall be construed to dictate or restrict or in any way modify the financial arrangements between any of the members that constitute the Tenant but are intended only to affect the calculation of Project Success Contributions.

(g) Project Success Contributions shall be funded solely from Available Cash and are expressly subordinate to, and only payable after payment of or provision for, all Expenses and the Preferred Returns.

(h) On or before that date which is the earlier of thirty (30) calendar days after the date on which Tenant receives its annual audited financial statements following

each Lease Year or one hundred twenty (120) calendar days after the expiration of each Lease Year, Tenant shall provide a statement (the “**Calculation Statement**”) showing the Available Cash for the previous Lease Year. Each Calculation Statement shall set forth the calculation used to determine the Available Cash with sufficient detail for Landlord to check the calculation and determination.

5.6. Payout of Project Success Contributions.

The funds in the Project Success Contribution account shall be paid out as follows:

(a) Not later than February 28 of each calendar year, Tenant shall determine the total Project Success Contribution for the preceding year;

(b) Such sum shall be divided by the number of Student Residents within the Premises as of January 1 and the product thereof (“**Rebate Amount**”) shall be applied, with respect to each Student Resident, **first**, as a credit against any past due rental obligation of such Student Resident; **second**, as a credit against such Student Resident’s rental obligation for the month of February; and

(c) If any portion of the Rebate Amount remains after the foregoing, then Tenant shall deliver to such Student Resident a check in the amount of the remaining balance by April 1 of the same calendar year.

Nothing in this Lease is intended to constitute any Student Resident as a third party beneficiary; provided, UNLV may enforce the foregoing provisions regarding Project Success Contributions by an action at law or in equity.

5.7. Landlord’s Audit Right. It is expected that annual financial statements will be produced for both the Residential Premises and Commercial Premises, if any. It is further expected that Tenant shall have said annual financial statements consolidated as one and subject to a single audit by a firm of independent certified public accountants selected by Tenant, subject to UNLV’s approval, which shall not be unreasonably withheld or conditioned; provided, that such audit shall contain discrete and separate statements of operating results and related balance sheets on an accrual basis in accordance with GAAP sufficient for the Parties to ascertain the finances of both the Residential Premises and Commercial Premises. The Parties shall cooperate in good faith to provide availability and access to financial information and documents necessary for said audit to be conducted.

Landlord shall have the right, at Landlord’s expense, to audit Tenant’s calculations provided in any Calculation Statement as follows:

(a) Tenant shall make Tenant’s records relating to or supporting the calculations set forth on any Calculation Statement available at Tenant’s offices for Landlord to review for such purpose. Tenant shall retain such documents for at least three (3) years after any Calculation Statement has been provided to Landlord hereunder.

(b) Landlord shall have the right to claim an adjustment of the calculations set forth on any Calculation Statement; provided that any such claim shall be required to be made by written notice delivered to Tenant within ninety (90) calendar days after the date on which Landlord receives such Calculation Statement from Tenant. Any such claim shall be made by notice to Tenant within such ninety (90) calendar day period, specifying the reasons for such claim for adjustment in detail sufficient for Tenant to understand the basis for Landlord's claim. If Landlord fails to claim an adjustment in such manner and time with respect to any Calculation Statement, the Parties shall have no further right hereunder to challenge the determinations set forth in the applicable Calculation Statement. Notwithstanding the foregoing, if such claim for adjustment is of the nature that could not have been reasonably identified or known by the Party after evaluation and review of the Calculation Statement, then this Section 5.7(b) shall not apply and the effected Party shall be made whole as mutually agreed upon by the Parties.

(c) If Landlord timely claims an adjustment under Section 5.7(b) Tenant and Landlord shall use reasonable good faith efforts to resolve any such claim within forty-five (45) calendar days after the date on which the notice of claim was given by Landlord. If Tenant and Landlord are unable to resolve such claim within such forty-five (45) calendar day period, either Landlord or Tenant may submit such dispute to arbitration in accordance with Article 28.

(d) In the event that any such audit verifies that Project Success Contributions has been overpaid for any period, then Tenant shall deduct the overpayment from all subsequent payments until the overpayment amount is exhausted.

(e) In the event that any such audit verifies that Project Success Contributions has been underpaid for any period, then Tenant shall promptly make any necessary additional payment.

(f) Tenant will pay Landlord's reasonable accounting costs in the event the Landlord incurs expenses of a separate audit as a result of any discrepancies of more than five percent (5%) of the audited amount.

5.8. Limitations. Notwithstanding anything set forth herein to the contrary, during any period when Landlord or its successor ceases operation of an institution for higher education on the Campus or the Leased Premises are no longer designated by Landlord as On-Campus Housing, Tenant shall have no obligation to pay Project Success Contributions during such period; provided, however, that Project Success Contributions shall not cease (a) for any period when Campus operations are disrupted due to Unavoidable Delays or classes are not in session due to holidays or other regularly scheduled breaks in classes or (b) as the result of any change in operations or class offerings on the Campus or any closure, sale, or other transfer of any portion of the Campus so long as the balance of the Campus is operated as an institute of higher education.

ARTICLE 6.
ALTERATIONS OF THE IMPROVEMENTS.

6.1. Alterations. Except as provided in Section 6.2, after construction of the Improvements has been completed by Tenant, Tenant may from time to time make such alterations, additions, improvements, and replacements to the Premises as it from time to time determines to be appropriate. Such alterations, additions, improvements and replacements, excepting normal maintenance and repairs and any Subtenant Improvements, shall be subject to prior approval by the Landlord, which such approval shall not be unreasonably withheld, conditioned, or delayed.

6.2. Alterations of Completed Improvements.

(a) Minor Alterations. Tenant may alter and make leasehold improvements for Occupants in areas of the Premises not visible from outside the building in which such Occupants reside or conduct business at any time during the Lease Term in Tenant's discretion.

(b) Major Alterations. After a Certificate of Occupancy has been issued for the Premises, the Tenant shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping or other exterior features of the Improvements that are visible from outside the building to which such Certificate of Occupancy relates or otherwise materially alter the Premises in a manner contrary to the use and design features set forth in the Construction Documents ("Major Alterations") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed alteration, its impact, if any, upon improvements existing upon or planned for under the Construction Documents on other portions of the Campus.

6.3. Construction of Alterations. All alterations and additions made in accordance with Section 6.2 shall be constructed in a good and workmanlike manner, with good quality new materials and equipment, in compliance with Applicable Law, and shall be completed with due diligence. If Tenant shall fail to comply with the foregoing requirements, the Landlord may, within a reasonable time after its discovery thereof, direct in writing that the Tenant so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of the Landlord. The Tenant shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

ARTICLE 7.
TAXES, ASSESSMENTS, AND UTILITIES.

7.1. UNLV's Tax Exemption. During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Premises. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Premises will be exempt from all real and tangible personal property ad valorem taxation pursuant to NRS 361.157(c).

Further, the Parties acknowledge and agree that it is the intent and expectation of the Parties that Tenant's leasehold interest in the Premises or other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation.

7.2. Right to Contest Taxes. If the imposition of any Tax shall be deemed by Tenant or Landlord to be improper, illegal, or excessive, Tenant may, in its own name, dispute and contest the same and, in such event and to the extent permitted by Applicable Laws, any such Tax need not be paid until adjudged to be valid; provided, however, Tenant shall in writing first notify Landlord of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage concerning the contest of taxes. Unless so contested, any Tax shall be paid by Tenant or Landlord, as applicable, within the time provided by Applicable Laws, and if contested, any such Tax shall be paid before the execution upon or foreclosure of any lien for any Tax on the Premises.

7.3. Tax on Receipt of Rent. Landlord shall be solely responsible for the payment of any tax, assessment, charge or excise on, attributable to, or measured by the Base Rent or by any other payments received by Landlord under this Lease other than payments in the nature of reimbursement to Landlord.

7.4. Utilities. Tenant shall, during the Lease Term, pay and discharge punctually, as and when the same shall become due and payable all rents and charges for sewer, water, steam, heat, gas, hot water, electricity, light, and power, and other service or services, furnished to the Premises during the same period (hereinafter referred to as "Utility Expenses"). Notwithstanding the above, Residents may be separately metered for any or all utilities and shall directly pay said Utility Expenses to the extent separately metered during the terms of their Subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

7.5. Tax Benefits. Landlord and Tenant agree that as between them, Tenant shall be entitled to all depreciation and/or amortization deductions, any state and/or federal investment credits, and to all other state and/or federal income tax deductions and credits which may be available with respect to the Premises, including without limitation, the Phase One Land, Improvements, and/or Personal Property; provided, that Landlord makes no representations or warranties regarding such deductions and credits, which shall be the sole responsibility of Tenant.

ARTICLE 8.
ADVERTISING AND MARKETING.

Tenant shall be responsible and shall have sole authority for marketing and leasing of the Premises except as may be explicitly provided in this Lease. Landlord hereby covenants and agrees, however, as follows, which covenants and agreements shall survive as obligations of the original Landlord following any Transfer pursuant to Article 26 hereof:

8.1. Advertising/Marketing. The Parties shall work in good faith to facilitate the rental and leasing of University Park.

(a) Tenant may, throughout the Lease Term, market the Residential Premises to UNLV Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Residential Premises as On-Campus Housing.

(b) Tenant may, from time to time, present to UNLV advertising and marketing content for UNLV web sites and other media used by UNLV or its licensees to advertise on-Campus housing and/or written content and images intended for email distribution. UNLV agrees to place such content on its web site in a manner substantially similar to other on-Campus housing and to distribute by email as applicable to all UNLV Students, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen (except as an inducement to sublet from Tenant after the Freshman year) as long as the restrictions described in Section 8.3 are in effect.

(c) UNLV will allow Tenant to place advertising and marketing content in any written materials and mailings, signage, and similar media in a manner substantially similar to other on-Campus housing, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen as long as the restrictions described in Section 8.3 are in effect.

(d) UNLV shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised on the same basis as other on-Campus housing.

(e) The Parties agree that the Premises shall be marketed as “Upper-Class” or “Move-Up” housing.

(f) Information regarding University Park will be included in UNLV’s catalogues and informational brochures distributed to UNLV Students, at the time of their next printing and printing for any subsequent Lease Year, and on UNLV’s web sites and other media outlets advertising and marketing housing.

(g) Nothing in this Lease shall prohibit Tenant from conducting normal and ordinary marketing activities typically conducted by Off-Campus Housing operators.

(h) Tenant and UNLV will coordinate their efforts and cooperate with each other to market and make the Residential Premises and other on-Campus housing properties available to participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Tenant, subject to the terms and provisions of Section 9.9 hereof.

(i) Tenant shall be entitled to actively participate in transfer student orientation sessions, welcome week activities and other student orientation sessions or similar events for purposes of marketing University Park, subject to reasonable rules and regulations promulgated by UNLV..

(j) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Premises or to other on-Campus housing properties.

8.2. AVS Housing Group. UNLV has recommended to Tenant that Tenant retain AVS Housing Group, LLC to assist Tenant in marketing, leasing, contract administration, room assignments, operations and facility management duties on the Premises and such other services as it currently provides for UNLV's other on-Campus housing. The Parties acknowledge and agree, however, that Tenant is under no obligation to do so and that failure to do so will not affect or diminish UNLV's obligations as set forth in this Lease. UNLV further agrees that it waives any objection to Tenant retaining AVS Housing Group, LLC or any Affiliate thereof based on any potential or perceived conflict of interest so long as AVS Housing Group, LLC or its Affiliate agree to act on behalf of UNLV and Tenant on a comparable basis except as relates to fees charged by AVS Housing Group, LLC., which shall be separately negotiate between Tenant and AVS Housing Group, LLC.

8.3. Freshman Housing Policy.

(a) The Parties acknowledge that UNLV currently has a policy requiring Freshman students to live in specified On-Campus housing that does not include University Park. Tenant agrees not to market or lease to Freshmen as long as UNLV maintains such policy and does not permit Freshmen to live in any On-Campus facility that is not owned and operated by UNLV.

(b) UNLV may, in its sole discretion, allow Freshmen to reside in the Premises as overflow Freshman housing in the event that UNLV's owned and operated On-Campus housing is inadequate to meet the demand for Freshman housing; provided, Tenant is not required to accept Freshmen.

(c) UNLV shall provide Tenant with a means to verify the status of any applicant for a Sublease as a UNLV Student or other person who is entitled to reside in the Residential Premises pursuant to Sections 9.9(a) through 9.9(i). It is the Parties' intent that such means will be available for instantaneous electronic confirmation of status, but in any event, the confirmation shall be within three (3) business days of Tenant's request

to Landlord. Such means to confirm student status will be available not later than ninety (90) days prior to the beginning of each Academic Term and Tenant shall have the right to rely on such means for the purposes of this Lease. If a Sublease applicant disagrees with UNLV's determination as communicated to Tenant, UNLV will, at Tenant's request and with consent of the applicant, provide a written determination of the applicant's eligibility to reside in the Premises.

ARTICLE 9.

RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS.

9.1. **Housing Development Restriction.** Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of, or permit to be developed on any land that UNLV, NSHE or any of their Affiliates own or control, any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Phase One Project ("**Phase One Occupancy Date**"); or
- (b) the Phase One Achievement Date set forth below in Section 9.4(c) on which the Phase One Project is deemed to have achieved the Phase One Performance Standards.

The foregoing covenant is referred to herein as the "**Housing Restriction**").

9.2. **Extension of Housing Restriction.** In the event the Phase One Performance Standards are met before ten (10) years have passed from the Phase One Occupancy Date and UNLV intends to commence development of Restricted Housing as permitted by Section 9.1(b), UNLV agrees to first provide Tenant and FPLLC with a written notice of such intent. FPLLC may notify UNLV within thirty (30) days of such notice of intent that FPLLC elects to proceed with its development of (a) the Future Phases Project, or (b) the Phase Two Project if FPLLC elects to create more than one Phase of development on the Future Phases Land (either of (a) or (b) in this sentence being hereafter referred to as the "**Next Phase Project**"). If FPLLC gives timely written notice to UNLV and thereafter proceeds with development of the Next Phase Project, the Housing Restriction shall be extended until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Next Phase Project ("**Next Phase Occupancy Date**"); or
- (b) the date the Next Phase Project achieves the Next Phase Performance Standards set forth below in Section 9.5; or
- (c) the earlier of the following two dates unless FPLLC shall Commence Construction on the Next Phase Project before such date:
 - (i) the date that is eighteen months following the Phase One Achievement Date, or
 - (ii) the ten (10) year anniversary of the Effective Date.

For purposes of this Section 9.2, the term “**Commence Construction**” refers to FPLLC having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Next Phase Project, and (c) commenced actual grading of the Next Phase Land.

9.3. “Restricted Housing” Defined.

(a) As used herein, “**Restricted Housing**” means any Dwelling designed, intended or used for any persons other than UNLV Students in their Freshman year of college.

(b) “**Dwelling**” means a building or portion thereof designed or used for residential occupancy by an individual, family, group of unrelated individuals, or by persons residing in a community residence, and includes factory-built homes, manufactured homes, one-family, two-family and multiple-family dwellings, apartments, flats, and community residences, and any other building wherein human beings may be lawfully housed such as a “boarding house”, “lodging house”, “fraternity”, “sorority”, “dormitory”, or any other group living arrangement for unrelated individuals.

(c) Notwithstanding anything herein or in any other agreement between the Parties to the contrary, the Housing Restriction shall **not** apply to any Dwelling located west of Interstate Highway 15 or north of Sahara Avenue.

9.4. Phase One Performance Standard. The “**Phase One Performance Standard**” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Phase One Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “**Occupied**” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for Phase One shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by Tenant and the Leasehold Mortgagees.

(c) To provide Tenant with sufficient time to calculate the preceding year’s Debt Service Coverage Ratio, the Phase One Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.4(b) and (ii) the date on which the occupancy requirement in 9.4(a) is achieved (the “**Phase One Achievement Date**”).

As used herein, the term “**Debt Service Coverage Ratio**” means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.5. Next Phase Performance Standard. The “Next Phase Performance Standard” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Next Phase Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “Occupied” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for the Next Phase Project shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by FPLLC and the Leasehold Mortgagees.

(c) To provide FPLLC with sufficient time to calculate the preceding year’s Debt Service Coverage Ratio, the Next Phase Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.5(b) and (ii) the date on which the occupancy requirement in 9.5(a) is achieved (the “Next Phase Achievement Date”).

As used herein, the term “Debt Service Coverage Ratio” means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.6. Memorandum of Housing Restriction. Tenant may, at Tenant’s sole cost, record a memorandum of the Housing Restriction against any property now owned or hereafter acquired by the Landlord or Affiliate of Landlord for the benefit of UNLV and located within the geographical limits described in Section 9.3.

9.7. University Park Information. Landlord acknowledges that Tenant is making a significant investment to develop the Premises based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to UNLV Students and prospective UNLV Students who have applied for admission to UNLV, potential participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Landlord.

9.8. Leasing Policies of UNLV. Except as explicitly provided in this Lease, UNLV shall not implement any policy or take any action which restricts or discourages UNLV Students from residing at the Residential Premises.

9.9. Permitted Residents. Tenant shall have the right to market and sublease the Residential Premises only to UNLV Students (except Freshmen as provided in Section 8.3), including but not limited to the following UNLV Students and others (“Permitted Residents”):

(a) All classifications of UNLV Students, including undergraduates (except Freshmen as provided in Section 8.3), graduate students and post-graduates;

(b) Current Subtenants of the Residential Premises;

(c) UNLV Students living in Off-Campus Housing, in an effort to attract them to the Residential Premises;

(d) UNLV Students living in UNLV's On-Campus Housing, in an effort to attract them to the Residential Premises rather than moving off-Campus;

(e) Transfer students or former UNLV Students applying for admission or re-admission to UNLV;

(f) UNLV faculty and staff;

(g) Participants in summer camps, seminars, and conferences operated by UNLV or others at the Campus;

(h) Participants in summer camps, seminars, and conferences independently contracted by Tenant;

(i) Students enrolled in other educational institutions including, but not limited to, local community colleges; and

(j) to any other individual with respect to any vacancies in the Premises as of July 1 of any year subject to the requirement that any Subleases covered by this Section 9.9(j) are terminable on or before the following June 30 and such premises are then made available for individuals described above in this Section 9.9.

(k) to any other individual without regard to the restrictions set forth in Section 9.9(j); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(k) shall not exceed five percent (5%) of the total number of Beds.

Notwithstanding anything in this Lease to the contrary, the foregoing restriction on Tenant's right to enter into Subleases shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

9.10. Supplemental Advertising and Marketing. Nothing in this Lease is intended or shall be construed as limiting or restricting Tenant from engaging in any additional marketing or advertising of the Premises in its sole discretion.

ARTICLE 10.

POLICE AND SECURITY SERVICES.

10.1. Outdoor Patrols. The Premises are within the jurisdiction of the University of Nevada, Las Vegas Department of Police Services (the "**UNLV Police**"). Landlord shall cause the UNLV Police to patrol the outdoor common areas of the Premises in substantially the same manner and frequency as such patrols are conducted at other Campus buildings and facilities.

10.2. Supplemental Services If requested by Tenant, the UNLV Police will provide additional services ("**Supplemental Services**") such as internal patrols, security at events, or other situations with respect to which Tenant requests police presence on the Premises in the same

manner as other on-Campus academic, student housing facilities and retail operations on the Campus: provided, Tenant understands that such other academic, housing facilities and retail operations on the Campus pay the UNLV Police for Supplemental Services provided. If Tenant requests such Supplemental Services, the UNLV Police will charge Tenant a fee, annually or on a more frequent schedule, determined in a manner similar to that used to set the fee paid by other residential or commercial establishments on-Campus.

10.3. Private Security Services Tenant shall have the right in its sole discretion, but no obligation, to provide additional unarmed private security forces to supplement those provided by the UNLV Police and the Las Vegas Metropolitan Police force at Tenant's sole cost and in compliance with all Applicable Laws. Prior to engaging any private security, Tenant shall first obtain the written consent of UNLV Police, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 11. PROHIBITED USES.

11.1. Prohibited Uses. Notwithstanding any other provision of this Lease to the contrary, no portion of the Premises shall be used for the following purposes:

(a) Gaming, casino gambling, slot machines, video or other electronic gambling devices, except that the sale of State lottery tickets is permitted if the State of Nevada authorizes a State lottery.

(b) The sale of firearms, explosives or lethal weapons sales or establishments;

(c) An adult theater, adult bookstore, adult video store or other establishment which shows, previews, or prominently includes, as a part of its stock-in-trade for sale, rental or other consumption or entertainment, or which otherwise conspicuously displays, advertises, or conspicuously promotes for sale or rental: (a) movies, films, videos, magazines, books, discs or other medium (whether now or hereafter developed) that are rated "NC-17" by the Motion Picture Association of America, Inc. (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature; or (b) sexually explicit games, toys, devices, or similar merchandise.

(d) The sale, dispensing or use of marijuana or marijuana-infused products (as defined in NRS 453A.112), whether for medicinal or other purposes.

(e) An adult nightclub, or any other establishment which offers entertainment or services by nude, topless or partially clothed male or female persons or which is designed to arouse the prurient interest in another.

(f) A tattoo parlor, body piercing shop, and so-called head shops (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs).

(g) Any purpose that violates Applicable Law, or in such a manner as to constitute a nuisance.

ARTICLE 12. SUBLEASES.

12.1. Subleases. Tenant, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Sublease for all or any part of the Premises. Each Sublease shall require the Subtenant to attorn (i) to Landlord in the event of the termination of this Lease or (ii) to any Leasehold Mortgagee that becomes the Tenant under a New Lease prior to the expiration date of the Sublease. . Notwithstanding the foregoing, no commercial sublease may extend beyond the Term without the written consent of Landlord, which may be given or withheld in its absolute discretion.

12.2. Approval of Sublease Form. In its capacity as an institution of higher education, UNLV is subject to certain affirmative obligations and regulations under federal and state law that apply to institutions of higher education ("***Institutional Restrictions***"). Some Institutional Restrictions may be applicable to the Residential Premises as a result of UNLV being the owner of the Land. In the event that it is necessary, in UNLV's reasonable opinion, that such Institutional Restrictions be incorporated into the Subleases between Tenant and a UNLV Student, UNLV shall notify Tenant in writing of such Institutional Restrictions and the provisions that UNLV desires be added to the form of Tenant's Subleases. Tenant agrees to incorporate such provisions in its form of Sublease agreement unless Tenant reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the Residential Premises. Either Party may submit to arbitration in accordance with Article 28 the issue of whether such provisions are reasonable and are reasonably necessary.. Landlord shall have the right to review the form or forms being used by Tenant, as well as the right to review Subleases then in effect, at any time and from time to time to confirm that the form or form contain all provisions required by this Section 12.2.

12.3. Landlord's Right to Evict Certain Sublessee. In the event that any Institutional Restrictions require that a Subtenant who is a UNLV Student be evicted from or relocated within the Residential Premises UNLV shall notify Tenant of such fact by written notice ("***Subtenant Action Notice***"). Such notice shall identify the Resident and contain a summary explanation of the reason for his or her eviction sufficient to provide the basis for a judicial eviction proceeding but subject to any privacy limits of Applicable Law (including but limited to the Family Educational Rights and Privacy Act ("FERPA")) . The Subtenant Action Notice will be signed by the Vice President of Student Affairs, General Counsel or their designees, and shall state that UNLV has afforded the Sublessee any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Subtenant Action Notice. Tenant shall use reasonable commercial efforts to cause the Subtenant described in the Subtenant Action Notice to be evicted or relocated, as directed in the Student Action Notice; provided, so long as the applicable Sublease contains the provisions required hereunder, Landlord shall

reimburse Tenant for any costs incurred and hold Tenant harmless against any claim by the Subtenant that the eviction was wrongful or that the circumstances alleged in the Subtenant Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant shall have no obligation to verify the facts alleged by UNLV in the Subtenant Action Notice and is entitled to rely on the facts and allegations contained in the Subtenant Action Notice. UNLV will provide any affidavit required and make available witnesses if necessary in connection with any judicial proceeding and Tenant may voluntarily dismiss any action if UNLV shall fail to do so on a timely basis.

12.4. Sublease to Landlord. At Tenant's option and subject to agreement between Landlord and Tenant the terms to govern such Sublease, Tenant has the right to Sublease all or any part of the Premises and Improvements to Landlord for Permitted Uses, and any such Sublease between Landlord and Tenant shall set forth the Parties' agreement regarding such Permitted Use and to the extent that such Sublease conflicts or is inconsistent with this Lease, the provisions of the Sublease shall apply during such time as the Sublease is in effect.

12.5. Tenant's Rights to Enforce Subleases, Control the Premises, and Determine Rental Rates. Except with respect to actions required in response to a Student Action Notice, Landlord shall not interfere with Tenant's decisions with respect to the enforcement of Subleases, actions taken to prevent damage to the Premises and maintain the safety and security of the Premises and the persons and property located thereon.

12.6. Nondiscrimination. Landlord and Tenant shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant shall not unlawfully discriminate in the conduct and operation of its business at the Premises against any person or group of persons because of race, color, religion, national origin, citizenship, sex, gender identity, sexual orientation, age, or disability.

12.7. Nondisturbance. Upon request therefor by Tenant, Landlord shall execute and deliver to a Commercial Subtenant a subordination, attornment, and nondisturbance agreement, in form and substance reasonably acceptable to Tenant and Landlord, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 13. PARKING.

UNLV will make available for purchase by Residents of University Park (i.e., Phase One and all Future Phases combined) three hundred (300) residential parking passes allowing twenty-four hour parking on campus. UNLV will offer such parking passes on the same terms and conditions as it offers other students, but shall not be obligated to offer any discount to Residents. If the demand for residential parking passes by University Park residents exceeds 300 and UNLV elects not to make more than 300 available to University Park residents, the total supply will be allocated among the Phases as provided in the Project Development Agreement.

UNLV shall designate surface or structured parking spaces within a UNLV owned parking lot on the northern side portion of Campus as near to the Phase One Land as reasonably feasible

determined by UNLV for use by Residents without time restrictions that may apply to other non-Resident parking. All residential parking on the UNLV Campus are on a first come first served basis, and the issuance of any permits hereunder shall be not deemed to guaranty any permit holder that spaces in any specific lot shall be available at all times.

UNLV shall only make such residential parking permits available to Residents if and to the extent parking available within the Phase One Project is and remains fully sold.

ARTICLE 14.
MAINTENANCE, OPERATION, AND MANAGEMENT.

14.1. Maintenance. Tenant shall, at its sole cost and expense, keep and maintain in good order and repair the Premises, both interior and exterior, structural and non-structural. All repairs, replacements, and renewals shall be made promptly and be substantially equal in quality to the original Improvement Work. Tenant waives any right created by any law now or hereafter in force to make repairs to the Premises at Landlord's expense, it being understood that Landlord shall not in any event be required to make any alterations, rebuildings, restorations, replacements, changes, additions, improvements, or repairs, unless required to do so by separate agreement. The Premises shall, at all times comply with all requirements of this Lease except to the extent the same may be inapplicable during construction, and make all necessary repairs thereto, in a timely and workmanlike manner in accordance with industry standards.

14.2. Phase One Project Reserves. The following provisions apply only to Improvements constructed after the Effective Date and not to the Existing Improvements:

(a) Tenant shall:

(i) During the thirtieth (30th) Lease Year, cause to be conducted a study of the reserves ("Reserve Study") required to repair, replace and restore the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore and deliver a copy of the Reserve Study to Landlord;

(ii) At least annually thereafter, review the results of the Reserve Study with Landlord to determine whether those reserves are sufficient; and

(iii) At least annually thereafter, make any adjustments to Tenant's funding plan which the Tenant deems necessary to provide adequate funding for the required reserves ("Annual Updates").

(b) The Reserve Study must include, without limitation:

(i) A summary of an inspection of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(ii) An identification of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore which have a remaining useful life of less than 30 years;

(iii) An estimate of the remaining useful life of each major component of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(iv) An estimate of the cost of maintenance, repair, replacement or restoration of each major component of the Premises during and at the end of its useful life; and

(v) An estimate of the total annual contribution to the Project Reserve Fund that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components of the Premises, after subtracting the existing reserves of Tenant as of the date of the Reserve Study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

(c) Tenant shall, beginning in the thirty-first (31st) Lease Year and in each Lease Year thereafter, create and maintain a fund for the purpose of reserving sufficient cash available for maintenance, repair, replacement or restoration of each major component of the Premises that is anticipated by the Reserve Study and the Annual Updates to require maintenance, repair, replacement or restoration during the remainder of the Lease Term (the “Project Reserve Fund”) and make an annual transfer to the Project Reserve Fund in an amount sufficient to cover all such costs of maintenance, repair, replacement or restoration.

(d) Any reserve amounts held by a Leasehold Mortgagee for the same or substantially similar purposes as described in Section 14.2(c) shall offset Tenant’s obligation under this Section 14.2 to the extent such reserves held by the Leasehold Mortgagee shall, under the terms of the Financing Documents, be available only for such similar purposes and shall be available to Landlord upon expiration of the Lease Term or earlier termination of this Lease to the same extent as required herein.

(e) Upon expiration of the Lease Term or upon earlier termination of the Lease, such amounts held in the Project Reserve Fund or any comparable reserve fund held by a Leasehold Mortgagee and used to offset Tenant’s obligation herein shall be paid over to Landlord.

(f) Tenant shall be entitled to draw upon the Project Reserve Fund to pay the costs of maintenance, repair, replacement or restoration of each major component of the Premises for which reserves are required by Section 14.2(c). Thereafter, future annual contributions to the Project Reserve Fund will restore the balance in the Project Reserve Fund as necessary to comply with Section 14.2(c).

(i) No Landlord consent shall be required with respect to a draw so long as the matter for which such draw is made relates to any maintenance,

repair, replacement or restoration which has a cost and is made at a time substantially consistent with the Reserve Study and Annual Updates.

(ii) If any maintenance, repair, replacement or restoration is required to be made significantly earlier than contemplated in the Reserve Study or has a cost which is significantly higher than estimated in the Reserve Study, Landlord shall have the right to approve related draws, which approval shall not be unreasonably withheld, conditioned or delayed.

(iii) If any maintenance, repair, replacement or restoration as contemplated in the Reserve Study has a cost which is significantly lower than estimated in the Reserve Study, Tenant may reallocate the difference in subsequent years to other maintenance, repair, replacement or restoration of major components of the Premises for which reserves are required by Section 14.2(c).

(iv) Tenant shall give Landlord 30 days' written notice of any planned draw which notice shall provide sufficient information to reflect that consent by Landlord is not required under this Section 14.2(f) or to enable Landlord to determine whether to give its approval to the draw.

14.3. Financial Aid. In the event that UNLV Students receive financial aid to pay for housing that is dependent on living in on-Campus housing, Tenant and Landlord shall work together to develop a process to permit the Premises to qualify for such residence, if allowed by Applicable Law.

14.4. Signs. Tenant shall have the right to install and replace, and to permit the installation or replacement by others, of any signs or advertising matter visible from the exterior of the Premises, so long as such signs conform with Landlord's regulations on use of UNLV's name and marks. Tenant shall comply with all applicable requirements of Governmental Authorities having jurisdiction and shall obtain all necessary governmental approvals prior to the installation or replacement of any sign or other advertising matter permitted by Landlord.

14.5. Project Management. The Parties desire to provide for upper-class, move-up and graduate student housing on the UNLV Campus as described in this Lease, each acting independently in pursuance of its own separate business interests. Tenant shall operate and staff the Premises in a professional manner consistent with the operation of a first-class University housing facility, comparable to those at UNLV's peer institutions and to privately owned off-campus housing in Las Vegas. In furtherance of such intent and except as otherwise expressly provided in this Lease, Tenant shall in general and whether herein specifically authorized or not, take all actions that Tenant deems necessary, proper or desirable in its business judgment with respect to the ownership and operation of the Premises.

Nothing herein contained shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of (i) partnership or of joint venture between the parties

hereto, or (ii) employer and employee, or (iii) any other relationship other than the relationship of Landlord and Tenant. The Landlord shall have no responsibility for the actions of the Tenant and no control over Tenant's operations other than as explicitly set forth in this Lease.

14.6. Asset Management Fee. Tenant shall be entitled to pay itself a fee for the services it provides under this Lease (the "Asset Management Fee") equal to one and one-half percent (1.5%) of the Gross Revenues.

**ARTICLE 15.
CONDITION OF PREMISES.**

Tenant acknowledges that it is fully familiar with the Phase One Land and Existing Improvements and the physical condition thereof as of the date hereof. Except for Landlord's obligation to (i) provide reasonable access for ingress, egress, and regress to the Premises, (ii) grant additional easements and access rights and cooperate with Tenant as to other matters pursuant to Section 2.3 above, and (iii) complete other duties as otherwise provided herein, Tenant accepts the Premises in the existing condition and state of repair, and agrees that Landlord shall in no event be liable for any latent or patent defects in the Phase One Land or the Existing Improvements.

**ARTICLE 16.
RIGHT OF INSPECTION.**

Landlord shall at all reasonable times during regular business hours be permitted access to the Premises for the purposes of inspecting the same and generally to do such other work as is deemed necessary to determine Tenant's compliance with this Lease. Except in the case of bona fide or apparent emergency or as provided under a Sublease or the Management agreement with Tenant, Landlord shall only be afforded access to the interior of any structure or building situate on the Premises: (a) when accompanied by a representative of Tenant; and (b) after five (5) Business Days written notice by Landlord to Tenant. In exercising its rights hereunder, Landlord shall not unreasonably interfere with the use or occupancy by Tenant or any Subtenant or Occupant. In the event of a bona fide or apparent emergency, Landlord may enter at any time and without accompaniment or notice (including forcibly, to the extent necessary), without such entry constituting an eviction of Tenant or a termination of this Lease.

**ARTICLE 17.
ENVIRONMENTAL COVENANTS AND WARRANTIES.**

17.1. Representations. Landlord and Tenant each warrants and represents to the other Party that it has disclosed to the other Party in writing any and all information known to Landlord or Tenant, as the case may be, relating to the environmental condition of the Phase One Land and the Existing Improvements.

17.2. Tenant's Environmental Covenants.

(a) Tenant shall not engage in and shall use reasonable efforts to prevent any Subtenant from engaging in operations at or in the Premises which involve the

generation, manufacture, refining, transportation, treatment, storage, handling, disposal, release, or threat of release of Hazardous Substances which would require remediation or clean-up to conform to Environmental Laws. Tenant shall at all times comply with Environmental Laws with respect to substances first coming onto the Premises following the Effective Date and during the Lease Term. Tenant shall not cause and shall not permit to exist as a result of an intentional or unintentional action or omission on its part (and Tenant shall use reasonable efforts not to permit to exist as a result of an intentional or unintentional action or omission on the part of any other party), the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping from or about the Premises of any Hazardous Substances in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to Environmental Laws.

(b) Nothing contained in this Section 17.2 shall be construed as prohibiting the use on the Premises of substances regulated by Environmental Laws that are normally or routinely used in the construction of improvements such as the Improvements or are normally or routinely used in the operation, repair, maintenance, and use of residential and commercial projects, such as fuels, solvents, cleaning materials, paint, and printing materials, so long as the same are used in a manner that complies with Environmental Laws.

ARTICLE 18.

WARRANTIES AND REPRESENTATIONS.

18.1. By Landlord. Landlord hereby warrants and represents to Tenant as follows:

(a) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals, consents, and board or committee actions necessary to authorize Landlord to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken.

(b) The person executing this Lease on behalf of Landlord has authority on behalf of Landlord to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Premises are not subject to any pending or, to Landlord's knowledge, threatened litigation, and Landlord is not subject to any pending or, to Landlord's knowledge, threatened litigation that would or might affect the Land or Landlord's ability to perform its obligations under this Lease.

(d) The consummation by Landlord of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) Landlord is not a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might to a material degree adversely affect the Premises, University Park or any portion of the Land upon which University Park will be constructed.

(f) Landlord has no knowledge of any condition of or with respect to the Premises that would adversely affect the use and enjoyment of the Premises by Tenant in accordance with the terms and provisions of this Lease.

(g) As used in this Section 18.1, Landlord's "knowledge" means the actual knowledge of Landlord's (i) Senior Vice President of Administration and Finance, or (ii) General Counsel, or (iii) Director for Real Estate; or any person under the direct supervision of any of them, following reasonable investigation or inquiry.

18.2. By Tenant.

(a) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals and corporate or limited liability company actions necessary to authorize Tenant to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken. The person executing this Lease on behalf of Tenant has authority on behalf of Tenant to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Tenant and is binding upon and enforceable against Tenant in accordance with its terms.

(b) Tenant is not subject to any pending or, to Tenant's knowledge, threatened litigation that would or might affect Tenant's ability to perform its obligations under this Lease.

(c) The consummation by Tenant of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule, or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

**ARTICLE 19.
TITLE TO IMPROVEMENTS.**

Notwithstanding anything set forth or implied hereunder, during the Lease Term, Landlord shall have and own fee simple title to all Improvements affixed to or forming a part of the Premises, subject only to the Leasehold Estate and interests of Tenant pursuant to this Lease and to such Subleases as are authorized hereby.

**ARTICLE 20.
MECHANICS' LIENS.**

Tenant shall use commercially reasonable efforts to avoid the filing of mechanics' liens against the fee interest of Landlord in the Premises or the Leasehold Estate of Tenant under this

Lease and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work. Tenant shall cause any claim of mechanics' lien arising by, through or under Tenant which purports to lien the estate of Landlord in the Premises to be removed or bonded off prior to any execution or enforcement of such lien. In the event that Tenant permits such liens to be foreclosed or executed on, Landlord may, but shall not be obligated to, pay such lien or liens in full, or cause the same to be removed of record by causing the lien or liens to be bonded. Any reasonable expenses incurred by Landlord in furtherance of Landlord's rights under this Article 20 shall be paid by Tenant to Landlord. Tenant may contest the validity of any such lien or claim, but upon final determination of such contest, Tenant shall pay any remaining judgment, decree or lien and cause the same to be released of record without cost to Landlord.

ARTICLE 21.
CASUALTY.

21.1. Tenant's Obligation to Repair. Except as provided in this Lease or in any Leasehold Mortgage, in the event of damage to or destruction of the Premises or any Improvements, the funds received by Tenant from property insurance acquired pursuant to Article 22 shall be made available to the extent needed to effect such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction, or, if such repair or reconstruction is determined by Tenant to be not commercially feasible due to the age, design, use, extent of damage or the type of construction, or other aspect of the Improvements, Tenant may, at its option, effect repair and reconstruction so as to preserve any portions of the Improvements that have not been substantially damaged or to remodel or revise the structure of the Improvements, or Tenant may raze the Improvements or any part thereof. Notwithstanding the foregoing, in the event that Tenant determines that any repair or reconstruction is not commercially feasible and/or that the continued operation of the Premises is not commercially feasible, Tenant may, at its option, terminate this Lease by written notice thereof to Landlord, whereupon Tenant shall be required to raze or repair the remaining Improvements to the extent necessary to protect them against further deterioration as a result of such casualty, and any insurance proceeds remaining following satisfaction of all sums secured by all Leasehold Mortgages and payment of any sums required to preserve or raze the Improvements shall be retained by Tenant. Tenant's restoration activities shall be subject to the following requirements and conditions:

(a) The restoration shall create a building of substantially the same (or greater) floor area and number of Beds as were contained in the damaged building; provided that Tenant shall be entitled to make such changes in the Improvements as Tenant determines are desirable to recognize changes that have occurred in this type of building since the original construction of the Premises and trends that are then occurring therein.

(b) Any material change to any work set forth in the Construction Documents for the restoration shall be subject to the review and approval of Landlord in accordance

with the terms and provisions of Article 6 hereof, which approval shall not unreasonably be withheld, conditioned or delayed.

(c) Landlord acknowledges that, notwithstanding anything set forth or implied herein to the contrary, Landlord has no ownership right or interest in the proceeds of the insurance acquired by Tenant pursuant to Article 22.

21.2. Prompt Repair. If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any Improvements, or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense but only to the extent of insurance proceeds and other amounts available to Tenant as above provided and subject to the provisions of Article 22 and the provisions of any Leasehold Mortgage. Subject to the time required for collecting insurance proceeds, redesigning, and obtaining governmental approvals therefor, obtaining necessary financing and Unavoidable Delays, Tenant shall use commercially reasonable efforts to promptly commence and complete such repair, replacement, reconstruction, or rebuilding to full completion.

21.3. Lease Continuance. This Lease and the Lease Term shall not terminate or be terminated because of damage to or destruction of the Improvements, except as expressly provided in this Lease. Tenant's obligation to pay Rent under this Lease shall be equitably abated during the period of any repair and/or reconstruction by Tenant pursuant to this Article 21.

ARTICLE 22. INSURANCE AND INDEMNIFICATION.

Before commencing construction of any Improvements, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect during the term of this Lease, at no cost to Landlord, the following insurance relating to the Premises:

22.1. Liability Insurance. Tenant shall purchase and maintain and keep in effect (or cause to be purchased and maintained and kept in effect) at all times during the Lease Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than \$5,000,000.00 per occurrence, which may be satisfied by any combination of a primary commercial general liability and excess liability or umbrella liability insurance policy, naming Landlord and any Leasehold Mortgagee as an additional insured. The coverage afforded the additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by Landlord shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- (a) Bodily injury
- (b) Broad form property damage (including completed operations)

(c) Personal injury

(d) Products and completed operations (this coverage shall extend for one year past the actual completion of construction of all Improvements)

22.2. Workers' Compensation Insurance. Tenant shall purchase and maintain and keep in effect at all times during the Lease Term workers compensation and employers liability insurance as required by the State of Nevada Workers Compensation statutes as follows:

(a) Workers Compensation (Coverage A) Statutory

(b) Employers Liability (Coverage B)

(i) \$500,000 each accident

(ii) \$500,000 each employee/disease

(iii) \$1,000,000 policy limit/disease

(iv) This policy shall include endorsement for All State coverage for state of hire.

22.3. Automobile Liability Insurance. If applicable, Tenant shall purchase and maintain and keep in effect at all times during the Lease Term commercial automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, to include non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add Landlord as an additional insured and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant.

22.4. Property Insurance. Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Lease Term insurance on the Premises and Improvements against special causes of loss form coverage. Such insurance shall be written on a replacement cost basis in the amount of the full replacement cost of the Improvements (but excluding the value of roads, foundations, surface parking areas, and similar improvements) subject, however to commercially reasonable sub-limits for buildings of this type. Tenant shall, periodically and its expense, but not less often than every 5 years during the term hereof, engage a consultant reasonably satisfactory to Landlord, to perform a detailed study of the cost to reconstruct the Phase One Project for purposes of determining the total insurance coverage required. During any period while the Premises is being constructed, the insurance required pursuant to this Article 22 shall be in the form of a builder's risk policy, to be provided by either Tenant or the General Contractor, equal to the replacement cost value of each building at the completion of construction.

(a) The builder's risk policy referred to above shall be special causes of loss form insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Premises and shall also insure finished products. Coverage

shall also cover the interests of Landlord, Tenant, the General Contractor and the Contractors and construction subcontractors in the buildings while under construction and the building materials on site but not yet attached to or incorporated in the building with respect to the Premises, but it will not cover any machinery, tools, equipment, appliances, or other personal property owned, rented or used by Tenant, the General Contractor, or any subcontractor in the performance of the construction work on the Premises, which will not become a part of the completed Premises.

(b) The property insurance obtained under the builder's risk policy shall provide special causes of loss form coverage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the Premises' design professional's and the General Contractor for services and expenses required as a result of such insured loss. The builder's risk insurance shall include physical loss or damage to the construction work on the Premises, including materials and equipment in transit, on the Premises or at another location as may be indicated in the General Contractor application for payment and approved by Tenant.

(c) As to the builder's risk insurance policy, Tenant or the General Contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.

22.5. Evidence of Insurance. Upon the Lease Commencement Date, and if requested by Landlord, no more than once annually thereafter, Tenant shall deliver to Landlord certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with this Article 22 reasonably acceptable to Landlord, which shall identify this Lease and include copies of endorsements naming Landlord as an additional insured for general liability coverage and auto liability coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Applicable Laws and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant. The certificates, insurance policies, and endorsements required by this Article 22 shall contain a provision that coverages afforded will not be cancelled until at least thirty (30) calendar days prior written notice (ten (10) calendar days for nonpayment of premium) to Landlord prior to any lapse, cancellation, or a reduction in coverage. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Lease.

22.6. Copies and Additional Information. Landlord shall be provided, upon reasonable request, copies of all policies and endorsements, to the extent available. Each copy of a policy shall include a copy of all endorsements and, if such copy is not a certified copy, shall be accompanied by a letter from Tenant's insurance broker stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of

the policy and endorsements is a true, correct, and complete copy of the respective insurance policy and all endorsements to the best of the broker's knowledge.

22.7. Tenant's Failure. In the event that Tenant fails to carry insurance as required under this Article 22, and such failure continues for fifteen (15) calendar days after Tenant's receipt of written notice of such failure from Landlord, then in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

22.8. Claims Reporting. Any failure to comply with the claims reporting provisions of the policies required to be maintained by Tenant hereunder or any breach of policy warranty shall not affect coverage afforded under the policy to protect Landlord.

22.9. Self-Insurance. The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses under the definition of Net Income.

22.10. Payment of Insurance Proceeds. In the event of any damage or destruction of the Premises or Improvements, the proceeds of Tenant's casualty insurance shall be paid to Tenant, or to the Leasehold Mortgagee, if said Leasehold Mortgagee so requires. If funds are disbursed to Tenant, Tenant shall deposit the proceeds in a fiduciary account or construction disbursement account to be distributed in accordance with this Lease.

22.11. Landlord's Insurance. At the earliest possible time after execution of this Lease, and thereafter upon renewal of such policies, Landlord shall deliver to Tenant certificates evidencing Landlord's commercial general liability insurance, automobile liability insurance, property insurance, and workers compensation insurance, with limits of liability as currently maintained by Landlord.

ARTICLE 23. CONDEMNATION.

In the event that the entire Premises, or any part thereof, is taken or condemned for a public or quasi-public use or that after any partial taking the remaining portion of the Premises is not sufficient, in Tenant's reasonable judgment, for the successful operation of the Premises, Tenant shall have the right, with the written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgagee), to terminate this Lease by written notice thereof to Landlord, in which event both Parties shall be relieved of and from any liability hereunder, except those accrued up to the time of such termination. In the event of any temporary taking or condemnation, Tenant shall be entitled to the entire award of the condemning authority. In the event that the entire Premises or any part thereof is permanently taken by condemnation, Tenant and Landlord shall cooperate to prove in each condemnation proceeding the loss in value, by reason of the taking, of the respective estates of Landlord and Tenant (notwithstanding the termination of this Lease, if any), and

Landlord and Tenant shall each be entitled to pursue an award for the values of Landlord's and Tenant's respective interests in the Premises taken in such proceedings, if the condemning authority permits separate awards to be sought by Tenant and Landlord (it being acknowledged that in no event shall the portion of the award allocated to Tenant be less than all amounts secured by all Leasehold Mortgages). In the event that the condemning authority does not permit separate awards to be sought by Tenant and Landlord, then all proceeds and awards which may be payable as a result of condemnation shall, following their receipt by Tenant or any Leasehold Mortgagee, be distributed in the following order of priority:

23.1. Leasehold Mortgagees. There shall first be paid to Leasehold Mortgagees such amounts as may be required by such Leasehold Mortgages to be paid to such Leasehold Mortgagees, in order of priority.

23.2. Costs of Collection and Restoration. From the amount remaining, if any, there shall then be paid to Tenant a sum equal to the costs incurred by Tenant or Leasehold Mortgagee in connection with collection of such proceeds and awards (including, without limitation, all fees for experts, legal fees, costs of surveys, and appraisals, and court costs), and, in the event of a partial taking which does not result in the termination of this Lease, a sum equal to the costs incurred or to be incurred by Tenant in restoring the portion of the Premises remaining to a condition as nearly as possible to that in which the Premises were prior to such taking, in the light of any reduced area thereof, pursuant to a procedure reasonably satisfactory to Leasehold Mortgagee.

23.3. Remainder. The amount remaining, if any, shall be paid to Tenant.

ARTICLE 24. LEASEHOLD MORTGAGES.

24.1. Right to Mortgage. On one or more occasions, Tenant and every successor and assignee of Tenant shall, in connection with the development and operation of the Phase One Project only have the right to enter into one or more Leasehold Mortgages and assign, transfer, or encumber this Lease as security for such Leasehold Mortgage ("**Permitted Financing**"). Tenant shall not place or create any mortgage, deed of trust or other lien or encumbrance purporting to affect Landlord's fee interest in the Premises or Landlord's interest in this Lease. Tenant shall not use, provide to others, or rely upon any financial statements, audits, or other documents of NSHE or UNLV for the purpose of obtaining any type of advantage with respect to financing the Phase One Project.

24.2. Landlord's Approval.

(a) On or before that date which is fifteen (15) calendar days prior to the execution by Tenant of any Leasehold Mortgage, Tenant shall provide written notice thereof to Landlord, together with a true and correct copy of such Leasehold Mortgage. Landlord shall have the right to review and approve the terms of the Leasehold Mortgage in Landlord's reasonable discretion. In the event Landlord notifies Tenant in writing

within ten (10) calendar days of receipt of the Leasehold Mortgage that Landlord does not approve thereof, Tenant shall not be permitted to execute the Leasehold Mortgage. If Landlord approves the Leasehold Mortgage in writing or fails to respond within ten calendar days, Tenant shall be permitted but not required to execute the Leasehold Mortgage in Tenant's sole discretion substantially in the form originally delivered to Landlord.

(b) Notwithstanding anything to the contrary, Tenant shall not be obligated to commence to perform the Improvement Work unless and until financing acceptable to Tenant is arranged. If financing acceptable to Tenant is not arranged within nine months after the Effective Date of this Lease, Tenant shall have the option to cancel this Lease by giving written notice of cancellation to Landlord; provided, such cancellation option shall be void if it is not exercised and financing is arranged thereafter. If Tenant can arrange financing only by making changes to the provisions of this Lease other than those provisions designating the length of the Term and the amount of Rent payable under this Lease, Tenant shall have the right to cancel this Lease if Landlord refuses to approve any such change in writing within thirty (30) days after Tenant's request therefor.

(c) In the event of any amendment to or modification of any Leasehold Mortgage, a copy thereof shall be provided to Landlord within fifteen (15) calendar days after the execution thereof. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and/or address shall be provided to Landlord. Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Article 24 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address indicated in the most recent notice sent with respect to the Leasehold Mortgage pursuant to this Article 24. Notices from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 32.1 hereof. Such notices, demands and requests shall be given in the manner described in Section 32.1 and shall in all respects be governed by the provisions of that section.

24.3. Default Notice; Leasehold Mortgagee's Right to Cure.

(a) Landlord, upon providing Tenant any notice of default under this Lease or a termination of this Lease, shall at the same time provide a copy of such notice to the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage. No such notice by Landlord shall be deemed to have been duly given unless and until a copy thereof has been so provided to such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to the Leasehold Mortgagee, such Leasehold Mortgagee shall have an additional ninety (90) day period (sixty (60) day

period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of this Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by Leasehold Mortgagee until Leasehold Mortgagee can gain possession of the Premises, Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as Leasehold Mortgagee gains possession of the Premises, so long as

(i) during such extended cure period all payments of Rent are paid as required under this Lease (subject to the notice and cure provisions set forth in this Lease) and

(ii) Leasehold Mortgagee is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes Leasehold Mortgagee to take any such action at Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Lease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

24.4. Notice to Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur that may entitle Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default set forth in Article 31 or to a Leasehold Mortgagee in this Article 24, or elsewhere in this Lease, if any, Landlord shall notify ("**Default Termination Notice**") the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent, and at least sixty (60) calendar days in advance of the proposed effective date of such termination if such default is not the failure to pay Rent. The provisions of Section 24.5 shall apply if, during such 30- or 60-day Default Termination Notice period the Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Default Termination Notice;

(b) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the Default Termination Notice to such Leasehold Mortgagee and that may thereafter become due during the cure period allowed to such Leasehold Mortgagee,

subject to the notice and cure provisions set forth in this Lease; provided that no such amount shall be required to be paid before the same is due and owing under this Lease; and

(c) Comply or, in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible to being complied with by such Leasehold Mortgagee and continue to pursue such cure with reasonable due diligence, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed the Leasehold Mortgagee to complete such cure pursuant to this Section 24.4(c) shall be not less than sixty (60) calendar days and shall continue thereafter for so long as is reasonably necessary for the Leasehold Mortgagee to cure such nonmonetary requirement which is susceptible of cure by such Leasehold Mortgagee, including, in the event that the Leasehold Mortgagee is required to obtain possession of the Premises in order to effect such cure, any period of time reasonably required to obtain such possession (including any time Leasehold Mortgagee is stayed or enjoined).

24.5. Procedure on Default.

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4, the specified date for the termination of this Lease as fixed by Landlord in its Default Termination Notice in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent shall be extended as provided in Section 24.4; provided, such Leasehold Mortgagee shall, during such extended period:

(i) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due (subject to the notice and grace provisions of Section 24.4) and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting: (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and

(ii) Unless Leasehold Mortgagee is stayed or enjoined from taking such actions, take steps to acquire or sell Tenant's interest in this Lease by

foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity.

(b) If at the end of such extended period Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by such Leasehold Mortgagee of proceedings pursuant to this Section 24.5 shall continue for the period provided in Section 31.1(b) in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent. Nothing in this Section 24.5, however, shall be construed to require Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) Upon the acquisition of Tenant's Leasehold Estate herein by Leasehold Mortgagee or its designee or any other permitted purchaser at a foreclosure sale, assignment in lieu thereof, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, all monetary defaults have been cured and the Leasehold Mortgagee, its designee or the successor of either shall proceed to cure any non-monetary defaults.

(d) Notwithstanding any other provision of this Lease, any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage (whether as a result of a default hereunder, a default under a Leasehold Mortgage or otherwise), shall be deemed to be a permitted Transfer or sale not requiring the consent of Landlord, provided such purchaser or assignee of this Lease and of the Leasehold Estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such Leasehold Estate. No such sale, Transfer, or assignment shall constitute a default or Event of Default under this Lease.

(e) Notwithstanding any other provision of this Lease, no Leasehold Mortgagee or other person acquiring title to Tenant's interest in the Premises through or under a Leasehold Mortgage (including by Transfer in lieu of foreclosure) shall be liable for any loss or damage occurring prior to acquiring such title or subsequent to any assignment of such title. In the event of any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, (a) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any act or omission of Tenant, (b) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any amendment to this Lease not joined in or consented to by such Leasehold Mortgagee,

(c) the Leasehold Mortgagee or purchaser at foreclosure shall not be subject to any offsets or defenses which Landlord has against Tenant and (d) Landlord and such Leasehold Mortgagee shall, each upon written request of the other, reaffirm in writing the validity of this Lease.

24.6. New Lease. In the event of the termination of this Lease as a result of Tenant's default or otherwise, Landlord shall, in addition to providing the notices of default and termination as required by Section 24.4, provide Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord shall enter into a new lease ("New Lease") of the Premises with Leasehold Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the Rent and upon the terms, covenants, and conditions of this Lease (but excluding any requirements which are not applicable or have been satisfied by Tenant prior to termination), subject only to the conditions of title as the Premises are subject to on the date of the execution of the original Lease and such matters arising thereafter to which such Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Premises, provided:

(a) Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) calendar days after the date such Leasehold Mortgagee receives Landlord's notice of termination given pursuant to this Section 24.6;

(b) Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to this Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 24.6 or under the New Lease, an amount equal to the Net Income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of the beginning of the Lease Term of such New Lease;

(c) Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which the Leasehold Mortgagee was notified by Landlord's Notice of Termination and that are reasonably susceptible of being cured by Leasehold Mortgagee or its designee; and

(d) Upon the execution and delivery of a New Lease, all Subleases and management agreements shall thereupon be assigned and transferred, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

24.7. No Merger. So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall otherwise expressly consent in writing or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. Landlord and Tenant may not voluntarily agree to terminate this Lease without the consent of Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage.

24.8. Erroneous Payments. No payments not constituting payments of Rent made to Landlord by Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided Leasehold Mortgagee shall have made demand therefor not later than one (1) year after the date of such payment.

24.9. Bankruptcy. In the event either Landlord or Tenant becomes the subject of a proceeding under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect (including any replacement thereof):

(a) Tenant shall not be entitled to reject this Lease without the prior written consent of the Leasehold Mortgagee and every other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; provided that, if the Lease is nevertheless rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 24.9(a) as if such bankruptcy proceeding had not occurred, unless the Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within sixty (60) calendar days following rejection of the Lease by Tenant or Tenant's trustee in bankruptcy. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in bankruptcy for Tenant in connection with any such proceeding, the rights of the Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 24.6 shall not be affected thereby.

(b) If the Lease is rejected by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; and any right to treat this Lease as terminated in such event shall be deemed

assigned to such Leasehold Mortgagees, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) If this Lease is not treated as terminated in accordance with Section 24.9(b)(i), then this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to offset against Rent payable hereunder the amounts of any damages from time to time arising from such rejection or any failure of Landlord to perform its obligations hereunder and any such offset properly made shall not be deemed a default under this Lease. The lien of each Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection with the same priority as it would have enjoyed had such rejection not taken place.

24.10. Landlord Not Liable for Tenant's Financing. Tenant acknowledges that Tenant may not qualify for tax exempt financing. Tenant shall be solely responsible for debt repayment relative to any borrowings by Tenant, and Landlord shall not be a participant or guarantor on any such borrowings. Except for the subordination and nondisturbance and attornment agreements and estoppel certificates required by this Lease, Landlord shall not be made a party to any of Tenant's financing documents.

24.11. Fee Mortgage. All Fee Mortgages shall be subordinate to this Lease and any New Lease, and Landlord shall from time to time at the request of Tenant or any Leasehold Mortgagee provide a subordination agreement from any holder of a Fee Mortgage confirming that the Fee Mortgage is subordinate to this Lease and any New Lease.

24.12. Limitation of Leasehold Mortgagee's Liability. The liability of any Leasehold Mortgagee or its designee or nominee acquiring title pursuant to foreclosure or other process in lieu thereof under this Lease shall be limited to its interest in the Premises, and any judgments rendered against any such Leasehold Mortgagee or its designee or nominee following foreclosure or other process in lieu thereof shall be satisfied solely out of its interests in this Lease or the proceeds of sale of its interest in the Premises. No personal judgment shall lie against any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Premises, and any judgment so rendered shall not give rise to any right of execution or levy against such Leasehold Mortgagee's or its designee's or nominee's assets. The provisions of this Section 24.12 shall not inure to the successors and assigns of any Leasehold Mortgagee or its designee or nominee following its acquisition and Transfer of title to the Leasehold Estate created hereby. Nothing contained herein limiting the liability of a Leasehold Mortgagee or any Transferee shall be deemed to waive any default or remedies of Landlord.

24.13. Security Interests. Landlord hereby acknowledges and consents to Tenant's grant of security interests in the Personal Property of Tenant to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant in which a security interest has been granted to a Secured Lender is hereinafter called "**Secured Property**." Landlord subordinates any interest in the Personal Property of Tenant to security interests granted to Secured Lenders, subject to the provisions hereof. Landlord consents to the entry by Secured Lenders or their agents or representatives upon the Premises at any time pursuant to any document evidencing or governing a lien or security interest in favor of a Secured Lender for the purpose of removing the Secured Property, except that the Secured Lenders may not remove any Fixtures from the Premises. The Secured Property shall be deemed to be Personal Property and not a part of the Premises and shall not be claimed or seized or levied upon in any levy or legal execution or legal proceedings by Landlord. The Secured Lenders may remove Secured Property, or any part thereof, without liability for damage to or diminution in value of the Premises, except for the actual physical damage caused by such removal, which physical damage shall be repaired by the removing Secured Lender or caused to be repaired by the removing Secured Lender so that the Premises shall be restored to the condition the Premises would be in absent such removal.

24.14. No Guaranty; Only Debtor-Creditor Relationship. Nothing contained herein shall be construed as a guaranty, of any kind or nature, by any Leasehold Mortgagee of any of the obligations of Tenant hereunder or as creating a relationship between Tenant and any Leasehold Mortgagee other than a relationship of creditor and debtor.

24.15. Casualty; Condemnation. All proceeds of policies of insurance maintained hereunder and the award from any condemnation or taking of the Premises shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized to participate in any actions, proceedings or negotiations in connection with the collection, settlement or compromise of any such proceeds or awards.

24.16. Proceedings. Landlord shall give each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of written notice of such proceedings.

24.17. Waiver of Landlord's Lien. Landlord does hereby waive any and all lien or claim of lien against Tenant, Commercial Subtenants, University Park, the Personal Property of Tenant and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and Commercial Subtenants, now or hereafter located on the Premises, arising from this Lease or the relationship of Landlord and Tenant hereunder (or to the extent any such waiver is ineffective under Applicable Laws, Landlord hereby subordinates any such lien or claim of lien to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing).

24.18. Changes to Mortgagee Protective Provisions. In the event that Tenant hereafter desires to enter into a Leasehold Mortgage, Landlord shall consider in good faith any modifications, clarifications or changes to the mortgagee protective provisions contained in this Lease (including without limitation those set forth in this Article 24) which are reasonably requested by a Leasehold Mortgagee. Landlord shall promptly respond to any such request within ten (10) Business Days after Landlord's receipt of such request.

**ARTICLE 25.
QUIET ENJOYMENT.**

Landlord represents and warrants that it has the right and capacity to enter into this Lease. Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Lease Term, without hindrance or molestation by anyone claiming paramount title or claims whatsoever, except by, through, or under Tenant, subject, however, to the covenants, agreements, terms, conditions, and other obligations of this Lease and any holder of any rights under any Permitted Exceptions and subject to the rights of Landlord set forth herein if an Event of Default occurs.

Landlord shall pay all amounts required to protect and defend Landlord's title to and interest in the Premises and as otherwise necessary to protect Tenant's interest in the Premises hereunder from any title exceptions adversely affecting Tenant's proposed use of the Premises, including without limitation any liens or similar claims not created by Tenant.

**ARTICLE 26.
ASSIGNMENT AND TRANSFER.**

26.1. Limitation: Consent Required. Tenant may not, at any time, sell, assign, convey, or transfer (each, as applicable, a "Transfer") this Lease to another Person without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. As used herein, "Transfer" (a) shall include the appointment of a new Person as manager of Tenant, and (b) shall not include any subletting of the Premises or a Phase. Notwithstanding the foregoing, such restriction on Transfer shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

26.2. Transfer by Landlord. Notwithstanding anything set forth herein to the contrary, Landlord shall not at any time Transfer its interests in the Premises, the Phase One Land, the Improvements, and/or University Park, or any part thereof, without the prior written consent of Tenant and any Leasehold Mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Tenant's reasonable grounds for disapproval may include the risk of loss of tax-exempt status of the Land and the Phase One Project.

ARTICLE 27.
ESTOPPEL CERTIFICATE.

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, any Commercial Subtenant or any Leasehold Mortgagee, the other Party shall execute, acknowledge, and deliver to the requesting Party and/or to any current or prospective mortgagee, purchaser, assignee, title insurer, or other appropriate party, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified, and setting forth the modifications), setting forth the dates to which the Rent and charges payable by Tenant hereunder have been paid, whether or not to the knowledge of the Party making such certificate there is any existing default by either Party and whether or not any notice of default has been served by either Party upon the other and remains outstanding and stating the nature of any such defaults, and such other matters as may be reasonably requested, it being intended that any such statement delivered pursuant to this Article 27 may be relied upon by any existing or prospective title insurer, purchaser, assignee, Subtenant, mortgagee, or other appropriate party.

ARTICLE 28.
DISPUTE RESOLUTION.

In recognition of the long term nature of each Party's commitment to the other and the substantial investment made by Tenant with regard to the Premises, in the event of a dispute, Landlord and Tenant agree that dispute resolution shall proceed as follows: first, negotiation as provided in Section 28.1; second, mediation, as provided in Section 28.2; and third, if the Parties are still unable to resolve their dispute, the complaining Party shall have all of the rights set forth in this Lease and available to such Party under Applicable Law to pursue adjudication and resolution of the dispute ("Dispute Resolution").

28.1. Negotiation. The parties shall attempt in good faith to resolve any dispute promptly by negotiation between executives who have authority to settle the controversy. Either Party may give the other Party notice of any dispute not resolved in the ordinary course of business. Within ten (10) calendar days after delivery of the notice, the receiving Party shall submit a written response to the notice. The notice and response shall include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) calendar days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations and materials provided pursuant to this negotiation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law, and statements made by any Party during negotiation may not be used against it in later proceedings if the Parties fail to resolve the dispute during negotiation.

28.2. Mediation. If a dispute has not been resolved by negotiation as provided above within twenty (20) calendar days or such longer time as the parties shall mutually agree upon, or the parties failed to meet within fifteen (15) days after delivery of the initial notice of negotiation, the parties shall endeavor to resolve the dispute by private mediation in Las Vegas, Nevada. If Landlord and Tenant cannot agree upon a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider or other private mediator, and the two mediators chosen by Landlord and Tenant shall then choose a third person who will serve as mediator. The parties agree to each have a representative present at the mediation who has authority to bind it to a written settlement agreement, subject to the approval of the board of directors or membership, as applicable, of Tenant and any consents or approvals of the Regents of the Nevada System of Higher Education or otherwise required by legislation and regulations governing Landlord. The initial mediation session shall be held promptly (but not more than thirty (30) calendar days following appointment of the mediator). All negotiations and materials provided pursuant to this mediation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Each Party shall bear its own expenses and shall pay an equal share of the expenses of the mediator. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof.

28.3. Further Legal Action. Except as otherwise provided in this Lease, it is the intent of the Parties that these negotiation and mediation procedures shall govern any dispute under this Lease and either Party shall have the right to specifically enforce the negotiation and mediation procedures before the other Party may seek legal redress in a court of law. If a dispute has not been resolved by negotiation and mediation as provided in Sections 28.1 and 28.2, either Party shall have the right to commence legal action. Any legal actions brought to enforce this Lease shall be interpreted by the laws of the State of Nevada and brought in a court of competent jurisdiction in the State of Nevada.

ARTICLE 29. INTEREST ON PAST DUE OBLIGATIONS.

To compensate Landlord for its additional cost of processing late payments, for any payment of Rent which is not received within 7 days after it is due, Tenant will pay a late charge of two percent (2%) of the late payment, but not more than \$1,000 per month. Unless otherwise specifically provided herein, any amount due under this Lease from Tenant to Landlord which is not paid when due shall bear interest from the due date until paid at the Default Rate.

ARTICLE 30.
SURRENDER UPON LEASE TERMINATION.

Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property and equipment that is not attached to the Improvements and shall surrender the Premises to Landlord in good functional similar condition as when placed in service (normal wear and tear excepted), damage by condemnation, casualty, and normal wear and tear excepted; provided that Tenant shall not remove from the Premises any Fixtures attached to or used in connection with operation of the Improvements, or any additions to or replacements thereof made during the Lease Term, it being the intent of the Parties that upon expiration or earlier termination of this Lease, Landlord shall receive the Improvements in operating condition; provided that nothing contained herein shall be construed as prohibiting Tenant from removing the Personal Property of Tenant or as prohibiting the removal of any belongings of any Subtenant. Tenant's Personal Property not removed by Tenant within six months after any expiration or other termination shall be considered abandoned, and Landlord may dispose of such property in accordance with Applicable Laws.

ARTICLE 31.
DEFAULT AND REMEDIES.

31.1. Tenant Defaults. The occurrence of any of the following shall constitute an event of default by Tenant hereunder (each, a "**Tenant Event of Default**"):

(a) Tenant shall have failed to pay any Base Rent payable under Section 5.1 when due or (subject to receipt of notice of the same from Landlord to the extent the bill therefor is received by Landlord) any other sum required or stipulated to be paid by Tenant to Landlord hereunder, and such failure continues for ten (10) calendar days following Tenant's receipt of written notice thereof from Landlord; or

(b) Tenant shall have failed to observe or perform any other covenant or obligation of Tenant hereunder and Tenant shall not have cured such failure within thirty (30) calendar days after Tenant shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within thirty (30) calendar days, Tenant shall not be in default hereunder if Tenant shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, "**Insolvency Laws**"), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Tenant of Tenant's covenants and obligations under this Lease,

as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Tenant of the performance of Tenant's covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Tenant of the performance of Tenant's covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Tenant or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If Tenant shall abandon the Premises; or

(f) If a Lien is filed against the Premises and Tenant fails to furnish a bond or otherwise obtain a release or discharge of the Lien as required by Article 20 of this Lease; or

(g) If any warranty or representation of Tenant contained in this Lease is untrue in any material respect as of the date made; or

(h) Tenant shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(i) A Transfer of this Lease in violation of Article 26.

31.2. Landlord Remedies. Upon the occurrence of a Tenant Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees set forth herein, Landlord shall be entitled to exercise any one or more or all of the following remedies:

(a) Subject to the rights of Leasehold Mortgagees set forth herein, Landlord may terminate this Lease and the rights of Tenant hereunder, and may enter and retake possession of the Premises (subject to the rights of Subtenants and Residents); or

(b) Landlord may exercise any other right or remedy available at law or in equity; provided that the remedy of terminating this Lease shall be subject to the rights of Leasehold Mortgagees, Subtenants and Residents; or

(c) Landlord, without additional notice, may cure such Event of Default on the part of Tenant at Tenant's expense, and Tenant shall promptly reimburse Landlord for all actual, reasonable costs and expenses incurred by Landlord in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Landlord in so curing such default or failure, and any damages incurred by Landlord as a result of such default or failure, shall be paid by Tenant within thirty (30) days of demand therefor by Landlord.

31.3. Tenant's Right to Contest. Notwithstanding anything to the contrary contained herein, if Landlord claims that a default has occurred under Section 31.1(b), and Tenant has

contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.1(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.4. Landlord Defaults. The occurrence of any of the following shall constitute an event of default by Landlord hereunder (each, a “**Landlord Event of Default**”):

(a) Landlord shall have failed to pay any sum required or stipulated to be paid by Landlord to Tenant hereunder, and such failure continues for ninety (90) calendar days following Landlord’s receipt of written notice thereof from Tenant; or

(b) Landlord shall have failed to observe or perform any other covenant or obligation of Landlord hereunder and Landlord shall not have cured such failure within ninety (90) calendar days after Landlord shall have received written notice thereof from Tenant; provided, however, that if such failure is such as cannot with diligent effort be cured within ninety (90) calendar days, Landlord shall not be in default hereunder if Landlord shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Landlord shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “**Insolvency Laws**”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Landlord of Landlord’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Landlord of the performance of Landlord’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Landlord of the performance of Landlord’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Landlord or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If any warranty or representation of Landlord contained in this Lease is untrue in any material respect as of the date made; or

(f) Landlord shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(g) A Transfer of this Lease in violation of Article 26 above.

31.5. Tenant Remedies. Upon the occurrence of a Landlord Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees herein, Tenant shall be entitled to exercise any one or more or all of the following remedies:

(a) Tenant may exercise any right or remedy available at law or in equity; and

(b) Tenant, without additional notice, may cure such Event of Default on the part of Landlord at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual, reasonable costs and expenses incurred by Tenant in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, shall be paid by Landlord within thirty (30) days of demand therefor by Tenant.

31.6. Landlord's Right to Contest. Notwithstanding anything to the contrary contained herein, if Tenant claims that a default has occurred under Section 31.4(b), and Landlord has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.4(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.7. Tenant's Remedies. In the event that Landlord defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within ninety (90) calendar days after the giving of written notice thereof by Tenant to Landlord, unless such default is of such nature that it cannot be cured within such 90-day period, in which case no default is to occur so long as Landlord commences the curing of the default within such 90-day period and thereafter diligently pursues the curing of same, Tenant may, in addition to any other right or remedy available to Tenant hereunder or at law or in equity, cure such default or failure at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual costs and expenses incurred by Tenant, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, may at Tenant's option be offset against any Rent and other amounts from time to time due or owing by Tenant to Landlord hereunder.

ARTICLE 32. GENERAL PROVISIONS

32.1. Notices. Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

<p>TO LANDLORD:</p>	<p>BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION c/o: Senior Vice President for Business and Finance University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451004 Las Vegas, NV 89154-1004 Attn: Gerry S. Bomotti Phone: (707) 895-3571 Fax: (702) 895-1090 Email: gerry.bomotti@unlv.edu</p>
<p>WITH A COPY TO:</p>	<p>Director for Real Estate: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451027 Las Vegas, NV 89154-1027 Attn: Cherie Garrity Phone: (702) 895-2500 Fax: (702) 895-4960 Email: cherie.garrity@unlv.edu</p>
<p>AND A COPY TO:</p>	<p>General Counsel: University of Nevada, Las Vegas 4505 S. Maryland Parkway Box 451085 Las Vegas, NV 89154-1085 Attn: Elda Sidhu Phone: (702) 895-5185 Fax: (702) 895-5299 Email: elda.sidhu@unlv.edu</p>
<p>TO TENANT:</p>	<p>UNIVERSITY PARK, LLC c/o The Midby Companies 8275 South Eastern, Suite 103 Las Vegas, NV 89123 (702) 362-2111 - Office (702) 637-4227 – Direct Line Attn: Tom George Email: Tomg@midbycos.com</p>

WITH A COPY TO:	The Midby Companies 8275 South Eastern, Suite 103 Las Vegas, NV 89123 (702) 362-2111 - Office (702) _____ – Direct Line Email: Ericm@midbycos.com
AND A COPY TO:	Jeff Geen, Esq. 2422 Granada Bluff Court Las Vegas, Nevada 89135 (702) 985-1800 Email: jeffsgeen@gmail.com

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party’s address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

32.2. Waiver. Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies under this Lease unless the waiver is in writing and signed by such Party. Any such waiver shall be applicable only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

32.3. Compliance With Laws. Tenant shall comply in all material respects at Tenant’s sole cost and expense with all notices of all governmental authorities having jurisdiction over the Premises and shall observe and comply with all Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to reasonably contest any such notices or Applicable Laws.

32.4. Approvals to be Reasonable. Unless the context of a provision clearly and unambiguously indicates otherwise, any approval or consent required under this Lease or requested by a Party of the other Party, shall not be unreasonably withheld, conditioned or delayed.

32.5. Interpretation. The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for or against either of the Parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the Parties. The Parties do not intend to become, and nothing contained in this Lease shall be interpreted to deem that Tenant and Landlord are, partners or joint venturers in any way or that Tenant is an agent or representative of Landlord for any

purpose or in any manner whatsoever. A male or female person may be referred to in this Lease by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Lease which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Lease specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Lease at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including but not limited to." Words such as "hereby," "herein," and "hereunder" and words of similar import shall be construed to refer to this Lease in its entirety. "Include" means "include but not limited to." "Any" means "any and all." Except to the extent the context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party's behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

32.6. Captions, Links, Table of Contents. The captions, links, headings, and table of contents set forth in this Lease are for convenience of reference only and shall not be limiting or determinative in the construction or interpretation hereof.

32.7. Memorandum of Lease. The Parties shall execute a memorandum of lease (the "Memorandum of Lease") of this Lease in the form of Exhibit D attached to this Lease for recording. Any recording, realty transfer, documentary, stamp, or other tax imposed upon the execution or recording of the Memorandum of Lease shall be paid by Tenant.

32.8. Binding Effect. All terms, covenants, conditions, and agreements contained in this Lease shall extend to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

32.9. Partial Invalidity. If any term, covenant, or condition of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and shall be enforced to the extent permitted by Applicable Laws; provided such partial invalidity does not prevent Tenant from realizing the benefit of its bargain pursuant to this Lease, including but not limited to possession of the Premises and the use thereof in all material respects as contemplated by this Lease.

32.10. Governing Law; Consent to Exclusive Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Nevada, without regard to conflict of laws principles. For the purpose of any suit, action, or proceeding arising out of or relating to this Lease, each of Landlord and Tenant hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of Nevada. In addition to any form of service of process otherwise permitted by law, service in any such action may be given by certified or registered mail, return receipt requested, and shall be deemed served upon the actual

delivery thereof in such manner to the Party intended to be served, which service shall be adequately established by the receipt for such delivery.

32.11. Unavoidable Delays. If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such Party, commonly referred to as “force majeure” (each, an “Unavoidable Delay”), including, without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, failure of power, unavailability of utility service, delays attributable to a Party’s unreasonable withholding of its consent or approval hereunder, Act of God, unusually severe or inclement weather, governmental restriction, regulation or control, terrorist, war, enemy, or hostile governmental action, civil commotion, insurrection, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days. If either Party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days.

32.12. Intellectual Property Rights. No Party may use the intellectual property rights of the other Party without the express written permission of the other Party. Without limiting the generality of the last sentence, Tenant shall not use the name of the “Nevada System of Higher Education” or “UNLV”, or the marks, seals, logos, or any other related name (collectively the “Marks”), in its advertising or in the production of any materials produced by Tenant, without the prior written consent of NSHE or UNLV, as the case may be, pursuant to an approved licensing or other agreement between the parties. Tenant may, however, use the names “Nevada System of Higher Education” and “University of Nevada, Las Vegas” or their acronyms in factual descriptions of the Phase One Project and, to the extent that Tenant delivers materials to UNLV for publication or dissemination that include the names or Marks and UNLV does so publish or disseminate the materials, it shall be deemed approval of such use.

32.13. Nonliability of Landlord and Tenant Officials and Employees. Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Tenant shall look solely to Landlord’s interest in the Premises for the collection of any judgment. No director, officer, official, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In no event shall this Lease be considered a general obligation of the Landlord or the State of Nevada. Tenant’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Landlord shall look solely to Tenant’s interest in the Premises for the collection of any judgment. No officer, official, employee, agent, member, or representative of Tenant shall be personally liable to Landlord or any successor in interest, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest, or on any obligation incurred under the terms of this Lease.

32.14. Surrender at End of Term. On the last day of the Lease Term or upon any earlier termination of this Lease, all of Tenant's right, title and interest in and to the Premises, (which shall include the Premises and all Improvements and Fixtures) shall automatically and fully vest in Landlord, and Tenant shall surrender and deliver up the Premises to Landlord in good order, condition, and repair, damage by fire or other casualty of Taking excepted, free and clear of all lettings, occupancies, liens, and encumbrances other than (a) those, if any, existing on the date hereof, and (b) those created by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date. Notwithstanding the termination of the Lease, Tenant shall remain liable to Landlord for any loss or damage suffered by Landlord because of any Event of Default of Tenant. Upon surrender, Tenant shall assign to Landlord or Landlord's designee all Subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant's interest in them, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

32.15. Yield Up. On the last day of the Lease Term or upon any earlier termination of this Lease, Tenant, its assigns, or successors in interest shall deliver to Landlord such of the following as Tenant, its assignee or successor in interest may have in its possession: Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, any maintenance records and manuals for the Premises, all original licenses and permits then pertaining to the Premises, and all warranties and guarantees then in effect that Tenant has received in connection with any equipment or work or services performed on the Improvements, together with a duly executed assignment to Landlord, without recourse or warranty, of the foregoing (whether or not Tenant has any of them in its possession), and copies of all other documents relating to the Premises.

32.16. Reserve Accounts. Upon the expiration or termination of the Lease Term, all reserve accounts shall automatically and fully vest in Tenant.

32.17. Prior Agreements and Discussions. Any agreements between Landlord on the one hand and Tenant on the other hand before the date of this Lease and relating to the Premises are superseded by this Lease; provided, however, that the Memorandum of Understanding shall remain in full force and effect with respect to all things and matters (including all pre-development reimbursables) other than the Premises, notwithstanding the execution of this Lease. If there are any conflicts between the Memorandum of Understanding and this Lease, this Lease shall control. All prior negotiations relative to the Premises and/or University Park are merged into this Lease. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Lease until it is executed and delivered by both Parties.

32.18. Relationship, No Third Party Rights. This Lease shall not be construed to create a joint venture or partnership between Landlord and Tenant, it being the intention of the parties to create only a landlord and tenant relationship. Nothing in this Lease shall be construed to permit anyone other than Landlord, Tenant, the Leasehold Mortgagees and their respective

successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

32.19. Entire Agreement; Amendment. This Lease embodies the entire agreement and understanding between the Parties with respect to the subject matter described in this instrument, and supersede all prior agreements and understandings between the Parties with respect to the subject matter hereof. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to University Park may require, and the Parties shall reasonably cooperate with each other, to amend or enter into additional agreements that are mutually determined to be advantageous to the construction, ownership, and operation of the Premises. This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the Party or Parties against which enforcement of such change, waiver, discharge or termination is sought.

32.20. Counterparts. This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature and acknowledgment pages may be taken from one counterpart and inserted in other counterparts to form a single Lease document.

32.21. Attorneys' Fees. In the event of any litigation proceedings regarding this Lease, the non-prevailing Party shall pay or reimburse the reasonable attorneys' fees, court costs and other reasonable costs paid or incurred by the prevailing Party in such litigation.

**ARTICLE 33.
EXHIBITS.**

The Exhibits to this Lease are as follows:

- A LEGAL DESCRIPTION OF LAND
- B GRAPHIC DEPICTION OF PHASE ONE LAND AND FUTURE PHASES LAND
- C PERMITTED EXCEPTIONS
- D FORM OF MEMORANDUM OF LEASE

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this **LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE** as of the date first written above.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

UNIVERSITY PARK, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

--

LEGAL DESCRIPTION OF LAND

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RE-RECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, THAT WOULD PASS THROUGH BY OPERATION OF LAW.

EXHIBIT B
--
**GRAPHIC DEPICTION OF PHASE ONE LAND
AND FUTURE PHASES LAND**

EXHIBIT C
--
PERMITTED EXCEPTIONS

EXHIBIT D

--

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

UNIVERSITY PARK, LLC
c/o The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123

Space above this line for Recorder's Office only

MEMORANDUM OF LEASES

THIS MEMORANDUM OF LEASE ("*Memorandum of Leases*") is made and entered into as of _____, 2015, by and between **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("*Landlord*" or "*UNLV*") and **UNIVERSITY PARK, LLC**, a Delaware limited liability company ("*UPLLC*"), and **[FUTURE PHASES, LLC]**, a Delaware limited liability company ("*FPLLC*").

UPLLC and FPLLC are collectively referred to herein as the "*Tenants*").

1. Landlord is the owner of that certain real property, and the improvements located thereon, located in Clark County, Nevada and more particularly described on Attachment A attached hereto (the "Land").

2. For and in consideration of the mutual covenants, agreements, and conditions set forth in the following unrecorded lease agreements:

(a) that certain unrecorded Lease Agreement for University Park Phase One by and between Landlord and UPLLC, dated _____, 2015 (the "*Phase One Lease*"), and

(b) that certain unrecorded Lease Agreement for University Park Future Phases by and between Landlord and FPLLC, dated _____, 2015 (the "*Future Phases Lease*," and, together with the Phase One Lease, collectively the "*Leases*."),

3. Landlord hereby leases to Tenants and Tenants hereby lease from Landlord, upon all the terms and conditions of the Leases, the Land and all buildings, structures, improvements, personal and intangible property, and appurtenances, as more particularly described in the Leases.

4. The Land is to be partitioned into two areas, which are sometimes referred to “Phase One Land” and “Future Phases Land,” and will be leased by Landlord to UPLLC and FPLLC, respectively.

5. In accordance with the terms and conditions of the Leases:

(a) the term of the Phase One Lease shall be for a period not to exceed approximately ____ years commencing on the Commencement Date as more particularly set forth therein and

(b) the term of the Future Phases Lease shall be for a period not to exceed of approximately ____ years commencing on the Commencement Date as more particularly set forth therein

6. This Memorandum of Leases has been prepared to provide notice that the Land is subject to the terms and conditions of the Leases, which terms are hereby incorporated by reference into this Memorandum of Leases.

7. In no event shall the terms of this Memorandum of Leases be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Leases. In the event of any inconsistency between the terms of this Memorandum of Leases and the terms of the Leases, the terms of the Leases shall control.

8. This Memorandum of Leases may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

IN WITNESS WHEREOF, Landlord and Tenants have caused their duly authorized representatives to execute this Memorandum of Leases as of the date first written above.

SIGNATURES TO FOLLOW

ATTACHMENT A
--
TO MEMORANDUM OF LEASES
--
LEGAL DESCRIPTION OF LAND

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

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EXHIBIT B

ASSESSOR'S PARCELS - CLARK CO., NV.
Michele W. Shafe - Assessor

BOOK T21S R61E **SEC.** 22 **MAP** N 2 NE 4 **162-22-5**

NOTES
 This map is for assessment use only and does NOT represent a survey.
 No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.
 This map is compiled from official records, including surveys and deeds, but only contains the information required for assessment. See the recorded documents for more detailed legal information.

MAP LEGEND

- Parcel Boundary
- Sub Boundary
- PM/LD Boundary
- Road Easement
- Match / Leader Line
- Historic Lot Line
- Historic Sub Boundary
- Historic PM/LD Boundary
- Section Line
- Condominium Unit
- Air Space PCL
- Right of Way PCL
- Sub-Surface PCL
- Road Parcel Number
- Parcel Number
- 1.00 Acreage
- Parcel Sub/Seq Number
- Plat Recording Number
- Block Number
- Lot Number
- Gov. Lot Number

Scale: 1" = 200' Rev: 02/08/2011

CLARK COUNTY NEVADA

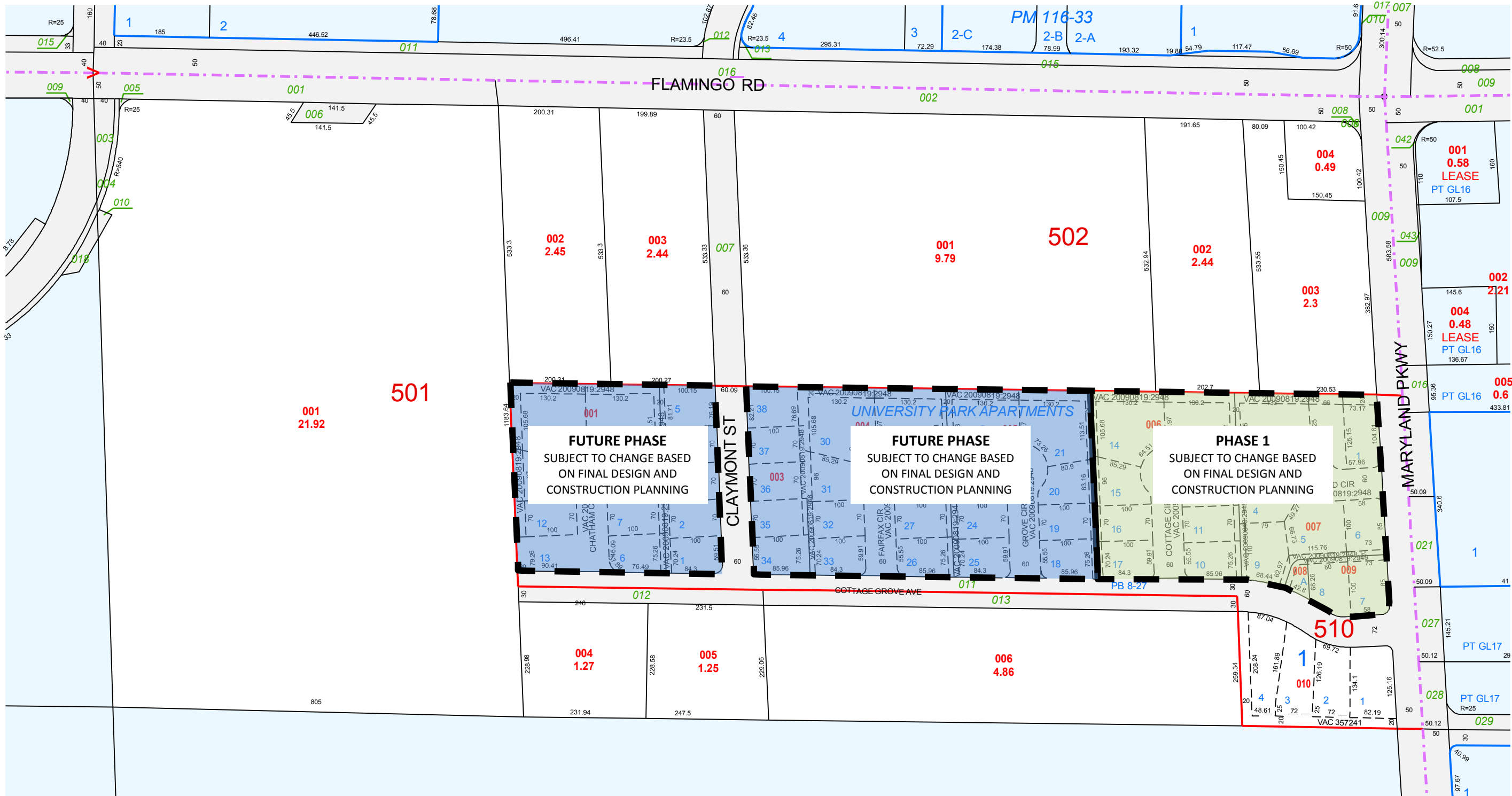


EXHIBIT C – DRAFT PHASE MAP

EXHIBIT C – DRAFT PHASE MAP

TAX DIST 470

EXHIBIT C

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
3. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
4. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

7. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,705.87, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,681.14 has been paid

Second installment of \$2,674.91 has been paid

Third installment of \$2,674.91 unpaid delinquent first Monday in January

Fourth installment of \$2,674.91 unpaid delinquent first Monday in March

Parcel No. 162-22-510-001

8. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,450.07, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,114.46 has been paid

Second installment of \$1,111.87 has been paid

Third installment of \$1,111.87 unpaid delinquent first Monday in January

Fourth installment of \$1,111.87 unpaid delinquent first Monday in March

Parcel No. 162-22-510-002

9. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,336.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,086.03 has been paid

Second installment of \$1,083.50 has been paid

Third installment of \$1,083.50 unpaid delinquent first Monday in January

Fourth installment of \$1,083.50 unpaid delinquent first Monday in March

Parcel No. 162-22-510-003

10. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,477.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,624.01 has been paid

Second installment of \$2,617.89 has been paid

Third installment of \$2,617.89 unpaid delinquent first Monday in January

Fourth installment of \$2,617.89 unpaid delinquent first Monday in March

Parcel No. 162-22-510-004

11. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,460.25, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,619.63 has been paid

Second installment of \$2,613.54 has been paid

Third installment of \$2,613.54 unpaid delinquent first Monday in January

Fourth installment of \$2,613.54 unpaid delinquent first Monday in March

Parcel No. 162-22-510-005

12. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,374.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,598.17 has been paid

Second installment of \$2,592.12 has been paid

Third installment of \$2,592.12 unpaid delinquent first Monday in January

Fourth installment of \$2,591.12 unpaid delinquent first Monday in March

Parcel No. 162-22-510-006

13. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$9,396.13, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,353.15 has been paid

Second installment of \$2,347.66 has been paid

Third installment of \$2,347.66 unpaid delinquent first Monday in January

Fourth installment of \$2,347.66 unpaid delinquent first Monday in March

Parcel No. 162-22-510-007

14. State and County Taxes for the fiscal period of 2014 to 2015, have been paid in full in the amount of \$5.87.

Parcel No. 162-22-510-008

15. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$727.23, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$182.13 has been paid

Second installment of \$181.70 has been paid

Third installment of \$181.70 unpaid delinquent first Monday in January

Fourth installment of \$181.70 unpaid delinquent first Monday in March

Parcel No. 162-22-510-009

16. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

17. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

18. Reservations and Easements in the patent from the State of Nevada, recorded January 24, 1955, in Book 81 as Document No. 68040 of Official Records.

19. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 8 of Plats, Page 27, of Official Records.
20. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, for electrical lines, recorded August 15, 1963, in Book 470 as Document No. 378570 of Official Records.
21. An unrecorded Lease executed by and between the parties named herein, for the terms and upon the subject to all of the terms, covenants, and provisions contained therein;
Dated: July 3, 2001
Lessor: Olympic Circle, a Partnership
Lessee: Web Service Company, Inc.
Term: Not less than 3 years nor more than 20 years from the date of the Lease
Disclosed by: Memorandum Of Lease
Recorded: August 22, 2001 in Book 20010822 as Document No. 02528

The present ownership of said leasehold estate and other matters affecting the interest of the lessee are not shown herein.

22. Any, rights, interest, or claims which may exist or arise by reason of the following facts as disclosed by GRANT, BARGAIN, SALE DEED recorded June 9, 2006 in Book 20060609 as Document No. 0002482 of Official Records, described as follows:

All buildings on all lots encroach into building set back lines as shown on the subdivision plat described in Item 11 herein.

Small out buildings located on Lots 4, 12, 28 and 37 lie within building set back lines as shown on the subdivision plat described in Item 11 herein.

Building located near the West line of Lot 29 encroaches into drainage easement as shown on the subdivision plat described in Item 11 herein.

Building located on Lot 1 encroaches into Nevada Power Company easement described in Item 12 herein.

23. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 of Official Records.

The above document was re-recorded on July 1, 2009 in Book 20090701 as Document No. 0001032.

The above document was re-recorded on August 19, 2009 in Book 20090819 as Document No. 0002948.

24. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for utilities, recorded June 29, 2009, in Book 20090629 as Document No. 0003323 of Official Records.
25. Water rights, claims or title to water, whether or not shown by the public records.
26. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

27. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
28. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as may be disclosed by an inspection of said premises.

**LEASE AGREEMENT
FOR
UNIVERSITY PARK
FUTURE PHASES**

by and between

**THE BOARD OF REGENTS OF THE
NEVADA SYSTEM OF HIGHER EDUCATION**

on behalf of

**THE UNIVERSITY OF NEVADA, LAS VEGAS
("LANDLORD")**

and

**FUTURE PHASES, LLC
("TENANT")**

Dated as of _____, 2015

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**LEASE AGREEMENT
FOR
UNIVERSITY PARK FUTURE PHASES**

This **LEASE AGREEMENT FOR UNIVERSITY PARK FUTURE PHASES** (this "**Lease**") dated for reference purposes only as of _____, 2015, is made by and between the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("**Landlord**" or "**UNLV**"), and **FUTURE PHASES, LLC**, a Delaware limited liability company, ("**Tenant**"). Landlord and Tenant are individually sometimes referred to herein as a "**Party**" and collectively as the "**Parties.**"

RECITALS

I. Background

A. The University of Nevada, Las Vegas is a public, urban research institution founded in 1957; and a part of the Nevada System of Higher Education ("**NSHE**"). The NSHE is governed by a thirteen person Board of Regents ("**Regents**") who are elected by the people of the State of Nevada. UNLV exists in accordance with the laws of the State of Nevada; and is a flagship institution of higher learning in the State, offering bachelor's, master's, and doctoral degrees.

B. On November 30, 2012, the Regents approved a comprehensive update to UNLV's Campus master plan (the "**Campus Master Plan**"). One of the guiding principles of the Campus Master Plan is that expanding Campus housing with both additional and varied types of housing will significantly improve the quality of Campus life. The Campus Master Plan also indicates that UNLV's peer institutions house 20-25% of their student population. UNLV currently houses approximately 6% of its student population, and UNLV is at maximum capacity.

C. A real estate analysis and demand study (the "**Demand Study**") has been prepared by Brailsford & Dunlavey, Inc. that determined that the demand for student housing at UNLV was significantly underserved.

D. The Campus Master Plan identified privately owned property on the north side of Campus adjacent to Cottage Grove Avenue within an area defined in the Campus Master Plan as the "Midtown District" as a location for future student housing with UNLV potentially involved on a public/private partnership basis.

E. The real property described on **Exhibit A** (the "**Land**") is a part of the Midtown District, approximately 14 acres in size, and currently owned by Wells Fargo N.A. ("**Seller**"). The

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Land currently has 280 apartment units arranged as 4-plexes (the “Existing Improvements”) that are approximately 50 years old.

F. In August of 2014, University Park, LLC, an Affiliate of Tenant (hereinafter, “UPLLC”) submitted a proposal to Seller outlining a plan for the purchase and redevelopment of the Land for UNLV student housing. UPLLC’s proposal was submitted as part of a process in which CBRE on behalf of Seller sought bids/proposals from several developers for the redevelopment of the Land. In September of 2014, UPLLC was selected by Seller as the winning bidder with the right to purchase the Land for \$20,500,000.

G. UPLLC in turn approached UNLV about redeveloping the Land on a public-private basis consistent with the Campus Master Plan. In October of 2014, representatives of UNLV and UPLLC met several times to discuss redevelopment of the Land and UNLV’s potential involvement in that process.

H. On October 16, 2014, UPLLC entered into a certain Purchase Contract (the “Purchase Contract”) with Seller to purchase the Land for a purchase price of \$20,500,000 (the “Purchase Price”).

I. As described in more detail below, redevelopment of the Land would involve UNLV purchasing the Land and leasing it back to Tenant and UPLLC for redevelopment. This would expand the Campus footprint in a strategically important area and ensure that UNLV maintains long term control of the Land.

II. Development Plans

J. The Land currently consists of two planning areas, which are depicted on Exhibit B and identified herein as the “Phase One Land” and the “Future Phases Land”. The Phase One Land is the subject of a separate lease agreement (the “Phase One Lease”) executed concurrently with this Lease by Landlord and UPLLC. The Future Phases Land may be further subdivided in accordance with the terms of this Lease if there are more than two development Phases of University Park. The overall development to occur on all of the Phases of the Land is hereinafter referred to as “University Park.”

K. The plan and agreement of the Parties now contemplates (i) UNLV leasing the Phase One Land to UPLLC, concurrent with the Closing under the Purchase Contract, which will develop the first stage of the planned student housing improvements, and (ii) UNLV leasing the Future Phases Land to Tenant concurrent with the Closing under the Purchase Contract, which will develop the second and subsequent (if any) stages of University Park.

L. Tenant, UPLLC and UNLV have also entered into that certain Project Development Agreement of even date herewith (the “Project Development Agreement”) which describes and governs the design and construction process of University Park in greater detail. Conceptual drawings and schematics of University Park are attached to the Project Development Agreement,

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which illustrate the overall design concept for University Park (the “**Schematic Plans**”). Full build-out of University Park is projected to include up to 3,400 Beds in three wrap-style buildings with apartment-like amenities, a limited amount of retail space, and 1,500 structured parking spaces. The final Bed count and heights of the buildings will depend on market conditions as development of University Park proceeds.

M. It is generally intended by the Parties that University Park, in all of its Phases, will be held out to the public and potential Residents as an integral part of UNLV’s On-Campus Housing stock like other On-Campus Housing facilities.

N. The first Phase of University Park development (the “**Phase One Project**”) will be constructed by UPLLC on the Phase One Land, approximately six (6) acres on the east end of the Land along the frontage of Maryland Parkway. The timing of development of the Phase Two Project and any subsequent Phases of University Park will be tied to the success of marketing and leasing of the Phase One Project.

O. The development of the Future Phases of University Park is referred to in this Lease as the “**Future Phases Project.**” Tenant will be responsible for the financing, construction, management, maintenance, marketing, and operations of the Future Phases Project. Tenant will also manage, maintain and operate the Existing Improvements that remain on the Future Phases Land until such time as they are demolished as phased redevelopment of the Future Phases Land proceeds.

P. Subject to certain conditions, Tenant will distribute a portion of the Available Cash of the Future Phases Project (the “**Project Success Contributions**”) to Student Residents (as defined below) in order to reduce future rental rates or provide other benefits directly to the Student Residents.

Q. University Park is consistent with the Campus Master Plan and the Demand Study and aligns with UNLV’s vision for the revitalization of the Midtown District through public private partnerships.

R. The Regents approved a Memorandum of Understanding (the “**Memorandum of Understanding**”) at their regular public meeting on December 5, 2014, in which Landlord and UPLLC agreed to undertake certain actions resulting in Landlord’s acquisition of the Land for the purpose of furthering UNLV’s strategic interest to provide its students with safe and affordable housing, along with amenities, in close proximity to the Campus;

S. The Parties, in fulfillment of certain of the undertakings set forth in the Memorandum of Understanding, are now prepared to enter into this Lease for the development, financing, construction of the Future Phases Project and management of the Premises, as described and defined below;

T. Pursuant to the terms, conditions, covenants, and provisions of this Lease, (i) Landlord desires to lease the Future Phases Land to Tenant; (ii) Tenant desires to lease the Future Phases Land from Landlord and construct Improvements, as defined below, upon the Future

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Phases Land, and transfer the Improvements to Landlord; and (iii) Landlord desires to lease the Premises, as defined below, to Tenant, and Tenant desires to lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth by each Party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each Party hereto, Landlord and Tenant hereby agree as follows with the intent to be legally bound:

ARTICLE 1. DEFINITIONS.

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, (i) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular; (ii) all accounting terms defined in GAAP and not otherwise defined herein have the meanings assigned to them in accordance with GAAP at the applicable time; (iii) all references in this Lease to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Lease; (iv) the word “including” shall have the same meaning as the phrase “including, without limitation,”; and (v) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision:

1.1. “Academic Term” means the spring and fall semesters of UNLV’s academic year, which run from approximately mid-January to mid-May (“Spring Term”) and from approximately mid-August to mid-December (“Fall Term”) of each calendar year

1.2. “Affiliate” means any Person directly or indirectly controlling, controlled by, or under common control with another Person or a blood relative or spouse of such Person, if such Person is a natural Person. For the purposes of this definition, “control” (including with correlative meaning, the terms “controlling,” “controlled by” and “under common control”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

1.3. “Applicable Laws” means applicable local, state, or federal laws, statutes, codes, ordinances, rules, regulatory notices, and any notices or orders of any and all governmental, quasi-governmental, or regulatory authorities and other authorities, and agencies having jurisdiction over the Premises, which are in effect from time to time.

1.4. “Asset Management Fee” has the meaning assigned to it in Section 14.6.

1.5. “Available Cash” has the meaning assigned to it in Section 5.5.

1.6. “Beds” means the maximum number of persons allowed to occupy University Park (or a Phase or building thereof depending on the context) whether or not all such Beds are in fact occupied from time to time.

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1.7. **“Building Codes”** means all building codes, ordinances, and other Applicable Laws applicable to the construction of the Improvements.

1.8. **“Business Day”** means any day which is not a Saturday, Sunday, or legal holiday under the laws of the State of Nevada or United States of America.

1.9. **“Campus”** means the main Campus of the University of Nevada, Las Vegas, located at 4504 South Maryland Parkway in Clark County, Nevada.

1.10. **“Campus Master Plan”** has the meaning assigned to it in Recital B.

1.11. **“Certificate of Occupancy”** means an approved final inspection, certificate of occupancy, certificate of completion, or other similar verification from the building division of Clark County, the Public Works Board of the State of Nevada, or similar governmental agency with jurisdiction to inspect the Improvements, indicating the building, structure, or part thereof for which the approved final inspection was made or certificate was issued, was found by the building official at the time of certificate issuance or final inspection to be in substantial compliance with the provisions of Applicable Law and the technical codes.

1.12. **“Closing”** has the meaning assigned to it in the Purchase Contract.

1.13. **“Commercial Premises”** means those portions of the Premises to be used for commercial purposes, to be identified as such on the Construction Documents.

1.14. **“Commercial Sublease”** means a Sublease for space within the Commercial Premises.

1.15. **“Commercial Subtenant”** means a Subtenant of any portion of the Commercial Premises.

1.16. **“Construction Documents”** means the final plans, specifications, and drawings for the construction of the Improvements to be prepared at Tenant’s expense in accordance with the Project Development Agreement.

1.17. **“County Code”** means the Clark County Code of Clark County, Nevada.

1.18. **“Debt Service”** means, for any debt service payment date, the amount required to pay the principal of (whether pursuant to a stated maturity or redemption requirements applicable thereto) and/or interest on financing permitted under this Lease and required to design, construct, and furnish the Premises pursuant to this Lease.

1.19. **“Default Rate”** means a rate that is one percent (1%) per annum in excess of the the per annum rate of interest announced as the “prime rate” in the Wall Street Journal or its successor, in effect from time-to-time; provided that, in no event shall the Default Rate hereunder exceed the maximum amount or rate that lawfully may be charged in the circumstances, if such a maximum exists.

1.20. **“Default Termination Notice”** has the meaning assigned to it in Section 24.4.

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1.21. **“Demand Study”** has the meaning assigned to it in Recital C.

1.22. **“Dwelling”** means a building or portion thereof designed or used exclusively for residential occupancy by a family or by persons residing in a community residence and within which there is interior access to all habitable rooms.

1.23. **“Effective Date”** means the date on which both the Landlord and Tenant shall have executed this Lease as set forth below their respective signatures or the later of such dates if they execute on different days.

1.24. **“Environmental Laws”** means Applicable Laws pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act.

1.25. **“Event of Default”** means either a Tenant Event of Default or a Landlord Event of Default.

1.26. **“Existing Improvements”** means the buildings and other structures and improvements currently existing on the Future Phases Land on the Effective Date. **“Phase One Existing Improvements”** means those Existing Improvements located on the Phase One Land; **“Phase Two Existing Improvements”** means those Existing Improvements located on the Phase Two Land; **“Future Phases Existing Improvements”** means those Existing Improvements located on any of the Future Phases Land. **“Operating Existing Improvements”** means any Existing Improvements, regardless of which Phase they are located on, that remain undemolished at any given time.

1.27. **“Expenses”** means, for any period, all expenses paid in connection with the operation, maintenance and repair of the Premises (or of the Premises with respect to any Future Phase, as the context requires) during such period, including, but not limited to the following:

(a) Taxes, charges or fees for, and taxes on, the furnishing of electricity, fuel, water, sewer, gas, oil and other utilities; security (provided, neither Tenant nor Landlord is obligated to provide security except as explicitly set forth herein);

(b) pest control; cleaning of windows and exterior curtain walls; janitorial services; trash and snow removal; landscaping and repair and maintenance of grounds;

(c) salaries, wages, and benefits for employees of Tenant engaged in the operation, maintenance or repair of the Premises including benefits, payroll taxes and worker’s compensation insurance;

(d) license fees and governmental permits;

(e) casualty and liability insurance;

(f) cleaning supplies; uniforms and dry cleaning service;

(g) supplies, repairs, replacements and other expenses for maintaining and operating the Premises;

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(h) the cost, including interest, amortized over its useful life or payback period of any capital improvement made to the Premises which is required under governmental law or regulation that was not applicable to the Premises at the time it was constructed or the installation of any device or other equipment which improves the operating efficiency of any system within the Premises and thereby reduces operating expenses, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder, except to the extent such costs are funded from reserves required by the terms of Permitted Financing or hereunder;

(i) Tenant's accounting fees and costs for the preparation of statements of operating expenses or incurred in order to reduce operating expenses;

(j) legal fees and costs relating to the operation, repair or maintenance of the Premises or incurred in order to reduce operating expenses, service or management contracts with independent contractors and;

(k) management fees paid to third parties (provided, if such third party is Affiliated with Tenant the fees to be paid shall be at market rates);

(l) telephone, telegraph and stationery; and the costs of any other items which, under generally accepted accounting principles consistently applied from year to year with respect to the Premises, constitute operating and maintenance costs attributable to any or all of the Premises; and

(m) the Asset Management Fee;

all of the foregoing calculated in accordance with GAAP.

1.28. “Fee Mortgage” means any mortgage or deed of trust given by Landlord in connection with any borrowing or financing by Landlord or any other Person as to which Landlord's interest in the Future Phases Project (or any part thereof) is encumbered or given as collateral in any form, and any modifications, extensions, renewals, and replacements thereof; provided, however, that “Fee Mortgage” does not include and specifically excludes any such instrument which is a Leasehold Mortgage.

1.29. “Financing Agreements” means any instrument or agreement between Tenant and a Leasehold Mortgagee providing financing for the Future Phases Project, including any Leasehold Mortgage.

1.30. “Fixtures” means any and all equipment, machinery, and other fixtures or improvements that are permanently attached to and made part of the Improvements or that, although they can be removed from the Improvements, are necessary to operate or maintain the Improvements in a normal and ordinary way, such as HVAC systems, electrical systems, plumbing systems, and elevator systems.

1.31. “Freshman” means a UNLV Student with 29 or fewer semester credits based on a standard of 120 semester credits for graduation. If UNLV changes its method of determining

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graduation requirements in the future, the foregoing definition will be altered accordingly to a standard that requires approximately one-fourth of the graduation requirement. All UNLV undergraduate students with 30 or more semester credits are referred to herein as “**Upper-Class.**” The use of the terms “Freshman” and “freshmen” are used without regard to gender and apply equally to men and women.

1.32. “Future Phase” means each Phase of University Park located on the Future Phases Land.

1.33. “Future Phases Land” has the meaning assigned to it in Recital J.

1.34. “Future Phases Project” means the Future Phases Land and the mixed-use development (or developments if there are more than two (2) University Park Phases) on the Future Phases Land to be developed by Tenant or a Phase Assignee, consisting primarily of housing facilities for UNLV Students and such other uses as provided in this Lease and the Project Development Agreement.

1.35. “GAAP” means generally accepted accounting principles consistently applied (as such term is used in the American Institute of Certified Public Accountants Professional Standards).

1.36. “General Contractor” means a contractor engaged by Tenant to perform the Improvement Work or a portion thereof.

1.37. “Governmental Authorities” means Clark County, the State of Nevada, the United States and their respective agencies but specifically excludes NSHE, the Regents and UNLV for purposes of this Lease.

1.38. “Gross Revenue” means, for any period, all revenues derived from the operation and leasing of the Premises during such period, including but not limited to any interest earned thereon, as calculated under GAAP; provided, however, that Gross Revenue shall not include: (i) Subtenant Deposits, unless and until such Subtenant Deposits are forfeited to or applied by Tenant toward rental obligations in accordance with the terms of a Sublease with respect to any failure by the Subtenant to perform its obligations; (ii) proceeds or payments under insurance policies (except proceeds of any business interruption or rental loss insurance, which proceeds are hereby deemed included in Gross Revenue); (iii) condemnation proceeds; and (iv) proceeds from any sale or financing of the Premises. Notwithstanding the foregoing, “Gross Revenue” does not include any Subtenant Deposits.

1.39. “Hazardous Substances” means “hazardous substances,” “regulated substances,” “hazardous wastes” or “solid wastes” (as such terms are defined and/or used in applicable Environmental Laws), including, without limitation, asbestos, lead paint, and polychlorinated byphenyls, or environmentally deleterious material in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to applicable Environmental Laws.

FUTURE PHASES LEASE

1.40. **“Improvements”** means any and all buildings and improvements from time to time hereafter constructed on the Future Phases Land, including without limitation all additions, alterations and improvements thereto or replacements thereof, and all fixtures, machinery, landscaping, signage, and equipment installed therein or affixed thereto necessary for the proper operation of such buildings and improvements; provided that **“Improvements”** does not include any of the Personal Property, Subtenant Improvements, or the Existing Improvements.

1.41. **“Improvement Work”** means the work of design and construction required by the terms of this Lease to be performed by Tenant to cause the demolition of the Existing Improvements and Substantial Completion of the Improvements and all work of construction to be performed by Tenant and its contractors as required by this Lease and such additional work, if any, as may be required by Clark County, the Public Works Board of the State of Nevada, or other governmental or quasi-governmental agencies and public utilities such as but not limited to, the Las Vegas Valley Water District, Southern Nevada Water Authority, Clark County Water Reclamation District, Clark County School District, NV Energy, Southwest Gas, and Republic Services, as a condition to issuance of building permits or a Certificate of Occupancy or provision of services to the Premises in accordance with the Construction Documents.

1.42. **“Land”** means the real property described on Exhibit A, together with all rights, easements, and appurtenances thereto or in anywise belonging.

1.43. **“Landlord”** has the meaning assigned to it in the first paragraph of this Lease.

1.44. **“Landlord Event of Default”** has the meaning assigned to it in Section 31.4.

1.45. **“Lease”** has the meaning assigned to it in the first paragraph of this Lease.

1.46. **“Lease Commencement Date”** has the meaning assigned to it in Section 4.1.

1.47. **“Leasehold Estate”** means the estate of Tenant created by this Lease upon and subject to all the terms and conditions of this Lease.

1.48. **“Leasehold Mortgage”** means and includes any mortgage, deed of trust and any other security instrument or instruments constituting a lien upon Tenant’s interest under this Lease and the Leasehold Estate hereby created, and any modifications, extensions, renewals, and replacements thereof; provided, Landlord has approved or is deemed to have approved such instruments as provided in Section 24.2.

1.49. **“Leasehold Mortgagee”** means any holder of a Leasehold Mortgage or any interest therein.

1.50. **“Lease Term”** means the period from the Lease Commencement Date until the Lease Term expires pursuant to Sections 4.2.

1.51. **“Lease Year”** means a period of twelve (12) months beginning on the Lease Commencement Date and each twelve month period thereafter until the end of the Lease Term.

1.52. **“Landlord”** has the meaning assigned to it in the first paragraph of this Lease.

FUTURE PHASES LEASE

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- 1.53. **“Major Alterations”** has the meaning set forth in Section 6.2.
- 1.54. **“Memorandum of Lease”** has the meaning assigned to it in Section 32.7.
- 1.55. **“Memorandum of Understanding”** has the meaning assigned to it in Recital R.
- 1.56. **“Net Income”** means, for any period, Gross Revenue less Expenses for such period, determined in accordance with GAAP.
- 1.57. **“NSHE”** has the meaning assigned to it in Recital A.
- 1.58. **“New Lease”** has the meaning assigned to it in Section 24.6.
- 1.59. **“Occupant”** means a Subtenant, licensee, user, owner, and anyone occupying or using any Dwelling or Commercial Premises under or through Tenant, including their employees, agents, contractors and invitees.
- 1.60. **“Off-Campus Housing”** means student housing that is not, as of the Lease Commencement Date or from time to time in the future, (i) owned, leased, managed, or otherwise controlled by UNLV or an Affiliate of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.
- 1.61. **“On-Campus Housing”** means student housing that is (i) owned, leased, managed, or otherwise controlled by UNLV, an Affiliate of UNLV or someone under contract with UNLV to lease, manage, or control on behalf of UNLV, or (ii) located on land owned, leased, or otherwise controlled by UNLV or an Affiliate of UNLV.
- 1.62. **“Party”** and **“Parties”** have the meanings assigned to them in the first paragraph of this Lease.
- 1.63. **“Permitted Exceptions”** means the easements, restrictions, encumbrances, or other exceptions listed on **Exhibit C** hereto.
- 1.64. **“Permitted Financing”** has the meaning assigned to it in Section 24.1
- 1.65. **“Permitted Residents”** has the meaning assigned to it in Section 9.9
- 1.66. **“Person”** means an individual, corporation, limited liability company, partnership, joint venture, unincorporated association, or other entity.
- 1.67. **“Personal Property”** means all furniture, furnishings, appliances, equipment, and personal property of any nature whatsoever now or hereafter located or to be located on or in the Premises other than the Fixtures.
- 1.68. **“Phase”** means a distinct and severable portion of the entire University Park development, including at least (i) the **“Phase One Project”**, which is being developed by UPLLC on the Phase One Land; and (ii) the **“Future Phases Project”**, which is being developed by Tenant or its assigns on the Future Phases Land or a portion thereof. If the Future Phases Project is further divided into any additional and supernumerary Phases in accordance with the this Lease, the first
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FUTURE PHASES LEASE

of such Phases on the Future Phases Land will be the “Phase Two Project,” the next will be the “Phase Three Project,” and the next, if any, will be the “Phase Four Project.” A Phase may or may not constitute a legally conveyable parcel.

1.69. “Phase Assignee” has the meaning assigned to it in Section 3.2.

1.70. “Phase Lessee” means Tenant or any Phase Assignee to whom Tenant has assigned its rights hereunder pursuant to Article 3.

1.71. “Phase One Land” has the meaning assigned to it in Recital J. The boundaries of the Phase One Land may be adjusted in Tenant’s and UPLLC’s reasonable discretion.

1.72. “Phase One Lease” has the meaning assigned to it in Recital J.

1.73. “Phase One Project” means the Phase One Land and the mixed-use development on the Phase One Land to be developed by UPLLC, consisting primarily of housing facilities for UNLV Students and such other uses as provided in the Future Phases Lease and the Project Development Agreement.

1.74. “Preferred Members” has the meaning assigned to it in Section 5.5(e).

1.75. “Premises” has the meaning assigned to it in Section 2.1.

1.76. “Project” means, generically, the portion of the entire University Park to be developed by UPLLC, Tenant, or any applicable Phase Lessee.

1.77. “Project Development Agreement” has the meaning assigned to it in Recital L.

1.78. “Purchase Contract” has the meaning assigned to it in Recital H.

1.79. “Purchase Price” has the meaning assigned to it in Recital H

1.80. “Regents” has the meaning assigned to it in Recital A.

1.81. “Rent” means Base Rent and any other sum required or stipulated to be paid by Tenant to Landlord hereunder.

1.82. “Resident” means any Subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sublease with Tenant, or (b) has applied for residence in the Residential Premises and been accepted by Tenant.

1.83. “Residential Premises” means those portions of the Premises to be used as housing facilities, to be identified as such on the Design Development Documents.

1.84. “Residential Sublease” means a Sublease for space within the Residential Premises.

1.85. “Secured Lenders” has the meaning assigned to it in Section 24.13.

1.86. “Secured Property” has the meaning assigned to it in Section 24.13.

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- 1.87. **“Seller”** has the meaning assigned to it in Recital E.
- 1.88. **“Student Resident”** means a Resident who is also a UNLV Student.
- 1.89. **“Sublease”** means any lease, sublease, sub-sublease, or license of the Premises or any part thereof by Tenant or Subtenant to another party. The term “Subleases” comprises Residential Subleases and Commercial Subleases.
- 1.90. **“Substantial Completion”** means, with respect to the Improvements, or any portion thereof, that the fire marshal of jurisdiction has certified them, as applicable, as ready for occupancy, but not including Commercial Subtenant improvements.
- 1.91. **“Subtenant”** means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a Sublease.
- 1.92. **“Subtenant Deposits”** means all security deposits or security interests paid by a Subtenant in advance or other deposits received from any Subtenant.
- 1.93. **“Subtenant Improvements”** means any and all improvements from time to time made to any portion of the Premises by a Commercial Subtenant, including without limitation all additions, alterations, and improvements, or replacements thereof, which may be implemented in one or more phases, and all fixtures, machinery, signage, and equipment installed therein or affixed thereto necessary or desirable for the operation of such portion of the Premises by such Commercial Subtenant.
- 1.94. **“Tax”** means, individually and collectively, any and all taxes, assessments, license fees, excises and charges of every sort, nature, and kind that during the Lease Term are levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Tenant or Landlord in and to the Premises.
- 1.95. **“Tenant”** has the meaning assigned to it in the first paragraph of this Lease.
- 1.96. **“Tenant Event of Default”** has the meaning assigned to it in Section 31.3.
- 1.97. **“Transfer”** has the meaning assigned to it in Section 26.1.
- 1.98. **“Unavoidable Delay”** has the meaning assigned to it in 32.11.
- 1.99. **“University Park”** has the meaning assigned to it in Recital K.
- 1.100. **“UNLV”** has the meaning assigned to it in the first paragraph of this Lease.
- 1.101. **“UNLV Police”** has the meaning assigned to it in Section 10.1.
- 1.102. **“UNLV Student”** means an individual who (a) is enrolled at and attending UNLV for the then current semester, (b) is enrolled as a student at UNLV for a subsequent semester or has applied for acceptance at or been accepted at UNLV for a subsequent semester, or (c) with respect to summer occupancy, (i) was enrolled at and attending UNLV in the previous Spring Term or (ii) is enrolled at UNLV for the upcoming Fall Term or has applied for acceptance at or been accepted at UNLV for the upcoming Fall Term.

1.103. **“UPLLC”** has the meaning assigned to it in Recital F.

**ARTICLE 2.
LEASE AND TITLE**

2.1. **Lease Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Future Phases Land and Existing Improvements, situated in Clark County, Nevada, more particularly described in Exhibit B, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Future Phases Land for pedestrian and vehicular ingress, egress and regress to and from the Future Phases Land and to and from any entries and entrances located thereby and connecting with a public right-of-way whether now existing or acquired subsequent to the execution and delivery of this Lease, together with all Improvements now existing or to be constructed thereon (collectively, the **“Premises”**). Such rights of access granted to Tenant hereunder shall be non-exclusive and extend to all Subtenants of Tenant, and all employees, licensees, and invitees of Tenant and/or Tenant’s Subtenants. The Premises include the Residential Premises and the Commercial Premises.

2.2. **Title.** Title to the Future Phases Land and Existing Improvements shall be free and clear of all title exceptions except the Permitted Exceptions, to be evidenced by a Leasehold Title Insurance Policy, with a no encroachment endorsement, on the Future Phases Land and Existing Improvements insuring Tenant’s Leasehold Estate in the Future Phases Land and Existing Improvements subject only to the Permitted Exceptions.

2.3. **Other Easements.** Notwithstanding any other provision of this Lease, Tenant and Landlord shall reasonably cooperate with one another in good faith to define and grant additional necessary easements relating to or benefiting the Premises on or over the Campus. Further, Landlord shall timely grant to Tenant access, temporary access, sidewalk, and/or utility easements (including without limitation electricity, cable, data, gas, water, storm water, and sewer) over and across the Campus as are needed for Tenant’s development, construction, and operation of the Premises. In addition, UNLV shall, from time to time, upon request by Tenant, exercise reasonable efforts and cooperate with Tenant, at no material cost to Landlord, in order to obtain releases, annulments, relocations, or abandonments of existing easements and other Permitted Exceptions that Tenant determines need to be released or abandoned in connection with the development and construction of the Premises.

2.4. **Title to Improvements.** Ownership of Improvements constructed by Tenant shall vest in UNLV upon Substantial Completion; subject, however, to Tenant’s rights under this Lease.

ARTICLE 3.

PHASE ASSIGNMENTS OF LEASEHOLD

3.1. Designation of Future Phases. Tenant may, from time to time, designate portions of the Future Phases Land for development as distinct Future Phases of University Park in the following manner:

(a) Tenant will deliver to Landlord a written notice (a "**Phase Notice**") that contains a metes and bounds description of the Future Phase and a map drawn to scale depicting the Future Phase and matching the metes and bounds description, each of which will be prepared and certified by a licensed Nevada engineer. The Phase Notice will also contain the engineer's certification of the gross acreage of land within the Future Phase.

(b) The boundaries of the Future Phase described in the Phase Notice will be subject to Landlord's reasonable approval and each Future Phase must fully contain at least one entire building and the parking facilities appurtenant to that building.

(c) Tenant may assign its rights under this Lease with respect to a Future Phase to one or more assignees as described in Section 3.2 or Tenant may elect to develop the Future Phase itself.

3.2. Future Phase Assignments. Tenant shall have the right to make one or more partial assignments of this Lease and all rights of Tenant under this Lease (each, a "**Phase Assignment**") to assignees (each, a "**Phase Assignee**") who, in the case of each such assignment, shall assume all of the obligations of the Tenant hereunder with respect to a particular Future Phase of University Park. Each such assignment shall be made by a written instrument (a "**Phase Assignment and Assumption Agreement**") substantially in the form of **Exhibit D** attached hereto and in recordable form and will relate to a single Future Phase of University Park. All such assignments shall be subject to approval by Landlord pursuant to Section 26.1

3.3. Assignee's Assumption of Obligations. Each Phase Assignee shall assume all obligations of the Tenant under this Lease as they relate to the Future Phase for which such Phase Assignee has accepted the assignment. Upon written assumption of the obligations delegated to the Phase Assignee and delivery of the Phase Assignment and Assumption Agreement to Landlord, Tenant shall be relieved of the obligations thereby assumed.

3.4. Allocations of Base Rent. Each Phase Assignee shall be responsible for an allocable portion of the Base Rent described in Section 5.1. The allocable share of Base Rent for each Future Phase (the "**Future Phase Base Rent**") shall be equal to the Base Rent multiplied by a fraction, the numerator of which is the net acreage of land within the Future Phase, and the denominator of which is the net acreage of the Future Phases Land. Notwithstanding the foregoing, the sum of the Future Phase Base Rents for all Future Phases plus the remaining Base Rent for any portion of the Future Phases Land that has not yet been designated as a Future Phase, shall at all times during the Lease Term equal one hundred percent (100%) of the Base Rent.

3.5. New Future Phase Lease. If Tenant (or the Phase Assignee as the case may be) or Landlord so requests by written notice to the other, the Parties will enter into a new lease (a "**New Future Phase Lease**"), which New Future Phase Lease will be identical to this instrument except for those modifications required to conform the New Future Phase Lease to the terms and conditions contained herein that apply solely to that Future Phase.

3.6. Subdivision of the Future Phases Land and Improvements. If required by a Leasehold Mortgagee or Governmental Authority as a condition to development or financing of any Future Phases Project and upon request of Tenant, Landlord shall (a) consent to one or more reasonable subdivisions of the Future Phases Land into parcels in a manner that satisfies the requirements of Nevada Revised Statutes Chapter 248 and the County Code for subdivisions of land, and (b) cooperate in any manner reasonably requested by Tenant, including execution of maps, plats and other instruments that require the signature or consent of the fee owner. In the event of a subdivision of the Future Phases Land hereunder, Landlord shall cooperate and assist with Tenant's efforts to subdivide the Future Phases Land and the Improvements, including revising and amending this Lease, the Project Development Agreement, or any other document relating to the Future Phases Project, as necessary.

**ARTICLE 4.
LEASE TERM.**

4.1. Lease Term Commencement. The term of this Lease (the "**Lease Term**") shall commence on the later of (a) the Effective Date, or (b) the date Landlord acquires title to the Future Phases Land (the "**Lease Commencement Date**").

4.2. Lease Term Expiration. Subject to the early termination provision of this lease, including but not limited to Sections 4.4 and 4.5, the Lease Term shall expire on the fortieth (40th) annual anniversary of the Lease Commencement Date unless Tenant exercises its Extension Option pursuant to Section 4.3.

4.3. Tenant's Extension Option. If Tenant Commences Construction of a Future Phase, then Tenant shall have the option (the "**Extension Option**") to extend the Lease Term with respect to such Future Phase, as follows:

(a) Tenant's Extension Option shall be exercised, if at all, by written notice from Tenant to Landlord within one year of the issuance of the first Certificate of Occupancy for any dwelling unit on the Premises of such Future Phase.

(b) If Tenant exercises the Extension Option, the Lease Term shall end on the earlier of (i) or (ii) below:

(i) the fortieth (40th) annual anniversary of the date on which one or more Certificates of Occupancy have been issued with respect to any dwelling unit on the Premises for such Future Phase; or

(ii) the fiftieth (50th) annual anniversary of the Lease Commencement Date.

4.4. Failure to Commence Construction of Phase One.

(a) In the event UPLLC shall fail to Commence Construction (as defined in the Phase One Lease) within two (2) years following the Effective Date of the Phase One Lease, Landlord shall have the right, by written notice to UPLLC, Tenant and to any Leasehold Mortgagee under the Phase One Lease or this Lease (an “**Intent to Terminate**”), to terminate the Phase One Lease. The Intent to Terminate shall contain the effective date of the proposed termination which shall be not less than 180 days after the date of the Intent to Terminate.

(b) In the event UPLLC does Commence Construction prior to the termination date specified in the Intent to Terminate, the Intent to Terminate shall be void and the Phase One Lease shall continue as otherwise provided. If UPLLC shall fail to Commence Construction prior to the expiration of such 180 period, Landlord may terminate the Phase One Lease at any time thereafter by written notice to UPLLC, Tenant and to any Leasehold Mortgagee under the Phase One Lease or this Lease; provided, if UPLLC does Commence Construction prior to the date Landlord terminates the Phase One Lease, Landlord’s right to terminate shall expire.

(c) For purposes of the foregoing, the term “**Commence Construction**” has the meaning assigned to it in the Phase One Lease.

(d) In the event Landlord does terminate the Phase One Lease for failure to Commence Construction, this Lease shall also terminate upon the third anniversary of the date that the Intent to Terminate is delivered and Tenant shall have the right to continue to operate the Existing Improvements until that time. In such event, Tenant shall have no further right to demolish the Existing Improvements or Commence Construction and there shall be no extension of such date..

4.5. Early Termination. This Lease will terminate with respect to any Future Phase on which Tenant has not Commenced Construction by the tenth anniversary of the Effective Date.

**ARTICLE 5.
RENT.**

5.1. Base Rent. Base Rent shall be payable on the first day of the calendar month immediately following the Lease Commencement Date and on the first day of each calendar month thereafter during the Lease Term. Base Rent will be prorated for any partial month prior to the Lease Commencement Date and any partial month at the end of the Lease Term on the basis of the actual number of days in such month. Base Rent shall be due monthly in advance on the first day of each calendar month as follows:

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THE FOLLOWING DOLLAR AMOUNTS ARE APPROXIMATE AND BASED ON FUTURE PHASES LAND BEING 60% OF TOTAL ACREAGE. IF THE BOUNDARIES OF PHASE ONE ARE ADJUSTED OR IF PHASE ONE IS LESS OR GREATER THAN 40% OF THE TOTAL ACREAGE THE DOLLAR AMOUNTS WILL BE ADJUSTED ACCORDINGLY IN THIS LEASE AND IN THE PHASE ONE LEASE SUCH THAT THE SUM OF THE INITIAL (I.E., LEASE YEARS 1 THROUGH 4) TOTAL BASE RENT UNDER BOTH LEASES SHALL BE \$550,000 PER YEAR, AS FURTHER PROVIDED IN THE PROJECT DEVELOPMENT AGREEMENT.

<u>Lease Years</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1 through 4	\$ 330,000	\$ 27,500
5 through 8	\$ 339,900	\$ 28,325
9 through 12	\$ 350,097	\$ 29,175
13 through 16	\$ 360,600	\$ 30,050
17 through 20	\$ 371,418	\$ 30,951
21 through 25	\$ 382,560	\$ 31,880
26 through 30	\$ 394,037	\$ 32,836
31 through 35	\$ 405,858	\$ 33,822
36 through 40	\$ 418,034	\$ 34,836
41 and 42 ¹	\$ 430,575	\$ 35,881

5.2. Base Rent Credit. Landlord acknowledges that, by the terms of the Project Development Agreement, Tenant and UPLLC made or are obligated to make a prepayment of the Base Rent under this Lease and under the Phase One Lease in the amount of Two Million Dollars (\$2,000,000) (the “**Prepaid Rent**”) at the closing of the Land acquisition as described in the Project Development Agreement. Such Prepaid Rent shall be credited against (a) the Base Rent payable by Tenant pursuant to Section 5.1, and (b) the Base Rent payable by UPLLC under the Phase One Lease in installments in the order that such payments are due until such amount is exhausted as more fully described in the Project Development Agreement. Tenant shall not be responsible for

¹ Lease Years 41 and 42 apply only if the Lease Term is extended pursuant to Section 4.3.

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cash payments of Base Rent until the first month of the Lease Term in which the balance remaining of the Prepaid Rent is insufficient to fully cover the Base Rent payment due.

5.3. Application of Gross Revenue. Gross Revenue from the operation of each Future Phase (each, a “***Subject Phase***”) shall be applied monthly or more frequently as required in the following order:

- (a) With respect to Gross Revenue from Existing Improvements:
 - (i) Payment of Base Rent for such Subject Phase;
 - (ii) Payment of all Expenses related solely to the Existing Improvements located on the Subject Phase;
 - (iii) Payment of any Base Rent guaranteed by the Phase Lessee of the Subject Phase pursuant to Section 5.4 and subject to the limitations contained in Section 5.4; and.
 - (iv) In the event the Phase One Project or any Future Phase Project (other than the Subject Phase) incurs totals of the amounts described in Sections 5.3(b)(i) through 5.3(b)(vi) in excess of the Gross Revenues for the Phase One Project or such other Future Phase Project, to the Phase One Tenant or the applicable Future Phase Tenant in the amount of such excess; and
 - (v) The balance, if any, to the Phase Lessee of the Subject Phase.
- (b) With respect to any Subject Phase in which there is no Gross Revenue from Operating Existing Improvements in such period:
 - (i) As to any Subject Phase which has Permitted Financing in place, payment of fees due to any trustee holding and making disbursements of Gross Revenue from the Subject Phase in accordance with the terms of the Financing Agreements applicable to the Subject Phase;
 - (ii) Payment of Base Rent for the Subject Phase;
 - (iii) As to any Subject Phase which has Permitted Financing in place, payment of interest due to Leasehold Mortgagees for such Subject Phase;
 - (iv) As to any Subject Phase which has Permitted Financing in place, payment of principal and all other charges and expenses due to Leasehold Mortgagees for such Subject Phase or as otherwise required in any Leasehold Mortgage applicable to the Subject Phase, including any debt service reserves;

FUTURE PHASES LEASE

(v) Funding of the Project Reserve Fund for the Subject Phase as provided in Section 14.2 and any other operating and maintenance reserve required in any Financing Agreement;

(vi) Payment of all Expenses for the Subject Phase not included in Sections 5.3(b)(i) through 5.3(b)(v);

(vii) Payment of any Asset Management Fee for the Subject Phase as described in Section 14.6.

(viii) The balance in the manner described in Section 5.5.

Without limiting the foregoing, Tenant agrees and any subsequent Phase Lessee agrees by accepting a Phase Assignment that, with respect to any payments for which Gross Revenue derived from the operation of such Phase Lessee's Premises are the source of funds, Base Rent shall have priority of payment over any costs and expenses incurred by such Phase Lessee, including payment to Leasehold Mortgagees, and operations and maintenance; provided, each Phase Lessee may pay such other costs and contribute to appropriate reserve funds monthly immediately after payment of the monthly installment of its Base Rent.

5.4. Certain Rent Defaults by Others. So long as there are any Operating Existing Improvements on any Future Phase, Tenant or the Phase Lessee of such Future Phase will provide a guaranty of the Rent obligations of the Phase Lessees of all prior Future Phases; provided, each such guaranty shall be limited as follows:

(a) the guaranty shall apply only with respect to Rent payments and amounts described in Section 5.3(a)(iii) on a prior Phase of University Park (including the Phase One Project) that are due after the commencement of demolition of the Existing Improvements on such prior Phase; and

(b) the sole source of payment of such deficiency, if any, shall be the sum remaining after the items listed in Sections 5.3(a)(i) and 5.3(a)(iii) are deducted from the Gross Revenue derived from the Operating Existing Improvements located on the Future Phase being leased by the Phase Lessee providing such guaranty; and

(c) the liability of each respective Phase Lessee providing such guaranty shall not apply to any Rent payment that accrues or becomes due after the demolition of all the Operating Existing Improvements on the respective Future Phase Land then being leased by the Phase Lessee providing such guaranty.

Nothing in this Section 5.4 is intended to impair or limit the right or obligation of any Phase Lessee to proceed with demolition of any Existing Improvements.

5.5. Project Success Contributions.

(a) That portion of the Gross Revenue from Existing Improvements remaining after payment or funding of the sums described in Sections 5.3(a)(i) through

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5.3(a)(iv) and that portion of the Gross Revenue from any Future Phase remaining after payment or funding of the sums described in Sections 5.3(b)(i) through 5.3(b)(vii) is hereafter referred to as “Available Cash.”

(b) With respect to each Future Phase and subject to all of the terms and provisions hereof, commencing in the first Lease Year after the later of (i) substantial completion of construction of the Project on such Future Phase, or (ii) the date that all Preferred Members of the Phase Lessee have received (or would have received if seventy-five percent of all Available Cash had, in fact, been distributed by the Phase Lessee to its Preferred Members in each of the preceding Lease Years) a return of their capital contributions and all additional distributions to which they are entitled (“Preferred Returns”), the Phase Lessee shall deposit in an interest bearing fiduciary account an amount equal to twenty-five percent (25%) of the Available Cash of the Phase Lessee’s Project earned in the prior Lease Year, which amount is hereafter referred to as the “Project Success Contribution.”

(c) For purposes of the calculations referred to in this Section 5.5 only, the Preferred Returns shall be an amount equal to the sum of:

(i) The total amount of capital contributions made by Preferred Members of the Phase Lessee, subject to Section 5.5(d); and

(ii) Interest on the foregoing amount described in Section 5.5(c)(i) on the entire time such funds are held by the Phase Lessee as capital contributions from the Phase Lessee’s Preferred Members equal to the lesser of (1) the actual interest paid to or accrued by its Preferred Members, or (2) a fixed rate equal to eighteen percent (18%) per annum, compounded annually.

(d) Notwithstanding anything to the contrary, for purposes of the calculation referred to in this Section 5.5 only, the amount of the capital contributions made by Preferred Members to be used in this calculation shall not exceed thirty percent (30%) of the projected total project development cost.

(e) For purposes of the calculations to be made pursuant to this Section 5.5 only, the term “Preferred Members” means members of the Phase Lessee that contribute capital to the Phase Lessee without voting rights but with a right to return of their capital and a stated rate of interest on such contributed capital before distributions may be made to other members of the Phase Lessee; provided, entities that are Affiliated with the Phase Lessee and natural persons who are descendants (as defined in NRS 132.085) of John H. Midby shall not be deemed Preferred Members for this purpose.

(f) Nothing in this Section 5.5 shall be construed to dictate or restrict or in any way modify the financial arrangements between any of the members that constitute the

Phase Lessee but are intended only to affect the calculation of Project Success Contributions.

(g) Project Success Contributions shall be funded solely from Available Cash and are expressly subordinate to, and only payable after payment of, or provision for, all Expenses and the Preferred Returns.

(h) On or before that date which is the earlier of thirty (30) calendar days after the date on which the Phase Lessee receives its annual audited financial statements following each Lease Year or one hundred twenty (120) calendar days after the expiration of each Lease Year, the Phase Lessee shall provide a statement (the "Calculation Statement") showing the Available Cash for the previous Lease Year. Each Calculation Statement shall set forth the calculation used to determine the Available Cash with sufficient detail for Landlord to check the calculation and determination.

5.6. Payout of Project Success Contributions.

The funds in the Project Success Contribution account shall be paid out as follows:

(a) Not later than February 28 of each calendar year, each Phase Lessee shall determine its total Project Success Contribution for the preceding year;

(b) Such sum shall be divided by the number of Student Residents within each Future Phase as of January 1 and the product thereof ("Rebate Amount") shall be applied, with respect to each Student Resident, **first**, as a credit against any past due rental obligation of such Student Resident; **second**, as a credit against such Student Resident's rental obligation for the month of February; and

(c) If any portion of the Rebate Amount remains after the foregoing, then the Phase Lessee shall deliver to such Student Resident a check in the amount of the remaining balance by April 1 of the same calendar year.

Nothing in this Lease is intended to constitute any Student Resident as a third party beneficiary; provided, UNLV may enforce the foregoing provisions regarding Project Success Contributions by an action at law or in equity.

5.7. Landlord's Audit Right. It is expected that annual financial statements will be produced for both the Residential Premises and Commercial Premises, if any, of each Future Phase. It is further expected that each Phase Lessee shall have said annual financial statements consolidated as one and subject to a single audit by a firm of independent certified public accountants selected by the Phase Lessee, subject to UNLV's approval, which shall not be unreasonably withheld or conditioned; provided, that such audit shall contain discrete and separate statements of operating results and related balance sheets on an accrual basis in accordance with GAAP sufficient for the Parties to ascertain the finances of both the Residential Premises and Commercial Premises. The Parties shall cooperate in good faith to provide availability and access to financial information and documents necessary for said audit to be conducted.

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Landlord shall have the right, at Landlord's expense, to audit each Phase Lessee's calculations provided in any Calculation Statement as follows:

(a) The Phase Lessee shall make the Phase Lessee's records relating to or supporting the calculations set forth on any Calculation Statement available at the Phase Lessee's offices for Landlord to review for such purpose. The Phase Lessee shall retain such documents for at least three (3) years after any Calculation Statement has been provided to Landlord hereunder.

(b) Landlord shall have the right to claim an adjustment of the calculations set forth on any Calculation Statement; provided that any such claim shall be required to be made by written notice delivered to the Phase Lessee within ninety (90) calendar days after the date on which Landlord receives such Calculation Statement from the Phase Lessee. Any such claim shall be made by notice to the Phase Lessee within such ninety (90) calendar day period, specifying the reasons for such claim for adjustment in detail sufficient for the Phase Lessee to understand the basis for Landlord's claim. If Landlord fails to claim an adjustment in such manner and time with respect to any Calculation Statement, the Parties shall have no further right hereunder to challenge the determinations set forth in the applicable Calculation Statement. Notwithstanding the foregoing, if such claim for adjustment is of the nature that could not have been reasonably identified or known by the Party after evaluation and review of the Calculation Statement, then this Section 5.7(b) shall not apply and the effected Party shall be made whole as mutually agreed upon by the Parties.

(c) If Landlord timely claims an adjustment under Section 5.7(b) the Phase Lessee and Landlord shall use reasonable good faith efforts to resolve any such claim within forty-five (45) calendar days after the date on which the notice of claim was given by Landlord. If the Phase Lessee and Landlord are unable to resolve such claim within such forty-five (45) calendar day period, either Landlord or the Phase Lessee may submit such dispute to arbitration in accordance with Article 28.

(d) In the event that any such audit verifies that Project Success Contributions has been overpaid for any period, then the Phase Lessee shall deduct the overpayment from all subsequent payments until the overpayment amount is exhausted.

(e) In the event that any such audit verifies that Project Success Contributions has been underpaid for any period, then the Phase Lessee shall promptly make any necessary additional payment.

(f) The Phase Lessee will pay Landlord's reasonable accounting costs in the event the Landlord incurs expenses of a separate audit as a result of any discrepancies of more than five percent (5%) of the audited amount.

5.8. Limitations. Notwithstanding anything set forth herein to the contrary, during any period when Landlord or its successor ceases operation of an institution for higher education

on the Campus or the Leased Premises are no longer designated by Landlord as On-Campus Housing, Tenant and any Phase Lessee shall have no obligation to pay Project Success Contributions during such period; provided, however, that Project Success Contributions shall not cease (a) for any period when Campus operations are disrupted due to Unavoidable Delays or classes are not in session due to holidays or other regularly scheduled breaks in classes or (b) as the result of any change in operations or class offerings on the Campus or any closure, sale, or other transfer of any portion of the Campus so long as the balance of the Campus is operated as an institute of higher education.

**ARTICLE 6.
ALTERATIONS OF THE IMPROVEMENTS.**

6.1. Alterations. Except as provided in Section 6.2, after construction of Improvements has been completed by a Phase Lessee, the Phase Lessee may from time to time make such alterations, additions, improvements, and replacements to the Premises as it from time to time determines to be appropriate. Such alterations, additions, improvements and replacements, excepting normal maintenance and repairs and any Subtenant Improvements, shall be subject to prior approval by the Landlord, which such approval shall not be unreasonably withheld, conditioned, or delayed.

6.2. Alterations of Completed Improvements.

(a) Minor Alterations. the Phase Lessee may alter and make leasehold improvements for Occupants in areas of the Premises not visible from outside the building in which such Occupants reside or conduct business at any time during the Lease Term in the Phase Lessee's discretion.

(b) Major Alterations. After a Certificate of Occupancy has been issued for its Premises, the Phase Lessee shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping or other exterior features of the Improvements that are visible from outside the building to which such Certificate of Occupancy relates or otherwise materially alter the Premises in a manner contrary to the use and design features set forth in the Construction Documents ("Major Alterations") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed alteration, its impact, if any, upon improvements existing upon or planned for under the Construction Documents on other portions of the Campus.

6.3. Construction of Alterations. All alterations and additions made in accordance with Section 6.2 shall be constructed in a good and workmanlike manner, with good quality new materials and equipment, in compliance with Applicable Law, and shall be completed with due

diligence. If the Phase Lessee shall fail to comply with the foregoing requirements, the Landlord may, within a reasonable time after its discovery thereof, direct in writing that the the Phase Lessee so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of the Landlord. The Phase Lessee shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

**ARTICLE 7.
TAXES, ASSESSMENTS, AND UTILITIES.**

7.1. UNLV's Tax Exemption. During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Premises. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Premises will be exempt from all real and tangible personal property ad valorem taxation pursuant to NRS 361.157(c).

Further, the Parties acknowledge and agree that it is the intent and expectation of the Parties that the Phase Lessee's leasehold interest in its Premises or other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation.

7.2. Right to Contest Taxes. If the imposition of any Tax shall be deemed by a Phase Lessee or Landlord to be improper, illegal, or excessive, the Phase Lessee may, in its own name, dispute and contest the same and, in such event and to the extent permitted by Applicable Laws, any such Tax need not be paid until adjudged to be valid; provided, however, the Phase Lessee shall in writing first notify Landlord of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage concerning the contest of taxes. Unless so contested, any Tax shall be paid by the Phase Lessee or Landlord, as applicable, within the time provided by Applicable Laws, and if contested, any such Tax shall be paid before the execution upon or foreclosure of any lien for any Tax on the Premises.

7.3. Tax on Receipt of Rent. Landlord shall be solely responsible for the payment of any tax, assessment, charge or excise on, attributable to, or measured by the Base Rent or by any other payments received by Landlord under this Lease other than payments in the nature of reimbursement to Landlord.

7.4. Utilities. Each Phase Lessee shall, during the Lease Term, pay and discharge punctually, as and when the same shall become due and payable all rents and charges for sewer, water, steam, heat, gas, hot water, electricity, light, and power, and other service or services, furnished to its Premises during the same period (hereinafter referred to as "Utility Expenses"). Notwithstanding the above, Residents may be separately metered for any or all utilities and shall directly pay said Utility Expenses to the extent separately metered during the terms of their Subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

7.5. Tax Benefits. Tenant and each other Phase Lessee shall be entitled to all depreciation and/or amortization deductions, any state and/or federal investment credits, and to all other state and/or federal income tax deductions and credits which may be available with respect to the Premises, including without limitation, the portion of the Land, Improvements, and/or Personal Property in such Future Phase; provided, that Landlord makes no representations or warranties regarding such deductions and credits, which shall be the sole responsibility of Tenant or Phase Lessee.

**ARTICLE 8.
ADVERTISING AND MARKETING.**

Tenant and each other Phase Lessee shall be responsible and shall have sole authority for marketing and leasing of its Project except as may be explicitly provided in this Lease. Landlord hereby covenants and agrees, however, as follows, which covenants and agreements shall survive as obligations of the original Landlord following any Transfer pursuant to Article 26 hereof:

8.1. Advertising/Marketing. The Parties shall work in good faith to facilitate the rental and leasing of University Park.

(a) Tenant may, throughout the Lease Term, market the Residential Premises to UNLV Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Residential Premises as On-Campus Housing.

(b) Tenant may, from time to time, present to UNLV advertising and marketing content for UNLV web sites and other media used by UNLV or its licensees to advertise on-Campus housing and/or written content and images intended for email distribution. UNLV agrees to place such content on its web site in a manner substantially similar to other on-Campus housing and to distribute by email as applicable to all UNLV Students, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen (except as an inducement to sublet from Tenant after the Freshman year) as long as the restrictions described in Section 8.3 are in effect.

(c) UNLV will allow Tenant to place advertising and marketing content in any written materials and mailings, signage, and similar media in a manner substantially similar to other on-Campus housing, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen as long as the restrictions described in Section 8.3 are in effect.

(d) UNLV shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised on the same basis as other on-Campus housing.

(e) The Parties agree that the Premises shall be marketed as “Upper-Class” or “Move-Up” housing.

(f) Information regarding University Park will be included in UNLV’s catalogues and informational brochures distributed to UNLV Students, at the time of their next printing and printing for any subsequent Lease Year, and on UNLV’s web sites and other media outlets advertising and marketing housing.

(g) Nothing in this Lease shall prohibit Tenant from conducting normal and ordinary marketing activities typically conducted by Off-Campus Housing operators.

(h) Tenant and UNLV will coordinate their efforts and cooperate with each other to market and make the Residential Premises and other on-Campus housing properties available to participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Tenant, subject to the terms and provisions of Section 9.9 hereof.

(i) Tenant shall be entitled to actively participate in transfer student orientation sessions, welcome week activities and other student orientation sessions or similar events for purposes of marketing University Park, subject to reasonable rules and regulations promulgated by UNLV,

(j) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Premises or to other on-Campus housing properties.

8.2. AVS Housing Group. UNLV has recommended to Tenant that Tenant retain AVS Housing Group, LLC to assist Tenant in marketing, leasing, contract administration, room assignments, operations and facility management duties on the Premises and such other services as it currently provides for UNLV’s other on-Campus housing. The Parties acknowledge and agree, however, that Tenant is under no obligation to do so and that failure to do so will not affect or diminish UNLV’s obligations as set forth in this Lease. UNLV further agrees that it waives any objection to Tenant retaining AVS Housing Group, LLC or any Affiliate thereof based on a any potential or perceived conflict of interest so long as AVS Housing Group, LLC or its Affiliate agree to act on behalf of UNLV and Tenant on a comparable basis except as relates to fees charged by AVS Housing Group, LLC., which shall be separately negotiate between Tenant and AVS Housing Group, LLC.

8.3. Freshman Housing Policy.

(a) The Parties acknowledge that UNLV currently has a policy requiring Freshman students to live in specified On-Campus housing that does not include University Park. Tenant agrees not to market or lease to Freshmen as long as UNLV maintains such policy and does not permit Freshmen to live in any On-Campus facility that is not owned and operated by UNLV.

(b) UNLV may, in its sole discretion, allow Freshmen to reside in the Premises as overflow Freshman housing in the event that UNLV's owned and operated On-Campus housing is inadequate to meet the demand for Freshman housing; provided, Tenant is not required to accept Freshmen.

(c) UNLV shall provide Tenant with a means to verify the status of any applicant for a Sublease as a UNLV Student or other person who is entitled to reside in the Residential Premises pursuant to Sections 9.9(a) through 9.9(i). It is the Parties' intent that such means will be available for instantaneous electronic confirmation of status, but in any event, the confirmation shall be within three (3) business days of Tenant's request to Landlord. Such means to confirm student status will be available not later than ninety (90) days prior to the beginning of each Academic Term and Tenant shall have the right to rely on such means for the purposes of this Lease. If a Sublease applicant disagrees with UNLV's determination as communicated to Tenant, UNLV will, at Tenant's request and with consent of the applicant, provide a written determination of the applicant's eligibility to reside in the Premises.

ARTICLE 9.

RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS.

9.1. **Housing Development Restriction.** Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of, or permit to be developed on any land that UNLV, NSHE or any of their Affiliates own or control, any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until the **earlier** of:

(a) ten (10) years following the issuance of a Certificate of Occupancy within the Phase One Project ("**Phase One Occupancy Date**"); or

(b) the Phase One Achievement Date set forth below in Section 9.4(c) on which the Phase One Project is deemed to have achieved the Phase One Performance Standards.

The foregoing covenant is referred to herein as the "**Housing Restriction**".

9.2. **Extension of Housing Restriction.** In the event the Phase One Performance Standards are met before ten (10) years have passed from the Phase One Occupancy Date and UNLV intends to commence development of Restricted Housing as permitted by Section 9.1(b), UNLV agrees to first provide Tenant and UPLLC with a written notice of such intent. Tenant may notify UNLV within thirty (30) days of such notice of intent that Tenant elects to proceed with its development of (a) the Future Phases Project, or (b) the Phase Two Project if Tenant elects to create more than one Future Phase (either of (a) or (b) in this sentence being hereafter referred to as the "**Next Phase Project**"). If Tenant gives timely written notice to UNLV and thereafter proceeds with development of the Next Phase Project, the Housing Restriction shall be extended until the **earlier** of:

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- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Next Phase Project (“***Next Phase Occupancy Date***”); or
- (b) the date the Next Phase Project achieves the Next Phase Performance Standards set forth below in Section 9.5; or
- (c) the earlier of the following two dates unless Tenant shall Commence Construction on the Next Phase Project before such date:
- (i) the date that is eighteen months following the Phase One Achievement Date, or
- (ii) the ten (10) year anniversary of the Effective Date.

For purposes of this Section 9.2, the term “***Commence Construction***” refers to Tenant having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Next Phase Project, and (c) commenced actual grading of the Next Phase Land.

9.3. “Restricted Housing” Defined.

(a) As used herein, “***Restricted Housing***” means any Dwelling designed, intended or used for any persons other than UNLV Students in their Freshman year of college.

(b) “***Dwelling***” means a building or portion thereof designed or used for residential occupancy by an individual, family, group of unrelated individuals, or by persons residing in a community residence, and includes factory-built homes, manufactured homes, one-family, two-family and multiple-family dwellings, apartments, flats, and community residences, and any other building wherein human beings may be lawfully housed such as a “boarding house”, “lodging house”, “fraternity”, “sorority”, “dormitory”, or any other group living arrangement for unrelated individuals.

(c) Notwithstanding anything herein or in any other agreement between the Parties to the contrary, the Housing Restriction shall **not** apply to any Dwelling located west of Interstate Highway 15 or north of Sahara Avenue.

9.4. Phase One Performance Standard. The “***Phase One Performance Standard***” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Phase One Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “***Occupied***” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for Phase One shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by UPLLC and the Leasehold Mortgagees.

(c) To provide UPLLC with sufficient time to calculate the preceding year's Debt Service Coverage Ratio, the Phase One Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.4(b) and (ii) the date on which the occupancy requirement in Section 9.4(a) is achieved (the "Phase One Achievement Date").

As used herein, the term "Debt Service Coverage Ratio" means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.5. Next Phase Performance Standard. The "Next Phase Performance Standard" shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Next Phase Project have been "Occupied" in any four (4) consecutive Academic Terms. For this purpose, "Occupied" shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for the Next Phase Project shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by Tenant and the Leasehold Mortgagees.

(c) To provide Tenant with sufficient time to calculate the preceding year's Debt Service Coverage Ratio, the Next Phase Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.5(b) and (ii) the date on which the occupancy requirement in 9.5(a) is achieved (the "Next Phase Achievement Date").

As used herein, the term "Debt Service Coverage Ratio" means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.6. Memorandum of Housing Restriction. Tenant may, at Tenant's sole cost, record a memorandum of the Housing Restriction against any property now owned or hereafter acquired by the Landlord or Affiliate of Landlord for the benefit of UNLV and located within the geographical limits described in Section 9.3.

9.7. University Park Information. Landlord acknowledges that Tenant is making a significant investment to develop the Premises based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to UNLV Students and prospective UNLV Students who have applied for admission to UNLV, potential participants in

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summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Landlord.

9.8. Leasing Policies of UNLV. Except as explicitly provided in this Lease, UNLV shall not implement any policy or take any action which restricts or discourages UNLV Students from residing at the Residential Premises.

9.9. Permitted Residents. Tenant shall have the right to market and sublease the Residential Premises only to UNLV Students (except Freshmen as provided in Section 8.3), including but not limited to the following UNLV Students and others ("**Permitted Residents**"):

- (a) All classifications of UNLV Students, including undergraduates (except Freshmen as provided in Section 8.3), graduate students and post-graduates;
- (b) Current Subtenants of the Residential Premises;
- (c) UNLV Students living in Off-Campus Housing, in an effort to attract them to the Residential Premises;
- (d) UNLV Students living in UNLV's On-Campus Housing, in an effort to attract them to the Residential Premises rather than moving off-Campus;
- (e) Transfer students or former UNLV Students applying for admission or re-admission to UNLV;
- (f) UNLV faculty and staff;
- (g) Participants in summer camps, seminars, and conferences operated by UNLV or others at the Campus;
- (h) Participants in summer camps, seminars, and conferences independently contracted by Tenant;
- (i) Students enrolled in other educational institutions including, but not limited to, local community colleges; and
- (j) to any other individual with respect to any vacancies in the Premises as of July 1 of any year subject to the requirement that any Subleases covered by this Section 9.9(j) are terminable on or before the following June 30 and such premises are then made available for individuals described above in this Section 9.9.
- (k) to any other individual without regard to the restrictions set forth in Section 9.9(j); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(k) shall not exceed five percent (5%) of the total number of Beds.

Notwithstanding anything in this Lease to the contrary, the foregoing restriction on Tenant's right to enter into Subleases shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

9.10. Supplemental Advertising and Marketing. Nothing in this Lease is intended or shall be construed as limiting or restricting Tenant from engaging in any additional marketing or advertising of the Premises in its sole discretion.

**ARTICLE 10.
POLICE AND SECURITY SERVICES.**

10.1. Outdoor Patrols. The Premises are within the jurisdiction of the University of Nevada, Las Vegas Department of Police Services (the "**UNLV Police**"). Landlord shall cause the UNLV Police to patrol the outdoor common areas of the Premises in substantially the same manner and frequency as such patrols are conducted at other Campus buildings and facilities.

10.2. Supplemental Services If requested by Tenant, the UNLV Police will provide additional services ("**Supplemental Services**") such as internal patrols, security at events, or other situations with respect to which Tenant requests police presence on the Premises in the same manner as other on-Campus academic, student housing facilities and retail operations on the Campus: provided, Tenant understands that such other academic, housing facilities and retail operations on the Campus pay the UNLV Police for Supplemental Services provided. If Tenant requests such Supplemental Services, the UNLV Police will charge Tenant a fee, annually or on a more frequent schedule, determined in a manner similar to that used to set the fee paid by other residential or commercial establishments on-Campus.

10.3. Private Security Services Tenant shall have the right in its sole discretion, but no obligation, to provide additional unarmed private security forces to supplement those provided by the UNLV Police and the Las Vegas Metropolitan Police force at Tenant's sole cost and in compliance with all Applicable Laws. Prior to engaging any private security, Tenant shall first obtain the written consent of UNLV Police, which consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 11.
PROHIBITED USES.**

11.1. Prohibited Uses. Notwithstanding any other provision of this Lease to the contrary, no portion of the Premises shall be used for the following purposes:

- (a) Gaming, casino gambling, slot machines, video or other electronic gambling devices, except that the sale of State lottery tickets is permitted if the State of Nevada authorizes a State lottery.
- (b) The sale of firearms, explosives or lethal weapons sales or establishments;
- (c) An adult theater, adult bookstore, adult video store or other establishment which shows, previews, or prominently includes, as a part of its stock-in-trade for sale, rental or other consumption or entertainment, or which otherwise conspicuously displays, advertises, or conspicuously promotes for sale or rental: (a) movies, films, videos,

magazines, books, discs or other medium (whether now or hereafter developed) that are rated “NC-17” by the Motion Picture Association of America, Inc. (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature; or (b) sexually explicit games, toys, devices, or similar merchandise.

(d) The sale, dispensing or use of marijuana or marijuana-infused products (as defined in NRS 453A.112), whether for medicinal or other purposes.

(e) An adult nightclub, or any other establishment which offers entertainment or services by nude, topless or partially clothed male or female persons or which is designed to arouse the prurient interest in another.

(f) A tattoo parlor, body piercing shop, and so-called head shops (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs).

(g) Any purpose that violates Applicable Law, or in such a manner as to constitute a nuisance.

**ARTICLE 12.
SUBLEASES.**

12.1. Subleases. Tenant, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Sublease for all or any part of the Premises. Each Sublease shall require the Subtenant to attorn (i) to Landlord in the event of the termination of this Lease or (ii) to any Leasehold Mortgagee that becomes the Tenant under a New Lease prior to the expiration date of the Sublease. . Notwithstanding the foregoing, no commercial sublease may extend beyond the Term without the written consent of Landlord, which may be given or withheld in its absolute discretion.

12.2. Approval of Sublease Form. In its capacity as an institution of higher education, UNLV is subject to certain affirmative obligations and regulations under federal and state law that apply to institutions of higher education (“***Institutional Restrictions***”). Some Institutional Restrictions may be applicable to the Residential Premises as a result of UNLV being the owner of the Land. In the event that it is necessary, in UNLV’s reasonable opinion, that such Institutional Restrictions be incorporated into the Subleases between Tenant and a UNLV Student, UNLV shall notify Tenant in writing of such Institutional Restrictions and the provisions that UNLV desires be added to the form of Tenant’s Subleases. Tenant agrees to incorporate such provisions in its form of Sublease agreement unless Tenant reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the Residential Premises. Either Party may submit to arbitration in accordance with Article 28 the issue of whether such provisions are reasonable and are reasonably necessary.. Landlord shall have the right to review the form or forms being used by Tenant, as well as the right to review Subleases then in effect, at any time and from time to time to confirm that the form or form contain all provisions required by this Section 12.2.

12.3. Landlord's Right to Evict Certain Sublessee. In the event that any Institutional Restrictions require that a Subtenant who is a UNLV Student be evicted from or relocated within the Residential Premises UNLV shall notify Tenant of such fact by written notice ("**Subtenant Action Notice**"). Such notice shall identify the Resident and contain a summary explanation of the reason for his or her eviction sufficient to provide the basis for a judicial eviction proceeding but subject to any privacy limits of Applicable Law (including but limited to the Family Educational Rights and Privacy Act ("FERPA")). The Subtenant Action Notice will be signed by the Vice President of Student Affairs, General Counsel or their designees, and shall state that UNLV has afforded the Sublessee any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Subtenant Action Notice. Tenant shall use reasonable commercial efforts to cause the Subtenant described in the Subtenant Action Notice to be evicted or relocated, as directed in the Student Action Notice; provided, so long as the applicable Sublease contains the provisions required hereunder, Landlord shall reimburse Tenant for any costs incurred and hold Tenant harmless against any claim by the Subtenant that the eviction was wrongful or that the circumstances alleged in the Subtenant Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant shall have no obligation to verify the facts alleged by UNLV in the Subtenant Action Notice and is entitled to rely on the facts and allegations contained in the Subtenant Action Notice. UNLV will provide any affidavit required and make available witnesses if necessary in connection with any judicial proceeding and Tenant may voluntarily dismiss any action if UNLV shall fail to do so on a timely basis.

12.4. Sublease to Landlord. At Tenant's option and subject to agreement between Landlord and Tenant the terms to govern such Sublease, Tenant has the right to Sublease all or any part of the Premises and Improvements to Landlord for Permitted Uses, and any such Sublease between Landlord and Tenant shall set forth the Parties' agreement regarding such Permitted Use and to the extent that such Sublease conflicts or is inconsistent with this Lease, the provisions of the Sublease shall apply during such time as the Sublease is in effect.

12.5. Tenant's Rights to Enforce Subleases, Control the Premises, and Determine Rental Rates. Except with respect to actions required in response to a Student Action Notice, Landlord shall not interfere with Tenant's decisions with respect to the enforcement of Subleases, actions taken to prevent damage to the Premises and maintain the safety and security of the Premises and the persons and property located thereon.

12.6. Nondiscrimination. Landlord and Tenant shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant shall not unlawfully discriminate in the conduct and operation of its business at the Premises against any person or group of persons because of race, color, religion, national origin, citizenship, sex, gender identity, sexual orientation, age, or disability.

12.7. Nondisturbance. Upon request therefor by Tenant, Landlord shall execute and deliver to a Commercial Subtenant a subordination, attornment, and nondisturbance agreement, in

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form and substance reasonably acceptable to Tenant and Landlord, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 13. PARKING.

UNLV will make available for purchase by Residents of University Park (i.e., Phase One and all Future Phases combined) three hundred (300) residential parking passes allowing twenty-four hour parking on campus. UNLV will offer such parking passes on the same terms and conditions as it offers other students, but shall not be obligated to offer any discount to Residents. If the demand for residential parking passes by University Park residents exceeds 300 and UNLV elects not to make more than 300 available to University Park residents, the total supply will be allocated among the Phases as provided in the Project Development Agreement.

UNLV shall designate surface or structured parking spaces within a UNLV owned parking lot on the northern side portion of Campus as near to the Future Phases Land as reasonably feasible determined by UNLV for use by Residents without time restrictions that may apply to other non-Resident parking. All residential parking on the UNLV Campus are on a first come first served basis, and the issuance of any permits hereunder shall be not deemed to guaranty any permit holder that spaces in any specific lot shall be available at all times.

UNLV shall only make such residential parking permits available to Residents if and to the extent parking available within the Future Phases Project is and remains fully sold.

ARTICLE 14. MAINTENANCE, OPERATION, AND MANAGEMENT.

14.1. Maintenance. Tenant shall, at its sole cost and expense, keep and maintain in good order and repair the Premises, both interior and exterior, structural and non-structural. All repairs, replacements, and renewals shall be made promptly and be substantially equal in quality to the original Improvement Work. Tenant waives any right created by any law now or hereafter in force to make repairs to the Premises at Landlord's expense, it being understood that Landlord shall not in any event be required to make any alterations, rebuildings, restorations, replacements, changes, additions, improvements, or repairs, unless required to do so by separate agreement. The Premises shall, at all times comply with all requirements of this Lease except to the extent the same may be inapplicable during construction, and make all necessary repairs thereto, in a timely and workmanlike manner in accordance with industry standards.

14.2. Future Phases Project Reserves. The following provisions apply only to Improvements constructed after the Effective Date and not to the Existing Improvements:

(a) Tenant shall:

(i) During the thirtieth (30th) Lease Year, cause to be conducted a study of the reserves ("Reserve Study") required to repair, replace and

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restore the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore and deliver a copy of the Reserve Study to Landlord;

(ii) At least annually thereafter, review the results of the Reserve Study with Landlord to determine whether those reserves are sufficient; and

(iii) At least annually thereafter, make any adjustments to Tenant's funding plan which the Tenant deems necessary to provide adequate funding for the required reserves ("Annual Updates").

(b) The Reserve Study must include, without limitation:

(i) A summary of an inspection of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(ii) An identification of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore which have a remaining useful life of less than 30 years;

(iii) An estimate of the remaining useful life of each major component of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(iv) An estimate of the cost of maintenance, repair, replacement or restoration of each major component of the Premises during and at the end of its useful life; and

(v) An estimate of the total annual contribution to the Project Reserve Fund that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components of the Premises, after subtracting the existing reserves of Tenant as of the date of the Reserve Study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

(c) Tenant shall, beginning in the thirty-first (31st) Lease Year and in each Lease Year thereafter, create and maintain a fund for the purpose of reserving sufficient cash available for maintenance, repair, replacement or restoration of each major component of the Premises that is anticipated by the Reserve Study and the Annual Updates to require maintenance, repair, replacement or restoration during the remainder of the Lease Term (the "Project Reserve Fund") and make an annual transfer to the Project Reserve Fund in an amount sufficient to cover all such costs of maintenance, repair, replacement or restoration.

(d) Any reserve amounts held by a Leasehold Mortgagee for the same or substantially similar purposes as described in Section 14.2(c) shall offset Tenant's obligation under this Section 14.2 to the extent such reserves held by the Leasehold

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Mortgagee shall, under the terms of the Financing Documents, be available only for such similar purposes and shall be available to Landlord upon expiration of the Lease Term or earlier termination of this Lease to the same extent as required herein.

(e) Upon expiration of the Lease Term or upon earlier termination of the Lease, such amounts held in the Project Reserve Fund or any comparable reserve fund held by a Leasehold Mortgagee and used to offset Tenant's obligation herein shall be paid over to Landlord.

(f) Tenant shall be entitled to draw upon the Project Reserve Fund to pay the costs of maintenance, repair, replacement or restoration of each major component of the Premises for which reserves are required by Section 14.2(c). Thereafter, future annual contributions to the Project Reserve Fund will restore the balance in the Project Reserve Fund as necessary to comply with Section 14.2(c).

(i) No Landlord consent shall be required with respect to a draw so long as the matter for which such draw is made relates to any maintenance, repair, replacement or restoration which has a cost and is made at a time substantially consistent with the Reserve Study and Annual Updates.

(ii) If any maintenance, repair, replacement or restoration is required to be made significantly earlier than contemplated in the Reserve Study or has a cost which is significantly higher than estimated in the Reserve Study, Landlord shall have the right to approve related draws, which approval shall not be unreasonably withheld, conditioned or delayed.

(iii) If any maintenance, repair, replacement or restoration as contemplated in the Reserve Study has a cost which is significantly lower than estimated in the Reserve Study, Tenant may reallocate the difference in subsequent years to other maintenance, repair, replacement or restoration of major components of the Premises for which reserves are required by Section 14.2(c).

(iv) Tenant shall give Landlord 30 days' written notice of any planned draw which notice shall provide sufficient information to reflect that consent by Landlord is not required under this Section 14.2(f) or to enable Landlord to determine whether to give its approval to the draw.

14.3. Financial Aid. In the event that UNLV Students receive financial aid to pay for housing that is dependent on living in on-Campus housing, Tenant and Landlord shall work together to develop a process to permit the Premises to qualify for such residence, if allowed by Applicable Law.

14.4. Signs. Tenant shall have the right to install and replace, and to permit the installation or replacement by others, of any signs or advertising matter visible from the exterior

of the Premises, so long as such signs conform with Landlord's regulations on use of UNLV's name and marks. Tenant shall comply with all applicable requirements of Governmental Authorities having jurisdiction and shall obtain all necessary governmental approvals prior to the installation or replacement of any sign or other advertising matter permitted by Landlord.

14.5. Project Management. The Parties desire to provide for upper-class, move-up and graduate student housing on the UNLV Campus as described in this Lease, each acting independently in pursuance of its own separate business interests. Tenant shall operate and staff the Premises in a professional manner consistent with the operation of a first-class University housing facility, comparable to those at UNLV's peer institutions and to privately owned off-campus housing in Las Vegas. In furtherance of such intent and except as otherwise expressly provided in this Lease, Tenant shall in general and whether herein specifically authorized or not, take all actions that Tenant deems necessary, proper or desirable in its business judgment with respect to the ownership and operation of the Premises.

Nothing herein contained shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of (i) partnership or of joint venture between the parties hereto, or (ii) employer and employee, or (iii) any other relationship other than the relationship of Landlord and Tenant. The Landlord shall have no responsibility for the actions of the Tenant and no control over Tenant's operations other than as explicitly set forth in this Lease.

14.6. Asset Management Fee. Tenant shall be entitled to pay itself a fee for the services it provides under this Lease (the "Asset Management Fee") equal to one and one-half percent (1.5%) of the Gross Revenues.

**ARTICLE 15.
CONDITION OF PREMISES.**

Tenant acknowledges that it is fully familiar with the Future Phases Land and Existing Improvements and the physical condition thereof as of the date hereof. Except for Landlord's obligation to (i) provide reasonable access for ingress, egress, and regress to the Premises, (ii) grant additional easements and access rights and cooperate with Tenant as to other matters pursuant to Section 2.3 above, and (iii) complete other duties as otherwise provided herein, Tenant accepts the Premises in the existing condition and state of repair, and agrees that Landlord shall in no event be liable for any latent or patent defects in the Future Phases Land or the Existing Improvements.

**ARTICLE 16.
RIGHT OF INSPECTION.**

Landlord shall at all reasonable times during regular business hours be permitted access to the Premises for the purposes of inspecting the same and generally to do such other work as is deemed necessary to determine Tenant's compliance with this Lease. Except in the case of bona fide or apparent emergency or as provided under a Sublease or the Management agreement with Tenant, Landlord shall only be afforded access to the interior of any structure or building situate

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on the Premises: (a) when accompanied by a representative of Tenant; and (b) after five (5) Business Days written notice by Landlord to Tenant. In exercising its rights hereunder, Landlord shall not unreasonably interfere with the use or occupancy by Tenant or any Subtenant or Occupant. In the event of a bona fide or apparent emergency, Landlord may enter at any time and without accompaniment or notice (including forcibly, to the extent necessary), without such entry constituting an eviction of Tenant or a termination of this Lease.

ARTICLE 17.

ENVIRONMENTAL COVENANTS AND WARRANTIES.

17.1. Representations. Landlord and Tenant each warrants and represents to the other Party that it has disclosed to the other Party in writing any and all information known to Landlord or Tenant, as the case may be, relating to the environmental condition of the Future Phases Land and the Existing Improvements.

17.2. Tenant's Environmental Covenants.

(a) Tenant shall not engage in and shall use reasonable efforts to prevent any Subtenant from engaging in operations at or in the Premises which involve the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, release, or threat of release of Hazardous Substances which would require remediation or clean-up to conform to Environmental Laws. Tenant shall at all times comply with Environmental Laws with respect to substances first coming onto the Premises following the Effective Date and during the Lease Term. Tenant shall not cause and shall not permit to exist as a result of an intentional or unintentional action or omission on its part (and Tenant shall use reasonable efforts not to permit to exist as a result of an intentional or unintentional action or omission on the part of any other party), the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping from or about the Premises of any Hazardous Substances in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to Environmental Laws.

(b) Nothing contained in this Section 17.2 shall be construed as prohibiting the use on the Premises of substances regulated by Environmental Laws that are normally or routinely used in the construction of improvements such as the Improvements or are normally or routinely used in the operation, repair, maintenance, and use of residential and commercial projects, such as fuels, solvents, cleaning materials, paint, and printing materials, so long as the same are used in a manner that complies with Environmental Laws.

ARTICLE 18.

WARRANTIES AND REPRESENTATIONS.

18.1. By Landlord. Landlord hereby warrants and represents to Tenant as follows:

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(a) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals, consents, and board or committee actions necessary to authorize Landlord to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken.

(b) The person executing this Lease on behalf of Landlord has authority on behalf of Landlord to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Premises are not subject to any pending or, to Landlord's knowledge, threatened litigation, and Landlord is not subject to any pending or, to Landlord's knowledge, threatened litigation that would or might affect the Land or Landlord's ability to perform its obligations under this Lease.

(d) The consummation by Landlord of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) Landlord is not a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might to a material degree adversely affect the Premises, University Park or any portion of the Land upon which University Park will be constructed.

(f) Landlord has no knowledge of any condition of or with respect to the Premises that would adversely affect the use and enjoyment of the Premises by Tenant in accordance with the terms and provisions of this Lease.

(g) As used in this Section 18.1, Landlord's "knowledge" means the actual knowledge of Landlord's (i) Senior Vice President of Administration and Finance, or (ii) General Counsel, or (iii) Director for Real Estate; or any person under the direct supervision of any of them, following reasonable investigation or inquiry.

18.2. By Tenant.

(a) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals and corporate or limited liability company actions necessary to authorize Tenant to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken. The person executing this Lease on behalf of Tenant has authority on behalf of Tenant to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Tenant and is binding upon and enforceable against Tenant in accordance with its terms.

(b) Tenant is not subject to any pending or, to Tenant's knowledge, threatened litigation that would or might affect Tenant's ability to perform its obligations under this Lease.

(c) The consummation by Tenant of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule, or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

**ARTICLE 19.
TITLE TO IMPROVEMENTS.**

Notwithstanding anything set forth or implied hereunder, during the Lease Term, Landlord shall have and own fee simple title to all Improvements affixed to or forming a part of the Premises, subject only to the Leasehold Estate and interests of Tenant pursuant to this Lease and to such Subleases as are authorized hereby.

**ARTICLE 20.
MECHANICS' LIENS.**

Tenant shall use commercially reasonable efforts to avoid the filing of mechanics' liens against the fee interest of Landlord in the Premises or the Leasehold Estate of Tenant under this Lease and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work. Tenant shall cause any claim of mechanics' lien arising by, through or under Tenant which purports to lien the estate of Landlord in the Premises to be removed or bonded off prior to any execution or enforcement of such lien. In the event that Tenant permits such liens to be foreclosed or executed on, Landlord may, but shall not be obligated to, pay such lien or liens in full, or cause the same to be removed of record by causing the lien or liens to be bonded. Any reasonable expenses incurred by Landlord in furtherance of Landlord's rights under this Article 20 shall be paid by Tenant to Landlord. Tenant may contest the validity of any such lien or claim, but upon final determination of such contest, Tenant shall pay any remaining judgment, decree or lien and cause the same to be released of record without cost to Landlord.

**ARTICLE 21.
CASUALTY.**

21.1. Tenant's Obligation to Repair. Except as provided in this Lease or in any Leasehold Mortgage, in the event of damage to or destruction of the Premises or any Improvements, the funds received by Tenant from property insurance acquired pursuant to Article 22 shall be made available to the extent needed to effect such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction, or, if such repair or reconstruction is determined by Tenant to be not commercially feasible due to the age, design, use, extent of damage or the type of construction, or other aspect of the Improvements, Tenant may, at its option, effect repair and reconstruction so as

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to preserve any portions of the Improvements that have not been substantially damaged or to remodel or revise the structure of the Improvements, or Tenant may raze the Improvements or any part thereof. Notwithstanding the foregoing, in the event that Tenant determines that any repair or reconstruction is not commercially feasible and/or that the continued operation of the Premises is not commercially feasible, Tenant may, at its option, terminate this Lease by written notice thereof to Landlord, whereupon Tenant shall be required to raze or repair the remaining Improvements to the extent necessary to protect them against further deterioration as a result of such casualty, and any insurance proceeds remaining following satisfaction of all sums secured by all Leasehold Mortgages and payment of any sums required to preserve or raze the Improvements shall be retained by Tenant. Tenant's restoration activities shall be subject to the following requirements and conditions:

(a) The restoration shall create a building of substantially the same (or greater) floor area and number of Beds as were contained in the damaged building; provided that Tenant shall be entitled to make such changes in the Improvements as Tenant determines are desirable to recognize changes that have occurred in this type of building since the original construction of the Premises and trends that are then occurring therein.

(b) Any material change to any work set forth in the Construction Documents for the restoration shall be subject to the review and approval of Landlord in accordance with the terms and provisions of Article 6 hereof, which approval shall not unreasonably be withheld, conditioned or delayed.

(c) Landlord acknowledges that, notwithstanding anything set forth or implied herein to the contrary, Landlord has no ownership right or interest in the proceeds of the insurance acquired by Tenant pursuant to Article 22.

21.2. Prompt Repair. If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any Improvements, or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense but only to the extent of insurance proceeds and other amounts available to Tenant as above provided and subject to the provisions of Article 22 and the provisions of any Leasehold Mortgage. Subject to the time required for collecting insurance proceeds, redesigning, and obtaining governmental approvals therefor, obtaining necessary financing and Unavoidable Delays, Tenant shall use commercially reasonable efforts to promptly commence and complete such repair, replacement, reconstruction, or rebuilding to full completion.

21.3. Lease Continuance. This Lease and the Lease Term shall not terminate or be terminated because of damage to or destruction of the Improvements, except as expressly provided in this Lease. Tenant's obligation to pay Rent under this Lease shall be equitably abated during the period of any repair and/or reconstruction by Tenant pursuant to this Article 21.

ARTICLE 22.
INSURANCE AND INDEMNIFICATION.

Before commencing construction of any Improvements, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect during the term of this Lease, at no cost to Landlord, the following insurance relating to the Premises:

22.1. Liability Insurance. Tenant shall purchase and maintain and keep in effect (or cause to be purchased and maintained and kept in effect) at all times during the Lease Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than \$5,000,000.00 per occurrence, which may be satisfied by any combination of a primary commercial general liability and excess liability or umbrella liability insurance policy, naming Landlord and any Leasehold Mortgagee as an additional insured. The coverage afforded the additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by Landlord shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- (a) Bodily injury
- (b) Broad form property damage (including completed operations)
- (c) Personal injury
- (d) Products and completed operations (this coverage shall extend for one year past the actual completion of construction of all Improvements)

22.2. Workers' Compensation Insurance. Tenant shall purchase and maintain and keep in effect at all times during the Lease Term workers compensation and employers liability insurance as required by the State of Nevada Workers Compensation statutes as follows:

- (a) Workers Compensation (Coverage A) Statutory
- (b) Employers Liability (Coverage B)
 - (i) \$500,000 each accident
 - (ii) \$500,000 each employee/disease
 - (iii) \$1,000,000 policy limit/disease
 - (iv) This policy shall include endorsement for All State coverage for state of hire.

22.3. Automobile Liability Insurance. If applicable, Tenant shall purchase and maintain and keep in effect at all times during the Lease Term commercial automobile liability

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insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, to include non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add Landlord as an additional insured and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant.

22.4. Property Insurance. Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Lease Term insurance on the Premises and Improvements against special causes of loss form coverage. Such insurance shall be written on a replacement cost basis in the amount of the full replacement cost of the Improvements (but excluding the value of roads, foundations, surface parking areas, and similar improvements) subject, however to commercially reasonable sub-limits for buildings of this type. Tenant shall, periodically and its expense, but not less often than every 5 years during the term hereof, engage a consultant reasonably satisfactory to Landlord, to perform a detailed study of the cost to reconstruct the Future Phase Project for purposes of determining the total insurance coverage required. During any period while the Premises is being constructed, the insurance required pursuant to this Article 22 shall be in the form of a builder's risk policy, to be provided by either Tenant or the General Contractor, equal to the replacement cost value of each building at the completion of construction.

(a) The builder's risk policy referred to above shall be special causes of loss form insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Premises and shall also insure finished products. Coverage shall also cover the interests of Landlord, Tenant, the General Contractor and the Contractors and construction subcontractors in the buildings while under construction and the building materials on site but not yet attached to or incorporated in the building with respect to the Premises, but it will not cover any machinery, tools, equipment, appliances, or other personal property owned, rented or used by Tenant, the General Contractor, or any subcontractor in the performance of the construction work on the Premises, which will not become a part of the completed Premises.

(b) The property insurance obtained under the builder's risk policy shall provide special causes of loss form coverage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the Premises' design professional's and the General Contractor for services and expenses required as a result of such insured loss. The builder's risk insurance shall include physical loss or damage to the construction work on the Premises, including materials and equipment in transit, on the Premises or at

another location as may be indicated in the General Contractor application for payment and approved by Tenant.

(c) As to the builder's risk insurance policy, Tenant or the General Contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.

22.5. Evidence of Insurance. Upon the Lease Commencement Date, and if requested by Landlord, no more than once annually thereafter, Tenant shall deliver to Landlord certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with this Article 22 reasonably acceptable to Landlord, which shall identify this Lease and include copies of endorsements naming Landlord as an additional insured for general liability coverage and auto liability coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Applicable Laws and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant. The certificates, insurance policies, and endorsements required by this Article 22 shall contain a provision that coverages afforded will not be cancelled until at least thirty (30) calendar days prior written notice (ten (10) calendar days for nonpayment of premium) to Landlord prior to any lapse, cancellation, or a reduction in coverage. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Lease.

22.6. Copies and Additional Information. Landlord shall be provided, upon reasonable request, copies of all policies and endorsements, to the extent available. Each copy of a policy shall include a copy of all endorsements and, if such copy is not a certified copy, shall be accompanied by a letter from Tenant's insurance broker stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of the policy and endorsements is a true, correct, and complete copy of the respective insurance policy and all endorsements to the best of the broker's knowledge.

22.7. Tenant's Failure. In the event that Tenant fails to carry insurance as required under this Article 22, and such failure continues for fifteen (15) calendar days after Tenant's receipt of written notice of such failure from Landlord, then in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

22.8. Claims Reporting. Any failure to comply with the claims reporting provisions of the policies required to be maintained by Tenant hereunder or any breach of policy warranty shall not affect coverage afforded under the policy to protect Landlord.

22.9. Self-Insurance. The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant

shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses under the definition of Net Income.

22.10. Payment of Insurance Proceeds. In the event of any damage or destruction of the Premises or Improvements, the proceeds of Tenant's casualty insurance shall be paid to Tenant, or to the Leasehold Mortgagee, if said Leasehold Mortgagee so requires. If funds are disbursed to Tenant, Tenant shall deposit the proceeds in a fiduciary account or construction disbursement account to be distributed in accordance with this Lease.

22.11. Landlord's Insurance. At the earliest possible time after execution of this Lease, and thereafter upon renewal of such policies, Landlord shall deliver to Tenant certificates evidencing Landlord's commercial general liability insurance, automobile liability insurance, property insurance, and workers compensation insurance, with limits of liability as currently maintained by Landlord.

ARTICLE 23. CONDEMNATION.

In the event that the entire Premises, or any part thereof, is taken or condemned for a public or quasi-public use or that after any partial taking the remaining portion of the Premises is not sufficient, in Tenant's reasonable judgment, for the successful operation of the Premises, Tenant shall have the right, with the written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgagee), to terminate this Lease by written notice thereof to Landlord, in which event both Parties shall be relieved of and from any liability hereunder, except those accrued up to the time of such termination. In the event of any temporary taking or condemnation, Tenant shall be entitled to the entire award of the condemning authority. In the event that the entire Premises or any part thereof is permanently taken by condemnation, Tenant and Landlord shall cooperate to prove in each condemnation proceeding the loss in value, by reason of the taking, of the respective estates of Landlord and Tenant (notwithstanding the termination of this Lease, if any), and Landlord and Tenant shall each be entitled to pursue an award for the values of Landlord's and Tenant's respective interests in the Premises taken in such proceedings, if the condemning authority permits separate awards to be sought by Tenant and Landlord (it being acknowledged that in no event shall the portion of the award allocated to Tenant be less than all amounts secured by all Leasehold Mortgages). In the event that the condemning authority does not permit separate awards to be sought by Tenant and Landlord, then all proceeds and awards which may be payable as a result of condemnation shall, following their receipt by Tenant or any Leasehold Mortgagee, be distributed in the following order of priority:

23.1. Leasehold Mortgagees. There shall first be paid to Leasehold Mortgagees such amounts as may be required by such Leasehold Mortgages to be paid to such Leasehold Mortgagees, in order of priority.

23.2. Costs of Collection and Restoration. From the amount remaining, if any, there shall then be paid to Tenant a sum equal to the costs incurred by Tenant or Leasehold Mortgagee

in connection with collection of such proceeds and awards (including, without limitation, all fees for experts, legal fees, costs of surveys, and appraisals, and court costs), and, in the event of a partial taking which does not result in the termination of this Lease, a sum equal to the costs incurred or to be incurred by Tenant in restoring the portion of the Premises remaining to a condition as nearly as possible to that in which the Premises were prior to such taking, in the light of any reduced area thereof, pursuant to a procedure reasonably satisfactory to Leasehold Mortgagee.

23.3. Remainder. The amount remaining, if any, shall be paid to Tenant.

**ARTICLE 24.
LEASEHOLD MORTGAGES.**

24.1. Right to Mortgage. On one or more occasions, Tenant and every successor and assignee of Tenant shall, in connection with the development and operation of a Future Phase only, have the right to enter into one or more Leasehold Mortgages and assign, transfer, or encumber this Lease as security for such Leasehold Mortgage ("**Permitted Financing**"). Tenant shall not place or create any mortgage, deed of trust or other lien or encumbrance purporting to affect Landlord's fee interest in the Premises or Landlord's interest in this Lease. Tenant shall not use, provide to others, or rely upon any financial statements, audits, or other documents of NSHE or UNLV for the purpose of obtaining any type of advantage with respect to financing the Future Phase Project.

24.2. Landlord's Approval.

(a) On or before that date which is fifteen (15) calendar days prior to the execution by Tenant of any Leasehold Mortgage, Tenant shall provide written notice thereof to Landlord, together with a true and correct copy of such Leasehold Mortgage. Landlord shall have the right to review and approve the terms of the Leasehold Mortgage in Landlord's reasonable discretion. In the event Landlord notifies Tenant in writing within ten (10) calendar days of receipt of the Leasehold Mortgage that Landlord does not approve thereof, Tenant shall not be permitted to execute the Leasehold Mortgage. If Landlord approves the Leasehold Mortgage in writing or fails to respond within ten calendar days, Tenant shall be permitted but not required to execute the Leasehold Mortgage in Tenant's sole discretion substantially in the form originally delivered to Landlord.

(b) Notwithstanding anything to the contrary, Tenant shall not be obligated to commence to perform the Improvement Work unless and until financing acceptable to Tenant is arranged. If financing acceptable to Tenant is not arranged within nine months after the Effective Date of this Lease, Tenant shall have the option to cancel this Lease by giving written notice of cancellation to Landlord; provided, such cancellation option shall be void if it is not exercised and financing is arranged thereafter. If Tenant can arrange financing only by making changes to the provisions of this Lease other than those provisions designating the length of the Term and the amount of Rent payable under this

Lease, Tenant shall have the right to cancel this Lease if Landlord refuses to approve any such change in writing within thirty (30) days after Tenant's request therefor.

(c) In the event of any amendment to or modification of any Leasehold Mortgage, a copy thereof shall be provided to Landlord within fifteen (15) calendar days after the execution thereof. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and/or address shall be provided to Landlord. Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Article 24 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address indicated in the most recent notice sent with respect to the Leasehold Mortgage pursuant to this Article 24. Notices from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 32.1 hereof. Such notices, demands and requests shall be given in the manner described in Section 32.1 and shall in all respects be governed by the provisions of that section.

24.3. Default Notice; Leasehold Mortgagee's Right to Cure.

(a) Landlord, upon providing Tenant any notice of default under this Lease or a termination of this Lease, shall at the same time provide a copy of such notice to the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage. No such notice by Landlord shall be deemed to have been duly given unless and until a copy thereof has been so provided to such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to the Leasehold Mortgagee, such Leasehold Mortgagee shall have an additional ninety (90) day period (sixty (60) day period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of this Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by Leasehold Mortgagee until Leasehold Mortgagee can gain possession of the Premises, Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as Leasehold Mortgagee gains possession of the Premises, so long as

(i) during such extended cure period all payments of Rent are paid as required under this Lease (subject to the notice and cure provisions set forth in this Lease) and

(ii) Leasehold Mortgagee is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes Leasehold Mortgagee to take any such action at Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Lease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

24.4. Notice to Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur that may entitle Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default set forth in Article 31 or to a Leasehold Mortgagee in this Article 24, or elsewhere in this Lease, if any, Landlord shall notify ("Default Termination Notice") the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent, and at least sixty (60) calendar days in advance of the proposed effective date of such termination if such default is not the failure to pay Rent. The provisions of Section 24.5 shall apply if, during such 30- or 60-day Default Termination Notice period the Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Default Termination Notice;

(b) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the Default Termination Notice to such Leasehold Mortgagee and that may thereafter become due during the cure period allowed to such Leasehold Mortgagee, subject to the notice and cure provisions set forth in this Lease; provided that no such amount shall be required to be paid before the same is due and owing under this Lease; and

(c) Comply or, in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible to being complied with by such Leasehold Mortgagee and continue to pursue such cure with reasonable due diligence, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed the Leasehold Mortgagee to complete such cure pursuant to this Section 24.4(c) shall be not less than sixty (60) calendar days and shall continue thereafter for so long as is reasonably necessary for the Leasehold Mortgagee to cure

such nonmonetary requirement which is susceptible of cure by such Leasehold Mortgagee, including, in the event that the Leasehold Mortgagee is required to obtain possession of the Premises in order to effect such cure, any period of time reasonably required to obtain such possession (including any time Leasehold Mortgagee is stayed or enjoined).

24.5. Procedure on Default.

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4, the specified date for the termination of this Lease as fixed by Landlord in its Default Termination Notice in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent shall be extended as provided in Section 24.4; provided, such Leasehold Mortgagee shall, during such extended period:

(i) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due (subject to the notice and grace provisions of Section 24.4) and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting: (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and

(ii) Unless Leasehold Mortgagee is stayed or enjoined from taking such actions, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity.

(b) If at the end of such extended period Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by such Leasehold Mortgagee of proceedings pursuant to this Section 24.5 shall continue for the period provided in Section 31.1(b) in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent. Nothing in this Section 24.5, however, shall be construed to require Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) Upon the acquisition of Tenant's Leasehold Estate herein by Leasehold Mortgagee or its designee or any other permitted purchaser at a foreclosure sale, assignment in lieu thereof, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, all monetary defaults have

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been cured and the Leasehold Mortgagee, its designee or the successor of either shall proceed to cure any non-monetary defaults.

(d) Notwithstanding any other provision of this Lease, any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage (whether as a result of a default hereunder, a default under a Leasehold Mortgage or otherwise), shall be deemed to be a permitted Transfer or sale not requiring the consent of Landlord, provided such purchaser or assignee of this Lease and of the Leasehold Estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such Leasehold Estate. No such sale, Transfer, or assignment shall constitute a default or Event of Default under this Lease.

(e) Notwithstanding any other provision of this Lease, no Leasehold Mortgagee or other person acquiring title to Tenant's interest in the Premises through or under a Leasehold Mortgage (including by Transfer in lieu of foreclosure) shall be liable for any loss or damage occurring prior to acquiring such title or subsequent to any assignment of such title. In the event of any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, (a) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any act or omission of Tenant, (b) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any amendment to this Lease not joined in or consented to by such Leasehold Mortgagee, (c) the Leasehold Mortgagee or purchaser at foreclosure shall not be subject to any offsets or defenses which Landlord has against Tenant and (d) Landlord and such Leasehold Mortgagee shall, each upon written request of the other, reaffirm in writing the validity of this Lease.

24.6. New Lease. In the event of the termination of this Lease as a result of Tenant's default or otherwise, Landlord shall, in addition to providing the notices of default and termination as required by Section 24.4, provide Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord shall enter into a new lease ("New Lease") of the Premises with Leasehold Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the Rent and upon the terms, covenants, and conditions of this Lease (but excluding any requirements which are not applicable or have been satisfied by Tenant prior to termination), subject only to the conditions of title as the Premises are subject to on the date of the execution of the original Lease

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and such matters arising thereafter to which such Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Premises, provided:

(a) Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) calendar days after the date such Leasehold Mortgagee receives Landlord's notice of termination given pursuant to this Section 24.6;

(b) Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to this Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 24.6 or under the New Lease, an amount equal to the Net Income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of the beginning of the Lease Term of such New Lease;

(c) Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which the Leasehold Mortgagee was notified by Landlord's Notice of Termination and that are reasonably susceptible of being cured by Leasehold Mortgagee or its designee; and

(d) Upon the execution and delivery of a New Lease, all Subleases and management agreements shall thereupon be assigned and transferred, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

24.7. No Merger. So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall otherwise expressly consent in writing or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. Landlord and Tenant may not voluntarily agree to terminate this Lease without the consent of Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage.

24.8. Erroneous Payments. No payments not constituting payments of Rent made to Landlord by Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the

return of any such payment or portion thereof provided Leasehold Mortgagee shall have made demand therefor not later than one (1) year after the date of such payment.

24.9. Bankruptcy. In the event either Landlord or Tenant becomes the subject of a proceeding under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect (including any replacement thereof):

(a) Tenant shall not be entitled to reject this Lease without the prior written consent of the Leasehold Mortgagee and every other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; provided that, if the Lease is nevertheless rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 24.9(a) as if such bankruptcy proceeding had not occurred, unless the Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within sixty (60) calendar days following rejection of the Lease by Tenant or Tenant's trustee in bankruptcy. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in bankruptcy for Tenant in connection with any such proceeding, the rights of the Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 24.6 shall not be affected thereby.

(b) If the Lease is rejected by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; and any right to treat this Lease as terminated in such event shall be deemed assigned to such Leasehold Mortgagees, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) If this Lease is not treated as terminated in accordance with Section 24.9(b)(i), then this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to offset against Rent payable hereunder the amounts of any damages from time to time arising from such rejection or any failure of Landlord to perform its obligations hereunder and any such offset properly made

shall not be deemed a default under this Lease. The lien of each Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection with the same priority as it would have enjoyed had such rejection not taken place.

24.10. Landlord Not Liable for Tenant's Financing. Tenant acknowledges that Tenant may not qualify for tax exempt financing. Tenant shall be solely responsible for debt repayment relative to any borrowings by Tenant, and Landlord shall not be a participant or guarantor on any such borrowings. Except for the subordination and nondisturbance and attornment agreements and estoppel certificates required by this Lease, Landlord shall not be made a party to any of Tenant's financing documents.

24.11. Fee Mortgage. All Fee Mortgages shall be subordinate to this Lease and any New Lease, and Landlord shall from time to time at the request of Tenant or any Leasehold Mortgagee provide a subordination agreement from any holder of a Fee Mortgage confirming that the Fee Mortgage is subordinate to this Lease and any New Lease.

24.12. Limitation of Leasehold Mortgagee's Liability. The liability of any Leasehold Mortgagee or its designee or nominee acquiring title pursuant to foreclosure or other process in lieu thereof under this Lease shall be limited to its interest in the Premises, and any judgments rendered against any such Leasehold Mortgagee or its designee or nominee following foreclosure or other process in lieu thereof shall be satisfied solely out of its interests in this Lease or the proceeds of sale of its interest in the Premises. No personal judgment shall lie against any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Premises, and any judgment so rendered shall not give rise to any right of execution or levy against such Leasehold Mortgagee's or its designee's or nominee's assets. The provisions of this Section 24.12 shall not inure to the successors and assigns of any Leasehold Mortgagee or its designee or nominee following its acquisition and Transfer of title to the Leasehold Estate created hereby. Nothing contained herein limiting the liability of a Leasehold Mortgagee or any Transferee shall be deemed to waive any default or remedies of Landlord.

24.13. Security Interests. Landlord hereby acknowledges and consents to Tenant's grant of security interests in the Personal Property of Tenant to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant in which a security interest has been granted to a Secured Lender is hereinafter called "**Secured Property**." Landlord subordinates any interest in the Personal Property of Tenant to security interests granted to Secured Lenders, subject to the provisions hereof. Landlord consents to the entry by Secured Lenders or their agents or representatives upon the Premises at any time pursuant to any document evidencing or governing a lien or security interest in favor of a Secured Lender for the purpose of removing the Secured Property, except that the Secured Lenders may not remove any Fixtures from the Premises. The Secured Property shall be deemed to be Personal Property and not a part of the Premises and shall not be claimed or seized or levied upon in any levy or legal execution or legal proceedings by Landlord. The Secured Lenders may remove Secured Property, or any part thereof,

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without liability for damage to or diminution in value of the Premises, except for the actual physical damage caused by such removal, which physical damage shall be repaired by the removing Secured Lender or caused to be repaired by the removing Secured Lender so that the Premises shall be restored to the condition the Premises would be in absent such removal.

24.14. No Guaranty; Only Debtor-Creditor Relationship. Nothing contained herein shall be construed as a guaranty, of any kind or nature, by any Leasehold Mortgagee of any of the obligations of Tenant hereunder or as creating a relationship between Tenant and any Leasehold Mortgagee other than a relationship of creditor and debtor.

24.15. Casualty; Condemnation. All proceeds of policies of insurance maintained hereunder and the award from any condemnation or taking of the Premises shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized to participate in any actions, proceedings or negotiations in connection with the collection, settlement or compromise of any such proceeds or awards.

24.16. Proceedings. Landlord shall give each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of written notice of such proceedings.

24.17. Waiver of Landlord's Lien. Landlord does hereby waive any and all lien or claim of lien against Tenant, Commercial Subtenants, University Park, the Personal Property of Tenant and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and Commercial Subtenants, now or hereafter located on the Premises, arising from this Lease or the relationship of Landlord and Tenant hereunder (or to the extent any such waiver is ineffective under Applicable Laws, Landlord hereby subordinates any such lien or claim of lien to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing).

24.18. Changes to Mortgagee Protective Provisions. In the event that Tenant hereafter desires to enter into a Leasehold Mortgage, Landlord shall consider in good faith any modifications, clarifications or changes to the mortgagee protective provisions contained in this Lease (including without limitation those set forth in this Article 24) which are reasonably requested by a Leasehold Mortgagee. Landlord shall promptly respond to any such request within ten (10) Business Days after Landlord's receipt of such request.

ARTICLE 25. QUIET ENJOYMENT.

Landlord represents and warrants that it has the right and capacity to enter into this Lease. Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold, and enjoy the

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Premises for the Lease Term, without hindrance or molestation by anyone claiming paramount title or claims whatsoever, except by, through, or under Tenant, subject, however, to the covenants, agreements, terms, conditions, and other obligations of this Lease and any holder of any rights under any Permitted Exceptions and subject to the rights of Landlord set forth herein if an Event of Default occurs.

Landlord shall pay all amounts required to protect and defend Landlord's title to and interest in the Premises and as otherwise necessary to protect Tenant's interest in the Premises hereunder from any title exceptions adversely affecting Tenant's proposed use of the Premises, including without limitation any liens or similar claims not created by Tenant.

ARTICLE 26.

ASSIGNMENT AND TRANSFER.

26.1. Limitation: Consent Required. Tenant may not, at any time, sell, assign, convey, or transfer (each, as applicable, a "Transfer") this Lease to another Person without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. As used herein, "Transfer" (a) shall include the appointment of a new Person as manager of Tenant, and (b) shall not include any subletting of the Premises or a Future Phase. Notwithstanding the foregoing, such restriction on Transfer shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

26.2. Transfer by Landlord. Notwithstanding anything set forth herein to the contrary, Landlord shall not at any time Transfer its interests in the Premises, the Future Phases Land, the Improvements, and/or University Park, or any part thereof, without the prior written consent of Tenant and any Leasehold Mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Tenant's reasonable grounds for disapproval may include the risk of loss of tax-exempt status of the Land and The Future Phase Project.

ARTICLE 27.

ESTOPPEL CERTIFICATE.

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, any Commercial Subtenant or any Leasehold Mortgagee, the other Party shall execute, acknowledge, and deliver to the requesting Party and/or to any current or prospective mortgagee, purchaser, assignee, title insurer, or other appropriate party, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified, and setting forth the modifications), setting forth the dates to which the Rent and charges payable by Tenant hereunder have been paid, whether or not to the knowledge of the Party making such certificate there is any existing default by either Party and whether or not any notice of default has been served by either Party upon the other and remains outstanding and stating the nature of any such defaults, and such other matters as may be reasonably requested, it being intended that any such statement delivered pursuant to this Article

27 may be relied upon by any existing or prospective title insurer, purchaser, assignee, Subtenant, mortgagee, or other appropriate party.

ARTICLE 28.
DISPUTE RESOLUTION.

In recognition of the long term nature of each Party's commitment to the other and the substantial investment made by Tenant with regard to the Premises, in the event of a dispute, Landlord and Tenant agree that dispute resolution shall proceed as follows: first, negotiation as provided in Section 28.1; second, mediation, as provided in Section 28.2; and third, if the Parties are still unable to resolve their dispute, the complaining Party shall have all of the rights set forth in this Lease and available to such Party under Applicable Law to pursue adjudication and resolution of the dispute ("*Dispute Resolution*").

28.1. Negotiation. The parties shall attempt in good faith to resolve any dispute promptly by negotiation between executives who have authority to settle the controversy. Either Party may give the other Party notice of any dispute not resolved in the ordinary course of business. Within ten (10) calendar days after delivery of the notice, the receiving Party shall submit a written response to the notice. The notice and response shall include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) calendar days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations and materials provided pursuant to this negotiation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law, and statements made by any Party during negotiation may not be used against it in later proceedings if the Parties fail to resolve the dispute during negotiation.

28.2. Mediation. If a dispute has not been resolved by negotiation as provided above within twenty (20) calendar days or such longer time as the parties shall mutually agree upon, or the parties failed to meet within fifteen (15) days after delivery of the initial notice of negotiation, the parties shall endeavor to resolve the dispute by private mediation in Las Vegas, Nevada. If Landlord and Tenant cannot agree upon a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider or other private mediator, and the two mediators chosen by Landlord and Tenant shall then choose a third person who will serve as mediator. The parties agree to each have a representative present at the mediation who has authority to bind it to a written settlement agreement, subject to the approval of the board of directors or membership, as applicable, of Tenant and any consents or approvals of the Regents of the Nevada System of Higher Education or otherwise required by legislation and regulations governing Landlord. The initial mediation session shall be held promptly (but not more than thirty (30) calendar days following appointment of the mediator). All negotiations and materials provided pursuant to this mediation process are confidential to the full extent allowed by law and

shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Each Party shall bear its own expenses and shall pay an equal share of the expenses of the mediator. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof.

28.3. Further Legal Action. Except as otherwise provided in this Lease, it is the intent of the Parties that these negotiation and mediation procedures shall govern any dispute under this Lease and either Party shall have the right to specifically enforce the negotiation and mediation procedures before the other Party may seek legal redress in a court of law. If a dispute has not been resolved by negotiation and mediation as provided in Sections 28.1 and 28.2, either Party shall have the right to commence legal action. Any legal actions brought to enforce this Lease shall be interpreted by the laws of the State of Nevada and brought in a court of competent jurisdiction in the State of Nevada.

**ARTICLE 29.
INTEREST ON PAST DUE OBLIGATIONS.**

To compensate Landlord for its additional cost of processing late payments, for any payment of Rent which is not received within 7 days after it is due, Tenant will pay a late charge of two percent (2%) of the late payment, but not more than \$1,000 per month. Unless otherwise specifically provided herein, any amount due under this Lease from Tenant to Landlord which is not paid when due shall bear interest from the due date until paid at the Default Rate.

**ARTICLE 30.
SURRENDER UPON LEASE TERMINATION.**

Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property and equipment that is not attached to the Improvements and shall surrender the Premises to Landlord in good functional similar condition as when placed in service (normal wear and tear excepted), damage by condemnation, casualty, and normal wear and tear excepted; provided that Tenant shall not remove from the Premises any Fixtures attached to or used in connection with operation of the Improvements, or any additions to or replacements thereof made during the Lease Term, it being the intent of the Parties that upon expiration or earlier termination of this Lease, Landlord shall receive the Improvements in operating condition; provided that nothing contained herein shall be construed as prohibiting Tenant from removing the Personal Property of Tenant or as prohibiting the removal of any belongings of any Subtenant. Tenant's Personal Property not removed by Tenant within six months after any expiration or other termination shall be considered abandoned, and Landlord may dispose of such property in accordance with Applicable Laws.

**ARTICLE 31.
DEFAULT AND REMEDIES.**

31.1. Tenant Defaults. The occurrence of any of the following shall constitute an event of default by Tenant hereunder (each, a “***Tenant Event of Default***”):

(a) Tenant shall have failed to pay any Base Rent payable under Section 5.1 when due or (subject to receipt of notice of the same from Landlord to the extent the bill therefor is received by Landlord) any other sum required or stipulated to be paid by Tenant to Landlord hereunder, and such failure continues for ten (10) calendar days following Tenant’s receipt of written notice thereof from Landlord; or

(b) Tenant shall have failed to observe or perform any other covenant or obligation of Tenant hereunder and Tenant shall not have cured such failure within thirty (30) calendar days after Tenant shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within thirty (30) calendar days, Tenant shall not be in default hereunder if Tenant shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “***Insolvency Laws***”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Tenant of Tenant’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Tenant of the performance of Tenant’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Tenant of the performance of Tenant’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Tenant or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If Tenant shall abandon the Premises; or

(f) If a Lien is filed against the Premises and Tenant fails to furnish a bond or otherwise obtain a release or discharge of the Lien as required by Article 20 of this Lease; or

(g) If any warranty or representation of Tenant contained in this Lease is untrue in any material respect as of the date made; or

(h) Tenant shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(i) A Transfer of this Lease in violation of Article 26.

31.2. Landlord Remedies. Upon the occurrence of a Tenant Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees set forth herein, Landlord shall be entitled to exercise any one or more or all of the following remedies:

(a) Subject to the rights of Leasehold Mortgagees set forth herein, Landlord may terminate this Lease and the rights of Tenant hereunder, and may enter and retake possession of the Premises (subject to the rights of Subtenants and Residents); or

(b) Landlord may exercise any other right or remedy available at law or in equity; provided that the remedy of terminating this Lease shall be subject to the rights of Leasehold Mortgagees, Subtenants and Residents; or

(c) Landlord, without additional notice, may cure such Event of Default on the part of Tenant at Tenant's expense, and Tenant shall promptly reimburse Landlord for all actual, reasonable costs and expenses incurred by Landlord in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Landlord in so curing such default or failure, and any damages incurred by Landlord as a result of such default or failure, shall be paid by Tenant within thirty (30) days of demand therefor by Landlord.

31.3. Tenant's Right to Contest. Notwithstanding anything to the contrary contained herein, if Landlord claims that a default has occurred under Section 31.1(b), and Tenant has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.1(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.4. Landlord Defaults. The occurrence of any of the following shall constitute an event of default by Landlord hereunder (each, a "Landlord Event of Default"):

(a) Landlord shall have failed to pay any sum required or stipulated to be paid by Landlord to Tenant hereunder, and such failure continues for ninety (90) calendar days following Landlord's receipt of written notice thereof from Tenant; or

(b) Landlord shall have failed to observe or perform any other covenant or obligation of Landlord hereunder and Landlord shall not have cured such failure within ninety (90) calendar days after Landlord shall have received written notice thereof from Tenant; provided, however, that if such failure is such as cannot with diligent effort be cured within ninety (90) calendar days, Landlord shall not be in default hereunder if Landlord shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Landlord shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “***Insolvency Laws***”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Landlord of Landlord’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Landlord of the performance of Landlord’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Landlord of the performance of Landlord’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Landlord or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If any warranty or representation of Landlord contained in this Lease is untrue in any material respect as of the date made; or

(f) Landlord shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(g) A Transfer of this Lease in violation of Article 26 above.

31.5. Tenant Remedies. Upon the occurrence of a Landlord Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees herein, Tenant shall be entitled to exercise any one or more or all of the following remedies:

(a) Tenant may exercise any right or remedy available at law or in equity; and

(b) Tenant, without additional notice, may cure such Event of Default on the part of Landlord at Landlord’s expense, and Landlord shall promptly reimburse Tenant for all actual, reasonable costs and expenses incurred by Tenant in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, shall be paid by Landlord within thirty (30) days of demand therefor by Tenant.

31.6. Landlord’s Right to Contest. Notwithstanding anything to the contrary contained herein, if Tenant claims that a default has occurred under Section 31.4(b), and Landlord has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.4(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.7. Tenant's Remedies. In the event that Landlord defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within ninety (90) calendar days after the giving of written notice thereof by Tenant to Landlord, unless such default is of such nature that it cannot be cured within such 90-day period, in which case no default is to occur so long as Landlord commences the curing of the default within such 90-day period and thereafter diligently pursues the curing of same, Tenant may, in addition to any other right or remedy available to Tenant hereunder or at law or in equity, cure such default or failure at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual costs and expenses incurred by Tenant, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, may at Tenant's option be offset against any Rent and other amounts from time to time due or owing by Tenant to Landlord hereunder.

**ARTICLE 32.
GENERAL PROVISIONS**

32.1. Notices. Except as otherwise expressly provided herein, all notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

TO LANDLORD: BOARD OF REGENTS OF THE NEVADA SYSTEM OF
 HIGHER EDUCATION
 c/o: Senior Vice President for Business and Finance
 University of Nevada, Las Vegas
 4505 S. Maryland Parkway
 Box 451004
 Las Vegas, NV 89154-1004
 Attn: Gerry S. Bomotti
 Phone: (707) 895-3571
 Fax: (702) 895-1090
 Email: gerry.bomotti@unlv.edu

WITH A COPY TO: Director for Real Estate:
 University of Nevada, Las Vegas
 4505 S. Maryland Parkway
 Box 451027
 Las Vegas, NV 89154-1027
 Attn: Cherie Garrity
 Phone: (702) 895-2500
 Fax: (702) 895-4960
 Email: cherie.garrity@unlv.edu

FUTURE PHASES LEASE

AND A COPY TO: General Counsel:
University of Nevada, Las Vegas
4505 S. Maryland Parkway
Box 451085
Las Vegas, NV 89154-1085
Attn: Elda Sidhu
Phone: (702) 895-5185
Fax: (702) 895-5299
Email: elda.sidhu@unlv.edu

TO TENANT: UNIVERSITY PARK, LLC
c/o The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123
(702) 362-2111 - Office
(702) 637-4227 – Direct Line
Attn: Tom George
Email: Tomg@midbycos.com

WITH A COPY TO: The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123
(702) 362-2111 - Office
(702) _____ – Direct Line
Email: Ericm@midbycos.com

AND A COPY TO: Jeff Geen, Esq.
2422 Granada Bluff Court
Las Vegas, Nevada 89135
(702) 985-1800
Email: jeffsgeen@gmail.com

Any such notices shall, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, (b) by overnight delivery using a nationally recognized overnight courier, (c) by personal delivery, or (d) by facsimile transmission, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) Business Day after such deposit. Notice given in any other manner shall be effective only if and when received (or when receipt is refused) by the Party to be notified. A Party's address may be changed by written notice to the other Party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice.

32.2. Waiver. Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies under this Lease unless the waiver is in writing and signed by such Party. Any such waiver shall be applicable only to the extent specifically set forth

in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

32.3. Compliance With Laws. Tenant shall comply in all material respects at Tenant's sole cost and expense with all notices of all governmental authorities having jurisdiction over the Premises and shall observe and comply with all Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to reasonably contest any such notices or Applicable Laws.

32.4. Approvals to be Reasonable. Unless the context of a provision clearly and unambiguously indicates otherwise, any approval or consent required under this Lease or requested by a Party of the other Party, shall not be unreasonably withheld, conditioned or delayed.

32.5. Interpretation. The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for or against either of the Parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the Parties. The Parties do not intend to become, and nothing contained in this Lease shall be interpreted to deem that Tenant and Landlord are, partners or joint venturers in any way or that Tenant is an agent or representative of Landlord for any purpose or in any manner whatsoever. A male or female person may be referred to in this Lease by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Lease which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Lease specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Lease at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including but not limited to." Words such as "hereby," "herein," and "hereunder" and words of similar import shall be construed to refer to this Lease in its entirety. "Include" means "include but not limited to." "Any" means "any and all." Except to the extent the context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party's behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

32.6. Captions, Links, Table of Contents. The captions, links, headings, and table of contents set forth in this Lease are for convenience of reference only and shall not be limiting or determinative in the construction or interpretation hereof.

32.7. Memorandum of Lease. The Parties shall execute a memorandum of lease (the "Memorandum of Lease") of this Lease in the form of Exhibit E attached to this Lease for recording. Any recording, realty transfer, documentary, stamp, or other tax imposed upon the execution or recording of the Memorandum of Lease shall be paid by Tenant.

32.8. Binding Effect. All terms, covenants, conditions, and agreements contained in this Lease shall extend to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

32.9. Partial Invalidity. If any term, covenant, or condition of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and shall be enforced to the extent permitted by Applicable Laws; provided such partial invalidity does not prevent Tenant from realizing the benefit of its bargain pursuant to this Lease, including but not limited to possession of the Premises and the use thereof in all material respects as contemplated by this Lease.

32.10. Governing Law; Consent to Exclusive Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Nevada, without regard to conflict of laws principles. For the purpose of any suit, action, or proceeding arising out of or relating to this Lease, each of Landlord and Tenant hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of Nevada. In addition to any form of service of process otherwise permitted by law, service in any such action may be given by certified or registered mail, return receipt requested, and shall be deemed served upon the actual delivery thereof in such manner to the Party intended to be served, which service shall be adequately established by the receipt for such delivery.

32.11. Unavoidable Delays. If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such Party, commonly referred to as “force majeure” (each, an “Unavoidable Delay”), including, without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, failure of power, unavailability of utility service, delays attributable to a Party’s unreasonable withholding of its consent or approval hereunder, Act of God, unusually severe or inclement weather, governmental restriction, regulation or control, terrorist, war, enemy, or hostile governmental action, civil commotion, insurrection, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days. If either Party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days.

32.12. Intellectual Property Rights. No Party may use the intellectual property rights of the other Party without the express written permission of the other Party. Without limiting the generality of the last sentence, Tenant shall not use the name of the “Nevada System of Higher Education” or “UNLV”, or the marks, seals, logos, or any other related name (collectively the “Marks”), in its advertising or in the production of any materials produced by Tenant, without the prior written consent of NSHE or UNLV, as the case may be, pursuant to an approved licensing or other agreement between the parties. Tenant may, however, use the names “Nevada System of

Higher Education” and “University of Nevada, Las Vegas” or their acronyms in factual descriptions of the Future Phase Project and, to the extent that Tenant delivers materials to UNLV for publication or dissemination that include the names or Marks and UNLV does so publish or disseminate the materials, it shall be deemed approval of such use.

32.13. Nonliability of Landlord and Tenant Officials and Employees. Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Tenant shall look solely to Landlord’s interest in the Premises for the collection of any judgment. No director, officer, official, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In no event shall this Lease be considered a general obligation of the Landlord or the State of Nevada. Tenant’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Landlord shall look solely to Tenant’s interest in the Premises for the collection of any judgment. No officer, official, employee, agent, member, or representative of Tenant shall be personally liable to Landlord or any successor in interest, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest, or on any obligation incurred under the terms of this Lease.

32.14. Surrender at End of Term. On the last day of the Lease Term or upon any earlier termination of this Lease, all of Tenant’s right, title and interest in and to the Premises, (which shall include the Premises and all Improvements and Fixtures) shall automatically and fully vest in Landlord, and Tenant shall surrender and deliver up the Premises to Landlord in good order, condition, and repair, damage by fire or other casualty of Taking excepted, free and clear of all lettings, occupancies, liens, and encumbrances other than (a) those, if any, existing on the date hereof, and (b) those created by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date. Notwithstanding the termination of the Lease, Tenant shall remain liable to Landlord for any loss or damage suffered by Landlord because of any Event of Default of Tenant. Upon surrender, Tenant shall assign to Landlord or Landlord’s designee all Subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant’s interest in them, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

32.15. Yield Up. On the last day of the Lease Term or upon any earlier termination of this Lease, Tenant, its assigns, or successors in interest shall deliver to Landlord such of the following as Tenant, its assignee or successor in interest may have in its possession: Tenant’s executed counterparts of any service and maintenance contracts then affecting the Premises, any maintenance records and manuals for the Premises, all original licenses and permits then pertaining to the Premises, and all warranties and guarantees then in effect that Tenant has received in connection with any equipment or work or services performed on the Improvements, together with a duly executed assignment to Landlord, without recourse or warranty, of the foregoing (whether

or not Tenant has any of them in its possession), and copies of all other documents relating to the Premises.

32.16. Reserve Accounts. Upon the expiration or termination of the Lease Term, all reserve accounts shall automatically and fully vest in Tenant.

32.17. Prior Agreements and Discussions. Any agreements between Landlord on the one hand and Tenant on the other hand before the date of this Lease and relating to the Premises are superseded by this Lease; provided, however, that the Memorandum of Understanding shall remain in full force and effect with respect to all things and matters (including all pre-development reimbursables) other than the Premises, notwithstanding the execution of this Lease. If there are any conflicts between the Memorandum of Understanding and this Lease, this Lease shall control. All prior negotiations relative to the Premises and/or University Park are merged into this Lease. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Lease until it is executed and delivered by both Parties.

32.18. Relationship, No Third Party Rights. This Lease shall not be construed to create a joint venture or partnership between Landlord and Tenant, it being the intention of the parties to create only a landlord and tenant relationship. Nothing in this Lease shall be construed to permit anyone other than Landlord, Tenant, the Leasehold Mortgagees and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

32.19. Entire Agreement; Amendment. This Lease embodies the entire agreement and understanding between the Parties with respect to the subject matter described in this instrument, and supersede all prior agreements and understandings between the Parties with respect to the subject matter hereof. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to University Park may require, and the Parties shall reasonably cooperate with each other, to amend or enter into additional agreements that are mutually determined to be advantageous to the construction, ownership, and operation of the Premises. This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the Party or Parties against which enforcement of such change, waiver, discharge or termination is sought.

32.20. Counterparts. This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature and acknowledgment pages may be taken from one counterpart and inserted in other counterparts to form a single Lease document.

FUTURE PHASES LEASE

32.21. Attorneys' Fees. In the event of any litigation proceedings regarding this Lease, the non-prevailing Party shall pay or reimburse the reasonable attorneys' fees, court costs and other reasonable costs paid or incurred by the prevailing Party in such litigation.

**ARTICLE 33.
EXHIBITS.**

The Exhibits to this Lease are as follows:

- A LEGAL DESCRIPTION OF LAND
- B GRAPHIC DEPICTION OF PHASE ONE LAND AND FUTURE PHASES LAND
- C PERMITTED EXCEPTIONS
- D FORM OF PHASE ASSIGNMENT AND ASSUMPTION AGREEMENT
- E FORM OF MEMORANDUM OF LEASE

[SIGNATURE PAGES FOLLOW]

FUTURE PHASES LEASE

IN WITNESS WHEREOF, the Parties hereto have executed this **LEASE AGREEMENT FOR UNIVERSITY PARK FUTURE PHASES** as of the date first written above.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

By: _____

Name: _____

Title: _____

Date: _____

TENANT:

[FUTURE PHASES, LLC], a Delaware limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

--

LEGAL DESCRIPTION OF LAND

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RE-RECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, THAT WOULD PASS THROUGH BY OPERATION OF LAW.

EXHIBIT B

--

**GRAPHIC DEPICTION OF PHASE ONE LAND
AND FUTURE PHASES LAND**

EXHIBIT C – DRAFT PHASE MAP

ASSESSOR'S PARCELS - CLARK CO., NV.
Michele W. Shafe - Assessor

162-22-5

N 2 NE 4

22

T21S R61E

Scale: 1" = 200' Rev: 02/08/2011

MAP LEGEND

NOTES

This map is for assessment use only and does NOT represent a survey. No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office. This map is compiled from official records, including surveys and deeds, but only contains the information required for assessment. See the recorded documents for more detailed legal information. USE THIS SCALE(FEET) WHEN MAP REDUCED FROM 11X17 ORIGINAL

PARCEL BOUNDARY
 SUB BOUNDARY
 PMLD BOUNDARY
 ROAD EASEMENT
 MATCH/LEADER LINE
 HISTORIC LOT LINE
 HISTORIC SUB BOUNDARY
 HISTORIC PMLD BOUNDARY
 SECTION LINE

CONDOMINIUM
 AIR SPACE PCL
 RIGHT OF WAY PCL
 SUB-SURFACE PCL

007 ROAD/PARCEL NUMBER
 001 PARCEL NUMBER
 1.00 ACREAGE
 202 PARCEL SUBSEQ NUMBER
 PB 24-46 PLAT RECORDING NUMBER
 5 BLOCK NUMBER
 001 LOT NUMBER
 GL5 GOV LOT NUMBER

8 4 8 4
 5 1 5 1
 6 2 6 2
 7 3 7 3
 8 4 8 4
 5 1 5 1

6 5 4 3 2 1
 7 8 9 10 11 12
 13 14 15 16 17 18
 19 20 21 22 23 24
 25 26 27 28 29 30
 31 32 33 34 35 36

Scale: 1" = 200' Rev: 02/08/2011

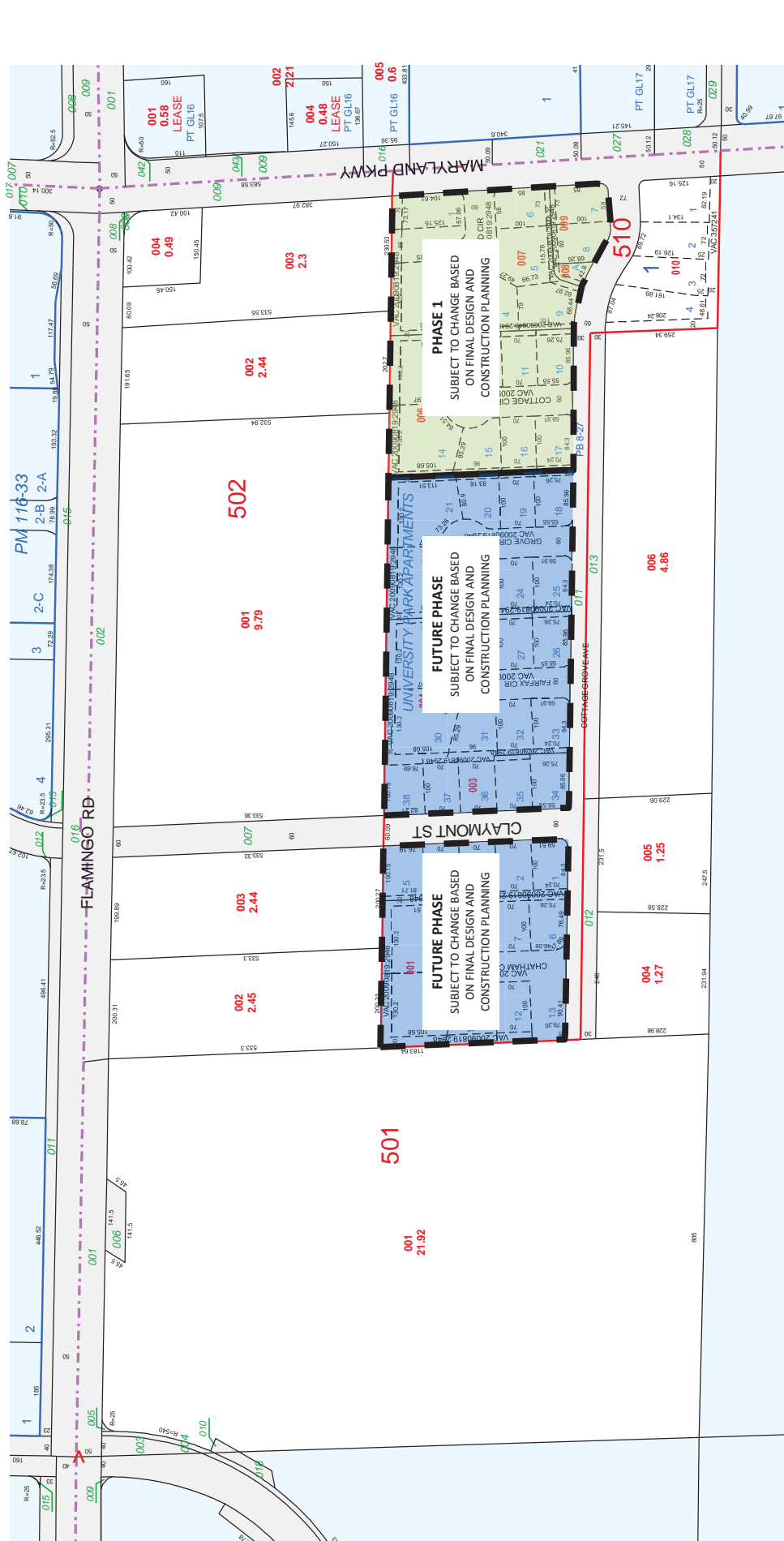


EXHIBIT C – DRAFT PHASE MAP

TAX DIST 470

EXHIBIT C
--
PERMITTED EXCEPTIONS

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the Effective Date but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
3. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
4. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
6. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

7. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,705.87, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,681.14 has been paid

Second installment of \$2,674.91 has been paid

Third installment of \$2,674.91 unpaid delinquent first Monday in January

Fourth installment of \$2,674.91 unpaid delinquent first Monday in March

Parcel No. 162-22-510-001

8. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,450.07, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,114.46 has been paid

Second installment of \$1,111.87 has been paid

Third installment of \$1,111.87 unpaid delinquent first Monday in January

Fourth installment of \$1,111.87 unpaid delinquent first Monday in March

Parcel No. 162-22-510-002

9. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,336.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,086.03 has been paid

Second installment of \$1,083.50 has been paid

Third installment of \$1,083.50 unpaid delinquent first Monday in January

Fourth installment of \$1,083.50 unpaid delinquent first Monday in March

Parcel No. 162-22-510-003

10. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,477.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,624.01 has been paid

Second installment of \$2,617.89 has been paid

Third installment of \$2,617.89 unpaid delinquent first Monday in January

Fourth installment of \$2,617.89 unpaid delinquent first Monday in March

Parcel No. 162-22-510-004

11. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,460.25, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,619.63 has been paid

Second installment of \$2,613.54 has been paid

Third installment of \$2,613.54 unpaid delinquent first Monday in January

Fourth installment of \$2,613.54 unpaid delinquent first Monday in March

Parcel No. 162-22-510-005

12. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,374.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,598.17 has been paid

Second installment of \$2,592.12 has been paid

Third installment of \$2,592.12 unpaid delinquent first Monday in January

Fourth installment of \$2,591.12 unpaid delinquent first Monday in March

Parcel No. 162-22-510-006

13. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$9,396.13, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,353.15 has been paid

Second installment of \$2,347.66 has been paid

Third installment of \$2,347.66 unpaid delinquent first Monday in January

Fourth installment of \$2,347.66 unpaid delinquent first Monday in March

Parcel No. 162-22-510-007

14. State and County Taxes for the fiscal period of 2014 to 2015, have been paid in full in the amount of \$5.87.

Parcel No. 162-22-510-008

15. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$727.23, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$182.13 has been paid

Second installment of \$181.70 has been paid

Third installment of \$181.70 unpaid delinquent first Monday in January

Fourth installment of \$181.70 unpaid delinquent first Monday in March

Parcel No. 162-22-510-009

16. Any supplemental or recapture taxes under NRS Chapter 361, as amended, which may become a lien on the subject property by reason of increased valuations due to land use, improvements or otherwise.

17. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

18. Reservations and Easements in the patent from the State of Nevada, recorded January 24, 1955, in Book 81 as Document No. 68040 of Official Records.

19. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 8 of Plats, Page 27, of Official Records.
20. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, for electrical lines, recorded August 15, 1963, in Book 470 as Document No. 378570 of Official Records.
21. An unrecorded Lease executed by and between the parties named herein, for the terms and upon the subject to all of the terms, covenants, and provisions contained therein;
Dated: July 3, 2001
Lessor: Olympic Circle, a Partnership
Lessee: Web Service Company, Inc.
Term: Not less than 3 years nor more than 20 years from the date of the Lease
Disclosed by: Memorandum Of Lease
Recorded: August 22, 2001 in Book 20010822 as Document No. 02528

The present ownership of said leasehold estate and other matters affecting the interest of the lessee are not shown herein.

22. Any, rights, interest, or claims which may exist or arise by reason of the following facts as disclosed by GRANT, BARGAIN, SALE DEED recorded June 9, 2006 in Book 20060609 as Document No. 0002482 of Official Records, described as follows:

All buildings on all lots encroach into building set back lines as shown on the subdivision plat described in Item 11 herein.

Small out buildings located on Lots 4, 12, 28 and 37 lie within building set back lines as shown on the subdivision plat described in Item 11 herein.

Building located near the West line of Lot 29 encroaches into drainage easement as shown on the subdivision plat described in Item 11 herein.

Building located on Lot 1 encroaches into Nevada Power Company easement described in Item 12 herein.

23. Order of Vacation: Any easements not vacated by that certain Order of Vacation recorded June 29, 2009 in Book 20090629 as Document No. 0003322 of Official Records.

The above document was re-recorded on July 1, 2009 in Book 20090701 as Document No. 0001032.

The above document was re-recorded on August 19, 2009 in Book 20090819 as Document No. 0002948.

24. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for utilities, recorded June 29, 2009, in Book 20090629 as Document No. 0003323 of Official Records.
25. Water rights, claims or title to water, whether or not shown by the public records.
26. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.

NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.

27. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
28. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as may be disclosed by an inspection of said premises.

EXHIBIT D

--

FORM OF PHASE ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION OF LEASE

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT OF LEASE (the "Assignment") is made as of the ___ day of ___, 20___, by and among the BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION on behalf of the University of Nevada, Las Vegas ("Landlord"), UNIVERSITY PARK, LLC, a Delaware limited liability company ("Assignor") and _____ (the "Assignee").

WITNESSETH:

WHEREAS, Landlord and Assignor as Tenant are parties to that certain "Lease Agreement for University Park Future Phases" dated _____ (the "Lease") with respect to certain leased Premises located on the Campus of the University of Nevada, Las Vegas ("UNLV"), as more particularly described therein. A copy of the Lease is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, Article 3 of the Lease permits partial assignment of the Lease with respect to portions of the Premises; and

WHEREAS, Assignor desires to assign to Assignee and Assignee desires to accept the assignment of all Assignor's interest as Tenant under the Lease in and to that portion of the Premises described on Exhibit B hereto (the "Assigned Premises");

WHEREAS, Landlord has consented to the partial assignment as described herein;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein and intending to be legally bound, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference as a material part hereof. All terms used but not otherwise defined herein shall have their meanings as set forth in the Lease.

2. Representations, Covenants and Warranties. As a material inducement to Assignee to assume the obligations of Assignor as Tenant under the Lease, Landlord and Assignor represent, warrant and covenant to Assignee as follows:

A. The Lease attached as Exhibit "A" hereto is in full force and effect and has not been modified, assigned, supplemented or further amended, nor are there any other agreements between Landlord and Assignor concerning the Lease or the Assigned Premises, whether oral or written.

B. Assignor is not in default under the Lease, and to the actual knowledge of Landlord there are no events which have occurred that, with the giving of notice or the passage of time or both, would result in a default by Assignor as Tenant under the Lease.

C. Assignor has paid all rents and all other sums due (if any) under the Lease current to the date hereof.

D. There are no uncured defaults on the part of Landlord under the Lease, Assignor has not sent any notice of default under the Lease to Landlord, and there are no events which have occurred that, with the giving of notice or the passage of time or both, would result in a default by Landlord under the Lease,

E. The execution and delivery of, and performance by Landlord and Assignor pursuant to this Assignment will not violate, conflict with or constitute a default under any agreement, order, rule or law by which either party or the Assigned Premises is bound, and any and all third party consents required for this Assignment have been obtained in writing.

F. The person executing this Assignment for each party has the authority to execute and deliver this Assignment on behalf of such party.

G. This Assignment includes all right, title and interest in and to all studies, agreements, permits, licenses, plans, authorizations and approvals relating to the Improvement Work and to the occupancy and operation of the Assigned Premises.

3. Assignment.

A. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all interest as Tenant in and to the Assigned Premises under the Lease. Assignee accepts the foregoing assignment and, except as specifically set forth herein, agrees to assume, fulfill, perform and discharge the obligations and liabilities of Assignor under the Lease hereby assigned and as modified herein, which arise on or after the effective date hereof.

B. Assignor shall remain liable for performing and discharging all obligations and liabilities relating to the Lease for which it was responsible and which arose prior to the date hereof and shall defend, indemnify and hold Assignee harmless from and against any and all claims or losses arising prior to the effective date hereof relating to Tenant's obligations under the Lease, including without limitation losses related to reasonable attorney's fees and expenses incurred to resolve such claims or losses.

C. Landlord acknowledges and agrees that this Assignment shall release Assignor from its obligations under the Lease to the extent of and with respect to the Assigned Premises, including, without limitation, the obligation to pay rent and all other amounts which become due under the Lease.

4. Further Assurances. The parties agree that they shall reasonably cooperate to provide such documents and information as may be reasonably required by Assignee's lender relative to the Lease and the Tenant's construction of the Improvement Work and the Commercial Lease to Assignor.

5. Assignment/Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Assignee shall have the absolute right to assign its rights hereunder to an affiliated entity owned and/or controlled by Assignee or by related parties to Assignee.

6. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of Nevada, without regard to the conflicts of laws doctrine of such state.

7. Defined Terms. All capitalized terms used herein that are not otherwise defined shall have the meaning assigned to them in the Lease.

8. Continuing Effect. The Lease, as assigned, assumed and modified hereby, shall remain in full force and effect and is hereby ratified by the parties.

[Remainder of page intentionally left blank. Signature page follows.]

EXHIBIT E

--

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

UNIVERSITY PARK, LLC
c/o The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123

Space above this line for Recorder's Office only

MEMORANDUM OF LEASES

THIS MEMORANDUM OF LEASE ("*Memorandum of Leases*") is made and entered into as of _____, 2015, by and between **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("*Landlord*" or "*UNLV*") and **UNIVERSITY PARK, LLC**, a Delaware limited liability company ("*UPLLC*"), and [**FUTURE PHASES, LLC**], a Delaware limited liability company ("*Tenant*").

UPLLC and Tenant are collectively referred to herein as the "*Tenants*").

1. Landlord is the owner of that certain real property, and the improvements located thereon, located in Clark County, Nevada and more particularly described on Attachment A attached hereto (the "Land").

2. For and in consideration of the mutual covenants, agreements, and conditions set forth in the following unrecorded lease agreements:

(a) that certain unrecorded Lease Agreement for University Park Phase One by and between Landlord and UPLLC, dated _____, 2015 (the "*Phase One Lease*"), and

(b) that certain unrecorded Lease Agreement for University Park Future Phases by and between Landlord and Tenant, dated _____, 2015 (the "*Future Phases Lease*," and, together with the Phase One Lease, collectively the "*Leases*."),

3. Landlord hereby leases to Tenants and Tenants hereby lease from Landlord, upon all the terms and conditions of the Leases, the Land and all buildings, structures, improvements, personal and intangible property, and appurtenances, as more particularly described in the Leases.

4. The Land is to be partitioned into two areas, which are sometimes referred to “Phase One Land” and “Future Phases Land,” and will be leased by Landlord to UPLLC and Tenant, respectively.

5. In accordance with the terms and conditions of the Leases:

(a) the term of the Phase One Lease shall be for a period not to exceed approximately ____ years commencing on the Commencement Date as more particularly set forth therein and

(b) the term of the Future Phases Lease shall be for a period not to exceed of approximately ____ years commencing on the Commencement Date as more particularly set forth therein

6. This Memorandum of Leases has been prepared to provide notice that the Land is subject to the terms and conditions of the Leases, which terms are hereby incorporated by reference into this Memorandum of Leases.

7. In no event shall the terms of this Memorandum of Leases be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Leases. In the event of any inconsistency between the terms of this Memorandum of Leases and the terms of the Leases, the terms of the Leases shall control.

8. This Memorandum of Leases may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

IN WITNESS WHEREOF, Landlord and Tenants have caused their duly authorized representatives to execute this Memorandum of Leases as of the date first written above.

SIGNATURES TO FOLLOW

**ATTACHMENT A
TO MEMORANDUM OF LEASES
--
LEGAL DESCRIPTION OF LAND**

LOTS ONE (1) THROUGH THIRTY-EIGHT (38) INCLUSIVE, AND LOT "A", ALL IN BLOCK TWO (2). AND LOTS ONE (1) THROUGH THIRTEEN (13) INCLUSIVE, IN BLOCK THREE (3) OF UNIVERSITY PARK APARTMENTS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 8, OF PLATS, PAGE 27, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

TOGETHER WITH THAT PORTION OF LAND VACATED BY THAT CERTAIN ORDER OF VACATION RECORDED JUNE 29, 2009 IN BOOK 20090629 AS DOCUMENT NO. 0003322 AND RE-RECORDED JULY 1, 2009 IN BOOK 20090701 AS DOCUMENT NO. 0001032 AND RE-RECORDED AUGUST 19, 2009 IN BOOK 20090819 AS DOCUMENT NO. 0002948 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA, THAT WOULD PASS THROUGH BY OPERATION OF LAW.

UNIVERSITY PARK, LLC

DECEMBER 2014

MEMORANDUM OF FINDINGS



PREFACE

In October 2014, University Park, LLC, in conjunction with the University of Nevada, Las Vegas (the “University,” or “UNLV”) engaged Brailsford & Dunlavey (“B&D”) to conduct a Student Housing Market Study (the “Study”). The purpose of the Study was to evaluate the feasibility of a student housing project at the northern edge of the University’s main campus. While multiple development phases are envisioned to add up to 3,000 beds at the 14-acre site, this Study’s primary purpose is to assess the market for the initial development phase.

The following Study summarizes B&D’s findings with respect to the various market conditions impacting student demand at UNLV. The findings contained herein represent the professional opinions of B&D’s personnel based on assumptions and conditions detailed in this Study. B&D conducted research using both primary and secondary information sources that are deemed reliable, but whose accuracy cannot be guaranteed. B&D does not represent or warrant that the estimates and projections contained herein will be realized, as the actual performance will be influenced by market and other external factors. The methodologies employed as a part of this Study included the following:

- ◆ *An in-depth tour of existing campus housing* was conducted, in addition to a comprehensive review of inventory data and occupancy statistics, in order to gain a thorough understanding of the University’s on-campus housing system.
- ◆ *Focus groups and intercept interviews* with UNLV students, living both on campus and off campus, created a qualitative understanding of student satisfaction levels with current housing facilities and preferences for future housing facilities.
- ◆ A *demographic analysis* of key components of the University’s student population was completed in order to better understand the potential market for on-campus student housing.
- ◆ A *competitive context assessment* was performed to evaluate the University’s current on-campus housing program against peer and aspirant institutions.
- ◆ A *student housing demand analysis* was performed using B&D’s proprietary demand-based programming (DBP) methodology, combined with B&D’s national database of student survey responses, to project the quantity of beds demanded by UNLV students, by enrollment classification and unit type.

B&D would like to thank the following individuals with The Midby Companies for their insight and direction throughout the process:

Mr. John H. Midby, Chief Executive Officer/Director of Finance
Mr. Tom George, Chief Financial Officer/ Director of Multi-Family Operations
Mr. Eric Midby, Chief Operating Officer/Director of Development

Additionally, B&D would like to thank the following University stakeholders for providing critical information and insights:

Mr. Richard Clarke, Executive Director, Housing & Residential Life
Mr. Orlando White, Assistant Director of Residential Education
Mr. Brent McPherson, Director of Property Operations, AVS Housing Group
Ms. Mya Starling, Director of Institutional Research, Office of Decision Support

The B&D team that produced the Study was comprised of the following individuals:

Peter Isaac, Senior Project Manager
Joe Collums, Assistant Project Manager
Martha McCoy, Project Analyst

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 - On-campus Housing
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 - Off-Campus Market
 - Demand Analysis
 - Development Opportunity

EXHIBITS

- A. Off-Campus Market Research
- B. Presentation of Findings

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EXECUTIVE SUMMARY

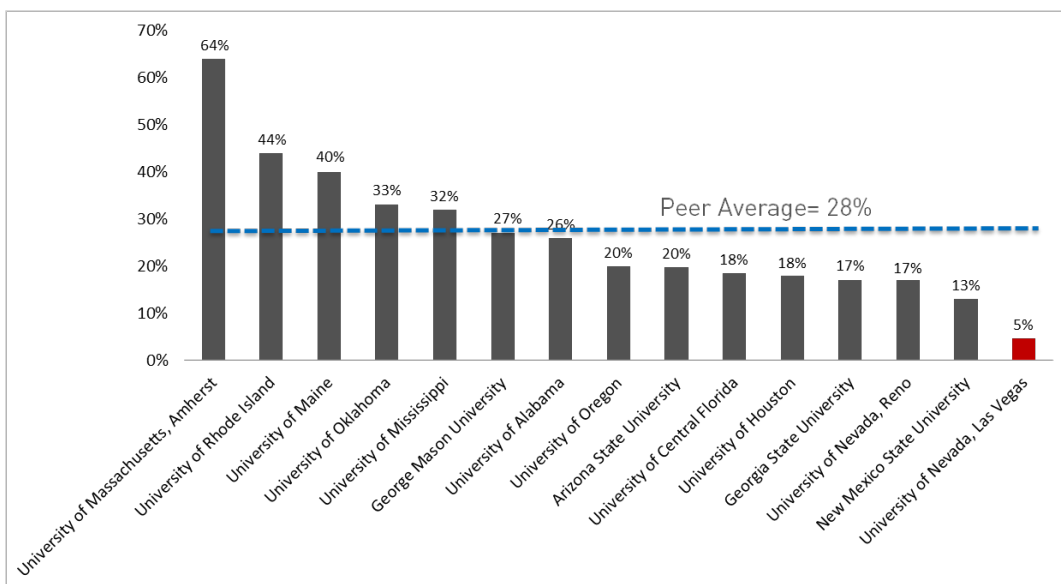
IMPORTANCE OF STUDENT HOUSING

UNLV's ability to offer top-flight students a rich and dynamic campus experience is critical to realizing its broader strategic goals as the University pursues a transformative vision to become one of the nation's foremost urban research institutions. Achieving designation from the Carnegie Foundation as Nevada's first Tier One institution is emerging as a top priority for UNLV, as Tier One institutions have been shown to deliver widespread benefits to a university and the surrounding region, including higher graduation rates, increased federal funding, small business and job creation, and substantial economic impact to the surrounding community. In addition to earning reputations for academic excellence, Tier One institutions have made significant investments in student housing in order to create the campus environment to draw and retain elite students from outside the local area.

CURRENT LIMITATIONS

UNLV's ability to offer an engaging student life experience in support of its mission, however, is currently limited by the lack of housing options available to its students. As shown in Figure 1, below, UNLV's on-campus housing presence lags far behind its identified peers, with just 5% of its population living on campus, compared to an average of 28% at peer institutions. This low on-campus participation rate reflects the limited supply of available beds (1,677), especially among UNLV's non-freshman students.

FIGURE 1: UNLV Capture Rates vs. Identified Peers (based on total enrollment)



Additionally, even the limited on-campus supply available to non-freshman students does not offer the amenities and living experience typically sought by upper-division students. All units on campus are in the semi-suite configuration, featuring shared bathrooms and mostly shared bedrooms (86%), with no in-unit laundry or kitchen available.

As a result, a commuter mentality has crystallized among UNLV's highly local, price-sensitive student population. This deep-seated reluctance for on-campus living is best illustrated by low participation levels among freshmen in on-campus housing, despite the University's live-on requirement. While institutions with a similar demographic and market profile to UNLV average a freshman capture rate of 48%, according to B&D's database, UNLV captured just 20% of its full-time freshmen in 2014, representing a missed market opportunity to accommodate approximately 1,500 students.

Further heightening the need for a residential campus is an underdeveloped off-campus market that largely fails to offer the amenities and security desired by UNLV students. B&D's research found that, with the exception of *Rebel Place Apartments*, located approximately 0.5 miles from campus, the immediate off-campus market lacks student-oriented features like in-unit laundry, individual leases, study areas, and controlled access. Even more important, while students generally feel safe on campus, there is an acute sentiment that the areas immediately surrounding campus are unsafe.

OPPORTUNITY

The latent desire for a true residential campus experience among UNLV students, combined with the University's transformative vision for the institution, creates a seminal development opportunity to catalyze a deeper, longer-lasting student experience on campus. With the University's identification of a site ideally positioned to support non-freshman student housing, the groundwork has been laid for a major residential expansion in alignment with both University vision and market demand.

To support the University's long-term vision, however, it is paramount that the initial phase of residential expansion is right-sized according to current target market demand and thoughtfully delivered to enhance students' campus experiences. Although student demand may swell to approximately 5,000 beds over what is currently available as the campus culture evolves, current latent demand from the non-freshman target market is calculated to be approximately 750 to 800 beds. Equally important to delivering at the appropriate scale is delivering a residential experience that reinforces and deepens students' ties to campus. The building design, physical linkages to campus, amenities, and residence life programs must all work together to create a seamless on-campus housing experience for students that have progressed beyond their freshman year.

While UNLV's transformation from a historically commuter-oriented institution to a residential campus will only be accomplished with a series of incremental steps over time, a properly packaged student housing development in the first phase will support future phases and plant the seeds for dynamic changes to the student experience.

RECOMMENDATIONS

UNLV engaged The Midby Companies as a potential development partner for the provision of student housing according to its broader vision for the site, and for the campus at-large. B&D believes the development is a feasible opportunity to develop student housing in alignment with the University's broader mission. In light of the project's significance to the campus and surrounding community, B&D believes it is important for University Park, LLC, to employ a measured, strategic implementation approach, as described in the following recommendations:

- ◆ **Intentionally integrate the development into the fabric of campus.**
 - While the terms of the partnership between UNLV and University Park, LLC may limit the University's role in the property's development, construction and ongoing management, the development must be inextricably linked to campus in the minds of UNLV students. The building's design should have the look and feel of the campus environment with, if possible, University branding, logos, and colors. Outdoor spaces and pedestrian infrastructure should be designed to facilitate linkages to campus. Access must be controlled, in order to address heightened security concerns of students and parents, but the development should not feel compartmentalized with excessive physical barriers. Finally, the development should offer regular programming tied to supporting student community.

- ◆ **Maintain the right balance between freshman housing and non-freshman housing when considering future development phases.**
 - In B&D's experience, a 70/30 split between communal-style housing designed for freshmen and independent-style housing designed for upper-division students creates a sustainable pipeline of student demand to fill unit-types throughout the system. With the potential addition of 750-800 apartment beds in the initial development phase, UNLV would achieve unit-type alignment, with 69% communal-style beds and 31% apartments campus wide. However, delivering additional apartment beds beyond the initial phase, without a corresponding increase in freshman beds, could skew the balance, leading to vacancy issues and ultimately undermining the desired campus life culture

change at UNLV. B&D believes that University Park, LLC can best promote UNLV’s campus life vision by creating a successful student housing project in Phase 1 and then re-analyzing market demand and enrollment prior to Phase 2 implementation.

- ◆ **Develop 750-800 beds of apartment-style units at the proposed location and market the project as on-campus student housing.**
 - Based on its proprietary demand-based programming (“DBP”) methodology and analysis of student demand preferences at institutions with a similar demographic and market profile, B&D calculates the need for 766 apartment-style beds, as shown in Figure 2 below. In order to most accurately project demand, B&D applied its proprietary Occupancy Coverage Ratio (“OCR”) to reflect the context within which the project will be developed, particularly the competitiveness of the off-campus market as well as the client’s risk tolerance. Specifically, a 1.30 OCR was applied to the identified gross demand, meaning that for every 130 beds of gross demand identified, 100 beds of demand are recommended. While there is unmet demand for alternative unit-types, in addition to the 766 beds of apartment demand, the development should not exceed the estimated demand for apartment-style beds, in order to ensure a successful first phase.

FIGURE 2: UNLV HOUSING DEMAND BY CLASSIFICATION AND UNIT-TYPE

Class	Traditional/			Total
	Semi-Suites	Full-Suites	Apartments	
Freshmen	1,125	N/A	N/A	1,125
Sophomores	266	188	239	693
Juniors	196	130	211	537
Seniors	79	79	160	318
Graduates	41	71	156	268
OCR Demand	1,707	468	766	2,941
Existing Supply	1,677	0	0	1,677
Net Demand	30	468	766	1,264

- Delivering 766 apartment beds will increase the on-campus supply to 2,443 total beds (potential 12% capture rate), with a more balanced split between communal-style housing in support of freshmen (69%) and independent-style housing designed for non-freshmen (31%).

- ◆ **Mix unit types between 2-bedrooms and 4-bedrooms, and offer a portion of the units as double-occupied bedrooms with lower rental rates.** Figure 3, below, provides a framework for a market-responsive unit mix for the potential development.

FIGURE 3: PROPOSED UNIT AND OCCUPANCY MIX

Unit Type	Occupancy	Beds	Units
2-Bedroom	Single	174	87
2-Bedroom	Double	80	20
4-Bedroom	Single	512	128
TOTAL		766	235

While there is some flexibility to adjust this unit mix according to financial realities, increasing the number of beds in 4-bedroom units beyond the distribution shown above (67% of total beds) would not sufficiently address market demand, especially from seniors and graduate students who typically look for increased privacy and fewer roommates. If necessary, some 3-bedroom units could be provided in place of 2-bedroom singles, although B&D believes it is important to develop no fewer than 50 2-bedroom singles to sufficiently address demand among upper-division students. B&D also recommends conservative assumptions regarding the ability to lease double-occupied bedrooms. While 2-bedroom units can be configured to accommodate shared bedrooms, University Park, LLC should assume shared bedrooms in a maximum of 25 units.

- ◆ **Ensure that rental rates for the proposed unit types appropriately reflect the achievable premiums relative to the primary off-campus competition, as shown in Figure 4, below.**

FIGURE 4: PROPOSED RENTAL RATES

Unit Type	Proposed 12-Month Rate Range	12-Month Rate at Rebel Place Apartments	Premium Over Rebel Place Apartments	Proposed 9-Month Rate	9-Month On-Campus Rate*	Premium Over On-Campus Rate
2 BR/2 BA Single	\$700-\$725	\$681	3%-6%	\$900	\$782	15%
2 BR/2 BA Double	\$538-\$565	N/A	N/A	\$692	\$632	10%
4 BR/4 BA Single	\$620-\$645	\$561	11%-15%	\$800	\$782	2%

*All on-campus units are single- or double-occupied semi-suites, with a shared bathroom adjoining two bedrooms.

- Following its analysis of rental rates, B&D believes that the proposed development can command a higher premium for 4-bedroom units than 2-bedroom units, relative to *Rebel Place Apartments*. Additionally, 3-bedroom

units, if included at the proposed development, could command approximately \$660 per bed, representing a 9% premium over *Rebel Place*.

- B&D recommends structuring leases as 12-month, rather than 9-month, agreements based on market opportunity. In either case, it will be critically important to closely coordinate with the University regarding rental rate structures. Increases in rates for the existing on-campus units could potentially threaten the competitive market position for *University Park*. Conversely, lowered rates or concessions at *University Park* could be problematic for the University.
- The above rates assume an amenity package on par with *Rebel Place Apartments* will be offered with, at minimum, in-unit laundry, utilities included, furnished units, study rooms, and attractive indoor and outdoor lounge areas. The proposed rates shown do not include fees for parking.

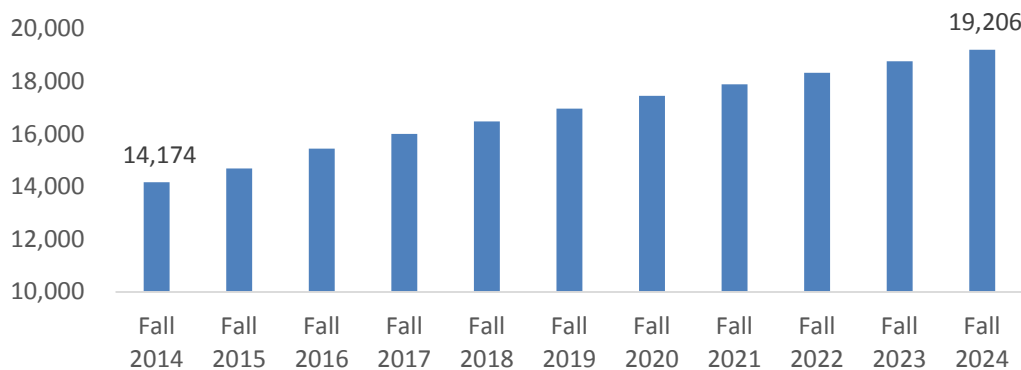
KEY FINDINGS

To expound on the Study’s Executive Summary, the following section of the memorandum will provide more detail on several of the key issues that were uncovered as a part of B&D’s planning effort.

CAMPUS PROFILE

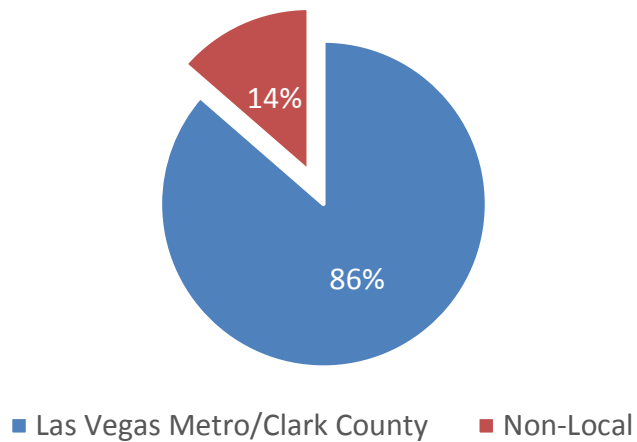
Anticipated changes in UNLV’s demographics are increasing the need for apartment-style housing units. According to data provided by the University’s Office of Decision Support, UNLV is expected to emerge from a period of relatively stagnant growth (3% from 2010-2014) to a high-growth phase over the next ten years. Full-time enrollment among degree-seeking students is projected to grow by 34%, from nearly 20,000 students to more than 26,000 students. The proposed development’s target market of non-freshman UNLV students is projected to grow at an even higher rate of 36%, from approximately 14,000 students to more than 19,000 students, as shown in Figure 5 below.

FIGURE 5: PROJECTED 10-YEAR ENROLLMENT GROWTH AMONG NON-FRESHMAN



The demand for non-freshman student housing will not only be affected by the number of full-time enrollees, but also the demographic profiles of incoming students. Namely, the distribution between students who hail from the local area and those who enter UNLV from outside the area is particularly important to the development’s future demand. Currently, as shown in Figure 6 below, UNLV’s student population is principally comprised of local students, with 86% of full-time enrolled students coming to the University from the Las Vegas Metropolitan area.

FIGURE 6: FULL-TIME STUDENTS BY PERMANENT RESIDENCE



A very low percentage (20%) of full-time freshmen currently live in on-campus housing because UNLV allows for an exception, as do many institutions, to its first-year live-on requirement for local students. Students who do not live on campus during their freshman year are much less likely to live in on-campus housing beyond their freshman year than students who do live on campus, in B&D's national experience. Therefore, demand for student housing at the proposed site- especially for future phases- will reflect the University's ability to increase the percentage of freshman students living on campus.

ON-CAMPUS HOUSING

Amplifying the demand for apartment-style beds is the notable absence of unit types (i.e., apartments and full suites) that offer the increased levels of independence and privacy typically sought by upper-division students. On-campus housing systems garnering high rates of housing retention typically offer a continuum of unit types, as shown in Figure 7 below, where shared spaces are less emphasized as students transition from their first year to upper divisions.

However, all units on UNLV's campus, including those within the Upper Class Complex, consist of semi-suites featuring a shared bathroom between units. The availability of quality, independent-style living options is critical, not only in meeting the housing demand of upper-division students, but also in shifting attitudes about the on-campus experience among prospective freshmen. Additionally, providing on-campus housing options that address student needs as they mature through their collegiate career can directly impact the University's ability to retain students past their freshman year and through graduation.

FIGURE 7: STUDENT HOUSING DEVELOPMENT CONTINUUM



UNLV's current on-campus supply consists of a total of 1,677 beds distributed across 12 residence halls, which are grouped into four residential complexes (Dayton, South Complex, Tonapah, and Upper Class Complex). Fueled by the University's freshman live-on requirement, the system is currently 96% occupied. A limited supply, coupled with a prevailing commuter mentality among students, has resulted in low capture rates across each classification, as shown below in Figure 8. On-campus housing options are particularly limited for the University's non-freshman students. With a total of 552 beds available after the assignment of beds to freshmen, the campus housing system had the capacity to accommodate just 4% of University non-freshmen in 2014.

FIGURE 8: ON-CAMPUS RESIDENTS BY CLASSIFICATION

Class	Current Occupancy - Fall '14			
	Enrolled Population (1)	% of Class	Residents (2)	% of Total On-Campus Residents
Freshmen	5,607	20%	1,125	69%
Sophomores	3,374	7%	251	15%
Juniors	3,348	5%	168	10%
Seniors	5,011	1%	59	4%
Graduates	2,337	1%	20	1%
Total	19,677	8%	1,622	

(1) Full-time, taking minimum of one class at main campus

(2) As provided by private management provider AVS

As a result of the system's uniformity in unit typology, there is little differentiation in the housing rates students are charged across residence halls. As shown in Figure 9 below, students pay an average (over the 9-month academic term) of \$632/month for a double occupancy unit and \$782/month for a single occupancy unit. Students living on campus are also required to purchase a meal plan, at a minimum rate of \$1,925 per semester. While UNLV's housing rates are comparable to the rates at similar institutions, students consistently expressed in focus groups and intercept interviews that the rate seemed high, especially compared to the off-campus market.

FIGURE 9: ON-CAMPUS HOUSING RATES

Residence Hall	Single Occupancy Semester	Single Occupancy Monthly (9 months)	Double Occupancy Semester	Double Occupancy Monthly (9 months)
South Complex	\$3,320	\$738	\$2,700	\$600
Tonapah	\$3,720	\$827	\$2,940	\$653
Dayton	N/A	N/A	\$2,940	\$653
Upper Class Complex	\$3,520	\$782	\$2,800	\$622
<i>Total</i>	\$3,520	\$782	\$2,845	\$632

Overall, UNLV’s 8% capture rate of full-time, degree-seeking students lags well behind the range required to create a true residential campus, which in B&D’s experience represents a capture rate of 20%-25% for institutions with UNLV’s demographic profile. In order to reach that threshold, the University would need to add approximately 2,500 beds above what is currently available. Institutions similar to UNLV in terms of institutional and market profile also capture an average of 48% of freshman students, according to B&D’s database, despite having similar live-on requirement exceptions. The University’s current 20% capture rate for freshmen, therefore, represents a missed market of over 1,500 students. It is important to note that these figures do not represent current or future demand, but simply the existing gap between current conditions and the residential context that is typically available at institutions with a similar demographic and market profile.

COMPETITIVE CONTEXT

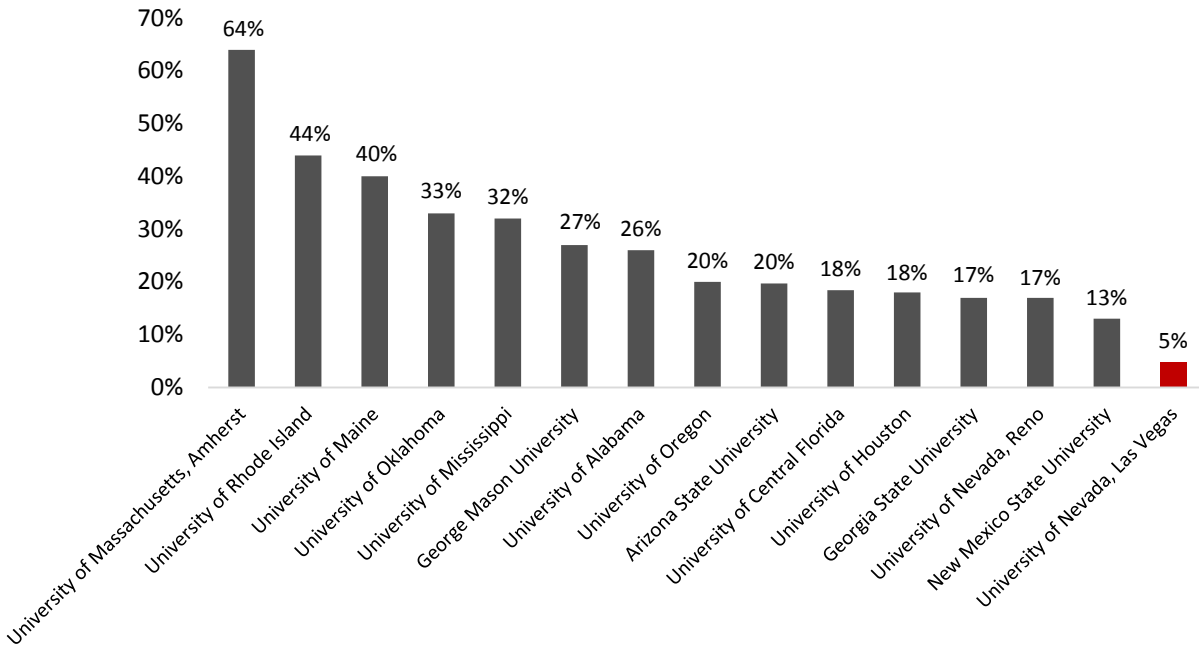
As the University continues to pursue Tier One designation, student housing can serve as a key driver in transforming the campus environment. As stated in *"The Path to Tier One"* white paper released by UNLV, improvements to the campus environment should parallel the rising academic reputation of the institution. In working towards this targeted new reality, an understanding of UNLV's competitive position among peer schools provides context for future decisions regarding housing offerings, on-campus capacity, and development of a comprehensive future housing program.

The following institutions have been identified as peers by UNLV:

- Arizona State University
- George Mason University
- Georgia State University
- New Mexico State University
- University of Alabama
- University of Central Florida
- University of Houston
- University of Maine
- University of Massachusetts, Amherst
- University of Mississippi
- University of Nevada, Reno
- University of Oklahoma
- University of Oregon
- University of Rhode Island

Capture rates are a critical sign that an institution is offering the type of campus life experience that attracts and retains high-caliber students. Currently, UNLV's peers are offering a substantially more robust campus living experience. As shown in Figure 10 below, UNLV captures just 5% of its total population, far below the average of 28% captured at peer institutions.

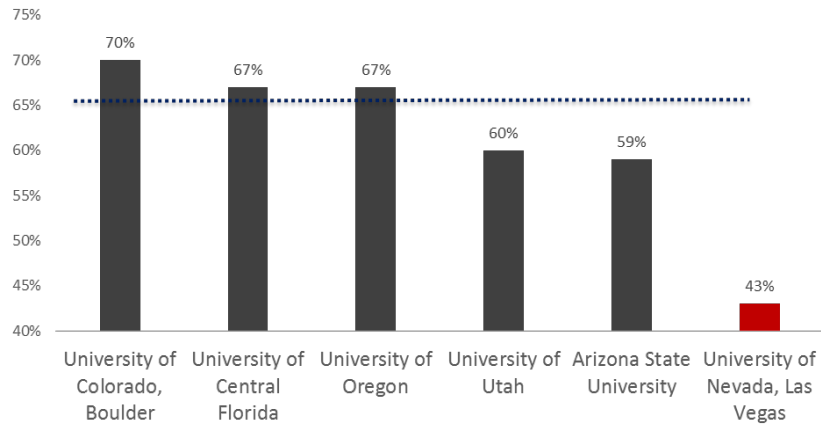
FIGURE 10: UNLV Capture Rates vs. Identified Peers (based on total enrollment)



Of UNLV's peer institutions, nine out of fourteen schools had first-year student capture rates above 30%. By contrast, UNLV captured just 20% of freshman students, despite having a first-year live-on requirement. While UNLV's low capture rates indicate the likelihood of pent-up demand and associated development opportunities, it also reflects the entrenched commuter mentality in place that must be incrementally changed in order for UNLV's demand potential to be realized.

B&D's research also found that Tier One universities are positioning student housing to play an important role in students' academic success. In "*The Path to Tier One*", the University identifies a comparison set of Tier One universities, including Arizona State University, the University of Central Florida, and the universities of Oregon, Utah, and Colorado, in order to illustrate the gaps UNLV must address in order to attain Tier One designation. These identified Tier One institutions are housing approximately 21% of total enrollment on average- more than four times the percentage of students living on campus at UNLV- and are 12% more likely than UNLV to retain students from first to second year. Their early success in retaining students is translating to a better ultimate outcome, as the Tier One comparison set is averaging a 65% graduation rate compared to UNLV's current 43% rate, as shown in Figure 11 below.

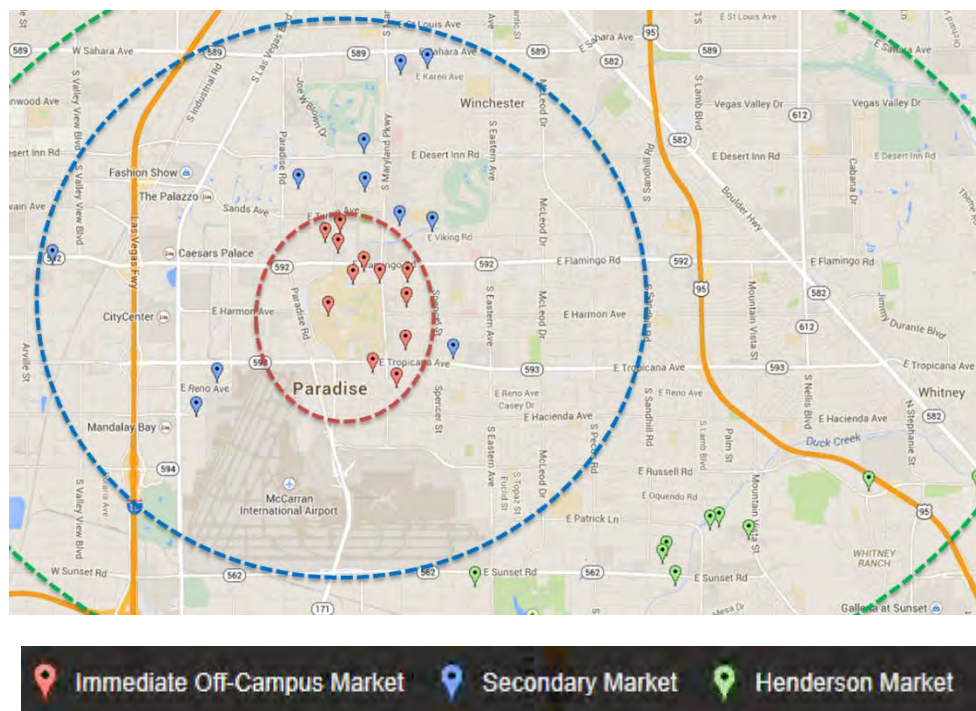
FIGURE 11: UNLV Graduation Rate vs. Comparison Tier One Institutions



OFF-CAMPUS MARKET

In order to better understand and define the primary rental market for UNLV students, B&D sought to identify and characterize the multi-family rental market in its initial Web-based research. Upon interviewing students during the onsite visit, however, it became evident that unconventional student housing sub-markets served UNLV students in addition to the primary market, especially southeast of campus in the Henderson, NV, area. As a result, B&D expanded its research to characterize the rates and amenities offered to students at 33 properties in three distinctive markets, as shown in Figure 12 below.

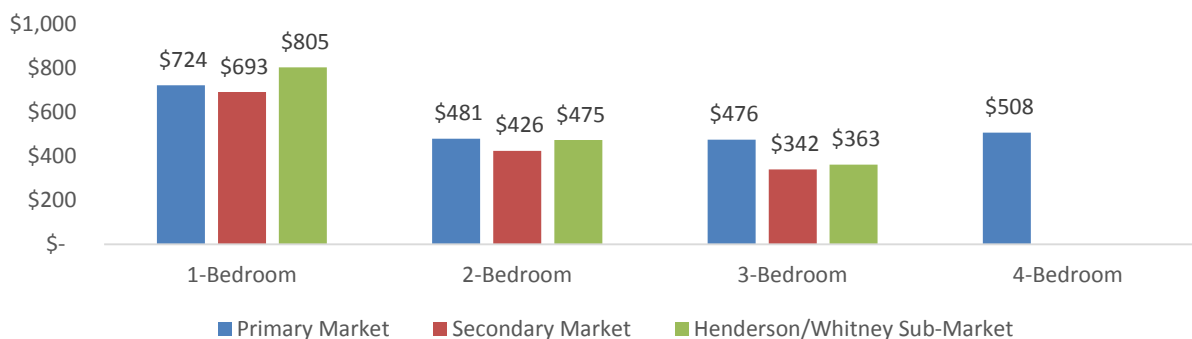
FIGURE 12: RESEARCHED OFF-CAMPUS PROPERTIES BY SUB-MARKET



The primary market, with the exception of *Rebel Place Apartments*, offers students proximity to campus (average 0.3 miles) at a relatively affordable rate, but lacks the student-oriented amenities and overall quality typical in a mature, university-oriented market. Furthermore, UNLV students widely perceive the primary market area as unsafe, relative to the security offered on campus as well as in sub-markets further from campus. While the secondary market (average 1.7 miles from campus) offers a greater sense of security and more amenities, it is primarily designed and marketed for professionals and families, rather than students. The Henderson/Whitney Sub-Market meanwhile, while not intentionally designed for UNLV students, holds wider appeal for them as an amenity-rich, secure alternative, despite its distance to campus (average 5.7 miles).

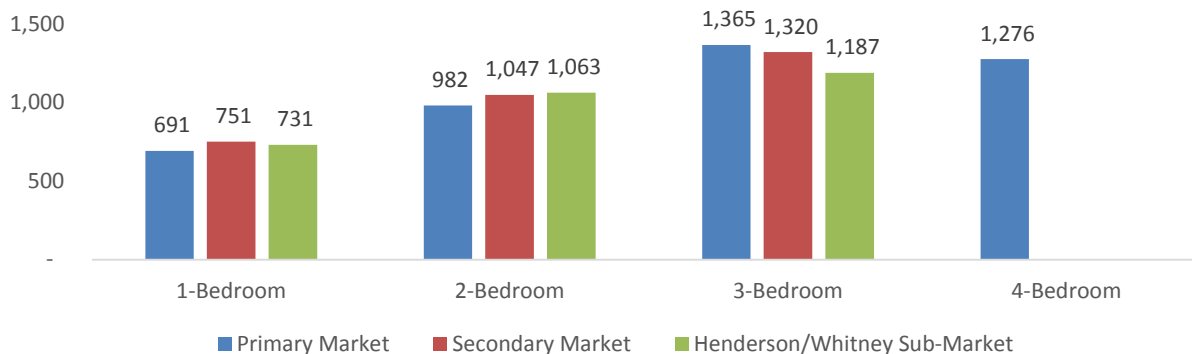
Despite its weaknesses, the primary market currently commands higher rates than comparison markets for all but the one-bedroom units, as shown in Figure 13 below. Properties surveyed in the secondary market and Henderson/Whitney Sub-Market do not offer four-bedroom units, and only *Rebel Place* and *Golden Pond University* offer four-bedrooms among primary market properties researched. Despite the small sample size, rates at existing four-bedroom units in the primary market are commanding an average of \$508 per bed.

FIGURE 13: OFF-CAMPUS RATES BY SUB-MARKET



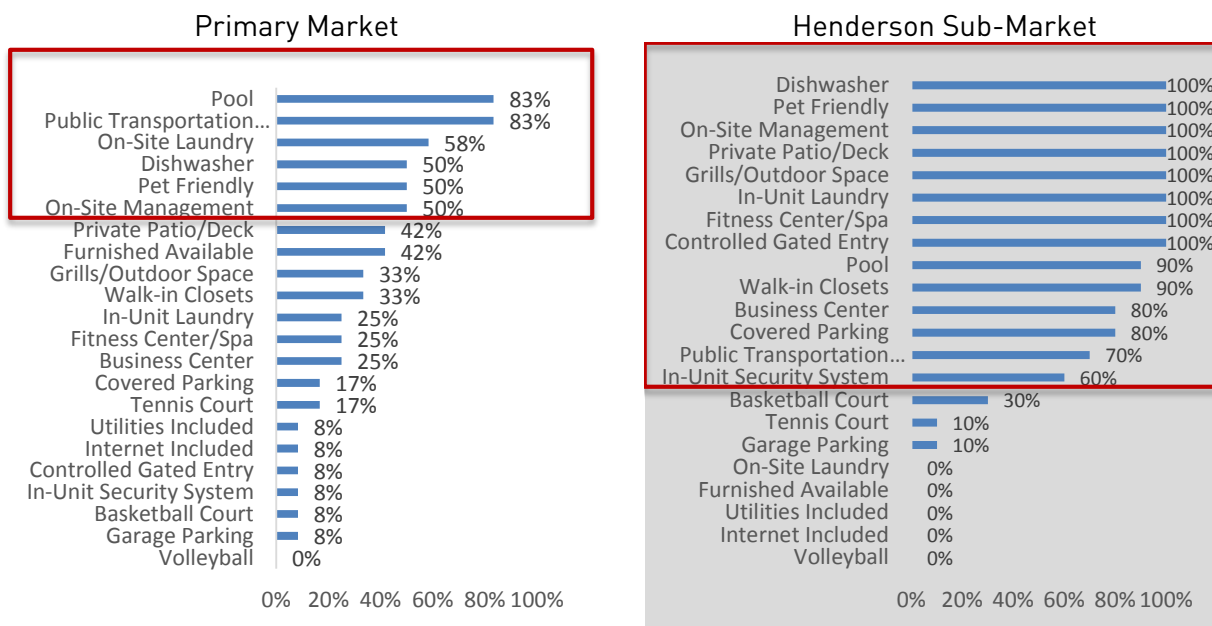
Unit sizes displayed more similarities across markets than did rental rates, according to B&D’s research. Two-bedroom units, for example, averaged between 982-1,063 square feet for each of the three markets, as shown in Figure 14. *Rebel Place* and *Golden Pond University*, which are properties in the primary market designed to accommodate students, have an average size of 1,276 square feet for four-bedroom units.

FIGURE 14: UNIT SIZES BY SUB-MARKET



Despite its distance from campus, the Henderson/Whitney Sub-Market has emerged because it offers a wealth of community and unit amenities compared to options in the primary market, as shown in Figure 15 below. While most properties researched in the primary market provided a swimming pool, they lack amenities important to UNLV students, including in-unit laundry, covered parking, individual leases, community gathering spaces and security features like controlled property entry and in-unit security systems. By contrast, the majority of researched properties in the Henderson/Whitney Sub-Market offered all of the aforementioned features, with 100% of surveyed properties featuring dishwashers, in-unit laundry, and controlled entry.

FIGURE 15: AMENITY COMPARISON: PRIMARY VS. HENDERSON SUB-MARKET



DEMAND ANALYSIS

Objectives

B&D developed a student housing demand model based on its proprietary demand-based programming (“DBP”) tool to quantify student demand for on-campus housing at UNLV. The DBP tool allows B&D to make detailed demand projections by total beds, unit-type, and classification based on the statistically significant survey responses of the institution’s own student population. The survey instrument asks students to indicate which unit type they would have selected for the current academic year, based on detailed descriptions of potential options that include sample floor plans along with associated rental rates. An additional response option allows students to indicate whether they would have preferred off-campus housing over the proposed unit types and rates.

To make detailed demand projections where no student survey was administered, as is the case for this Study, B&D utilizes the statistically significant demand preferences of students at similar institutions, from its extensive national database, to understand and help quantify the institution’s housing demand. Only recently conducted surveys were utilized from institutions providing a very similar student experience based on academic rigor, demographics, and similar off-campus market characteristics. Additionally, B&D analyzed and removed outliers from the comparison set to most accurately project demand.

Demand Projections

B&D estimates that the current demand for on-campus housing at UNLV is 3,247 beds, based on an analysis of the demand preferences of students at universities with a similar institutional and market profile. Figure 16, below, shows the projected demand distribution by classification for the target market. B&D believes the current freshman occupancy of 1,125 beds accurately reflects freshman demand, due to the University’s first-year live-on requirement. If student demand preferences were met, UNLV would capture 17% of full-time students engaged at the main campus, up from 8% in 2014.

FIGURE 16: DEMAND PROJECTION BY CLASSIFICATION

Class	Current Occupancy - Fall '14			Potential Demand	
	Enrolled Population (1)	Residents (2)	Capture Rate	Gross Demand	Potential Capture Rate
Freshmen	5,607	1,125	20%	1,125	20%
Sophomores	3,374	251	7%	797	24%
Juniors	3,348	168	5%	623	19%
Seniors	5,011	59	1%	378	8%
Graduates	2,337	20	1%	324	14%
Total	19,677	1,622	8%	3,247	17%

(1) Full-time, taking minimum of one class at main campus
 (2) As provided by private management provider AVS

Unit-Type Projection Methodology

To further customize the demand analysis to represent UNLV’s current conditions, B&D filtered demand through an Occupancy Coverage Ratio (OCR), which is a proprietary B&D tool utilized to reflect the client’s risk tolerance for housing and the competitiveness of the off-campus market in the demand projections. A higher OCR value assignment indicates a more competitive off-campus market and a lower risk tolerance from the client. A lower OCR value assignment indicates a client with a higher risk tolerance. For example:

- A 1.15 OCR is an aggressive assignment of apartment-style beds. This OCR requires 115 beds of gross demand to justify the delivery of 100 beds of supply. In this scenario, slight changes in market conditions could challenge project occupancy.
- A 1.30 OCR is a moderate assignment for apartment-style beds and requires 130 beds of gross demand to justify the delivery of 100 beds of supply.
- A 1.50 OCR is an extremely conservative assignment for apartment-style beds and requires 150 beds of gross demand to justify the delivery of 100 beds of supply. Although this strategy seems safe by its conservative nature, there is a risk that this strategy could be detrimental as it is undersupplying the student housing market and might deter students from enrolling in UNLV.

B&D believes the 1.30 OCR most accurately reflects UNLV’s market context, based on B&D’s experience in projecting student housing demand. In addition to applying a 1.30 OCR for apartments, B&D analyzed traditional/semi-suite style beds and full-suite beds. A 1.05 OCR was applied for traditional/semi-suite beds because of the live-on requirement and the nature of the freshman student population. A 1.10 OCR assignment was given to full-suite beds to represent current market conditions.

Demand by Unit-Type

After applying the OCR according to the methodology described above, B&D estimates that current demand for apartment-style beds among the target market is 766 beds, as shown in Figure 17 below. While students typically desire the increased privacy and enhanced amenities of apartments as they progress beyond their freshman year, price sensitivities result in continued interest in lower-cost housing options, like suites and traditional beds. With nearly 1,700 beds of existing semi-suite beds, UNLV has essentially satisfied student demand for that unit-type. While nearly 500 beds of demand remains unmet for full-suites, University Park, LLC should structure the proposed development to meet only apartment-style demand in order to ensure a successful first phase of development.

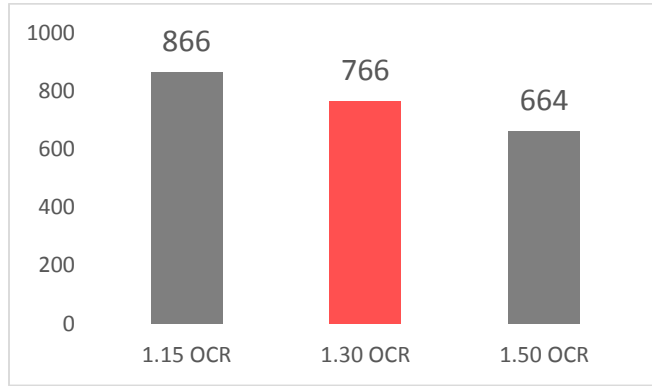
FIGURE 17: PROJECTED DEMAND BY UNIT-TYPE

Class	Traditional/ Semi-Suites			Total
	Full-Suites	Apartments		
Freshmen	1,125	N/A	N/A	1,125
Sophomores	266	188	239	693
Juniors	196	130	211	537
Seniors	79	79	160	318
Graduates	41	71	156	268
OCR Demand	1,707	468	766	2,941
Existing Supply	1,677	0	0	1,677
Net Demand	30	468	766	1,264

Demand Considerations

B&D also analyzed the development opportunity according to a broader range of OCR assignments for apartment-style bed demand, as shown in Figure 18 below. Applying an aggressive 1.15 OCR results in approximately 865 beds of apartment demand at UNLV, while a very conservative 1.50 OCR results in approximately 665 beds of student demand. B&D believes, however, that a 1.30 OCR assignment not only appropriately reflects UNLV's market conditions, but also promotes the University's larger strategic goals for a multi-phase transformation fueled by a highly successful Phase 1.

FIGURE 18: APARTMENT DEMAND BY OCCUPANCY COVERAGE RATIO



DEVELOPMENT OPPORTUNITY

Location

The proposed development site, highlighted in Figure 19 below, is situated along the northern edge of campus at South Maryland Parkway and Cottage Grove Avenue and is ideally located for non-freshman student housing, as it affords seamless integration to campus while providing access to off-campus amenities. Not only is the site proximate to a host of academic buildings, including the William S. Boyd School of Law, but importantly there are no significant physical barriers to access, such as major thoroughfares, expansive parking lots, or athletic fields. In addition to convenience, the site's potential for integration into the fabric of campus helps address student concerns regarding safety, which significantly intensifies in the areas immediately surrounding campus.

FIGURE 19: SITE CONTEXT



Additionally, the site benefits from its location opposite the current residence halls on the southern part of campus, as it promotes the establishment of an independent living experience that is distinguishable from the freshman living experience. In focus groups with students currently living on campus, students noted that while their residence halls offered access to quality of life facilities like dining, recreation, and the student union, they were removed from academic buildings on the northern half of campus. The proposed site, therefore, will offer students a living option that aligns well with their shifting focus as they progress beyond their freshman year.

In addition to the site's positive associations with campus, it is further enhanced by its linkages to the off-campus opportunities sought by upper-division students. The initial phase is proposed to front the South Maryland Parkway corridor that, while underdeveloped, offers viable restaurants and retail establishments. As the community continues to focus on the corridor for its potential to develop into a vibrant University District, a potential student housing development is poised to both catalyze further investment, and benefit from the corridor's continued redevelopment.

Unit Mix

A range of unit types should be offered at the proposed development in response to the changing living preferences of students as they progress toward graduation. In B&D's national experience, the ability to have their own bedroom is consistently a top priority for non-freshman students. With limited opportunities to live in singles as freshmen, and with affordable alternatives in the off-campus market, UNLV students are projected to be particularly reluctant to share bedrooms in the proposed development. However some price-sensitive students, as shown again in Figure 20 below, could be captured in double occupancy bedrooms with reduced rates. Additionally, while B&D projects substantial demand for four-bedroom singles, a portion of two-bedroom singles will be required to fully satisfy senior and graduate student demand.

FIGURE 20: PROPOSED UNIT AND OCCUPANCY MIX

Unit Type	Occupancy	Beds	Units
2-Bedroom	Single	174	87
2-Bedroom	Double	80	20
4-Bedroom	Single	512	128
TOTAL		766	235

Rates

B&D projects that students will be willing to pay a premium for student housing at the identified site, relative to rates in the immediate off-campus market, as shown in Figure 21 below. Not only will the development offer access to academic buildings and other campus services within walking distance, but it is likely to ease students' concerns over security, as students in focus groups and intercept interviews reported feeling safe on campus, but unsafe immediately off campus. Additionally, the site is adjacent to reputable retail establishments along South Maryland Parkway, providing another distinct advantage over the location of *Rebel Place Apartments*.

FIGURE 21: PROPOSED RENTAL RATES

Unit Type	Proposed 12-Month Rate Range	12-Month Rate at Rebel Place Apartments	Premium Over Rebel Place Apartments	Proposed 9-Month Rate	9-Month On-Campus Rate*	Premium Over On-Campus Rate
2 BR/2 BA Single	\$700-\$725	\$681	3%-6%	\$900	\$782	15%
2 BR/2 BA Double	\$538-\$565	N/A	N/A	\$692	\$632	10%
4 BR/4 BA Single	\$620-\$645	\$561	11%-15%	\$800	\$782	2%

*All on-campus units are single- or double-occupied semi-suites, with a shared bathroom adjoining two bedrooms.

Amenities

The development’s ability to command the rent premiums described, however, depends on the provision of a competitive amenity package. Students will expect community amenities including swimming pool, on-site management, study rooms, attractive outdoor areas, and dedicated parking, in addition to in-unit features such as full kitchens, washer and dryer, fully furnished units, keyed bedroom entry, and the ability to lease rooms individually. Utility costs should be included in the rental rate for a development of this type, and efforts should be made to minimize fees (parking fees are an exception) in addition to the monthly rate. In order to remain competitive, the amenity package should be on par with amenities offered at *Rebel Place*, as shown in Figure 22, below.

FIGURE 22: AMENITIES OFFERED AT REBEL PLACE APARTMENTS



COMMUNITY AMENITIES	IN-UNIT AMENITIES
Gated Access	All Utilities Included
Clubhouse with Wi-Fi	Internet
Swimming Pool	Extended Cable with HBO
Outdoor Grilling Area	Key Bedroom Entry
Computer Lab	Private Bathroom
24-Hour Fitness Center	Fully Furnished
Free Shuttle to UNLV	Walk-in Closet
Group Study Room	Full, Luxury Kitchen
	Ceiling Fans

EXHIBIT A:

OFF-CAMPUS MARKET RESEARCH

UNLV
OFF-CAMPUS MARKET ANALYSIS WORKSHEETS
Community and Unit Amenities

Property	Pool	Dishwasher	In-Unit Laundry	Utilities Included	Public Transportation Nearby	Pet Friendly	Fitness Center/Spa	Private Patio/Deck	Internet Included	Furnished Available	Grills/Outdoor Space	Business Center	Controlled Gated Entry	Walk-in Closets	Basketball Court	On-Site Laundry	Covered Management	Garage Parking	Volleyball	Tennis Court
Primary Market (1/2 mile)																				
Rebel Place	x	x	x	x		x		x	x	x	x	x				x				
Vegas Towers	x	x		x	x	x	x			x							x	x		
Golden Pond University	x	x		x	x		x		x							x	x			
Las Vegas Grand	x	x	x		x	x	x			x	x	x	x	x		x		x		x
Hampton Court	x				x	x				x						x				x
Tamarus Park	x	x			x		x	x								x	x			
Cottage Grove	x				x	x			x	x						x				
Rebel House Apartments					x				x											
The Landing	x				x	x								x		x				
Oasis Pearl	x	x	x				x			x			x			x	x			
University Park	x				x	x				x						x				
Tropicana Village	x	x			x	x	x		x	x	x					x	x			
Oasis Bay	x	x	x		x		x				x			x			x	x		
Secondary Market (3 miles)																				
Las Palmas	x	x				x	x	x		x	x	x				x	x	x		
Southern Cove	x	x	x			x		x			x		x	x			x	x		
Cabana on Dumont	x	x			x	x		x		x	x	x		x		x	x	x		
Valencia	x	x			x	x	x	x		x	x		x	x	x	x	x		x	x
Laguna Palms	x	x	x		x		x	x		x	x					x	x			
The Onyx Apartments	x	x	x		x		x	x		x	x	x		x			x		x	
The Oasis	x	x			x	x	x	x			x					x	x	x		
Mark I	x	x			x		x					x				x	x		x	
Sonoma Shadows	x	x			x	x	x			x	x				x	x	x	x		
Pine Hills Lodge	x	x			x	x	x			x	x				x	x	x	x		
Tropicana Royale	x	x			x	x	x	x		x	x	x				x	x	x		
Tertiary Market (10 miles)																				
Sunset Pointe	x	x	x		x	x	x	x		x	x	x	x	x			x	x		
Rancho Ocaso	x	x	x		x	x	x	x		x	x	x	x				x	x		
Camden Commons	x	x	x		x	x	x	x		x	x	x	x	x	x		x	x		x
Mesa Verde	x	x	x		x	x	x	x		x	x	x	x	x			x	x		
The Passage	x	x	x			x	x	x		x	x	x	x	x			x	x		
Solevita	x	x	x		x	x	x	x		x	x	x	x	x			x	x		
Broadstone Agave	x	x	x		x	x	x	x		x		x					x			
The Palladium	x	x	x			x	x	x		x	x	x	x	x			x	x		
Ventana Canyon	x	x	x		x	x	x	x		x	x	x	x	x			x	x		
Firenze Apartments		x	x			x	x	x			x		x				x		x	

UNLV

OFF-CAMPUS MARKET ANALYSIS WORKSHEETS

Student-Friendly Amenities

Property	Proximity to University (Miles)	Academic/Flexible Lease Terms	Parents Ability to Co-Sign	Individual Leases	Roommate Matching Service	Furnished Units- Standard	Lowered Credit Requirements	Campus Transit/Shuttle Service	Keyed Bedroom Entry
Rebel Place	0.5	x	x	x	x	x	x	x	
Vegas Towers	0.2								
Golden Pond University	0.2	x		x	x			x	
Las Vegas Grand	0.2	x				x			
Hampton Court	0.3	x			x				
Tamarus Park	0.4	x						x	
Cottage Grove	0.1	x							
Rebel House Apartments	0.1				x				
The Landing	0.2	x							
Oasis Pearl	0.5	x						x	
University Park	0.1	x							
Tropicana Village	0.2								

0.3

Property	Proximity to University (Miles)	Academic/Flexible Lease Terms	Parents Ability to Co-Sign	Individual Leases	Roommate Matching Service	Furnished Units Standard	Lowered Credit Requirements	Campus Transit/Shuttle Service
Las Palmas	1.7	x						
Southern Cove	1.2	x						
Cabana on Dumont	0.9	x						
Valencia	0.9							
Laguna Palms	2.1							
The Onyx Apartments	1.7							
The Oasis	2.3	x						
Mark I	1.6	x						
Sonoma Shadows	2.6	x						
Pine Hills Lodge	2.3	x						
Tropicana Royale	1.1	x						

1.7

UNLV
OFF-CAMPUS MARKET ANALYSIS WORKSHEETS
Student-Friendly Amenities, Con't

Property	Proximity to University (Miles)	Academic/Flexible Lease Terms	Parents Ability to Co-Sign	Individual Leases	Roommate Matching Service	Furnished Units Standard	Lowered Credit Requirements	Campus Transit/Shuttle Service
Sunset Pointe	3.5	x						
Rancho Ocaso	4.9							
Camden Commons	5							
Mesa Verde	4.8	x						
The Passage	5.6							
Solevita	5.6							
Broadstone Agave	5.4							
The Palladium	5.6							
Ventana Canyon	9.8							
Firenze Apartments	6.7							

5.7

UNLV

Off-Campus Market Analysis - Unit Types / Average Rent

Student Housing Market Analysis

Primary	Unit Types/Average Rent/Average GSF														
	Property Name	Studio SF	Studio Rent	Rent PSF	1-Bedroom SF	1-Bedroom Rent	Rent PSF	2 Bedroom SF	2-Bedroom Rent	Rent PSF	3 Bedroom SF	3-Bedroom Rent	Rent PSF	4 Bedroom SF	4-Bedroom Rent
	Rebel Place						881	\$1,362	\$1.55	1,188	\$1,818	\$1.53	1351	\$2,244	
	Vegas Towers			685	\$905	\$1.32	1,150	\$1,035	\$0.90						
	Golden Pond University												1200	\$1,820	
	Las Vegas Grand			842	\$1,177	\$1.40	1,218	\$1,640	\$1.35	1,883	\$2,133	\$1.13			
	Hampton Court			525	\$550	\$1.05	725	\$650	\$0.90						
	Tamarus Park	575	\$515		750	\$579	\$0.77	1,000	\$759	\$0.76					
	Cottage Grove	500	\$537												
	Rebel House Apartments	490	\$450												
	The Landing			630	\$600	\$0.95									
	Oasis Pearl			720	\$623	\$0.87	1,035	\$847	\$0.82						
	University Park						900	\$605	\$0.67	950	\$710	\$0.75			
	Tropicana Village			627	\$550	\$0.88	840	\$679	\$0.81	1,440	\$1,050	\$0.73			
	Oasis Bay	533	\$764		747	\$805	\$1.08	1,085	\$1,074	\$0.99					
	Average Rate/Unit	525	\$566		691	\$724	\$1.04	982	\$961	\$0.97	1365	\$1,428	\$1.03	1276	\$2,032

Secondary	Unit Types/Average Rent/Average GSF														
	Property Name	Studio SF	Studio Rent	Rent PSF	1-Bedroom SF	1-Bedroom Rent	Rent PSF	2 Bedroom SF	2-Bedroom Rent	Rent PSF	3 Bedroom SF	3-Bedroom Rent	Rent PSF	4 Bedroom SF	4-Bedroom Rent
	Las Palmas				704	\$625	\$0.89	997	\$750	\$ 0.75	1,445	\$1,200	\$0.83		
	Southern Cove							1,085	\$853	\$ 0.79					
	Cabana on Dumont	600	\$499	\$0.83	800	\$699	\$0.87	1,400	\$899	\$ 0.64	1,700	\$849	\$0.50		
	Valencia				717	\$615	\$0.86	934	\$645	\$ 0.69	1,223	\$948	\$0.77		
	Laguna Palms							986	\$800	\$ 0.81		\$900			
	The Onyx Apartments				774	\$1,200	\$1.55	994	\$1,575	\$ 1.58	1,410	\$1,838	\$1.30		
	The Oasis				681	\$665	\$0.98	1,013	\$743	\$ 0.73					
	Mark I	550	\$688	\$1.25	850	\$850	\$1.00	1,250	\$1,100	\$ 0.88					
	Sonoma Shadows				760	\$503	\$0.66	1,100	\$730	\$ 0.66	1,200	\$821	\$0.68		
	Pine Hills Lodge				760	\$506	\$0.67	860	\$593	\$ 0.69	1,200	\$822	\$0.69		
	Tropicana Royale				710	\$575	\$0.81	900	\$675	\$ 0.75	1,065	\$825	\$0.77		
	Average Rental Rate /Unit	575	\$ 593	\$ 1.04	751	\$ 693	\$ 0.92	1047	\$ 851	\$ 0.82	1320	\$ 1,025	\$ 0.79		

UNLV

Off-Campus Market Analysis - Unit Types / Average Rent

Student Housing Market Analysis, cont

Tertiary/Henderson	Unit Types/Average Rent/Average GSF													
Property Name	Studio SF	Studio Rent	Rent PSF	1-Bedroom SF	1-Bedroom Rent	Rent PSF	2 Bedroom SF	2-Bedroom Rent	Rent PSF	3 Bedroom SF	3-Bedroom Rent		4 Bedroom SF	4-Bedroom Rent
Sunset Pointe	430	\$600	\$ 1.40	703	\$690	\$0.98	1,069	\$815	\$ 0.76	1,109	\$950	\$0.86		
Rancho Ocaso				745	\$785	\$1.05	1,015	\$900	\$ 0.89	1,205	\$1,100	\$0.91		
Camden Commons				700	\$810	\$1.16	1,035	\$934	\$ 0.90	1,224	\$1,144	\$0.93		
Mesa Verde							1,200	\$1,015	\$ 0.85					
The Passage				751	\$905	\$1.21	1,140	\$1,105	\$ 0.97	1,232	\$1,270	\$1.03		
Solevita				720	\$688	\$0.95	975	\$890	\$ 0.91	1,200	\$1,000	\$0.83		
Broadstone Agave				702	\$705	\$1.00	946	\$785	\$ 0.83	1,128	\$915	\$0.81		
The Palladium				751	\$885	\$1.18	1,140	\$1,085	\$ 0.95	1,232	\$1,225	\$0.99		
Ventana Canyon				726	\$908	\$1.25	1,030	\$930	\$ 0.90	1,201	\$1,115	\$0.93		
Firenze Apartments				779	\$872	\$1.12	1,080	\$1,036	\$ 0.96	1,155	\$1,095	\$0.95		
Average Rental Rate / Unit	430	\$ 600	\$ 1.40	731	\$ 805	\$ 1.10	1063	\$ 949	\$ 0.89	1187	\$ 1,090	\$ 0.92		



EXHIBIT B:

PRESENTATION OF FINDINGS

THE MIDBY COMPANIES: UNLV STUDENT HOUSING MARKET STUDY

**PRESENTATION OF
FINDINGS**



BRAILSFORD & DUNLAVEY

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Purpose

UNLV HOUSING MARKET STUDY



To assess the market opportunity for non-freshman, apartment-style student housing at the campus edge site

Key Findings

UNLV HOUSING MARKET STUDY

- ◆ Improving the on-campus experience is critical to broader goals of the university
 - *Tier I designation*
- ◆ UNLV's on-campus housing is not currently positioned to support Tier I pursuit
 - *~5% capture rate*
 - *No "move-up" options*
- ◆ There is robust demand for more on-campus housing among non-freshman students
 - *Estimated target market demand for apartments= 766 beds*

Key Findings

UNLV HOUSING MARKET STUDY

- ◆ The primary off-campus market does not meet student expectations for quality or security
 - *Has resulted in unconventional markets removed from campus (e.g., Henderson)*
- ◆ Students will pay premium rates for amenity-rich housing near campus, despite the availability of more affordable units in the primary market area
 - *On-Campus Singles: \$782/month (9-month term)*
 - *Rebel Place 4 BR: \$544/month (12-month)*
 - *Primary Market Average: \$485/month (12-month)*

Recommendations

UNLV HOUSING MARKET STUDY

- ◆ Build 750-800 beds in response to current apartment demand
- ◆ Offer a market-responsive unit mix
 - *2-bedroom singles needed for seniors, graduate students*
 - *Provide some doubles in response to price sensitivities*

Unit Type	Occupancy	Beds	Units
2-Bedroom	Single	174	87
2-Bedroom	Double	80	20
4-Bedroom	Single	512	128
TOTAL		766	235

Recommendations

UNLV HOUSING MARKET STUDY

- ◆ Focus on establishing a university-affiliated district
 - *Physical and programmatic links to campus*
 - *Retail*
 - *Amenities*

- ◆ Evaluate future phases based on growth in freshmen residents
 - *Freshmen will serve as primary target market for future developments*
 - *70/30 split between community-style (i.e. traditional and semi-suites) and independent-style (apartments) beds*

KEY FINDINGS

Tier I Status

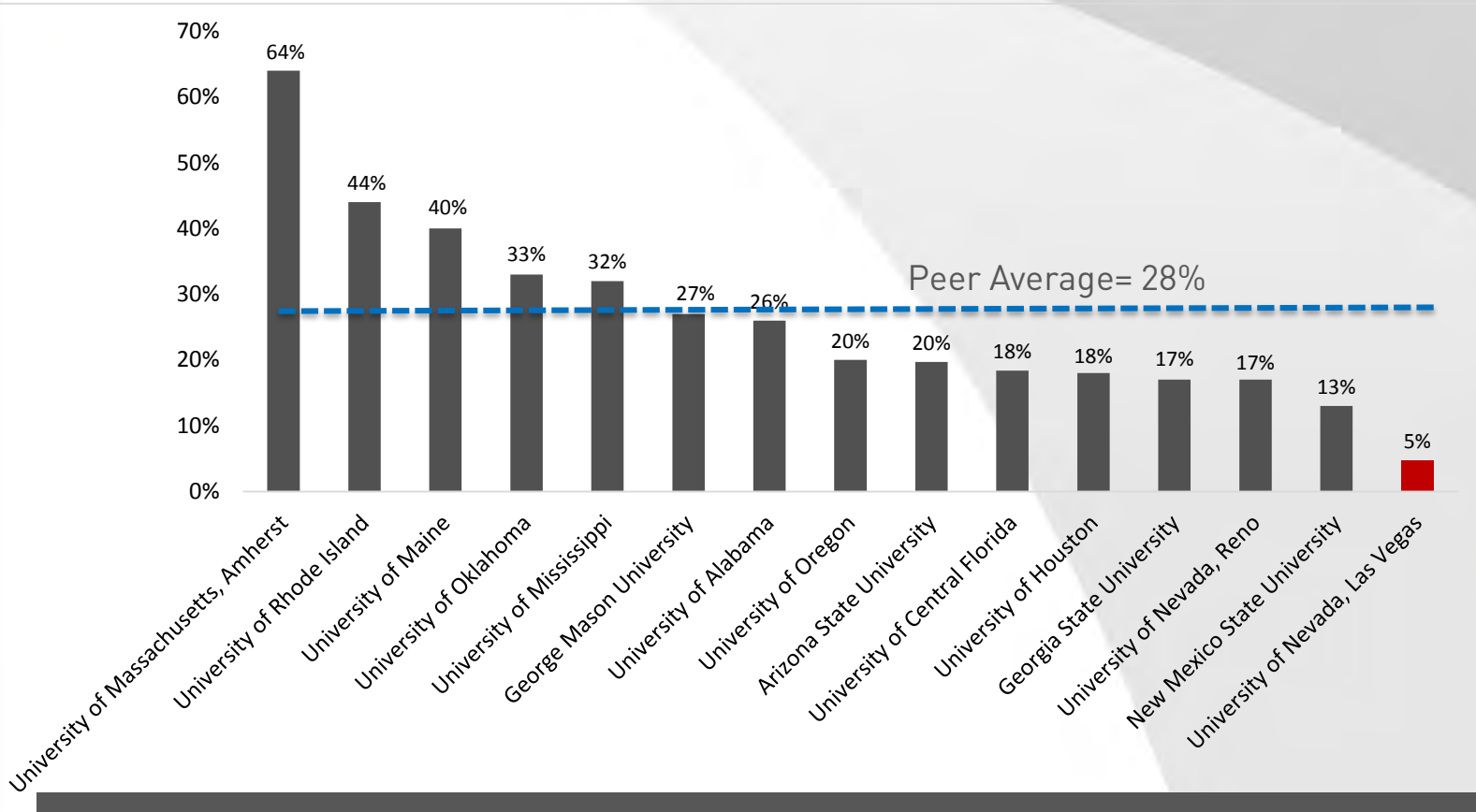
UNLV HOUSING MARKET STUDY



“Nevada, Clark County, and Las Vegas need to maximize their ability to attract and retain dynamic people as students, workers, and employers.”

On-Campus Housing: Peer Institutions

UNLV HOUSING MARKET STUDY

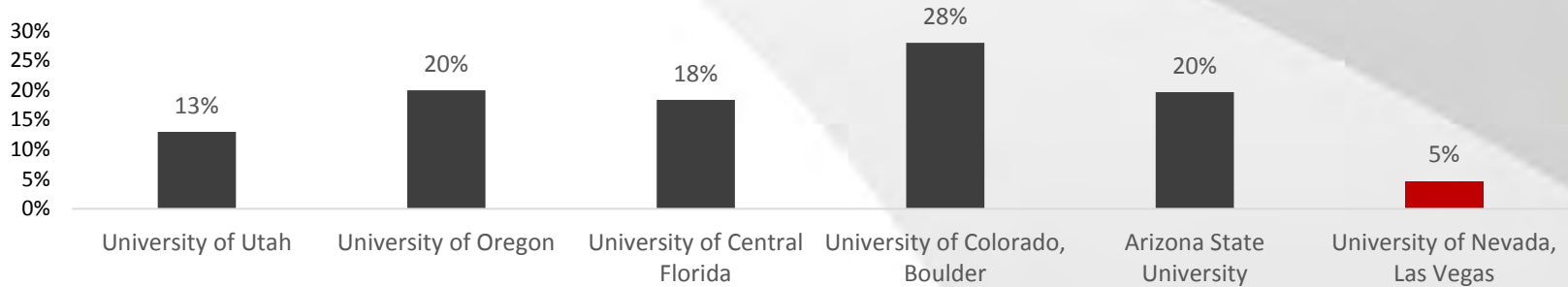


Top students are looking for a dynamic campus experience in addition to academic opportunities

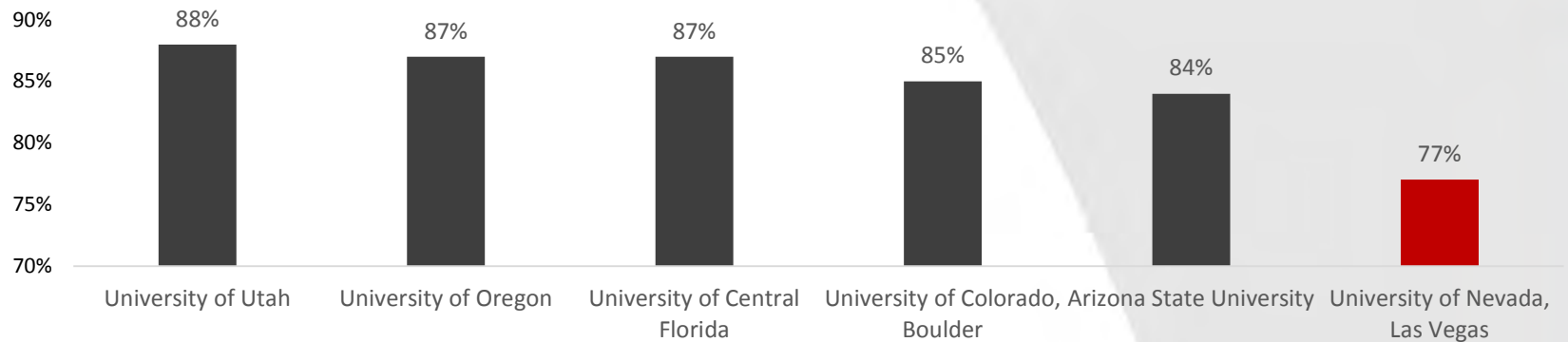
Tier I Comparison

UNLV HOUSING MARKET STUDY

Students Living On Campus (total enrollment)



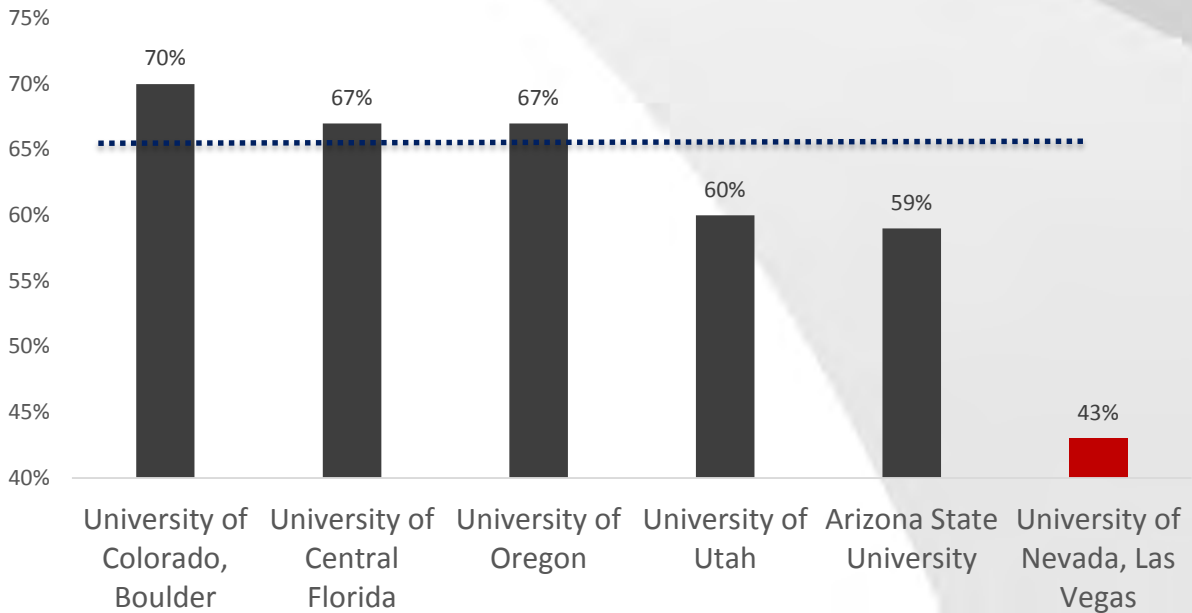
Retention: 1st Year to 2nd Year



Tier I sample schools experience higher retention rates along with higher housing participation

Tier I Comparison

UNLV HOUSING MARKET STUDY



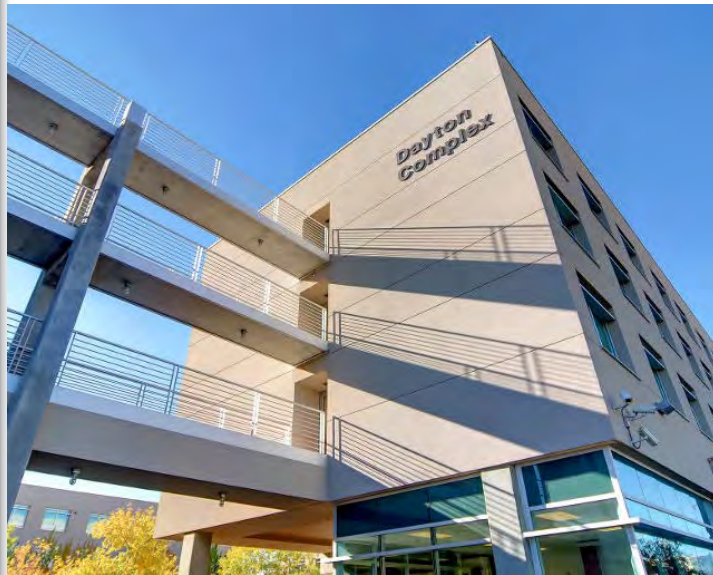
Tier I sample schools also experience higher graduation rates

ON-CAMPUS CONTEXT

ON-CAMPUS HOUSING

HOUSING MARKET STUDY UPDATE

UNLV On-Campus Housing	Single per Semester	Double per Semester	Available Beds	Programming
Tonopah Community	\$3,720	\$2,940	554	First-year & Upperclass
Dayton Community	-	\$2,940	452	First-year
South Complex	\$3,320	\$2,700	419	First-year & Upperclass
Upper Class Complex	\$3,520	\$2,800	252	Upperclass



FEES AND ADDITIONAL COSTS			
New Applicant Fee	Reservation Fee	Meal Plan Cost	Parking Permit
\$125	\$375	\$1,925 to \$2,425	\$125 annually or \$11.50 / month

COMMUNITY AMENITIES	IN-UNIT AMENITIES
<ul style="list-style-type: none"> Special Programming by Hall In-Building Laundry Social/game Lounges Computer Labs Conference Rooms Community Kitchens 	<ul style="list-style-type: none"> All Utilities Included Internet Premium Cable Key Bedroom Entry Suite-Style Unit with Bathroom Fully Furnished Closets

Student Housing Continuum

ON-CAMPUS ANALYSIS

Residence Hall	Available Beds	Occupancy
B	46	87%
C	74	93%
Hughes	62	98%
Faiman	70	93%
Dayton North	275	99%
Dayton South	177	98%
Tonopah Center	165	97%
Tonopah North	196	97%
Tonopah South	193	97%
Rodman	101	95%
Boyd	135	96%
Williams	183	97%
Total	1,677	96%



1

3

5

COMMUNITY ORIENTED



STUDENT INDEPENDENCE

2

4

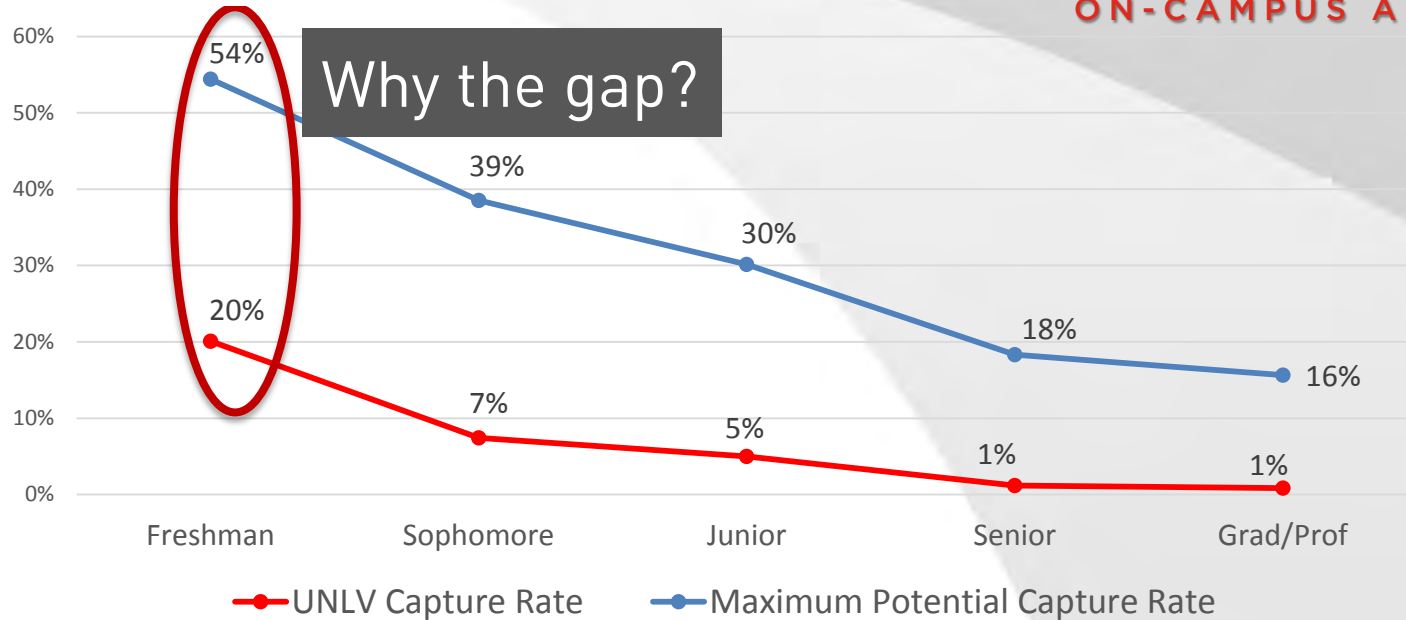
6



All beds are semi-suites

On-Campus Capture Rates

ON-CAMPUS ANALYSIS



- ◆ Deep-seated campus culture
- ◆ No recent additions (Dayton Complex 2004, UC Complex 1988)
- ◆ Cost sensitivity
- ◆ Neighborhood perceptions
- ◆ No move-up options
- ◆ Lack of enriched programming (Greek life, Living-learning)

Potential Capture Rates

ON-CAMPUS ANALYSIS

Class	Current Occupancy - Fall '14			Potential Demand	
	<u>Enrolled</u> Population (1)	Residents (2)	Capture Rate	<u>Potential</u> Gross Demand	Capture Rate
Freshmen	5,607	1,125	20%	1,125	20%
Sophomores	3,374	251	7%	797	24%
Juniors	3,348	168	5%	623	19%
Seniors	5,011	59	1%	378	8%
Graduates	2,337	20	1%	324	14%
Total	19,677	1,622	8%	3,247	17%

(1) Full-time, taking minimum of one class at main campus

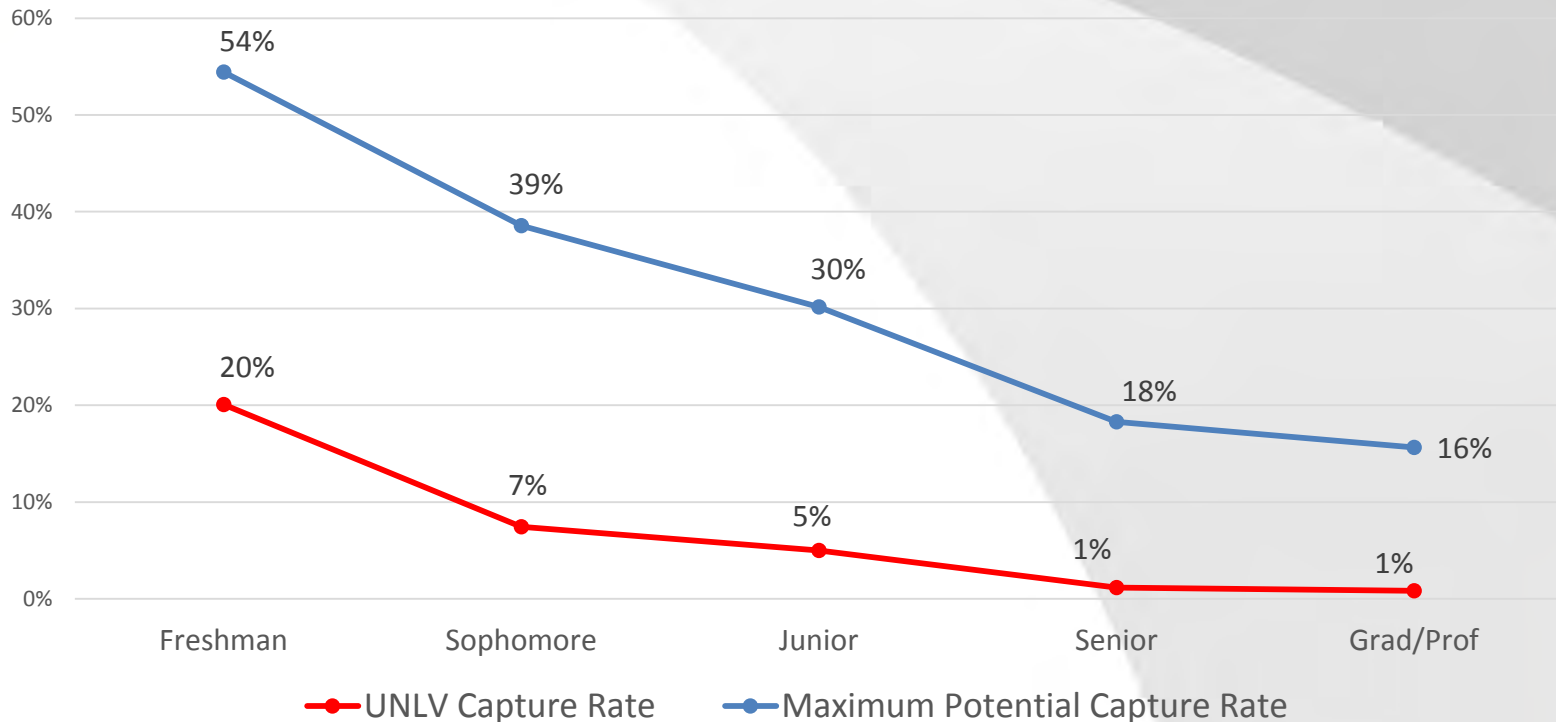
(2) As provided by private management provider AVS

- ◆ Deep-seated campus culture
- ◆ No recent additions (Dayton Complex 2004, UC Complex 1988)
- ◆ Cost sensitivity
- ◆ Neighborhood perception
- ◆ No move-up options
- ◆ Lack of enriched programming (Greek life, Living-learning)

DEMAND ANALYSIS

Demand Analysis

ON-CAMPUS ANALYSIS



Key Question: *How much* demand currently exists among non-freshmen?

Demand Analysis

ON-CAMPUS ANALYSIS

B&D's Demand-Based Programming (DBP) tool quantifies student demand by unit type

- ◆ Statistically significant survey responses identify on-campus preferences
 - By unit type, occupancy, and cost
- ◆ Excludes students unlikely to live on-campus
 - Based on age, marital status, current rent payments, etc.
- ◆ Potential capture rates, targeted demand analyzed by classification

Demand Analysis

ON-CAMPUS ANALYSIS

Occupancy Coverage Ratio (OCR)

- ◆ Proprietary B&D methodology that adjusts demand projections to better reflect...
 - ◆ *An institution's risk tolerance for housing*
 - ◆ *Competitiveness of the off-campus market*

Example: 1.3 to 1.0 OCR = 130 units of demand required to build 100 units of supply

Housing Type / Target Market	Aggressive	Moderate	Conservative
Traditional Style Housing	1.05:1	1.15:1	1.25:1
Suite-Style Housing	1.10:1	1.20:1	1.35:1
Apartment-Style Housing	1.15:1	1.30:1	1.50:1

Demand Analysis

ON-CAMPUS ANALYSIS

The DBP tool provides institutions with a detailed breakdown of student demand

Sample DBP Output

Class	OCR Adjusted Demand	Traditional	Traditional	Semi-Suite	Semi-Suite	Full-Suite	Full-Suite
		Single	Double	Single	Double	Single	Double
Freshman	5,925	328	741	846	582	2,486	942
Sophomore	1,741	138	106	299	96	816	286
Junior	872	127	54	165	49	419	56
Senior	660	13	53	145	48	339	61
Graduate / Professional	142	26	17	39	8	39	13
Total	9,340	633	971	1,494	784	4,100	1,358
Actual Capacity	8,685	141	2,895	0	189	5,391	69
Net Demand	655	492	(1,924)	1,494	595	(1,291)	1,289

Overall

By Class

By Unit Type

Projecting Demand at UNLV

ON-CAMPUS ANALYSIS

In absence of student survey, can we reliably estimate targeted demand of UNLV students?

1. Identify universities from B&D's database with similar institutional and market profile
 - By enrollment, market context (Metro/commuter), academic rigor, demographics
2. Remove outliers
3. Analyze results by net demand, demand by classification, and demand by unit type
4. Customize according to unique UNLV context

Demand Projection

ON-CAMPUS ANALYSIS

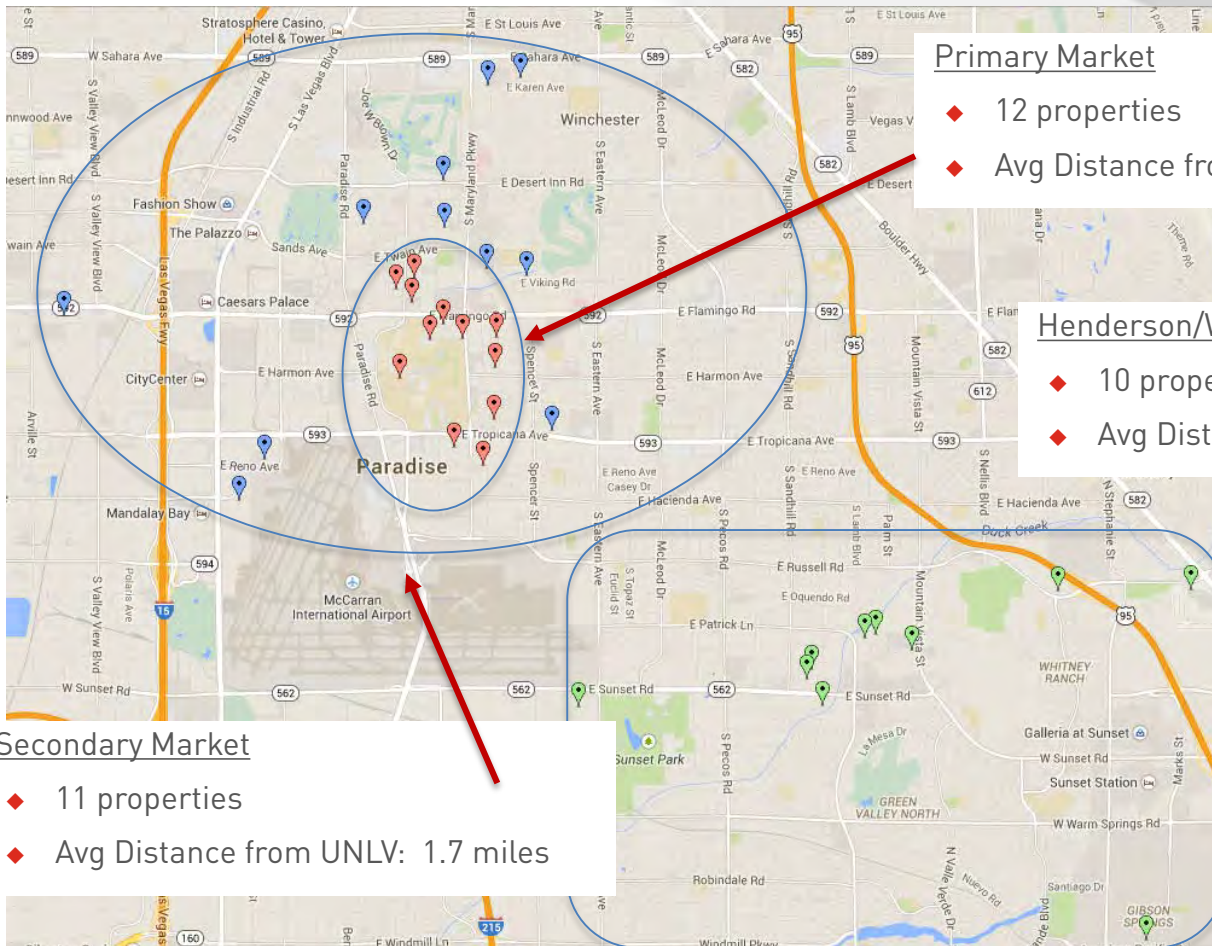
Class	Traditional/			Total
	Semi-Suites	Full-Suites	Apartments	
Freshmen	1,125	N/A	N/A	1,125
Sophomores	266	188	239	693
Juniors	196	130	211	537
Seniors	79	79	160	318
Graduates	41	71	156	268
OCR Demand	1,707	468	766	2,941
Existing Supply	1,677	0	0	1,677
Net Demand	30	468	766	1,264

Projected demand for ~765 on-campus, apartment-style beds for UNLV non-freshmen

OFF-CAMPUS MARKET

Off-Campus Analysis

ON-CAMPUS ANALYSIS



Primary Market

- ◆ 12 properties
- ◆ Avg Distance from UNLV: 0.3 miles

Henderson/Whitney Sub-Market

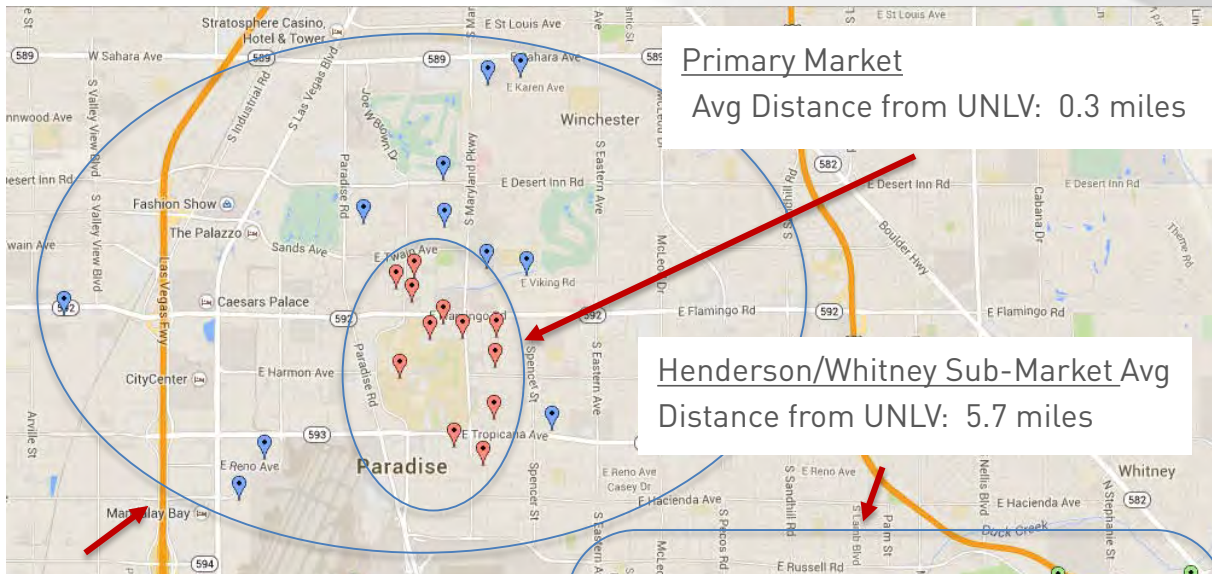
- ◆ 10 properties
- ◆ Avg Distance from UNLV: 5.7 miles

Secondary Market

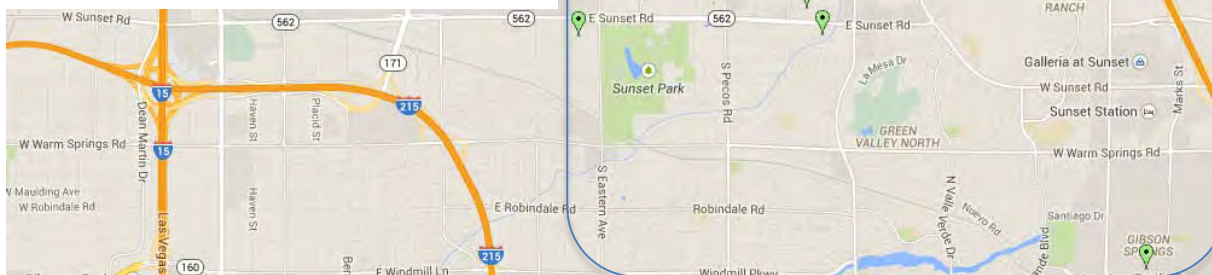
- ◆ 11 properties
- ◆ Avg Distance from UNLV: 1.7 miles

Off-Campus Analysis

ON-CAMPUS ANALYSIS

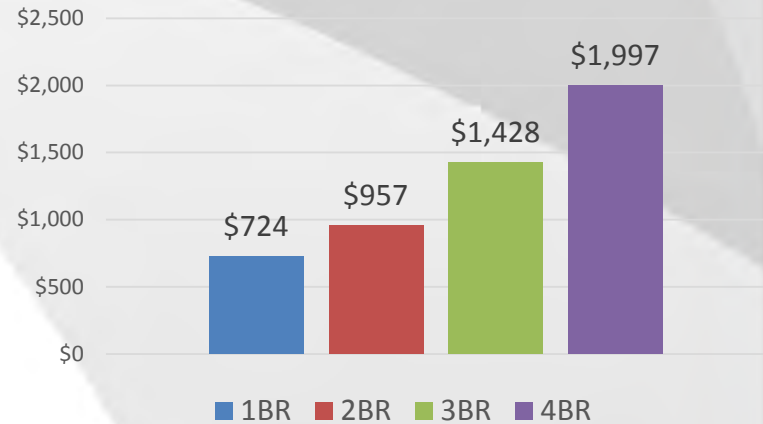
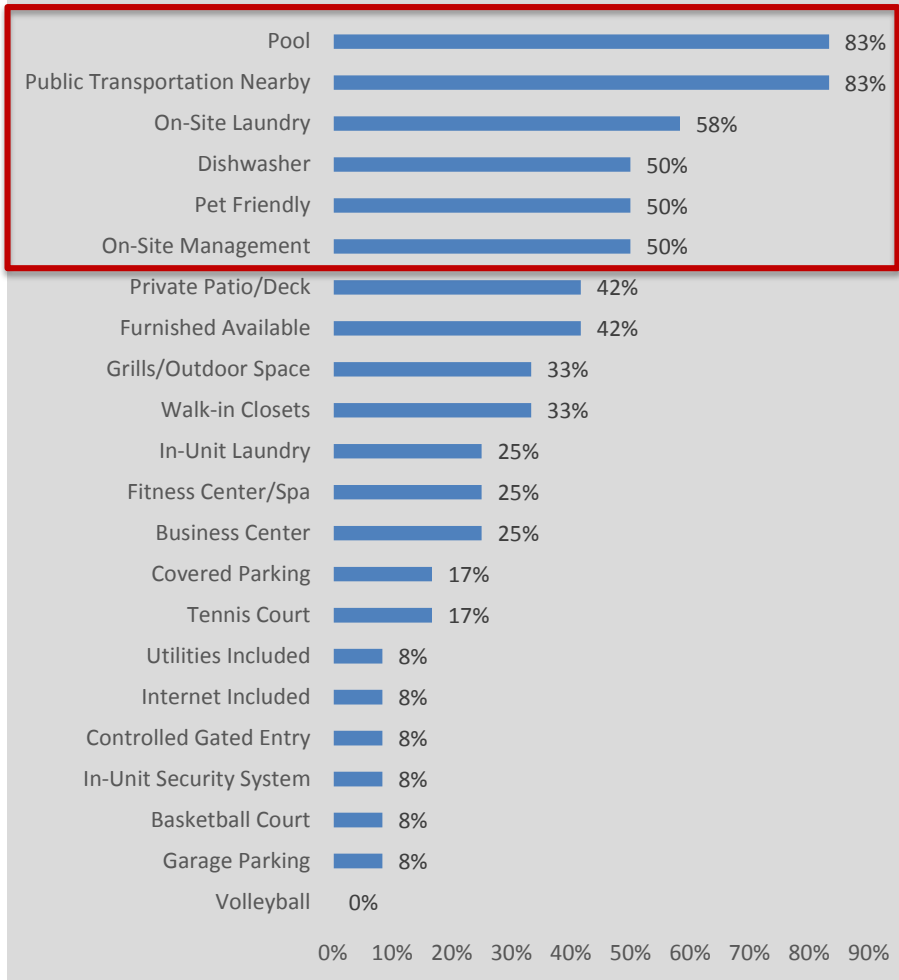


Secondary Market
Avg distance from UNLV: 1.7 miles

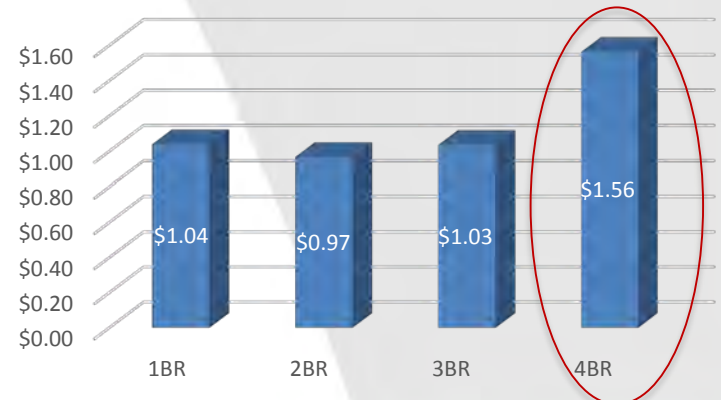


Primary Market

OFF-CAMPUS ANALYSIS

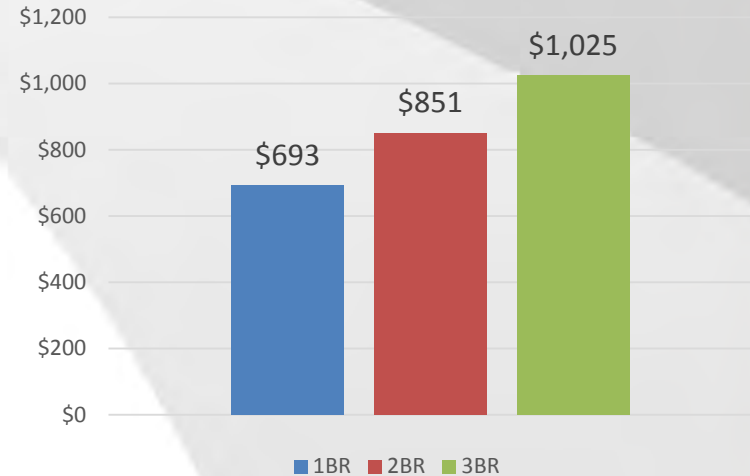
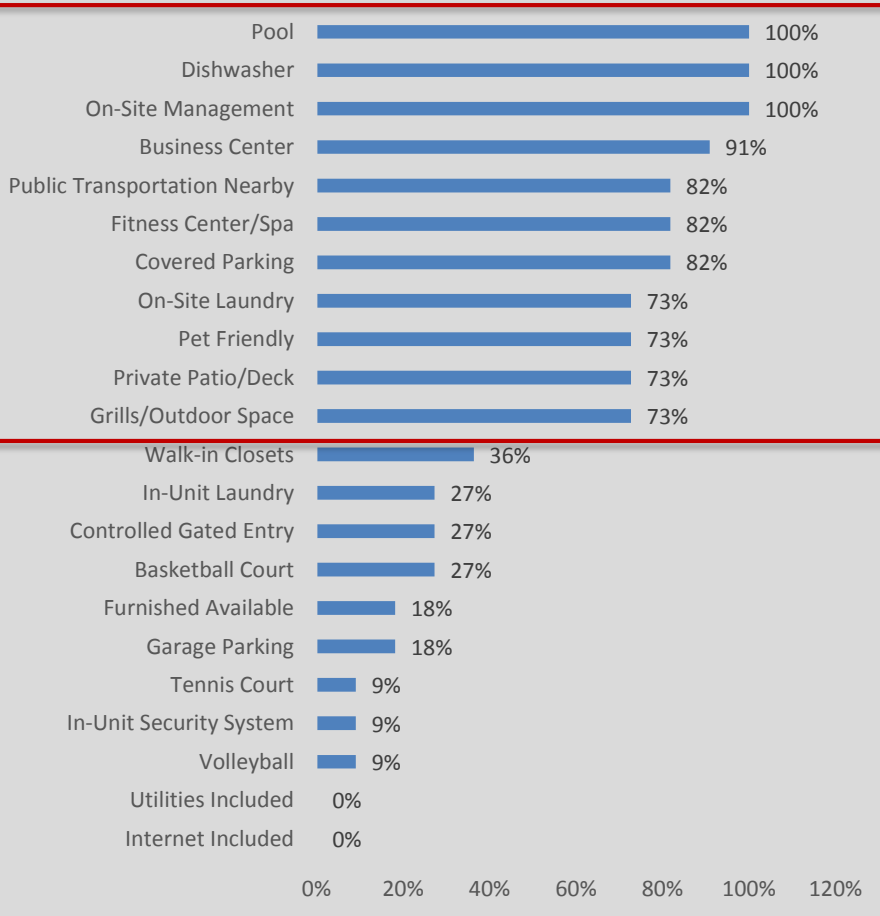


Rates/Sq. Ft.



Secondary Market

OFF-CAMPUS ANALYSIS

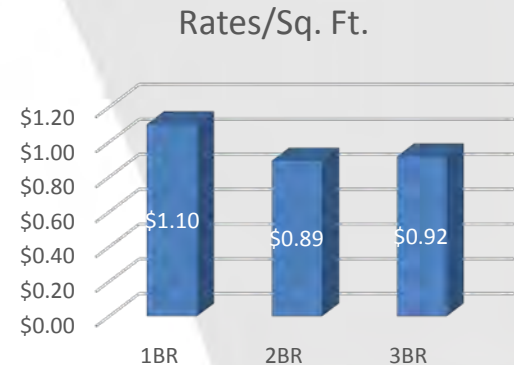
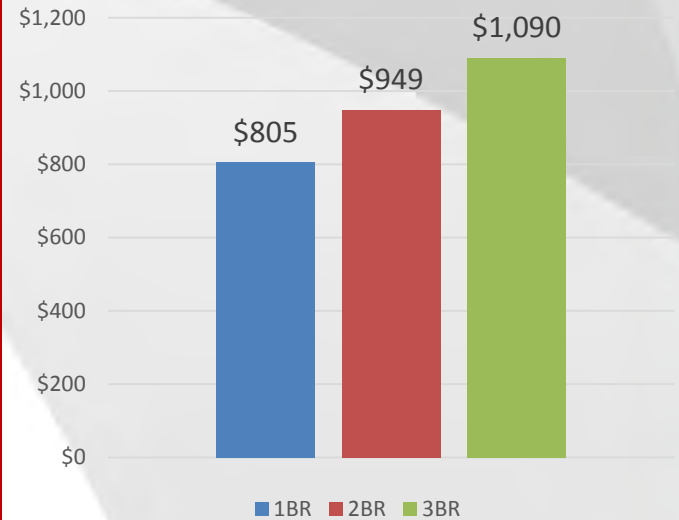
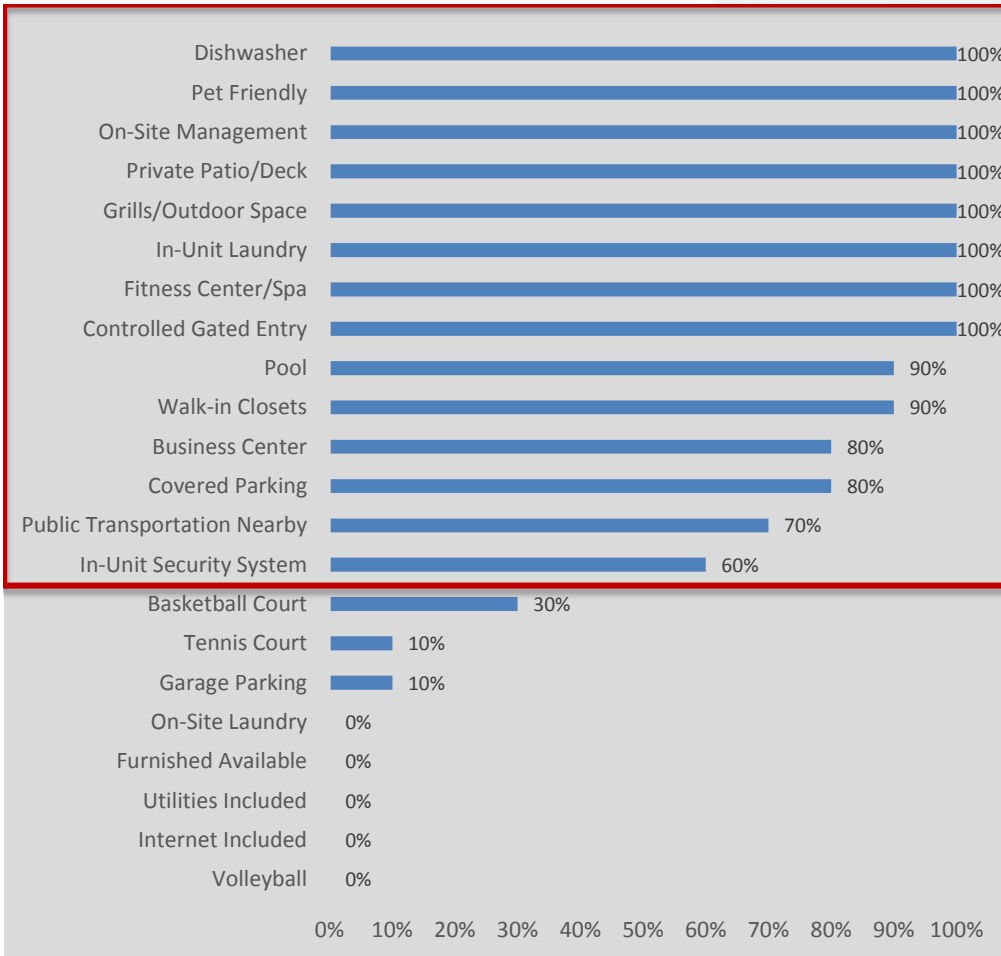


Rates/Sq. Ft.



Henderson/Whitney Sub-Market

OFF-CAMPUS ANALYSIS



RATES AND AMENITIES

Rates

UNLV HOUSING MARKET STUDY

◆ Recommended 12-month rate

- ◆ 2 BR Double- \$538-\$565
- ◆ 2 BR Single- \$700-\$725 (3%-6% premium over Rebel Place)
- ◆ 4 BR Single- \$620-\$645 (11%-15% premium over Rebel Place)

◆ Recommended 9-month rate

- ◆ 2 BR Double- \$692 (10% premium over on-campus doubles)
- ◆ 2 BR Single-\$900 (15% premium over on-campus singles)
- ◆ 4 BR single- \$800 (2% premium over on-campus singles)

Assumes:

- ◆ *Furnished units*
- ◆ *Utilities included*
- ◆ *In-unit laundry*
- ◆ *No meal plan requirement*
- ◆ *Parking fee not included in rate*
- ◆ *Competitive amenity package*

REBEL PLACE APARTMENTS

PRIMARY MARKET

SPECIFICATIONS (156 Units / 480 Beds)	12 Month Rate	Approx. Sq. Ft.	Rate per Sq. Ft.	Parking Fee
2 Bedroom, 2 Bathroom	\$663.50	861	\$1.54	\$10 / month
3 Bedroom, 3 Bathroom	\$606	1,188	\$1.53	
4 Bedroom, 4 Bathroom	\$543.50	1,351	\$1.61	



COMMUNITY AMENITIES

- Gated Access
- Clubhouse with Wi-Fi
- Swimming Pool
- Outdoor Grilling Area
- Computer Lab
- 24-Hour Fitness Center
- Free Shuttle to UNLV
- Group Study Room

IN-UNIT AMENITIES

- All Utilities Included
- Internet
- Extended Cable with HBO
- Key Bedroom Entry
- Private Bathroom
- Fully Furnished
- Walk-in Closet
- Full, Luxury Kitchen
- Ceiling Fans

THE MIDBY COMPANIES: UNLV STUDENT HOUSING MARKET STUDY

**PRESENTATION OF
FINDINGS**



BRAILSFORD & DUNLAVEY

INSPIRE. EMPOWER. ADVANCE.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is acknowledged by and among the Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada, Las Vegas (“UNLV”), and University Park, LLC, a Delaware limited liability company authorized to do business in Nevada, and an affiliate of the Midby Companies (“Midby”). For purposes of this MOU, UNLV and Midby may be referred to individually as a “Party” and together may be referred to as the “Parties.” This MOU shall become effective when executed by Midby and approved by the Board of Regents of the Nevada System of Higher Education (the “Board of Regents”) at a publically noticed meeting (the “MOU Effective Date”).

RECITALS

A. On November 30, 2012, the Board of Regents approved a comprehensive update to UNLV’s campus master plan (the “Master Plan”). One of the guiding principles of the Master Plan is that expanding campus housing with both additional and varied types of housing will significantly improve the quality of campus life. The Master Plan also indicates that UNLV’s peer institutions house 20-25% of their student population. UNLV currently houses approximately 6% of its student population, and UNLV is at maximum capacity.

B. In January of 2013, a comprehensive Housing Plan was completed by AVS Housing Group, LLC (“AVS”), UNLV’s current on-campus housing marketing and leasing manager to determine the market demand for campus student housing. Among other things, the Housing Plan determined that the demand for student housing at UNLV was significantly underserved and that “an optional program is for 3,698 single full-time undergraduate students, and could reach 7,875 students should UNLV reach its headcount enrollment target.” UNLV’s student housing is currently at full capacity at approximately 1,700 beds.

C. The Master Plan and Housing Study identify privately owned property on the north side of campus adjacent to Cottage Grove Avenue within an area known as the “Midtown North District” as a location for future student housing with UNLV potentially involved on a public-private partnership basis. Within the Midtown District is the “Site” depicted in Exhibit A; APN’s 162-22-510-003 through 009. The Site is approximately 14 acres and is currently owned by Wells Fargo N.A. (“Wells Fargo”); having recently obtained ownership of the Site through foreclosure. The Site currently has 280 apartment units arranged as 4-plexes (the “Existing Apartments”) that are approximately 40 years old.

D. In August of 2014, Midby submitted a proposal to Wells Fargo outlining a plan for the purchase and redevelopment of the Site for student housing. Midby’s proposal was submitted as part of a process in which CBRE on behalf of Wells Fargo sought bids/proposals from several developers for the redevelopment of the Site. In September of 2014, Midby was selected by Wells Fargo as the winning bidder with the right to purchase the Site for \$20,500,000.

E. Midby in turn approached UNLV about redeveloping the Site on a public-private partnership basis consistent with the Master Plan and Housing Plan. In October of 2014, representatives of UNLV and Midby met several times to discuss redevelopment of the Site and UNLV's potential involvement in that process.

F. As initially discussed by representatives of the Parties and as outlined in more detail below, redevelopment of the Site on a public-private partnership basis would involve UNLV purchasing the Site. This would expand the campus footprint in a strategically important area and ensure that UNLV maintains long term control of the Site. UNLV would lease the Site to Midby for 40 years and Midby would fund, construct and maintain new student housing on the Site in two or three phases (the "Project"). Conceptual drawings and schematics of the Project are depicted in Exhibit B. Full build out of the Project is projected to include approximately 3,000 beds in three six-story wrap-style buildings with apartment like amenities, limited retail space, and 1,500 structured parking spaces. Phase 1 of the Project (approximately 6 acres) would include approximately 1,200 beds and be located along the frontage of Maryland Parkway. The timing of the subsequent phases would be tied to the success of Phase 1. Midby would be responsible for the financing, construction, management, maintenance, marketing, and operations of the Project. Midby would also manage, maintain and operate the Existing Apartments that remain on the Site until such time as they are demolished as phased redevelopment of the Site proceeds. Midby would also work to transition the Existing Apartments that are not a part of Phase 1 to student centric housing. Subject to certain conditions, UNLV would receive a portion of the net revenue of the Project (the "Project Success Funds") that could be used to reduce future rental rates or provide other benefits directly to student residents of the Project. The Project is consistent the Master Plan and the Housing Plan and aligns with UNLV's vision for the revitalization of the Midtown North District through public private partnerships. The Project structure seeks to minimize UNLV's financial risk and preserve UNLV's debt capacity for other core/academic related projects.

G. The Parties now desire to move forward with the Project and beyond the conceptual stage. Therefore by way of this MOU the Parties (i) set forth the objectives and specification of the Project, (ii) outline the agreements and deliverables necessary to obtain final approval and begin commencement of the Project, and (iii) state various other requirements of the Parties and the Project (collectively the "Terms of Understanding").

TERMS OF UNDERSTANDING

1. **Objectives and Specifications.** The Parties acknowledge the following objectives and specifications of the Project.

1.1 **Ownership of the Site.** UNLV would purchase and hold fee simple title in the Site. Subject to an appropriate appraisal, \$18,500,000 of the purchase price would be paid by UNLV. Midby would pay \$2,000,000 of the purchase price. Midby's share of the purchase

price would be credited toward rent due to UNLV from Midby under the Lease. UNLV's fee simple interest in the Site would not secure any financing for Midby's share of the purchase price of the Site or the construction of the Project.

1.2 **The Lease.** UNLV would lease the Site to Midby for a term of forty (40) years initially through two leases, and depending on Project phasing and financing, possibly additional leases.) The term of the lease for property on which a phase of the Project other than phase 1 is located, could be extended, at Midby's option, from the initial 40 year term to a term not exceeding 40 years from the issuance of a certificate of occupancy for that phase of the Project, if the certificate of occupancy is issued within ten (10) years of the commencement date of the initial term of the two initial leases. All phases of the project would need to be completed within 10 years of the commencement date of the initial term of the two initial leases, or the option to extend the lease term on property on which any then uncompleted phase of the Project is to located would expire. Midby would pay rent of approximately \$550,000 per year for the Site which would increase by three percent (3%) every four (4) years. Midby's share of the purchase price for the Site would be credited toward rent at the beginning of the lease term until exhausted. Payment of rent from Project revenues would be superior to payment of interest and principal on any Project financing, operation and maintenance costs, and all other costs and expenses related to the Project. Revenues remaining after payment of operation and maintenance expenses, including marketing expenses, from the operation of the Existing Apartments would be available to cover expenses related to the operation of phased Project improvements.

1.3 **Construction and Development.** Midby would develop and construct the Project. Midby would be responsible for all financing of the Project and all such financing would be non-recourse to UNLV's fee simple interest in the Site. UNLV will not backstop the Project financing or have financial responsibility for the Project in any way. The Parties would enter into a Project Development Agreement setting forth design and construction standard for the Project including a requirement to obtain LEED Silver or equivalent. The Project Development Agreement would include rights for UNLV to review and approve design and construction elements of the Project and require Midby to discharge and indemnify UNLV from any liens and construction claims. The Project would be designed and constructed to meet or exceed the standard for upper-class/move-up housing at peer institutions and be of similar quality to Sterling Alvarado; a private off-campus apartment complex marketed to students at San Diego State University. UNLV would not be responsible for any pre-development costs other than its own costs of due diligence related to the purchase of the Site. Midby would be required to provide bonding and other guarantees of completion of the various phases of the Project. All utilities for the Project would be provided by direct connection to local utility providers and not UNLV's utility network, except UNLV may allow the Project to connect into UNLV internet/fiber connection as may be feasible and subject to certain terms and conditions. Subject to certain terms and conditions, UNLV would sell up to three hundred (300) residential

parking passes to UNLV Student tenants of the Project allowing twenty-four hour parking on campus.

1.4 Operation and Maintenance. Midby would be responsible for the management, maintenance and operations of the Project and the Existing Apartments. The Lease would set forth operating standards, covenants of continued operation, and prescribe maintenance and reserve requirements designed to preserve the value of the Project improvements throughout the term of the lease.

1.5 Project Finance and Business Plan. Prior to approval of any of the Implementation Agreements (as defined below), Midby would commission and provide to UNLV a (i) demand study related to the Project and, (ii) a financial/business plan and operational pro forma, both of which must be sufficient for independent review. UNLV would have the right to review and approve the source and terms of any and all financing or refinancing Midby obtains for the Project and UNLV shall not unreasonably delay or withhold such approval.

1.6 Marketing. Midby would be responsible for marketing and leasing the Project and could contract with UNLV's existing on-campus marketing and leasing agent, AVS, to provide such services for the Project, or other vendor approved by UNLV. The Project would be marketed as upper-class, move-up, and graduate student housing and Midby or its leasing agent would have the right to market the Project to those groups as "on-campus" housing. The Project would not be marketed or leased to freshman, and would not meet the requirements of UNLV's policy requiring freshman to live in specified on campus housing. However, UNLV could, in its sole discretion, elect to utilize the Project as overflow freshman housing UNLV would retain the ability and authority to build additional on-campus freshman housing as it deems necessary. UNLV would agree to limit its rights to develop or participate in the development any other upper-class, move-up and graduate student housing for up to ten (10) years dependent on the performance of Phase I of the Project and subject to certain terms and conditions.

At Midby's request and expense, UNLV would include the Project in all marketing and advertising solicitations made to students involving housing, including but not limited to, catalogues and informational brochures, websites, and other commonly used forms of advertising. Midby would remain free to conduct any additional or supplementary advertising typically conducted by independent housing operators. Midby or its agents would be allowed to participate in student orientation, welcome week activities, or similar events, subject to reasonable rules and regulations applicable to such events determined by UNLV. In coordination with UNLV, Midby would be permitted to market and make the Project available to participants in summer camps, seminars and conferences operated by UNLV or independently by Midby or its agents.

2.0 Implementation Agreements. The Parties acknowledge the following agreements (the "Implementation Agreements") will or may be necessary to accomplish the objectives and

specifications of the Project outlined above and will work in good faith to negotiate and prepare the same and, as necessary, obtain approval from the Board of Regents:

2.1 **Purchase and Sale Agreement.** A Purchase and Sale Agreement or other appropriate agreement(s) by which UNLV obtains fee simple title to the Site.

2.2 **Project Development Agreement.** A Project Development Agreement or other appropriate agreement(s) governing the demolition of the Existing Apartments and the design, development and construction of the Project and any other improvements to the Site.

2.3 **Lease.** A lease or multiple leases (the "Lease") and other appropriate agreement(s) by which UNLV leases the Site and the completed Project improvements to Midby. The Lease would also proscribe operating standards and maintenance/reserve requirements sufficient to preserve the value of the Project improvements throughout the term of the Lease.

3. **Schedule.** The Parties agree to work in good faith to meet the following schedule, it being understood that no Party may allege that the other is not acting in good faith in a Party determines, for any reason, to delay the proposed schedule or determines it cannot meet the proposed schedule.

Task:	Date/Deadline:
Presentation of MOU to the Board of Regents for Approval.	Not later than December 5, 2014
Project Finance and Business Plan	December 15, 2014
Negotiations and preliminary approval from Wells Fargo and Midby to sell the Site to UNLV.	January 15, 2015
Preparation of final drafts of Implementation Agreements.	End of January, 2015
Board of Regents approval of the Implementation Agreements.	March 2015 Board of Regents meeting
UNLV review and approval of Project financing	April 2015
Purchase of the Site.	April 2015
Demolition of the Existing Apartments for Phase 1 of the Project.	May 2015
Complete construction of Phase 1 of the Project.	July 2016

4. **Other Requirements.** The Parties agree and acknowledge the following additional requirements of the Parties and the Project.

4.1 **Prevailing Wage.** The construction and development of all aspects of the Project shall be subject to the prevailing wage rates determined by the Nevada Department of Business

and Industry, Office of the Labor Commissioner, as those rates are calculated in accordance with the requirements of Chapter 338 of the Nevada Revised Statutes. Midby will be responsible for providing payroll reports, statements of compliance and any other forms and records required by law or by the Office of the Labor Commissioner. Midby shall indemnify, defend, save and hold harmless, the Nevada System of Higher Education, UNLV, the Board of Regents, and the agents and employees of each of them from and against any violation or alleged violation of any of the provisions of Chapter 338 of the Nevada Revised Statutes.

4.2 Disadvantaged Business Reporting Requirements. UNLV supports equal opportunity for minority owned ("MBE"), women owned ("WBE"), disabled veteran owned ("VBE"), small business ("SBE") and other disadvantaged business enterprises ("DBE") (collectively "MWVSDBE's") to compete for contacts awarded by UNLV. UNLV also supports efforts to encourage local businesses enterprises ("LBE") to compete for UNLV contracts. In some situations MWVSDBE's and LBE's may not have the depth or full capacity to meet all the requirements of large contracts. Nevertheless, UNLV supports finding opportunities for such MWVSDBE's and LBE's to participate as subcontractors or Tier 2 suppliers in large contracts. Therefore, the Project will be subject to the following:

4.2.1 If the purchase of goods or services is anticipated to exceed \$1,000,000 at any time during terms of the construction and development of any portion of the Project, then Midby must provide, at a minimum, annual reports listing expenditures with MWVSDBE's and LBE's. These reports pertain only to expenditures that are directly attributable to the Project. The report must be available to UNLV by September 15th of the applicable term year, and should contain the following information:

- a. the type of MWVSDBE, its name, city and state, and any certification of the MWVSDBE's status including the entity granting the certification;
- b. if the MWVSDBE meets more than one definition or category each category should be identified;
- c. a description of the goods or services purchased;
- d. the amount of expenditures with the MWVSDBE attributed to the Project for the most recent completed fiscal year (July 1 through June 30).

4.2.2 Definitions.

a. LBE - Local Business Enterprise is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

b. DBE - Disadvantaged Business Enterprise is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

c. MBE - Minority Business Enterprise is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

d. WBE - Women-Owned Business Enterprise is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

e. VBE - Disabled Veteran Business Enterprise is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.

f. SBE - Small Business Enterprise is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

4.3 Principal Representative. Each party shall appoint a single person to act as its principal representative. The person so appointed shall be responsible for managing the negotiations of the Implementation Agreements and the process contemplated by this MOU. UNLV's principal

representative shall be Mr. Gerry Bomotti, Senior Vice President for Finance and Business. Midby's principal representative shall be Mr. John H. Midby, Chief Executive Officer.

4.4 Discretionary Approvals. Midby acknowledges (i) that the discretionary approval of the Board of Regents shall be required as to all Implementation Agreements, and (ii) that the Implementation Agreements may include additional terms and conditions not currently contemplated or later determined necessary pursuant to existing financial, legal and contractual obligations of the Nevada System of Higher Education or UNLV.

4.5 Non-binding MOU. The Parties acknowledge that this MOU is not a binding and enforceable contract and shall not give rise to any obligations on the part of any Party. This MOU establishes the framework to continue negotiations and develop the Implementation Agreements necessary to obtain final approval and begin commencement of the Project. In no event shall either Party or any of their individual officers, employees or agent in any way be liable or responsible for any obligations contained in this MOU, whether express or implied; nor for any statement, representation or warranty made in connection with this MOU.

4.6 Not a Partnership. It is expressly understood that, by reason of this MOU or otherwise, none of the Parties is or becomes in any way a partner of the other in the conduct of its business, or a joint venture with the other, or an agent of the other.

4.7 No Third Party Beneficiary. This MOU is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a Party unless otherwise expressly provided.

4.8 Use of Financial Statements. Midby shall not, use, provide to others, or rely upon any financial statements, audits, or other documents (the "Financial Statements") of the Nevada System of Higher Education or UNLV for the purpose of obtaining any type of advantage with respect to financing the Project.

4.9 Marks. Midby shall not use the name of the "Nevada System of Higher Education" or "UNLV", or the marks, seals, logos, or any other related name (collectively the "Marks"), in the performance of its services, in its advertising, or in the production of any materials related to this MOU, without the prior written consent of the Nevada System of Higher Education or UNLV pursuant to an approved licensing or other agreement between the parties. Midby may use the names "Nevada System of Higher Education" and "University of Nevada, Las Vegas" or their acronyms in factual descriptions of the Project used to meet Midby's obligations under this MOU and the Implementing Agreements.

4.10 Term and Termination. This MOU shall be effective for one (1) year from the MOU Effective Date, except as may be extended by mutual agreement. Any Party shall have the right to terminate this MOU for any reason by providing the other Party ten (10) days' written notice.

For purposes of this section, the President of UNLV is authorized to extend this MOU for an additional term of one (1) year.

4.11 **Governing Law.** The laws of the State of Nevada without reference to conflicts of laws principals shall govern the validity, construction, interpretation, and effect of this MOU.

[SIGNATURES PAGE FOLLOWS]

The Parties hereby acknowledge the terms of this MOU as stated above.

**BOARD OF REGENTS OF THE NEVADA SYSTEM
OF HIGHER EDUCATION, ON BEHALF OF THE
UNIVERSITY OF NEVADA, LAS VEGAS**

RECOMMENDED:

By: 
Gerry J. Bomotti
Vice President for Finance and Business

By: 
Donald D. Snyder
President, UNLV

**APPROVED BY THE BOARD OF REGENTS AT A
NOTICED PUBLIC MEETING:**

By: 
HON. KEVIN J. PAGE
CHAIRMAN OF THE BOARD OF REGENTS

UNIVERSITY PARK, LLC
A Delaware limited liability company, an affiliate of the Midby Companies

By: 
Its: _____
John Midby

UNIVERSITY PARK DEVELOPMENT

