

# **BOARD OF REGENTS BRIEFING PAPER**

## **1. AGENDA ITEM TITLE: Legal Description Change to Nevada State College Student Housing Project**

**MEETING DATE:** February 28, 2019

## **2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

At its September 2018 meeting, the Board of Regents approved the implementing agreements for the College and American Public Development, LLC (APD) to move forward with a public-private partnership student housing project. The project that was approved consisted of 312 beds, configured in a village-style community, with study and tutoring spaces, as well as recreational areas. The approved Ground Lease provided APD with 9.13 acres upon which to construct the project. The project pro-forma, which was included in the September 2018 Board of Regents' meeting packet, indicated that the college would receive approximately \$60M through payments of base rents and Surplus Funds, as defined in the Ground Lease, over the 40-year term. At the end of the Ground Lease term, ownership of the student housing project will automatically transfer to the Board of Regents, for the benefit of the College.

Following the September 2018 Board of Regents' approval, the development and financing team for the student housing project has been busy negotiating the terms of the Indenture and Preliminary Official Statement, as well as other related agreements necessary to the project. The negotiated reserve set forth in the Indenture for the "Surplus Fund" was agreed to be set at \$250,000. The financing team further agreed, subject to necessary approvals, to fund the Surplus Fund with bond proceeds instead of funding it from net operating activity at the student housing facility. The \$250,000 Surplus Fund will be established as part of the Debt Service Coverage Account to be maintained within the Surplus Fund.

APD's non-profit partner, Public Financing Authority (PFA), requested a third demand survey as part of their due diligence process. APD engaged the services of Brailsford and Dunlavy (B&D), a respected student housing firm, to conduct the survey. PFA then hired Spectrum Development Solutions to complete an independent review the survey results and recommendations provided by B&D. The results of this process suggested that the housing project should provide an option for shared bedrooms, at a lower price point.

Based on the results of the latest demand survey, the project has been reconfigured to build-out one of the seven housing units to provide a two-bedroom, four-bed, two bath options. This reconfiguration adds approximately 8,000 square feet to the project. It also increases the capacity of the project from 312 beds to 342 beds, which is supported by the demand survey.

This change provided an opportunity to reassess the location and layouts of the housing village. Although APD will still be constructing the roadway that serves the housing project, the roadway should remain outside of the project areas since it also serves as the major arterial traffic flow for campus, Nevada State Drive. (Note that this roadway is being designed for expansion and improvement as part of the Education Building Project to be performed by Nevada State Public Works.) Roadway and utility easements will be approved in accordance with Title 4, Chapter 10, Section 9 of the Board of Regents Handbook, at a later date. The new layout resulting from these changes will require only 7.88 acres to be leased as opposed to the originally approved 9.13 acres. This reduction in acreage will affect the following documents approved at the September 2018 meeting:

- 1) Ground Lease
- 2) Project Development Agreement
- 3) Recognition, Consent, Non-Disturbance and Estoppel Agreement
- 4) Indemnity Agreement between Nevada State College and First American Title Insurance Company

Despite the reduction of leased area and a lower entry price for our students, the increased capacity and a new financing plan negotiated between APD, Citigroup and American Campus Communities all works together to improve the project pro-forma from a 1.2 debt coverage ratio to 1.3 debt coverage ratio. In addition, the amounts being paid to the college under the new plan are now estimated at \$80M over the life of the project.

## **3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

President Bart Patterson requests approval to reduce the legal description from 9.13 acres to 7.88 acres for the student housing project at Nevada State College.

## **4. IMPETUS (WHY NOW?):**

This administrative change to the implementing agreements for the project will impact the bond issuance process. The student housing financing team met with Standard and Poor's on January 4, 2019 as a final review of the project prior to obtaining ratings for the bond issue. S&P will have the confidential rates to APD by the end of January. Based on this timeline, the bonds will price in early February 2019.

**5. CHECK THE NSHE STRATEGIC PLAN GOAL THAT IS SUPPORTED BY THIS REQUEST:**

- Access (Increase participation in post-secondary education)
- Success (Increase student success)
- Close the Achievement Gap (Close the achievement gap among underserved student populations)
- Workforce (Collaboratively address the challenges of the workforce and industry education needs of Nevada)
- Research (Co-develop solutions to the critical issues facing 21<sup>st</sup> century Nevada and raise the overall research profile)
- Not Applicable to NSHE Strategic Plan Goals

**INDICATE HOW THE PROPOSAL SUPPORTS THE SPECIFIC STRATEGIC PLAN GOAL**

Campus housing provides an opportunity for the College to serve more students. The College's location can be a challenge for students and can deter potential students from attending. Many of the College's students commute to campus via public transportation. Some trips are reportedly in excess of two hours each way. On campus housing can serve as a solution for more students to attend college. Financial aid cost of attendance includes calculations for on campus housing. So, it is an affordable option regardless of student financial status. Our campus housing also creates an opportunity for living-learning communities which have proven effective for student success. Finally, student housing creates an opportunity to integrate more cultural experiences to our students. On campus housing can draw students from other regions and countries to give Nevada students exposure to ideas and customs that many would not otherwise have.

**6. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- Implementing agreements for the housing project were approved at the September 2018 Board meeting.
- The change encumbers less campus lands.
- Providing a lower cost option for students will help ensure the success of the project.
- The changes to the project increase the project income to the college by an estimated \$16M.

**7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

- None

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

- Delay the project
- Seek other avenues for acquiring campus housing

**9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:**

**10. 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  No
- Explain: Although the risk is low, there is a potential that lien claims under the College's indemnity to the title company could exceed \$25,000\_

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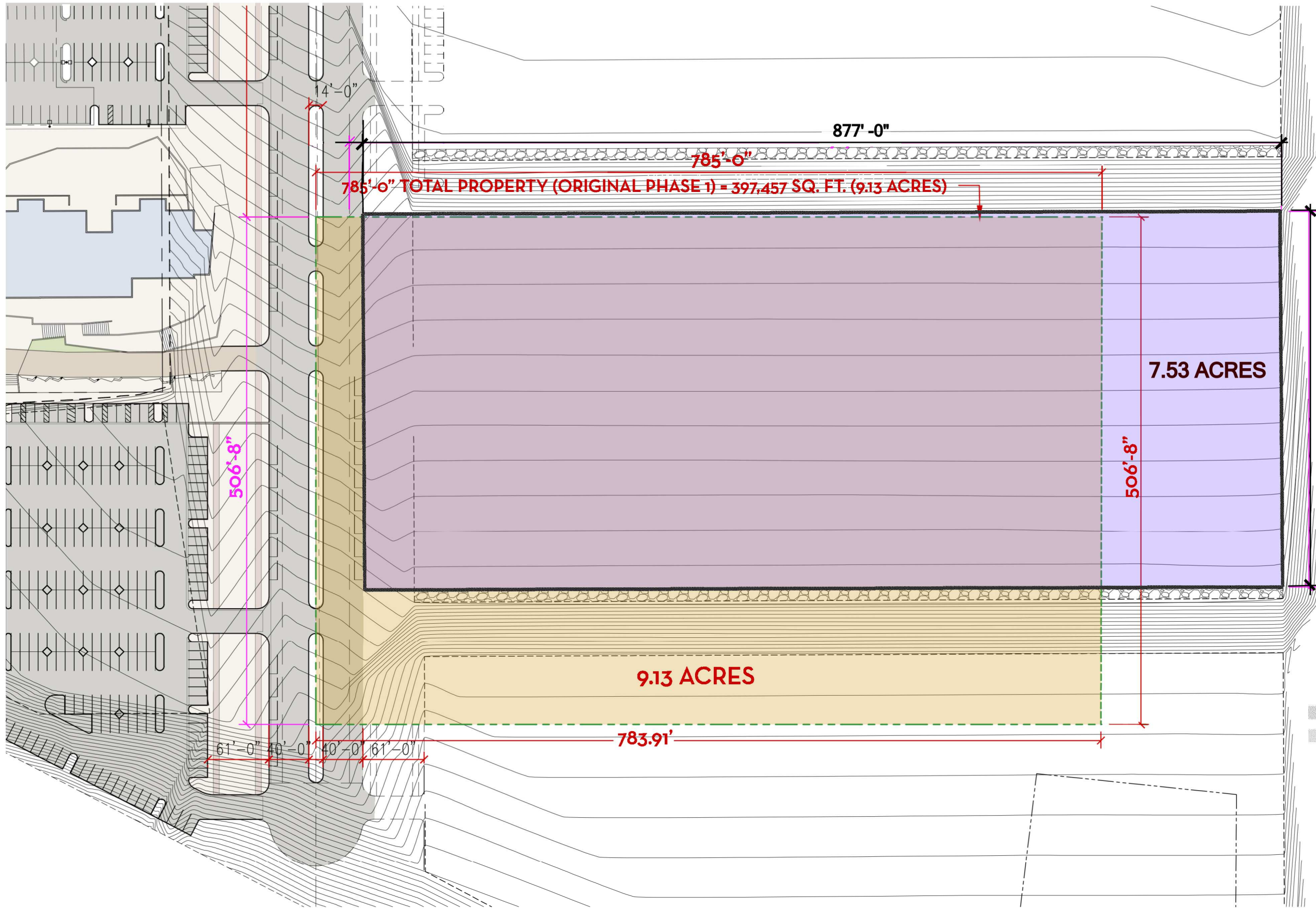
Ground Lease

Development Agreement

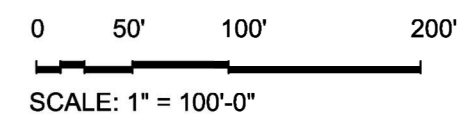
Recognition, Consent and Non Disturbance Agreement

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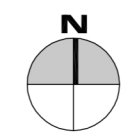
Project Proforma



PROPOSED NEW LEASE @ 7.53 ACRES  
 EXISTING LEASE @ 9.13 ACRES



# NCS Campus Housing Site



January 3, 2019



# **GROUND LEASE AGREEMENT FOR STATE CAMPUS VILLAGE**

*by and between*

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

*on behalf of*

**NEVADA STATE COLLEGE  
("LANDLORD")**

*and*

**AMERICAN PUBLIC DEVELOPMENT, LLC  
("TENANT")**

**Dated as of \_\_\_\_\_, 2019**

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**GROUND LEASE AGREEMENT  
FOR  
STATE CAMPUS VILLAGE**

This **GROUND LEASE AGREEMENT FOR STATE CAMPUS VILLAGE** (this "**Lease**") dated for reference purposes only as of \_\_\_\_\_, 201\_\_, is made by and between the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION**, acting on behalf of the Nevada State College, a constitutional entity of the State of Nevada ("**Landlord**" or "**NSC**"), and **AMERICAN PUBLIC DEVELOPMENT, LLC**, a Nevada limited liability company ("**Tenant**"). Landlord and Tenant are individually sometimes referred to herein as a "**Party**" and collectively as the "**Parties**."

**RECITALS**

**A.** Nevada State College is a public college founded in 2002 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 citizens of the State of Nevada. NSC exists in accordance with the laws of the State of Nevada and is an important institution of higher learning in the State.

**B.** In early 2010, NSC completed its campus master plan (the "**Campus Master Plan**") for its 512-acre site ("**Site**"). Student housing is identified as a significant component of the master plan, and the Site is eventually intended to provide housing for approximately 5,200 students on approximately forty six (46) acres.

**C.** In furtherance of Site development activities, NSC commenced an RFI process in 2015 which resulted in NSC entering into a non-binding memorandum of understanding on August 1, 2016, with Eric A. Traub dba Traub and Associates ("**Traub**") and Leducor Construction, Inc. ("**Leducor**") to assist NSC with the development of the Site.

**D.** Traub and Leducor have worked on development opportunities for the Site, including for student housing. A real estate analysis and demand study (the "**Demand Study**") was prepared that demonstrates that there is significant demand for student housing at NSC.

**E.** A new Memorandum of Understanding was approved by the Regents on December 1, 2017, between NSC and Tenant as the successor to Traub and Leducor.

**F.** The real property described on **Exhibit A** (the "**Land**"), comprising approximately seven and 53/100ths (7.53) acres, has been identified for the initial phase of student housing for the Site. The project is a development of seven (7) buildings of student housing, and associated improvements and amenities, totaling approximately three hundred forty-two (342) beds, all subject to further revision by Tenant, as shown on the attached **Exhibit B** (the "**Project**"), and shall be known as the "**State Campus Village**".

**G.** It is anticipated that there will be additional phases of student housing developed at the Site, as determined by Tenant and approved by Landlord. NSC and Tenant have not made or committed to any other development project in connection with the Site, or the Land.

**H.** It is anticipated that, at the time of the Closing (as defined herein), the Tenant will enter into the PFA Sublease (as defined herein) with the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin ( "**PFA**") in order to transfer control of the Project to PFA and qualify for tax exempt financing to fund the Project development, finance, and construction costs.

**I.** It is anticipated that, at the time of the Closing, the Tenant will enter into the Project Development Agreement with NSC.

**J.** It is anticipated that, at the time of the Closing, the Tenant will enter into the PFA Sub-Development Agreement with PFA

**K.** 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 of the Premises.

**L.** Pursuant to the terms, conditions, covenants, and other provisions of this Lease, (i) Landlord desires to lease the Land to the Tenant; and (ii) Tenant desires to lease the Land from Landlord, and to construct and operate the Improvements (as such term is defined herein), all in accordance with the terms of this Lease and the Project Development Agreement (as such term is defined herein), upon the Land.

**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 generally accepted accounting principles applicable to Developer and NSC, respectively ("**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 NSC’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** “**Annual Budget**” means the annual operating plan and budget for the Project for the applicable Operating Year prepared by the Asset Manager and approved by PFA.

**1.4** “**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.

**1.5** “**Asset Management Agreement**” means that certain agreement entered into between Tenant and Subtenant at the time of Closing relating to the management of the Project.

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

**1.7** “**Asset Manager**” or “**Manager**” means American Public Development, LLC, or another Person who functions as the manager of the Premises pursuant to the Asset Management Agreement.

**1.8** “**Base Rent**” has the meaning assigned to it in Section 5.1.

**1.9** “**Beds**” means the maximum number of persons to whom the Tenant is allowed to sublease under all Applicable Laws within State Campus Village whether or not all such Beds are in fact leased from time to time.

**1.10** “**Bonds**” and “**Series of Outstanding Bonds**” means the Series 2019 Bonds and all Additional Bonds, as defined in the Indenture.

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

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

1.13 “**Campus**” means the main campus of the Nevada State College, Henderson, located at 1300 Nevada State Drive, Henderson, Nevada 89002.

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

1.15 “**Certificate of Occupancy**” means an approved final inspection, certificate of occupancy, certificate of completion, or other similar verification from the building division of the City of Henderson, 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.

1.16 “**Closing**” shall mean the Tenant’s closing on its Financing Agreements.

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

1.18 “**Commercial Sub-sublease**” means a Sub-sublease for space within the Commercial Premises, if any.

1.19 “**Commercial Sub-subtenant**” means a Sub-subtenant of any portion of the Commercial Premises.

1.20 “**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.

1.21 “**City Code**” means the City Code of the City of Henderson, Nevada.

1.22 “**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.

1.23 “**Default Rate**” means a rate that is one percent (1%) per annum in excess of 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.

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

1.25 “**Demand Study**” has the meaning assigned to it in Recital D.

1.26 “**Developer**” shall mean American Public Development, LLC.

**1.27** **“Dwelling”** shall have the meaning set forth in Section 9.3(b).

**1.271.28** **“Effective Date”** shall mean the date that the Ground Lease is executed by NSHE.

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

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

**1.301.31** **“Extraordinary Expense Fund Requirement”** means \$750,000, as provided in the Indenture.

**1.311.32** **“Facility Operator”** shall mean ACC SC Management LLC, a Delaware limited liability company, and any other Person who is an assignee of the initial Facility Operating Agreement or who enters into a Facility Operating Agreement with the Tenant to operate and manage the Project on behalf of PFA.

**1.321.33** **“Facility Operator Fee”** mean the fee incurred by the Asset Manager pursuant to the Facility Operating Agreement.

**1.331.34** **“Financing Agreements”** means any instrument or agreement between Tenant or PFA and a Leasehold Mortgagee providing financing for the Project, including any Leasehold Mortgage.

**1.341.35** **“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.

**1.351.36** **“Force Majeure Event”** means a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Lease; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and other events beyond the control of a Party.

**1.361.37** **“Fund”** or **“Funds”** means the funds, accounts subaccounts provided in the Indenture to implement the Permitted Financing, including the Revenue Fund, Project Fund, Debt Service Reserve Fund, Capitalized Interest Fund, Rebate Fund, Repair and Replacement Fund, Ground Lease Payment Fund, Extraordinary Expense Fund, Operating Reserve Fund, and Surplus Fund.

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**1.371.38** “**Full Operations**” means the Project having reached Substantial Completion and the sub-subleasing of at least seventy-five percent (75%) of the Project’s beds.

**1.381.39** “**GAAP**” means generally accepted accounting principles consistently applied (as such term is used in the American Institute of Certified Public Accountants Professional Standards).

**1.391.40** “**General Contractor**” means a contractor engaged by Tenant to perform the Improvement Work or a portion thereof.

**1.401.41** “**Governmental Authorities**” means City of Henderson, the State of Nevada, the United States and their respective agencies but specifically excludes NSHE, the Regents and NSC for purposes of this Lease.

**1.411.42** “**Gross Operating Revenues**” 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 on a cash basis; provided, however, that Gross Operating Revenues shall not include: (i) Sub-subtenant Deposits, unless and until such Sub-subtenant Deposits are forfeited to or applied by Tenant toward rental obligations in accordance with the terms of a Sub-sublease with respect to any failure by a Sub-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 Operating Revenues); (iii) condemnation proceeds; and (iv) proceeds from any sale or financing of the Premises.

**1.421.43** “**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 biphenyls, 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.

**1.431.44** “**Improvements**” means any and all buildings and improvements from time to time hereafter constructed on the 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 or Sub-subtenant Improvements.

**1.441.45** “**Improvement Work**” means the work of design and construction required by the terms of this Lease to be performed by Tenant to cause the 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 the City of Henderson, 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.

**1.451.46** “**Indenture**” means the Trust Indenture, dated as of \_\_\_\_\_ 1, 2019, by and between the Authority and the Trustee, as originally executed and as it may from time to time be amended, modified and supplemented in accordance with the terms thereof.

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

**1.471.48** “**Landlord**” has the meaning assigned to it in the introductory paragraph of this Lease.

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

**1.491.50** “**Lease**” has the meaning assigned to it in the introductory paragraph of this Lease.

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

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

**1.521.53** “**Leasehold Mortgage**” means and includes any mortgage, deed of trust and any other security instrument or instruments constituting a lien upon Tenant or PFA’s interest under the Lease and the Leasehold Estate, or the PFA Sublease and Subleasehold Estate, 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.

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

**1.541.55** “**Lease Term**” means the period from the Lease Commencement Date until the Lease Term expires pursuant to Section 4.2 unless earlier terminated as provided herein.

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

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

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

**1.581.59** “**Memorandum of Understanding**” means the Memorandum of Understanding referenced in Recital E.

**1.591.60** “**NSC**” has the meaning assigned to it in the introductory paragraph of this Lease.

**1.601.61** “**NSC Student**” means an individual who (a) is enrolled at and attending NSC for the then current semester, (b) is enrolled as a student at NSC for a subsequent semester or has applied for acceptance at or been accepted at NSC for a subsequent semester, or (c) with respect to summer occupancy, (i) was enrolled at and attending NSC in the previous Spring Term or (ii) is enrolled at NSC for the upcoming Fall Term or has applied for acceptance at or been accepted at NSC for the upcoming Fall Term.

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

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

**1.631.64** “**Occupancy Date**” has the meaning assigned to it in Section 9.1.

**1.641.65** “**Occupant**” means a Sub-subtenant, licensee, user, owner, and anyone occupying or using any Dwelling or Commercial Premises under or through PFA, including their employees, agents, contractors and invitees.

**1.651.66** “**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 NSC or an Affiliate of NSC, or (ii) located on land owned, leased, or otherwise controlled by NSC or an Affiliate of NSC.

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

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

(b) 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);

(c) pest control; cleaning of windows and exterior curtain walls; janitorial services; trash and snow removal; landscaping and repair and maintenance of grounds;

- (d) salaries, wages, and benefits for employees of Facility Operator engaged in the operation, maintenance or repair of the Premises including benefits, payroll taxes and worker's compensation insurance;
- (e) license fees and governmental permits;
- (f) casualty and liability insurance, and other insurance coverages such as professional liability insurance;
- (g) cleaning supplies; uniforms and dry cleaning service;
- (h) supplies, repairs, replacements (irrespective of an asset's useful life) and other expenses for maintaining and operating the Premises;
- (i) expenses of travel in connection with the operation of the Premises;
- (j) Tenant, PFA, and Facility Operator's accounting and audit fees related to the Project;
- (k) 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;
- (l) the Facility Operator Fee paid under the Facility Operating Agreement, excluding the Subordinated Facility Operator Fee which is deferred and paid at Section 5.3;
- (m) 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;
- (n) fees charged and retained by PFA; and
- (o) the Asset Management Fee paid under the Asset Management Agreement, excluding the Subordinated Asset Management Fee which is deferred and paid at Section 5.3;

with all of the foregoing calculated on a cash basis (and not in accordance with GAAP).

Notwithstanding the foregoing description, unless expressly made an Operating Expense under a specific provision of the Management Agreement, the following shall not constitute Operating Expenses: (a) depreciation and amortization on capitalized assets; (b) payments of principal and interest related to any financing of the Project; (c) costs paid or reimbursed by and pursuant to the Manager's indemnity, hold harmless and defense agreements contained in the Management Agreement, all of which shall be funded out of the Manager's own funds (from whatever source, including Insurance Proceeds to the extent paid to the Manager); (d) costs incurred by the Manager to perform obligations, duties, covenants, agreements and responsibilities which,

under the express terms of the Asset Management Agreement, are to be funded from the Manager's own funds; (e) costs paid or reimbursed by and pursuant to the Facility Operator's indemnity, hold harmless and defense agreements contained in the Facility Operating Agreement, all of which shall be funded out of the Facility Operator's own funds (from whatever source, including Insurance Proceeds to the extent paid to the Facility Operator); (f) costs incurred by the Facility Operator to perform obligations, duties, covenants, agreements and responsibilities which, under the express terms of the Facility Operating Agreement, are to be funded from the Facility Operator's own funds and (g) Capital Expenses.

**1.681.69** “**Operating Reserve Requirement**” means 25% of the then-current annual budgeted Operating Expenses.

**1.691.70** “**Operating Year**” means the twelve (12) month period terminating on June 30 of each year, or any other annual accounting period hereafter selected and designated by PFA as the Operating Year.

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

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

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

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

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

**1.751.76** “**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.

**1.761.77** “**PFA**” means the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin, and its assigns or successors, including, but not limited to, any successor in interest following the acquisition of the Subleasehold Estate by Leasehold Mortgagee or its nominee in a foreclosure sale or by deed in lieu of foreclosure.

**1.771.78** “**PFA Sub-Development Agreement**” means the sub-development agreement entered into at the time of Closing between Tenant and PFA relating to Tenant's obligation to develop the Project consistent with the terms set forth herein.

**1.781.79** “**PFA Sublease**” means the Ground Sublease Agreement entered into at the time of Closing between Tenant and PFA whereby PFA subleases the Premises from the Tenant.

1.791.80 “**Police**” has the meaning assigned to it in Section 10.1.

1.801.81 “**Premises**” has the meaning assigned to it in Section 2.5.

1.811.82 “**Project**” means the current portion of the State Campus Village described in Recital F to be developed by Tenant pursuant to the Project Development Agreement and the PFA Sub-Development Agreement.

1.821.83 “**Project Development Agreement**” shall mean that certain Project Development Agreement between NSC and Developer dated concurrently with this Lease.

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

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

1.851.86 “**Rent Commencement Date**” has the meaning assigned to it in Section 5.1.

1.861.87 “**Repair and Replacement Fund Requirement**” means an amount equal to \$175 per operational bed per year, as provided in the Indenture.

1.871.88 “**Reserve Fund Requirement**” means an amount equal to the least of (i) 10% of the issue price of the Bonds, (ii) 125% of the average annual debt service for the Bonds, and (iii) 100% of the maximum annual debt service, as further defined in the Indenture.

1.881.89 “**Resident**” means any Sub-subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sub-sublease with PFA, or (b) has applied for residence in the Residential Premises and been accepted by PFA.

1.891.90 “**Residential Premises**” means those portions of the Premises to be used as housing facilities, to be identified as such on the Design Development Documents.

1.901.91 “**Residential Sub-sublease**” means a Sub-sublease for space within the Residential Premises.

1.911.92 “**Secured Lenders**” has the meaning assigned to it in Section 24.13.

1.921.93 “**Secured Property**” has the meaning assigned to it in Section 24.13.

1.931.94 “**Student Resident**” means a Resident who is also a NSC Student.

1.941.95 “**Subleasehold Estate**” means the estate of PFA created by the PFA Sublease upon and subject to all the terms and conditions of the PFA Sublease.

1.951.96 “**Subordinated Asset Management Fee**” means one-half (50%) of the Asset Management Fee.

1.961.97 “**Subordinated Facility Operator Fee**” means one-half (50%) of the Facility Operator Fee.

1.971.98 “**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 Sub-subtenant improvements.

1.981.99 “**Sub-sublease**” means any sub-sublease or license of the Premises or any part thereof by PFA to another party. The term “Sub-subleases” consists of the Residential Sub-subleases and Commercial Sub-subleases.

1.991.100 “**Subtenant**” means, initially, the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin, pursuant to the PFA Sublease, and, in the event of and upon termination of the PFA Sublease, means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a sublease.

1.1001.101 “**Sub-subtenant**” means any Person having an interest in a portion of the Premises pursuant to a Sub-sublease.

1.1041.102 “**Sub-subtenant Deposits**” means all security deposits or security interests paid by a Sub-subtenant in advance or other deposits received from any Sub-subtenant.

1.1021.103 “**Sub-subtenant Improvements**” means any and all improvements from time to time made to any portion of the Premises by a Commercial Sub-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 Sub-subtenant.

1.1031.104 “**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.

1.1041.105 “**Tax Certificate**” means the Tax Certificate dated the closing date of the Permitted Financing executed by PFA.

1.1051.106 “**Tenant**” has the meaning assigned to it in the introductory paragraph of this Lease.

1.1061.107 “**Tenant Event of Default**” has the meaning assigned to it in Section 31.1.

1.1071.108 “**Transfer**” has the meaning assigned to it in Section 26.1.

~~1.108~~1.109 **“Trustee”** means The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture, together with any successors or assigns.

~~1.109~~1.110 **“Unavoidable Delay”** has the meaning assigned to it in 32.11.

## **ARTICLE 2 LEASE AND TITLE**

**2.1 Lease Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Land, situated in the City of Henderson, Nevada, more particularly described in Exhibit A, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Land for pedestrian and vehicular ingress, egress and regress to and from the 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 any improvements now existing (collectively, the “Land”). 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.

**2.2 Title.** Title to the Land 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 Land insuring Tenant’s Leasehold Estate in the Land 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 Land 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 Improvements. In addition, NSC 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 Improvements.

**2.4 Title to Improvements.** During the Term, ownership of the Improvements constructed by PFA pursuant to the PFA Sublease, the Development Agreement and the PFA Sub-Development Agreement shall remain with PFA. PFA’s ownership rights shall automatically terminate and all such rights shall revert to the Landlord, and the Landlord shall be the sole owner of all Improvements upon the termination of this Lease.

**2.5 Premises.** The Leasehold Estate and the Improvements shall constitute the Premises.

**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 Effective Date (the "***Lease Commencement Date***").

**4.2 Lease Term Expiration.** Subject to the early termination provisions of this Lease, including but not limited to Section 4.3, the Lease Term shall expire on the earlier of (i) the fortieth (40th) anniversary of the Rent Commencement Date, or (ii) the satisfaction of all obligations of payment and performance which are imposed under or with respect to the Permitted Financing including, without limitation, payment of all PFA expenses associated therewith.

**4.3 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 to terminate this Lease by written notice to Tenant, Developer, PFA, and to any Leasehold Mortgagee under this Lease (an "***Intent to Terminate***"). The Intent to Terminate shall contain the effective date of the proposed termination which shall be not less than one hundred eighty (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-day period, Landlord may terminate this Lease at any time thereafter by written notice to Tenant, PFA, Developer, and to any Leasehold Mortgagee under this Lease; provided, if Tenant does Commence Construction prior to the date Landlord terminates this Lease, Landlord's right to terminate shall be void.

(c) For purposes of the foregoing, the term "***Commence Construction***" refers to Tenant or PFA having (a) obtained funding of a Permitted Financing, (b) obtained the building permit from the City of Henderson to permit Tenant or PFA to commence vertical construction of the Improvements, and (c) commenced actual grading of the Land; provided that Tenant shall be entitled to an equitable extension of time as a result of a Force Majeure Event.

**4.4 Substantial Completion.** There shall be Substantial Completion of the construction on or before that date which is eighteen (18) months from the date of the initial commencement of construction; provided that Tenant shall be entitled to an equitable extension of time as a result of a Force Majeure Event. The Project shall be constructed, and completed, substantially in accordance with the Project Schedule attached hereto as **Exhibit "E"**.



**4.5 Notice of Non-Responsibility.** Landlord may record a notice of non-responsibility as allowed by NRS 108.234 with respect to the construction of the Improvements.

## **ARTICLE 5 RENT**

**5.1 Base Rent.** Base Rent shall be payable, solely from Gross Operating Revenues and subject to Section 5.3, starting on the Rent Commencement Date and on the first day of each calendar month thereafter during the Lease Term. The **Rent Commencement Date** shall be December 1 of the year that is one year after commencement of Full Operations of the Project. For sake of clarity, if the Project starts Full Operations in August 2019, then the Rent Commencement date shall be December 1, 2020. If applicable, 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 in the amounts set forth in the Rent Schedule attached hereto as **Exhibit “F”**, and shall be escalated by three percent (3%) annually, in accordance with the Rent Schedule.

**5.2 Operating Expenses.** Within thirty (30) days of Landlord’s written request, Tenant shall provide such documentation and or invoices evidencing the Operating Expenses as Landlord may require.

**5.3 Flow of Funds.** Except as otherwise provided in Section 9.05 of the Indenture, on the third Business Day preceding the first day of each month, (commencing on [\_\_\_\_\_ 1, 2019]), the Trustee shall make the deposits, transfers or payments indicated below from amounts then on deposit in the Revenue Fund (provided that, in the event the Trustee has received moneys attributable to more than one Operating Year, the Trustee shall make the transfer in the Operating Year to which such moneys are attributable, as directed by the Manager), in the priority listed below (including curing any existing deficiency in deposits, transfers or payments required in prior months), the requirements of each Fund, deposit, transfer or payment of each priority to be fully satisfied, leaving no deficiencies, prior to any deposit, transfer or payment later in priority, unless as otherwise expressly provided below:

*First*, to the O&M Fund, the amount specified in the Annual Budget for the following month’s Operating Expenses, together with such additional amounts for other necessary expenditures not included in the Annual Budget requested in writing by the Manager, not to exceed ten percent (10%) of amount set forth in the Annual Budget, which amount will be set forth in a certificate of the Manager delivered to the Trustee.

*Second*, unless provision for such payments from the Project Fund or otherwise has been made as contemplated by Section 5.03 of the Indenture or otherwise, to the Debt Service Account of the Debt Service Fund:

(A) one-sixth of any interest to become due and payable within the next six months on each Series of Outstanding Bonds, net of any amounts in the Capitalized

Interest Subaccount to be used for payment of that interest, plus an amount equal to any shortfall from prior periods to the extent not made up from another source; plus

(B) one-twelfth of the principal to become due and payable within the next twelve months, on each Series of Outstanding Bonds, plus an amount equal to any shortfall from prior periods to the extent not made up from another source;

*Third*, to the Rebate Fund, the amount required to be deposited in the Rebate Fund pursuant to the Tax Certificate delivered in connection with the issuance of each Series of Outstanding Bonds and as directed in writing by PFA;

*Fourth*, to the Debt Service Reserve Fund, 1/36<sup>th</sup> of the amount required to bring the balance in the Debt Service Reserve Fund to equal the Reserve Fund Requirement, in accordance with the provisions of Section 5.07 of the Indenture;

*Fifth*, to the Repair and Replacement Fund, an amount required to bring the balance in the Repair and Replacement Fund to be equal to the Repair and Replacement Fund Requirement;

*Sixth*, to the Subordinated Fee Fund, the Subordinated Asset Management and Operator Fees due in the month of transfer from the Revenue Fund;

*Seventh*, to the Ground Lease Payment Fund, 1/12th of the Base Rent due in that Fiscal Year commencing on such date as shall be directed by the Manager;

*Eighth*, to the Extraordinary Expense Fund an amount required to bring the balance in the Extraordinary Expense Fund to be equal to the Extraordinary Expense Fund Requirement;

*Ninth*, to the Operating Reserve Fund an amount required to bring the balance in the Operating Reserve Fund to be equal to the Operating Reserve Requirement; and

*Tenth*, to the Surplus Fund, the balance, if any, of moneys remaining in the Revenue Fund, and including distribution of such funds to the Landlord as provided in Section 5.11 of the Indenture.

Terms used in this Section 5.3 but not defined in the Lease shall have the meaning set forth in the Indenture entered into by PFA as part of the Permitted Financing.

**5.4 Subordinated Fees Payment Shortfall.** If the Subordinated Asset Management Fee or the Subordinated Facility Operator Fee are not paid in full during any year of the Lease, the payment shortfall shall be deferred and paid with the Subordinated Asset Management Fee and the Subordinated Facility Operator Fee, as applicable, in the following year of the Lease to the extent that there are sufficient funds. The payment shortfall shall accrue interest at the rate of six percent (6%) simple interest. If the payment shortfall continues for a period of five (5) years, then the payment of Base Rent shall be subordinated to the

payment of the Subordinated Asset Management Fee and the Subordinated Facility Operator Fee until such time as the payment shortfall is paid in full.

**5.5 Accounting.** Within thirty (30) days of Landlord's written request, Tenant shall provide to Landlord an accounting of the application of Gross Operating Revenues, in such form and content as Landlord may reasonably require.

## **ARTICLE 6 ALTERATIONS OF THE IMPROVEMENTS**

**6.1 Alterations.** Except as provided in Section 6.2, after Substantial Completion of the Improvements, Tenant or PFA 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.

**6.2 Alterations of Completed Improvements.**

(a) **Minor Alterations.** Tenant or PFA 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 or PFA's discretion.

(b) **Major Alterations.** After a Certificate of Occupancy has been issued for the Premises, the Tenant or PFA 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 as customary in the reasonable application of industry standards, in compliance with Applicable Law, and shall be completed with due diligence. If Tenant or PFA 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 or PFA 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 or PFA 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 NSC's Tax Exemption.** During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Land. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Land 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 or PFA's leasehold interest in the Land, the Premises, the Improvements, and other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation provided, however, that the Parties understand and agree that an exemption from real and/or tangible personal property ad valorem taxation is or may become unavailable and PFA makes no representation or warranty regarding the potential exception or exemption and no Party is relying upon PFA to undertake or refuse to undertake any action in any manner in relation to any real or potential exception or exemption.

**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. Landlord shall cooperate with Tenant's reasonable requests in any such Tax dispute or context. PFA shall have the same rights pursuant to the PFA Sublease provided, however, that Tenant shall not dispute or contest any Tax without PFA's prior written consent, which may be withheld in PFA's sole and absolute discretion.

**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.

**7.4 Utilities.** Tenant or PFA 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 or Commercial Sub-tenants 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 Sub-subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

**ARTICLE 8  
ADVERTISING AND MARKETING; OPERATOR**

Tenant shall be responsible and shall have sole authority for marketing and leasing of the Premises. To the extent that Tenant has entered into the PFA Sublease, PFA, its agents or assigns, shall assume Tenant's responsibilities pursuant to this Article 8. 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 the Premises, and Landlord agrees that Tenant shall be the advertiser permitted by NSC for student housing. Tenant may, throughout the Lease Term, market the Premises to NSC Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Project as On-Campus Housing.

(a) Tenant may, from time to time, present to NSC advertising and marketing content for NSC web sites and other media used by NSC or its licensees to advertise On-Campus Housing and/or written content and images intended for email distribution. NSC agrees to place such content on its web site and to distribute by email or comparable means as applicable to all NSC Students, subject to reasonable restrictions on such content.

(b) NSC will allow Tenant, from time to time, to place advertising and marketing content in NSC's written materials and mailings, signage, and similar media, subject to reasonable restrictions on such content.

(c) NSC shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised.

(d) The Parties agree that the Premises shall be marketed as campus student housing.

(e) Information regarding the Project will be included in NSC's catalogues and informational brochures distributed to NSC Students, at the time of their next printing and printing for any subsequent Lease Year, and on NSC's web sites and other media outlets advertising and marketing housing.

(f) Nothing in this Lease shall prohibit Tenant from conducting normal and ordinary marketing activities typically conducted by Off-Campus Housing operators.

(g) Tenant and NSC will coordinate their efforts and cooperate with each other to market and make the Project 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.

(h) 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 the Project, subject to reasonable rules and regulations promulgated by NSC.

(i) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Project.

**8.2 Asset Manager and Facility Operator.** Prior to the commencement of operations, Subtenant and Tenant shall enter into the Asset Management Agreement, and Tenant, as Asset Manager, shall enter into the Facility Operating Agreement with Facility Operator. The Facility Operating Agreement, any amendment thereto, or any replacement thereof is and will be subject to the approval of NSC, which approval may not be unreasonably withheld, conditioned, or delayed. Initially, Landlord acknowledges that (i) Tenant will be the Asset Manager, and NSC consents to the engagement of Tenant as Asset Manager, and (ii) American Campus Communities will be the initial Facility Operator, and NSC consents to the engagement of American Campus Communities as Facility Operator.

## ARTICLE 9

### RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS

**9.1 Housing Development Restriction.** Except for additional phases of student housing to be developed by Developer with Landlord, Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until seven (7) years following the issuance of a Certificate of Occupancy within the Project ("**Occupancy Date**"). The foregoing covenant is referred to herein as the "**Housing Restriction**". The Parties agree that, subject to Regent approval, future phases of student housing for Landlord will be developed only if Landlord provides a study, reasonably acceptable to Developer, showing sufficient demand to justify additional phase(s) of student housing (the "**Additional Phases**"). Promptly upon receipt of such study, Developer and Landlord shall negotiate, in good faith, the development terms for the Additional Phases, which shall be substantially the same terms for the development of this Project. If after such negotiations, the Developer chooses to not participate in the development of the Additional Phases, Landlord may enter into agreements with other developers for the Additional Phases.

**9.2** Intentionally Omitted.

**9.3 "Restricted Housing" Defined.**

(a) As used herein, “**Restricted Housing**” means any Dwelling designed, intended or used for NSC Students, or students of other NSHE institutions.

(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.

9.4 Intentionally Omitted.

9.5 Intentionally Omitted.

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 NSC. PFA shall also have the right to record a memorandum of the Housing Restriction.

9.7 **State Campus Village Information.** Landlord acknowledges that Tenant is making a significant investment to develop the Project based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to NSC Students and prospective NSC Students who have applied for admission to NSC, 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 NSC.** Except as explicitly provided in this Lease, NSC shall not implement any policy or take any action which restricts or discourages NSC Students from residing at the Project in any material way.

9.9 **Permitted Residents.** Tenant and PFA shall have the right to market and sub-lease the Residential Premises only to NSC Students and the following additional persons (“**Permitted Residents**”):

(a) Transfer students or former NSC Students applying for admission or re-admission to NSC;

(b) NSC faculty and staff;

(c) Participants in summer camps, seminars, and conferences operated by NSC or others at the Campus;

(d) Participants in summer camps, seminars, and conferences independently contracted by Tenant;

(e) Students enrolled in other educational institutions including, but not limited to, University of Nevada Las Vegas, College of Southern Nevada, community colleges, and other public colleges and universities;

(f) To the extent that the Project contains units dedicated to married student housing, the spouse and children of Permitted Residents identified in subparts (a), (b), and (e) above for such portions of the Project.

(g) 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 Sub-subleases covered by this Section 9.9(g) 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; and

(h) to any other individual without regard to the restrictions set forth in Section 9.9(g); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(h) 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 and PFA's right to enter into Sub-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 Landlord may provide police protection under agreements with other NSHE institutions or the City of Henderson (the "Police"). During such periods as the Landlord has agreements for Police services, Landlord shall cause the 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. Landlord agrees to provide Tenant and PFA with a copy of all agreements relating to Police within three (3) days of the effective date of such agreement(s) and to notify Tenant and PFA of any amendment, modification, termination or non-renewal of such agreement(s) within three (3) days of the effective date of such event.

**10.2 Supplemental Services.** If requested by Tenant, Landlord will cause the Police to 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. If Tenant requests such Supplemental Services, the Tenant understands that the 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 Police and or the City of Henderson 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 Police.

## **ARTICLE 11 PROHIBITED USES**

**11.1 Prohibited Uses.** Notwithstanding any other provision of this Lease to the contrary, no portion of the Project 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  
SUB-SUBLEASES**

**12.1 Sub-subleases.** PFA, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Residential Sub-sublease for all or any part of the Premises, and to enter any Commercial Sub-sublease for all or any part of the Premises with the Landlord's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed. PFA shall have the right to modify or terminate any Commercial Sub-sublease without the Landlord's prior written consent. Each Sub-sublease shall require the Sub-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 PFA Sublease.

**12.2 Approval of Sub-sublease Form.** In its capacity as an institution of higher education, NSC 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 Premises as a result of NSC being the fee owner of the Land. The present Institutional Restrictions, also known as the NSHE Board of Regents Policies Related to Student Housing, is attached as **Exhibit G**, which may be amended from time to time. The Institutional Restrictions shall be incorporated into the Sub-subleases between PFA and a NSC Student. PFA shall incorporate such provisions in its form of Sub-sublease agreement unless PFA reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the 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 and PFA, as well as the right to review Subleases and Sub-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 Sub-subtenants.** In the event that any Institutional Restrictions require that a Sub-subtenant who is a NSC Student be evicted from or relocated within the Premises, NSC shall notify Tenant and PFA of such fact by written notice ("***Sub-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 not limited to the Family Educational Rights and Privacy Act ("***FERPA***")). The Sub-subtenant Action Notice will be signed by the Dean of Students, General Counsel or their designees, and shall state that NSC has afforded the Sub-subtenant any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Sub-subtenant Action Notice. Tenant and PFA shall use commercially reasonable efforts to cause the Sub-subtenant described in the Sub-subtenant Action Notice to be evicted or relocated, as directed in the Sub-subtenant Action Notice; provided, so long as the applicable Sub-sublease contains the provisions required hereunder, Landlord shall reimburse Tenant and PFA for any costs incurred and hold Tenant and PFA harmless against any claim by the Sub-subtenant that the eviction was wrongful or that the circumstances alleged in the Sub-subtenant

Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant and PFA shall have no obligation to verify the facts alleged by NSC in the Sub-subtenant Action Notice and are entitled to rely on the facts and allegations contained in the Sub-subtenant Action Notice. NSC 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 NSC shall fail to do so on a timely basis. Tenant and PFA shall reimburse Landlord for any costs incurred and hold Landlord harmless against any claim arising out of the Tenant or PFA's failure to evict a Sub-subtenant pursuant to a Sub-subtenant Action Notice.

**12.4** Intentionally Omitted.

**12.5** **PFA's Rights to Enforce Sub-subleases, Control the Premises, and Determine Rental Rates.** Except with respect to actions required in response to a Sub-subtenant Action Notice, Landlord shall not interfere with PFA's decisions with respect to the enforcement of Sub-subleases, actions taken to prevent damage to the Premises and to maintain the safety and security of the Premises and the persons and property located thereon. The Landlord shall have the right to require that the Facility Operator reduce the established rental rates for the Project if the Debt Service Coverage Ratio of the Permitted Financing as reflected in the Annual Budget is greater than 1.50 times debt service, as set forth in Section 3(b)(iii)(6) of the Facility Operating Agreement and as provided in the Indenture, provided that the funds in the Indenture are fully funded. The reduction in rental rates shall not reduce the Debt Service Coverage Ratio to less than 1.50 times debt service.

**12.6** **Nondiscrimination.** Landlord, Tenant, and PFA shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant and PFA shall not unlawfully discriminate in the conduct and operation of its business at the Project 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 or PFA, Landlord shall execute and deliver to PFA 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**

The Tenant will provide parking at the Premises in compliance with applicable codes.

### **ARTICLE 14 MAINTENANCE, OPERATION, AND MANAGEMENT**

**14.1** **Maintenance.** Tenant shall, solely from Gross Operating Revenues, 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, 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 Project Reserves.** Unless a repair and replacement fund is established in a Financing Agreement to which Tenant or PFA is a party, with respect to the Improvements:

(a) Tenant shall:

(i) During the fifth (5<sup>th</sup>) 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 fifth (5th) 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 satisfy 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.
- (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 satisfy Tenant’s obligation herein shall be paid over to Landlord.
- (f) Subject to the requirement imposed by a Permitted Financing, if any, 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 NSC 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 (i) are approved by Landlord, which approval may not be unreasonably withheld, conditioned, or delayed, and (ii) conform with Landlord's regulations on use of NSC'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.** Tenant, as Asset Manager, shall, with funds generated solely from Gross Operating Revenues or funded through the Permitted Financing, operate and staff the Premises, or cause the Premises to be operated and staffed, in a professional manner consistent with the operation of a first-class college housing facility, comparable to those at NSC's peer institutions. 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.** Landlord acknowledges that Tenant, as Developer, shall be entitled to a fee for services rendered under the Asset Management Agreement. The asset management fee shall be eight percent (8%) of Gross Operating Revenues (the "**Asset Management Fee**"), with one-half of the Asset Management Fee referred to as the "Subordinated Asset Management Fee", payment of which is subordinated as shown in Section 5.3(f). The Asset Management Fee shall commence on the first day of occupancy of the Premises by a PFA and shall be paid monthly.

**14.7 NSC Food Services.** Tenant will cooperate with and assist Landlord in its study to determine whether to expand food service operations at NSC for the benefit of the Residents, including the possibility of offering food services at the Premises.

#### **ARTICLE 15 CONDITION OF LAND**

Tenant acknowledges that it is fully familiar with the Land and its physical condition 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 Land in its existing condition and agrees that Landlord shall in no event be liable for any latent or patent defects in the Land.

#### **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, including, without limitation, the construction of the Improvements. Except in the case of bona fide or apparent emergency or as provided under a Sub-sublease, 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, PFA, or any Sub-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 REPRESENTATIONS, COVENANTS AND WARRANTIES**

**17.1 Representations.** Landlord and Tenant each represent and warrant 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 Land.

**17.2 Tenant's Environmental Covenants.**

(a) Tenant and PFA shall not engage in and shall use reasonable efforts to prevent any Sub-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 and PFA shall at all times comply with Environmental Laws with respect to substances first coming onto the Land following the

Effective Date and during the Lease Term. Tenant and PFA 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 and PFA 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 Land 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 Land 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 legal and valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Land is 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) Except as disclosed in the Permitted Exceptions, 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 adversely affect the Land.



(f) Except for that certain Contract for Services of Independent Contractor dated as of June 26, 2017, by and between the Landlord and Capriati Construction Corporation for grading services on a portion of the Site which includes the Land, Landlord has no knowledge of any condition of or with respect to the Land that would adversely affect the use and enjoyment of the Land 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) Vice President of Finance and Business Operations, or (ii) General Counsel; 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 legal and 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 the Land, subject to the Leasehold Estate and interests of Tenant pursuant to this Lease, the PFA Sublease, and to such Sub-subleases as are authorized hereby. Upon the termination of this Lease, or the end of the Lease Term, whatever date comes first, title to the Improvements shall vest solely in Landlord, including all fund balances, except for the extraordinary expense fund balance, related to the Permitted Financing, and Landlord shall succeed, without any further action by Landlord, to all of the Tenant's rights and remedies as the owner of the Improvements, including, without limitation, rights and remedies with respect to construction defect claims and/or construction contracts related to the Improvements, all such rights and remedies being hereby unconditionally assigned to Landlord, with such assignment to be effective upon the said termination of this Lease and/or the end of the Lease Term, as the case may be.

**ARTICLE 20  
MECHANICS' LIENS**

The recording of a mechanic's lien against title to any part of the Land, the Leasehold Estate of Tenant, any Subleasehold Estate, or the Improvements shall be a Tenant Event of Default hereunder if not timely cured as allowed hereunder. Tenant shall use commercially reasonable efforts to avoid the recording of any and all mechanics' liens against the Land or the Leasehold Estate of Tenant or Subleasehold Estate and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work, in a form and substance reasonably acceptable to Landlord and in compliance with the requirements of NRS 108.2457.

Tenant, PFA, or its construction contractor shall obtain a surety bond in the amount of 150% of the amount of the construction contract. Tenant shall record the surety bond with the Clark County Recorder's Office before the date on which it Commences Construction, and shall comply with the notice and other requirements set forth in NRS 108.2415 and NRS 108.2403.

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 the filing of any action to enforce such lien, or any other execution or enforcement of such lien. In the event that Tenant permits such liens to be recorded, 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 by posting a bond or other surety satisfactory to Landlord in the full amount thereof, 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, Permitted Financing, or in any Leasehold Mortgage, in the event of damage to or destruction of Premises or the 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, in its reasonable discretion, 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 employer's 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 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 at 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 Premises 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 Improvements 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 Improvements, 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 Improvements, 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 Project's design professionals 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 Improvements, including materials and equipment in transit, on the Land 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 copies of the insurance policies required by this Article 22, certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with the requirements of this Article 22, 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 Operating Expenses.

**22.10 Payment of Insurance Proceeds.** 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 Operating Expenses.

**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.

**22.12 Leasehold Mortgage.** So long as the indebtedness, or any part of the indebtedness, secured by the Leasehold Mortgage remains outstanding and unpaid, and the Leasehold Mortgage remains of record, Landlord and Tenant agree that: (a) the Lease shall not terminate or be canceled at any time upon the damage or destruction by fire or other casualty of all, substantially all, or any part of the Premises; (b) the insurance policies required to be maintained pursuant to the Lease shall name Leasehold Mortgagee as an additional named insured and loss payee/ mortgagee, as its interests may appear; (c) the form of such policies and amounts thereof shall at all times be in accordance with the terms of the Leasehold Mortgage, and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option (which shall be exercised, with respect to a Leasehold Mortgagee who is also the Trustee, upon receipt of written direction of the majority in aggregate principal amount of the Bonds and upon receipt of satisfactory indemnity) to participate in any adjustment, settlement or compromise with respect to any insurance claim; and (d) all proceeds of such insurance policies shall be payable to Leasehold Mortgagee as loss payee (Landlord and Tenant subordinating any right to receive such proceeds to Leasehold Mortgagee), to be applied by Leasehold Mortgagee in accordance with the terms of the Leasehold Mortgage (or other applicable bond documents).

## **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 prior written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgage, and which written approval shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds), 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.** Notwithstanding anything to the contrary contained herein, in the event of any taking or condemnation (either temporary or permanent), 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 and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option (which shall be exercised upon receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds and upon receipt of satisfactory indemnity) to participate in any compromise, settlement or adjustment with respect to the Premises.

**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 was prior to such taking, in the light of any reduced area thereof

**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, PFA and every successor and assignee of Tenant or PFA, as applicable, shall, in connection with the development and operation of the Premises 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 NSC for the purpose of obtaining any type of advantage with respect to financing the Premises. Tenant shall not be entitled to enter into any Permitted Financing without the prior written approval of the PFA to be held withheld or given in PFA's sole and absolute discretion.



## **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, which approval shall not be unreasonably withheld, conditioned or delayed. 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 twelve (12) 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.

## **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 PFA, 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 PFA and such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to PFA and the Leasehold Mortgagee, PFA and such Leasehold Mortgagee shall have an additional ninety (90) day period or such longer period of time as PFA or the Leasehold Mortgagee reasonably requires to remedy or cause to be remedied any non-monetary default (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 PFA and 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 PFA or Leasehold Mortgagee until PFA or Leasehold Mortgagee can gain possession of the Premises, PFA and Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as PFA or 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 or PFA is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of PFA or such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes PFA and Leasehold Mortgagee to take any such action at PFA and 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 PFA and the Leasehold Mortgagee for such purpose.

(d) Neither PFA nor Leasehold Mortgagee shall have any obligation to remedy or cure any Tenant default.

The Parties hereto acknowledge and agree that the Leasehold Mortgagee shall not be required to take any action under this Section 24.3 except upon the written direction of the holders of a majority in aggregate principal of the Bonds issued under the Indenture and upon receipt of satisfactory indemnity. It is understood and agreed that the Leasehold Mortgagee is entitled to retain (at the expense of the holders of the Bonds) and act through agents, receivers, attorneys, managers (including property managers), accountants and other experts in taking such actions.

**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 (i) the period of time given Tenant to cure such default as set forth in Article 31, and (ii) the additional period of time given to a Leasehold Mortgagee or PFA to cure such default under Section 24.3, or elsewhere in this Lease, if any, Landlord shall notify ("**Default Termination Notice**") PFA and 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 PFA or the Leasehold Mortgagee shall undertake on of the following actions (which actions shall be undertaken upon the written direction of the majority in aggregate principal amount of the Bonds and upon receipt of satisfactory indemnity):

(a) Notify Landlord of PFA or such Leasehold Mortgagee's desire to cure 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 and that may thereafter become due during the cure period allowed to PFA and 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 PFA or 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 PFA or Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed PFA or 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 PFA or the Leasehold Mortgagee to cure such nonmonetary requirement which is susceptible of cure by PFA or such Leasehold Mortgagee, including, in the event that PFA or 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 PFA or the Leasehold Mortgagee is stayed or enjoined).

It is understood and agreed that the Leasehold Mortgagee is entitled to retain (at the expense of the holders of the Bonds) and act through agents, receivers, attorneys, managers (including property managers), accountants and other experts in taking such actions.

#### **24.5 Procedure on Default.**

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and PFA or 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, PFA or 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 PFA or 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 PFA or Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by PFA or 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 PFA or Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and PFA or 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) In no event shall any act or omission of PFA or Leasehold Mortgagee (including, without limitation, the acquisition of Tenant's interest in the Lease and the leasehold estate created thereby in a transaction described in this Section or the taking of possession of the Premises thereon through a receiver or other means) require PFA or Leasehold Mortgagee to assume, or cause Leasehold Mortgagee to be deemed to have assumed, any obligation or liability of Tenant under this Lease, and neither PFA nor Leasehold Mortgagee shall have any personal liability to Landlord for Tenant's failure to so perform and observe any agreement, covenant or condition of Tenant under this Lease, it being expressly understood and agreed that, in the event of any such failure, Landlord's sole and exclusive remedy shall be to terminate this Lease, without any recourse or claim for damages against PFA or Leasehold Mortgagee. Notwithstanding the foregoing, upon the acquisition of Tenant's Leasehold Estate herein by PFA or 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 PFA or 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 PFA and 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, upon PFA or Leasehold Mortgagee's written election (which election, as to Leasehold Mortgagee, shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds and receipt of indemnity satisfactory to it), enter into a new lease ("**New Lease**") of the Land with PFA or 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 Land is subject to on the date of the execution of the original Lease and such matters arising thereafter to which PFA or 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 Land, provided:

(a) PFA or Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) calendar days after the PFA or date such Leasehold Mortgagee receives Landlord's notice of termination given pursuant to this Section 24.6;

(b) PFA or 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 funds received 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) PFA or Leasehold Mortgagee or its designee shall agree to remedy any of Tenant's defaults of which PFA or the Leasehold Mortgagee was notified by Landlord's Notice of Termination and that are reasonably susceptible of being cured by PFA or Leasehold Mortgagee or its designee; and

(d) Upon the execution and delivery of a New Lease, the PFA Sublease, all Sub-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 (which shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds) or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Leasehold Estate of Tenant created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title of the 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 PFA, Leasehold Mortgagee (which consent shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds), 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 PFA or Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and PFA or 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.

**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 (which shall be provided only upon the Leasehold Mortgagee's receipt of the written direction of the holders of a majority in aggregate principal amount of the Bonds and receipt of indemnity satisfactory to it) 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, at the sole option of the Leasehold Mortgagee, 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 (which shall be provided only upon the Leasehold Mortgagee's receipt of the written direction of the holders of a majority in aggregate principal amount of the Bonds and receipt of indemnity satisfactory to it) 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 and PFA's Liability.** The liability of PFA or 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 respective interest in the Leasehold Estate, and any judgments rendered against PFA or 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 Leasehold Estate. No personal judgment shall lie against PFA or any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Leasehold Estate, and any judgment so rendered shall not give rise to any right of execution or levy against PFA or 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 PFA or 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 and PFA's grant of security interests in the Personal Property of Tenant and PFA, other than Fixtures, to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant or PFA 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, equipment, Fixtures, and income from operations of Tenant and PFA 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 Leasehold Estate 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 Leasehold Estate. The Secured Property shall be deemed to be Personal Property and not a part of the Leasehold Estate 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 Leasehold Estate, 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 Leasehold Estate shall be restored to the condition the Leasehold Estate 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 Leasehold Estate shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized (which option shall be exercised upon the written direction of the holders of a majority in aggregate principal amounts of the Bonds and upon receipt of satisfactory indemnity) 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 PFA and each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease; provided that the Leasehold Mortgagee shall not be required to review such copies, but shall retain them as a repository for the holders of the Bonds. PFA and each Leasehold Mortgagee shall have the right, but not the obligation, 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 PFA or any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give PFA and the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on PFA and 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 liens or claims of lien against Tenant, PFA, the Personal Property of Tenant, PFA and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and PFA now or hereafter located on the Leasehold Estate, to the extent the same does not constitute a Fixture, 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 Mortgage Protective Provisions.** In the event that Tenant or PFA 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.

**24.19 No Modification Without Leasehold Mortgagee's Consent.** Neither Landlord nor Tenant will amend, modify, cancel or surrender the Lease without Leasehold Mortgagee's prior written consent (which shall be provided upon satisfaction of the applicable conditions set forth in Article XI of the Indenture), and any such action taken without Leasehold Mortgagee's consent shall not be binding on Tenant or Leasehold Mortgagee or their respective successors and assigns (and this Lease shall be interpreted as if such action was not taken).

**24.20 Right to Perform; Leasehold Mortgagee Consent.** The right of PFA to enforce its rights and to perform under this Article 24 shall be subject to Leasehold Mortgagee consent (which shall be provided only upon the Leasehold Mortgagee's receipt of the written direction of the holders of a majority in aggregate principal amount of the Bonds). Landlord shall not accept any such payment or performance by PFA under this Article 24, in connection with a Tenant default of which Leasehold Mortgagee and PFA have received notice under Section 24.3 herein, without receipt from Leasehold Mortgagee of a notice in writing consenting (which shall be provided only upon the Leasehold Mortgagee's receipt of the written direction of the holders of a majority in aggregate principal amount of the Bonds) to such payment and performance by PFA and any such performance or action taken by PFA under Article 24 without Leasehold Mortgagee's consent shall be null and void (and this Lease shall be interpreted as if such action was not taken). In acting hereunder, the Leasehold Mortgagee shall be afforded the same rights, protections, immunities and indemnities hereunder as accorded to it as Trustee under the Bond Documents.

## **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 Leasehold Estate 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 Leasehold Estate and as otherwise necessary to protect Tenant's interest in the Leasehold Estate hereunder from any title exceptions adversely affecting Tenant's proposed use of the Leasehold Estate, 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, pledge 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 Leasehold Estate or the Transfer of a Subleasehold Estate to a trustee in conjunction with a Permitted Financing. 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 Leasehold Estate, the Premises, the Land, the Improvements, and/or State Campus Village, or any part thereof, without the prior written consent of Tenant and PFA 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 Premises. Landlord shall provide written notice to Leasehold Mortgage of the proposed Transfer at the same time Landlord provides notice to Tenant and PFA.

**ARTICLE 27  
ESTOPPEL CERTIFICATE**

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, PFA, any Sub-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, PFA, Sub-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***”). Notwithstanding any provision of this Article 28 to the contrary, Dispute Resolution shall not apply to a Tenant Event of Default arising from the recording of Lien.

**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; provided, however, that the following enumerated matters shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles: (i) the Authority's organization, existence, statutory and corporate powers, and legal and contractual capacity; (ii) the Authority's right to the payment of its fees, costs and expenses, including, but not limited to, attorneys' fees, costs of investigation and the expenses of other professionals retained by the Authority and the reasonableness of such fees, costs, and expenses; (iii) the Authority's and the Authority Indemnified Persons' rights to indemnification from Company (and Company's corresponding obligation to provide such indemnification); (iv) Company's release of the Authority and the Authority Indemnified Persons from liability; (v) exculpation of the Authority and the Authority Indemnified Persons from pecuniary liability and any limitations thereon; and (vi) the Authority's governmental rights, privileges and immunities, and any action concerning such issues must be brought in the State of Wisconsin.

#### **ARTICLE 29 INTEREST ON PAST DUE OBLIGATION**

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 earlier of the expiration of the Lease Term or earlier termination of this Lease arising from a Tenant Event of Default, 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 thirty (30) calendar days following Tenant's and PFA'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 sixty (60) calendar days after Tenant and PFA shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within sixty (60) 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, provided, however, that Tenant in all cases in which Tenant cannot so cure the default or other failure to perform in question within the said sixty (60) day period, Tenant shall effectuate such cure within ninety (90) calendar days after Landlord's written notice of such default; 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 recorded against the Land or Leasehold Estate 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 within thirty (30) days after receipt of notice of the recording of the Lien; 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) 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 Land and Leasehold Estate (subject to the rights of PFA, Sub-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, PFA, Sub-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, non-appealable 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 Land, 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 Land, 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, non-appealable 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: Vice President for Finance and Business Operations  
Nevada State College  
1300 Nevada State Drive  
Henderson, NV 89002  
Attn: Kevin Butler  
Phone: (707) 992-2312  
Fax: (702) 992-2351  
Email: kevin.butler@nsc.edu

WITH A COPY TO: NEVADA SYSTEM OF HIGHER EDUCATION  
c/o Vice Chancellor for Legal Affairs  
4300 S. Maryland Parkway  
Las Vegas, NV 89119  
Attn: \_\_\_\_\_  
Phone: (702) 889-8426  
Fax: (702) 889-8495  
Email: \_\_\_\_\_

TO TENANT: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [ttraub@garfieldtraub.com](mailto:ttraub@garfieldtraub.com)

WITH A COPY TO: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 239-4479  
Fax: (702) 227-7191  
Email: [cam@camwalker.com](mailto:cam@camwalker.com)

AND A COPY TO: Ballard Rawson Jorgensen  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Attention: Kris T. Ballard, Esq.  
Phone: (702) 425-3555  
Fax: (702) 722-5525  
Email: ktb@ballardrawson.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.

A copy of all notices given by any party under this Lease shall be simultaneously provided to PFA, as follows:

Public Finance Authority  
Suite 900  
22 East Mifflin Street  
Madison, Wisconsin 53703  
Attention: Scott Carper and Michael LaPierre  
Email: scarper@pfauthority.org and mlapierre@pfauthority.org  
Facsimile: (608) 237-2368

**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 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.

**32.11 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 “Nevada State College”, 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 NSC, 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 “Nevada State College” or their acronyms in factual descriptions of the Premises and, to the extent that Tenant delivers materials to NSC for publication or dissemination that include the names or Marks and NSC does so publish or disseminate the materials, it shall be deemed approval of such use.

**32.12 Nonliability of Landlord and Tenant Officials and Employees.** Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Land, and Tenant shall look solely to Landlord’s interest in the Land 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 Leasehold Estate, and Landlord shall look solely to Tenant’s interest in the Leasehold Estate 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.

**32.13 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 Leasehold Estate, (which shall include 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, or consented to, by Landlord, including the PFA Sublease and all Sub-subleases. 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, the PFA Sublease, all Sub-subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant's interest in it, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

**32.14 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.

**32.15 Reserve Accounts.** Upon the expiration or termination of the Lease Term, all reserve accounts shall automatically and fully vest in Tenant or PFA.

**32.16 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 Project are superseded by this Lease; provided, however, that the Project Development Agreement and 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 Project Development Agreement and the Memorandum of Understanding on the one hand and this Lease on the other hand, this Lease shall control. All prior negotiations relative to the Premises and/or State Campus Village 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.

**32.17 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, PFA, 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.

**32.18 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 supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof, whether written or oral. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to State Campus Village 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. Subject to Section 24.19 herein, 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.

**32.19 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.

**32.20 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 LAND
- C PERMITTED EXCEPTIONS
- D FORM OF MEMORANDUM OF LEASE
- E PROJECT SCHEDULE
- F RENT SCHEDULE

G INSTITUTIONAL RESTRICTIONS

*[SIGNATURE PAGE FOLLOWS]*



**IN WITNESS WHEREOF**, the Parties hereto have executed this **GROUND LEASE AGREEMENT** as of the date first written above.

**LANDLORD:**

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

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

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

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

Date: \_\_\_\_\_

**TENANT:**

**AMERICAN PUBLIC DEVELOPMENT, LLC**

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

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

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

Date: \_\_\_\_\_

**EXHIBIT A**  
--  
**LEGAL DESCRIPTION OF LAND**

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 488.92 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 47.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 877.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 877.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.53 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

**EXHIBIT B**  
--  
**GRAPHIC DEPICTION OF LAND**

**EXHIBIT C**  
--  
**PERMITTED EXCEPTIONS**

**EXHIBIT D**

--

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

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

Space above this line for Recorder's Office only

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** ("Memorandum of Lease") is made and entered into as of \_\_\_\_\_, 2019, by and between **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of Nevada State College, a constitutional entity of the State of Nevada ("Landlord" or "NSC") and **AMERICAN PUBLIC DEVELOPMENT, LLC**, a Nevada limited liability company ("Tenant").

1. Landlord is the owner of that certain real property located in the City of Henderson, Nevada and more particularly described on Exhibit A attached hereto (the "Land").
2. Landlord and Tenant have entered into a Ground Lease Agreement dated the Effective Date (as amended, modified, renewed, or extended from time to time, the "Lease").
3. For good and valuable consideration, Landlord has leased and hereby leases to Tenant a portion of the Land, consisting of approximately 7.53 acres, for the initial phase of student housing at Nevada State College, all as the Lease provides, as set forth in Exhibit B attached hereto ("Tenant's Premises").
4. The "Lease Commencement Date" of the Lease is [\_\_\_\_\_, 2019].
5. The Term of the Lease begins on the Lease Commencement Date and expires on the earlier of (i) the fortieth (40th) anniversary of the Rent Commencement Date (defined in the Lease as December 1 of the year that is one year after commencement of Full Operations (as defined in the Lease) of the housing project), or (ii) the satisfaction of all obligations of payment and performance which are imposed under or with respect to its Permitted Financing

(as defined in the Lease) including, without limitation, payment of all Public Finance Authority expenses associated therewith, unless terminated sooner under the Lease.

6. This Memorandum of Lease has been prepared to provide notice that the Tenant's Premises are subject to the terms and conditions of the Lease, which terms are hereby incorporated by reference into this Memorandum of Lease.

7. This Memorandum of Lease does not modify, increase, decrease, or in any other way affect the rights, duties, and obligations of Landlord and Tenant under the Lease. Landlord and Tenant each has rights, duties, and obligations (and conditions to its rights) under the Lease but not stated in this Memorandum of Lease. If the Lease and this Memorandum of Lease conflict, the Lease governs. Nothing in this Memorandum of Lease constitutes any representation or warranty by either party. To the extent, if any, that the Lease limits the liability of either Landlord or Tenant, such limitation shall apply with the same force and effect to any liability of Landlord or Tenant under this Memorandum of Lease.

8. The Lease and this Memorandum of Lease shall bind and benefit the parties and their successors and assigns. This shall not limit any restrictions on assignment or other transfer in the Lease.

9. This Memorandum of Lease shall automatically terminate and be of no force or effect upon any termination of the Lease, including any termination by Landlord upon an Event of Default as described in the Lease.

10. Each party shall execute, acknowledge (where necessary), and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the intent of the parties as expressed in the Lease and this Memorandum of Lease. If the Lease terminates, then Tenant shall execute, acknowledge (where necessary), and deliver such documents as Landlord shall reasonably require or as any title insurance, abstract company, or institutional lender shall require to remove this Memorandum of Lease of record.

11. This Memorandum of Lease 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.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, Landlord and Tenant have caused their duly authorized representatives to execute this Memorandum of Lease as of the date first written above.

**LANDLORD:**

**TENANT:**

BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION

AMERICAN PUBLIC DEVELOPMENT,  
LLC, a Nevada limited liability company

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

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

State of Nevada

County of Clark

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of the Board of Regents of the Nevada System of Higher Education.

\_\_\_\_\_  
Notary Public

State of Nevada

County of Clark

This instrument was acknowledged before me on \_\_\_\_\_, 2019, by \_\_\_\_\_, as \_\_\_\_\_ of American Public Development, LLC, a Nevada limited liability company.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**TO MEMORANDUM OF LEASE**  
--  
**LEGAL DESCRIPTION OF THE LAND**



**EXHIBIT B  
TO MEMORANDUM OF LEASE**

--  
**LEGAL DESCRIPTION OF THE TENANT'S PREMISES**

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 488.92 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 47.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 877.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 877.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.53 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

**EXHIBIT E**  
**PROJECT SCHEDULE**

**EXHIBIT F**  
**RENT SCHEDULE**

<u>Lease Year</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1	50,000	4,167
2	51,500	4,292
3	53,045	4,420
4	54,636	4,553
5	56,275	4,690
6	57,964	4,830
7	59,703	4,975
8	61,494	5,124
9	63,339	5,278
10	65,239	5,437
11	67,196	5,600
12	69,212	5,768
13	71,288	5,941
14	73,427	6,119
15	75,629	6,302
16	77,898	6,492
17	80,235	6,686
18	82,642	6,887
19	85,122	7,093
20	87,675	7,306
21	90,306	7,525
22	93,015	7,751
23	95,805	7,984
24	98,679	8,223
25	101,640	8,470
26	104,689	8,724
27	107,830	8,986
28	111,064	9,255
29	114,396	9,533
30	117,828	9,819
31	121,363	10,114

32	125,004	10,417
33	128,754	10,730
34	132,617	11,051
35	136,595	11,383
36	140,693	11,724
37	144,914	12,076
38	149,261	12,438
39	153,739	12,812
40	158,351	13,196

## EXHIBIT G

### INSTITUTIONAL RESTRICTIONS

#### NSHE BOARD OF REGENTS POLICIES RELATED TO STUDENT HOUSING

##### **Section 34. Possession and Use of Marijuana**

The Nevada System of Higher Education is sympathetic to the medical needs of our students, employees and visitors. A growing number of states, including Nevada, are enacting laws decriminalizing or legalizing the use, possession, delivery, manufacture, growth, distribution, production, and/or cultivation (hereinafter "use") of marijuana, including for medical purposes. Federal law prohibits the use of marijuana, including for medical purposes, on college and university campuses that receive federal funding. The following provisions shall govern the possession and use of marijuana, including for medical purposes, on NSHE property.

1. The use, possession, or cultivation of marijuana, including for medical purposes, on any NSHE or NSHE foundation owned or leased property, or at any NSHE sponsored or authorized activity, is expressly prohibited.
2. Students, employees, faculty, guests, and/or visitors who violate this policy are subject to applicable disciplinary, legal and/or administrative action.
3. Each institution shall permit students who live on-campus or in housing that is owned or operated by the institution, to petition ("request") for a release from the housing agreement if they assert legal compliance with Nevada state law to use medical marijuana. Such students, who prove their compliance with state law, may, in accordance with the applicable institution refund policy, be released from their housing agreements and may receive a prorata refund of housing fees or rent paid.

Title 4, Chapter 1, Page 30

##### **Section 36. Policy on Registered Offenders**

###### **3. Institutional Procedures Governing Registered Offenders**

Each President shall develop procedures governing the application, admission, enrollment, employment and/or other presence, including but not limited to volunteers and vendors, on campus of a registered offender. These procedures must comply with state and federal law governing registered offenders and must include, but are not limited to, the following:

###### **a. Self-Reporting Required by Registered Offender**

Institutions must require registered offenders to report their offender status and provide other information required by the institution to the institution's police or security services and/or other individual or department designated by the institution. Failure to self-report may result in immediate removal from campus and/or disciplinary action, including sanctions authorized by this section. Other information required by the institution may include, but is not limited to, contact information; changes in residence and employment; and name and address of supervising agency, if any.

###### **b. Restrictions Placed on Registered Offender by Institution**

Institutions must document any restrictions placed on the registered offender as a condition of application, admission, enrollment, employment and/or other presence, including but not limited to volunteers and vendors. The restrictions may include but are not limited to:

i. Restrictions on Institutional Housing

Institutions may deny or restrict a registered offender from working, visiting, or living in residence halls, apartments or other institutional facilities for housing.

Title 4, Chapter 1, Page 32

**Section 17. Emotional Support Animals**

1. Policy Statement

The Fair Housing Amendments Act of 1988, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act protect the right of people with disabilities to keep emotional support animals within housing associated with educational institutions. The Nevada System of Higher Education is committed to reasonably accommodating individuals with disabilities who require the assistance of an emotional support animal in institutional housing.

2. Emotional Support Animal:

An “emotional support animal” (“ESA”) is an animal that provides comfort to an individual with a disability upon the recommendation of a healthcare or mental health professional. An emotional support animal does not assist an individual with a disability with activities of daily living but rather its role is to live with an individual and alleviate the symptoms of an individual’s disability.

3. Institutional Housing

Emotional support animals may reside in institutional housing only with express written approval of the institution through the institutional policies and procedures established pursuant to subsection 4 of this policy.

4. Institutional Policies and Procedures

Each institution shall develop policies and procedures to implement this policy and govern the presence of emotional support animals in institutional housing, and other approved areas, if any. Such policies and procedures must include, but are not limited to:

- a. The process under which individuals may request approval to have an emotional support animal in institutional housing, or other approved areas, if any. This process must include a means of verifying that a disability exists and that the need for the presence of the emotional support animal is genuine based on the professional opinion of a physical or mental health care licensed provider or therapist.
- b. The responsibility of individuals with emotional support animals, including but not limited to:
  - i. Care and supervision of the animal;
  - ii. Health and safety of others, including ensuring that others are not threatened by an emotional support animal and that such animals authorized to live in institutional housing do not interfere with others’ enjoyment of the residential space; and

- iii. Other reasonable conditions or restrictions, if necessary to ensure the health, safety and reasonable enjoyment of others.
- c. The circumstances under which an emotional support animal may be removed.
- d. Any restrictions on where the emotional support animal may be present in institutional housing, or other approved areas, if any.

#### 5. Damage

Owners of emotional support animals are solely responsible for any damage to individuals or property caused by their animal.

(B/R 6/17)

Title 4, Chapter 8, Page 37

#### **Section 4. Alcoholic Beverage Policy**

1. The storage and use of alcoholic beverages shall be permitted to students 21 years of age or older living in approved NSHE housing, subject to the following conditions:

- a. Students over 21 years of age may elect in each living unit to be clustered so as to facilitate enforcement of all state and local laws relative to the consumption of alcoholic beverages. Their being permitted to do so would result from a majority decision in which all members of that living unit participate.
  - b. Students who elect to cluster so as to enjoy the privilege of drinking will have the responsibility of obeying the law (as will minor students).
  - c. The privilege of clustered students to consume alcoholic beverages may be revoked by the majority vote of others residing in the living unit.
  - d. The purchase of alcoholic beverages for use at NSHE functions shall be permitted for the following functions or pursuant to the following conditions:
    - (1) Conferences, programs, institutes, and similar functions where a part of the fee collected is for a cocktail party.
    - (2) Host account expenditures for alcoholic beverages with dinner and for large receptions.
    - (3) Student associations must have the institutional president's prior approval and the institutional president is to be the only person authorized to approve payment for the purchase of alcoholic beverages from Student Association Funds. The institutional president will only grant this authorization upon being satisfied that proper supervision is provided in the dispensing of alcoholic beverages.
2. Except as provided above, the storage, possession or use of alcoholic beverages shall not be permitted on University owned or supervised property, including University supervised housing, apartments, residence halls, or on sorority or fraternity property.
3. Any student who exhibits offensive behavior on the University owned or supervised property while under the influence of alcoholic beverages shall be subject to disciplinary action.
4. The president has the authority to designate the time and place for special events where alcoholic beverages may be served on the University campus.

Title 4, Chapter 20, Page 3

## PROJECT DEVELOPMENT AGREEMENT

This Project Development Agreement (the “**Development Agreement**”) is made by and between American Public Development, LLC, a Nevada limited liability company (“**Developer**”), and the Board of Regents of the Nevada System of Higher Education (“**Board of Regents**”), on behalf of Nevada State College (“**NSC**”). Developer and NSC are each referred to as a “**Party**” and collectively be referred to as the “**Parties**” herein.

This Development Agreement shall become effective when executed by Developer and approved by the Board of Regents at a publicly noticed meeting (the “**Effective Date**”).

As used herein, the term “**Developer**” is used in the singular to refer to American Public Development, LLC, or its assignee, that is responsible for developing the State Campus Village Project on the Land (the “**Project**”).

The Parties desire to develop the Project subject to the terms and conditions of this Development Agreement and therefore agree as follows:

### THE PROJECT

1.1. In early <sup>ARTICLE 1</sup> 2010, NSC completed its campus master plan (the “**Master Plan**”) for its ~~509512~~-acre site (“**Site**”). Student housing is identified as a significant component of the Master Plan, and there is an eventual intention to provide housing for 5,200 students on approximately 46 acres of the Site.

1.2. In furtherance of Site development activities, NSC commenced an RFI process in 2015 which resulted in NSC entering into a non-binding memorandum of understanding on August 1, 2016, with Eric A. Traub dba Traub and Associates (“**Traub**”) and Leducor Construction, Inc. (“**Leducor**”) to assist with the development of the Site. Traub and Leducor worked on development opportunities for the Site, including a real estate analysis and demand study that demonstrates there is significant demand for student housing at NSC.

1.3. A new Memorandum of Understanding was approved by the Board of Regents on December 1, 2017, between NSC and Developer (“**MOU**”), as the successor to Traub and Leducor. As set forth in the MOU, the Developer has proposed to enter into a ground lease with NSC for the undeveloped real property described on **Exhibit A** (the “**Land**”), comprising approximately ~~nineseven~~ and ~~1353~~/100ths (~~9.137.53~~) acres for the initial phase of student housing for the Site. The Project is a development of seven buildings of student housing totaling approximately ~~312342~~ beds, subject to further revision by Developer, as shown on **Exhibit B** (the “**Project Plans**”). It is anticipated that Developer will construct future phases of student housing at the Site, as determined by Developer and approved by NSC.

1.4. It is anticipated that, at the time of the Developer entering into the Lease, the Developer will sub-lease the Land to the Public Finance Authority, a unit of government and body corporate and politic of the State of Wisconsin (“**PFA**”), which will finance the Project development through the issuance of its Student Housing Series ~~20182019~~ Revenue Bonds, Series ~~20182019~~ (Nevada State College) and contract with Developer for the management of the student housing facility.



1.5. The Project and future phases of student housing will be called the “State Campus Village.”

1.6. **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 Project. The Project Implementation Agreements also include:

(a) that certain **Ground Lease Agreement** by which NSC leases the Land to Developer (the “**Lease**”);

(b) that certain **Ground Sublease Agreement** (“**Sublease**”) by which the Developer subleases the Land to PFA; and

(c) the Sub-Development Agreement, the Subleasehold Deed of Trust, the Asset Management Agreement, the Facility Operating Agreement and any other agreements and documents that are or become necessary to complete the Project.

1.7. **This Development Agreement.** As detailed herein, this Development Agreement establishes certain design standards and construction requirements and related approval processes for the Land and Project. Developer agrees, by accepting this Development Agreement, to design and construct, and require its architects, engineers and contractors to design and construct, that portion of the Project for which it is responsible, consistent with this Development Agreement.

1.8. **Lease.** Concurrently with the execution of this Development Agreement, the Developer and NSC will execute (i) the Lease for the Land, and (ii) the other Project Implementation Agreements necessary to effectuate this Development Agreement and the transactions contemplated hereby.

1.9. **Development Fee.** The Developer shall be entitled to receive for its compensation a development fee of five percent (5%) of the Total Project Costs in one lump sum at the time set forth in the Sub-Development Agreement to be paid pursuant to Section 3 of the Sub-Development Agreement. As used herein, “Total Project Costs” means the total cost of developing and constructing the Improvements in accordance with the design documents, including without limitation the cost to (i) design and construct the Project, (ii) manage and oversee the design and construction of the Project, and (iii) outfit and prepare the Project for operations, including furniture, fixtures, equipment.

1.10. **Sub-Development Agreement and Other Services.** Concurrently with the execution of this Development Agreement, Developer will enter into the Sub-Development Agreement with PFA for services during the construction of the Project, including without limitation monthly reporting to PFA and NSC. NSC will acknowledge the Sub-Development Agreement and consent to the terms therein. The Developer will enter into such other agreements including, without limitation, the Project Implementation Agreements, necessary to effectuate the purpose of this Development Agreement.

1.11. **Financing.** PFA will finance the Project with bonds issued pursuant to an indenture (“**Indenture**”), with The Bank of New York Mellon Trust Company, N.A. as trustee (“**Trustee**”) under the Indenture.

1.12. **NSC’s Pre-Development Costs.** In connection with the financing of the Project, NSC shall be paid the sum of \$250,000 for its pre-development costs incurred before the execution of this Development Agreement. The payment will be made from the Project, directly to NSC.

## **DESIGN AND CONSTRUCTION STANDARDS.**

2.1. **General Intent and Covenant.** Developer shall, at its own expense, design and construct the Project in accordance with the provisions of this Development Agreement, the Lease, the Sub-Development Agreement, the Sublease and the MOU. The Project shall be constructed in substantial conformance with the Construction Documents (as defined in Section 2.7(a)) for the 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 NSC, the Developer as well as their respective successors and assigns. The Developer shall record this Development Agreement with the Clark County Recorder’s Office, and NSC shall execute all documents, and otherwise cooperate, necessary to allow such recording.

The Parties intend to complete the Project in order to provide student housing for the fall 2019 semester. In order to make that schedule, the Parties intend to fast track the planning, design and construction efforts, including, without limitation, the commencement of grading and other construction activities before all approvals set forth herein have been given. The Parties pledge their diligent, good faith efforts to provide approvals in an expeditious manner.

As used herein, “**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 the Project, which are in effect from time to time.

2.2. **Design Quality Standard.** Developer agrees to design and construct the Project consistent with housing at NSC’s peer institutions (the “**Quality Standard**”). Notwithstanding the foregoing, the Parties acknowledge that the architectural styles and construction materials used at NSC’s peer institutions may differ from that contemplated at the Project but the design concepts, floor plans and interior layouts and finishes, and exterior finishes and building system components of the Project will be of comparable quality.

2.3. **Schematic Design Documents Review.** Developer shall submit draft versions of the Schematic Design Documents (as defined herein) for the Project to NSC for NSC’s preliminary review and comment. In developing the Schematic Design Documents, Developer will reasonably cooperate with NSC and meet with NSC representatives from time to time as reasonably requested to facilitate NSC’s review of the Schematic Design Documents. During the review process, NSC may make suggestions regarding schematic designs, Project layout and other matters, and Developer

shall consider such input and take reasonable steps to implement any such suggestion. Only those objections by NSC that are raised pursuant to Section 2.4 shall require any formal response by the Developer. NSC shall not be obligated to provide any written or formal response to any Schematic Design Documents progress review request.

2.4. **Schematic Design Review and Approval.** If the Developer makes any material changes to the Project Plans in the Schematic Design process, the Developer shall deliver to NSC a copy of any such revised schematic plans (the “**Revised Schematic Plans**”) for NSC’s review and reasonable approval.

(a) NSC shall provide any objections to the Revised Schematic Plans in writing to the Developer within five (5) 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 meet and discuss any disagreements related thereto.

(b) To the extent necessary and provided that NSC’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 NSC. Developer may proceed as if the Revised Schematic Plans are approved unless NSC delivers written notice to Developer within five (5) days that the Revised Schematic Plans do not address the objections raised on NSC’s first review and provide a detailed explanation of NSC’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 NSC’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 NSC in accordance with this Section 2.4 shall be initialed and dated by the Parties and attached as counterparts of this Development Agreement.

(e) NSC’s Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.4.

(f) “**Schematic Design Documents**” shall mean drawings and other documents, including plans, sections, elevations, and layouts of the buildings, and such other elements as appropriate.

2.5. **Design Development Documents Review.** Developer shall submit draft versions of the Design Development Documents (as defined herein) for the Project to NSC for NSC’s preliminary review and comment. In developing the Design Development Documents, Developer will consider input from and reasonably cooperate with NSC and meet with NSC representatives from time to time as reasonably requested to facilitate NSC’s review of the Design Development Documents. During the review process, NSC may make suggestions regarding elements, scope item,

materials, construction, layout and other matters, and Developer shall take reasonable steps to implement any such suggestions. Only those objections by NSC that are raised in the context of Section 2.6 shall require any formal response by the Developer. NSC shall not be obligated to provide any written or formal response to any Design Development Document progress review request.

## 2.6. **Design Development Documents Approval.**

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

(b) NSC shall provide any objections to the Design Development Documents in writing to the Developer within five (5) 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 NSC'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 NSC. Developer may proceed as if the Design Development Documents are approved unless NSC delivers written notice to Developer within five (5) days that the Design Development Documents do not address the objections raised on NSC's first review and provide a detailed explanation of NSC'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 NSC's written notice, either Party may submit such matter to Expedited Arbitration in accordance with Article 5.

(e) NSC's Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.6.

(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.

## 2.7. **Construction Documents.**

(a) Developer shall deliver to NSC for NSC's review the final construction drawings, construction contracts, detailed specifications, and related documents (the "**Construction Documents**") required for construction of the Project or any portion thereof.

The Construction Documents shall conform to and be consistent with in all material respects the approved Design Development Documents.

(b) NSC shall provide any objections to the Construction Documents in writing to the Developer within ten (10) 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) NSC's Vice President of Finance and Business Operations, or his or her designee, is authorized to issue any approvals or take any other action on behalf of NSC required or authorized by this Section 2.7.

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

2.9. **Project Milestone Schedule.** Within thirty (30) days of the Effective Date of this Development Agreement, Developer shall provide NSC a schedule setting forth the anticipated timeline for financing, construction and completion of the Project improvements; provided, such schedule is for planning purposes only and shall not be binding on Developer. The Developer shall Commence Construction, as defined in the Lease, and reach Substantial Completion, also as defined in the Lease, of the Project in accordance with the time frames set forth in Article 4 of the Lease.

2.10. **PFA Design Review and Approval Rights.** The Developer shall provide PFA, as the Project owner, same rights to review and approve the Project designs as NSC, as set forth in Sections 2.3 to 2.8 inclusive.

ARTICLE 3.

### CONSTRUCTION REQUIREMENTS

3.1. **Requirements for Commencement of Construction.** Developer shall not commence construction of its Project or any portion thereof until:

(a) the Construction Documents are approved in writing or are deemed approved by NSC in accordance with the terms of this Development Agreement.

(b) State Public Works, the City of Henderson, or other governmental authority has issued any permit necessary for the commencement of the appropriate stage of construction, as required by City code or state law;

(c) any other government authority having jurisdiction over the construction of the Project 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 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 or any portion thereof is provided to NSC.

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

3.3. **Code Compliance.** The Developer and its agents, contractors, sub-contractors and employees shall comply with all requirements for construction of its Project or any portion thereof which include, but are not necessarily limited to, the latest code editions adopted by the City of Henderson 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](http://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.** For the benefit of PFA, the Trustee, and NSC, 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 or any portion thereof guaranteeing the faithful performance of the construction, and a payment bond for 150% 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 or any portion thereof, in a form and with a company acceptable to NSC in its reasonable discretion. NSC's Vice President of Finance and Business Operations or his or her designee is authorized to issue any approvals on behalf of NSC required by this Section 3.4.

3.5. **Public Works and Planning.** The construction and development of the Project may be subject to the provisions of Chapter 338 of the Nevada Revised Statutes (Public Works and Planning). If applicable, the 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 the Project. The Developer shall indemnify, defend, save and hold harmless, the Nevada System of Higher Education, NSC, the Board of Regents, and the agents and employees of each (collectively, the "**Indemnitees**"), from and against any violations or alleged violation of any of the provisions of Chapter 338 of the Nevada Revised Statutes unless such violation or alleged violation is caused by NSC's insistence on a Design Standard through the Section 2 process.

3.6. **Government Regulations/Licenses.** Developer is solely responsible for obtaining all required governmental, regulatory or administrative approvals necessary to permit the development and construction of the Project (collectively, the "**Governmental Approvals**"). Developer shall pay all plan check fees to the City of Henderson or any other government agency, if applicable. If necessary, Developer will pay NSC, which will pass on the payment to the State Public Works Board. 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. Developer shall maintain all appropriate and necessary business and operating licenses. NSC shall cooperate with Developer in connection with obtaining the Governmental Approvals and shall provide assistance as reasonably requested by Developer in connection with obtaining such approvals.

3.7. **Right To Inspect Construction.** Upon a minimum of 24 hours advance written notice to the Developer and its general contractor during the construction period, NSC, or its designees may inspect the Project 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. NSC shall strictly comply with all safety precautions prescribed by Developer or its general contractors and shall not enter the construction area unless accompanied by an authorized representative of the general contractor. Developer is responsible to arrange inspections by City of Henderson as the Developer 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 the Project, Developer, at its expense, shall furnish to NSC and PFA 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 Project and all improvements to the Land. Developer shall also furnish to NSC upon request, at its’ expense, copies of any and all other reports which the Developer may have in connection with the Project, including, but not limited to, environmental surveys and assessments.

ARTICLE 4.

**OTHER PROJECT REQUIREMENTS**

4.1. **Construction Drawings.** All plans and specifications for the construction of the Project shall comply with the State of Nevada laws and 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.

4.2. **Licensed and Insured Professionals.** Developer shall use only licensed, bonded, and responsible design professionals and contractors to perform any work, repairs, installations, or improvements on the Project or any portion thereof. Unless otherwise approved by NSC’s Vice President of Finance and Business Operations, all design professionals and contractors employed by Developer to perform any work, repair, installation, or improvement on the Project shall carry Workers’ Compensation Insurance in accordance with statutory requirements and Commercial General Liability Insurance covering their activities on the Project in amounts at least equal to the limits set forth in the Lease.

4.3. **Disadvantaged Business Reporting Requirements.** NSC 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 contacts awarded by NSC. In some situations, Disadvantaged Businesses may not have the depth or full capacity to meet all the requirements of large contracts. Nevertheless, NSC supports finding

opportunities for such Disadvantaged Businesses to participate as subcontractors or Tier 2 suppliers in large contracts. Therefore, the Project will be subject to the following requirements:

(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 the Project, then 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. The report must be available to NSC 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 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.** 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. 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 the Project and shall require the same be incorporated into any subcontracts by any such organizations and individuals.

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

4.6. **Utility Connections.** All utilities for the Project will be provided by direct connection to local utility providers and not NSC's utility infrastructure.

4.7. **Ownership of Utility Improvements.** Utilities installed in connection with the Project will either be the property of the Subtenant, or if dedicated to a governmental authority or public utility, such dedication will be made on behalf of Subtenant. NSC shall have no obligation to pay for any utility services provided to the Premises. NSC 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 NSC.

4.8. **Notice of Non-Responsibility.** NSC may record a notice of non-responsibility as allowed by NRS 108.234 with respect to the construction of the Project. Developer, PFA, or their

construction contractors shall obtain a surety bond in the amount of 150% of the amount of the construction contract. Developer shall record the surety bond with the Clark County Recorder's Office before the date on which it commences construction of the Project, and shall comply with the notice and other requirements set forth in NRS 108.2415.

4.9. **Indemnification of NSC.** The Developer shall indemnify, defend, save and hold harmless, the Indemnitees from and against any claim for indemnification against an Indemnitee by First American Title Insurance Company ("**First American**") in connection with that certain Indemnity Agreement between First American and the Board of Regents of the Nevada System of Higher Education on behalf of Nevada State College, and arising out of that certain Contract for Services of Independent Contractor dated as of June 26, 2017 between NSC and Capriati Construction Corporation for grading services on the Land.

### **EXPEDITED ARBITRATION IF CONSENT WITHHELD**

5.1. **Send Disputes to Arbitration.** In the event of a dispute between NSC and Developer over the reasonableness of NSC withholding, delaying or conditioning its consent or approval of any matter for which NSC's consent or approval is required, then, and only in such events, Developer may submit such dispute to arbitration in the Clark County, Nevada before one (1) arbitrator by giving NSC a demand for arbitration on or prior to the date which is ten (10) business days after NSC refused to grant such consent or approval. In such arbitration NSC 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 NSC meets this burden, the Developer will then have the burden to show (i) that NSC'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 NSC 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 NSC 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:

5.5. The list of arbitrators referred to in Rule 54 shall be returned within three (3) business days from the date of receipt;

5.6. 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;

5.7. The Notice of Hearing referred to in Rule 55 shall be given at least four (4) business days in advance of the hearing;

5.8. 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

5.9. 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.

5.10. **Resolution and Attorney's Fees.** If any such arbitrator determines that NSC was unreasonable in not granting or withholding such consent or approval, then NSC 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.

5.11. **PFA Participation.** PFA shall have the right, but not the obligation to participate in any arbitration or litigation arising under this Development Agreement.

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 NSC:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF  
HIGHER EDUCATION  
c/o: Vice President for Finance and Business Operations  
Nevada State College  
1300 Nevada State Drive  
Henderson, NV 89002  
Attn: Kevin Butler  
Phone: (707) 992-2312  
Fax: (702) 992-2351  
Email: kevin.butler@nsc.edu

WITH A COPY TO:

NEVADA SYSTEM OF HIGHER EDUCATION  
c/o Vice Chancellor for Legal Affairs  
4300 S. Maryland Parkway  
Las Vegas, NV 89119

Attn: \_\_\_\_\_  
Phone: (702) 889-8426  
Fax: (702) 889-8495  
Email: \_\_\_\_\_

TO DEVELOPER: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: [ttraub@garfieldtraub.com](mailto:ttraub@garfieldtraub.com)

WITH A COPY TO: American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 239-4479  
Fax: (702) 227-7191  
Email: [cam@camwalker.com](mailto:cam@camwalker.com)

AND A COPY TO: Ballard Rawson Jorgensen  
10181 Park Run Drive, Suite 110  
Las Vegas, NV 89145  
Attention: Kris T. Ballard, Esq.  
Phone: (702) 425-3555  
Fax: (702) 722-5525  
Email: [ktb@ballardrawson.com](mailto:ktb@ballardrawson.com)

A copy of all notices given by any party under this Development Agreement shall be provided to PFA, as follows:

Public Finance Authority  
Suite 900  
22 East Mifflin Street  
Madison, Wisconsin 53703  
Attention: Scott Carper and Michael LaPierre  
Email: [scarper@pfauthority.org](mailto:scarper@pfauthority.org) and [mlapierre@pfauthority.org](mailto:mlapierre@pfauthority.org)  
Facsimile: (608) 237-2368

6.3. 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.

6.4. **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. Furthermore, no amendment of this Development Agreement shall be effective without the consent of PFA, which consent shall not be unreasonably withheld, conditioned, or delayed.

6.5. **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.

6.6. **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 Eighth 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. Notwithstanding the foregoing, the existence, corporate powers, legal capacity, rights, privileges, powers, corporate obligations and liabilities of PFA shall be governed by the laws of the State of Wisconsin, excluding conflicts of law principles and, to the extent that any of the foregoing can be separated from other disputes under this Development Agreement, venue for any such legal proceedings shall be in any state or federal court of competent jurisdiction located in Dane County, Wisconsin.

6.7. **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.

6.8. **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.

6.9. **Authority.** If Developer is 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. The person executing this Development Agreement on behalf of NSC represents and warrants to Developer that (c) NSC has the full right, power, and authority to enter into this Development Agreement and to perform its obligations hereunder; (d) all requisite approvals, consents, and board or committee actions necessary to authorize NSC to enter into this Development Agreement and to be bound by the provisions of this Development Agreement have been obtained or taken; and (e) this Development Agreement is a legal and valid obligation of NSC and is binding upon and enforceable against NSC in accordance with its terms.

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

6.11. **Interpretation.** Developer and NSC 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, Developer and NSC agree that no presumption should arise construing this Development Agreement more unfavorably against any one Party.

6.12. **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.

6.13. **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.

6.14. **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.

6.15. **Consent; Approval; Step-in Rights.** Prior to NSC terminating this Development Agreement for any reason related to breach, or an alleged breach, by Developer, NSC agrees to provide PFA and the Trustee with written notice of default or alleged default by Developer, and NSC agrees to provide PFA and the Trustee with a period of sixty (60) days after the date that NSC delivers such notice to PFA and the Trustee to permit PFA and the Trustee to remedy any such default(s) or alleged default(s) by Developer under this Development Agreement. In no event shall PFA or the Trustee be required to remedy any such default(s) or alleged default(s) by Developer. If PFA or the Trustee, at their option, elect to remedy any such default(s) or alleged default(s) by Developer, NSC agrees that it will accept performance of such remedy by PFA or the Trustee and shall not terminate this Development Agreement so long as PFA or the Trustee is diligently pursuing cure(s) to any such default(s) or alleged default(s). Developer shall have the right to assign or transfer its rights and obligations under this Development Agreement to PFA or the Trustee in the event that PFA or the Trustee remedy Developer's default(s) or alleged default(s) under this

Development Agreement. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as afforded to it under the Indenture. In accordance with the Indenture, the Trustee shall not be required to take any action hereunder unless directed by the holders of a majority in aggregate principal amount of the Bonds and upon being indemnified to its satisfaction.

***SIGNATURES FOLLOW ON THE NEXT PAGE***

**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 NEVADA STATE COLLEGE**

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 \_\_\_\_\_, ~~2018~~2019, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_.

Notary Public

**AMERICAN PUBLIC DEVELOPMENT, 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 \_\_\_\_\_, ~~2018~~2019, by Eric A. Traub, as Manager of American Public Development, LLC.

Notary Public



**EXHIBIT A**

**THE LAND**

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 488.92 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 47.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 877.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 877.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.53 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

**EXHIBIT B**  
**PROJECT PLANS**

**RECOGNITION, CONSENT AND NON DISTURBANCE  
AGREEMENT**

THIS RECOGNITION, CONSENT AND NON-DISTURBANCE AGREEMENT (the “Agreement”) is made this \_\_ day of ~~September, 2018~~, 2019 by and among BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, acting on behalf of the Nevada State College, a constitutional entity of the State of Nevada (together with its successors and assigns, “Landlord”); AMERICAN PUBLIC DEVELOPMENT, LLC, a Nevada limited liability company (together with its successors and assigns, “Tenant”); the PUBLIC FINANCE AUTHORITY, a unit of government and body corporate and politic of the State of Wisconsin (together with its successors and assigns, “Subtenant”); and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (together with its successors and assigns, “Leasehold Mortgagee”).

**W I T N E S S E T H:**

WHEREAS, Landlord is the present owner of that certain parcel of land described in Exhibit A attached hereto and made a part hereof (the “Land”); and

WHEREAS, Landlord and Tenant are simultaneously herewith entering into that certain Ground Lease Agreement for State Campus Village (the “Ground Lease”) pursuant to which Landlord leased to Tenant the Land for the purpose of development, financing, construction and management of the seven buildings of student housing totaling approximately three hundred ~~twelve~~forty-two (~~312~~342) beds, as shown on Exhibit B attached hereto and made a part hereof (the “Improvements”, together with the Land, hereinafter referred to as the “Premises”); and

WHEREAS, Tenant and Subtenant are simultaneously herewith entering into that certain Ground Sublease Agreement for State Campus Village (the “Ground Sublease”) pursuant to which Tenant leased to Subtenant the Premises; and

WHEREAS, Subtenant has granted or is about to grant a mortgage to Leasehold Mortgagee in the aggregate principal amount of up to \$\_\_\_\_\_ to be recorded simultaneously herewith in the \_\_\_\_\_, which mortgage encumbers Subtenant’s leasehold interest in the Premises and the Ground Sublease (collectively, the “Leasehold Mortgage”); and

WHEREAS, each of Landlord, Tenant, Subtenant and Leasehold Mortgagee desire to confirm their understanding with respect to the Ground Lease, the Ground Sublease, and the Leasehold Mortgage, any future financings with respect to the Premises and other matters as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration each to the other in hand paid, the receipt and sufficiency of which are hereby acknowledged, each of Landlord, Tenant, Subtenant and Leasehold Mortgagee hereby agree to the foregoing and as follows:

1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Ground Lease.

**Error! Unknown document property name.**

2. Consents.

(a) The Ground Lease provides that Subtenant has the right to grant the Leasehold Mortgage, subject to Landlord approval. Landlord hereby approves the terms of the Leasehold Mortgage, as required under Section 24.2 of the Ground Lease. From and after the date hereof, (i) Leasehold Mortgagee and its successors and assigns shall be and hereby are recognized as and deemed "Leasehold Mortgagees" under the Ground Lease, (ii) the Leasehold Mortgage shall be and hereby is recognized as a "Permitted Financing" under Section 24.1 of the Ground Lease, and (iii) all conditions precedent to the Leasehold Mortgage set forth in the Ground Lease shall be deemed satisfied. The exercise of Leasehold Mortgagee's rights under the Leasehold Mortgage, in accordance with the terms and conditions of Article 24 of the Ground Lease, shall not constitute a default under the Ground Lease.

(b) Landlord approves the Ground Sublease and consents to the execution and delivery of the same. Landlord acknowledges and agrees that the Ground Sublease is permitted without Landlord consent as provided in Section 26.1 of the Ground Lease and that the restrictions on Transfer in Article 26 of the Ground Lease shall not apply to Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate and/or the Subleasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

3. Recognition and Non-Disturbance of Subtenant and Leasehold Mortgagee; New Leases.

(a) In the event of the termination of the Ground Lease, Landlord shall, in addition to providing the notices of default as required by Section 6 herein, provide Leasehold Mortgagee with written notice that the Ground Lease has been terminated, together with a statement of all sums that would at the time be due under the Ground Lease but for such termination, and of all other defaults, if any, then known to Landlord, all in accordance with the terms and conditions of Article 24 of the Ground Lease. In the event of the termination of the Ground Lease or the Ground Sublease for any reason whatsoever, Landlord shall, upon Leasehold Mortgagee's written election (which shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds (as defined in the Leasehold Mortgage) and receipt of satisfactory indemnity), (i) enter into a "New Lease" (as such term is defined in the Ground Lease), in accordance with Section 24.6 of the Ground Lease, and (ii) if required in connection with the exercise of Leasehold Mortgagee's rights under the Leasehold Mortgage, consent to a new sublease of the Premises for the remainder of the term of the Ground Sublease, effective as of the date of termination, at the Sublease Payments (as such term is defined in the Ground Sublease) and upon the same terms, covenants, and conditions of the Ground Sublease (but excluding any requirements which are not applicable or have been satisfied by Subtenant prior to termination) (a "New Sublease"), in either case of the foregoing (i) or (ii) subject only to the conditions of title as the Land is subject to on the date of the execution of the original Ground Lease and such matters arising thereafter to which Leasehold Mortgagee has consented to in writing (which consent shall be provided only upon the Leasehold Mortgagee's receipt of written direction of the holders of a majority in aggregate principal amount of the Bonds (as defined in the Leasehold Mortgage)) and to the right, if any, of any parties then in possession of any part of the Land, provided:

- i. As provided in Section 24.6 of the Ground Lease, Leasehold Mortgagee shall make written request upon Landlord for such New Lease and New Sublease consent, if required, within sixty (60) calendar days after the date Leasehold Mortgagee receives Landlord's notice of termination given pursuant to Section 3(a);
- ii. 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 the Ground 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 Section 24.6 of the Ground Lease 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 the Ground Lease to the date of the beginning of the Lease Term of such New Lease.

(b) Upon the execution and delivery of a New Lease, the Ground Sublease (or any New Sublease), all Sub-subleases, and management agreements shall thereupon be assigned and transferred or terminated, at Leasehold Mortgagee's election, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

4. Conveyance of Interests; Attornment. Any successor to Landlord's fee title interest in the Land shall take title subject to the terms and conditions of the Ground Lease, the Ground Sublease, the Leasehold Mortgage and this Agreement, provided, however, that upon the Landlord's sale or other conveyance of its fee interest in the Land, Tenant and Subtenant shall attorn to any subsequent owner succeeding to the fee title interest of the Land, and upon such sale or conveyance Tenant and Subtenant shall recognize such person or entity as the ground lessor of the Land under the Ground Lease. Such attornment by Tenant and Subtenant shall be effective without the execution of any further instruments.

5. Casualty and Condemnation.

(a) So long as the indebtedness, or any part of the indebtedness, secured by the Leasehold Mortgage remains outstanding and unpaid, and the Leasehold Mortgage remains of record, Landlord and Tenant agree that, as provided in Section 22.12 of the Ground Lease: (a) the Ground Lease shall not terminate or be canceled at any time upon the damage or destruction by fire or other casualty of all, substantially all, or any part of the Premises; (b) the insurance policies required to be maintained pursuant to the Ground Lease shall name Leasehold Mortgagee as an additional named insured and loss payee/ mortgagee, as its interests may appear; (c) the form of such policies and amounts thereof shall at all times be in accordance with the terms of the Leasehold Mortgage, and Leasehold Mortgagee shall be entitled, at Leasehold Mortgagee's option (which it shall have no duty or obligation to exercise), to participate in any adjustment, settlement

or compromise with respect to any insurance claim; and (d) all proceeds of such insurance policies shall be payable to Leasehold Mortgagee as loss payee (Landlord and Tenant subordinating any right to receive such proceeds to Leasehold Mortgagee), to be applied by Leasehold Mortgagee in accordance with the terms of the Leasehold Mortgage (or other applicable financing documents).

(b) Notwithstanding anything to the contrary contained herein, as provided in Section 23.1 of the Ground Lease, in the event of any taking or condemnation (either temporary or permanent), there shall first be paid to Leasehold Mortgagee such amounts as may be required by the Leasehold Mortgage to be paid to Leasehold Mortgagee, in order of priority and Leasehold Mortgagee shall be entitled at Leasehold Mortgagee's option to participate in any compromise, settlement or adjustment with respect to the Premises.

6. Notices of Default and Cure Rights.

(a) Landlord, upon providing Tenant any notice of default under the Ground Lease or a termination of the Ground Lease, shall at the same time provide a copy of such notice to Leasehold Mortgagee, as provided in Section 24.3(a) of the Ground Lease.

(b) After such notice has been given to Leasehold Mortgagee as provided in Section 24.3(b) of the Ground Lease, Leasehold Mortgagee shall have an additional ninety (90) day period or such longer period of time as Leasehold Mortgagee reasonably requires to remedy or cause to be remedied any non-monetary default (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 the Ground 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 the Ground Lease (subject to the notice and cure provisions set forth in the Ground 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 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 Agreement, the Ground Lease and the Ground Sublease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

(d) Notwithstanding anything contained herein or in the Ground Lease or Ground Sublease to the contrary, except as provided in Article 24 of the Ground Lease, in no event shall any act or omission of Leasehold Mortgagee (including, without limitation, the acquisition of Tenant's interest in the Ground Lease and the leasehold estate created thereby or the taking of possession of the Premises thereon through a receiver or other means) require Leasehold Mortgagee to assume, or cause Leasehold Mortgagee to be deemed to have assumed, any obligation or liability of Tenant or Subtenant under the Ground Lease or the Ground Sublease, and Leasehold Mortgagee shall have no personal liability to Landlord or Tenant for the failure to so perform and observe any agreement, covenant or condition of Tenant or Subtenant under the Ground Lease or the Ground Sublease.

(e) The parties hereto acknowledge and agree that the Leasehold Mortgagee shall not be required to take any action under this Section 6 except upon the written direction of a majority of the holders of the bonds issued under the Indenture (as defined in the Leasehold Mortgage) and upon receipt of satisfactory indemnity.

7. Amendments to Ground Lease. Notwithstanding anything to the contrary contained in the Ground Lease, neither Landlord nor Tenant will amend, modify, cancel or surrender the Ground Lease without: (a) the prior written consent of both the Subtenant and the Leasehold Mortgagee, which consent may be granted, conditioned or withheld in the Subtenant's or the Leasehold Mortgagee's sole and absolute discretion (and with respect to the Leasehold Mortgagee, which consent shall only be given in accordance with Article ~~IX~~X of the Indenture (as defined in the Leasehold Mortgage)); and (b) complying with Article XI of the Indenture (as defined in the Leasehold Mortgage).

8. Notices. Whenever it is provided in this Agreement that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, any of the parties by any other party or parties, or whenever any of the parties desires to give or serve upon any other party or parties any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose only if given or served by hand with proof of delivery; or by mailing the same to the party by certified mail, postage prepaid, return receipt requested; or by delivery by nationally recognized overnight courier such as Federal Express, addressed as follows:

If to Landlord:

[Board of Regents of the Nevada System of Higher Education](#)  
[c/o: Vice President for Finance and Business Operations](#)  
[Nevada State College](#)  
[1300 Nevada State Drive](#)  
[Henderson, NV 89002](#)  
[Attn: Kevin Butler](#)  
[Phone: \(707\) 992-2312](#)  
[Fax: \(702\) 992-2351](#)  
[Email: kevin.butler@nsc.edu](#)

**Error! Unknown document property name.**

With a copy to:

Nevada System of Higher Education  
c/o Vice Chancellor for Legal Affairs  
4300 S. Maryland Parkway  
Las Vegas, NV 89119  
Attn:  
Phone: (702) 889-8426  
Fax: (702) 889-8495  
Email:

If to Tenant:

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Tony Traub  
Phone: (702) 227-7111  
Fax: (702) 227-7191  
Email: ttraub@garfieldtraub.com

With a copy to:

American Public Development, LLC  
2821 West Horizon Ridge Parkway, Suite 120  
Henderson, NV 89074  
Attention: Cam Walker  
Phone: (702) 239-4479  
Fax: (702) 227-7191  
Email: cam@camwalker.com

If to Subtenant:

Public Finance Authority  
22 East Mifflin Street, Suite 900  
Madison, WI 53703  
Attn: Scott Carper and Michael LaPierre

If to Leasehold Mortgagee:

The Bank of New York Mellon Trust Company, N.A.  
Attn: Jane Thang  
400 South Hope Street, Suite 500  
Los Angeles, California 90071

Any party may change its address for purposes hereof by notice to all other parties.

**Error! Unknown document property name.**



9. Miscellaneous.

(a) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Nevada without regard to the principles of conflicts of laws thereof.

(b) This Agreement shall inure to the benefit of the parties thereto, their successors and assigns; provided, however, that in the event of the assignment or transfer of the interest of Subtenant or Leasehold Mortgagee, all obligations and liabilities of Subtenant or Leasehold Mortgagee under this Agreement arising after the date of assignment shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Subtenant's or Leasehold Mortgagee's interest is assigned or transferred, or as otherwise provided under the Leasehold Mortgage. Notwithstanding any other provision herein, all rights, obligations and liabilities of (i) Subtenant shall terminate upon the expiration or termination of, or the sale or assignment of Subtenant's interest in, the Ground Sublease, and (ii) Leasehold Mortgagee shall terminate upon the expiration, termination, satisfaction, sale or assignment of the Leasehold Mortgage.

(c) Neither this Agreement nor any of its terms may be amended, changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing, signed by all of the parties hereto and in conformance with the terms and conditions to Article XI of the Indenture.

(d) The parties hereto shall cause this Agreement to be recorded in the land records of the Clark County Recorder's Office, Nevada, and to execute and deliver any and all other forms or documents necessary to accomplish the same.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(f) Should any provisions of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms of any such provisions shall be more strictly construed against one party or the other by reason of the rule of construction that a document is to be construed most strictly against the party who itself or its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation of this Agreement.

10. Leasehold Mortgagee. The Leasehold Mortgagee shall have the same rights, protections, immunities and indemnities hereunder as accorded to it as trustee under the Indenture and the other Bond Documents (as defined in the Indenture).

[No further text this page; Signature pages to follow.]

IN WITNESS WHEREOF, the undersigned party has signed this Agreement as of the day and year first above written.

Landlord:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Tenant:

AMERICAN PUBLIC DEVELOPMENT, LLC

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Subtenant:

PUBLIC FINANCE AUTHORITY

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

Name:

Title: Assistant Secretary

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

Leasehold Mortgagee:

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.

By \_\_\_\_\_

Name:

Title:

STATE OF NEW YORK)

COUNTY OF \_\_\_\_\_) ss.:

On the \_\_ day of \_\_\_\_\_, 201\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and (s)he acknowledged to me that (s)he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

EXHIBIT A

LAND

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 488.92 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 47.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 877.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 877.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.53 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

EXHIBIT B  
IMPROVEMENTS

Document comparison by Workshare 9 on Thursday, January 17, 2019 9:48:14 AM

<b>Input:</b>	
Document 1 ID	netdocuments://4835-4297-9939/7
Description	Recognition, Consent and Non-Disturbance Agreement
Document 2 ID	netdocuments://4835-4297-9939/8
Description	Recognition, Consent and Non-Disturbance Agreement
Rendering set	Standard

<b>Legend:</b>	
<u>Insertion</u>	
<del>Deletion</del>	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

<b>Statistics:</b>	
	Count
Insertions	58
Deletions	6
Moved from	0
Moved to	0
Style change	0
Format changed	0
<b>Total changes</b>	<b>64</b>



**Reference Information:**

Accepting Office / Agent: **First American Title Insurance Company National Commercial Services**

Property Address /Project Reference: **Vacant Land/APN 189-03-110-002, Las Vegas, NV**

File Number: **NCS-901556-HHLV**

General Description of Project: **Nevada State College Student Housing**

**INDEMNITY AGREEMENT I  
(Mechanics' Liens)**

**INTRODUCTION**

THIS INDEMNITY AGREEMENT I (this "Agreement") is made and entered into as of , by **Board of Regents of the Nevada System of Higher Education on behalf of the Nevada State College** (such named Persons, along with any other Person who executes this Agreement, individually and collectively, the "Indemnitor") in favor of FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation, its affiliates, subsidiaries, and agents (collectively "First American").

**RECITALS:**

- A.** Indemnitor is the owner of, and/or has a material interest in, the Property or a transaction involving the Property (defined below).
- B.** In connection with the Project, Construction of certain improvements has commenced or will commence on the Property, and Indemnitor has entered in to that certain Contract for Services of Independent Contractor dated as of June 26, 2017, by and between the Indemnitor and Capriati Construction Corporation for grading services (the "Grading Contract") on a portion of the Site which includes the Property (defined below).
- C.** In connection with a contemplated transaction involving the Property, First American has been requested to issue one or more Title Policies in respect to the Property insuring against loss or damage by reason of Mechanics' Liens arising from the Grading Contract.
- D.** In connection with future transactions, First American may issue one or more Title Policies insuring against loss or damage by reason of such Mechanics' Liens. If First American, in its discretion, elects to issue a Title Policy for the Property, it will do so in material reliance on each of the covenants, agreements, representations, and warranties of Indemnitor set forth in this Agreement, and First American would not have issued a Title Policy but for such covenants, agreements, representations, and warranties of Indemnitor.

NOW, THEREFORE, the parties hereto agree as follows:

**AGREEMENT:**

- 1. DEFINITIONS:** As used herein, the following terms shall have the following meanings:

<b>Construction:</b>	Any and all work, labor, services, construction, alteration, maintenance, repair, and/or placement or segregation of materials, whether heretofore or hereafter furnished, which may give rise to the right for liens to be filed against the Property under the applicable statutes and/or equitable principles of the State, that may be a result of that certain Grading Contract between the Indemnitor and Capriati Construction Corporation dated June 19th, 2017, but only as to the work done under said contract.
<b>Construction Costs:</b>	All costs, fees, expenses, and/or obligations for or in connection with the Construction.
<b>Effective Date:</b>	The date this Agreement becomes effective in accordance with Paragraph 3 below.
<b>Mechanics' Liens:</b>	All liens or rights to lien against the Property which attach or are claimed against the Property due to Construction under the Grading Contract.
<b>Person:</b>	A natural person, or an artificial person (including, without limitation, a corporation, partnership, limited liability company, trust, or other artificial person), as the context may require.
<b>Policy Date:</b>	The "Date of Policy" as indicated on Schedule A of a Title Policy.
<b>Project:</b>	The work or works of improvement generally described in the "General Description of Project" line of the Reference Information.
<b>Property:</b>	That certain real property as described on <b>Exhibit A</b> attached hereto and incorporated herein by reference.
<b>Property Owner:</b>	The Person or Persons that own(s) the Property.
<b>Reference Information:</b>	The informational items indicated on the header of page one of this Agreement.
<b>State:</b>	The state, commonwealth, territory, or similar political subdivision in which the Property is located.
<b>Title Policy(ies):</b>	Policy or policies of title insurance issued by First American with respect to the Property.

**2. REPRESENTATIONS AND WARRANTIES.** As of the Effective Date, Indemnitor represents and warrants to First American as follows: (a) except as otherwise previously disclosed in writing to First American, all Construction Costs relating to the Grading Contract that are currently due and owing have been timely paid; (b) the Property Owner has committed funds sufficient to pay all Construction Costs applicable to the Grading Contract; (c) except as otherwise previously disclosed in writing to First American, there are no Mechanics' Liens filed against the Property related to the Grading Contract; (d) Indemnitor has no knowledge of any potential Mechanics' Liens that may be filed against the Property due to untimely payments of or disputes regarding Construction Costs related to the Grading Contract.

### **3. EFFECTIVE DATE AND TERM.**

**3.1. Effective Date.** The Effective Date of this Agreement shall be the earlier of the date First American issues or becomes contractually obligated to issue its Title Policy in connection with the Property. Where First American issues more than one Title Policy in connection with the Property, the Effective Date shall be the earliest Policy Date of the respective Title Policies. Indemnitor acknowledges and agrees that delivery of this Agreement by Indemnitor to First American shall not be deemed a commitment to issue a Title Policy for the Property. First American has no obligation or duty to Indemnitor, Property Owner, or any other person to accept this Agreement or, in the future, to issue a Title Policy for the Property solely by reason of this Agreement.

**3.2. Term.** Upon acceptance of this Agreement by First American as evidenced by the issuance of a Title Policy, this Agreement shall remain in effect until terminated by written agreement signed by each of Indemnitor and First American. Indemnitor acknowledges and agrees that First American may rely on this Agreement to issue a Title Policy at any time without notice to or further approval of Indemnitor.

### **4. MULTIPLE INDEMNITORS.**

**4.1. Joint and Several.** If there is more than one Indemnitor under this Agreement, then all of the obligations contained in this Agreement shall be the joint and several obligations of each and every Indemnitor. Each Indemnitor shall be fully liable to First American even if another Indemnitor is not liable for any reason, including the failure of such Indemnitor to execute this Agreement.

**4.2. Waiver and Release.** First American has the right, in its discretion and without notice to or consent by Indemnitor, to (a) waive any provision of this Agreement as it relates to any Indemnitor, at any time or from time to time, without providing the same or similar waiver for the benefit of any other Indemnitor, and/or (b) release any Indemnitor from any or all obligations under this Agreement at any time or from time to time, without releasing any other Indemnitor.

## **5. INDEMNIFICATION OBLIGATIONS AND RELATED COVENANTS.**

**5.1. Payment of Construction Costs.** Indemnitor covenants and agrees that Indemnitor shall cause all Construction Costs on the Property related to the Grading Contract to be paid promptly and in full prior to the time for filing any Mechanics' Liens related thereto.

**5.2. Indemnity.** In addition to any other rights or remedies available to First American at law or in equity, Indemnitor agrees to pay, protect, defend, indemnify, hold and save harmless First American from and against any and all liabilities, claims, obligations, losses, costs, charges, expenses, causes of action, suits, demands, judgments, and damages of any kind or character whatsoever, including, but not limited to, actual attorneys' fees and costs (including appellate fees and costs) incurred or sustained by First American, and actual attorneys' fees awarded against First American, directly or indirectly, by reason of, relating to, or arising under any Title Policy relating to Mechanics' Liens arising from the Grading Contract, or in any other action at law or in equity under any theory of recovery as a result of the existence of Mechanics' Liens arising from the Grading Contract, and only the Grading Contract. For the avoidance of doubt, it is the intent of the parties that all loss, cost, or expense relating to Mechanics' Liens arising from the Grading Contract, but only the Grading Contract, will be borne by Indemnitor, and not by First American.

**5.3. Duty to Notify First American.** Indemnitor shall notify First American in writing if Indemnitor is in any manner notified or becomes aware: (a) of a claim or dispute which relates to Mechanics' Liens arising from the Grading Contract; (b) of the filing or commencement of any action at law or in equity or any judicial or non-judicial proceeding (including mediation or arbitration) relating to Mechanics' Liens arising from the Grading Contract, but only the Grading Contract; (c) that the Property Owner no longer has committed funds sufficient to complete the work to be performed under the Grading Contract; and/or (d) of any untimely payments of or disputes regarding Construction Costs that may give rise to a Mechanics' Lien arising from work done under the Grading Contract. Indemnitor agrees to notify First American in writing of any such matter as soon as practicable, but in no event later than seven (7) days from Indemnitor's being notified or becoming aware of such matter.

**5.4. Rights and Obligations.** Indemnitor acknowledges and agrees that First American has a duty of good faith to its insured under any Title Policy. Therefore, upon the filing of any action at law or in equity or the assertion of any claim, cause of action, or judicial or non-judicial proceeding relating to Mechanics' Liens arising from the Grading Contract, or at any other time which First American deems it necessary to protect itself or its insured under a Title Policy in light of First American's duties, First American shall have the right, but not the obligation, (1) to take such action as First American deems necessary to protect its interests and those of its insured under any Title Policy, and/or (2) to require that Indemnitor, at Indemnitor's sole cost and expense, promptly do one or more of the following:

- (a) Cause a valid release of any Mechanics' Lien relating to the Grading Contract to be filed of record in the proper governmental office.
- (b) Cause to be recorded with respect to any Mechanics' Lien arising from the Grading Contract a bond releasing the Property from the effect of such Mechanics' Lien, should such bond be available and effective in removing the effect of such Mechanics' Lien from the Property as a matter of law.
- (c) In situations where affirmative legal action or proceedings at law or in equity are necessary to discharge, eliminate, or remove any Mechanics' Lien arising from the Grading Contract, cause counsel selected by First American to institute such action or proceeding as is necessary to discharge, eliminate or remove such Mechanics' Lien. Indemnitor may object to First American's choice of counsel for reasonable cause. Indemnitor agrees to cause such counsel to keep First American apprised as to the status of such action or proceeding, at no cost to First American.
- (d) If an action or proceeding concerning any Mechanics' Lien relating to the Grading Contract is instituted by a third party, cause such action or proceeding to be timely defended and resisted by counsel selected by First American, which counsel will protect First American and any and all insured(s) to whom First American may have potential liability as a result of the said Mechanics' Lien. Indemnitor may object to First American's choice of counsel for reasonable cause. Indemnitor agrees to cause such counsel to keep First American apprised as to the status of such action or proceeding, at no cost to First American.

- (e) If the payment of a sum of money will discharge, eliminate, or remove the effect of any Mechanics' Lien against the Property arising under the Grading Contract, pay such sum as is sufficient to discharge, eliminate, or remove such Mechanics' Lien in a manner legally sufficient to effect the release of such Mechanics' Lien of record, and deliver documents evidencing such payment to First American, in a form satisfactory to First American.
- (f) Take such action with respect to any Mechanics' Lien arising from the Grading Contract as First American authorizes Indemnitor in writing to undertake, provided that any such authority shall not be a waiver by First American to require Indemnitor at any time to comply with the foregoing subparagraphs of this Paragraph above, within ten (10) days of First American's written revocation of authority to take action other than that under any other subparagraphs of this Paragraph, and demand that Indemnitor comply with any other subparagraphs of this Paragraph.

Indemnitor covenants and agrees to cooperate with First American and to act diligently and in good faith in connection with First American's rights under this Paragraph 5.4.

**5.5. Interest.** Indemnitor agrees that any sums which are actually advanced or incurred by First American pursuant to this Agreement or by its exercise of any rights hereunder shall be repaid by Indemnitor to First American within ten (10) days of Indemnitor's receipt of First American's written demand therefor, together with interest thereon at four percent (4%) above the prime rate as published in the Wall Street Journal as of the date such sum was first advanced by First American, and continuing until it is repaid in full, but in no event shall such rate of interest exceed the lesser of: (a) ten percent (10%) per annum, or (b) the maximum rate permitted by law in the State.

**5.6. Determination of Coverage.** Any determination of coverage by First American shall be conclusive evidence that the matter is within the Title Policy coverage as to Mechanics' Liens relating to the Grading Contract for purposes of this Agreement. Indemnitor acknowledges and agrees that Indemnitor has no right to participate in First American's coverage decisions. If First American accepts the defense of a matter within the Title Policy as to the Record Matters with a reservation of rights, then all costs, damages, expenses, and legal fees actually incurred by First American shall be deemed within the terms and obligations of Indemnitor under this Agreement even if the matter is subsequently determined by a court to not be within the Title Policy as to the Record Matters.

**6. REMEDIES.** Indemnitor specifically acknowledges that upon any default by any Indemnitor under this Agreement, First American shall have the right to exercise any and all remedies available at law, in equity, or under this Agreement against any, some, or all of the Indemnitors, including but not limited to injunctive relief, specific performance, damages, self-help, and/or resort to any collateral held by First American to secure the obligations of Indemnitor under this Agreement.

**7. SUBROGATION AND SUBORDINATION.** Indemnitor hereby unconditionally grants to First American any and all rights of subrogation Indemnitor may have with respect to Mechanics' Liens covered hereby. Indemnitor agrees to promptly execute any documents with respect to such Mechanics' Liens or any other matter relating to this Agreement requested by First American with respect to such right of subrogation and to deliver same to First American. Indemnitor hereby subordinates any and all debts owed to any one Indemnitor from any other Indemnitor to the obligations owed to First American under this Agreement. Indemnitor acknowledges and agrees that First American is subrogated under its Title Policy to any obligations of Indemnitor that may be owed to First American's insured under such Title Policy, and nothing in this Agreement modifies, amends, replaces, or supersedes First American's rights under its Title Policy.

## **8. FINANCIAL INFORMATION.**

**8.1. Representations and Warranties Regarding Financial Information.** Each Indemnitor represents and warrants to First American as follows regarding the financial information delivered with respect to such Indemnitor: (a) such financial statements are true, complete, accurate, and correct in all material respects; (b) such financial statements disclose all material financial information regarding Indemnitor; (c) such financial statements fairly and accurately present the financial condition and operations of Indemnitor; and (d) since the date of the financial statements as reflected thereon and the Effective Date, there has been no material adverse change in the financial condition of Indemnitor.

**8.2. Covenants Regarding Financial Information.** Should any Indemnitor be notified or become aware of any event which could be a material adverse change in the financial condition of such Indemnitor, then such

Indemnitor shall provide written notice to First American as soon as practicable, but in no event later than ten (10) business days after such Indemnitor is notified or becomes aware of such event. Upon request by First American, each Indemnitor further agrees to deliver to First American updated financial information. Each Indemnitor agrees that by delivery thereof, such Indemnitor shall be deemed to make all the same representations and warranties as to the updated financial information set forth above, except as otherwise disclosed in writing to First American concurrently with the delivery of the updated financial information.

**9. WAIVERS AND RELATED COVENANTS.** In the event that Indemnitor is not the Property Owner, Indemnitor understands and agrees that First American has no obligation to secure an indemnity from the Property Owner. Indemnitor agrees that the validity of this Agreement and the obligations of Indemnitor hereunder shall in no way be terminated, affected, limited, or impaired by reason of (a) the assertion by First American of any rights or remedies which it may have under any agreement or cause of action against any other Person (including but not limited to Property Owner); (b) First American's failure to exercise, or delay in exercising, any such right or remedy that First American may have against any other Person (including but not limited to Property Owner); (c) First American's failure to exercise, or delay in exercising, any right or remedy First American may have hereunder or in respect to this Agreement; (d) the commencement of a case under Title 11 of the United States Code and/or any similar State insolvency or creditors' rights laws by or against any Person (including but not limited to Property Owner); or (e) Indemnitor's ownership interest in the Property or lack thereof. Indemnitor further covenants that this Agreement shall remain and continue in full force and effect as to any Title Policies issued at any time by First American with respect to the Property and that First American shall not be under a duty to protect, secure, or enforce any rights it may have under any indemnity agreement or any other right against any third party, and that other indulgences or forbearances may be granted under any or all of such documents, all of which may be made, done or permitted without notice to, or further consent of, Indemnitor. First American may, at its option, proceed directly and at once, without notice, against any Indemnitor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against the Property Owner or any other Person. Indemnitor hereby waives and relinquishes (f) any right or claim of right to cause a marshaling of any Indemnitor's assets; (g) all rights and remedies accorded by applicable law to indemnitors or guarantors, except any rights of subrogation which Indemnitor may have, provided that the assurances and obligations provided for hereunder shall not be contingent upon the existence of any such rights of subrogation; (h) notice of acceptance hereof and of any action taken or omitted in reliance hereon; (i) presentment for payment, demand of payment, protest or notice of nonpayment or failure to perform or observe, or other proof, or notice or demand; (j) any defense based upon an election of remedies by First American, including without limitation an election to proceed in a manner which has impaired, eliminated or otherwise destroyed Indemnitor's rights of subrogation and reimbursement, if any, against the Property Owner or any third party; (k) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (l) the defense of the statute of limitations in any action hereunder or in any action for the collection or performance of any obligations covered by this Agreement; (m) and any duty on the part of First American to disclose to Indemnitor any facts First American may now or hereafter know about the Property Owner, since Indemnitor acknowledges that Indemnitor is fully responsible for being and keeping informed of the financial condition of the Property Owner and of all circumstances bearing on the risk of nonperformance of any obligations covered by this Agreement.

**10. NOTICE.** Any notices, demands or communications under this Agreement between Indemnitor and First American shall be in writing, shall include the Reference Information, and may be given either by commercial overnight delivery service, or by mailing via first-class United States certified mail, postage prepaid, return receipt requested. Any such notice, demand, or communication must be addressed to each party as set forth on the signature page of this Agreement. If the address for First American is not completed on the signature page, notice to First American shall be given to First American's office for the State. All notices given in accordance with the requirements in this Paragraph shall be deemed to be received as of the earlier of (a) actual receipt by the addressee thereof, or (b) the expiration of five (5) business days after depositing same with the commercial overnight delivery carrier or the United States Postal System, as applicable.

**11. MISCELLANEOUS.**

**11.1. No Waiver.** No delay, error, or omission by First American in exercising any right or power under this Agreement shall impair any such right or power or be construed as a waiver thereof. A waiver by First American of a breach of any of the covenants, agreements, restrictions, obligations, or conditions of this Agreement with respect to the Indemnitor shall not be construed as a waiver of any succeeding breach of the same or other

covenants, agreements, restrictions, obligations or conditions under this Agreement. No waiver of any of First American's rights or powers under this Agreement is effective unless in writing and executed by First American.

**11.2. No Third Party Beneficiaries.** This Agreement is only between Indemnitor and First American, and is not intended to be, nor shall it be construed as being, for the benefit of any third party.

**11.3. Partial Invalidity.** If any term, provision, condition, or covenant of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

**11.4. Modification or Amendment.** Any alteration, change, modification, amendment, or supplement to this Agreement or any documents incorporated herein, in order to become effective, can only be made by written instrument executed by all parties hereto.

**11.5. Execution in Counterpart.** This Agreement and any alteration, change, modification, amendment or supplement to this Agreement may be executed by Indemnitor in several counterparts, and as so executed, will constitute one agreement binding on all Indemnitors, notwithstanding that all Indemnitors are not signatories to the original or the same counterpart. Any signature page may be detached from its counterpart and attached to another counterpart so as to form one complete document. Counterparts executed and delivered by electronic means, including but not limited to facsimile or portable document format (PDF), shall be fully effective and binding and shall constitute originals.

**11.6. Qualification; Authority.** Each natural person executing this Agreement on behalf of an Indemnitor which is an artificial person represents, warrants, and covenants to First American that (a) such artificial person is duly formed, in good standing, and authorized to do business in the State, (b) such natural person is duly authorized to execute and deliver this Agreement on behalf of such artificial person in accordance with authority granted under the organizational documents of such artificial person, and (c) such artificial person is bound under the terms of this Agreement.

**11.7. Merger of Prior Agreements and Understandings.** This Agreement and other documents incorporated herein by reference contain the entire understanding and agreement between the parties relating to the obligations of the parties with respect to Mechanics' Liens covered hereby, and all prior or contemporaneous agreements, understandings, representations, warranties, and statements, whether oral or written, shall be of no force or effect.

**11.8. Jurisdiction and Venue.** Indemnitor hereby submits to the personal jurisdiction of any state or federal court of First American's choosing having subject matter jurisdiction with respect to this Agreement, and Indemnitor waives any objection to venue therein should any action at law or in equity be necessary to enforce or interpret this Agreement. If any action at law or in equity is necessary to enforce or interpret this Agreement, then the prevailing party in such action shall be entitled to recover from the other party the prevailing party's actual attorneys' fees and other expenses incurred in connection with such action or proceeding in addition to its actual court costs.

**11.9. Other.** This Agreement is to be interpreted according to the laws of the State and is to be construed according to its fair meaning. All parties contributed materially to the preparation and negotiation of this Agreement, and this Agreement is not to be construed against any party. Titles and captions in this Agreement are for convenience only and are not part of the substance of this Agreement. The introduction, recitals, and Reference Information set forth hereinabove are all incorporated into this Agreement as material and essential terms of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number will each be deemed to include the others wherever and whenever the context so dictates. This Agreement inures to the benefit of and binds the personal representatives, successors, heirs, and assigns of the parties hereto.

**12. SECURITY.** Indemnitor has provided or will provide security for this Agreement to First American as follows:

<input checked="" type="checkbox"/>	<b>None at this time</b>	<input type="checkbox"/>	<b>Letter of Credit Agreement w/ Sight Draft</b>
<input type="checkbox"/>	<b>Security Agreement*</b> (Cash)	<input type="checkbox"/>	<b>Control Agreement</b>
<input type="checkbox"/>	<b>Security Agreement*</b> (Non-Cash)	<input type="checkbox"/>	<b>Deed of Trust / Mortgage / Security Deed</b>
<input type="checkbox"/>	<b>Security Agreement**</b> (Other)	<input type="checkbox"/>	<b>Other:</b>

**(Note:** If security is to be taken, additional forms must be executed. *Please be advised that additional documents may be needed to perfect a security interest. Please follow directions on said forms as to additional requirements or consult your local underwriter.*)

A breach by an obligor, pledgor or debtor under any of the foregoing documents as well as any documents which may be referenced in such documents shall be deemed a breach by Indemnitor under this Agreement. Unless otherwise agreed in writing, any sums held by First American as security may be held by First American in its general accounts and not deposited into an interest bearing account. Indemnitor understands that as a result of maintaining its accounts with a financial institution and its on-going banking relationship with the specific financial institution, First American may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from the financial institution ("collateral benefits"). Indemnitor agrees that any and all such collateral benefits belong solely to First American and First American has no obligation to account to Indemnitor for the value of any such collateral benefits. If the funds are deposited into a special interest bearing account, all such interest will be added to and retained in the account as part of the security for First American. Any such interest earned will be attributed for tax purposes to the Indemnitor depositing same.

**13. ESTOPPEL. NOTWITHSTANDING ANY POSSIBLE DIFFERENCE IN THE PARITY OF THE PARTIES HERETO, INDEMNITOR UNDERSTANDS THAT FIRST AMERICAN IS UNDERTAKING A RISK SIGNIFICANTLY GREATER THAN THAT UNDERTAKEN IN THE NORMAL COURSE OF PROVIDING TITLE INSURANCE POLICIES AND RELATED SERVICES BY ENTERING INTO THIS AGREEMENT AND ISSUING POLICIES OF TITLE INSURANCE IN RELIANCE ON THIS AGREEMENT AND EACH AND EVERY ONE OF THE COVENANTS, AGREEMENTS, REPRESENTATIONS, AND WARRANTIES OF INDEMNITOR CONTAINED HEREIN. THEREFORE, INDEMNITOR HEREBY DECLARES ITS WILLINGNESS TO ENTER INTO THIS AGREEMENT AND TO INDUCE FIRST AMERICAN TO ACCEPT THIS AGREEMENT, REALIZING THAT INDEMNITOR'S BEST INTEREST, IN THE OPINION OF INDEMNITOR, IS BEING SERVED THEREBY.**

[Signature page follows]

\* Requires a UCC Financing Statement to be executed and filed.

\*\* May require a UCC Financing Statement to be executed and filed.

**NOTICE:**  
**THIS AGREEMENT CONTAINS PROVISIONS WHICH PERSONALLY OBLIGATE INDEMNITOR. IT IS STRONGLY RECOMMENDED THAT INDEMNITOR CONSULT LEGAL COUNSEL PRIOR TO EXECUTING THIS AGREEMENT.**

**INDEMNITOR:**

Board of Regents of the Nevada System of  
Higher Education on behalf of the Nevada  
State College

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

**Social Security or Tax I.D. No.**

**Social Security or Tax I.D. No.**

\_\_\_\_\_

\_\_\_\_\_

**Tax Payer Name:**

**Tax Payer Name:**

\_\_\_\_\_

\_\_\_\_\_

**Notice Address: Vacant Land/APN 189-03-110-002,  
Las Vegas, NV**

**Notice Address:**

\_\_\_\_\_

\_\_\_\_\_

**ADDRESS FOR NOTICE TO FIRST AMERICAN:**

(If this information is not completed, please see Paragraph 10.)

**Notice Address: 2500 Paseo Verde Parkway, #120,  
Henderson, NV 89074**

**Notice Address:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**EXHIBIT A**

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**DESCRIPTION OF PROPERTY**

**File Number: NCS-901556-HHLV**

Street Address: Vacant Land / APN 189-03-110-002, Henderson, NV

Legal Description:

A PORTION OF ALL THAT CERTAIN REAL PROPERTY DESCRIBED IN INSTRUMENT 20010830:01402 OF OFFICIAL RECORDS ON FILE IN OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA. SITUATED IN THE NORTH HALF (N 1/2) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, CLARK COUNTY, NEVADA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM CAP MARKED P.L.S. 8866 SET AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SAID SECTION 3; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 488.92 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 47.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 877.00 FEET; THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET; THENCE NORTH 90°00'00" WEST, A DISTANCE OF 877.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 374.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7.53 ACRES, MORE OR LESS.

THE NORTH LINE OF THE NORTHWEST QUARTER (NW 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHWEST QUARTER (NW 1/4) OF SECTION 3, TOWNSHIP 23 SOUTH, RANGE 63 EAST, M.D.M., CITY OF HENDERSON, AS SHOWN BY THAT MAP IN BOOK 62 OF PLATS, PAGE 87, ON FILE IN THE CLARK COUNTY RECORDER'S OFFICE, CLARK COUNTY, NEVADA.

SAID LINE BEARS: SOUTH 89°23'54" WEST.

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
OPERATING PRO FORMA

		Soft Opening	OPENING	2	3	4	5	6	7	8	9	10
	Annual % Increase	Spring/Summer 2020	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
<b>REVENUES</b>												
Market Rate Units	3%		\$2,295,000	\$2,699,424	\$3,084,036	\$3,176,557	\$3,271,854	\$3,370,010	\$3,471,110	\$3,575,243	\$3,682,501	\$3,792,976
Other Revenue	3%		\$56,250	\$63,750	\$75,000	\$77,250	\$79,568	\$81,955	\$84,413	\$86,946	\$89,554	\$92,241
<b>Total Revenues</b>			<b>\$2,351,250</b>	<b>\$2,763,174</b>	<b>\$3,159,036</b>	<b>\$3,253,807</b>	<b>\$3,351,422</b>	<b>\$3,451,964</b>	<b>\$3,555,523</b>	<b>\$3,662,189</b>	<b>\$3,772,055</b>	<b>\$3,885,216</b>
<b>OPERATING EXPENSES</b>												
Utilities	3.0%	\$ 37,125	\$112,500	\$150,000	\$154,500	\$159,135	\$163,909	\$168,826	\$173,891	\$179,108	\$184,481	\$190,016
Professional Services & Reimbursables	3.0%	\$ 8,250	\$25,000	\$25,750	\$26,523	\$27,318	\$28,138	\$28,982	\$29,851	\$30,747	\$31,669	\$32,619
Management Staff	3.0%	\$ 95,149	\$288,331	\$296,981	\$305,890	\$315,067	\$324,519	\$334,255	\$344,282	\$354,611	\$365,249	\$376,207
Maintenance Expenses	3.0%		\$75,000	\$85,000	\$100,000	\$103,000	\$106,090	\$109,273	\$112,551	\$115,927	\$119,405	\$122,987
Marketing	3.0%	\$ 11,517	\$34,900	\$35,947	\$37,025	\$38,136	\$39,280	\$40,459	\$41,672	\$42,923	\$44,210	\$45,537
General and Administrative	3.0%	\$ 21,088	\$63,904	\$65,821	\$67,796	\$69,830	\$71,925	\$74,082	\$76,305	\$78,594	\$80,952	\$83,380
Insurance	3.0%	\$ 16,500	\$50,000	\$51,500	\$53,045	\$54,636	\$56,275	\$57,964	\$59,703	\$61,494	\$63,339	\$65,239
Property Management Fee 2%		\$ 15,518	\$47,025	\$55,263	\$63,181	\$65,076	\$67,028	\$69,039	\$71,110	\$73,244	\$75,441	\$77,704
Asset Management Fees 4%		\$ -				\$130,152	\$134,057	\$138,079	\$142,221	\$146,488	\$150,882	\$155,409
Audit/Accounting Fees	3.0%	\$ 6,600	\$20,000	\$20,600	\$21,218	\$21,855	\$22,510	\$23,185	\$23,881	\$24,597	\$25,335	\$26,095
PFA Ownership Fee			\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200
<b>Total Operating Expenses</b>		<b>\$ 211,748</b>	<b>\$767,860</b>	<b>\$838,063</b>	<b>\$880,378</b>	<b>\$1,035,405</b>	<b>\$1,064,932</b>	<b>\$1,095,343</b>	<b>\$1,126,668</b>	<b>\$1,158,932</b>	<b>\$1,192,164</b>	<b>\$1,226,393</b>
<b>Surplus Fund (Coverage Reserve Account)</b>			<b>\$0</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>
<b>NET OPERATING INCOME</b>			<b>\$1,583,390</b>	<b>\$2,175,111</b>	<b>\$2,528,659</b>	<b>\$2,468,402</b>	<b>\$2,536,490</b>	<b>\$2,606,621</b>	<b>\$2,678,855</b>	<b>\$2,753,257</b>	<b>\$2,829,891</b>	<b>\$2,908,823</b>
<b>FINANCING COSTS</b>												
Net Interest Payment on Debt			745,040	1,561,299	1,561,299	1,561,299	1,538,660	1,522,660	1,502,910	1,479,160	1,451,160	1,421,660
Principal Payment on Debt			-	-	-	250,000	320,000	395,000	475,000	560,000	590,000	620,000
<b>Total Net Debt Service</b>			<b>\$745,040</b>	<b>\$1,561,299</b>	<b>\$1,561,299</b>	<b>\$1,811,299</b>	<b>\$1,858,660</b>	<b>\$1,917,660</b>	<b>\$1,977,910</b>	<b>\$2,039,160</b>	<b>\$2,041,160</b>	<b>\$2,041,660</b>
DSCR			2.125	1.393	1.620	1.363	1.365	1.359	1.354	1.350	1.386	1.425
Cash Flow After Debt Service			\$838,350	\$363,812	\$717,360	\$407,103	\$427,830	\$438,960	\$450,945	\$464,097	\$538,730	\$617,163
Cumulative Cash Flow After Debt Service			\$838,350	\$1,202,162	\$1,919,522	\$2,326,625	\$2,754,455	\$3,193,415	\$3,644,360	\$4,108,457	\$4,647,188	\$5,264,351
<b>SUBORDINATE EXPENSES / RESERVES</b>												
Repair and Replacement Fund	3.0%		\$0	\$0	\$54,600	\$56,238	\$57,925	\$59,663	\$61,453	\$63,296	\$65,195	\$67,151
Utilities	3.0%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Base Rent	3.0%		\$0	\$50,000	\$51,500	\$53,045	\$54,636	\$56,275	\$57,964	\$59,703	\$61,494	\$63,339
Property Management Fee 2%			\$47,025	\$55,263	\$63,181	\$65,076	\$67,028	\$69,039	\$71,110	\$73,244	\$75,441	\$77,704
Subordinated Asset Management Fee 4%		\$ 31,037	\$94,050	\$110,527	\$126,361	\$130,152	\$134,057	\$138,079	\$142,221	\$146,488	\$150,882	\$155,409
Operating Reserve Fund			\$191,965	\$17,551	\$10,579	\$38,757	\$7,382	\$7,603	\$7,831	\$8,066	\$8,308	\$8,557
<b>Total Subordinate Expenses</b>			<b>\$333,040</b>	<b>\$233,341</b>	<b>\$306,221</b>	<b>\$343,268</b>	<b>\$321,028</b>	<b>\$330,659</b>	<b>\$340,579</b>	<b>\$350,796</b>	<b>\$361,320</b>	<b>\$372,160</b>
<b>Surplus Cash Flow</b>			<b>\$505,310</b>	<b>\$130,471</b>	<b>\$411,139</b>	<b>\$63,835</b>	<b>\$106,801</b>	<b>\$108,301</b>	<b>\$110,366</b>	<b>\$113,300</b>	<b>\$177,410</b>	<b>\$245,003</b>
<b>Aggregate Surplus Cash Flow</b>			<b>\$505,310</b>	<b>\$635,781</b>	<b>\$1,046,920</b>	<b>\$1,110,755</b>	<b>\$1,217,556</b>	<b>\$1,325,857</b>	<b>\$1,436,224</b>	<b>\$1,549,524</b>	<b>\$1,726,934</b>	<b>\$1,971,938</b>

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
OPERATING PRO FORMA

		11	12	13	14	15	16	17	18	19	20
	Annual % Increase	2030-31	2031-32	2032-33	2033-34	2034-35	2035-36	2036-37	2037-38	2038-39	2039-40
<b>REVENUES</b>											
Market Rate Units	3%	\$3,906,765	\$4,023,968	\$4,144,687	\$4,269,028	\$4,397,098	\$4,529,011	\$4,664,882	\$4,804,828	\$4,948,973	\$5,097,442
Other Revenue	3%	\$95,008	\$97,858	\$100,794	\$103,818	\$106,932	\$110,140	\$113,444	\$116,848	\$120,353	\$123,964
<b>Total Revenues</b>		<b>\$4,001,773</b>	<b>\$4,121,826</b>	<b>\$4,245,481</b>	<b>\$4,372,845</b>	<b>\$4,504,030</b>	<b>\$4,639,151</b>	<b>\$4,778,326</b>	<b>\$4,921,676</b>	<b>\$5,069,326</b>	<b>\$5,221,406</b>
<b>OPERATING EXPENSES</b>											
Utilities	3.0%	\$195,716	\$201,587	\$207,635	\$213,864	\$220,280	\$226,888	\$233,695	\$240,706	\$247,927	\$255,365
Professional Services & Reimbursables	3.0%	\$33,598	\$34,606	\$35,644	\$36,713	\$37,815	\$38,949	\$40,118	\$41,321	\$42,561	\$43,838
Management Staff	3.0%	\$387,493	\$399,118	\$411,091	\$423,424	\$436,127	\$449,210	\$462,687	\$476,567	\$490,864	\$505,590
Maintenance Expenses	3.0%	\$126,677	\$130,477	\$134,392	\$138,423	\$142,576	\$146,853	\$151,259	\$155,797	\$160,471	\$165,285
Marketing	3.0%	\$46,903	\$48,310	\$49,759	\$51,252	\$52,789	\$54,373	\$56,004	\$57,684	\$59,415	\$61,197
General and Administrative	3.0%	\$85,882	\$88,458	\$91,112	\$93,845	\$96,661	\$99,560	\$102,547	\$105,624	\$108,792	\$112,056
Insurance	3.0%	\$67,196	\$69,212	\$71,288	\$73,427	\$75,629	\$77,898	\$80,235	\$82,642	\$85,122	\$87,675
Property Management Fee 2%		\$80,035	\$82,437	\$84,910	\$87,457	\$90,081	\$92,783	\$95,567	\$98,434	\$101,387	\$104,428
Asset Management Fees 4%		\$160,071	\$164,873	\$169,819	\$174,914	\$180,161	\$185,566	\$191,133	\$196,867	\$202,773	\$208,856
Audit/Accounting Fees	3.0%	\$26,878	\$27,685	\$28,515	\$29,371	\$30,252	\$31,159	\$32,094	\$33,057	\$34,049	\$35,070
PFA Ownership Fee		\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200
<b>Total Operating Expenses</b>		<b>\$1,261,648</b>	<b>\$1,297,962</b>	<b>\$1,335,365</b>	<b>\$1,373,890</b>	<b>\$1,413,570</b>	<b>\$1,454,442</b>	<b>\$1,496,539</b>	<b>\$1,539,899</b>	<b>\$1,584,560</b>	<b>\$1,630,561</b>
<b>Surplus Fund (Coverage Reserve Account)</b>		<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>
<b>NET OPERATING INCOME</b>		<b>\$2,990,124</b>	<b>\$3,073,864</b>	<b>\$3,160,116</b>	<b>\$3,248,955</b>	<b>\$3,340,460</b>	<b>\$3,434,710</b>	<b>\$3,531,787</b>	<b>\$3,631,777</b>	<b>\$3,734,766</b>	<b>\$3,840,845</b>
<b>FINANCING COSTS</b>											
<b>Net Interest Payment on Debt</b>		1,390,660	1,358,160	1,324,160	1,288,410	1,250,910	1,211,410	1,169,910	1,126,410	1,080,660	1,032,660
Principal Payment on Debt		650,000	680,000	715,000	750,000	790,000	830,000	870,000	915,000	960,000	1,005,000
<b>Total Net Debt Service</b>		<b>\$2,040,660</b>	<b>\$2,038,160</b>	<b>\$2,039,160</b>	<b>\$2,038,410</b>	<b>\$2,040,910</b>	<b>\$2,041,410</b>	<b>\$2,039,910</b>	<b>\$2,041,410</b>	<b>\$2,040,660</b>	<b>\$2,037,660</b>
DSCR		1.465	1.508	1.550	1.594	1.637	1.683	1.731	1.779	1.830	1.885
Cash Flow After Debt Service		\$699,464	\$785,704	\$870,956	\$960,545	\$1,049,550	\$1,143,299	\$1,241,877	\$1,340,366	\$1,444,106	\$1,553,185
Cumulative Cash Flow After Debt Service		\$5,963,815	\$6,749,518	\$7,620,474	\$8,581,019	\$9,630,569	\$10,773,868	\$12,015,745	\$13,356,111	\$14,800,217	\$16,353,402
<b>SUBORDINATE EXPENSES / RESERVES</b>											
Repair and Replacement Fund	3.0%	\$69,166	\$71,241	\$73,378	\$75,579	\$77,847	\$80,182	\$82,587	\$85,065	\$87,617	\$90,245
Utilities	3.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
<b>Base Rent</b>	<b>3.0%</b>	<b>\$65,239</b>	<b>\$67,196</b>	<b>\$69,212</b>	<b>\$71,288</b>	<b>\$73,427</b>	<b>\$75,629</b>	<b>\$77,898</b>	<b>\$80,235</b>	<b>\$82,642</b>	<b>\$85,122</b>
Property Management Fee 2%		\$80,035	\$82,437	\$84,910	\$87,457	\$90,081	\$92,783	\$95,567	\$98,434	\$101,387	\$104,428
Subordinated Asset Management Fee 4%		\$160,071	\$164,873	\$169,819	\$174,914	\$180,161	\$185,566	\$191,133	\$196,867	\$202,773	\$208,856
Operating Reserve Fund		\$8,814	\$9,078	\$9,351	\$9,631	\$9,920	\$10,218	\$10,524	\$10,840	\$11,165	\$11,500
<b>Total Subordinate Expenses</b>		<b>\$383,325</b>	<b>\$394,824</b>	<b>\$406,669</b>	<b>\$418,869</b>	<b>\$431,435</b>	<b>\$444,378</b>	<b>\$457,710</b>	<b>\$471,441</b>	<b>\$485,584</b>	<b>\$500,152</b>
<b>Surplus Cash Flow</b>		<b>\$316,139</b>	<b>\$390,879</b>	<b>\$464,286</b>	<b>\$541,676</b>	<b>\$618,114</b>	<b>\$698,921</b>	<b>\$784,167</b>	<b>\$868,925</b>	<b>\$958,522</b>	<b>\$1,053,033</b>
<b>Aggregate Surplus Cash Flow</b>		<b>\$2,288,077</b>	<b>\$2,678,956</b>	<b>\$3,143,243</b>	<b>\$3,684,919</b>	<b>\$4,303,033</b>	<b>\$5,001,954</b>	<b>\$5,786,121</b>	<b>\$6,655,047</b>	<b>\$7,613,568</b>	<b>\$8,666,601</b>

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
OPERATING PRO FORMA

		21	22	23	24	25	26	27	28	29	30
	Annual % Increase	2040-41	2041-42	2042-43	2043-44	2044-45	2045-46	2046-47	2047-48	2048-49	2049-50
<b>REVENUES</b>											
Market Rate Units	3%	\$5,250,365	\$5,407,876	\$5,570,113	\$5,737,216	\$5,909,332	\$6,086,612	\$6,269,211	\$6,457,287	\$6,651,006	\$6,850,536
Other Revenue	3%	\$127,682	\$131,513	\$135,458	\$139,522	\$143,708	\$148,019	\$152,460	\$157,033	\$161,744	\$166,597
<b>Total Revenues</b>		<b>\$5,378,048</b>	<b>\$5,539,389</b>	<b>\$5,705,571</b>	<b>\$5,876,738</b>	<b>\$6,053,040</b>	<b>\$6,234,631</b>	<b>\$6,421,670</b>	<b>\$6,614,320</b>	<b>\$6,812,750</b>	<b>\$7,017,133</b>
<b>OPERATING EXPENSES</b>											
Utilities	3.0%	\$263,026	\$270,917	\$279,044	\$287,416	\$296,038	\$304,919	\$314,067	\$323,489	\$333,193	\$343,189
Professional Services & Reimbursables	3.0%	\$45,153	\$46,507	\$47,903	\$49,340	\$50,820	\$52,344	\$53,915	\$55,532	\$57,198	\$58,914
Management Staff	3.0%	\$520,758	\$536,381	\$552,472	\$569,046	\$586,118	\$603,701	\$621,812	\$640,466	\$659,680	\$679,471
Maintenance Expenses	3.0%	\$170,243	\$175,351	\$180,611	\$186,029	\$191,610	\$197,359	\$203,279	\$209,378	\$215,659	\$222,129
Marketing	3.0%	\$63,033	\$64,924	\$66,872	\$68,878	\$70,945	\$73,073	\$75,265	\$77,523	\$79,849	\$82,244
General and Administrative	3.0%	\$115,418	\$118,880	\$122,447	\$126,120	\$129,904	\$133,801	\$137,815	\$141,949	\$146,208	\$150,594
Insurance	3.0%	\$90,306	\$93,015	\$95,805	\$98,679	\$101,640	\$104,689	\$107,830	\$111,064	\$114,396	\$117,828
Property Management Fee 2%		\$107,561	\$110,788	\$114,111	\$117,535	\$121,061	\$124,693	\$128,433	\$132,286	\$136,255	\$140,343
Asset Management Fees 4%		\$215,122	\$221,576	\$228,223	\$235,070	\$242,122	\$249,385	\$256,867	\$264,573	\$272,510	\$280,685
Audit/Accounting Fees	3.0%	\$36,122	\$37,206	\$38,322	\$39,472	\$40,656	\$41,876	\$43,132	\$44,426	\$45,759	\$47,131
PFA Ownership Fee		\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200	\$51,200
<b>Total Operating Expenses</b>		<b>\$1,677,942</b>	<b>\$1,726,744</b>	<b>\$1,777,010</b>	<b>\$1,828,784</b>	<b>\$1,882,112</b>	<b>\$1,937,039</b>	<b>\$1,993,614</b>	<b>\$2,051,887</b>	<b>\$2,111,907</b>	<b>\$2,173,729</b>
<b>Surplus Fund (Coverage Reserve Account)</b>		<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>
<b>NET OPERATING INCOME</b>		<b>\$3,950,106</b>	<b>\$4,062,646</b>	<b>\$4,178,561</b>	<b>\$4,297,954</b>	<b>\$4,420,928</b>	<b>\$4,547,592</b>	<b>\$4,678,056</b>	<b>\$4,812,434</b>	<b>\$4,950,843</b>	<b>\$5,093,404</b>
<b>FINANCING COSTS</b>											
Net Interest Payment on Debt		982,410	929,410	873,910	815,660	754,410	690,160	622,660	551,910	477,410	399,160
Principal Payment on Debt		1,060,000	1,110,000	1,165,000	1,225,000	1,285,000	1,350,000	1,415,000	1,490,000	1,565,000	1,640,000
<b>Total Net Debt Service</b>		<b>\$2,042,410</b>	<b>\$2,039,410</b>	<b>\$2,038,910</b>	<b>\$2,040,660</b>	<b>\$2,039,410</b>	<b>\$2,040,160</b>	<b>\$2,037,660</b>	<b>\$2,041,910</b>	<b>\$2,042,410</b>	<b>\$2,039,160</b>
DSCR		1.934	1.992	2.049	2.106	2.168	2.229	2.296	2.357	2.424	2.498
Cash Flow After Debt Service		\$1,657,696	\$1,773,235	\$1,889,651	\$2,007,293	\$2,131,518	\$2,257,432	\$2,390,396	\$2,520,523	\$2,658,432	\$2,804,244
Cumulative Cash Flow After Debt Service		\$18,011,098	\$19,784,333	\$21,673,983	\$23,681,277	\$25,812,795	\$28,070,227	\$30,460,622	\$32,981,146	\$35,639,578	\$38,443,821
<b>SUBORDINATE EXPENSES / RESERVES</b>											
Repair and Replacement Fund	3.0%	\$92,953	\$95,741	\$98,614	\$101,572	\$104,619	\$107,758	\$110,991	\$114,320	\$117,750	\$121,282
Utilities	3.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Base Rent	3.0%	\$87,675	\$90,306	\$93,015	\$95,805	\$98,679	\$101,640	\$104,689	\$107,830	\$111,064	\$114,396
Property Management Fee 2%		\$107,561	\$110,788	\$114,111	\$117,535	\$121,061	\$124,693	\$128,433	\$132,286	\$136,255	\$140,343
Subordinated Asset Management Fee 4%		\$215,122	\$221,576	\$228,223	\$235,070	\$242,122	\$249,385	\$256,867	\$264,573	\$272,510	\$280,685
Operating Reserve Fund		\$11,845	\$12,201	\$12,567	\$12,944	\$13,332	\$13,732	\$14,144	\$14,568	\$15,005	\$15,455
<b>Total Subordinate Expenses</b>		<b>\$515,156</b>	<b>\$530,611</b>	<b>\$546,529</b>	<b>\$562,925</b>	<b>\$579,813</b>	<b>\$597,207</b>	<b>\$615,123</b>	<b>\$633,577</b>	<b>\$652,584</b>	<b>\$672,162</b>
<b>Surplus Cash Flow</b>		<b>\$1,142,540</b>	<b>\$1,242,624</b>	<b>\$1,343,121</b>	<b>\$1,444,368</b>	<b>\$1,551,705</b>	<b>\$1,660,225</b>	<b>\$1,775,272</b>	<b>\$1,886,946</b>	<b>\$2,005,848</b>	<b>\$2,132,082</b>
<b>Aggregate Surplus Cash Flow</b>		<b>\$9,809,141</b>	<b>\$11,051,765</b>	<b>\$12,394,887</b>	<b>\$13,839,255</b>	<b>\$15,390,960</b>	<b>\$17,051,185</b>	<b>\$18,826,457</b>	<b>\$20,713,403</b>	<b>\$22,719,251</b>	<b>\$24,851,332</b>

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
OPERATING PRO FORMA

		31	32	33	34	35	36	37	38	39	40										
	Annual % Increase	2050-51	2051-52	2052-53	2053-54	2054-55	2055-56	2056-57	2057-58	2058-59	2060-61	SUMMARY	2062-63	2063-64	2064-65	2065-66	2066-67	2067-68	2068-69	2069-70	
<b>REVENUES</b>																					
Market Rate Units	3%	\$7,056,052	\$7,267,734	\$7,485,766	\$7,710,339	\$7,941,649	\$8,179,898	\$8,425,295	\$8,678,054	\$8,938,396	\$9,206,547										
Other Revenue	3%	\$171,595	\$176,742	\$182,045	\$187,506	\$193,131	\$198,925	\$204,893	\$211,040	\$217,371	\$223,892										
<b>Total Revenues</b>		<b>\$7,227,647</b>	<b>\$7,444,476</b>	<b>\$7,667,810</b>	<b>\$7,897,845</b>	<b>\$8,134,780</b>	<b>\$8,378,823</b>	<b>\$8,630,188</b>	<b>\$8,889,094</b>	<b>\$9,155,766</b>	<b>\$9,430,439</b>										
<b>OPERATING EXPENSES</b>																					
Utilities	3.0%	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189	\$343,189										
Professional Services & Reimbursables	3.0%	\$60,682	\$62,502	\$64,377	\$66,308	\$68,298	\$70,347	\$72,457	\$74,631	\$76,870	\$79,176										
Management Staff	3.0%	\$699,855	\$720,851	\$742,476	\$764,750	\$787,693	\$811,324	\$835,663	\$860,733	\$886,555	\$913,152										
Maintenance Expenses	3.0%	\$228,793	\$235,657	\$242,726	\$250,008	\$257,508	\$265,234	\$273,191	\$281,386	\$289,828	\$298,523										
Marketing	3.0%	\$84,711	\$87,253	\$89,870	\$92,566	\$95,343	\$98,204	\$101,150	\$104,184	\$107,310	\$110,529										
General and Administrative	3.0%	\$155,112	\$159,765	\$164,558	\$169,495	\$174,580	\$179,817	\$185,212	\$190,768	\$196,491	\$202,386										
Insurance	3.0%	\$121,363	\$125,004	\$128,754	\$132,617	\$136,595	\$140,693	\$144,914	\$149,261	\$153,739	\$158,351										
Property Management Fee 2%		\$144,553	\$148,890	\$153,356	\$157,957	\$162,696	\$167,576	\$172,604	\$177,782	\$183,115	\$188,609										
Asset Management Fees 4%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0										
Audit/Accounting Fees	3.0%	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131	\$47,131										
PFA Ownership Fee		\$51,200	\$51,200	\$51,200	\$51,200	\$0	\$0	\$0	\$0	\$0	\$0										
<b>Total Operating Expenses</b>		<b>\$1,936,589</b>	<b>\$1,981,441</b>	<b>\$2,027,639</b>	<b>\$2,075,222</b>	<b>\$2,073,033</b>	<b>\$2,123,515</b>	<b>\$2,175,511</b>	<b>\$2,229,066</b>	<b>\$2,284,229</b>	<b>\$2,341,046</b>										
<b>Surplus Fund (Coverage Reserve Account)</b>		<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>	<b>\$250,000</b>										
<b>NET OPERATING INCOME</b>		<b>\$5,541,057</b>	<b>\$5,713,035</b>	<b>\$5,890,171</b>	<b>\$6,072,622</b>	<b>\$6,311,747</b>	<b>\$6,505,309</b>	<b>\$6,704,677</b>	<b>\$6,910,027</b>	<b>\$7,121,538</b>	<b>\$7,339,394</b>										
<b>FINANCING COSTS</b>																					
Net Interest Payment on Debt		317,160	231,160	140,660	(2,050,840)	(2,041,891)		-	-	-	-										
Principal Payment on Debt		1,720,000	1,810,000	1,900,000	1,995,000			-	-	-	-										
<b>Total Net Debt Service</b>		<b>\$2,037,160</b>	<b>\$2,041,160</b>	<b>\$2,040,660</b>	<b>-\$55,840</b>	<b>-\$2,041,891</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>										
DSCR		2.720	2.799	2.886																	
Cash Flow After Debt Service		\$3,253,897	\$3,421,875	\$3,599,511	\$5,878,462	\$8,103,637	\$6,255,309	\$6,454,677	\$6,660,027	\$6,871,538	\$7,089,394										
Cumulative Cash Flow After Debt Service		\$41,697,719	\$45,119,593	\$48,719,104	\$54,597,566	\$62,701,204	\$68,956,512	\$75,411,189	\$82,071,217	\$88,942,755	\$96,032,148										
<b>SUBORDINATE EXPENSES / RESERVES</b>																					
Repair and Replacement Fund	3.0%	\$124,921	\$128,668	\$132,529	\$136,504	\$140,600	\$144,818	\$149,162	\$153,637	\$158,246	\$162,993										
Utilities	3.0%	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0										
Base Rent	3.0%	\$117,828	\$121,363	\$125,004	\$128,754	\$0	\$0	\$0	\$0	\$0	\$0	\$ 2,753,892									
Property Management Fee 2%		\$144,553	\$148,890	\$153,356	\$157,957	\$162,696	\$167,576	\$172,604	\$177,782	\$183,115	\$188,609										
Subordinated Asset Management Fee 4%		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0										
Operating Reserve Fund		-\$59,285	\$11,213	\$11,549	\$11,896	-\$547	\$12,620	\$12,999	\$13,389	\$13,791	\$14,204										
<b>Total Subordinate Expenses</b>		<b>\$328,017</b>	<b>\$410,134</b>	<b>\$422,438</b>	<b>\$435,111</b>	<b>\$302,748</b>	<b>\$325,014</b>	<b>\$334,765</b>	<b>\$344,808</b>	<b>\$355,152</b>	<b>\$365,806</b>										
<b>Surplus Cash Flow</b>		<b>\$2,925,880</b>	<b>\$3,011,740</b>	<b>\$3,177,073</b>	<b>\$5,443,351</b>	<b>\$7,800,889</b>	<b>\$5,930,294</b>	<b>\$6,119,913</b>	<b>\$6,315,220</b>	<b>\$6,516,386</b>	<b>\$6,723,587</b>	\$ 78,815,665									
<b>Aggregate Surplus Cash Flow</b>		<b>\$27,777,212</b>	<b>\$30,788,953</b>	<b>\$33,966,026</b>	<b>\$39,409,376</b>	<b>\$47,210,266</b>	<b>\$53,140,560</b>	<b>\$59,260,473</b>	<b>\$65,575,692</b>	<b>\$72,092,078</b>	<b>\$78,815,665</b>										

CAMPUS VILLAGE AT NEVADA STATE COLLEGE  
 OPERATING PRO FORMA

	Annual % Increase	2070-71	2071-72	2072-73	2073-74	2074-75
<b>REVENUES</b>						
Market Rate Units	3%					
Other Revenue	3%					
<b>Total Revenues</b>						
<b>OPERATING EXPENSES</b>						
Utilities	3.0%					
Professional Services & Reimbursables	3.0%					
Management Staff	3.0%					
Maintenance Expenses	3.0%					
Marketing	3.0%					
General and Administrative	3.0%					
Insurance	3.0%					
Property Management Fee 2%						
Asset Management Fees 4%						
Audit/Accounting Fees	3.0%					
PFA Ownership Fee						
<b>Total Operating Expenses</b>						
<b>Surplus Fund (Coverage Reserve Account)</b>						
<b>NET OPERATING INCOME</b>						
<b>FINANCING COSTS</b>						
Net Interest Payment on Debt						
Principal Payment on Debt						
<b>Total Net Debt Service</b>						
<b>DSCR</b>						
Cash Flow After Debt Service						
Cumulative Cash Flow After Debt Service						
<b>SUBORDINATE EXPENSES / RESERVES</b>						
Repair and Replacement Fund	3.0%					
Utilities	3.0%					
Base Rent	3.0%					
Property Management Fee 2%						
Subordinated Asset Management Fee 4%						
Operating Reserve Fund						
<b>Total Subordinate Expenses</b>						

Surplus Cash Flow  
**Aggregate Surplus Cash Flow**