

BOARD OF REGENTS BRIEFING PAPER

1. AGENDA ITEM TITLE: New Facilities Operator for the Village at Nevada State College Student Housing

MEETING DATE: June 9, 2023 _____

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

At its September 2018 meeting, the Board of Regents approved the implementing agreements for Nevada State College and American Public Development, LLC (APD) to move forward with a third-party student housing project. The approved project consists of 312 beds, configured in a village-style community, with study and tutoring spaces, as well as recreational areas. APD engaged the services of American Campus Communities (ACC) to function as the Facilities Operator. Although the Facilities Operating Agreement is between APD and ACC, the Agreement was included in the Board of Regents packet of materials submitted for project approval. Because the Facilities Operator is a critical component of the project and must integrate with Nevada State College operations, the original, approve Ground Lease for the project contained language that required Nevada State College to approve the Facilities Operating Agreement, any amendment thereto, or any replacement thereof. Such approval may not be unreasonably withheld, conditioned or delayed. The Ground Lease also stated that Nevada State College consents to the Facilities Operating Agreement with ACC.

At its March 2022 meeting, the Board of Regents approved refinancing of the housing project. Among other actions, the Board approved an Amended and Restated Ground Lease for the project during the March 2022 meeting. This Amended and Restated Ground Lease contains similar language to the original Ground Lease requiring Nevada State College's approval of any changes in the Facilities Operating Agreement. The Amended and Restated Ground Lease also contains language regarding Nevada State College's consent of the initial Facilities Operating Agreement with ACC.

The bondholders of the project have recently selected a new Facilities Operator, Capstone On-Campus Management, LLC (COCM) for the project. This will require a new Facilities Operating Agreement between APD and COCM. Nevada State College has no objection to COCM as the new Facilities Operator and looks forward to working with ACC and COCM for a smooth transition this summer.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

President DeRionne Pollard requests approval to consent to a Facilities Operating Agreement between American Public Development, LLC and Capstone On-Campus Management, LLC engaging Capstone On-Campus Management, LLC to function at the Facilities Operator for the Village at Nevada State College student housing facility.

4. IMPETUS (WHY NOW?):

The Bondholders for the third-party student housing facility have requested a change in Facilities Operator. A transition during the summer months will be less impactful on the student residents.

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 21st 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 2 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. Campus housing also creates an opportunity for live and learn 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:

- The Amended and Restated Ground Lease for the housing project requires Nevada State College to approve any changes to or replacement of the Facilities Operating Agreement
- Such approval may not be unreasonably withheld, conditioned or delayed
- Nevada State College has no concerns with Capstone On-Campus Management, LLC as the Facilities Operator of the Village at Nevada State College

7. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None

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

- None

9. RECOMMENDATION FROM THE CHANCELLOR'S OFFICE:

The Chancellor's Office supports approval of the Agreement.

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: _____
- Fiscal Impact: Yes____ No X____
Explain: _____

**FACILITY OPERATING AGREEMENT
BETWEEN
AMERICAN PUBLIC DEVELOPMENT, LLC AND
CAPSTONE ON-CAMPUS MANAGEMENT, LLC**

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THIS FACILITY OPERATING AGREEMENT (this “Operating Agreement”) is made and effective as of the [___] day of May, 2023 (“Effective Date”) by and between AMERICAN PUBLIC DEVELOPMENT, LLC, a Nevada limited liability company, having its principal office in Las Vegas, Nevada (“Company”), and CAPSTONE ON-CAMPUS MANAGEMENT, LLC, a limited liability company duly organized and existing under the laws of the State of Alabama (“Operator”).

Recitals

Company and The Board of Regents of Nevada System of Higher Education (the “Board”), on behalf of Nevada State College (“College”) entered into an Amended and Restated Ground Lease Agreement For State Campus Village, dated as of October 26, 2022 (the “Ground Lease”), and a Project Development Agreement, dated as of April 24, 2019 (the “Development Agreement”), pursuant to which Company was obligated to develop, finance, construct, furnish, and equip the Project (as defined herein) for the use and benefit of the College.

Company subleased the Site to the Public Finance Authority, a governmental entity organized and existing pursuant to the laws of the State of Wisconsin (the “Authority”) pursuant to that certain Amended and Restated Ground Sublease Agreement For State Campus Village, dated as of October 26, 2022 (the “Ground Sublease”).

The Project was refinanced with proceeds of \$37,940,000 aggregate principal amount of Public Finance Authority Student Housing Revenue Bonds, Series 2022 (Nevada State College) (the “Bonds”) issued by the Authority pursuant to a certain Trust Indenture, dated as of October 1, 2022 (the “Indenture,” which term shall include the Master Glossary of Terms incorporated therein (the “Master Glossary”)), between the Authority and UMB Bank, N. A., as Trustee (the “Trustee”). Capitalized terms used but not defined in this Operating Agreement shall have the respective meanings ascribed to such terms in the Master Glossary.

In connection with the issuance of the Bonds, the Ground Lease and the Ground Sublease, Company and the Authority entered into an Asset Management Agreement dated as of October 26, 2022 (the “AMA”), by which Company will act as the asset manager with respect to the management and operation of the Project, and the performance by Operator under this Operating Agreement.

Pursuant to and in accordance with the terms and conditions of the AMA, Company hereby appoints Operator to manage, operate and maintain the Project, and Operator accepts such responsibility for the term of this Operating Agreement.

In consideration of the mutual promises and covenants herein contained, Company and Operator agree as follows:

Section 1. Appointment and Acceptance. Company appoints Operator as Company’s exclusive agent for the operation and maintenance of the Project, as further defined in this Operating Agreement, and Operator accepts the appointment, subject to the terms and conditions set forth in this Operating Agreement. Nothing herein or in the Bond Documents shall operate or

be construed to make Operator liable or responsible for any aspect of the Project, except as specifically set forth in this Operating Agreement, and nothing herein or in the Bond Documents shall obligate Operator to be liable for any portion of the principal of, interest on or redemption premium, if any, on the Bonds or for any Operating Expense of the Project. This Operating Agreement is not intended to be treated as a lease or a conveyance of ownership of the Project, and Operator agrees that it will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment of rent with respect to the Project.

Section 2. Description of Project. The facility to be operated by Operator under this Operating Agreement (the “Project”) is the approximately 342-bed student housing facility, including the buildings, furniture, fixtures, machinery, and equipment therefor and related facilities developed pursuant to the Development Agreement, located on the campus of the College in the City of Henderson, Clark County, Nevada, as more specifically described in the Ground Lease.

Section 3. Management of Project. Operator shall use commercially reasonable, good faith efforts to manage the Project in accordance with Company’s responsibilities as set forth below:

(a) the following provisions of the Ground Sublease, the Indenture, the Leasehold Mortgage, the Tax Agreement and the AMA:

(i) Section 11 of the Ground Sublease;

(ii) Section 7.23 of the Indenture;

(iii) Section 17 of the Leasehold Mortgage;

(iv) Section 2.3 of the Tax Agreement labeled “Governmental Bond Status” relating to “Private Use”;

(v) Section 4.1 of the AMA;

(vi) the Resident Leases; and

(vii) Applicable Law.

(b) To the extent not inconsistent with the provisions described in subsection (a) above, Operator shall use commercially reasonable, good faith efforts to manage the Project consistent with: (i) the responsibilities referenced on Exhibit A hereto, (ii) College policies, procedures, rules and regulations described in Section 3(g)(v) hereof and (iii) all policies and operating procedures governing residents of the Project (collectively the “Management Responsibilities”). In fulfilling its duties and obligations under this Operating Agreement, Operator shall do all things necessary, desirable or appropriate therefor or customarily performed by management agents of properties similar to the Project. Operator further agrees not to knowingly take any action or fail to take any action which it is specifically obligated to take hereunder that would cause Company to be in breach of any of the representations or covenants made by Company in the AMA. In

furtherance thereof, Operator will employ an adequate staff to lease, operate, maintain, collect rent and make the appropriate disbursements for the Project, and will have full authority and complete supervision over the employment, discharge and performance of duties of all personnel used in the management, maintenance, operation, repair, and renting of the Project. Without limiting the generality of the foregoing, the Management Responsibilities under this Operating Agreement shall include the following:

(i) Marketing Activities. Operator will provide and supervise the marketing activities for the Project and attempt to secure rentals for the Project in accordance with this Operating Agreement and the Marketing Plan (defined below) approved by the Company.

(ii) Marketing Plan. Annually on or before December 1 prior to each Fiscal Year, commencing with the Fiscal Year beginning January 1, 2023, Operator shall submit to Company for approval (with a copy to the College and Authority) a plan for the advertising and other marketing efforts for the Project detailing, among other things, the timing, cost and media type to be utilized (the “Marketing Plan”). Company will review the proposed Marketing Plan and will consult with Operator prior to the commencement of the forthcoming Fiscal Year in order to agree on an approved Marketing Plan (as the same may from time to time be amended and approved by Company the “Approved Marketing Plan”). If the Company gives notice of its disapproval, Operator and the Company promptly, in good faith, shall develop a Marketing Plan on which they agree. If Company and Operator fail to reach agreement not later than sixty (60) days following receipt thereof, the Marketing Plan for the then-current Fiscal Year shall be implemented for the next Fiscal Year until agreement is reached on a new Marketing Plan. For purposes of this Agreement, “Fiscal Year” shall mean any one-year period set forth in Operating Plan and Budget.

(iii) Rentals. Operator will provide and supervise the on-site staff in the renting of the bed accommodations to Permitted Residents (as defined in the Ground Lease). Incident thereto, the following provisions will apply:

(1) Reserved.

(2) Operator will be responsible for taking and timely processing applications for rentals.

(3) Operator will prepare all Resident Leases for the Project in a form mutually agreeable to both Operator and Company, subject to approval of the Authority of such form and (including approval of any modifications, amendments or deviations from such form either generally or on an ad hoc basis) and will cause such Resident Leases to be executed by the students. The rental amounts under the Resident Leases will be in conformity with the schedule of specific and mandatory rental amounts established by the approved Annual Budget.

(4) Operator shall market and lease the Project's bed accommodations on a basis consistent with the Approved Marketing Plan.

(5) Operator will be responsible for the collection, deposit and disbursement of advance reservation deposits and security deposits, if required, in accordance with the terms of each Resident Lease, the Management Responsibilities and the laws of the State applicable to such deposits. All such deposits ("Security Deposits") shall be held in a separate Security Deposit account. All funds in such accounts shall at all times be the exclusive property of the Authority, or, to the extent provided by Applicable Law, the respective tenants of the Project, and shall not be commingled with any funds of Operator. All such deposits shall be in federally insured institutions and fully insured therein. Operator shall notify Company, Authority and the Trustee of the name, account number and location of the account in which Security Deposits are being held. Operator shall promptly notify Company, the Authority, and the Trustee of any material damage to a dwelling unit caused by or otherwise attributable to the occupant of such dwelling unit, and shall promptly transfer any forfeited amounts from Security Deposits (which, upon forfeiture, shall be deemed Revenues) to the Trustee pursuant to the Bond Documents for application in accordance with the Indenture. To the extent required under any Resident Lease, Operator is authorized to return to the tenant thereunder the applicable Security Deposit, or such portion thereof as is then being held by Operator.

(6) Operator will establish rents for bed accommodations in the Project from time to time, subject to approval by the Authority, in accordance with the requirements of Section 7.23 of the Indenture and subject to the approval of the College if required under Section 12.5 of the Ground Lease. In order to facilitate the establishment of rents, Operator shall furnish to Company, the Authority and the College (and during any Distress Period, to the Trustee) annually on or before December 1 prior to each Fiscal Year commencing with the Fiscal Year beginning on January 1, 2023), and at such other times as may be reasonably requested by Company, the Authority or the College (or during any Distress Period, the Trustee), a proposed schedule of rents, which proposal shall be accompanied by an analysis demonstrating that the proposed rents will be sufficient to satisfy the requirements of Section 7.23 of the Indenture and consistent with the Annual Budget.

(7) Operator will use its commercially reasonable efforts to timely collect all rents, charges and other amounts receivable in connection with the management and operation of the Project. Operator shall undertake to collect such amounts in a commercially reasonable manner consistent with the Management Responsibilities. All rents, charges, and other income from the Project shall be the property of the Authority. Until transferred to

the Trustee as provided herein, such amounts will be received and held by Operator in trust for the Authority in a segregated blocked account which will be subject to a blocked account agreement which sweeps into the Revenue Fund daily and will not be commingled with any funds of Operator or any other person or entity. Such amounts will be deposited by Operator with the Trustee not less frequently than daily.

(c) Enforcement of Resident Leases. Operator will use commercially reasonable efforts to secure full compliance by each tenant with the terms of such tenant's Resident Lease, including, but not limited to, the use of on-site personnel. Operator will enforce compliance by each tenant in a commercially reasonable manner.

(d) Maintenance and Repair. Operator will use commercially reasonable efforts to cause the Project to be maintained in good repair, including but not limited to, cleaning, painting, decorating, plumbing, carpentry, HVAC, grounds care and such other maintenance and repair work as may be reasonably necessary, in compliance with the requirements of Section 4.1 of the AMA, subject to receipt of adequate funds from the Trustee as set forth in the Annual Budget, all of which shall be paid by Operator out of the Operating Account as an Operating Expense of the Project. Operator shall use commercially reasonable efforts to ensure that the actual costs of maintaining and operating the Project shall not exceed the Annual Budget, and year-to-date budget variances in excess of five percent (5%) will be explained to Company each month. Except as otherwise set forth herein, any expenditure from the Operating Account which exceeds by more than five percent (5%) in any major expense category (or an aggregate amount of \$15,000.00 in any major expense category for any Fiscal Year) the amount for such expenditure set forth in the Annual Budget shall require the approval of Company, which approval shall not be unreasonably withheld, and which approval shall be deemed to have been given if Company does not specifically deny such approval within ten (10) days after such approval is requested by the Operator. In cases of emergency, Operator may make expenditures for repairs or replacements in conformance with the aforementioned spending limit without prior approval, if it is necessary, in the reasonable judgment of Operator, to prevent imminent damage to property or injury to persons. Operator will promptly notify Company and the Authority of any such emergency expenditure no later than three (3) business days following such emergency repair or replacement, describing the cause of such emergency, the repairs or replacements undertaken in connection with such emergency, and the cost of such emergency repairs or replacements. Incident thereto (but only to the extent authorized by the Annual Budget), the following provisions will apply:

(i) Reasonable and customary attention will be given to preventive maintenance in accordance with Management Responsibilities.

(ii) If Operator determines it to be necessary, Operator will hire qualified independent contractors for the maintenance and repair of heating and air-conditioning systems, and for other repairs beyond the capability of its regular maintenance employees.

(iii) Operator will systematically and promptly receive and investigate all legitimate service requests from tenants and take such action thereon as may be justified. Unresolved material complaints will be reported to Company after investigation.

(iv) Operator will acquire all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project.

(e) Capital Improvements.

(i) Operator shall from time to time plan and carry out necessary capital improvements with respect to the Project, with the prior approval of Company and the Authority, in accordance with the then-applicable approved Annual Budget. The cost of any such capital improvements shall be paid with funds from the Repair and Replacement Fund provided for in the Indenture.

(ii) Operator shall provide Company and the Designated Agent with advance written notification (hereinafter, "Work Notification") of any proposed capital improvement work to be performed in excess of \$10,000 that is not accounted for in the Annual Budget. The Work Notification shall be provided promptly following identification of the expected costs and shall consist of a general description of the work, required building materials, when it will occur, its location by building and room, and identification of the building and rooms which the work may contact or disturb. Operator shall also provide to Company and the Authority any other information they may reasonably request with regard to the Work Notification or the work described therein.

(iii) Operator acknowledges that capital improvements shall be planned and carried out in compliance with Section 4.1 of the AMA and Section 17 of the Leasehold Mortgage, and Operator agrees to use its commercially reasonable efforts to make capital improvements to the Project in accordance with such provisions in a manner that minimizes to the extent practicable any disruption to or interference with the use of the Project or the habitability of any of its dwelling units. Operator shall be responsible for obtaining all governmental consents and approvals relating to capital improvements and for ensuring that any and all required third party consents and approvals required by the sections referenced hereinabove are obtained before proceeding with any such capital improvements.

(iv) Any expenditure from the Repair and Replacement Fund for maintenance and repair of the Project will conform to the requirements of the Indenture.

(f) Utilities and Services. Operator will make timely arrangements for water, electricity, telephone, cable television, broadband, natural gas, sewage, garbage collection services, trash disposal, landscape maintenance and vermin extermination services to the Project. Operator is authorized to make such contracts as may be necessary to secure such

utilities and services. The expenses incurred for such utilities and services that are not directly billed to the tenants by or on behalf of the applicable utility company shall be paid by Operator out of the Operating Account as an Operating Expense of the Project.

(g) Personnel. All on-site personnel will be employees or third parties contracted by Operator that in the reasonable judgment of Operator are qualified to perform the respective tasks and responsibilities assigned to them. Operator will select, hire, pay, supervise and discharge Operator's employees, and will require third parties contracted by Operator to supervise and discharge such third parties' personnel, subject to the following conditions:

(i) PERSONS EMPLOYED, RETAINED OR ENGAGED BY OPERATOR IN CONNECTION WITH ITS DUTIES AND RESPONSIBILITIES UNDER THIS OPERATING AGREEMENT SHALL IN EVERY INSTANCE BE EMPLOYEES OF OPERATOR OR OF THIRD PARTIES CONTRACTED BY OPERATOR AND UNDER NO CIRCUMSTANCES SHALL ANY INDIVIDUAL EMPLOYED AT ANY TIME OR IN ANY CAPACITY IN RESPECT OF THE PROJECT, THE CONDUCT OF BUSINESS AND OPERATIONS OF THE PROJECT, OR ANY MAINTENANCE OR OPERATION THEREOF BE CONSIDERED EMPLOYEES OF AMERICAN PUBLIC DEVELOPMENT, LLC, THE AUTHORITY OR THE TRUSTEE FOR ANY PURPOSE WHATSOEVER.

(ii) Operator will coordinate employment activities and personnel in the interest of good overall management. College shall have the right to require that Operator address to College's reasonable satisfaction any reasonable complaints by College as to the qualifications and performance of Operator's General Manager, Assistant General Manager and Maintenance Supervisor (the "Key Personnel") working in connection with the Project if College reasonably determines that such action is in the best interest of the good overall management of the Project, subject to the following conditions:

(1) Pursuant to the Ground Lease, College has agreed that it must notify Company and Operator in writing if College has a complaint with respect to any Key Personnel employed by Operator, which notice shall specify the basis for College's dissatisfaction with the qualifications or performance of such individual who is part of Key Personnel (the "Complaint Notice").

(2) If Operator disagrees with the substance of the Complaint Notice, Operator shall notify Company and College in writing of Operator's objection, which notice shall specify the reasons for Operator's objection (the "Objection Notice"), within ten (10) days after receipt of the Complaint Notice.

(3) If Operator delivers an Objection Notice to Company and College within such ten (10) day period, representatives of Operator, Company and College shall, as soon as is reasonably practicable following the receipt by Company and College of the Objection Notice, confer in good faith in an attempt to resolve the dissatisfaction of College with the qualifications or performance of such individual who is part of Key Personnel and Operator's objections set forth in its Objection Notice.

(4) If either (A) Operator fails to deliver an Objection Notice within ten (10) days after receipt of a Complaint Notice or (B) the good faith conferral described in clause (3) above does not produce agreement among the parties as to a course of action, then Operator shall, as soon as is reasonably practicable thereafter, but subject in all events to compliance with applicable legal requirements, (i) engage a replacement for the applicable individual who is part of Key Personnel in accordance with applicable legal requirements and the terms and conditions of this Operating Agreement, (ii) with College's consent, not to be unreasonably withheld, assign such individual who is part of Key Personnel to different duties in connection with the Project, and/or (iii) relieve such individual who is part of Key Personnel of such duty or duties that are the subject of the Complaint Notice.

(iii) The compensation, including fringe benefits, of all personnel performing on-site functions will be determined by Operator. Compensation of bookkeeping, clerical, and other managerial personnel will be within Operator's sole discretion. The compensation, including regular, overtime and holiday pay, incentive bonuses and annual leave time, payroll taxes and fringe benefits, including life and medical insurance, social security, Medicare, state and federal unemployment taxes, workers' compensation insurance, administrative costs and pre-employment testing and screening, of all personnel expected to perform on-site functions will be paid as an Operating Expense of the Project in accordance with and subject to the Annual Budget. Except for its payment of expenses included as part of the approved Annual Budget solely from the sources provided therefor under the Indenture, the Authority shall not have any legal or financial responsibilities for any employees or contractors of Operator, shall not be consulted and shall exercise no discretion or authority with respect to any employees or contractors of Operator or with respect to any employees of a contractor with respect to the Project

(iv) Operator shall have sole and exclusive responsibility for timely compliance with all Applicable Law regarding its employees, and Operator shall fully and completely indemnify and hold the Authority harmless as provided in Section 18 hereof, but without regard to any fault or negligence of Operator, for any Employment-Related Liabilities (as hereinafter defined) whether arising under this Operating Agreement or any contract entered into by Operator;

(v) The rental value of any dwelling unit furnished rent-free to a resident of the Project will be treated as a cost of the Project. No dwelling unit will be furnished rent-free to a resident of the Project without the prior approval of Company, Authority, the College, and during a Distress Period, the Trustee.

(vi) Operator shall be an equal opportunity employer and shall conform to all applicable federal and state laws regarding employment. Operator shall not engage in or permit discrimination against any person or groups of persons on the grounds of race, color, handicap, religion, national origin, age, or sex in any manner prohibited by the laws of the United States or the State.

(vii) Operator will strictly adhere, and will use its commercially reasonable efforts to cause its employees to adhere, to this Operating Agreement and to the policies, procedures, and regulations of the College (including but not limited to parking, smoking, security and drug and alcohol policies) set forth in the Student Handbook and the Student Code of Conduct, as amended and supplemented from time to time and with respect to which Operator has actual notice, and all policies and operating procedures governing residents of the Project while on the College's campus.

(viii) It is understood and agreed that all Project employees may not devote one hundred percent (100%) of their respective time to the operation of the Project, and Operator shall be responsible to ensure that such Project employees shall be deemed to be Project employees only to the extent of their respective time devoted to the Project, and will ensure that the salary and fringe benefits of such Project employees will be commensurately prorated.

(h) Records and Reports.

(i) Operator shall maintain, at Operator's home offices, currently in Birmingham, Alabama, accurate books and records with respect to the Project. Subject to Applicable Law, including the Family Educational Records and Privacy Act, the Company, the Authority, the College, or the Trustee shall have the right (but not the obligation) during Operator's normal business hours to examine, audit and, if the Company, the Authority, the College or the Trustee deems necessary, copy Operator's books and records pertaining to the Project and to make transcripts thereof. Operator shall keep all books and records pertaining to the Project, including all supporting vouchers, for a period of at least six (6) years.

(ii) Operator will provide to Company, the Authority, and the College a rent roll for the Project at the beginning of each semester, or if unavailable at the beginning of each semester, within twenty-five (25) days of the beginning of each semester and monthly thereafter.

(iii) Not later than one hundred twenty (120) days following the end of each Fiscal Year beginning with the Fiscal Year ending December 31, 2023,

Operator shall, using private auditors selected by Company subject to the Authority's approval, furnish to Company, the Authority, the College, and the Trustee audited financial statements with respect to the Project for such fiscal year in a form, and with a level of detail, reasonably satisfactory to Company, the Authority and the College. All costs associated with such audits shall be paid as an Operating Expense of the Project.

(iv) Not later than forty-five (45) days following each October 1, January 1, April 1, and July 1 of each Fiscal Year, beginning with July 1 for the Fiscal Year ending December 31, 2023, Operator shall furnish to Company and the Authority a financial report, signed by an authorized officer of Operator, that includes supporting calculations, a calculation of the Debt Service Coverage Ratio.

(i) In addition to the foregoing, Operator will timely provide to Company and the Authority such other information with respect to the Project and its operations as set forth on Exhibit B hereto as well as such other information relating to the operation of the Project as Company or the Authority may reasonably request in order to comply with their respective obligations under the Bond Documents. Operator shall also cooperate with Company, the Authority and the College in connection with any investigations, inspections, studies or reports reasonably required by the Authority, the Company, or the College or by Applicable Law, including Title IX investigations and criminal investigations.

(j) Annual Budget.

(i) In compliance with the provisions of Section 4.1 of the AMA, and subject in all respects to the requirements and provisions of such sections, Operator shall develop in good faith a line-item operation and capital budget for the Project for each Fiscal Year (collectively, the "Annual Budgets" and each, an "Annual Budget"). The Annual Budget shall set forth among other matters, usually contained in budgets of similar nature:

(1) the categories of anticipated Revenues relating to the Project and the projected amounts of each category of such Revenues;

(2) all anticipated capital expenditures to be paid out of the Repair and Replacement Fund provided for in the Indenture;

(3) the projected reasonable amounts of all Operating Expenses and the Subordinated Fees of the Project;

(4) the schedule of specific and mandatory rental amounts to be paid pursuant to the Resident Leases which will be calculated to provide Total Net Revenue sufficient to produce a Debt Service Coverage Ratio as required by Section 7.23 of the Indenture;

(5) a schedule showing any planned disposition of any assets that are part of the Project;

(6) the anticipated rent levels; and

(7) sufficient information to explain the basis for the budgeted Revenues, Capital Expenditures, Subordinated Fees and Operating Expenses, including the Management Fee, of the Project.

(ii) As of the Effective Date, Company has approved the partial year budget for the Fiscal Year ending December 31, 2023, a copy of which is attached hereto as Exhibit D. Commencing with the Fiscal Year ending December 31, 2024 and for each Fiscal Year thereafter, Operator shall submit the proposed Annual Budget to Company and the Authority (and the Trustee during any Distress Period) for Company's and the Authority's (and, if applicable, the Trustee's) review and approval, not later than ninety (90) days prior to the commencement of each Fiscal Year. Company and the Authority (and the Trustee during any Distress Period) shall give Operator notice of its approval of the Annual Budget as submitted or of its disapproval of one or more of the matters contained therein not later than the commencement of such Fiscal Year. If Company or the Authority (or the Trustee during any Distress Period) gives notice of its disapproval, Operator, Company, and the Authority, promptly, in good faith, shall develop an Annual Budget on which they may agree. If Operator, Company, and the Authority (and the Trustee during any Distress Period), fail to reach agreement prior to the commencement of a Fiscal Year, the Annual Budget for the then current Fiscal Year, as increased by a factor equal to the Consumer Price Index Increase, shall be implemented for the next Fiscal Year until agreement is reached on a new Annual Budget. The Authority and the Company (and the Trustee during any Distress Period) shall be deemed to approve the foregoing matters if they fail to disapprove such submission within ten (10) days of the submission by the Operator to the Authority and the Company (and the Trustee during any Distress Period) of such matters.

(iii) From time to time during or with respect to a Fiscal Year, and except for any dispositions of property which must in each instance be approved by Company and the Authority (and the Trustee during any Distress Period), Operator shall have the right to modify the Annual Budget, which modification shall be subject to Company's and the Authority's (and the Trustee's during any Distress Period) approval unless: (1) the modification is made to reflect additional Revenues or the receipt of insurance or condemnation proceeds; (2) the modification shall be for an amount in respect to a line item (a) that does not increase or decrease, when netted against all other changes to that line item, either the original amount of that line item or an increased amount approved by Company and the Authority (and the Trustee during any Distress Period) and then in effect by more than ten percent (10%), or (b) the modification shall be necessary to prevent or reduce the risk of death or injury to any person or material damage to property. Operator shall promptly notify the Company and the Authority (and the Trustee during any

Distress Period) of any modification made without their approvals pursuant to this Section 3(j)(iii). An Annual Budget for a Fiscal Year, as so amended, shall, after such amendment, be the Annual Budget for such Fiscal Year.

(iv) Operator shall operate the Project and make expenditures in connection with the Project in accordance with the Annual Budget.

(v) For each month within a Fiscal Year, Operator shall submit to Company and the Authority not later than forty-five (45) days after the end of such month, a Budget Reconciliation Statement.

(vi) The parties acknowledge and agree that except for the payment of expenses included as part of the Annual Budget solely from the sources provided therefor under the Indenture, the Authority and the Company shall not have any legal or financial responsibilities, shall not be consulted and shall exercise no discretion or authority with respect to any employees or contractors of Operator or with respect to any employees of a contractor with respect to the Project.

(k) Specific Management Practices. Operator will execute its duties hereunder in a manner consistent with good management practices, but subject in all events to the terms of this Operating Agreement.

(l) Recommendations of the Authority's Housing Consultant. If the Authority shall be required to retain a Housing Consultant pursuant to Section 7.18(c) of the Indenture, then, notwithstanding any other provision of this Operating Agreement, Operator shall promptly, and to the full extent required under the Indenture, implement and follow such recommendations regarding the Project as may be appropriate to achieve compliance in a manner approved by the Authority, such approval not to be unreasonably withheld, including but not limited to recommendations regarding Project operations and the establishment of Project rents.

(m) Availability of Funds. Notwithstanding anything set forth herein to the contrary, nothing herein shall obligate Operator to expend resources or perform any duties and obligations requiring resources beyond those made available by Authority under the Bond Documents and the Annual Budget or take any action requiring the approval of Company, the Authority or the College without such approval, and the duties and obligations of Operator under this Operating Agreement shall be expressly limited thereby. Operator shall have no duty or obligation to pay or fund any sums hereunder from Operator's own funds.

(n) Approval of Board and College; Approval of Authority. Notwithstanding anything set forth herein to the contrary, to the extent that any action required to be taken by Operator under this Operating Agreement requires the approval of the Board and/or College as set forth in this Operating Agreement, Company shall use its commercially reasonable efforts to assist Operator in obtaining such approval provided however that in no event shall Operator be permitted or obligated to proceed with such action until such

approval has been obtained. To the extent that Company is required to consult with the Board and/or College prior to Company approving any action to be taken by Operator, responsibility for such consultation shall belong solely to Company. To the extent that any action required or permitted to be taken by Operator under this Operating Agreement requires the approval of the Authority, Company shall be responsible for obtaining such approval and the Operator may rely on a statement or representation by Company that Authority approval has been obtained without undertaking to verify the veracity of such representation or statement.

Section 4. Payment of Costs of Operating the Project.

(a) Disbursements to and from Operating Account. Operator shall establish and maintain an account separate from any other account of the Operator designated as “State Campus Village Project Operating Account” (the “Operating Account”) for the payment of the costs of operating, managing, monitoring and repairing the Project, all of which shall be deemed to be Operating Expenses or Subordinated Fees of the Project except as otherwise provided herein. Operator shall timely pay all such Operating Expenses of the Project out of funds deposited by the Trustee in the Operating Account unless previously paid by the Trustee.

(b) Administrative and Supervisory. All off-site administrative and supervisory salaries and expenses will be borne by Operator out of its own funds and will not be treated as Operating Expenses of the Project.

(c) Management and Overhead. Management and general overhead expenses of Operator will be borne by Operator out of its own funds and will not be treated as Operating Expenses of the Project, including, but not be limited to: (1) compensation of central office or off-site personnel employed or contracted by Operator, (2) rent for off-site offices utilized by Operator, (3) telephone (other than long-distance telephone charges incurred in managing and leasing the Project) and utility charges incurred at such offices, (4) office supplies, (5) rent for and repair and maintenance of office machines used at such offices, (6) postage used at such offices; and (7) any rental for or allocation of depreciation or amortization of any non-Project properties owned by or leased by Operator and used in the performance of its duties hereunder.

(d) Notwithstanding Sections 4(b) and 4(c) hereof, if it is to the financial benefit of the Project, charges for expenses directly associated with the Project, including telephone, postage and courier services for the benefit of the Project, for office supplies used on-site at the Project, and for employment-related benefits of employees working at the Project may be incurred by the Operator off-site and treated as an Operating Expense, but solely to the extent included in the Annual Budget with the Company’s and, during any Distress Period, the Trustee’s prior written approval.

Section 5. On-Site Management Facilities. Operator (at its discretion) may maintain a rental and leasing office for the Project at the Project at a location approved by Company and Authority and will make no rental charge for the same.

Section 6. Insurance. Company will obtain, as an Operating Expense of the Project, the insurance coverage types and coverage limits set forth in the Master Insurance Schedule attached to the Indenture and Operator shall provide reasonable assistance to the Company. To the extent practicable at commercially reasonable rates, Operator shall be named as an additional insured under the general liability, umbrella, and automobile liability policies required to be maintained under the Master Insurance Schedule.

In addition, Operator may obtain, as an Operating Expense of the Project, liability insurance coverage for Operator on a “contingent” basis (the “Operator Contingent Coverage”), with the insurance policies obtained by the Company provided as “primary,” if the following conditions are met:

- (a) The premium for the Operator Contingent Coverage is included in the budget;
- (b) During any Distress Period, Operator shall obtain Trustee’s prior written consent if the annual premium for the Operator Contingent Coverage exceeds \$15,000; and
- (c) Company, Authority, the College, and the Trustee are covered as additional named insureds on policies comprising the Operator Contingent Coverage.

Section 7. Operator’s Compensation. Operator shall be compensated for its services under this Operating Agreement as provided in *Exhibit C* attached hereto. To the extent that funds are not available for payment of the Management Fee in accordance with the terms hereunder and under the Indenture, the Management Fee shall remain due and owing to Operator and the due but unpaid Management Fee shall bear interest at a rate of 6%, compounded annually (collectively, the “Unpaid Management Fee”). The Unpaid Management Fee shall be payable from the Subordinated Fee Fund, but only from amounts available therein in accordance with the payment provisions of the Indenture. Any Unpaid Management Fee (including accrued interest) shall be paid to Operator no later than the fifth (5th) anniversary of the date originally due and, at such date, shall no longer be subject to any deferral hereunder unless, prior to that fifth (5th) anniversary date, the Trustee shall be in receipt of an unqualified opinion of Bond Counsel that the further deferral of such Unpaid Management Fee will not adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

Section 8. Compliance with Laws. Operator shall perform all of Operator’s services under this Operating Agreement in compliance with Applicable Law. Operator shall not be liable for violations of Applicable Law except to the extent that the same arises out of or relates to Operator’s negligence or willful misconduct or its failure to comply with the terms of this Operating Agreement; provided, however, that Operator shall (i) exercise its commercially reasonable efforts to comply with Applicable Law, the cost of such compliance to be paid as an Operating Expense of the Project and (ii) promptly notify Company and Authority of violations or hazards discovered by Operator. Operator shall not be obligated to initiate a process of discovery requiring environmental testing or inspections not normally performed in the routine operation of the Project, unless specifically requested to do so by Company and Authority in writing and paid for in accordance with an approved Annual Budget.

Section 9. Limitations on Operator's Actions and Authority. Operator shall not be liable for any obligation or expenditure incurred on behalf of the Project, the Authority, or Company if such obligation is incurred by Operator within the scope of Operator's authority or pursuant to the Annual Budget (as the same may from time to time be amended and approved by Company and the Authority). In contracting for services and products in accordance with the terms of this Operating Agreement, Operator shall be acting solely as Company's agent, and, subject to Section 18 hereof, Company agrees to indemnify, defend, protect and hold Operator, its principals, agents and employees, harmless from and against all claims asserted and losses sustained by reason of the performance in good faith of Operator's duties hereunder; provided, however, that nothing contained herein shall require Company or the Authority to indemnify such parties for any liability arising from the negligence, willful misconduct, malfeasance or fraud of any of such parties or the breach by Operator of the terms and conditions of this Operating Agreement for which Operator hereby agrees to indemnify, defend, and save the Authority, the Authority Indemnified Persons (as identified in the Indenture) and Company, its principals, members, agents and employees harmless in accordance with Section 18 of this Operating Agreement. In connection with activities that are expressly authorized hereunder, Operator may advise any contracting party with whom it deals that Operator is acting as Company's agent, and that neither Company nor the Authority shall have any liability for the obligation or expenditure, and Operator shall exact a commitment from the contracting party to look only to the Project for payment. Operator shall not be obligated to advance any sum of money for Company or the Project or lend its credit for the benefit of the Project. Notwithstanding the authority granted to Operator in the other provisions of this Operating Agreement, Operator shall not do any of the following without the prior written consent of Company, the Authority, and the Trustee (during a Distress Period), in each instance:

(a) Enter into any contract that is not cancelable by Company or Operator on thirty (30) days' notice, without penalty;

(b) Enter into any contract if the fees, charges or other compensation or remuneration payable to the contractor under such contract is (i) unreasonably excessive for the products or services or other consideration provided by the contractor under such contract; or (ii) based directly or indirectly on the net profits or net losses of the Project unless, in either case, the Authority and the Company have been furnished with an unqualified opinion of nationally recognized bond counsel acceptable to the Authority that such contract will not adversely affect the exclusion from gross income of interest on the Bonds under Section 103 of the Code.

(c) Enter into any contract or group or series of related contracts, which, in the aggregate, call for total payments in excess of \$25,000, exclusive of contracts or agreements to provide internet or utility services ("Material Contract").

(d) Institute any legal action in the name of the Authority, except that the foregoing shall not prohibit Operator from instituting an eviction action provided that it provides notice to the Company and the Authority at least fifteen (15) days prior to the commencement of such action and gives the Company and the Authority reasonable opportunity to object;

(e) Expend or commit any funds other than as allowed hereunder or otherwise approved by Company;

(f) Execute any deed, note, mortgage or security agreement binding on Company or the Project;

(g) Commit or allow any act or omission, which results in the creation or perfection of any lien or encumbrance on the Project;

(h) Incur costs or expenses in excess of or not contemplated by the then-applicable Annual Budget, except as set forth in Section 3(e) hereof or as otherwise directed by Company and the Authority;

(i) Commit any act, or omit to take any act required to be taken by Operator under this Operating Agreement, that would result in a default under the Ground Sublease, the Indenture, Leasehold Mortgage or adversely affect the exemption from federal income tax of interest payable with respect to the Bonds;

(j) Enter into any Resident Leases or other contracts that would impose upon the Authority for any liability beyond its interest in the Project; or

(k) Enter into any Resident Leases with any person who is not a Permitted Resident.

Section 10. Assignment. Except as otherwise provided in the Indenture and as set forth in this Section 10, neither Company nor Operator shall have any right to transfer, assign, pledge, or hypothecate any of their respective rights, duties or obligations under this Operating Agreement without the prior written consent of the other party and the Authority, which consent shall not be unreasonably withheld, and any attempt to do any of the foregoing shall be null and void and of no force or effect. Notwithstanding the foregoing, Operator hereby acknowledges and consents to any assignment or pledge of this Operating Agreement by Company to the Authority or the Trustee or otherwise in connection with the issuance of the Bonds, and to any assignment or transfer made in connection with any assignment or other transfer of the Authority's interest under the Ground Sublease. Operator and Company recognize the Trustee, the Authority and the Authority Indemnified Persons as third-party beneficiaries of this Operating Agreement who, for the avoidance of doubt, shall, by reason of such assignment or transfer, have full right, power, and authority to enforce the provisions of this Operating Agreement, each in their own name or in the name of Company, and to exercise any and all rights and remedies of Company hereunder. In no event shall the Trustee be deemed to have any obligations hereunder by virtue of such assignment. The Trustee shall have the same rights, protections, immunities and indemnities hereunder as accorded to it under the other Bond Documents (as defined in the Indenture).

Section 11. Term of Agreement; End of Term.

(a) This Operating Agreement shall be in effect for a period (the "Primary Term") beginning on the Effective Date (the "Commencement Date"), and ending three (3) years after the Commencement Date, unless otherwise terminated in accordance with

the provisions of this Operating Agreement, and continuing thereafter for successive one (1) year terms, unless on or before one hundred and twenty (120) days prior to the expiration of any such period or any extension thereof, either Company or Operator shall notify the other in writing that it elects to terminate this Operating Agreement, in which case this Operating Agreement shall be thereby terminated on the last day of such period. The parties agree that each of Company and Operator may have obligations under this Operating Agreement which are required to be performed prior to the commencement of the Primary Term. Upon expiration or termination of this Operating Agreement for any reason:

(i) Company promptly shall give written notice of such expiration or termination to Trustee and the Authority.

(ii) Operator shall cause all funds held by Operator relating to the Project, including, but not limited to, the Security Deposits, to be delivered to the Trustee.

(iii) Operator shall deliver to the Company copies of all records and documents in Operator's possession or control relating to the Project including, without limitation, all accounting data and records, rent rolls, originals and copies of all housing leases, service contracts and agreements, and technical data with respect to operation and maintenance of the various systems at the Project.

(iv) Operator shall be paid all fees and reimbursements then due and payable and accrued through the date of expiration or termination.

(v) Operator shall use commercially reasonable efforts to avoid any disruption to Project operations or any inconvenience to Project residents as a result of such expiration or termination; provided, however, for the avoidance of doubt, that the Operator shall have no obligations under this Section 11(a)(v) after the termination of this Agreement.

(vi) Operator's and Company's obligations under this paragraph shall survive the termination or expiration of this Operating Agreement. Notwithstanding the foregoing, this Operating Agreement shall not extend beyond the term or early termination of the AMA.

(vii) Operator shall (A) assist in the transition of the Operator to the new operator of the Project, (B) deliver to the Company all supplies and keys for the Project, and (C) vacate any occupied space, including but not limited to both office and residential space.

(b) Notwithstanding the foregoing, this Operating Agreement is subject to termination in accordance with the following conditions:

(i) This Operating Agreement may be terminated by the mutual consent of Company and Operator as of the end of any calendar month.

(ii) This Operating Agreement may be terminated by the Company at any time for its convenience upon not less than ninety (90) days' prior written notice to the Operator.

(iii) Except as hereinafter provided, in the event a petition in bankruptcy is filed by or against either of Company or Operator and such proceeding is not dismissed within ninety (90) days thereof, or in the event either makes an assignment generally for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Operating Agreement without notice to the other.

(iv) Either Company or Operator may terminate this Operating Agreement by written notice to the other party that the Operating Agreement shall terminate five (5) business days after the other party's receipt of such notice in the event there occurs an Event of Default by the other party under the terms of this Operating Agreement. The non-defaulting party shall also have the right to seek damages and exercise such other remedies as may be provided by law or in equity against the defaulting party.

(v) This Operating Agreement shall automatically terminate when the AMA is terminated.

Section 12. Events of Default; Remedies.

(a) The occurrence of any of the following shall constitute an "Event of Default" by the party failing to comply:

(i) Operator shall fail to comply with any of the material terms or conditions hereof relating to the collection, possession or remittance of rents or any other amounts payable to the Authority or to Operator on behalf of the Authority, which failure shall persist for ten (10) days after written notice thereof.

(ii) Company or Operator shall have failed to observe or perform any other material term or condition of this Operating Agreement which failure shall persist for thirty (30) days after written notice thereof; provided, that, if Company or Operator, as applicable, has initiated a cure and is pursuing such cure using commercially reasonable efforts and good faith, and such cure shall not be completed within thirty (30) days, then an Event of Default shall not have occurred until the expiration of ninety (90) days, in any event.

(iii) A petition in bankruptcy is filed by or against either Company or Operator and such proceeding is not dismissed within ninety (90) days thereof, or in the event either makes an assignment generally for the benefit of creditors or takes advantage of any insolvency act.

(b) Upon the occurrence of an Event of Default, the non-defaulting party may exercise one or more of the following remedies, after providing written notice to the other party, the Authority, the College and the Trustee:

(i) Subject to the provisions of Section 11(a) hereof, terminate this Operating Agreement by written notice stating a date certain upon which this Operating Agreement shall terminate, in which event this Operating Agreement shall expire and terminate upon such date as fully and completely as if such date were the stated expiration date of this Operating Agreement.

(ii) With or without terminating this Operating Agreement, bring an action for damages, specific performance and/or injunctive relief.

(iii) Such other rights or remedies as may be available hereunder, at law or in equity.

(c) Notwithstanding anything set forth herein to the contrary, neither Party shall be liable to the other Party for (and the other Party hereby waives any claim for) any consequential, speculative or punitive damages).

Section 13. Notices. All notices or approvals required to be given hereunder shall be in writing and delivered personally or by certified mail, return receipt requested, overnight delivery or electronic mail (followed by a hard copy via registered or certified mail, postage prepaid or by overnight delivery), and addressed as follows:

If to Company: American Public Development, LLC
2524 Vera Cruz Circle
Henderson, Nevada 89074
Telephone: (702) 239-4479
Email: cam@camwalker.com

If to Operator: CAPSTONE ON-CAMPUS MANAGEMENT, LLC
1500 Urban Center Drive
Suite 400
Vestavia Hills, AL 35243
Attention: Chief Operating Officer
Email: wdavenport@cocm.com

If to the College: Nevada State College
1300 Nevada State Drive
Henderson, Nevada 89002
Attention: Vice President for Finance and Business Operations
Telephone: (702) 992-2000
Email:

If to the Trustee: UMB Bank, National Association
120 South Sixth Street, Suite 1400
Minneapolis, MN 55402
Attn: Michael G. Slade
Telephone:
Email:

With a Copy to: ArentFox Schiff LLP
1301 Avenue of the Americas
Floor 42
New York, NY 10019
Attention: Mark A. Angelov, Esquire
Email: mark.angelov@afslaw.com

If to the Authority: Public Finance Authority
c/o GPM Municipal Advisor, LLC
2999 Oak Road, Suite 710
Walnut Creek, CA 94597
Attention: Program Operator
Email:

If to the Designated Agent: GPM Municipal Advisors, LLC
800 South Broadway, Suite 470
Walnut Creek, CA 94596
Attention: Program Operator
Email:

Each mailed notice shall be deposited with the United States Postal Service, in registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner provided above. Each such notice shall be deemed to have been given to, or served upon, the party to whom delivered, upon delivery at the addresses provided above. Any party hereto may change its address for the service of notice hereunder by providing written notice of said change to the other parties hereunder, in the manner specified above, ten (10) days prior to the effective date of said change.

Section 14. Interpretive Provisions.

(a) This written Operating Agreement, attachments hereto, and other contracts or documents referenced herein constitute the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between Company and Operator with respect to the Project. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Operating Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by Company and Operator.

(b) This Operating Agreement has been executed in several counterparts, each of which constitute a complete original Operating Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts. This Operating Agreement and any additional amendments to this Operating Agreement may be executed by hand-signatures, electronic signature (such as DocuSign), facsimile and pdf; however, such signatures may be transmitted by facsimile or email, and any such electronic transmissions of the signatures shall be deemed to constitute originals. In addition, either party may rely upon any electronic transmission of any document that is properly executed by the other party. The signature of any party thereon shall be considered for those purposes as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of any party, a facsimile or scanned email document shall be re-executed by all parties in original form. No party may raise the use of a facsimile machine or scanned email, or the fact that any signature was transmitted through the use of a facsimile or scanned email as a defense to the enforcement of this Operating Agreement.

(c) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.

(d) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.

(e) As used herein, the words “include” and “including” shall be deemed to mean “including but not limited to.”

(f) The paragraph headings or captions appearing in this Operating Agreement are for convenience only, and are not to be considered in interpreting the Operating Agreement.

(g) All the terms, provisions, and conditions of this Operating Agreement shall be deemed to be severable in nature. If for any reason the provisions hereof are held to be invalid or unenforceable by a court of competent jurisdiction, then to the extent that such provisions are valid and enforceable, such court shall construe and interpret this Operating Agreement to provide for maximum validity and enforceability.

Section 15. Applicable Law. This Operating Agreement and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of Nevada, without reference to conflict of laws principles.

Section 16. Successors and Assigns. This Operating Agreement shall be binding upon the parties hereto, their successors and assigns. Any successor or assignee to the duties and obligations of Operator shall be reasonably acceptable to Company, the Authority, and the College, which acceptance must be evidenced in writing. Company and Operator acknowledge that the

College, the Authority and the Authority Indemnified Persons are intended third-party beneficiaries of this Operating Agreement entitled to enforce their rights (including their rights hereunder to indemnification and exculpation from pecuniary liability) in his, her, its, or their own name.

Section 17. Limitation of Liability.

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

(b) Except to the extent that the following arises out of or results from Operator’s negligence or willful misconduct or a breach by Operator of the terms and conditions of this Operating Agreement, Operator shall not be liable for (i) any negligence or intentional acts or omissions of Company, or any previous or subsequent owners or managers of the Project, or any agents or any previous or subsequent agents of either or (ii) any failure of, or default by, any tenant in the payment of any rent or other charges due the Authority or in the performance of any obligations owed by any tenant to the Authority or Company pursuant to any Resident Lease or otherwise. Operator assumes no responsibility or liability for the provision of security services or devices other than to supervise and to enforce on behalf of Company the obligations of the contractor(s) providing security services for the Project.

(c) Notwithstanding anything set forth or implied herein to the contrary, Operator agrees to look solely to Company for the duties, obligations, responsibilities and liabilities of Company hereunder and neither the constituent partners, members or managers of Company nor any partners, members, managers, shareholders, officers, directors, beneficiaries, trustees or employees of Company or the constituent partners, members or managers of Company shall be liable or responsible for any duty, obligation, responsibility or liability of Company hereunder. Notwithstanding anything set forth or implied herein to the contrary, Company agrees to look solely to Operator for the duties, obligations, responsibilities and liabilities of Operator hereunder and neither the constituent partners, members or managers of Operator nor any partners, members, managers, shareholders, officers, directors, beneficiaries, trustees or employees of Operator or the constituent partners, members or managers of Operator shall be liable or responsible for any duty, obligation, responsibility or liability of Operator hereunder.

(d) Notwithstanding anything herein to the contrary, each party hereto waives and releases all rights that it may have against the Authority and any Authority Indemnified Person (as defined in the Indenture) for any bodily injury, death or less or damage to the Project.

Section 18. Indemnification. It is Company's and Operator's intent to look initially to the insurance coverage required pursuant to the Master Insurance Schedule attached to the Indenture for both legal defense and payment of any applicable claims, without regard to the following indemnities. Therefore, the parties agree that, notwithstanding any indemnity language to the contrary, in the event that a claim, liability, loss or expense arises which is covered by the insurance required pursuant to the Master Insurance Schedule, Company and Operator shall cause such insurance to be paid in accordance with such policies, and to the extent of such payment, the indemnities provided below shall not apply. To the extent insurance is not available, or any claim is not fully paid by applicable insurance, the parties agree that the following indemnities set forth below shall control. As to any claims paid by insurance, the parties agree to waive all rights of subrogation, provided that such waiver does not invalidate any insurance policy or materially adversely affect the premium rates for such insurance.

(a) Company shall indemnify, defend, protect and hold harmless the Operator and Operator's members, managers, officers, directors, shareholders, employees, partners, principals, attorneys and agents (collectively referred to as "Operator" for the purposes of this Section 18(a)), from and against any and all Company-Indemnified Liabilities (including reasonable attorneys' fees and costs of defense) in excess of the insurance coverage.

(b) Operator shall indemnify, defend, protect and hold harmless (i) the Authority, (ii) any Authority Indemnified Person, and (iii) Company and Company's members, managers, officers, directors, shareholders, employees, partners, principals, attorneys and agents (collectively, the "Indemnitees"), from and against any and all Operator-Indemnified Liabilities.

(c) Defined terms. The following definitions shall apply:

(i) "Liabilities" means any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, reasonable fees and expenses of attorneys, accountants, consultants and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) in any way related to the Bonds or the Project to which the indemnified parties, or any of them, may become subject under any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise, and specifically including Extraordinary Costs and Expenses.

(ii) "Company-Indemnified Liabilities" means Liabilities arising from: (A) any acts or omissions of Company, its agents, representatives, or employees constituting negligence, willful misconduct, malice or fraud and/or criminal activity in connection with services of Company, its agents, representatives, or employees arising out of or relating to the operation of the Project; (B) any breach or violation by Company or its agents, representatives, or employees of this Operating Agreement or of any Applicable Law; Employment-Related Liabilities;

(C) any losses suffered as a result of theft, embezzlement, fraud, or other dishonesty by Company, its agents, representatives, or employees; or (D) acts of Company which are beyond the scope of Company's authority hereunder and not otherwise approved by Operator.

(iii) "Operator-Indemnified Liabilities" means Liabilities arising from: (A) any acts or omissions of Operator, its agents, representatives, or employees constituting negligence, willful misconduct, malice or fraud and/or criminal activity in connection with services of Operator, its agents, representatives, or employees arising out of or relating to the operation of the Project; (B) Employment-Related Liabilities; (C) any breach or violation by Operator or its agents, representatives or employees of this Operating Agreement or of any Applicable Law; (D) any losses suffered as a result of theft, embezzlement, fraud or other dishonesty by Operator, its agents, representatives, or employees; or (E) any claims against the Authority or any Authority Indemnified Person arising out of a Material Contract that for any reason does not satisfy the requirements of Section 9(c); or (F) acts of Operator which are beyond the scope of Operator's authority hereunder and not otherwise approved by Company.

(iv) "Employment-Related Liabilities" means all Liabilities arising out of Operator's labor and employment-related activities (such as, by way of illustration, screening, testing, investigating, interviewing, hiring, training, supervising, discharging, and paying all personnel necessary to maintain and operate the Project, employment discrimination, wage & hour disputes, civil rights, unfair labor practices, OSHA and ADA compliance). For avoidance of doubt, Employment-Related Liabilities shall constitute Operator-Indemnified Liabilities without regard to any fault, negligence, misconduct, action or inaction on the part of Operator.

(d) Except as may be derived from insurance proceeds, Operator acknowledges and agrees that its obligation to defend, indemnify and hold the Indemnitees harmless from and against Operator Indemnified Liabilities shall not be funded by the Indenture Funds or diminished in any respect by the availability of the Indenture Funds or the use or application by the Authority of Indenture Funds to satisfy any Liabilities (including Operator Indemnified Liabilities) hereunder and that such use or application by the Authority for such purpose shall not affect in any manner Operator's obligation to reimburse the Authority therefor. This paragraph shall apply regardless of whether Indenture Funds at any time include any money provided by Operator.

For avoidance of doubt, and notwithstanding anything herein to the contrary, in the event that the Company assigns this Agreement to the Authority, for any reason, and the Authority assumes the rights, duties and obligations of Company in this Agreement, the limitations on the Authority's obligations hereunder shall at all times and in all circumstances be subject to the provisions of Section 24.

Section 19. Competitive Projects. Company acknowledges, agrees and understands that Operator and/or its affiliates may, individually or with others, engage in or possess an interest in any other projects and ventures of every nature and description, including, but not limited to, the ownership, financing, leasing, operation, management, brokerage, development and sale of real property and building projects other than the Project, provided such other ventures or projects are not competitive with the Project.

Section 20. Force Majeure. Operator shall not be liable or responsible for any delay or failure resulting from (and the times for performance by Operator hereunder shall be extended by the duration of) causes beyond the control of, and without the fault or negligence of, Operator, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, severe or inclement weather beyond that usually encountered in the county in which the Project is located, shortages in labor or materials, or delays due to any such causes.

Section 21. Operator's Materials Proprietary. Company acknowledges and understands that all market studies, competitive analyses, lease forms, management programs, LAMS system, leasing materials, logos, trademarks, marketing materials and brochures (collectively, the "Materials") provided by Operator in connection with this Operating Agreement are proprietary to Operator or its affiliate and the property of Operator or its affiliate. Although Operator may use the Materials for purposes of the Project on a nonexclusive basis as herein specified, Company covenants and agrees that Company shall not use the Materials for any purpose whatsoever, except Company may use lease forms, leasing materials, marketing materials and brochures in connection with the Project. Company acknowledges and understands that, except as otherwise provided herein, Operator reserves and retains the right to use the Materials relative to other projects and developments, and such right is not transferred or assigned by Operator to Company hereunder. The terms and provisions of this Section 21 shall survive any termination of this Operating Agreement and shall be binding upon Company and its successors, assigns, affiliates and parents and shall inure to the benefit of Operator and its successors, assigns, affiliates and parents.

Section 22. Condition of Project. Without in any way releasing Operator from its responsibility under Section 3 hereof for maintaining the Project in good repair, Company acknowledges that Operator is not a property inspector or engineer and is not qualified to inspect or make representations as to the physical or environmental condition of the Project. Accordingly, Company agrees that Operator, in fulfilling its obligation under this Operating Agreement to maintain the Project in good repair may, as a Project expense, from time to time as it deems necessary, obtain from a third-party inspector a property condition report relative to the Project, and in fulfilling its obligation under this Operating Agreement to maintain the Project in good repair or advising Company regarding the physical or environmental condition of the Property, Operator may rely upon such property condition report(s) for all matters relative to the physical or environmental condition of the Project.

Section 23. Qualified Management Agreement. To the extent that it deals with the management of Project assets, this Operating Agreement is intended to and shall constitute a "qualified management agreement" in compliance with applicable requirements of Section 141 of

the Code and Rev. Proc. 2017-13, 2017-6 I.R.B. 787, and shall be interpreted in accordance with such requirements.

Section 24. Limited Liability of Authority. Notwithstanding anything to the contrary in this Operating Agreement or any other document or instrument to which the Authority is a party, whether express or by implication or construction or interpretation or otherwise, Operator acknowledges and agrees that he Authority shall not be liable or obligated in any manner under this Agreement or otherwise to pay or cause to be paid any fees, expenses or reimbursements or to make any other payments or advance funds under this Operating Agreement or otherwise, or incur or cause to be incurred any expense in pursuing any course of action, in connection with the Project or any other matter within the scope of or contemplated by this Operating Agreement or be liable (directly or indirectly) for any claims, proceedings, costs or expenses of any kind for any reason in connection with or in any way related to this Operating Agreement or any other document or instrument to which the Authority is a party related to the Project, its financing, development, operation, management or otherwise, except only to the extent that monies are held by the Trustee and available therefor as expressly set forth the Indenture, and provided, that the Authority shall not be required to incur any expense or liability in pursuing any claim against such monies for the benefit of Operator, Company or any other Person. Operator further acknowledges and agrees that it must adhere to the provisions of the Indenture in requesting disbursements from the funds and amounts held by the Trustee for payment of all of its costs, expenses, and compensation payable by the Authority hereunder out of the applicable Operating Account as Operating Expenses and out of the amounts paid to Operator as Budgeted Operating Expenses and to the extent that funds are available therefor under the priority of payments set forth in the Indenture. TO THE EXTENT THAT FUNDS OR PROPERTY ARE HELD BY THE TRUSTEE BUT NOT SUFFICIENT FOR SUCH PURPOSE, COMPANY WILL BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM THE AUTHORITY AND MAY BE UNABLE TO RECOVER ANY SUCH COST, EXPENSE, LOSS OR DAMAGE FROM COMPANY OR FROM ANY OTHER PERSON.

Section 25. Amendment. This Operating Agreement may be amended or modified only by mutual agreement of Operator and Company in writing and signed by each of the parties hereto; provided, however, so long as the Bonds remain outstanding, no amendment to this Agreement shall be effective as between the Parties unless Trustee has consented to such amendment if required, and subject to the provisions of Article XI of the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Company and Operator by their duly authorized representatives have executed this Operating Agreement on the date first above written.

COMPANY:

AMERICAN PUBLIC DEVELOPMENT, LLC,
a Nevada limited liability company

By: _____
Name: Cam C. Walker
Title: Manager

IN WITNESS WHEREOF, Company and Operator by their duly authorized representatives have executed this Operating Agreement on the date first above written.

OPERATOR:

**CAPSTONE ON-CAMPUS MANAGEMENT,
LLC,**
an Alabama limited liability company

By: _____
Name: William E. Davenport II
Title: Chief Operating Officer

EXHIBIT A
RESPONSIBILITIES

Subject to the terms and provisions of this Operating Agreement, Operator shall use commercially reasonable, good faith efforts to:

1. Design and implement a Residential Life and Housing Administration program, which embraces a respect for diversity, inclusion and equity.
2. Meet regularly with the College Chief Housing Officer to coordinate the services to be provided to the occupants and develop strong links to the academic programs, faculties and staffs of the College.
3. Provide a wide variety of learning centered programs based on the College programming model with College identified Student Learning Outcomes and designed to meet the needs of the various groups of occupants living at the Student Housing Facility.
4. Endeavor to create a culture that is welcoming, safe, participative and supportive of the occupants' academic goals.
5. Notify representatives of the College, as directed by the College, when an "incident" (as defined by written notification thereof to Operator from the College) occurs.
6. Hire, train and oversee applicable personnel in accordance with the staffing plan.
7. Hire, train and oversee all resident advisors ("RAs") consistent with commonly accepted housing standards. Ensure that resident advisors are trained in all applicable higher education related laws and regulations.
8. Hire, train and oversee administrative and other positions inside the Student Housing Facility in accordance with the staffing plan approved by Company.
9. Subject to the College's approval, develop and update as needed a Resident Handbook that includes, but is not limited to: an emergency response plan; job descriptions for personnel; procedures for contacting key offices of the College as defined by the College; procedures for handling emergencies; management firm policy and procedures; notification procedures; copies of student and staff model contracts; and programming guidelines and resource.
10. Develop and implement a training program for staff of the Student Housing Facility, which will meet or exceed the comprehensiveness of the training programs at similar institutions.

11. Provide reports as requested to the College regarding all programs, along with evaluations and recommendations for future programs.
12. Develop a communication plan, subject to the College's approval, for occupants and staff of the Student Housing Facility.
13. Anticipate whenever possible and respond effectively to student behavior issues, including issues of safety, security and the general welfare of all occupants.
14. Develop fair and consistent policies, rules and regulations governing behavior and activity in the Student Housing Facility, subject to the College's approval, for the administration of the Resident Handbook in which such information is published; a means by which violations thereof will be reported, investigated and reviewed; and consequences for violations for which residents are found responsible; and considering any consequences thereof as learning experiences for the occupants even when severe consequences must be imposed.
15. Develop policies, practices and standards, subject to the College's approval, for emergency response. Provide the emergency contact information of Operator and Assistant Operator for inclusion in College emergency notification systems. Engage in efforts to assist the College in evacuation processes in the event there is a need for a campus evacuation.
16. Develop and document, subject to the College's approval, policies, procedures and expectations for governing student conduct, including descriptions of standards of acceptable behavior and the potential consequences for violating those standards. For clarification purposes the following apply:
 - Lease Violations including, but not limited to, payment delinquencies, noise complaints, fire code violations, pet policy violations, roommate issues, and sanitation and trash removal violations; that are not simultaneously a violation of the *Student Code of Conduct* may be addressed by the management staff. Operator may seek assistance from the College as needed to address violations. When management evicts any resident for the above reasons, they must first notify the College Chief Housing Officer.
 - Lease violations that are simultaneously violations of the *Student Code of Conduct* will be addressed by the Office of Judicial Affairs. Only the Office of Judicial Affairs may evict a resident for lease violations that are also violations of the Student Code of Conduct.
 - Reporting Lease Violations: Residents may report lease violations and concerns directly to management during regular office hours. If the immediate safety of any individual is in question, the College Police Department should be contacted.

- Reporting *Student Code of Conduct* Violations: A resident or housing staff should report Student Code of Conduct Violations to the Office of Judicial Affairs. Student Code of Conduct Violations (that are not simultaneously violations of the law) are initially addressed by the management staff through a referral to the Office of Judicial Affairs. If the immediate safety of any individual is in question, the College Police Department should be contacted.
 - Reporting of Violations of Law: Violations of Law should be immediately reported to the College Police Department for investigation. The Office of Judicial Affairs may issue charges against a student based upon the information obtained by the College Police Department or other entity as appropriate. These charges will be issued without regard to the pendency of civil litigation in court or criminal arrest and prosecution. Proceedings under the Student Code of Conduct may be carried out prior to, simultaneously with or following civil or criminal proceedings off-campus as deemed appropriate by the Office of Judicial Affairs.
 - Operator reserves the right to address extreme circumstances which could jeopardize the safety of the community forthwith in accordance with their lease with the student. However, all intended actions will be discussed with College officials prior to implementation, if time allows.
17. Develop and maintain a database that includes number, type, location, names, and other information concerning incidents related to residents' behavior as witnessed by or reported to building personnel or College staff.
 18. Conduct regular and on-going research of occupants' satisfaction using surveys, focus groups, exit interviews and other means and provide the results of these surveys to the College Chief Housing Officer. All assessment efforts should be coordinated through the College Chief Housing Officer and follow the rules and protocols of the College and the reporting division.
 19. In conjunction with the College, and in accordance with College procedures, conduct an assessment of occupants that will provide information as to levels of satisfaction with the quality of life within the Student Housing Facility as well as areas for improvement.
 20. Make all room assignments and coordinate the plans of residents for moving into or out of the Student Housing Facility in conjunction with the College's academic year, with a view towards scheduling such movements to minimize inconvenience to other residents.
 21. Maintain businesslike relationships with residents and receive and respond in a timely fashion to all resident complaints, requests for services, and reports of injuries, crimes or similar incidents. Operator shall promptly inform the College's

Chief Housing Officer upon receiving any material complaint or any report involving a crime or an injury requiring medical treatment. Upon discovery or receipt of information thereof, Operator also shall promptly inform the College's Police Department of any crime or suspected criminal activity occurring at the Student Housing Facility of which Operator is aware. Operator shall keep systematic records showing the action(s) taken with respect to each complaint, request or report. Each complaint involving student discipline (as reasonably determined by Operator) shall be reported to the College's Office of Judicial Affairs -- Division of Student Engagement and Success.

22. Unless Company agrees otherwise, employ one General Manager and one Assistant General Manager. The General Manager may not be removed by Operator without Company's permission, which permission shall not be unreasonably withheld, conditioned or delayed.
23. Only use or permit the use of the Student Housing Facility for residential purposes and for related uses approved by Company. Operator shall not conduct or permit any activity at the Facility which would violate any legal requirement, be incompatible with College policies, procedures, or regulations, or constitute a nuisance.
24. At all times allow authorized agents or representatives of the College, Company and the Trustee to have access to the Student Housing Facility.
25. Clearly identify any items of personal property which Operator purchases or has purchased with its own funds (without reimbursement from the Operating Account or otherwise by Company) and which therefore belong to Operator rather than Company.
26. Maintain within the resident database information that allows for all residents to be identified by the Student Banner ID currently used by the College.
27. Any abandoned textbooks, bikes, scooters, skateboards or other recreational equipment will be reported to College Police for pick up to place in lost and found. The same is applicable to other personal items that are found and need to be returned to an owner.
28. Prior to printing/publishing any advertisements or other promotional material relating to the Facility, Operator shall provide the Chief Housing Officer with proofs for approval. All materials will be designed in accordance with College style guidelines and must be approved before use.
29. Operator will establish a procedure to provide data to the College in electronic format to assure the College has current information regarding occupants and to create an efficient transfer of information regarding emergency contact information and financial aid payments.

30. All College rules and regulations to the extent reasonably applicable to the Project, including, but not limited to collection of rent, parking, smoking, security, alcohol and other drug use as well as those outlined in the Student Handbook and the *Student Code of Conduct* will be followed and enforced by Operator.

EXHIBIT B

LIST OF PERIODIC REPORTS, PROJECT OPERATING STATEMENTS AND INFORMATION

For each of the months of March through September, Leasing and Marketing Report (by the 25th day of the following month)

Income Statement and Variances Report (by the 25th day of the following month)

Statement of Operations (including occupancy rates)

Capital Expenditure Report

Budget Reconciliations (to be provided upon request by Company)

Project Rent Roll

Aged Delinquency Report Check Register

Check Register

Account Payable Report

Following receipt of written notice therefrom from Company to Operator, (i) any other report which Company is currently obligated to furnish pursuant to the terms and provisions of the Ground Sublease, Indenture, Leasehold Mortgage, Continuing Disclosure Agreement or Tax Agreement in connection with the operation and management of the Project, including, without limitation, the information regarding rental rates and units required in Section 3 of the Continuing Disclosure Agreement and (ii) any information reasonably requested by the College to assist it in complying with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or other applicable law.

No later than twenty-five (25) days after the beginning of each fall and spring semester, Operator shall furnish Company the occupancy report required in Section 3 of the Continuing Disclosure Agreement.

EXHIBIT C

OPERATOR'S COMPENSATION

Compensation

Subject to the terms and provisions of this Operating Agreement, Operator's compensation for management of the Project shall be a fee (the "Management Fee") for each Fiscal Year or partial Fiscal Year during the term of this Operating Agreement commencing on the Effective Date equal to four percent (4%) of all Revenues received during such Fiscal Year (or partial Fiscal Year) which shall be paid as follows: 2% of all Revenues received during such Fiscal Year (or partial Fiscal Year) from the O&M Fund and 2% of all Revenues received during such Fiscal Year (or partial Fiscal Year) from the Subordinated Fee Fund. The Management Fee shall be calculated on the last Business Day of each month, commencing on the Effective Date, based on Revenues for that month, and shall be due and payable on the twentieth day of the following month as an Operating Expense of the Project. Company's obligation to pay the Management Fee shall survive the expiration or termination of this Operating Agreement with respect to portions of the Management Fee earned or payable as of such expiration or termination. Upon the termination of this Operating Agreement on a day other than the last day of the calendar month, the Management Fee shall be prorated on a per diem basis for the days in which this Operating Agreement was in effect.

EXHIBIT D

Annual Budget