

BOARD OF REGENTS
BRIEFING PAPER

1. Agenda Item Title: University Park Apartments Project- Assignment and
Assumption Agreement

Meeting Date: December 3-4, 2015

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

At its December 4, 2014 meeting, the Investment and Facilities Committee approved a Memorandum of Understanding (“MOU”) to define the parameters for a public/private partnership between UNLV and the Midby Companies for a student housing project on the University Park Apartments 14 acre site (the “Project”). At its April 24, 2015 meeting, the Board of Regents approved the following agreements relating to the Project: (1) the Assignment and Assumption Agreement for the purchase of the subject property, (2) the Lease Agreement for University Park – Phase One (“Phase One Lease”), (3) the Lease Agreement for University Park – Futures Phases, and (4) the Project Development Agreement (collectively the “Implementing Agreements”). The Phase One Lease was entered into with University Park, LLC – an entity created by Midby for purposes of developing and operating the initial phase of the Project.

In order to obtain financing for the Project, the Midby Companies now desire to assign the Phase One Lease to UPA 1, LLC, a wholly owned subsidiary of University Park, LLC. Section 26.1 of the Phase One Lease contemplated such structures and requires the Board’s consent to any assignment and provides that such consent shall not be unreasonably withheld. Accordingly, UNLV seeks approval of the attached Assignment, Assumption and Modification of Lease, which will formally transfer the obligations of University Park, LLC (as Tenant) to UPA 1, LLC. There are no substantive changes being made to the Phase One Lease and the only modification involves adding a new address and contact information for “notices” required to be provided to UPA 1, LLC. In addition, the disclosures of ownership required by NRS 396.431 have been provided by UPA 1, LLC and are attached.

Finally, Section 24.2 of the Phase One Lease requires Landlord’s approval of Tenant’s financing for the Project. The intent of this section is to allow Landlord the opportunity to be assured that the Tenant’s financing is consistent with the terms of the Implementing Agreements. UNLV requests that the Board delegate authority to the Chancellor or his designee to review and approve Tenant’s financing as required by Section 24.2 of the Phase One Lease. Administrative approval of Tenant’s financing is consistent with the original intent of the parties and will assure Tenant’s lender that there will be no unanticipated delays in such approval.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

UNLV President Len Jessup requests approval of the attached Assignment, Assumption and Modification of Lease agreement of the Phase One Lease for the University Park Apartments project. In addition, UNLV requests that the Board authorize the Chancellor or his designee to review and approve Tenant’s proposed financing for the Project as required by Section 24.2 of the Phase One Lease.

4. IMPETUS (WHY NOW?):

In order to obtain financing, the Midby Companies have created a project specific entity intended to develop and operate the first phase of the Project; UPA 1, LLC. Thus, the Phase One Lease needs to be formally assigned to UPA 1, LLC. UPA 1, LLC is wholly owned by University Park Apartments, LLC – the original Tenet of the Phase One Lease. Therefore, UNLV requests approval of the attached Assignment, Assumption and Modification of Lease.

In addition, Section 24.2 of the Phase One Lease requires Landlord's review and approval of Tenant's financing for the Project. In order to assure Tenant's lender that there will be no delays in such approval, UNLV requests that the Board authorize the Chancellor or his designee to review Tenant's financing and issue any required approvals.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Approval of this request will help assure the Project will move forward expeditiously and that the Tenant will be able to secure financing for the Project.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

- None known.

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

- Do not approve this request.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # 4 Chapter # 10 Section # 9 (Table 9.1)
- Amends Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No **X**
Explain: _____

**ASSIGNMENT, ASSUMPTION AND MODIFICATION
OF LEASE**

THIS ASSIGNMENT, ASSUMPTION AND MODIFICATION OF LEASE (the "Assignment") is made as _____, 2015, by and among BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("Landlord"), UNIVERSITY PARK, LLC, a Delaware limited liability company ("Assignor") and UPA 1, LLC, (the "Assignee").

RECITALS

- A.** Landlord and Assignor as Tenant are parties to that certain "Lease Agreement for University Park Phase One" dated as of May 15, 2015 (the "Lease") with respect to certain leased Premises located in Clark County, Nevada, as more particularly described therein. A copy of the Lease is attached hereto as Exhibit A and incorporated herein by reference.
- B.** Section 26.1 of the Lease permits assignment of the Lease only with the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed, and Landlord has consented only to the assignment of the Lease to Assignee described in this Assignment.
- C.** In connection with the assignment of the Lease, Landlord and Assignee wish to modify certain of the terms and provisions of the Lease and to memorialize their agreement with respect to such modifications herein.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein and intending to be legally bound, the parties hereby agree as follows:

- 1. Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference as a material part hereof. All terms used but not otherwise defined herein shall have their meanings as set forth in the Lease.
- 2. Representations, Covenants and Warranties.** As a material inducement to Assignee to assume the obligations of Assignor as Tenant under the Lease, Landlord and Assignor represent, warrant and covenant to Assignee as follows:
 - A.** The Lease attached as Exhibit A hereto is in full force and effect and has not been modified, assigned, supplemented or further amended, nor are there any other agreements between Landlord and Assignor concerning the Lease or the Premises, whether oral or written.
 - B.** Assignor is not in default under the Lease, and to the actual knowledge of Landlord there are no events which have occurred that, with the giving of notice or the passage of time or both, would result in a default by Assignor as Tenant under the Lease.
 - C.** Assignor has paid all rents and all other sums due (if any) under the Lease current to the date hereof.
 - D.** There are no uncured defaults on the part of Landlord under the Lease; Assignor has not sent any notice of default under the Lease to Landlord, and there are no events which have

occurred that, with the giving of notice or the passage of time or both, would result in a default by Landlord under the Lease.

E. Assignor has full and lawful authority to assign its interest in the Lease.

F. The execution and delivery of, and performance by Landlord and Assignor pursuant to, this Assignment will not violate, conflict with or constitute a default under any agreement, order, rule or law by which either party or the Premises is bound, and any and all third party consents required for this Assignment have been obtained in writing.

G. The person executing this Assignment for each party has the authority to execute and deliver this Assignment on behalf of such party.

H. This Assignment includes all right, title and interest in and to all studies, agreements, permits, licenses, plans, authorizations and approvals relating to Improvement Work and to the occupancy and operation of the Premises. All costs associated with the Improvement Work have been or will be fully paid and satisfied by Assignee.

I. The warranties contained in this Section 2 are true as of the date of Assignor's execution of this Assignment and will be true as of the Effective Date and will survive the Effective Date.

3. Assignment.

A. Assignor hereby assigns, transfers, sets over and conveys to Assignee, all interest as Tenant in and to the Premises under the Lease.

B. Assignee accepts the foregoing assignment and, except as specifically set forth herein, agrees to assume, fulfill, perform and discharge the obligations and liabilities of Assignor under the Lease hereby assigned and as modified herein, which arise on or after the Effective Date.

C. Landlord consents to the foregoing assignment and assumption pursuant to Section 26.1 of the Lease.

D. The foregoing assignment and assumption will be effective upon execution by all of the parties hereto (the "***Effective Date***")

E. Assignee will accept the Premises in their condition on the Effective Date.

F. The Lease attached to the Assignment is a correct copy of the Lease and all amendments and side agreements to it.

G. Prior to the Effective Date, Landlord (i) will not accept a surrender or consent to the modification of any of the terms of the Lease, (ii) will not terminate the Lease by reason of any act or omission of Tenant unless Landlord has given written notice of such act or omission to Assignee at its address in this Assignment and until a reasonable period of time has elapsed following the giving of such notice, during which period Assignee will have the right, but will not be obligated, to remedy such act or omission; (iii) will notify Assignee in writing at Assignee's address in the Assignment prior to the Effective Date if an Event of Default occurs under the Lease or if any of the statements made by Assignor in the Assignment are materially false or misleading, or omit to state a material fact, as a result of any circumstances occurring or becoming known to Landlord after the date of Landlord's execution of this Assignment.

H. Assignor shall remain liable for performing and discharging all obligations and liabilities relating to the Lease for which it was responsible and which arose prior to the Effective Date and shall defend, indemnify and hold Assignee harmless from and against any and all claims or losses arising prior to the Effective Date hereof relating to Tenant's obligations under the Lease, including without limitation losses related to reasonable attorney's fees and expenses incurred to resolve such claims or losses.

I. Except as otherwise provided in this Assignment, following the Effective Date Assignor shall be released from the obligations under the Lease, including, without limitation, the obligation to pay Rent and Additional Rent and all other amounts which become due under the Lease, if any.

4. Modification of Lease.

The parties agree that the Lease shall be modified as follows:

A. Section 32.1 of the Lease is hereby modified to provide that Assignee shall be entitled to the same rights and notices as Tenant. Assignee's address for notices is:

UPA 1, LLC
c/o The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123
(702) 362-2111 - Office
(702) 637-4227 - Direct Line
Attn: Tom George
Email: Tomg@midbycos.com

or to such other address or addresses as may from time to time hereafter be designated by Assignee by like notice.

B. The parties agree to execute and record a Memorandum of Lease Assignment and Assumption, in form and content reasonably satisfactory to the parties, evidencing, among other things, this Assignment.

5. Further Assurances. The parties agree that they shall reasonably cooperate to provide such documents and information as may be reasonably required by Assignee's lender relative to the Lease and the Tenant's construction of the Improvement Work.

6. Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. Mutual Indemnification.

A. Assignor will indemnify Assignee against and hold Assignee harmless from any and all loss, liability, and expense (including reasonable attorneys' fees and court costs) arising out of any breach by Assignor of its warranties contained in this Assignment.

B. Assignee will indemnify Assignor against and will hold Assignor harmless from any loss, liability, and expense (including reasonable attorneys' fees and court costs) arising out of any breach by Assignee of its agreements contained in this Assignment after the Effective Date.

8. Entire Agreement. This Assignment embodies the entire agreement of Assignor and Assignee with respect to the subject matter of this Assignment, and it supersedes any prior agreements, whether written or oral, with respect to the subject matter of this Assignment. There are no agreements or understandings which are not set forth in this Assignment. This Assignment may be modified only by a written instrument duly executed by Assignor and Assignee.

9. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Nevada, without regard to the conflicts of laws doctrine of such state.

10. Continuing Effect. The Lease, as assigned, assumed and modified hereby, shall remain in full force and effect and is hereby ratified by the parties.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have duly executed this Assignment as of the day and date first above written, each by its duly authorized representative.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

By: _____

Name: _____

Title: _____

Date: _____

ASSIGNOR:

UNIVERSITY PARK, LLC, a Delaware limited liability company

By its manager: Master Management, LLC, a Nevada limited liability company

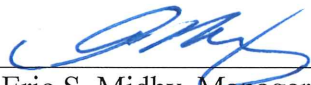
By:  _____
Eric S. Midby, Manager

Date: _____

ASSIGNEE:

UPA 1, LLC, a Delaware limited liability company

By its manager: Master Management, LLC, a Nevada limited liability company

By:  _____
Eric S. Midby, Manager

Date: _____

**NRS 396.431 Disclosure Statement
By UPA 1, LLC**

Pursuant to NRS 396.431, UPA 1, LLC, a Delaware limited liability company, hereby certifies that below is a list of all persons who hold an ownership interest of one percent (1%) or more in UPA 1, LLC:

Name of person(s) holding interest:
University Park, LLC, a Delaware limited liability company

Dated: October 13, 2015

UPA 1, a Delaware limited liability company

By its manager:
Master Management, LLC, a Nevada limited liability company

By: 
Eric S. Midby, Manager

NRS 396.431 Disclosure Statement

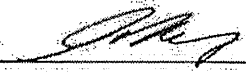
Pursuant to NRS 396.431, University Park, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in University Park, LLC:

Name of person holding interest:

1. TMG Development, LLC

Dated as of March 2nd, 2015.

University Park, LLC

By:  _____

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

NRS 396.431 Disclosure Statement

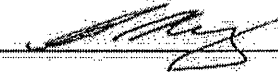
Pursuant to NRS 396.431, TMG Development, LLC hereby certifies that below is a list of all persons who holds an ownership interest of 1 percent or more in TMG Development, LLC:

Name of person holding interest:

1. The Midby Group, LLC

Dated as of March 2nd, 2015.

TMG Development, LLC

By: 

Name: Eric S. Midby

Title: Manager of its Manager, Master Management, LLC

**NRS 396.431 Disclosure Statement
By The Midby Group, LLC**

Pursuant to NRS 396.431, The Midby Group, LLC, a Nevada limited liability company, hereby certifies that below is a list of all persons who hold an ownership interest of one percent (1%) or more in The Midby Group, LLC:

Name of person(s) holding interest:

Eric S. Midby: 50.5%
John C. Midby: 25.5%
Bonny J. Midby: 10%
Thomas George: 8%
Libby Taff: 4%
Ryan Hayden: 2%

Dated: October 13, 2015

The Midby Group, LLC a Nevada limited liability company

By its manager:
Master Management, LLC, a Nevada limited liability company

By: 
Eric S. Midby, Manager

EXHIBIT A
LEASE

**LEASE AGREEMENT
FOR
UNIVERSITY PARK
PHASE ONE**

by and between

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

on behalf of

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

and

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

Dated as of May 15, 2015

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**LEASE AGREEMENT
FOR
UNIVERSITY PARK PHASE ONE**

This **LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE** (this "Lease") dated for reference purposes only as of May 15, 2015, is made by and between the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("Landlord" or "UNLV"), and **UNIVERSITY PARK, LLC**, a Delaware limited liability company, ("Tenant"). Landlord and Tenant are individually sometimes referred to herein as a "Party" and collectively as the "Parties."

RECITALS

I. Background

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

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

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

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

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

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

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

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

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

II. Development Plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1. DEFINITIONS.

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

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

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

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

1.4. “**Asset Management Fee**” has the meaning assigned to it in Section 14.8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) the Asset Management Fee;

all of the foregoing calculated in accordance with GAAP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.81. **“Resident”** means any Subtenant who (a) occupies or resides in a portion of the Residential Premises pursuant to a Sublease with Tenant, or (b) has applied for residence in the Residential Premises and been accepted by Tenant.

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

1.83. **“Residential Sublease”** means a Sublease for space within the Residential Premises.

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

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

1.86. **“Seller”** has the meaning assigned to it in Recital E.

1.87. **“Student Resident”** means a Resident who is also a UNLV Student.

1.88. **“Sublease”** means any lease, sublease, sub-sublease, or license of the Premises or any part thereof by Tenant or Subtenant to another party. The term “Subleases” comprises Residential Subleases and Commercial Subleases.

1.89. **“Substantial Completion”** means, with respect to the Improvements, or any portion thereof, that the fire marshal of jurisdiction has certified them, as applicable, as ready for occupancy, but not including Commercial Subtenant improvements.

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1.90. “**Subtenant**” means a tenant, subtenant, sub-subtenant, or occupant of a portion of the Premises pursuant to a Sublease.

1.91. “**Subtenant Deposits**” means all security deposits or security interests paid by a Subtenant in advance or other deposits received from any Subtenant.

1.92. “**Subtenant Improvements**” means any and all improvements from time to time made to any portion of the Premises by a Commercial Subtenant, including without limitation all additions, alterations, and improvements, or replacements thereof, which may be implemented in one or more phases, and all fixtures, machinery, signage, and equipment installed therein or affixed thereto necessary or desirable for the operation of such portion of the Premises by such Commercial Subtenant.

1.93. “**Tax**” means, individually and collectively, any and all taxes, assessments, license fees, excises and charges of every sort, nature, and kind that during the Lease Term are levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of Tenant or Landlord in and to the Premises.

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

1.95. “**Tenant Event of Default**” has the meaning assigned to it in Section 31.3.

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

1.97. “**Unavoidable Delay**” has the meaning assigned to it in 32.11.

1.98. “**University Park**” has the meaning assigned to it in Recital K.

1.99. “**UNLV**” has the meaning assigned to it in the first paragraph of this Lease.

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

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

ARTICLE 2. LEASE AND TITLE

2.1. **Lease Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, all the Phase One Land and Existing Improvements, situated in Clark County, Nevada, more particularly described in Exhibit B, and any and all appurtenant interests, rights, privileges, and easements, together with all licenses, agreements, easements, and rights of access appurtenant to the Phase One Land for pedestrian and vehicular ingress, egress and regress to and from the Phase One Land and to and from any entries and entrances located thereby and connecting with a public right-of-way whether now existing or acquired subsequent to the execution and delivery of

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this Lease, together with all Improvements now existing or to be constructed thereon (collectively, the “**Premises**”). Such rights of access granted to Tenant hereunder shall be non-exclusive and extend to all Subtenants of Tenant, and all employees, licensees, and invitees of Tenant and/or Tenant’s Subtenants. The Premises include the Residential Premises and the Commercial Premises.

2.2. Title. Title to the Phase One Land and Existing Improvements shall be free and clear of all title exceptions except the Permitted Exceptions, to be evidenced by a Leasehold Title Insurance Policy, with a no encroachment endorsement, on the Phase One Land and Existing Improvements insuring Tenant’s Leasehold Estate in the Phase One Land and Existing Improvements subject only to the Permitted Exceptions.

2.3. Other Easements. Notwithstanding any other provision of this Lease, Tenant and Landlord shall reasonably cooperate with one another in good faith to define and grant additional necessary easements relating to or benefiting the Premises on or over the Campus. Further, Landlord shall timely grant to Tenant access, temporary access, sidewalk, and/or utility easements (including without limitation electricity, cable, data, gas, water, storm water, and sewer) over and across the Campus as are needed for Tenant’s development, construction, and operation of the Premises. In addition, UNLV shall, from time to time, upon request by Tenant, exercise reasonable efforts and cooperate with Tenant, at no material cost to Landlord, in order to obtain releases, annulments, relocations, or abandonments of existing easements and other Permitted Exceptions that Tenant determines need to be released or abandoned in connection with the development and construction of the Premises.

2.4. Title to Improvements. Ownership of Improvements constructed by Tenant shall vest in UNLV upon Substantial Completion subject, however, to Tenant’s rights under this Lease.

ARTICLE 3.

[INTENTIONALLY OMITTED]

ARTICLE 4.

LEASE TERM.

4.1. Lease Term Commencement. The term of this Lease (the “**Lease Term**”) shall commence on the later of (a) the Effective Date, or (b) the date Landlord acquires title to the Phase One Land (the “**Lease Commencement Date**”).

4.2. Lease Term Expiration. Subject to the early termination provisions of this lease, including but not limited to Section 4.4, the Lease Term shall expire on the fortieth (40th) annual anniversary of the Lease Commencement Date unless Tenant exercises its Extension Option pursuant to Section 4.3.

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4.3. Tenant's Extension Option. If Tenant Commences Construction of the Phase One Project, then Tenant shall have the option (the "Extension Option") to extend the Lease Term as follows:

(a) Tenant's Extension Option shall be exercised, if at all, by written notice from Tenant to Landlord within one year of the issuance of the first Certificate of Occupancy for any dwelling unit on the Premises.

(b) If Tenant exercises the Extension Option, the Lease Term shall end on the earlier of (i) or (ii) below:

(i) the fortieth (40th) annual anniversary of the date on which one or more Certificates of Occupancy have been issued with respect to any dwelling unit on the Premises; or

(ii) the forty-second (42nd) annual anniversary of the Lease Commencement Date.

4.4. Failure to Commence Construction.

(a) In the event Tenant shall fail to Commence Construction (as hereinafter defined) within two (2) years following the Effective Date, Landlord shall have the right, by written notice to Tenant, FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease (an "Intent to Terminate"), to terminate this Lease. The Intent to Terminate shall contain the effective date of the proposed termination which shall be not less than 180 days after the date of the Intent to Terminate.

(b) In the event Tenant does Commence Construction prior to the termination date specified in the Intent to Terminate, the Intent to Terminate shall be void and the Lease shall continue as otherwise provided. If Tenant shall fail to Commence Construction prior to the expiration of such 180 period, Landlord may terminate this Lease at any time thereafter by written notice to Tenant; FPLLC, and to any Leasehold Mortgagee under this Lease or the Future Phases Lease; provided, if Tenant does Commence Construction prior to the date Landlord terminates this Lease, Landlord's right to terminate shall expire.

(c) For purposes of the foregoing, the term "Commence Construction" refers to Tenant having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Phase One Project, and (c) commenced actual grading of the Phase One Land.

(d) In the event Landlord terminates this Lease in accordance with Section 4.4, the Future Phases Lease shall also terminate in accordance with its terms upon the third anniversary of the termination of this Lease and FPLLC shall have the right to continue to operate the Existing Improvements (as defined in the Future Phases Lease) until that time.

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**ARTICLE 5.
RENT.**

5.1. Base Rent. Base Rent shall be payable on the first day of the calendar month immediately following the Lease Commencement Date and on the first day of each calendar month thereafter during the Lease Term. Base Rent will be prorated for any partial month prior to the Lease Commencement Date and any partial month at the end of the Lease Term on the basis of the actual number of days in such month. Base Rent shall be due monthly in advance on the first day of each calendar month as follows:

THE FOLLOWING DOLLAR AMOUNTS ARE APPROXIMATE AND BASED ON PHASE ONE LAND BEING 40% OF TOTAL ACREAGE. IF THE BOUNDARIES OF PHASE ONE ARE ADJUSTED OR IF PHASE ONE LAND IS LESS OR GREATER THAN 40% OF THE TOTAL ACREAGE THE DOLLAR AMOUNTS WILL BE ADJUSTED ACCORDINGLY IN THIS LEASE AND IN THE FUTURE PHASES LEASE SUCH THAT THE SUM OF THE INITIAL (I.E., LEASE YEARS 1 THROUGH 4) TOTAL BASE RENT UNDER BOTH LEASES SHALL BE \$550,000 PER YEAR, AS FURTHER PROVIDED IN THE PROJECT DEVELOPMENT AGREEMENT.

<u>Lease Years</u>	<u>Annual Base Rent</u>	<u>Monthly Base Rent</u>
1 through 4	\$ 220,000	\$ 18,333
5 through 8	\$ 226,600	\$ 18,883
9 through 12	\$ 233,398	\$ 19,450
13 through 16	\$ 240,400	\$ 20,033
17 through 20	\$ 247,612	\$ 20,634
21 through 25	\$ 255,040	\$ 21,253
26 through 30	\$ 262,692	\$ 21,891
31 through 35	\$ 270,572	\$ 22,548
36 through 40	\$ 278,689	\$ 23,224
41 and 42 ¹	\$ 287,050	\$ 23,921

¹ Lease Years 41 and 42 apply only if the Lease Term is extended pursuant to Section 4.3.

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5.2. Base Rent Credit. Landlord acknowledges that, by the terms of the Project Development Agreement, Tenant and FPLLC made or are obligated to make a prepayment of the Base Rent under this Lease and under the Future Phases Lease in the amount of Two Million Dollars (\$2,000,000) (the “***Prepaid Rent***”) at the closing of the Land acquisition as described in the Project Development Agreement. Such Prepaid Rent shall be credited against (a) the Base Rent payable by Tenant pursuant to Section 5.1, and (b) the Base Rent payable by FPLLC under the Future Phases Lease in installments in the order that such payments are due until such amount is exhausted as more fully described in the Project Development Agreement. Tenant shall not be responsible for cash payments of Base Rent until the first month of the Lease Term in which the balance remaining of the Prepaid Rent is insufficient to fully cover the Base Rent payment due.

5.3. Application of Gross Revenue. Gross Revenue from the operation of the Premises shall be applied monthly or more frequently as required in the following order:

- (a) Payment of fees due to any trustee holding and making disbursements of Gross Revenue in accordance with the terms of the Financing Agreements;
- (b) Payment of Base Rent;
- (c) Payment of interest due to Leasehold Mortgagees;
- (d) Payment of principal and all other charges and expenses due to Leasehold Mortgagees or as otherwise required in any Leasehold Mortgage, including any debt service reserves;
- (e) Funding of the Project Reserve Fund as provided in Section 14.2 and any other operating and maintenance reserve required in any Financing Agreement;
- (f) Payment of all Expenses not included in Sections 5.3(a) through 5.3(e);
- (g) Payment of any Asset Management Fee as described in Section 14.8;
- (h) The balance in the manner described in Section 5.5.

Without limiting the foregoing, Tenant agrees that, with respect to any payments for which Gross Revenue derived from the operation of the Premises are the source of funds, Base Rent shall have priority of payment over any costs and expenses incurred by Tenant, including payment to Leasehold Mortgagees, and operations and maintenance; provided, Tenant may pay such other costs and contribute to appropriate reserve funds monthly immediately after payment of the monthly installment of Base Rent.

5.4. [Intentionally Omitted]

5.5. Project Success Contributions.

- (a) That portion of Gross Revenue remaining after (a) payment or funding of the sums described in Section 5.3(a) through 5.3(g), and (b) distributions to Preferred Members of Tenant is hereafter referred to as “***Available Cash.***”

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(b) Subject to all of the terms and provisions hereof, commencing in the first Lease Year after the later of (i) substantial completion of construction of the Phase One Project, or (ii) the date that all Preferred Members of Tenant have received (or would have received if seventy-five percent of all Available Cash had, in fact, been distributed to Preferred Members) a return of their capital contributions and all additional distributions to which they are entitled (“***Preferred Returns***”), Tenant shall deposit in an interest bearing fiduciary account an amount equal to twenty-five percent (25%) of the Available Cash of the Phase One Project earned in the prior Lease Year, which amount is hereafter referred to as the “***Project Success Contribution***.”

(c) For purposes of the calculations referred to in this Section 5.5 only, the Preferred Returns shall be an amount equal to the sum of:

(i) The total amount of capital contributions made by Preferred Members of Tenant, subject to Section 5.5(d); and

(ii) Interest on the foregoing amount described in Section 5.5(c)(i) on the entire time such funds are held by Tenant as capital contributions from the Preferred Members equal to the lesser of (1) the actual interest paid to or accrued by Preferred Members, or (2) a fixed rate equal to eighteen percent (18%) per annum, compounded annually.

(d) Notwithstanding anything to the contrary, for purposes of the calculation referred to in this Section 5.5 only, the amount of the capital contributions made by Preferred Members to be used in this calculation shall not exceed thirty percent (30%) of the projected total project development cost.

(e) For purposes of the calculations to be made pursuant to this Section 5.5 only, the term “***Preferred Members***” means members of Tenant that contribute capital to Tenant without voting rights but with a right to return of their capital and a stated rate of interest on such contributed capital before distributions may be made to other members of Tenant; provided, entities that are Affiliated with Tenant and natural persons who are descendants (as defined in NRS 132.085) of John H. Midby shall not be deemed Preferred Members for this purpose.

(f) Nothing in this Section 5.5 shall be construed to dictate or restrict or in any way modify the financial arrangements between any of the members that constitute the Tenant but are intended only to affect the calculation of Project Success Contributions.

(g) Project Success Contributions shall be funded solely from Available Cash and are expressly subordinate to, and only payable after payment of or provision for, all Expenses and the Preferred Returns.

(h) On or before that date which is the earlier of thirty (30) calendar days after the date on which Tenant receives its annual audited financial statements following

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each Lease Year or one hundred twenty (120) calendar days after the expiration of each Lease Year, Tenant shall provide a statement (the “Calculation Statement”) showing the Available Cash for the previous Lease Year. Each Calculation Statement shall set forth the calculation used to determine the Available Cash with sufficient detail for Landlord to check the calculation and determination.

5.6. Payout of Project Success Contributions.

The funds in the Project Success Contribution account shall be paid out as follows:

- (a) Not later than February 28 of each calendar year, Tenant shall determine the total Project Success Contribution for the preceding year;
- (b) Such sum shall be divided by the number of Student Residents within the Premises as of January 1 and the product thereof (“Rebate Amount”) shall be applied, with respect to each Student Resident, **first**, as a credit against any past due rental obligation of such Student Resident; **second**, as a credit against such Student Resident’s rental obligation for the month of February; and
- (c) If any portion of the Rebate Amount remains after the foregoing, then Tenant shall deliver to such Student Resident a check in the amount of the remaining balance by April 1 of the same calendar year.

Nothing in this Lease is intended to constitute any Student Resident as a third party beneficiary; provided, UNLV may enforce the foregoing provisions regarding Project Success Contributions by an action at law or in equity.

5.7. Landlord’s Audit Right. It is expected that annual financial statements will be produced for both the Residential Premises and Commercial Premises, if any. It is further expected that Tenant shall have said annual financial statements consolidated as one and subject to a single audit by a firm of independent certified public accountants selected by Tenant, subject to UNLV’s approval, which shall not be unreasonably withheld or conditioned; provided, that such audit shall contain discrete and separate statements of operating results and related balance sheets on an accrual basis in accordance with GAAP sufficient for the Parties to ascertain the finances of both the Residential Premises and Commercial Premises. The Parties shall cooperate in good faith to provide availability and access to financial information and documents necessary for said audit to be conducted.

Landlord shall have the right, at Landlord’s expense, to audit Tenant’s calculations provided in any Calculation Statement as follows:

- (a) Tenant shall make Tenant’s records relating to or supporting the calculations set forth on any Calculation Statement available at Tenant’s offices for Landlord to review for such purpose. Tenant shall retain such documents for at least three (3) years after any Calculation Statement has been provided to Landlord hereunder.

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(b) Landlord shall have the right to claim an adjustment of the calculations set forth on any Calculation Statement; provided that any such claim shall be required to be made by written notice delivered to Tenant within ninety (90) calendar days after the date on which Landlord receives such Calculation Statement from Tenant. Any such claim shall be made by notice to Tenant within such ninety (90) calendar day period, specifying the reasons for such claim for adjustment in detail sufficient for Tenant to understand the basis for Landlord's claim. If Landlord fails to claim an adjustment in such manner and time with respect to any Calculation Statement, the Parties shall have no further right hereunder to challenge the determinations set forth in the applicable Calculation Statement. Notwithstanding the foregoing, if such claim for adjustment is of the nature that could not have been reasonably identified or known by the Party after evaluation and review of the Calculation Statement, then this Section 5.7(b) shall not apply and the effected Party shall be made whole as mutually agreed upon by the Parties.

(c) If Landlord timely claims an adjustment under Section 5.7(b) Tenant and Landlord shall use reasonable good faith efforts to resolve any such claim within forty-five (45) calendar days after the date on which the notice of claim was given by Landlord. If Tenant and Landlord are unable to resolve such claim within such forty-five (45) calendar day period, either Landlord or Tenant may submit such dispute to arbitration in accordance with Article 28.

(d) In the event that any such audit verifies that Project Success Contributions has been overpaid for any period, then Tenant shall deduct the overpayment from all subsequent payments until the overpayment amount is exhausted.

(e) In the event that any such audit verifies that Project Success Contributions has been underpaid for any period, then Tenant shall promptly make any necessary additional payment.

(f) Tenant will pay Landlord's reasonable accounting costs in the event the Landlord incurs expenses of a separate audit as a result of any discrepancies of more than five percent (5%) of the audited amount.

5.8. Limitations. Notwithstanding anything set forth herein to the contrary, during any period when Landlord or its successor ceases operation of an institution for higher education on the Campus or the Leased Premises are no longer designated by Landlord as On-Campus Housing, Tenant shall have no obligation to pay Project Success Contributions during such period; provided, however, that Project Success Contributions shall not cease (a) for any period when Campus operations are disrupted due to Unavoidable Delays or classes are not in session due to holidays or other regularly scheduled breaks in classes or (b) as the result of any change in operations or class offerings on the Campus or any closure, sale, or other transfer of any portion of the Campus so long as the balance of the Campus is operated as an institute of higher education.

ARTICLE 6.

ALTERATIONS OF THE IMPROVEMENTS.

6.1. Alterations. Except as provided in Section 6.2, after construction of the Improvements has been completed by Tenant, Tenant may from time to time make such alterations, additions, improvements, and replacements to the Premises as it from time to time determines to be appropriate. Such alterations, additions, improvements and replacements, excepting normal maintenance and repairs and any Subtenant Improvements, shall be subject to prior approval by the Landlord, which such approval shall not be unreasonably withheld, conditioned, or delayed.

6.2. Alterations of Completed Improvements.

(a) **Minor Alterations.** Tenant may alter and make leasehold improvements for Occupants in areas of the Premises not visible from outside the building in which such Occupants reside or conduct business at any time during the Lease Term in Tenant's discretion.

(b) **Major Alterations.** After a Certificate of Occupancy has been issued for the Premises, the Tenant shall not make or permit to be made any substantial alteration of, addition to or change in the exterior facade (which shall include, without limitation, entrance locations, materials, windows and cornices forming a part of such facade) or the landscaping or other exterior features of the Improvements that are visible from outside the building to which such Certificate of Occupancy relates or otherwise materially alter the Premises in a manner contrary to the use and design features set forth in the Construction Documents ("**Major Alterations**") without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Any request for such consent shall be accompanied by graphic, financial and other materials sufficient to illustrate the nature and extent of the proposed alteration, its impact, if any, upon improvements existing upon or planned for under the Construction Documents on other portions of the Campus.

6.3. Construction of Alterations. All alterations and additions made in accordance with Section 6.2 shall be constructed in a good and workmanlike manner, with good quality new materials and equipment, in compliance with Applicable Law, and shall be completed with due diligence. If Tenant shall fail to comply with the foregoing requirements, the Landlord may, within a reasonable time after its discovery thereof, direct in writing that the Tenant so modify, reconstruct or remove such portion or portions of the Improvements as were reconstructed, demolished or subtracted from or added to or extended without the prior approval of the Landlord. The Tenant shall promptly comply with such directive, and shall not proceed further with such reconstruction, demolition, subtraction, addition or extension until such directive is complied with.

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ARTICLE 7.

TAXES, ASSESSMENTS, AND UTILITIES.

7.1. **UNLV's Tax Exemption.** During the Lease Term, Landlord, exclusively, shall have and own fee simple title to the Premises. Under current law in the State of Nevada, the Parties believe, but do not warrant to the other Party, that the Premises will be exempt from all real and tangible personal property ad valorem taxation pursuant to NRS 361.157(c).

Further, the Parties acknowledge and agree that it is the intent and expectation of the Parties that Tenant's leasehold interest in the Premises or other rights, title and interest under this Lease shall not be subject to real and/or tangible personal property ad valorem taxation.

7.2. **Right to Contest Taxes.** If the imposition of any Tax shall be deemed by Tenant or Landlord to be improper, illegal, or excessive, Tenant may, in its own name, dispute and contest the same and, in such event and to the extent permitted by Applicable Laws, any such Tax need not be paid until adjudged to be valid; provided, however, Tenant shall in writing first notify Landlord of such dispute and contest and shall comply with the requirements of any Leasehold Mortgage concerning the contest of taxes. Unless so contested, any Tax shall be paid by Tenant or Landlord, as applicable, within the time provided by Applicable Laws, and if contested, any such Tax shall be paid before the execution upon or foreclosure of any lien for any Tax on the Premises.

7.3. **Tax on Receipt of Rent.** Landlord shall be solely responsible for the payment of any tax, assessment, charge or excise on, attributable to, or measured by the Base Rent or by any other payments received by Landlord under this Lease other than payments in the nature of reimbursement to Landlord.

7.4. **Utilities.** Tenant shall, during the Lease Term, pay and discharge punctually, as and when the same shall become due and payable all rents and charges for sewer, water, steam, heat, gas, hot water, electricity, light, and power, and other service or services, furnished to the Premises during the same period (hereinafter referred to as "**Utility Expenses**"). Notwithstanding the above, Residents may be separately metered for any or all utilities and shall directly pay said Utility Expenses to the extent separately metered during the terms of their Subleases. Landlord shall reasonably cooperate in obtaining necessary easements for such utilities to be provided to the Premises.

7.5. **Tax Benefits.** Landlord and Tenant agree that as between them, Tenant shall be entitled to all depreciation and/or amortization deductions, any state and/or federal investment credits, and to all other state and/or federal income tax deductions and credits which may be available with respect to the Premises, including without limitation, the Phase One Land, Improvements, and/or Personal Property; provided, that Landlord makes no representations or warranties regarding such deductions and credits, which shall be the sole responsibility of Tenant.

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**ARTICLE 8.
ADVERTISING AND MARKETING.**

Tenant shall be responsible and shall have sole authority for marketing and leasing of the Premises except as may be explicitly provided in this Lease. Landlord hereby covenants and agrees, however, as follows, which covenants and agreements shall survive as obligations of the original Landlord following any Transfer pursuant to Article 26 hereof:

8.1. Advertising/Marketing. The Parties shall work in good faith to facilitate the rental and leasing of University Park.

(a) Tenant may, throughout the Lease Term, market the Residential Premises to UNLV Students and other Permitted Residents as On-Campus Housing. Tenant shall be entitled to advertise the Residential Premises as On-Campus Housing.

(b) Tenant may, from time to time, present to UNLV advertising and marketing content for UNLV web sites and other media used by UNLV or its licensees to advertise on-Campus housing and/or written content and images intended for email distribution. UNLV agrees to place such content on its web site in a manner substantially similar to other on-Campus housing and to distribute by email as applicable to all UNLV Students, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen (except as an inducement to sublet from Tenant after the Freshman year) as long as the restrictions described in Section 8.2 are in effect.

(c) UNLV will allow Tenant to place advertising and marketing content in any written materials and mailings, signage, and similar media in a manner substantially similar to other on-Campus housing, subject to reasonable restrictions on such content that apply equally to other on-Campus housing. Tenant acknowledges that such content will not be directed to Freshmen as long as the restrictions described in Section 8.2 are in effect.

(d) UNLV shall allow Tenant to advertise on Campus kiosks and within student centers and any other locations on Campus where housing is offered or advertised on the same basis as other on-Campus housing.

(e) The Parties agree that the Premises shall be marketed as “Upper-Class” or “Move-Up” housing.

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

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

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(h) Tenant and UNLV will coordinate their efforts and cooperate with each other to market and make the Residential Premises and other on-Campus housing properties available to participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Tenant, subject to the terms and provisions of Section 9.9 hereof.

(i) Tenant shall be entitled to actively participate in transfer student orientation sessions, welcome week activities and other student orientation sessions or similar events for purposes of marketing University Park, subject to reasonable rules and regulations promulgated by UNLV.

(j) Neither Party shall make any claim or statement that is disparaging to the other Party or to the Premises or to other on-Campus housing properties.

8.2. Freshman Housing Policy.

(a) The Parties acknowledge that UNLV currently has a policy requiring Freshman students to live in specified On-Campus housing that does not include University Park. Tenant agrees not to market or lease to Freshmen as long as UNLV maintains such policy and does not permit Freshmen to live in any On-Campus facility that is not owned and operated by UNLV.

(b) UNLV may, in its sole discretion, allow Freshmen to reside in the Premises as overflow Freshman housing in the event that UNLV's owned and operated On-Campus housing is inadequate to meet the demand for Freshman housing; provided, Tenant is not required to accept Freshmen.

(c) UNLV shall provide Tenant with a means to verify the status of any applicant for a Sublease as a UNLV Student or other person who is entitled to reside in the Residential Premises pursuant to Sections 9.9(a) through 9.9(i). It is the Parties' intent that such means will be available for instantaneous electronic confirmation of status, but in any event, the confirmation shall be within three (3) business days of Tenant's request to Landlord. Such means to confirm student status will be available not later than ninety (90) days prior to the beginning of each Academic Term and Tenant shall have the right to rely on such means for the purposes of this Lease. If a Sublease applicant disagrees with UNLV's determination as communicated to Tenant, UNLV will, at Tenant's request and with consent of the applicant, provide a written determination of the applicant's eligibility to reside in the Premises.

ARTICLE 9.

RESTRICTION ON CERTAIN STUDENT HOUSING DEVELOPMENTS.

9.1. Housing Development Restriction. Landlord agrees that it shall not develop or construct or participate in the development, financing or construction of, or permit to be

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developed on any land that UNLV, NSHE or any of their Affiliates own or control, any Restricted Housing (defined below in Section 9.3) from the Effective Date of this Lease until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Phase One Project (“**Phase One Occupancy Date**”); or
- (b) the Phase One Achievement Date set forth below in Section 9.4(c) on which the Phase One Project is deemed to have achieved the Phase One Performance Standards.

The foregoing covenant is referred to herein as the “**Housing Restriction**”).

9.2. Extension of Housing Restriction. In the event the Phase One Performance Standards are met before ten (10) years have passed from the Phase One Occupancy Date and UNLV intends to commence development of Restricted Housing as permitted by Section 9.1(b), UNLV agrees to first provide Tenant and FPLLC with a written notice of such intent. FPLLC may notify UNLV within thirty (30) days of such notice of intent that FPLLC elects to proceed with its development of (a) the Future Phases Project, or (b) the Phase Two Project if FPLLC elects to create more than one Phase of development on the Future Phases Land (either of (a) or (b) in this sentence being hereafter referred to as the “**Next Phase Project**”). If FPLLC gives timely written notice to UNLV and thereafter proceeds with development of the Next Phase Project, the Housing Restriction shall be extended until the **earlier** of:

- (a) ten (10) years following the issuance of a Certificate of Occupancy within the Next Phase Project (“**Next Phase Occupancy Date**”); or
- (b) the date the Next Phase Project achieves the Next Phase Performance Standards set forth below in Section 9.5; or
- (c) the earlier of the following two dates unless FPLLC shall Commence Construction on the Next Phase Project before such date:
 - (i) the date that is eighteen months following the Phase One Achievement Date, or
 - (ii) the ten (10) year anniversary of the Effective Date.

For purposes of this Section 9.2, the term “**Commence Construction**” refers to FPLLC having (a) obtained funding of a Leasehold Mortgage, (b) obtained all permits required from Governmental Authorities to commence vertical construction of the Next Phase Project, and (c) commenced actual grading of the Next Phase Land.

9.3. “Restricted Housing” Defined.

- (a) As used herein, “**Restricted Housing**” means any Dwelling designed, intended or used for any persons other than UNLV Students in their Freshman year of college.
- (b) “**Dwelling**” means a building or portion thereof designed or used for residential occupancy by an individual, family, group of unrelated individuals, or by

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persons residing in a community residence, and includes factory-built homes, manufactured homes, one-family, two-family and multiple-family dwellings, apartments, flats, and community residences, and any other building wherein human beings may be lawfully housed such as a “boarding house”, “lodging house”, “fraternity”, “sorority”, “dormitory”, or any other group living arrangement for unrelated individuals.

(c) Notwithstanding anything herein or in any other agreement between the Parties to the contrary, the Housing Restriction shall **not** apply to any Dwelling located west of Interstate Highway 15 or north of Sahara Avenue.

9.4. Phase One Performance Standard. The “Phase One Performance Standard” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Phase One Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “Occupied” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for Phase One shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by Tenant and the Leasehold Mortgagees.

(c) To provide Tenant with sufficient time to calculate the preceding year’s Debt Service Coverage Ratio, the Phase One Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.4(b) and (ii) the date on which the occupancy requirement in 9.4(a) is achieved (the “Phase One Achievement Date”).

As used herein, the term “Debt Service Coverage Ratio” means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.5. Next Phase Performance Standard. The “Next Phase Performance Standard” shall mean that both of the following criteria have been met:

(a) An average of ninety percent (90%) of the Beds in the Next Phase Project have been “Occupied” in any four (4) consecutive Academic Terms. For this purpose, “Occupied” shall mean that a Sublease for the Bed has been signed and a Resident is in actual occupancy of the Bed at the end of the third full week of the respective Academic Term.

(b) The Debt Service Coverage Ratio for the Next Phase Project shall have exceeded 1.25 in each of the two (2) immediately preceding calendar years as reasonably determined by FPLLC and the Leasehold Mortgagees.

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(c) To provide FPLLC with sufficient time to calculate the preceding year's Debt Service Coverage Ratio, the Next Phase Performance Standard will be deemed to have been achieved on the later of (i) March 1 of the year following the achievement of the Debt Service Coverage Ratio requirement set forth in Section 9.5(b) and (ii) the date on which the occupancy requirement in 9.5(a) is achieved (the "**Next Phase Achievement Date**").

As used herein, the term "**Debt Service Coverage Ratio**" means Net Income for a calendar year divided by Debt Service for the same calendar year, expressed in decimal form.

9.6. Memorandum of Housing Restriction. Tenant may, at Tenant's sole cost, record a memorandum of the Housing Restriction against any property now owned or hereafter acquired by the Landlord or Affiliate of Landlord for the benefit of UNLV and located within the geographical limits described in Section 9.3.

9.7. University Park Information. Landlord acknowledges that Tenant is making a significant investment to develop the Premises based, in part, upon the expectation that Tenant will have the ability to easily disseminate its marketing information to UNLV Students and prospective UNLV Students who have applied for admission to UNLV, potential participants in summer camps, seminars and conferences operated at the Campus or additional summer camp, seminar and conference business independently generated by Landlord.

9.8. Leasing Policies of UNLV. Except as explicitly provided in this Lease, UNLV shall not implement any policy or take any action which restricts or discourages UNLV Students from residing at the Residential Premises.

9.9. Permitted Residents. Tenant shall have the right to market and sublease the Residential Premises only to UNLV Students (except Freshmen as provided in Section 8.2), including but not limited to the following UNLV Students and others ("**Permitted Residents**"):

(a) All classifications of UNLV Students, including undergraduates (except Freshmen as provided in Section 8.2), graduate students and post-graduates;

(b) Current Subtenants of the Residential Premises;

(c) UNLV Students living in Off-Campus Housing, in an effort to attract them to the Residential Premises;

(d) UNLV Students living in UNLV's On-Campus Housing, in an effort to attract them to the Residential Premises rather than moving off-Campus;

(e) Transfer students or former UNLV Students applying for admission or re-admission to UNLV;

(f) UNLV faculty and staff;

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

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

(i) Students enrolled in other educational institutions including, but not limited to, local community colleges; and

(j) to any other individual with respect to any vacancies in the Premises as of July 1 of any year subject to the requirement that any Subleases covered by this Section 9.9(j) are terminable on or before the following June 30 and such premises are then made available for individuals described above in this Section 9.9.

(k) to any other individual without regard to the restrictions set forth in Section 9.9(j); provided, the total number of Residents who qualify for residency based solely on this Section 9.9(k) shall not exceed five percent (5%) of the total number of Beds.

Notwithstanding anything in this Lease to the contrary, the foregoing restriction on Tenant's right to enter into Subleases shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

9.10. Supplemental Advertising and Marketing. Nothing in this Lease is intended or shall be construed as limiting or restricting Tenant from engaging in any additional marketing or advertising of the Premises in its sole discretion.

ARTICLE 10.

POLICE AND SECURITY SERVICES.

10.1. Outdoor Patrols. The Premises are within the jurisdiction of the University of Nevada, Las Vegas Department of Police Services (the "UNLV Police"). Landlord shall cause the UNLV Police to patrol the outdoor common areas of the Premises in substantially the same manner and frequency as such patrols are conducted at other Campus buildings and facilities.

10.2. Supplemental Services If requested by Tenant, the UNLV Police will provide additional services ("Supplemental Services") such as internal patrols, security at events, or other situations with respect to which Tenant requests police presence on the Premises in the same manner as other on-Campus academic, student housing facilities and retail operations on the Campus: provided, Tenant understands that such other academic, housing facilities and retail operations on the Campus pay the UNLV Police for Supplemental Services provided. If Tenant requests such Supplemental Services, the UNLV Police will charge Tenant a fee, annually or on a more frequent schedule, determined in a manner similar to that used to set the fee paid by other residential or commercial establishments on-Campus.

10.3. Private Security Services Tenant shall have the right in its sole discretion, but no obligation, to provide additional unarmed private security forces to supplement those provided by the UNLV Police and the Las Vegas Metropolitan Police force at Tenant's sole cost and in compliance with all Applicable Laws. Prior to engaging any private security, Tenant shall first

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obtain the written consent of UNLV Police, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 11. PROHIBITED USES.

11.1. Prohibited Uses. Notwithstanding any other provision of this Lease to the contrary, no portion of the Premises shall be used for the following purposes:

(a) Gaming, casino gambling, slot machines, video or other electronic gambling devices, except that the sale of State lottery tickets is permitted if the State of Nevada authorizes a State lottery.

(b) The sale of firearms, explosives or lethal weapons sales or establishments;

(c) An adult theater, adult bookstore, adult video store or other establishment which shows, previews, or prominently includes, as a part of its stock-in-trade for sale, rental or other consumption or entertainment, or which otherwise conspicuously displays, advertises, or conspicuously promotes for sale or rental: (a) movies, films, videos, magazines, books, discs or other medium (whether now or hereafter developed) that are rated "NC-17" by the Motion Picture Association of America, Inc. (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature; or (b) sexually explicit games, toys, devices, or similar merchandise.

(d) The sale, dispensing or use of marijuana or marijuana-infused products (as defined in NRS 453A.112), whether for medicinal or other purposes.

(e) An adult nightclub, or any other establishment which offers entertainment or services by nude, topless or partially clothed male or female persons or which is designed to arouse the prurient interest in another.

(f) A tattoo parlor, body piercing shop, and so-called head shops (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs).

(g) Any purpose that violates Applicable Law, or in such a manner as to constitute a nuisance.

ARTICLE 12. SUBLEASES.

12.1. Subleases. Tenant, and its successors and assigns, shall have the right, without the consent or approval of Landlord, to enter into, modify, and terminate any Sublease for all or any part of the Premises. Each Sublease shall require the Subtenant to attorn (i) to Landlord in the event of the termination of this Lease or (ii) to any Leasehold Mortgagee that becomes the Tenant under a New Lease prior to the expiration date of the Sublease. . Notwithstanding the foregoing,

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no commercial sublease may extend beyond the Term without the written consent of Landlord, which may be given or withheld in its absolute discretion.

12.2. Approval of Sublease Form. In its capacity as an institution of higher education, UNLV is subject to certain affirmative obligations and regulations under federal and state law that apply to institutions of higher education ("***Institutional Restrictions***"). Some Institutional Restrictions may be applicable to the Residential Premises as a result of UNLV being the owner of the Land. In the event that it is necessary, in UNLV's reasonable opinion, that such Institutional Restrictions be incorporated into the Subleases between Tenant and a UNLV Student, UNLV shall notify Tenant in writing of such Institutional Restrictions and the provisions that UNLV desires be added to the form of Tenant's Subleases. Tenant agrees to incorporate such provisions in its form of Sublease agreement unless Tenant reasonably and in good faith questions the necessity of such provision or the applicability of the Institutional Restrictions to the Residential Premises. Either Party may submit to arbitration in accordance with Article 28 the issue of whether such provisions are reasonable and are reasonably necessary.. Landlord shall have the right to review the form or forms being used by Tenant, as well as the right to review Subleases then in effect, at any time and from time to time to confirm that the form or form contain all provisions required by this Section 12.2.

12.3. Landlord's Right to Evict Certain Sublessee. In the event that any Institutional Restrictions require that a Subtenant who is a UNLV Student be evicted from or relocated within the Residential Premises UNLV shall notify Tenant of such fact by written notice ("***Subtenant Action Notice***"). Such notice shall identify the Resident and contain a summary explanation of the reason for his or her eviction sufficient to provide the basis for a judicial eviction proceeding but subject to any privacy limits of Applicable Law (including but limited to the Family Educational Rights and Privacy Act ("FERPA")). The Subtenant Action Notice will be signed by the Vice President of Student Affairs, General Counsel or their designees, and shall state that UNLV has afforded the Sublessee any and all due process rights required under Applicable Law to which he or she may be entitled to challenge the grounds for such Subtenant Action Notice. Tenant shall use reasonable commercial efforts to cause the Subtenant described in the Subtenant Action Notice to be evicted or relocated, as directed in the Student Action Notice; provided, so long as the applicable Sublease contains the provisions required hereunder, Landlord shall reimburse Tenant for any costs incurred and hold Tenant harmless against any claim by the Subtenant that the eviction was wrongful or that the circumstances alleged in the Subtenant Action Notice were untrue, incomplete or libelous. Landlord agrees that Tenant shall have no obligation to verify the facts alleged by UNLV in the Subtenant Action Notice and is entitled to rely on the facts and allegations contained in the Subtenant Action Notice. UNLV will provide any affidavit required and make available witnesses if necessary in connection with any judicial proceeding and Tenant may voluntarily dismiss any action if UNLV shall fail to do so on a timely basis.

12.4. Sublease to Landlord. At Tenant's option and subject to agreement between Landlord and Tenant the terms to govern such Sublease, Tenant has the right to Sublease all or any part of the Premises and Improvements to Landlord for Permitted Uses, and any such Sublease

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between Landlord and Tenant shall set forth the Parties' agreement regarding such Permitted Use and to the extent that such Sublease conflicts or is inconsistent with this Lease, the provisions of the Sublease shall apply during such time as the Sublease is in effect.

12.5. Tenant's Rights to Enforce Subleases, Control the Premises, and Determine Rental Rates. Except with respect to actions required in response to a Student Action Notice, Landlord shall not interfere with Tenant's decisions with respect to the enforcement of Subleases, actions taken to prevent damage to the Premises and maintain the safety and security of the Premises and the persons and property located thereon.

12.6. Nondiscrimination. Landlord and Tenant shall comply with all Applicable Laws governing equal employment opportunities, immigration, and non-discrimination. To that end, Tenant shall not unlawfully discriminate in the conduct and operation of its business at the Premises against any person or group of persons because of race, color, religion, national origin, citizenship, sex, gender identity, sexual orientation, age, or disability.

12.7. Nondisturbance. Upon request therefor by Tenant, Landlord shall execute and deliver to a Commercial Subtenant a subordination, attornment, and nondisturbance agreement, in form and substance reasonably acceptable to Tenant and Landlord, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 13. PARKING.

UNLV will make available for purchase by Residents of University Park (i.e., Phase One and all Future Phases combined) three hundred (300) residential parking passes allowing twenty-four hour parking on campus. UNLV will offer such parking passes on the same terms and conditions as it offers other students, but shall not be obligated to offer any discount to Residents. If the demand for residential parking passes by University Park residents exceeds 300 and UNLV elects not to make more than 300 available to University Park residents, the total supply will be allocated among the Phases as provided in the Project Development Agreement.

UNLV shall designate surface or structured parking spaces within a UNLV owned parking lot on the northern side portion of Campus as near to the Phase One Land as reasonably feasible determined by UNLV for use by Residents without time restrictions that may apply to other non-Resident parking. All residential parking on the UNLV Campus are on a first come first served basis, and the issuance of any permits hereunder shall be not deemed to guaranty any permit holder that spaces in any specific lot shall be available at all times.

UNLV shall only make such residential parking permits available to Residents if and to the extent parking available within the Phase One Project is and remains fully sold.

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ARTICLE 14.

MAINTENANCE, OPERATION, AND MANAGEMENT.

14.1. **Maintenance.** Tenant shall, at its sole cost and expense, keep and maintain in good order and repair the Premises, both interior and exterior, structural and non-structural. All repairs, replacements, and renewals shall be made promptly and be substantially equal in quality to the original Improvement Work. Tenant waives any right created by any law now or hereafter in force to make repairs to the Premises at Landlord's expense, it being understood that Landlord shall not in any event be required to make any alterations, rebuildings, restorations, replacements, changes, additions, improvements, or repairs, unless required to do so by separate agreement. The Premises shall, at all times comply with all requirements of this Lease except to the extent the same may be inapplicable during construction, and make all necessary repairs thereto, in a timely and workmanlike manner in accordance with industry standards.

14.2. **Phase One Project Reserves.** The following provisions apply only to Improvements constructed after the Effective Date and not to the Existing Improvements:

(a) Tenant shall:

(i) During the thirtieth (30th) Lease Year, cause to be conducted a study of the reserves ("**Reserve Study**") required to repair, replace and restore the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore and deliver a copy of the Reserve Study to Landlord;

(ii) At least annually thereafter, review the results of the Reserve Study with Landlord to determine whether those reserves are sufficient; and

(iii) At least annually thereafter, make any adjustments to Tenant's funding plan which the Tenant deems necessary to provide adequate funding for the required reserves ("**Annual Updates**").

(b) The Reserve Study must include, without limitation:

(i) A summary of an inspection of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(ii) An identification of the major components of the Premises that Tenant is obligated to maintain, repair, replace or restore which have a remaining useful life of less than 30 years;

(iii) An estimate of the remaining useful life of each major component of the Premises that Tenant is obligated to maintain, repair, replace or restore;

(iv) An estimate of the cost of maintenance, repair, replacement or restoration of each major component of the Premises during and at the end of its useful life; and

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(v) An estimate of the total annual contribution to the Project Reserve Fund that may be necessary to cover the cost of maintaining, repairing, replacement or restoration of the major components of the Premises, after subtracting the existing reserves of Tenant as of the date of the Reserve Study, and an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves.

(c) Tenant shall, beginning in the thirty-first (31st) Lease Year and in each Lease Year thereafter, create and maintain a fund for the purpose of reserving sufficient cash available for maintenance, repair, replacement or restoration of each major component of the Premises that is anticipated by the Reserve Study and the Annual Updates to require maintenance, repair, replacement or restoration during the remainder of the Lease Term (the "Project Reserve Fund") and make an annual transfer to the Project Reserve Fund in an amount sufficient to cover all such costs of maintenance, repair, replacement or restoration.

(d) Any reserve amounts held by a Leasehold Mortgagee for the same or substantially similar purposes as described in Section 14.2(c) shall offset Tenant's obligation under this Section 14.2 to the extent such reserves held by the Leasehold Mortgagee shall, under the terms of the Financing Documents, be available only for such similar purposes and shall be available to Landlord upon expiration of the Lease Term or earlier termination of this Lease to the same extent as required herein.

(e) Upon expiration of the Lease Term or upon earlier termination of the Lease, such amounts held in the Project Reserve Fund or any comparable reserve fund held by a Leasehold Mortgagee and used to offset Tenant's obligation herein shall be paid over to Landlord.

(f) Tenant shall be entitled to draw upon the Project Reserve Fund to pay the costs of maintenance, repair, replacement or restoration of each major component of the Premises for which reserves are required by Section 14.2(c). Thereafter, future annual contributions to the Project Reserve Fund will restore the balance in the Project Reserve Fund as necessary to comply with Section 14.2(c).

(i) No Landlord consent shall be required with respect to a draw so long as the matter for which such draw is made relates to any maintenance, repair, replacement or restoration which has a cost and is made at a time substantially consistent with the Reserve Study and Annual Updates.

(ii) If any maintenance, repair, replacement or restoration is required to be made significantly earlier than contemplated in the Reserve Study or has a cost which is significantly higher than estimated in the Reserve Study, Landlord shall have the right to approve related draws, which approval shall not be unreasonably withheld, conditioned or delayed.

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(iii) If any maintenance, repair, replacement or restoration as contemplated in the Reserve Study has a cost which is significantly lower than estimated in the Reserve Study, Tenant may reallocate the difference in subsequent years to other maintenance, repair, replacement or restoration of major components of the Premises for which reserves are required by Section 14.2(c).

(iv) Tenant shall give Landlord 30 days' written notice of any planned draw which notice shall provide sufficient information to reflect that consent by Landlord is not required under this Section 14.2(f) or to enable Landlord to determine whether to give its approval to the draw.

14.3. Financial Aid. In the event that UNLV Students receive financial aid to pay for housing that is dependent on living in on-Campus housing, Tenant and Landlord shall work together to develop a process to permit the Premises to qualify for such residence, if allowed by Applicable Law.

14.4. Signs. Tenant shall have the right to install and replace, and to permit the installation or replacement by others, of any signs or advertising matter visible from the exterior of the Premises, so long as such signs conform with Landlord's regulations on use of UNLV's name and marks. Tenant shall comply with all applicable requirements of Governmental Authorities having jurisdiction and shall obtain all necessary governmental approvals prior to the installation or replacement of any sign or other advertising matter permitted by Landlord.

14.5. Project Management. The Parties desire to provide for upper-class, move-up and graduate student housing on the UNLV Campus as described in this Lease, each acting independently in pursuance of its own separate business interests. Tenant shall operate and staff the Premises in a professional manner consistent with the operation of a first-class University housing facility, comparable to those at UNLV's peer institutions and to privately owned off-campus housing in Las Vegas. In furtherance of such intent and except as otherwise expressly provided in this Lease, Tenant shall in general and whether herein specifically authorized or not, take all actions that Tenant deems necessary, proper or desirable in its business judgment with respect to the ownership and operation of the Premises.

Nothing herein contained shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of (i) partnership or of joint venture between the parties hereto, or (ii) employer and employee, or (iii) any other relationship other than the relationship of Landlord and Tenant. The Landlord shall have no responsibility for the actions of the Tenant and no control over Tenant's operations other than as explicitly set forth in this Lease.

14.6. Selection Process for Professional Facility Management. Tenant and Landlord each acknowledge that:the management of a student housing facility differs in certain critical respects from the operation of other rental housing facilities that are not specifically intended for students;

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(b) it is crucial to the success of the Project for Tenant to have the final authority to retain a professional property management company ("Manager") from among candidates pre-qualified by the Board of Regents ("Board") in order for Tenant to (i) obtain Project financing, (ii) maintain supervisory control of the Manager, and (iii) preserve an independent, arm's length, contractual relationship with Landlord and the Manager;

(c) Landlord, acting through its Board, must however retain the authority to reject any Manager that does not have substantial experience in the management of on-campus or off-campus student housing facilities similar to the Project or that would not be capable of maintaining the Project in a condition that protects and promotes the University's image as an educational institution; and

(d) Landlord does not wish, however, to have legal responsibility or liability for the acts of the Manager, who will act at the direction of Tenant and at Tenant's will.

For the foregoing reasons, the Parties agree to the following evaluation process to select a Manager. Tenant shall first identify, recruit and negotiate with one or more professional management companies with substantial experience in the management of on-campus or off-campus student housing facilities of a size and amenities package similar to the Project. During the evaluation process, Tenant will continuously solicit input and suggestions from UNLV's Senior Vice President for Finance and Business regarding the qualifications and experience of the management companies being considered and on each companies' abilities, qualifications and expertise to manage the Project. Tenant shall present one or more of the management companies to the Board for its review and endorsement. The Board's endorsement shall indicate that the Board will accept the company as Manager if it is retained by Tenant but shall not be construed as Landlord's acceptance of any responsibility or liability for the acts of the Manager.

The Board's review and endorsement of any submitted companies shall not be unreasonably withheld or delayed. Tenant may respond to any objections raised by the Board and ask for reconsideration of any companies rejected by the Board. Subject to the foregoing, Tenant shall have authority for final selection of the professional management company.

14.7. AVS Housing Group. UNLV has recommended to Tenant that Tenant retain AVS Housing Group, LLC to assist Tenant in marketing, leasing, contract administration, room assignments, operations and facility management duties on the Premises and such other services as it currently provides for UNLV's other on-Campus housing. The Parties acknowledge and agree, however, that Tenant is under no obligation to do so and that failure to do so will not affect or diminish UNLV's obligations as set forth in this Lease. UNLV further agrees that it waives any objection to Tenant retaining AVS Housing Group, LLC or any Affiliate thereof based on any potential or perceived conflict of interest so long as AVS Housing Group, LLC or its Affiliate agree to act on behalf of UNLV and Tenant on a comparable basis except as relates to fees charged by AVS Housing Group, LLC., which shall be separately negotiate between Tenant and AVS Housing Group, LLC.

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14.8. Asset Management Fee. Tenant shall be entitled to pay itself a fee for the services it provides under this Lease (the "Asset Management Fee") equal to one and one-half percent (1.5%) of the Gross Revenues.

ARTICLE 15. CONDITION OF PREMISES.

Tenant acknowledges that it is fully familiar with the Phase One Land and Existing Improvements and the physical condition thereof as of the date hereof. Except for Landlord's obligation to (i) provide reasonable access for ingress, egress, and regress to the Premises, (ii) grant additional easements and access rights and cooperate with Tenant as to other matters pursuant to Section 2.3 above, and (iii) complete other duties as otherwise provided herein, Tenant accepts the Premises in the existing condition and state of repair, and agrees that Landlord shall in no event be liable for any latent or patent defects in the Phase One Land or the Existing Improvements.

ARTICLE 16. RIGHT OF INSPECTION.

Landlord shall at all reasonable times during regular business hours be permitted access to the Premises for the purposes of inspecting the same and generally to do such other work as is deemed necessary to determine Tenant's compliance with this Lease. Except in the case of bona fide or apparent emergency or as provided under a Sublease or the Management agreement with Tenant, Landlord shall only be afforded access to the interior of any structure or building situate on the Premises: (a) when accompanied by a representative of Tenant; and (b) after five (5) Business Days written notice by Landlord to Tenant. In exercising its rights hereunder, Landlord shall not unreasonably interfere with the use or occupancy by Tenant or any Subtenant or Occupant. In the event of a bona fide or apparent emergency, Landlord may enter at any time and without accompaniment or notice (including forcibly, to the extent necessary), without such entry constituting an eviction of Tenant or a termination of this Lease.

ARTICLE 17. ENVIRONMENTAL COVENANTS AND WARRANTIES.

17.1. Representations. Landlord and Tenant each warrants and represents to the other Party that it has disclosed to the other Party in writing any and all information known to Landlord or Tenant, as the case may be, relating to the environmental condition of the Phase One Land and the Existing Improvements.

17.2. Tenant's Environmental Covenants.

(a) Tenant shall not engage in and shall use reasonable efforts to prevent any Subtenant from engaging in operations at or in the Premises which involve the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, release, or threat of release of Hazardous Substances which would require remediation or clean-up to conform to Environmental Laws. Tenant shall at all times comply with

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Environmental Laws with respect to substances first coming onto the Premises following the Effective Date and during the Lease Term. Tenant shall not cause and shall not permit to exist as a result of an intentional or unintentional action or omission on its part (and Tenant shall use reasonable efforts not to permit to exist as a result of an intentional or unintentional action or omission on the part of any other party), the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping from or about the Premises of any Hazardous Substances in amounts and concentrations the uncontained presence of which would require remediation or clean-up to conform to Environmental Laws.

(b) Nothing contained in this Section 17.2 shall be construed as prohibiting the use on the Premises of substances regulated by Environmental Laws that are normally or routinely used in the construction of improvements such as the Improvements or are normally or routinely used in the operation, repair, maintenance, and use of residential and commercial projects, such as fuels, solvents, cleaning materials, paint, and printing materials, so long as the same are used in a manner that complies with Environmental Laws.

ARTICLE 18.

WARRANTIES AND REPRESENTATIONS.

18.1. By Landlord. Landlord hereby warrants and represents to Tenant as follows:

(a) Landlord has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals, consents, and board or committee actions necessary to authorize Landlord to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken.

(b) The person executing this Lease on behalf of Landlord has authority on behalf of Landlord to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Landlord and is binding upon and enforceable against Landlord in accordance with its terms.

(c) The Premises are not subject to any pending or, to Landlord's knowledge, threatened litigation, and Landlord is not subject to any pending or, to Landlord's knowledge, threatened litigation that would or might affect the Land or Landlord's ability to perform its obligations under this Lease.

(d) The consummation by Landlord of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Landlord.

(e) Landlord is not a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might to a material degree adversely affect the Premises,

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University Park or any portion of the Land upon which University Park will be constructed.

(f) Landlord has no knowledge of any condition of or with respect to the Premises that would adversely affect the use and enjoyment of the Premises by Tenant in accordance with the terms and provisions of this Lease.

(g) As used in this Section 18.1, Landlord's "knowledge" means the actual knowledge of Landlord's (i) Senior Vice President of Administration and Finance, or (ii) General Counsel, or (iii) Director for Real Estate; or any person under the direct supervision of any of them, following reasonable investigation or inquiry.

18.2. By Tenant.

(a) Tenant has the full right, power, and authority to enter into this Lease and to perform its obligations hereunder. All requisite approvals and corporate or limited liability company actions necessary to authorize Tenant to enter into this Lease and to be bound by the provisions of this Lease have been obtained or taken. The person executing this Lease on behalf of Tenant has authority on behalf of Tenant to execute this Lease and all other documents contemplated hereby. This Lease is a valid obligation of Tenant and is binding upon and enforceable against Tenant in accordance with its terms.

(b) Tenant is not subject to any pending or, to Tenant's knowledge, threatened litigation that would or might affect Tenant's ability to perform its obligations under this Lease.

(c) The consummation by Tenant of the transaction contemplated hereby does not, and will not, constitute a violation of any existing order, rule, or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Tenant.

ARTICLE 19.

TITLE TO IMPROVEMENTS.

Notwithstanding anything set forth or implied hereunder, during the Lease Term, Landlord shall have and own fee simple title to all Improvements affixed to or forming a part of the Premises, subject only to the Leasehold Estate and interests of Tenant pursuant to this Lease and to such Subleases as are authorized hereby.

ARTICLE 20.

MECHANICS' LIENS.

Tenant shall use commercially reasonable efforts to avoid the filing of mechanics' liens against the fee interest of Landlord in the Premises or the Leasehold Estate of Tenant under this Lease and shall obtain a lien waiver from the General Contractor upon completion of the Improvement Work. Tenant shall cause any claim of mechanics' lien arising by, through or under Tenant which purports to lien the estate of Landlord in the Premises to be removed or bonded off

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prior to any execution or enforcement of such lien. In the event that Tenant permits such liens to be foreclosed or executed on, Landlord may, but shall not be obligated to, pay such lien or liens in full, or cause the same to be removed of record by causing the lien or liens to be bonded. Any reasonable expenses incurred by Landlord in furtherance of Landlord's rights under this Article 20 shall be paid by Tenant to Landlord. Tenant may contest the validity of any such lien or claim, but upon final determination of such contest, Tenant shall pay any remaining judgment, decree or lien and cause the same to be released of record without cost to Landlord.

ARTICLE 21. CASUALTY.

21.1. Tenant's Obligation to Repair. Except as provided in this Lease or in any Leasehold Mortgage, in the event of damage to or destruction of the Premises or any Improvements, the funds received by Tenant from property insurance acquired pursuant to Article 22 shall be made available to the extent needed to effect such repair and reconstruction of the structure or improvement so damaged or destroyed to substantially its condition prior to said damage or destruction, or, if such repair or reconstruction is determined by Tenant to be not commercially feasible due to the age, design, use, extent of damage or the type of construction, or other aspect of the Improvements, Tenant may, at its option, effect repair and reconstruction so as to preserve any portions of the Improvements that have not been substantially damaged or to remodel or revise the structure of the Improvements, or Tenant may raze the Improvements or any part thereof. Notwithstanding the foregoing, in the event that Tenant determines that any repair or reconstruction is not commercially feasible and/or that the continued operation of the Premises is not commercially feasible, Tenant may, at its option, terminate this Lease by written notice thereof to Landlord, whereupon Tenant shall be required to raze or repair the remaining Improvements to the extent necessary to protect them against further deterioration as a result of such casualty, and any insurance proceeds remaining following satisfaction of all sums secured by all Leasehold Mortgages and payment of any sums required to preserve or raze the Improvements shall be retained by Tenant. Tenant's restoration activities shall be subject to the following requirements and conditions:

(a) The restoration shall create a building of substantially the same (or greater) floor area and number of Beds as were contained in the damaged building; provided that Tenant shall be entitled to make such changes in the Improvements as Tenant determines are desirable to recognize changes that have occurred in this type of building since the original construction of the Premises and trends that are then occurring therein.

(b) Any material change to any work set forth in the Construction Documents for the restoration shall be subject to the review and approval of Landlord in accordance with the terms and provisions of Article 6 hereof, which approval shall not unreasonably be withheld, conditioned or delayed.

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(c) Landlord acknowledges that, notwithstanding anything set forth or implied herein to the contrary, Landlord has no ownership right or interest in the proceeds of the insurance acquired by Tenant pursuant to Article 22.

21.2. Prompt Repair. If Tenant, pursuant to the terms hereof, is obligated or elects to repair, replace, reconstruct or rebuild any Improvements, or other property as hereinabove provided, the same shall be effected at Tenant's cost and expense but only to the extent of insurance proceeds and other amounts available to Tenant as above provided and subject to the provisions of Article 22 and the provisions of any Leasehold Mortgage. Subject to the time required for collecting insurance proceeds, redesigning, and obtaining governmental approvals therefor, obtaining necessary financing and Unavoidable Delays, Tenant shall use commercially reasonable efforts to promptly commence and complete such repair, replacement, reconstruction, or rebuilding to full completion.

21.3. Lease Continuance. This Lease and the Lease Term shall not terminate or be terminated because of damage to or destruction of the Improvements, except as expressly provided in this Lease. Tenant's obligation to pay Rent under this Lease shall be equitably abated during the period of any repair and/or reconstruction by Tenant pursuant to this Article 21.

ARTICLE 22. INSURANCE AND INDEMNIFICATION.

Before commencing construction of any Improvements, Tenant shall provide, or cause to be provided, and thereafter shall keep in full force and effect, or cause to be kept in full force and effect during the term of this Lease, at no cost to Landlord, the following insurance relating to the Premises:

22.1. Liability Insurance. Tenant shall purchase and maintain and keep in effect (or cause to be purchased and maintained and kept in effect) at all times during the Lease Term insurance against claims for personal injuries (including death) or property damage, under a policy of commercial general liability insurance, such that the total available limits will not be less than \$5,000,000.00 per occurrence, which may be satisfied by any combination of a primary commercial general liability and excess liability or umbrella liability insurance policy, naming Landlord and any Leasehold Mortgagee as an additional insured. The coverage afforded the additional insured shall be primary and shall apply to loss prior to any coverage carried by Landlord. Any insurance or self-insurance maintained by Landlord shall be in excess of Tenant's commercial general liability insurance coverage and shall not contribute with it. Certificates of insurance shall include a copy of the endorsement evidencing additional insured status. The policy shall include coverage for:

- (a) Bodily injury
- (b) Broad form property damage (including completed operations)
- (c) Personal injury

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(d) Products and completed operations (this coverage shall extend for one year past the actual completion of construction of all Improvements)

22.2. Workers' Compensation Insurance. Tenant shall purchase and maintain and keep in effect at all times during the Lease Term workers compensation and employers liability insurance as required by the State of Nevada Workers Compensation statutes as follows:

(a) Workers Compensation (Coverage A) Statutory

(b) Employers Liability (Coverage B)

(i) \$500,000 each accident

(ii) \$500,000 each employee/disease

(iii) \$1,000,000 policy limit/disease

(iv) This policy shall include endorsement for All State coverage for state of hire.

22.3. Automobile Liability Insurance. If applicable, Tenant shall purchase and maintain and keep in effect at all times during the Lease Term commercial automobile liability insurance, with minimum limits of \$1,000,000 per occurrence combined single limit, to include non-owned and hired motor vehicles, applicable to claims arising from bodily injury, death or property damage arising out of the ownership, maintenance or use of any automobile. The policy shall be endorsed to add Landlord as an additional insured and shall stipulate that the insurance shall be primary, and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant.

22.4. Property Insurance. Tenant shall maintain and keep in effect (or cause to be maintained and kept in effect) at all times during the Lease Term insurance on the Premises and Improvements against special causes of loss form coverage. Such insurance shall be written on a replacement cost basis in the amount of the full replacement cost of the Improvements (but excluding the value of roads, foundations, surface parking areas, and similar improvements) subject, however to commercially reasonable sub-limits for buildings of this type. Tenant shall, periodically and its expense, but not less often than every 5 years during the term hereof, engage a consultant reasonably satisfactory to Landlord, to perform a detailed study of the cost to reconstruct the Phase One Project for purposes of determining the total insurance coverage required. During any period while the Premises is being constructed, the insurance required pursuant to this Article 22 shall be in the form of a builder's risk policy, to be provided by either Tenant or the General Contractor, equal to the replacement cost value of each building at the completion of construction.

(a) The builder's risk policy referred to above shall be special causes of loss form insurance coverage, which shall insure against physical loss or damage to all property incorporated into the Premises and shall also insure finished products. Coverage shall also cover the interests of Landlord, Tenant, the General Contractor and the

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Contractors and construction subcontractors in the buildings while under construction and the building materials on site but not yet attached to or incorporated in the building with respect to the Premises, but it will not cover any machinery, tools, equipment, appliances, or other personal property owned, rented or used by Tenant, the General Contractor, or any subcontractor in the performance of the construction work on the Premises, which will not become a part of the completed Premises.

(b) The property insurance obtained under the builder's risk policy shall provide special causes of loss form coverage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, windstorm, false work, testing and startup, temporary buildings, and debris removal including demolition occasioned by enforcement of any applicable legal requirement, and shall cover reasonable compensation for the Premises' design professional's and the General Contractor for services and expenses required as a result of such insured loss. The builder's risk insurance shall include physical loss or damage to the construction work on the Premises, including materials and equipment in transit, on the Premises or at another location as may be indicated in the General Contractor application for payment and approved by Tenant.

(c) As to the builder's risk insurance policy, Tenant or the General Contractor, as applicable, shall be responsible for the deductible of each loss and shall retain responsibility for any loss not covered by the builder's risk policy.

22.5. Evidence of Insurance. Upon the Lease Commencement Date, and if requested by Landlord, no more than once annually thereafter, Tenant shall deliver to Landlord certificates of insurance and any additional documentation reasonably requested by Landlord (including, without limitation, policy endorsements) to assure compliance with this Article 22 reasonably acceptable to Landlord, which shall identify this Lease and include copies of endorsements naming Landlord as an additional insured for general liability coverage and auto liability coverage as to acts and omissions of Tenant and others for which Tenant is responsible under Applicable Laws and as to all liability coverages shall stipulate that Tenant's insurance shall be primary and that any self-insurance or other insurance carried by Landlord shall be excess and not contributory to the insurance provided by Tenant. The certificates, insurance policies, and endorsements required by this Article 22 shall contain a provision that coverages afforded will not be cancelled until at least thirty (30) calendar days prior written notice (ten (10) calendar days for nonpayment of premium) to Landlord prior to any lapse, cancellation, or a reduction in coverage. All coverages, conditions, limits, and endorsements shall remain in full force and effect as required in this Lease.

22.6. Copies and Additional Information. Landlord shall be provided, upon reasonable request, copies of all policies and endorsements, to the extent available. Each copy of a policy shall include a copy of all endorsements and, if such copy is not a certified copy, shall be accompanied by a letter from Tenant's insurance broker stating that Tenant's insurance carrier will not provide certified copies of insurance policies and endorsements and that the enclosed copy of

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the policy and endorsements is a true, correct, and complete copy of the respective insurance policy and all endorsements to the best of the broker's knowledge.

22.7. Tenant's Failure. In the event that Tenant fails to carry insurance as required under this Article 22, and such failure continues for fifteen (15) calendar days after Tenant's receipt of written notice of such failure from Landlord, then in Landlord's discretion, Landlord may procure or renew such insurance and pay any and all premiums in connection therewith, and all monies so paid by Landlord shall be repaid by Tenant upon demand.

22.8. Claims Reporting. Any failure to comply with the claims reporting provisions of the policies required to be maintained by Tenant hereunder or any breach of policy warranty shall not affect coverage afforded under the policy to protect Landlord.

22.9. Self-Insurance. The policies specified herein may provide coverage, which contain deductibles or self-insured retentions. Such deductibles and/or self-insured retentions shall not be applicable with respect to the coverage provided to Landlord under such policies. Tenant shall be solely responsible for any deductible and/or self-insured retention, which shall be included as Expenses under the definition of Net Income.

22.10. Payment of Insurance Proceeds. In the event of any damage or destruction of the Premises or Improvements, the proceeds of Tenant's casualty insurance shall be paid to Tenant, or to the Leasehold Mortgagee, if said Leasehold Mortgagee so requires. If funds are disbursed to Tenant, Tenant shall deposit the proceeds in a fiduciary account or construction disbursement account to be distributed in accordance with this Lease.

22.11. Landlord's Insurance. At the earliest possible time after execution of this Lease, and thereafter upon renewal of such policies, Landlord shall deliver to Tenant certificates evidencing Landlord's commercial general liability insurance, automobile liability insurance, property insurance, and workers compensation insurance, with limits of liability as currently maintained by Landlord.

ARTICLE 23. CONDEMNATION.

In the event that the entire Premises, or any part thereof, is taken or condemned for a public or quasi-public use or that after any partial taking the remaining portion of the Premises is not sufficient, in Tenant's reasonable judgment, for the successful operation of the Premises, Tenant shall have the right, with the written approval of the Leasehold Mortgagee (if there is then a Leasehold Mortgage), to terminate this Lease by written notice thereof to Landlord, in which event both Parties shall be relieved of and from any liability hereunder, except those accrued up to the time of such termination. In the event of any temporary taking or condemnation, Tenant shall be entitled to the entire award of the condemning authority. In the event that the entire Premises or any part thereof is permanently taken by condemnation, Tenant and Landlord shall cooperate to prove in each condemnation proceeding the loss in value, by reason of the taking, of the respective estates of Landlord and Tenant (notwithstanding the termination of this Lease, if any), and

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Landlord and Tenant shall each be entitled to pursue an award for the values of Landlord's and Tenant's respective interests in the Premises taken in such proceedings, if the condemning authority permits separate awards to be sought by Tenant and Landlord (it being acknowledged that in no event shall the portion of the award allocated to Tenant be less than all amounts secured by all Leasehold Mortgages). In the event that the condemning authority does not permit separate awards to be sought by Tenant and Landlord, then all proceeds and awards which may be payable as a result of condemnation shall, following their receipt by Tenant or any Leasehold Mortgagee, be distributed in the following order of priority:

23.1. Leasehold Mortgagees. There shall first be paid to Leasehold Mortgagees such amounts as may be required by such Leasehold Mortgages to be paid to such Leasehold Mortgagees, in order of priority.

23.2. Costs of Collection and Restoration. From the amount remaining, if any, there shall then be paid to Tenant a sum equal to the costs incurred by Tenant or Leasehold Mortgagee in connection with collection of such proceeds and awards (including, without limitation, all fees for experts, legal fees, costs of surveys, and appraisals, and court costs), and, in the event of a partial taking which does not result in the termination of this Lease, a sum equal to the costs incurred or to be incurred by Tenant in restoring the portion of the Premises remaining to a condition as nearly as possible to that in which the Premises were prior to such taking, in the light of any reduced area thereof, pursuant to a procedure reasonably satisfactory to Leasehold Mortgagee.

23.3. Remainder. The amount remaining, if any, shall be paid to Tenant.

ARTICLE 24.

LEASEHOLD MORTGAGES.

24.1. Right to Mortgage. On one or more occasions, Tenant and every successor and assignee of Tenant shall, in connection with the development and operation of the Phase One Project only have the right to enter into one or more Leasehold Mortgages and assign, transfer, or encumber this Lease as security for such Leasehold Mortgage ("Permitted Financing"). Tenant shall not place or create any mortgage, deed of trust or other lien or encumbrance purporting to affect Landlord's fee interest in the Premises or Landlord's interest in this Lease. Tenant shall not use, provide to others, or rely upon any financial statements, audits, or other documents of NSHE or UNLV for the purpose of obtaining any type of advantage with respect to financing the Phase One Project.

24.2. Landlord's Approval.

(a) On or before that date which is fifteen (15) calendar days prior to the execution by Tenant of any Leasehold Mortgage, Tenant shall provide written notice thereof to Landlord, together with a true and correct copy of such Leasehold Mortgage. Landlord shall have the right to review and approve the terms of the Leasehold Mortgage in Landlord's reasonable discretion. In the event Landlord notifies Tenant in writing

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within ten (10) calendar days of receipt of the Leasehold Mortgage that Landlord does not approve thereof, Tenant shall not be permitted to execute the Leasehold Mortgage. If Landlord approves the Leasehold Mortgage in writing or fails to respond within ten calendar days, Tenant shall be permitted but not required to execute the Leasehold Mortgage in Tenant's sole discretion substantially in the form originally delivered to Landlord.

(b) Notwithstanding anything to the contrary, Tenant shall not be obligated to commence to perform the Improvement Work unless and until financing acceptable to Tenant is arranged. If financing acceptable to Tenant is not arranged within nine months after the Effective Date of this Lease, Tenant shall have the option to cancel this Lease by giving written notice of cancellation to Landlord; provided, such cancellation option shall be void if it is not exercised and financing is arranged thereafter. If Tenant can arrange financing only by making changes to the provisions of this Lease other than those provisions designating the length of the Term and the amount of Rent payable under this Lease, Tenant shall have the right to cancel this Lease if Landlord refuses to approve any such change in writing within thirty (30) days after Tenant's request therefor.

(c) In the event of any amendment to or modification of any Leasehold Mortgage, a copy thereof shall be provided to Landlord within fifteen (15) calendar days after the execution thereof. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgage, notice of the new name and/or address shall be provided to Landlord. Any notice to be given by Landlord to a Leasehold Mortgagee pursuant to any provision of this Article 24 shall be deemed properly addressed if sent to the Leasehold Mortgagee at the address indicated in the most recent notice sent with respect to the Leasehold Mortgage pursuant to this Article 24. Notices from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 32.1 hereof. Such notices, demands and requests shall be given in the manner described in Section 32.1 and shall in all respects be governed by the provisions of that section.

24.3. Default Notice; Leasehold Mortgagee's Right to Cure.

(a) Landlord, upon providing Tenant any notice of default under this Lease or a termination of this Lease, shall at the same time provide a copy of such notice to the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage. No such notice by Landlord shall be deemed to have been duly given unless and until a copy thereof has been so provided to such Leasehold Mortgagees of which Landlord has received written notice in the manner specified herein.

(b) After such notice has been given to the Leasehold Mortgagee, such Leasehold Mortgagee shall have an additional ninety (90) day period (sixty (60) day

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period in the case of a monetary default) for remedying (or commencing to remedy and diligently pursuing remedying) any default or causing the same to be remedied (or commencing to remedy and diligently pursuing remedying) as is given Tenant; provided that such ninety (90) day period (sixty (60) day period in the case of a monetary default) shall begin when Landlord delivers a subsequent written notice to the Leasehold Mortgagee after the period of time given to Tenant to remedy, commence remedying or cause to be remedied the defaults specified in any such notice has expired in accordance with the terms and provisions of this Lease; provided, however, that in the event that any such nonmonetary default is not susceptible to cure by Leasehold Mortgagee until Leasehold Mortgagee can gain possession of the Premises, Leasehold Mortgagee's period of time to commence to cure such default shall be extended until such time as Leasehold Mortgagee gains possession of the Premises, so long as

(i) during such extended cure period all payments of Rent are paid as required under this Lease (subject to the notice and cure provisions set forth in this Lease) and

(ii) Leasehold Mortgagee is reasonably diligent in its efforts to gain possession of the Premises. Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant.

(c) Tenant authorizes Leasehold Mortgagee to take any such action at Leasehold Mortgagee's option in accordance with Applicable Laws and the terms and conditions of this Lease and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose.

24.4. Notice to Leasehold Mortgagee. Anything contained in this Lease to the contrary notwithstanding, if any default shall occur that may entitle Landlord to terminate this Lease, Landlord shall have no right to terminate this Lease unless, following the expiration of the period of time given Tenant to cure such default set forth in Article 31 or to a Leasehold Mortgagee in this Article 24, or elsewhere in this Lease, if any, Landlord shall notify ("**Default Termination Notice**") the Leasehold Mortgagee of Landlord's intent to so terminate at least thirty (30) calendar days in advance of the proposed effective date of such termination if the nature of such default is the failure to pay Rent, and at least sixty (60) calendar days in advance of the proposed effective date of such termination if such default is not the failure to pay Rent. The provisions of Section 24.5 shall apply if, during such 30- or 60-day Default Termination Notice period the Leasehold Mortgagee shall:

(a) Notify Landlord of such Leasehold Mortgagee's desire to nullify such Default Termination Notice;

(b) Pay or cause to be paid all Rent and other payments then due and in arrears as specified in the Default Termination Notice to such Leasehold Mortgagee and that may thereafter become due during the cure period allowed to such Leasehold Mortgagee,

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subject to the notice and cure provisions set forth in this Lease; provided that no such amount shall be required to be paid before the same is due and owing under this Lease; and

(c) Comply or, in good faith, with reasonable diligence and continuity, commence to comply with all nonmonetary requirements of this Lease then in default and reasonably susceptible to being complied with by such Leasehold Mortgagee and continue to pursue such cure with reasonable due diligence, excepting (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the time allowed the Leasehold Mortgagee to complete such cure pursuant to this Section 24.4(c) shall be not less than sixty (60) calendar days and shall continue thereafter for so long as is reasonably necessary for the Leasehold Mortgagee to cure such nonmonetary requirement which is susceptible of cure by such Leasehold Mortgagee, including, in the event that the Leasehold Mortgagee is required to obtain possession of the Premises in order to effect such cure, any period of time reasonably required to obtain such possession (including any time Leasehold Mortgagee is stayed or enjoined).

24.5. Procedure on Default.

(a) If Landlord shall elect to terminate this Lease by reason of any default of Tenant, and Leasehold Mortgagee shall have proceeded in the manner provided for by Section 24.4, the specified date for the termination of this Lease as fixed by Landlord in its Default Termination Notice in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent shall be extended as provided in Section 24.4; provided, such Leasehold Mortgagee shall, during such extended period:

(i) Pay or cause to be paid the Rent, and other monetary obligations of Tenant under this Lease as the same become due (subject to the notice and grace provisions of Section 24.4) and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting: (a) obligations of Tenant to satisfy or otherwise discharge any lien, charge, or encumbrance against Tenant's interest in this Lease junior in priority to the lien of the Leasehold Mortgage held by Leasehold Mortgagee (which is not also a lien against Landlord's fee interest in the Premises); and (b) past nonmonetary obligations then in default and not reasonably susceptible of being cured by Leasehold Mortgagee; and

(ii) Unless Leasehold Mortgagee is stayed or enjoined from taking such actions, take steps to acquire or sell Tenant's interest in this Lease by

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foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with reasonable diligence and continuity.

(b) If at the end of such extended period Leasehold Mortgagee is complying with this Section 24.5, this Lease shall not then terminate; and the time for completion by such Leasehold Mortgagee of proceedings pursuant to this Section 24.5 shall continue for the period provided in Section 31.1(b) in connection with Tenant's failure to comply with obligations other than the obligation to pay Rent. Nothing in this Section 24.5, however, shall be construed to require Leasehold Mortgagee to continue such foreclosure proceedings after the default has been cured. If the default shall be cured, and Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) Upon the acquisition of Tenant's Leasehold Estate herein by Leasehold Mortgagee or its designee or any other permitted purchaser at a foreclosure sale, assignment in lieu thereof, or otherwise, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease; provided, all monetary defaults have been cured and the Leasehold Mortgagee, its designee or the successor of either shall proceed to cure any non-monetary defaults.

(d) Notwithstanding any other provision of this Lease, any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage (whether as a result of a default hereunder, a default under a Leasehold Mortgage or otherwise), shall be deemed to be a permitted Transfer or sale not requiring the consent of Landlord, provided such purchaser or assignee of this Lease and of the Leasehold Estate hereby created shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of such Leasehold Estate. No such sale, Transfer, or assignment shall constitute a default or Event of Default under this Lease.

(e) Notwithstanding any other provision of this Lease, no Leasehold Mortgagee or other person acquiring title to Tenant's interest in the Premises through or under a Leasehold Mortgage (including by Transfer in lieu of foreclosure) shall be liable for any loss or damage occurring prior to acquiring such title or subsequent to any assignment of such title. In the event of any sale or other Transfer of this Lease and of the Leasehold Estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignment or other Transfer of this Lease or of the Leasehold Estate hereby created in lieu of the foreclosure of any Leasehold Mortgage, (a) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any act or omission of Tenant, (b) the Leasehold Mortgagee or purchaser at foreclosure shall not be liable for any amendment to this Lease not joined in or consented to by such Leasehold Mortgagee,

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(c) the Leasehold Mortgagee or purchaser at foreclosure shall not be subject to any offsets or defenses which Landlord has against Tenant and (d) Landlord and such Leasehold Mortgagee shall, each upon written request of the other, reaffirm in writing the validity of this Lease.

24.6. New Lease. In the event of the termination of this Lease as a result of Tenant's default or otherwise, Landlord shall, in addition to providing the notices of default and termination as required by Section 24.4, provide Leasehold Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums that would at the time be due under the Lease but for such termination, and of all other defaults, if any, then known to Landlord. Landlord shall enter into a new lease ("New Lease") of the Premises with Leasehold Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the Rent and upon the terms, covenants, and conditions of this Lease (but excluding any requirements which are not applicable or have been satisfied by Tenant prior to termination), subject only to the conditions of title as the Premises are subject to on the date of the execution of the original Lease and such matters arising thereafter to which such Leasehold Mortgagee has consented to in writing, and to the right, if any, of any parties then in possession of any part of the Premises, provided:

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

(b) Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums that are at the time of execution and delivery thereof due pursuant to this Lease regardless of such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, that Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and that have not otherwise been received by Landlord from Tenant or other party in interest under Tenant. Upon the execution of such New Lease, Landlord shall allow to the Tenant named therein as an offset against the sums otherwise due under this Section 24.6 or under the New Lease, an amount equal to the Net Income derived by Landlord from the Premises during the period from the date of termination of this Lease to the date of the beginning of the Lease Term of such New Lease;

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

(d) Upon the execution and delivery of a New Lease, all Subleases and management agreements shall thereupon be assigned and transferred, without warranty or recourse by Landlord to the extent of its interests, if any, to the tenant under the New Lease.

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24.7. No Merger. So long as any Leasehold Mortgage is in existence, unless Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall otherwise expressly consent in writing or unless this Lease has otherwise been terminated in accordance with its terms, the fee title to the Premises and the Leasehold Estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said Leasehold Estate by Landlord or by Tenant or by a third party, by purchase or otherwise. Landlord and Tenant may not voluntarily agree to terminate this Lease without the consent of Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage.

24.8. Erroneous Payments. No payments not constituting payments of Rent made to Landlord by Leasehold Mortgagee shall constitute agreement that such payment was, in fact, due under the terms of this Lease; and Leasehold Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment or portion thereof provided Leasehold Mortgagee shall have made demand therefor not later than one (1) year after the date of such payment.

24.9. Bankruptcy. In the event either Landlord or Tenant becomes the subject of a proceeding under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect (including any replacement thereof):

(a) Tenant shall not be entitled to reject this Lease without the prior written consent of the Leasehold Mortgagee and every other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; provided that, if the Lease is nevertheless rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee of the Leasehold Estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate and the Leasehold Mortgagee shall have all the rights of the Leasehold Mortgagee under this Section 24.9(a) as if such bankruptcy proceeding had not occurred, unless the Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within sixty (60) calendar days following rejection of the Lease by Tenant or Tenant's trustee in bankruptcy. If any court of competent jurisdiction shall determine that this Lease shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Tenant or the trustee in bankruptcy for Tenant in connection with any such proceeding, the rights of the Leasehold Mortgagee to a New Lease from Landlord pursuant to Section 24.6 shall not be affected thereby.

(b) If the Lease is rejected by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage; and any right to treat this Lease as terminated in such event shall be deemed

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assigned to such Leasehold Mortgagees, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and the Leasehold Mortgagee and each other Leasehold Mortgagee that has given Landlord notice of its Leasehold Mortgage shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) If this Lease is not treated as terminated in accordance with Section 24.9(b)(i), then this Lease shall continue in effect upon all the terms and conditions set forth herein, including Rent, but excluding requirements that are not then applicable or pertinent to the remainder of the term hereof. Thereafter, Tenant or its successors shall be entitled to offset against Rent payable hereunder the amounts of any damages from time to time arising from such rejection or any failure of Landlord to perform its obligations hereunder and any such offset properly made shall not be deemed a default under this Lease. The lien of each Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection with the same priority as it would have enjoyed had such rejection not taken place.

24.10. Landlord Not Liable for Tenant's Financing. Tenant acknowledges that Tenant may not qualify for tax exempt financing. Tenant shall be solely responsible for debt repayment relative to any borrowings by Tenant, and Landlord shall not be a participant or guarantor on any such borrowings. Except for the subordination and nondisturbance and attornment agreements and estoppel certificates required by this Lease, Landlord shall not be made a party to any of Tenant's financing documents.

24.11. Fee Mortgage. All Fee Mortgages shall be subordinate to this Lease and any New Lease, and Landlord shall from time to time at the request of Tenant or any Leasehold Mortgagee provide a subordination agreement from any holder of a Fee Mortgage confirming that the Fee Mortgage is subordinate to this Lease and any New Lease.

24.12. Limitation of Leasehold Mortgagee's Liability. The liability of any Leasehold Mortgagee or its designee or nominee acquiring title pursuant to foreclosure or other process in lieu thereof under this Lease shall be limited to its interest in the Premises, and any judgments rendered against any such Leasehold Mortgagee or its designee or nominee following foreclosure or other process in lieu thereof shall be satisfied solely out of its interests in this Lease or the proceeds of sale of its interest in the Premises. No personal judgment shall lie against any such Leasehold Mortgagee or its designee or nominee upon extinguishment of its rights in the Premises, and any judgment so rendered shall not give rise to any right of execution or levy against such Leasehold Mortgagee's or its designee's or nominee's assets. The provisions of this Section 24.12 shall not inure to the successors and assigns of any Leasehold Mortgagee or its designee or nominee following its acquisition and Transfer of title to the Leasehold Estate created hereby. Nothing contained herein limiting the liability of a Leasehold Mortgagee or any Transferee shall be deemed to waive any default or remedies of Landlord.

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24.13. Security Interests. Landlord hereby acknowledges and consents to Tenant's grant of security interests in the Personal Property of Tenant to bona fide lenders, their successors and assigns (together, "**Secured Lenders**"). Any Personal Property of Tenant in which a security interest has been granted to a Secured Lender is hereinafter called "**Secured Property**." Landlord subordinates any interest in the Personal Property of Tenant to security interests granted to Secured Lenders, subject to the provisions hereof. Landlord consents to the entry by Secured Lenders or their agents or representatives upon the Premises at any time pursuant to any document evidencing or governing a lien or security interest in favor of a Secured Lender for the purpose of removing the Secured Property, except that the Secured Lenders may not remove any Fixtures from the Premises. The Secured Property shall be deemed to be Personal Property and not a part of the Premises and shall not be claimed or seized or levied upon in any levy or legal execution or legal proceedings by Landlord. The Secured Lenders may remove Secured Property, or any part thereof, without liability for damage to or diminution in value of the Premises, except for the actual physical damage caused by such removal, which physical damage shall be repaired by the removing Secured Lender or caused to be repaired by the removing Secured Lender so that the Premises shall be restored to the condition the Premises would be in absent such removal.

24.14. No Guaranty; Only Debtor-Creditor Relationship. Nothing contained herein shall be construed as a guaranty, of any kind or nature, by any Leasehold Mortgagee of any of the obligations of Tenant hereunder or as creating a relationship between Tenant and any Leasehold Mortgagee other than a relationship of creditor and debtor.

24.15. Casualty; Condemnation. All proceeds of policies of insurance maintained hereunder and the award from any condemnation or taking of the Premises shall be applied as provided in Article 22 and Article 23, as applicable. The Leasehold Mortgagee is hereby authorized to participate in any actions, proceedings or negotiations in connection with the collection, settlement or compromise of any such proceeds or awards.

24.16. Proceedings. Landlord shall give each Leasehold Mortgagee prompt written notice of any legal proceedings between Landlord and Tenant involving obligations under this Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the Parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Landlord shall give the Leasehold Mortgagee written notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of written notice of such proceedings.

24.17. Waiver of Landlord's Lien. Landlord does hereby waive any and all lien or claim of lien against Tenant, Commercial Subtenants, University Park, the Personal Property of Tenant and Commercial Subtenants, and all other trade fixtures and equipment of Tenant and Commercial Subtenants, now or hereafter located on the Premises, arising from this Lease or the relationship of Landlord and Tenant hereunder (or to the extent any such waiver is ineffective under Applicable Laws, Landlord hereby subordinates any such lien or claim of lien to the liens created under any and all Leasehold Mortgages, whether now or hereafter existing).

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24.18. Changes to Mortgagee Protective Provisions. In the event that Tenant hereafter desires to enter into a Leasehold Mortgage, Landlord shall consider in good faith any modifications, clarifications or changes to the mortgagee protective provisions contained in this Lease (including without limitation those set forth in this Article 24) which are reasonably requested by a Leasehold Mortgagee. Landlord shall promptly respond to any such request within ten (10) Business Days after Landlord's receipt of such request.

**ARTICLE 25.
QUIET ENJOYMENT.**

Landlord represents and warrants that it has the right and capacity to enter into this Lease. Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Lease Term, without hindrance or molestation by anyone claiming paramount title or claims whatsoever, except by, through, or under Tenant, subject, however, to the covenants, agreements, terms, conditions, and other obligations of this Lease and any holder of any rights under any Permitted Exceptions and subject to the rights of Landlord set forth herein if an Event of Default occurs.

Landlord shall pay all amounts required to protect and defend Landlord's title to and interest in the Premises and as otherwise necessary to protect Tenant's interest in the Premises hereunder from any title exceptions adversely affecting Tenant's proposed use of the Premises, including without limitation any liens or similar claims not created by Tenant.

**ARTICLE 26.
ASSIGNMENT AND TRANSFER.**

26.1. Limitation: Consent Required. Tenant may not, at any time, sell, assign, convey, or transfer (each, as applicable, a "Transfer") this Lease to another Person without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. As used herein, "Transfer" (a) shall include the appointment of a new Person as manager of Tenant, and (b) shall not include any subletting of the Premises or a Phase. Notwithstanding the foregoing, such restriction on Transfer shall not apply to a Leasehold Mortgagee or its nominee following the acquisition of the Leasehold Estate in a foreclosure sale or by deed in lieu of foreclosure.

26.2. Transfer by Landlord. Notwithstanding anything set forth herein to the contrary, Landlord shall not at any time Transfer its interests in the Premises, the Phase One Land, the Improvements, and/or University Park, or any part thereof, without the prior written consent of Tenant and any Leasehold Mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Tenant's reasonable grounds for disapproval may include the risk of loss of tax-exempt status of the Land and the Phase One Project.

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ARTICLE 27. ESTOPPEL CERTIFICATE.

Upon not less than ten (10) Business Days prior written request by Tenant, Landlord, any Commercial Subtenant or any Leasehold Mortgagee, the other Party shall execute, acknowledge, and deliver to the requesting Party and/or to any current or prospective mortgagee, purchaser, assignee, title insurer, or other appropriate party, a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same are in full force and effect as modified, and setting forth the modifications), setting forth the dates to which the Rent and charges payable by Tenant hereunder have been paid, whether or not to the knowledge of the Party making such certificate there is any existing default by either Party and whether or not any notice of default has been served by either Party upon the other and remains outstanding and stating the nature of any such defaults, and such other matters as may be reasonably requested, it being intended that any such statement delivered pursuant to this Article 27 may be relied upon by any existing or prospective title insurer, purchaser, assignee, Subtenant, mortgagee, or other appropriate party.

ARTICLE 28. DISPUTE RESOLUTION.

In recognition of the long term nature of each Party's commitment to the other and the substantial investment made by Tenant with regard to the Premises, in the event of a dispute, Landlord and Tenant agree that dispute resolution shall proceed as follows: first, negotiation as provided in Section 28.1; second, mediation, as provided in Section 28.2; and third, if the Parties are still unable to resolve their dispute, the complaining Party shall have all of the rights set forth in this Lease and available to such Party under Applicable Law to pursue adjudication and resolution of the dispute ("Dispute Resolution").

28.1. Negotiation. The parties shall attempt in good faith to resolve any dispute promptly by negotiation between executives who have authority to settle the controversy. Either Party may give the other Party notice of any dispute not resolved in the ordinary course of business. Within ten (10) calendar days after delivery of the notice, the receiving Party shall submit a written response to the notice. The notice and response shall include (a) a statement of that Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) calendar days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations and materials provided pursuant to this negotiation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law, and statements made by any Party during negotiation may not be used against it in later proceedings if the Parties fail to resolve the dispute during negotiation.

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28.2. Mediation. If a dispute has not been resolved by negotiation as provided above within twenty (20) calendar days or such longer time as the parties shall mutually agree upon, or the parties failed to meet within fifteen (15) days after delivery of the initial notice of negotiation, the parties shall endeavor to resolve the dispute by private mediation in Las Vegas, Nevada. If Landlord and Tenant cannot agree upon a mediator, each shall select one name from a list of mediators maintained by any bona fide dispute resolution provider or other private mediator, and the two mediators chosen by Landlord and Tenant shall then choose a third person who will serve as mediator. The parties agree to each have a representative present at the mediation who has authority to bind it to a written settlement agreement, subject to the approval of the board of directors or membership, as applicable, of Tenant and any consents or approvals of the Regents of the Nevada System of Higher Education or otherwise required by legislation and regulations governing Landlord. The initial mediation session shall be held promptly (but not more than thirty (30) calendar days following appointment of the mediator). All negotiations and materials provided pursuant to this mediation process are confidential to the full extent allowed by law and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence under applicable law. Positions and statements made by any Party during mediation may not be used against it in later proceedings if the Parties fail to reach a settlement agreement during mediation. Each Party shall bear its own expenses and shall pay an equal share of the expenses of the mediator. Agreements reached in any mediation proceeding shall be enforceable as settlement agreements in any court having jurisdiction thereof.

28.3. Further Legal Action. Except as otherwise provided in this Lease, it is the intent of the Parties that these negotiation and mediation procedures shall govern any dispute under this Lease and either Party shall have the right to specifically enforce the negotiation and mediation procedures before the other Party may seek legal redress in a court of law. If a dispute has not been resolved by negotiation and mediation as provided in Sections 28.1 and 28.2, either Party shall have the right to commence legal action. Any legal actions brought to enforce this Lease shall be interpreted by the laws of the State of Nevada and brought in a court of competent jurisdiction in the State of Nevada.

ARTICLE 29.

INTEREST ON PAST DUE OBLIGATIONS.

To compensate Landlord for its additional cost of processing late payments, for any payment of Rent which is not received within 7 days after it is due, Tenant will pay a late charge of two percent (2%) of the late payment, but not more than \$1,000 per month. Unless otherwise specifically provided herein, any amount due under this Lease from Tenant to Landlord which is not paid when due shall bear interest from the due date until paid at the Default Rate.

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ARTICLE 30.

SURRENDER UPON LEASE TERMINATION.

Upon the expiration or earlier termination of this Lease, Tenant shall remove Tenant's Personal Property and equipment that is not attached to the Improvements and shall surrender the Premises to Landlord in good functional similar condition as when placed in service (normal wear and tear excepted), damage by condemnation, casualty, and normal wear and tear excepted; provided that Tenant shall not remove from the Premises any Fixtures attached to or used in connection with operation of the Improvements, or any additions to or replacements thereof made during the Lease Term, it being the intent of the Parties that upon expiration or earlier termination of this Lease, Landlord shall receive the Improvements in operating condition; provided that nothing contained herein shall be construed as prohibiting Tenant from removing the Personal Property of Tenant or as prohibiting the removal of any belongings of any Subtenant. Tenant's Personal Property not removed by Tenant within six months after any expiration or other termination shall be considered abandoned, and Landlord may dispose of such property in accordance with Applicable Laws.

ARTICLE 31.

DEFAULT AND REMEDIES.

31.1. Tenant Defaults. The occurrence of any of the following shall constitute an event of default by Tenant hereunder (each, a "Tenant Event of Default"):

(a) Tenant shall have failed to pay any Base Rent payable under Section 5.1 when due or (subject to receipt of notice of the same from Landlord to the extent the bill therefor is received by Landlord) any other sum required or stipulated to be paid by Tenant to Landlord hereunder, and such failure continues for ten (10) calendar days following Tenant's receipt of written notice thereof from Landlord; or

(b) Tenant shall have failed to observe or perform any other covenant or obligation of Tenant hereunder and Tenant shall not have cured such failure within thirty (30) calendar days after Tenant shall have received written notice thereof from Landlord; provided, however, that if such failure is such as cannot with diligent effort be cured within thirty (30) calendar days, Tenant shall not be in default hereunder if Tenant shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Tenant shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, "Insolvency Laws"), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Tenant of Tenant's covenants and obligations under this Lease,

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as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Tenant of the performance of Tenant's covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Tenant of the performance of Tenant's covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Tenant or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If Tenant shall abandon the Premises; or

(f) If a Lien is filed against the Premises and Tenant fails to furnish a bond or otherwise obtain a release or discharge of the Lien as required by Article 20 of this Lease; or

(g) If any warranty or representation of Tenant contained in this Lease is untrue in any material respect as of the date made; or

(h) Tenant shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(i) A Transfer of this Lease in violation of Article 26.

31.2. Landlord Remedies. Upon the occurrence of a Tenant Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees set forth herein, Landlord shall be entitled to exercise any one or more or all of the following remedies:

(a) Subject to the rights of Leasehold Mortgagees set forth herein, Landlord may terminate this Lease and the rights of Tenant hereunder, and may enter and retake possession of the Premises (subject to the rights of Subtenants and Residents); or

(b) Landlord may exercise any other right or remedy available at law or in equity; provided that the remedy of terminating this Lease shall be subject to the rights of Leasehold Mortgagees, Subtenants and Residents; or

(c) Landlord, without additional notice, may cure such Event of Default on the part of Tenant at Tenant's expense, and Tenant shall promptly reimburse Landlord for all actual, reasonable costs and expenses incurred by Landlord in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Landlord in so curing such default or failure, and any damages incurred by Landlord as a result of such default or failure, shall be paid by Tenant within thirty (30) days of demand therefor by Landlord.

31.3. Tenant's Right to Contest. Notwithstanding anything to the contrary contained herein, if Landlord claims that a default has occurred under Section 31.1(b), and Tenant has

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contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.1(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.4. Landlord Defaults. The occurrence of any of the following shall constitute an event of default by Landlord hereunder (each, a “*Landlord Event of Default*”):

(a) Landlord shall have failed to pay any sum required or stipulated to be paid by Landlord to Tenant hereunder, and such failure continues for ninety (90) calendar days following Landlord’s receipt of written notice thereof from Tenant; or

(b) Landlord shall have failed to observe or perform any other covenant or obligation of Landlord hereunder and Landlord shall not have cured such failure within ninety (90) calendar days after Landlord shall have received written notice thereof from Tenant; provided, however, that if such failure is such as cannot with diligent effort be cured within ninety (90) calendar days, Landlord shall not be in default hereunder if Landlord shall have commenced action to remedy such failure promptly following notice thereof and shall have diligently prosecuted such action in good faith thereafter; or

(c) If Landlord shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “*Insolvency Laws*”), or shall seek, consent to, or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver, or liquidator of Landlord of Landlord’s covenants and obligations under this Lease, as applicable, or of all or any substantial part of its properties or of the Premises or Improvements, or shall make a general assignment for the benefit of creditors, or be unable to pay its debts as they mature; or

(d) The commencement of any action, case, or proceeding against Landlord of the performance of Landlord’s covenants and obligations under this Lease seeking (i) any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Insolvency Laws, or (ii) the appointment, without the consent or acquiescence of Landlord of the performance of Landlord’s covenants and obligations under this Lease, as applicable, of any trustee, receiver, or liquidator of Landlord or of all or substantially all of its properties or of the Premises, and such proceeding shall continue undismissed for a period of sixty (60) calendar days; or

(e) If any warranty or representation of Landlord contained in this Lease is untrue in any material respect as of the date made; or

(f) Landlord shall be dissolved or liquidated or shall be involved in proceedings towards dissolution or liquidation; or

(g) A Transfer of this Lease in violation of Article 26 above.

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31.5. Tenant Remedies. Upon the occurrence of a Landlord Event of Default, subject to the terms hereof and the rights of Leasehold Mortgagees herein, Tenant shall be entitled to exercise any one or more or all of the following remedies:

(a) Tenant may exercise any right or remedy available at law or in equity; and

(b) Tenant, without additional notice, may cure such Event of Default on the part of Landlord at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual, reasonable costs and expenses incurred by Tenant in curing such Event of Default, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, shall be paid by Landlord within thirty (30) days of demand therefor by Tenant.

31.6. Landlord's Right to Contest. Notwithstanding anything to the contrary contained herein, if Tenant claims that a default has occurred under Section 31.4(b), and Landlord has contested such claim and has instituted legal proceedings to obtain adjudication for such claim, then the cure period set forth in Section 31.4(b) shall be tolled during the period between the date such proceedings are instituted until the final, nonappealable adjudication of such proceedings.

31.7. Tenant's Remedies. In the event that Landlord defaults hereunder or fails to timely comply with any of its duties or obligations hereunder, provided said default is not cured within ninety (90) calendar days after the giving of written notice thereof by Tenant to Landlord, unless such default is of such nature that it cannot be cured within such 90-day period, in which case no default is to occur so long as Landlord commences the curing of the default within such 90-day period and thereafter diligently pursues the curing of same, Tenant may, in addition to any other right or remedy available to Tenant hereunder or at law or in equity, cure such default or failure at Landlord's expense, and Landlord shall promptly reimburse Tenant for all actual costs and expenses incurred by Tenant, plus interest at the Default Rate. Any costs incurred by Tenant in so curing such default or failure, and any damages incurred by Tenant as a result of such default or failure, may at Tenant's option be offset against any Rent and other amounts from time to time due or owing by Tenant to Landlord hereunder.

ARTICLE 32. GENERAL PROVISIONS

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

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

P H A S E O N E L E A S E

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

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

32.2. Waiver. Neither Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies under this Lease unless the waiver is in writing and signed by such Party. Any such waiver shall be applicable only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

32.3. Compliance With Laws. Tenant shall comply in all material respects at Tenant's sole cost and expense with all notices of all governmental authorities having jurisdiction over the Premises and shall observe and comply with all Applicable Laws. Notwithstanding the foregoing, Tenant shall have the right to reasonably contest any such notices or Applicable Laws.

32.4. Approvals to be Reasonable. Unless the context of a provision clearly and unambiguously indicates otherwise, any approval or consent required under this Lease or requested by a Party of the other Party, shall not be unreasonably withheld, conditioned or delayed.

32.5. Interpretation. The language in all parts of this Lease shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for or against either of the Parties, and the construction of this Lease and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of either of the Parties. The Parties do not intend to become, and nothing contained in this Lease shall be interpreted to deem that Tenant and Landlord are, partners or joint venturers in any way or that Tenant is an agent or representative of Landlord for any

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purpose or in any manner whatsoever. A male or female person may be referred to in this Lease by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of this Lease which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Lease specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Lease at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. "Including" means "including but not limited to." Words such as "hereby," "herein," and "hereunder" and words of similar import shall be construed to refer to this Lease in its entirety. "Include" means "include but not limited to." "Any" means "any and all." Except to the extent the context requires otherwise, "may" means "may but shall not be obligated to." "At any time" means "at any time and from time to time." An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party's behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

32.6. Captions, Links, Table of Contents. The captions, links, headings, and table of contents set forth in this Lease are for convenience of reference only and shall not be limiting or determinative in the construction or interpretation hereof.

32.7. Memorandum of Lease. The Parties shall execute a memorandum of lease (the "Memorandum of Lease") of this Lease in the form of Exhibit D attached to this Lease for recording. Any recording, realty transfer, documentary, stamp, or other tax imposed upon the execution or recording of the Memorandum of Lease shall be paid by Tenant.

32.8. Binding Effect. All terms, covenants, conditions, and agreements contained in this Lease shall extend to and be binding upon the Parties hereto and their respective heirs, executors, administrators, successors, and assigns.

32.9. Partial Invalidity. If any term, covenant, or condition of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term, covenant, and condition of this Lease shall be valid and shall be enforced to the extent permitted by Applicable Laws; provided such partial invalidity does not prevent Tenant from realizing the benefit of its bargain pursuant to this Lease, including but not limited to possession of the Premises and the use thereof in all material respects as contemplated by this Lease.

32.10. Governing Law; Consent to Exclusive Jurisdiction. This Lease shall be construed in accordance with and governed by the laws of the State of Nevada, without regard to conflict of laws principles. For the purpose of any suit, action, or proceeding arising out of or relating to this Lease, each of Landlord and Tenant hereby irrevocably consents and submits to the exclusive jurisdiction of any court of competent jurisdiction in the State of Nevada. In addition to any form of service of process otherwise permitted by law, service in any such action may be given by certified or registered mail, return receipt requested, and shall be deemed served upon the actual

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delivery thereof in such manner to the Party intended to be served, which service shall be adequately established by the receipt for such delivery.

32.11. Unavoidable Delays. If either Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Lease (other than an obligation or condition requiring the making of any payment hereunder) by any condition beyond the reasonable control of such Party, commonly referred to as “force majeure” (each, an “Unavoidable Delay”), including, without limitation, any strike, lockout, labor dispute, inability to obtain labor or materials, failure of power, unavailability of utility service, delays attributable to a Party’s unreasonable withholding of its consent or approval hereunder, Act of God, unusually severe or inclement weather, governmental restriction, regulation or control, terrorist, war, enemy, or hostile governmental action, civil commotion, insurrection, sabotage, or fire or other casualty, then the time to perform such obligation or satisfy such condition shall be extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days. If either Party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event plus ten (10) calendar days.

32.12. Intellectual Property Rights. No Party may use the intellectual property rights of the other Party without the express written permission of the other Party. Without limiting the generality of the last sentence, Tenant shall not use the name of the “Nevada System of Higher Education” or “UNLV”, or the marks, seals, logos, or any other related name (collectively the “Marks”), in its advertising or in the production of any materials produced by Tenant, without the prior written consent of NSHE or UNLV, as the case may be, pursuant to an approved licensing or other agreement between the parties. Tenant may, however, use the names “Nevada System of Higher Education” and “University of Nevada, Las Vegas” or their acronyms in factual descriptions of the Phase One Project and, to the extent that Tenant delivers materials to UNLV for publication or dissemination that include the names or Marks and UNLV does so publish or disseminate the materials, it shall be deemed approval of such use.

32.13. Nonliability of Landlord and Tenant Officials and Employees. Landlord’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Tenant shall look solely to Landlord’s interest in the Premises for the collection of any judgment. No director, officer, official, employee, agent, or representative of Landlord shall be personally liable to Tenant or any successor in interest, in the event of any default or breach by Landlord for any amount which may become due to Tenant or any successor in interest, or on any obligation incurred under the terms of this Lease. In no event shall this Lease be considered a general obligation of the Landlord or the State of Nevada. Tenant’s responsibility and liability under this Lease shall be limited to its interest in the Premises, and Landlord shall look solely to Tenant’s interest in the Premises for the collection of any judgment. No officer, official, employee, agent, member, or representative of Tenant shall be personally liable to Landlord or any successor in interest, in the event of any default or breach by Tenant for any amount which may become due to Landlord or any successor in interest, or on any obligation incurred under the terms of this Lease.

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32.14. Surrender at End of Term. On the last day of the Lease Term or upon any earlier termination of this Lease, all of Tenant's right, title and interest in and to the Premises, (which shall include the Premises and all Improvements and Fixtures) shall automatically and fully vest in Landlord, and Tenant shall surrender and deliver up the Premises to Landlord in good order, condition, and repair, damage by fire or other casualty of Taking excepted, free and clear of all lettings, occupancies, liens, and encumbrances other than (a) those, if any, existing on the date hereof, and (b) those created by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date. Notwithstanding the termination of the Lease, Tenant shall remain liable to Landlord for any loss or damage suffered by Landlord because of any Event of Default of Tenant. Upon surrender, Tenant shall assign to Landlord or Landlord's designee all Subleases, and other agreements and rights relating to the operation or use of the Premises, or Tenant's interest in them, as Landlord may request. The provisions of this 32.14 shall survive the expiration or earlier termination of this Lease.

32.15. Yield Up. On the last day of the Lease Term or upon any earlier termination of this Lease, Tenant, its assigns, or successors in interest shall deliver to Landlord such of the following as Tenant, its assignee or successor in interest may have in its possession: Tenant's executed counterparts of any service and maintenance contracts then affecting the Premises, any maintenance records and manuals for the Premises, all original licenses and permits then pertaining to the Premises, and all warranties and guarantees then in effect that Tenant has received in connection with any equipment or work or services performed on the Improvements, together with a duly executed assignment to Landlord, without recourse or warranty, of the foregoing (whether or not Tenant has any of them in its possession), and copies of all other documents relating to the Premises.

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

32.17. Prior Agreements and Discussions. Any agreements between Landlord on the one hand and Tenant on the other hand before the date of this Lease and relating to the Premises are superseded by this Lease; provided, however, that the Memorandum of Understanding shall remain in full force and effect with respect to all things and matters (including all pre-development reimbursables) other than the Premises, notwithstanding the execution of this Lease. If there are any conflicts between the Memorandum of Understanding and this Lease, this Lease shall control. All prior negotiations relative to the Premises and/or University Park are merged into this Lease. The submission of any unexecuted copy of this Lease shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Lease until it is executed and delivered by both Parties.

32.18. Relationship, No Third Party Rights. This Lease shall not be construed to create a joint venture or partnership between Landlord and Tenant, it being the intention of the parties to create only a landlord and tenant relationship. Nothing in this Lease shall be construed to permit anyone other than Landlord, Tenant, the Leasehold Mortgagees and their respective

PHASE ONE LEASE

successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

32.19. Entire Agreement; Amendment. This Lease embodies the entire agreement and understanding between the Parties with respect to the subject matter described in this instrument, and supersede all prior agreements and understandings between the Parties with respect to the subject matter hereof. The Recitals to this Lease are hereby incorporated herein and made a part hereof. The Parties acknowledge that financing and feasibility studies related to University Park may require, and the Parties shall reasonably cooperate with each other, to amend or enter into additional agreements that are mutually determined to be advantageous to the construction, ownership, and operation of the Premises. This Lease may be changed, waived, discharged or terminated only by an instrument in writing signed by the Party or Parties against which enforcement of such change, waiver, discharge or termination is sought.

32.20. Counterparts. This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature and acknowledgment pages may be taken from one counterpart and inserted in other counterparts to form a single Lease document.

32.21. Attorneys' Fees. In the event of any litigation proceedings regarding this Lease, the non-prevailing Party shall pay or reimburse the reasonable attorneys' fees, court costs and other reasonable costs paid or incurred by the prevailing Party in such litigation.

ARTICLE 33. EXHIBITS.

The Exhibits to this Lease are as follows:

- A LEGAL DESCRIPTION OF LAND
- B GRAPHIC DEPICTION OF PHASE ONE LAND AND FUTURE PHASES LAND
- C PERMITTED EXCEPTIONS
- D FORM OF MEMORANDUM OF LEASE


[SIGNATURE PAGES FOLLOW]

PHASE ONE LEASE

IN WITNESS WHEREOF, the Parties hereto have executed this LEASE AGREEMENT FOR UNIVERSITY PARK PHASE ONE as of the date first written above.

LANDLORD:

BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION

By: 
Name: Daniel J. Klarch
Title: Chancellor
Date: May 26, 2015

TENANT:

UNIVERSITY PARK, LLC, a Delaware limited liability company


By: 
Name: Eric S. Midby
Title: Manager of its Manager, Master Management, LLC
Date: May 15, 2015

EXHIBIT A

--

LEGAL DESCRIPTION OF LAND

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

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

EXHIBIT B

--

**GRAPHIC DEPICTION OF PHASE ONE LAND
AND FUTURE PHASES LAND**

NOTES

This map is for assessment use only and does NOT represent a survey.
 No liability is assumed for the accuracy of the data delineated herein. Information on roads and other non-assessed parcels may be obtained from the Road Document Listing in the Assessor's Office.
 This map is compiled from official records, including surveys and deeds, but only contains the information required for assessment. See the recorded documents for more detailed legal information.
 USE THIS SCALE(FEET) WHEN MAP REDUCED FROM 11X17 ORIGINAL

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

MAP LEGEND

- PARCEL BOUNDARY
- SUB BOUNDARY
- PM/LD BOUNDARY
- ROAD EASEMENT
- MATCH / LEADER LINE
- HISTORIC LOT LINE
- HISTORIC SUB BOUNDARY
- HISTORIC PM/LD BOUNDARY
- SECTION LINE
- CONDOMINIUM UNIT
- AIR SPACE PCL
- RIGHT OF WAY PCL
- SUB-SURFACE PCL
- 001 ROAD PARCEL NUMBER
- 001 PARCEL NUMBER
- 1.00 ACREAGE
- 202 PARCEL SUB/SEQ NUMBER
- PB 24-45 PLAT RECORDING NUMBER
- 5 BLOCK NUMBER
- 5 LOT NUMBER
- GL5 GOV. LOT NUMBER

BOOK T21S R61E

138	139	140
162	162	161
178	177	178

SECT 22

1	2	3	4
5	6	7	8
9	10	11	12
13	14	15	16
17	18	19	20
21	22	23	24
25	26	27	28
29	30	31	32

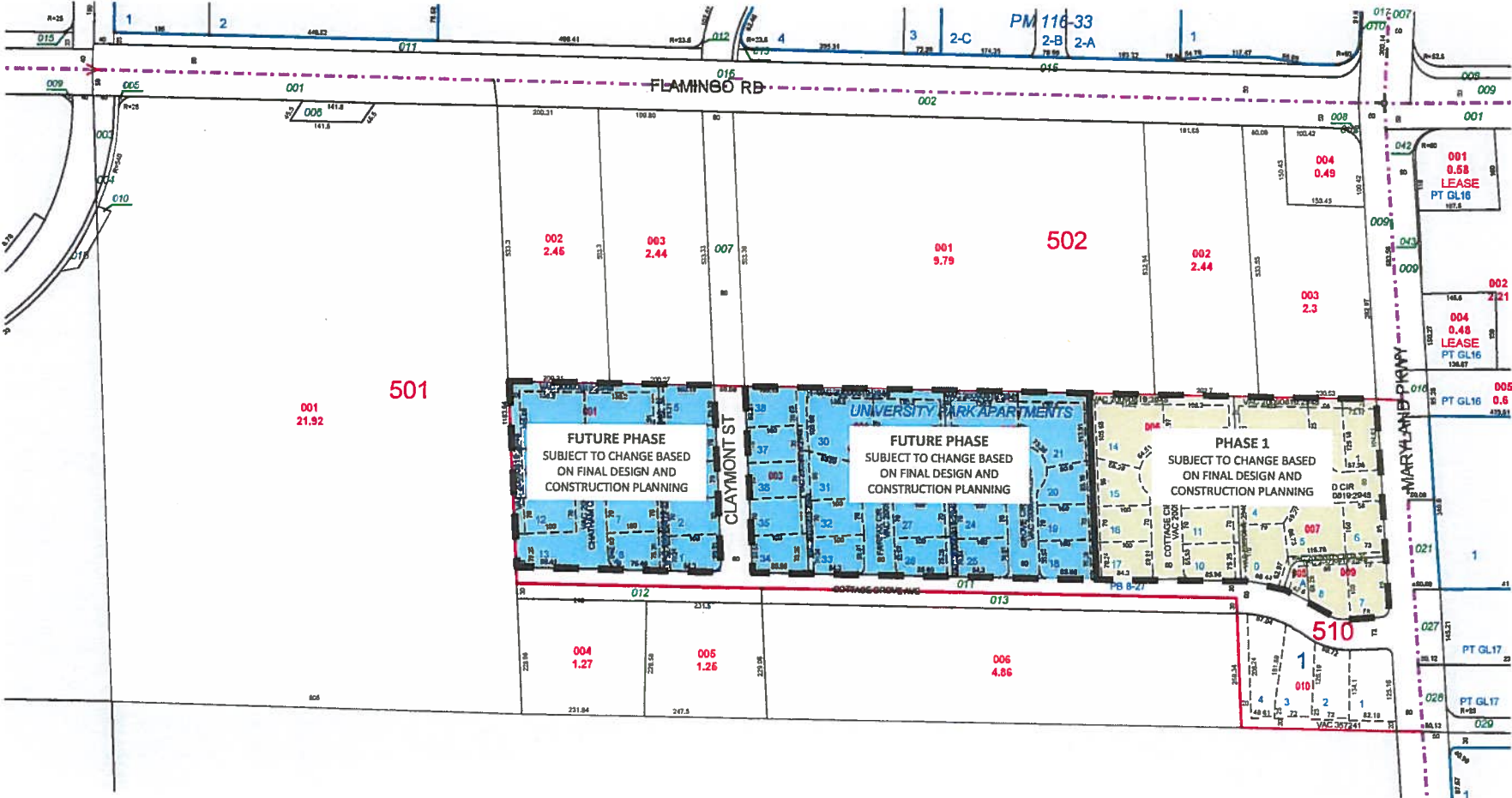
MAP N 2 NE 4

8	4	8	4
5	1	5	1
6	2	6	2
7	3	7	3
8	4	8	4
5	1	5	1

162-22-5

CLARK COUNTY
 NEVADA

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



TAX DIST 470

EXHIBIT C
--
PERMITTED EXCEPTIONS

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

1. Effective Date: October 15, 2014 at 7:30 a.m.
2. Policy or Policies to be issued: Amount
 - a. Owners Policy CLTA: \$20,500,000.00

Proposed Insured: UNIVERSITY PARK, LLC A DELAWARE LIMITED
LIABILITY COMPANY

3. The estate or interest in the land described or referred to in this Commitment is

FEE

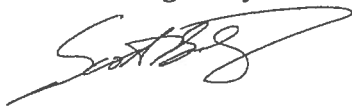
4. Title to the estate or interest in the land is at the effective date vested in:

Wells Fargo Bank National Association

5. The land referred to in this Commitment is described as follows:

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

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



Title Officer: Scott M Braatz

American Land Title Association Commitment 2006

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION I

REQUIREMENTS

The following are the requirements to be complied with:

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

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

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

4. The Company must be advised in writing of the name of any party not referred to in this Commitment who will acquire an interest in the land, or who will either obtain or make a loan or mortgage encumbering the land. The Company may then make additional requirements, or take additional exceptions to coverage on Schedule B, Section II.
5. Pay all taxes, charges, assessments levied and assessed against the land which are already due and payable, or which will be due and payable as of the effective date of the policy anticipated by this Commitment.
6. The requirement that we be provided with a copy of the Operating Agreement of University Park, LLC prior to the close of escrow.
7. Release(s) or Reconveyance(s) of the Following:

NONE

8. Our search in the public record did not disclose any open deeds of trust on the herein described property. Please confirm with your seller/borrower that there are no liens or encumbrances affecting the herein described property other than those shown on the Preliminary Report or Commitment bearing the above referenced escrow number.
9. This transaction is entitled to a Short Term Rate discount on the Title Premiums which expires on March 11, 2017.
10. It is required that Seller furnish a fully executed Owner's Affidavit prior to close of this transaction if ALTA Extended coverage is contemplated.

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

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

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

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

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

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

COMMITMENT FOR TITLE INSURANCE

SCHEDULE B – SECTION II

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

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

7. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,705.87, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,681.14 has been paid

Second installment of \$2,674.91 has been paid

Third installment of \$2,674.91 unpaid delinquent first Monday in January

Fourth installment of \$2,674.91 unpaid delinquent first Monday in March

Parcel No. 162-22-510-001

8. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,450.07, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,114.46 has been paid

Second installment of \$1,111.87 has been paid

Third installment of \$1,111.87 unpaid delinquent first Monday in January

Fourth installment of \$1,111.87 unpaid delinquent first Monday in March

Parcel No. 162-22-510-002

9. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$4,336.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$1,086.03 has been paid

Second installment of \$1,083.50 has been paid

Third installment of \$1,083.50 unpaid delinquent first Monday in January

Fourth installment of \$1,083.50 unpaid delinquent first Monday in March

Parcel No. 162-22-510-003

10. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,477.68, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,624.01 has been paid

Second installment of \$2,617.89 has been paid

Third installment of \$2,617.89 unpaid delinquent first Monday in January

Fourth installment of \$2,617.89 unpaid delinquent first Monday in March

Parcel No. 162-22-510-004

11. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,460.25, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,619.63 has been paid

Second installment of \$2,613.54 has been paid

Third installment of \$2,613.54 unpaid delinquent first Monday in January

Fourth installment of \$2,613.54 unpaid delinquent first Monday in March

Parcel No. 162-22-510-005

12. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$10,374.53, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,598.17 has been paid

Second installment of \$2,592.12 has been paid

Third installment of \$2,592.12 unpaid delinquent first Monday in January

Fourth installment of \$2,591.12 unpaid delinquent first Monday in March

Parcel No. 162-22-510-006

13. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$9,396.13, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$2,353.15 has been paid

Second installment of \$2,347.66 has been paid

Third installment of \$2,347.66 unpaid delinquent first Monday in January

Fourth installment of \$2,347.66 unpaid delinquent first Monday in March

Parcel No. 162-22-510-007

14. State and County Taxes for the fiscal period of 2014 to 2015, have been paid in full in the amount of \$5.87.

Parcel No. 162-22-510-008

15. State and County Taxes for the fiscal period of 2014 to 2015, a lien now due and payable in the total amount of \$727.23, and payable in the following installments and becomes delinquent if not paid as set forth below.

First installment of \$182.13 has been paid

Second installment of \$181.70 has been paid

Third installment of \$181.70 unpaid delinquent first Monday in January

Fourth installment of \$181.70 unpaid delinquent first Monday in March

Parcel No. 162-22-510-009

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

17. The herein described property lies within the boundaries of CLARK COUNTY WATER RECLAMATION DISTRICT and may be subject to all assessments and obligation thereof.

18. Reservations and Easements in the patent from the State of Nevada, recorded January 24, 1955, in Book 81 as Document No. 68040 of Official Records.

19. Dedications and Easements as shown on the recorded Map referred to herein, on file in Book 8 of Plats, Page 27, of Official Records.
20. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of NEVADA POWER COMPANY, for electrical lines, recorded August 15, 1963, in Book 470 as Document No. 378570 of Official Records.
21. An unrecorded Lease executed by and between the parties named herein, for the terms and upon the subject to all of the terms, covenants, and provisions contained therein;
Dated: July 3, 2001
Lessor: Olympic Circle, a Partnership
Lessee: Web Service Company, Inc.
Term: Not less than 3 years nor more than 20 years from the date of the Lease
Disclosed by: Memorandum Of Lease
Recorded: August 22, 2001 in Book 20010822 as Document No. 02528

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

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

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

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

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

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

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

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

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

24. An easement affecting that portion of said land and for the purposes therein and incidental purposes thereto, in favor of COUNTY OF CLARK, for utilities, recorded June 29, 2009, in Book 20090629 as Document No. 0003323 of Official Records.
 25. Water rights, claims or title to water, whether or not shown by the public records.
 26. Subject to the rights of party or parties in possession in accordance with any unrecorded leases affecting portions of said land for the term and upon the terms, covenants, conditions and provisions therein contained.
- NOTE: Should an inspection of the real property disclose any work of improvement in progress, this Company may be unwilling to provide mechanic's lien coverage.
27. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
 28. Any Claim of Lien for labor and/or materials that may be filed against said land by reason of work or improvement thereon, as may be disclosed by an inspection of said premises.

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

EXHIBIT D

--

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY:

WHEN RECORDED, RETURN TO:

UNIVERSITY PARK, LLC
c/o The Midby Companies
8275 South Eastern, Suite 103
Las Vegas, NV 89123

Space above this line for Recorder's Office only

MEMORANDUM OF LEASES

THIS MEMORANDUM OF LEASE ("*Memorandum of Leases*") is made and entered into as of _____, 2015, by and between **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION** on behalf of the University of Nevada, Las Vegas, a constitutional entity of the State of Nevada ("*Landlord*" or "*UNLV*") and **UNIVERSITY PARK, LLC**, a Delaware limited liability company ("*UPLLC*"), and [**FUTURE PHASES, LLC**], a Delaware limited liability company ("*FPLLC*").

UPLLC and FPLLC are collectively referred to herein as the "*Tenants*").

1. Landlord is the owner of that certain real property, and the improvements located thereon, located in Clark County, Nevada and more particularly described on Attachment A attached hereto (the "Land").

2. For and in consideration of the mutual covenants, agreements, and conditions set forth in the following unrecorded lease agreements:

(a) that certain unrecorded Lease Agreement for University Park Phase One by and between Landlord and UPLLC, dated _____, 2015 (the "*Phase One Lease*"), and

(b) that certain unrecorded Lease Agreement for University Park Future Phases by and between Landlord and FPLLC, dated _____, 2015 (the "*Future Phases Lease*," and, together with the Phase One Lease, collectively the "*Leases*."),

3. Landlord hereby leases to Tenants and Tenants hereby lease from Landlord, upon all the terms and conditions of the Leases, the Land and all buildings, structures, improvements, personal and intangible property, and appurtenances, as more particularly described in the Leases.

4. The Land is to be partitioned into two areas, which are sometimes referred to “Phase One Land” and “Future Phases Land,” and will be leased by Landlord to UPLLC and FPLLC, respectively.

5. In accordance with the terms and conditions of the Leases:

(a) the term of the Phase One Lease shall be for a period not to exceed approximately ____ years commencing on the Commencement Date as more particularly set forth therein and

(b) the term of the Future Phases Lease shall be for a period not to exceed of approximately ____ years commencing on the Commencement Date as more particularly set forth therein

6. This Memorandum of Leases has been prepared to provide notice that the Land is subject to the terms and conditions of the Leases, which terms are hereby incorporated by reference into this Memorandum of Leases.

7. In no event shall the terms of this Memorandum of Leases be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Leases. In the event of any inconsistency between the terms of this Memorandum of Leases and the terms of the Leases, the terms of the Leases shall control.

8. This Memorandum of Leases may be executed in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same document. Signature pages may be taken from a counterpart and attached to other counterparts to form one document, which shall constitute a fully executed document that may be recorded.

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

SIGNATURES TO FOLLOW

ATTACHMENT A
--
TO MEMORANDUM OF LEASES
--
LEGAL DESCRIPTION OF LAND

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

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