



# **EXECUTIVE**

**December 11, 2025**

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**ACCEPTANCE OF TITLE FOR 2311, 2315 AND 2319 NASHVILLE RD**

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**REQUEST:**

Acceptance of ownership and transfer of titles for 2311, 2315 and 2319 Nashville Rd from the WKU Real Estate Corporation.

**FACTS:**

The WKU Real Estate Corporation is the trustee of the Jean P. Carlisle Charitable Remainder Annuity Trust for 2311 and 2315 Nashville Road. WKU leased this property from WKU REC for \$66,000/yr starting in 2010. A portion of the property is used for large equipment storage for the Department of Facilities Management. The retail space and associated parking lots are currently sub-leased to iGo Motors. The lease for these properties ended in June 2025 when the obligations for the Trust were met.

The WKU Real Estate Corporation is the trustee of the Jean P. Carlisle Charitable Remainder Annuity Trust for 2319 Nashville Road. WKU leased this property from WKU REC for \$55,490.72 annually starting in 2010 to fulfill the Trust. The property is currently being used for WKU storage and by the Community Farmers Market. The final payment to fulfill the Trust were made in August 2025.

Now that the Charitable Remainder Annuity Trusts are satisfied, WKU Real Estate Corporation is prepared to deed the properties to WKU.

**BUDGETARY IMPLICATIONS:**

With the end of the leases, WKU is able to use the allocated funding for other purposes.

**RECOMMENDATION:**

President Timothy C. Caboni recommends that the Board of Regents approve the acceptance of ownership and title transfer for 2311, 2315 and 2319 Nashville Rd.

**MOTION:**

To approve acceptance of ownership and transfer of title for 2311, 2315 and 2319 Nashville Rd.



Figure 1. 2311 and 2315 Nashville Rd covers approximately 1.25 acres. A portion of the property is used to store large equipment for the Department of Facilities Management. The retail portion of the property is leased to iGo Motors. The Community Farmer's Market occupies the building on 2319 Nashville Rd, which is approximately 0.69 acres.

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**AUTHORIZATION TO GRANT AN EASEMENT TO  
WARREN COUNTY WATER DISTRICT**

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**REQUEST:**

Approval to convey an easement to Warren County Water District across property owned by the university located on Elrod Road, Bowling Green, Kentucky.

**FACTS:**

The Warren County Water District is requesting an easement along the perimeter of WKU AG Farm property in support of the new Dillard Elementary School being built by the Warren County Board of Education. The water main connection is needed to boost water pressure for the new school. The connection will be adjacent to the sewer lift station on Elrod Rd. and travel approximately five-hundred sixty-three (563) linear feet along the Ag Farm property line to the cul-de-sac of Affirmed Circle in the Ivan Downs subdivision. It will be a ten (10) foot easement, five (5) feet on each side. There will be a temporary twenty (20) foot by five-hundred-sixty-three (563) foot wide easement for the duration of construction. WCWD will be responsible for ensuring the area remains secure during construction, replacing any disturbed fencing with new fencing to match existing conditions, and to restore disturbed property to previous conditions. In the event crops are affected, the Ag Farm will be compensated for any crop losses.

**BUDGETARY IMPLICATIONS:**

None.

**RECOMMENDATION:**

President Timothy C. Caboni requests the approval of the Board of Regents to authorize the University take appropriate action to convey an easement to Warren County Water District across property owned by the university located on Elrod Road, Bowling Green, Kentucky, as identified in the project drawing included with the Board agenda material.

**MOTION:**

Approval to authorize the University to take appropriate action to convey an easement to Warren County Water District across property owned by the university located on Elrod Road, Bowling Green, Kentucky, as identified in the project drawing included with the Board agenda material.





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**AUTHORIZATION TO GRANT AN EASEMENT TO  
WARREN RURAL ELECTRIC COOPERATIVE CORPORATION**

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**REQUEST:**

Authorization to convey an easement to Warren Rural Electric Cooperative Corporation across property owned by the university located on Elrod Road, Bowling Green, Kentucky.

**FACTS:**

Top Crops is a non-profit group which utilizes a leased 0.5-acre plot at Western Kentucky University's Agriculture Farm for horticultural therapy programs serving mentally handicapped individuals. Top Crops is seeking to install electricity to a small vegetable cleaning shed at their own expense, covering both installation and monthly charges. To do so, Warren Rural Electric Cooperative Corporation (WRECC) is requesting a fifty (50) foot wide utility easement to run an overhead power line approximately eighty-eight (88) feet from a nearby pole. This will require installing a new pole and meter near the shed as shown in the figure below. The line will not interfere with farm or university activities and the improvements will remain with the property at the conclusion of the lease.

**BUDGETARY IMPLICATIONS:**

None.

**RECOMMENDATION:**

President Timothy C. Caboni request authorization to convey an easement to Warren Rural Electric Cooperative Corporation across property owned by the university located on Elrod Road, Bowling Green, Kentucky, as identified in the project drawing included with the Board agenda material.

**MOTION:**

Authorization to convey an easement to Warren Rural Electric Cooperative Corporation across property owned by the university located on Elrod Road, Bowling Green, Kentucky, as identified in the project drawing included with the Board agenda material.

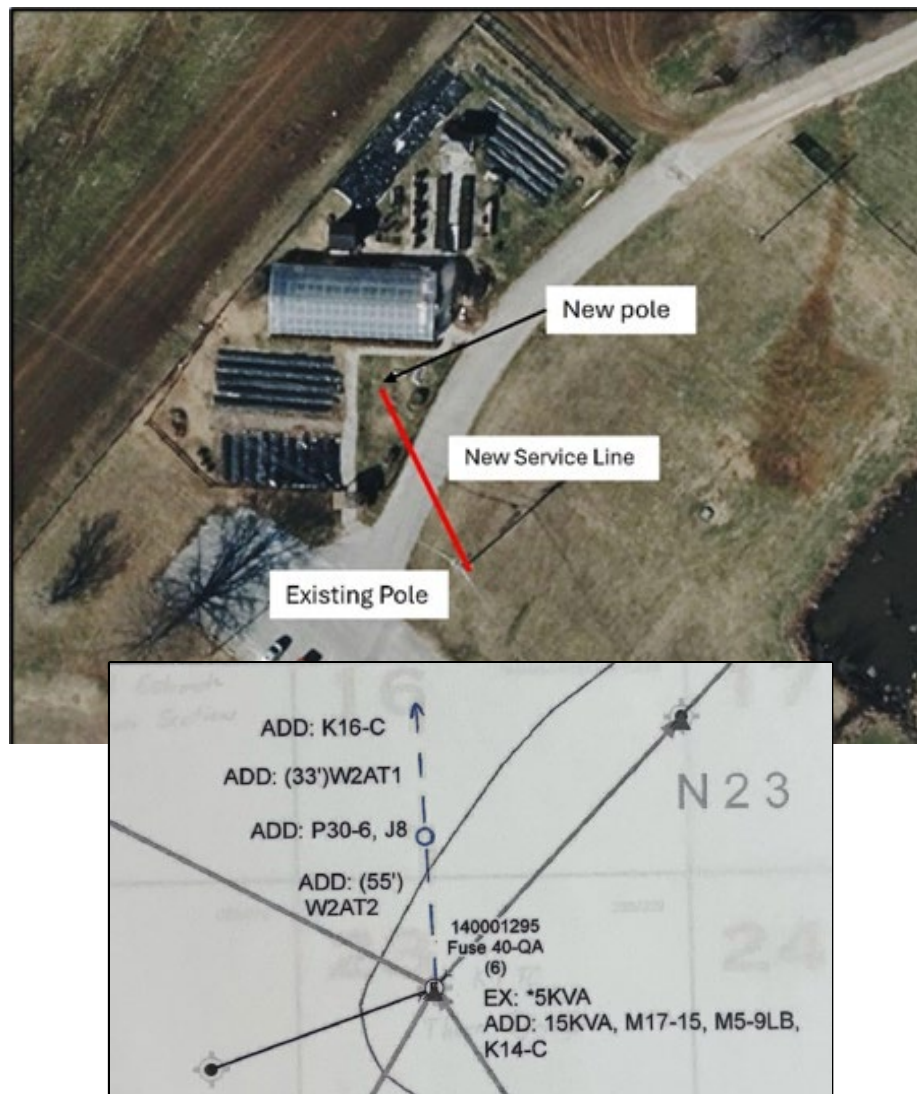


Figure 1. Aerial view of the Top Crop operation on the WKU Agriculture Farm property. The red line is the approximate path of the requested power line. The inset shows the WRECC work order drawings with technical details associated with the request. The dashed line represents the new power line.

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**ANTISEMITISM POLICY**

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**REQUEST:**

Adoption of Western Kentucky University's Antisemitism Policy.

**FACTS:**

As a requirement of Kentucky Senate Joint Resolution 55 ("SJR 55"), passed on April 2, 2025, by the Kentucky General Assembly, all governing boards of public universities must adopt policies to combat antisemitism within their institutions.

**BUDGETARY IMPLICATIONS:**

None.

**RECOMMENDATION:**

General Counsel, Andrea Anderson requests approval of the adoption of the Antisemitism policy.

**MOTION:**

To approve the adoption of the Antisemitism policy.





## **POLICY & PROCEDURE DOCUMENT**

NUMBER:

DIVISION: General University

TITLE: Antisemitism Policy

DATE:

REVISED:

AUTHORIZED: President

### **I. Purpose and Scope**

Western Kentucky University ("WKU" or "University") prohibits discrimination on the basis of one's membership in a protected class and has policies and procedures in place to investigate and address reports of such allegations. See Section V., below. As required by Senate Joint Resolution 55, [S.J. Res. 55, 25RS, 2025 Ky. Acts ch. 157](#) ("SJR 55"), WKU has adopted the following Policy to combat antisemitism.

This Policy applies to all WKU faculty, staff, students, vendors and third parties, University-recognized student organizations, and other members of the WKU campus community.

### **II. Definitions**

- A. Antisemitism: A certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed towards Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.<sup>1</sup>
- B. Discrimination: See [WKU Policy # 0.2040, Discrimination and Harassment](#)
- C. Harassment: See [WKU Policy # 0.2040, Discrimination and Harassment](#)

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<sup>1</sup> WKU's definition of Antisemitism is adopted from the [International Holocaust Remembrance Alliance](#) ("IHRA") definition of Antisemitism, as required by SJR 55.

### III. Policy

- A. WKU is committed to providing a working and learning environment that is free from discrimination and harassment. Discrimination and harassment, and/or retaliation against anyone who makes a report or participates in an investigation are prohibited and shall not be tolerated. WKU prohibits all forms of discrimination and harassment, including discrimination and harassment on the basis of national origin, ethnicity, and religion.
- B. Pursuant to SJR 55, WKU will defund and disband any student organization that has been found by the University to be providing material support or resources to a designated terrorist organization and will report such activities to appropriate law enforcement authorities. Reports of this type can be made to:
  - 1. [Student Conduct](#); and/or  
Potter Hall—Suite 425  
(270) 745-5485
  - 2. [WKU Police Department](#)  
Parking Structure (PS) 1  
(270) 745-2677 / For an emergency, dial 911
- C. The University shall identify all Jewish groups that seek to serve Jewish students attending the institution as community resources to the same extent as any other religious organization is organized by the University as a community resource.
- D. The University shall implement this Policy through June 30, 2028, and may continue implementation thereafter.

## **IV. Procedure**

### **A. Reports of Discrimination and Harassment**

Reports of Discrimination or Harassment on the basis of membership in a protected class should be made to:

[Office of Institutional Equity](#)

Wetherby Administration Building– Suite 317

(270) 745-5121

These reports will be addressed pursuant to Policy 0.2040, Discrimination and Harassment.

### **B. Required Notifications**

As required by law, at the start of each academic semester, the University will send a notice to all students that includes:

1. Their rights under Title VI of the Civil Rights Act of 1964 and how to file a report if they believe those rights have been violated;
2. Information on [KRS 344.450](#), which provides any person injured by certain acts of discrimination with a civil cause of action to enjoin further violations and to recover the actual damages sustained and the costs of the lawsuit; and
3. A weblink to the following WKU policies regarding student-on-student harassment;
  - i. [Policy 0.2040, Discrimination and Harassment](#)
  - ii. [Policy 0.2070, Sex and Gender-Based Discrimination, Harassment, and Retaliation](#)
  - iii. [Policy, 0.2310 Free Speech](#)
  - iv. [Policy 0.2400, Institutional Neutrality](#)
  - v. [Policy 6.3000, Student Code of Conduct](#)

### **C. Required Reporting**

Beginning January 1, 2026, WKU will collect the following data:

1. The number of reports alleging antisemitism submitted to the University;
2. The number of investigations opened by the University as a result of those reports and the outcomes of those investigations;

3. The number of reports alleging antisemitism submitted to the University;
  4. The number of investigations opened by the University as a result of those reports, and the outcomes of those investigations;
  5. The number of reports alleging a violation of Title VI of the Civil Rights Act of 1964 that are connected to antisemitism of which the University has been notified and the results of those investigations that are in the possession of the University; and
  6. The number of actions that have been brought against WKU under KRS 344.450 and the outcomes of such actions.
- D. The University will provide this information to the Council on Postsecondary Education on or before June 30<sup>th</sup> of each year, until July 1, 2028. The report shall include data collected over the prior year, except the first report shall review available data from the prior two years.
- E. Nothing contained herein shall be construed to prohibit or limit any rights guaranteed by the First Amendment or Section 1 of the Kentucky Constitution, including freedom of speech, association, and academic inquiry.

## **V. Related Policies/Laws**

See also:

[Policy 0.2040 Discrimination and Harassment](#)

[Policy 0.2070 Sex and Gender-Based Discrimination, Harassment, and Retaliation](#)

[Policy 0.2310 Free Speech Policy](#)

[Policy 6.3000 Student Code of Conduct](#)

[Senate Joint Resolution 55](#)

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**APPROVAL OF PRE-DEVELOPMENT AGREEMENT  
WITH GILBANE**

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**REQUEST:**

The President requests approval for Western Kentucky University to enter into a Pre-Development Agreement with Gilbane Development Company to undertake the financing, design, construction, management, and operations of a new housing development on the University's campus and the renovation, management, and operation of the existing housing portfolio

**FACTS:**

As part of the strategic initiative to elevate student housing on the University's campus, the University partnered with Brailsford & Dunlavey, a planning and student housing development advisory firm retained by the Student Life Foundation, to seek a national partner to transform student housing. Following a Request for Qualification and subsequent Request for Proposal, the University selected Gilbane Development Company as its preferred third-party developer to begin phase one of the student housing transformation.

**BUDGETARY IMPLICATIONS:**

Gilbane Development Company is self-funding 100% of the project's pre-development costs. In the event the University defaults on the terms of the Pre-Development Agreement or terminates the Agreement for convenience, the University will be responsible for up to \$5,791.250 in pre-development costs.

**RECOMMENDATION:**

President Timothy C. Caboni requests approval of the Pre-Development Agreement with Gilbane Development Company.

**MOTION:**

To approve the Pre-Development Agreement between Gilbane Development Company and Western Kentucky University.



**PHASE 1 PRE-DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**WESTERN KENTUCKY UNIVERSITY**

**AND**

**GILBANE DEVELOPMENT COMPANY**

**DATED AS OF DECEMBER [\_\_], 2025**

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**Exhibit A** – Definitions

**Exhibit B** – RFQ Proposal

**Exhibit C** – Project Terms

**Exhibit D** – Project Site

**Exhibit E** – Pre-Development Budget

**Exhibit F** – Pre-Development Schedule

## PHASE 1 PRE-DEVELOPMENT AGREEMENT

This PHASE 1 PRE-DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of December [ ], 2025 (“**Effective Date**”) by and among **WESTERN KENTUCKY UNIVERSITY**, a public body corporate, and an educational institution and agency of the Commonwealth of Kentucky (the “**University**”) and **GILBANE DEVELOPMENT COMPANY**, a Rhode Island corporation (the “**Developer**”). The University and the Developer shall sometimes collectively be referred to herein as the “**Parties**” and each as a “**Party**.”

### RECITALS

A. The University operates a public university on its main campus consisting of approximately 200 acres located at 1906 College Heights Boulevard, Bowling Green, Kentucky 42101 (the “**Campus**”).

B. On June 10, 2025, the University issued its Request for Qualification WKU-10432 (the “**RFQ**”) to development firms qualified to enter into a transaction with the University pursuant to which the University will grant a development partner certain interests in real property owned (or to be owned) by the University, and the development partner will undertake the financing, design, construction, leasing, management, and operation of one or more new student housing development(s) on the Campus and the renovation, management and operation of existing student housing on the Campus (the “**Facility Program**”) to meet and serve the University’s student housing demand.

C. The Developer and its partners submitted a responses to the RFQ (the “**RFQ Proposal**”) which is incorporated by reference herein and is attached as **Exhibit B** (*RFQ Proposal*).

D. On October 3, 2025, the University identified the Developer as its preferred development partner for the Facility Program following a comprehensive RFQ evaluation and interview process conducted by the University.

E. The University desires to proceed at this time with the objectives of the Facility Program as described in the RFQ by entering into this Agreement to enable the Developer to engage in certain Pre-Development Activities in furtherance of determining the specific scope of facilities, improvements, sequence, processes, and services to be made a part of the Project.

### AGREEMENT

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

#### 1. **Definitions; Basic Agreement; Project; Project Site.**

(a) Definitions. All capitalized terms used in this Agreement, but not expressly defined in this Agreement, have the respective meanings set forth in **Exhibit A** (*Definitions*).

(b) Basic Agreement.

(i) The University hereby appoints and engages the Developer as the exclusive developer with respect to the Pre-Development Activities and the Work during the Term, and the Developer hereby accepts such appointment and engagement, under the terms, and subject to the conditions, of this Agreement.

(ii) The Developer hereby agrees to perform diligently the Pre-Development Activities in accordance with the terms, and subject to the conditions, of: (i) this Agreement, (ii) applicable

Law, (iii) the Standard of Care and (iv) the University Guidelines. The Developer further agrees to apply commercially reasonable business practices in the performance of its duties hereunder.

(iii) The Parties agree that they are proceeding with the undertakings set forth in this Agreement based upon the development, operations, management and maintenance of the Project in accordance with the RFQ Proposal and the Project Terms set forth in **Exhibit C** (*Project Terms*). The University recognizes that the Developer would not be undertaking the activities and costs under this Agreement without the agreement by the Parties on the Project Terms and the incorporation of those Project Terms into a definitive written document.

(c) **Project.** The University desires the Developer to: (i) develop [ ] beds of student housing located in one or more facilities to be designed and thereafter constructed on the Project Site, and thereafter operate and maintain such facilities (the “**New Construction Project**”); (ii) renovate, operate, maintain and demolish, as applicable, and as the Parties may hereafter agree, certain other existing student housing facilities on the Campus (the “**Existing Project**” and, together with the New Construction Project, the “**Project**”); and (iii) evaluate potential opportunities related to the University’s on-campus energy system (the “**Energy Project**”), all of which will be more fully determined as part of the Pre-Development Activities.

(d) **Project Site.** The New Construction Project shall be constructed on approximately [ ] acres of land located at Freshman Village that is a part of the Campus and the Existing Project shall be renovated, operated and maintained, each as more fully described in **Exhibit D** (*Project Site*) (the “**Project Site**”).

## 2. **Pre-Development Proposal; Pre-Development Activities.**

(a) The Developer generally shall manage, arrange, supervise, and coordinate the Pre-Development Activities, in a good and workmanlike manner, applying commercially reasonable business practices. The Developer shall cooperate with the University and act in good faith.

(b) The Developer acknowledges that the University has set forth a targeted occupancy date for the New Construction Project of May 31, 2028 (the “**Project Occupancy Deadline Goal**”), as the same may be extended due to a Force Majeure Event, University Delay or otherwise mutually amended by the Parties. The Parties agree that the aforementioned Project Occupancy Deadline Goal is a nonbinding progress goal, however, in the Turn-Key Development Agreement to be executed at Financial Closing, the Developer will commit to substantially completing the Project pursuant to the terms and conditions of the Turn-Key Development Agreement. The Developer and the University agree to reasonably and timely cooperate with one another in good faith in connection with the facilitation and performance of the Pre-Development Activities to achieve the Financial Closing Deadline and the Project Occupancy Deadline Goal.

(c) To achieve the Financial Closing Deadline and the Project Occupancy Deadline Goal, the Developer shall perform the Pre-Development Activities and provide the University with a proposal (the “**Pre-Development Proposal**”) on or before March 31, 2026 (the “**Pre-Development Proposal Deadline**”), as the same may be extended due to a Force Majeure Event, University Delay or otherwise mutually amended by the Parties. The Pre-Development Proposal shall contain the final design and construction pricing for the New Construction Project, the final development schedule for the New Construction Project, the final Financial Model and any other deliverables necessary for the University to make a decision whether or not to undertake the Project.

(d) The Parties agree that the following non-exclusive list of activities may need to be performed by Developer prior to Financial Closing (collectively, the “**Pre-Development Activities**”), such Pre-Development Activities to include:

(i) periodic visits to the Project Site, attendance at meetings with representatives of the University and attendance at necessary meetings, hearings and other proceedings with governmental authorities;

(ii) the preparation and evaluation of plans, profiles, preliminary drawings, conceptual designs, schematic designs, preliminary specifications, preliminary performance requirements, design development and construction documents for the New Construction Project and the renovation of the Existing Project (collectively, the “**Plans**”), and the evaluation of design and development alternatives, including any necessary coordination with the University and the University’s advisor review process; provided, however, that all Plans shall be subject to review and written approval by the University per the terms and conditions of this Agreement;

(iii) finalizing the Plans (including final and complete specifications and performance requirements) for the Project based upon any budget, policy, procedural, and programmatic requirements of the University, Project Site constraints determined by the assessment of the Project Site, including any necessary coordination with the University;

(iv) an assessment of the Project Site;

(v) preparation of a detailed development and delivery schedule for inclusion within certain of the Project Agreements, reflecting sequencing of the design, development, and construction of the New Construction Project and the renovation of the Existing Project, including any mutually agreeable milestones, review times, hold points and financing-related events;

(vi) the generation, review and evaluation of alternatives for structuring the financing for the Project;

(vii) pro forma analysis related to the development, design, construction, renovation, demolition, financing, operation and maintenance, as applicable, and as the Parties may hereafter agree, of the Project;

(viii) obtaining and maintaining all approvals (including governmental approvals), permits, licenses (including individual professional licenses), and other authorizations necessary for the development and construction of the New Construction Project and the renovation included in the Existing Project, including any necessary and/or required coordination, support and cooperation by and with the University;

(ix) preliminary design and construction pricing for the New Construction Project based upon actual site conditions determined via the Project Site assessment, refined Plans, and the ultimate delivery schedule for the Project;

(x) preliminary renovation and related construction pricing (including demolition pricing, where applicable) based upon actual site conditions determined via the Project Site assessment, refined Plans, and the ultimate delivery schedule for the Project;

(xi) the preparation of a final budget, milestone and high-level schedule, setting forth a mutually agreeable final cost and milestone dates for delivery of the entire Project;



(xii) coordinating drafts of all necessary financing documents and other documents related to Financial Closing, which documents may include a trust indenture, loan agreement, mortgage and any other security documents and collateral documents (collectively, the “**Financing Documents**”);

(xiii) preparing plans for the operation, maintenance, and management of the Existing Project, including, without limitation, recruitment, interviews and training of property management staff;

(xiv) preparing, maintaining and updating as necessary the Financial Model;

(xv) negotiating, reviewing, commenting and finalizing the Project Agreements, and other requirements required to reach Financial Closing;

(xvi) outreach with various stakeholders, including the City of Bowling Green, Kentucky;

(xvii) assisting the University to prepare various submittals including specifically those required for submission to, and in connection with the preparations for meetings with and review by, the Capital Projects and Bond Oversight Committee, a committee of the Kentucky General Assembly (the “**Oversight Committee**”); and

(xviii) performing such other acts as the University may reasonably request consistent with the Pre-Development Budget and standard industry Pre-Development Activities provided in connection with projects of similar size and scope or as may be required under Commonwealth law.

(e) The Developer shall regularly keep the University informed in writing as to progress of all Pre-Development Activities and provide the University with all information reasonably necessary to make Project-related decisions. The Developer shall coordinate regular progress meetings with the University and attendees identified by the University no less than once every two weeks.

(f) During the Term, University shall not negotiate with any party other than the Developer with respect to the development of the Project.

### 3. **Pre-Development Expenses, Budget and Schedule**

(a) Pre-Development Expenses.

(i) Except as otherwise expressly provided in this Agreement, the Developer shall bear and pay for the costs and expenses incurred by or on behalf of the Developer in performing the Pre-Development Activities, including all Pre-Development Expenses. The Developer plans to expend in good faith monies to engage third parties and to allocate internal resources in furtherance of the pre-development of the Project. Such expenditures anticipated to be expended in furtherance of the pre-development of the Project are specifically described in the Pre-Development Budget.

(ii) The Parties agree that the Pre-Development Activities to be provided by or on behalf of the Developer shall be performed directly by the Developer or by third parties engaged by the Developer and that all actual third-party costs paid or incurred by the Developer in connection with the Pre-Development Activities shall be borne and paid by the Developer, subject to the express obligations of the University under this Agreement.

(iii) For purposes of this Agreement, “**Pre-Development Expenses**” shall mean bona fide, documented, reasonable out-of-pocket expenses actually incurred by the Developer, consistent with the Pre-Development Budget, for (i) fees and reimbursables payable to third-parties which are approved by the University, (ii) fees, deposits, reimbursables and other sums required to be paid to governmental authorities in connection with applications and proceedings for approvals associated with the design and development of the Project, (iii) fees, costs, charges and reimbursables for or associated with the preparation or revision of the Plans, and (iv) the Developer’s other direct costs associated with the Project and as expressly identified and set forth on the Pre-Development Budget, as may be amended. In no event shall Pre-Development Expenses include any costs or expenses incurred in connection with preparing the RFQ Proposal, entertainment expenses, or any general overhead (including costs of rents, utility expenses, office furnishings and equipment or other non-Project-specific costs and expenses for the conduct of the Developer’s business operations and locations).

(iv) Pre-Development Expenses may not include any item not expressly identified on the Pre-Development Budget, as may be amended, it being agreed that Pre-Development Expenses are only those expenses that directly advance Pre-Development Activities.

(v) As of the Effective Date, the Developer has incurred and will continue to incur, in good faith, Pre-Development Expenses in furtherance of the development of the Project as specifically described in the Pre-Development Budget.

(vi) During the Term, in no event shall the Developer purchase any materials, nor incur any hard costs without the express written consent of the University.

(b) **Pre-Development Budget.**

(i) The University authorizes the Developer to engage in and/or cause third parties to perform the Pre-Development in accordance with the pre-development budget attached as **Exhibit E** (*Pre-Development Budget*) (the “**Pre-Development Budget**”) which in no event shall exceed the Pre-Development Cost Cap. Any Pre-Development Expenses incurred by the Developer in excess of the Pre-Development Cost Cap will be borne by the Developer and will not be reimbursed pursuant to the terms of this Agreement except as otherwise mutually agreed upon by the Parties.

(ii) The Pre-Development Budget may be amended, modified and/or supplemented from time to time with the University’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. The Developer shall have the right to re-allocate amounts contained in particular line items within the Pre-Development Budget to and from other line items within such Pre-Development Budget, provided, however, that re-allocations within the applicable sub-groups of the Pre-Development Budget may not exceed, in the aggregate a ten percent (10%) increase or decrease adjustment in such sub-groups without the prior written consent of the University.

(iii) The Developer shall submit to the University a report on or prior to the 15th day of each month commencing the first month after the Effective Date, (i) written updates to the total Pre-Development Expenses incurred and anticipated to be incurred (in gross terms and as compared to the Pre-Development Budget); and (ii) appropriate documentation evidencing the incurrence of each of the Pre-Development Expenses, in the form of copies of invoices, receipts, vouchers or the like, in such form and containing such information required by the University’s financial policies and as is reasonably necessary in order for the Developer and University to determine that such items constitute Pre-Development Expenses incurred in accordance with the terms and conditions of this Agreement.

(iv) Notwithstanding anything to the contrary contained in this Agreement, the University's liability for the Pre-Development Expenses, whether due to any earlier termination of this Agreement or otherwise, shall not in any event exceed the Pre-Development Cost Cap, except as otherwise mutually agreed upon by the Parties.

(v) At any time during the Term, the University may, upon reasonable prior written notice to the Developer, review the books and accounts of the Developer related exclusively to the Project.

(c) Pre-Development Schedule. Prior to entering into this Agreement, the Parties have agreed upon a preliminary development schedule for the Pre-Development Activities (such schedule, as amended or modified from time to time, is referred to herein as the "**Pre-Development Schedule**"). The Developer may update the Pre-Development Schedule and submit the same to the University for approval in the University's reasonable discretion. The Developer will perform the Pre-Development Activities in accordance with the Pre-Development Schedule.

#### 4. **Development Fee.**

(a) The Developer acknowledges that the Project Agreements will provide for the payment of a development fee to the Developer in an amount equal to 3.25% of the total development cost for the New Construction Project as established in the approved development budget for the New Construction Project, as such development cost for the New Construction Project may be amended by the Project Agreements (the "**Development Fee**"). By executing this Agreement, the University has not agreed to pay the Development Fee.

(b) While the Turn-Key Development Agreement will definitively set forth the amount of the Development Fee and terms and conditions upon which the Development Fee will be paid, the Developer agrees that the Project Agreements will provide that the Development Fee is to be paid by CHF as follows: (i) fifty percent (50%) of the Development Fee shall be earned for services rendered prior to the Financial Closing and shall be paid to the Developer at the Financial Closing; and (ii) the remainder of the Development Fee shall be paid to the Developer on a monthly basis in accordance with the monthly progress payments process for the Work of the Project as more fully set forth in the Project Agreements. If the Financial Closing does not occur, the Parties agree that the Development Fee shall not be paid to the Developer.

#### 5. **Access to Project Site; Insurance.**

(a) Access to Project Site.

(i) The University hereby grants to Developer, Developer's general contractor or construction manager for the Project ("**Contractor**"), Developer's architects and engineers designing the Project (collectively, the "**Architect**"), Developer's affiliated property management company, and their respective affiliates, engineers, consultants, advisors, agents, and other subcontractors (together with the Contractor and the Architect, the "**Permitted Persons**"), a non-exclusive license to travel on, over and across such portions of the Project Site as is necessary to access the Project Site, for the purpose of performing the Pre-Development Activities, along with the incidental right of ingress and egress over and across other adjoining property owned by the University to and from the Project Site; provided, however, that any such ingress and egress shall occur via the shortest path reasonably possible to access the Project Site. All access granted by this Section 5 (Access to Project Site; Insurance) shall be pursuant to the terms and conditions of this Section 5 (Access to Project Site; Insurance).

(ii) As condition precedent to any entry by the Developer and or any Permitted Persons upon the Project Site, the Developer shall furnish to the University and receive the University's written approval of a written request for such entry not less than 48 hours prior to the proposed entry, which request shall include, at a minimum: (i) a summary of the activities to be performed; (ii) the specific portions of the Campus to be impacted and the nature of such impacts; (iii) a list of any Developer or Permitted Persons which shall be present on the Project Site; and (iv) any other information pertinent to the University's assessment of such request.

(iii) In conducting the Pre-Development Activities, the Developer, and the Permitted Persons shall not unreasonably interfere with the University's uses of the Project Site. The Developer hereby acknowledges that University reserves the right to grant to other parties rights of use to the Project Site; provided, however, the University shall provide the Developer with prior written notice of any other parties the University grants the right to use the Project Site.

(iv) In the event this Agreement expires by its terms, is terminated pursuant to the terms hereof or is otherwise determined to be of no further force or effect, the Developer shall restore the Project Site to substantially the same condition in which the Project Site was found before the Pre-Development Activities were undertaken.

(v) The Developer agrees that its exercise of the rights granted under this Section 5 (Access to Project Site; Insurance) are subject to the "AS IS" condition of the Project Site, including all defects latent and patent. The University makes no representation or warranty, express or implied or arising by operation of Law, including any warranty of condition, habitability, merchantability, or fitness for a particular purpose in connection with the Project Site.

(vi) The Developer hereby also acknowledges that the aforementioned license does not, nor shall be deemed to, convey any estate or ownership interest in the Project or the Project Site nor any public way or any part of the Campus not within the Project Site, nor any right to exclusive possession thereof. For avoidance of doubt, the aforementioned license does not create, nor shall be construed to create, any landlord-tenant, lessor-lessee of real property, optionor-optionee, vendor-purchaser, mortgagor-mortgagee, or similar relationship sounding in real property between the University and the Developer as to the Project Site, nor any similar relationship sounding in personal property between University and the Developer as to the Project.

(vii) The Permitted Persons shall be responsible for payment of parking permits/fees relating to access to the Project Site. The Permitted Persons shall not perform or cause to be performed any invasive testing on the Project Site without the University's prior approval of the scope of work, which approval shall not be unreasonably withheld.

(b) Insurance.

(i) At all times during the continuance of this Agreement, including, but not limited to, prior to any entry by the Developer or any Permitted Person upon the Project Site, the Developer shall obtain and maintain, and shall cause each Permitted Person to obtain and maintain the following insurance coverages:

(A) Commercial General Liability Insurance providing coverage for bodily injury, property damage, personal injury and contractual liability with minimum limits of \$1,000,000 per occurrence/\$2,000,000 aggregate with the general aggregate limit applicable.

(B) Business Automobile Liability Insurance providing coverage for bodily injury and property damage for all owned (if any), leased, hired or non-owned vehicles with a minimum limit of \$1,000,000 combined single limit.

(C) Umbrella/Excess Liability Insurance with a minimum limit of \$4,000,000 per occurrence/aggregate excess of the above-required insurances.

(D) Workers Compensation and Employer's Liability Insurance with statutory workers compensation coverage and minimum employers liability limits of \$1,000,000 per accident or disease.

(ii) The Developer shall, at its own expense, procure and maintain insurance policies in each instance written by an insurer that is authorized to do business in the Commonwealth, of recognized financial standing and rated A-/VIII or better by A.M. Best, and otherwise acceptable to the University.

(iii) The University and the University Indemnified Parties shall be included as additional insureds under the Commercial General Liability, Automobile Liability and Umbrella/Excess Liability policies denoted above on a primary and non-contributory basis.

(iv) The Developer hereby agrees to waive subrogation against the University and the University Indemnified Parties to the extent covered by any of the insurance policies required above. Such insurance policies shall be endorsed so that the insurers also agree to provide a waiver of subrogation against the University and the University Indemnified Parties.

(v) To the extent that any subcontractors or subconsultants are visiting the site on behalf of the Developer, the Developer agrees that each such subcontractor or subconsultant shall procure and maintain appropriate insurance coverages and shall ensure that all such insurance policies comply with the requirements of 5.(i), 5.(iii) and 5.(iv) above.

(vi) Each insurance policy required above shall be endorsed to provide at least thirty (30) days' notice of cancellation (10 days for non-payment) will be given to the University prior to cancellation by the insurance company.

(vii) At the time of execution of this Agreement, Developer shall endeavor to provide the University with a certificate of insurance evidencing the above-noted insurance coverages and other requirements herein at least seven (7) days prior to the expiration of any of the required insurance policies. Developer shall provide the University with an updated renewal certificate of insurance.

(viii) If at any time during the Term any requirement of this Section 5(b) (Insurance) is not satisfied, the University may in its sole discretion require that the Developer suspend the Pre-Development Activities and suspend the rights of the Developer to access the Project Site.

## **6. Role of the University during the Pre-Development Process.**

(a) Upon receipt of the Pre-Development Proposal, the University will review the various elements of the Pre-Development Proposal and provide any questions or comments related to the Pre-Development Proposal to the Developer within fifteen (15) Business Days of receipt of the Pre-Development Proposal. Within thirty (30) Business Days of receipt of the Pre-Development Proposal, the University will inform the Developer in writing whether or not the University would like to proceed with the Project, in the University's sole discretion.



(b) Prior to the Financial Closing, the University agrees to reasonably cooperate with the Developer, in the following activities:

(i) assistance in working with the Developer and applicable regulatory bodies to secure, but not being responsible for securing, all land entitlements and zoning required to develop the Project, if necessary;

(ii) participation in design review of the Project to ensure that the Project is not inconsistent with the University's goals or standards; and

(iii) participation in market demand studies for the Project.

7. **Term; Project Agreements; Financial Closing.**

(a) Term. The "**Term**" of this Agreement shall become effective as of the Effective Date and shall continue in full force and effect and terminate until the earliest to occur of: (i) the Financial Closing, (ii) termination of this Agreement pursuant to Section 8 (*Termination*); or (iii) the Financial Closing Deadline.

(b) Project Agreements.

(i) As part of the Pre-Development Activities, the Parties will negotiate the terms of the following (collectively, the "**Project Agreements**"): (A) a ground lease agreement between the University, as owner and a wholly-controlled affiliate of Collegiate Housing Foundation, as tenant (Collegiate Housing Foundation, together with its affiliate, "**CHF**") (the "**Ground Lease**"); (B) a turn-key development agreement between the Developer (or an affiliate of the Developer) and CHF to design, development and construction of the New Construction Project (the "**Turn-Key Development Agreement**"); (C) one or more management agreements between the Developer (or an affiliate of the Developer) and CHF to manage, operate and maintain the New Construction Project and the Existing Project (the "**Management Agreement**"); and (D) various agreements between the University and CHF regarding performance by the University of certain services including, but not limited to: residence life, security, utilities and information technology services (the "**Services Agreement**").

(ii) The Project Agreements shall incorporate the Project Terms and those non-conflicting provisions of the RFQ, the RFQ Proposal and the Pre-Development Proposal as refined into final form.

(iii) Any negotiations of any Project Agreement shall be undertaken in good faith by the Parties. Notwithstanding anything to the contrary contained in this Agreement, nothing shall be construed to obligate either Party to enter into any Project Agreements; nor shall anything contained in this Agreement be construed to obligate the University to continue with the pre-development phase of the Project, or to implement and construct the Project.

(iv) The Developer acknowledges and agrees that the University's execution of any Project Agreement shall be contingent in all respects on the prior written approval thereof of the Oversight Committee.

(c) Financial Closing.

(i) After receipt of the Pre-Development Proposal, if the University determines in its sole discretion to proceed with the Project, the Parties will work together in good faith and with due diligence to have all of the relevant parties to the Project Agreements and the Financing

Documents to execute and deliver the Project Agreements and the Financing Documents, respectively, and to reach close on the financing for the Project (the “**Financial Closing**”).

(ii) The Parties agree to work in good faith to achieve Financial Closing by June 1, 2026 unless the University informs the Developer during the Term that the University has not received legislative approval to achieve Financial Closing prior to July 1, 2026, in which case such date shall be extended to July 1, 2027 (as such date may be extended due to a Force Majeure Event, University Delay or otherwise amended by mutual agreement of the Parties, the “**Financial Closing Deadline**”).

(iii) The Developer agrees that at the Financial Closing it will execute and deliver to the University an investment grade Project guaranty and a combination of one or more performance bonds, liquid financial instruments and cash retainage for completion of the Project in form satisfactory to the Parties, pursuant to which the Developer (or an affiliate thereof) will guaranty Project completion on-time and on-budget as such development budget and Project timeline may be agreed upon by the Parties and set forth in the Project Agreements. The form of the Project Agreements’ payment and performance bonds, liquid financial instruments, form of any guaranty(ies), and identity of the guarantor(s), each as referenced in the proceeding sentence, shall be subject to the University approval in its sole discretion.

(iv) The Developer shall use commercially reasonable efforts to furnish the University with substantially final Financing Documents for review and acceptance no later than 45 days prior to its intended Financial Closing date. Except as otherwise agreed to by the University in its sole discretion, in no event will any interest of the University in the Project be encumbered by or serve as security under any Financing Documents, nor will the University have any liability under the Financing Documents.

(d) Financial Model.

(i) The Developer has developed a preliminary Project financial model, which model is consistent with the RFQ Proposal (except as otherwise approved by the University in its reasonable discretion) and intended to encompass among other things all revenues, operating expenses, financing expenses, debt service, payments to the University, and net cash flow for the Project (as updated from time to time in accordance with this Agreement, the “**Financial Model**”).

(ii) During the Term, the Developer shall provide to the University updates to the Financial Model (including, but not limited to, any revisions/changes to actual or anticipated Pre-Development Expenses, and anticipated building sizes, unit-mixes, rental rates, operating expenses, sequencing, and design or construction costs) at regular milestones during the period between the Effective Date and the anticipated Financial Closing date.

(iii) Notwithstanding or in limitation of the foregoing requirement, (A) the Developer shall promptly notify the University of any material change to the Financial Model, and (B) the Developer shall submit to the University a final projected Financial Model at least forty-five (45) days prior to the execution of the Project Agreements.

8. **Termination.**

This Agreement may be terminated as a result of the occurrence of any one of the following events.

(a) The University may terminate this Agreement in the event of a material breach of this Agreement by the Developer, after the Developer’s failure to cure such material breach within thirty (30) days following the date the Developer receives written notice thereof from the University or for such longer

period as may be reasonably necessary to cure such failure up to a maximum on ninety (90) days. Such breaches include:

- (i) any representation or warranty made by the Developer hereunder is false or misleading in any material respect on the date made and has a material adverse effect upon the Project or the University;
- (ii) the Developer fails, and such failure is not due in part to any action or inaction of the University, to deliver a Pre-Development Proposal by the Pre-Development Proposal Deadline;
- (iii) the Developer fails to comply with, perform or observe any undertaking, obligation, covenant, agreement, term or condition in this Agreement;
- (iv) the gross negligence or willful misconduct of the Developer in its performance of its obligations hereunder; or
- (v) the insolvency of the Developer.

Developer acknowledges and agrees that any breach under Section 8(a)(i) with respect to warranties of disclosure of under Section 14(b)(vi) or to comply with those statutes during the Term, as listed in Section 16(o) are material and shall, in addition to constituting grounds for termination under this Section 8, be grounds for disqualification of the Developer from eligibility for future state contracts for a period of two years.

(b) The Developer may terminate this Agreement in the event of a breach of this Agreement by the University, after the University's failure to cure such breach (if reasonably capable of cure) within thirty (30) days of receipt of written notice of such breach. Such breaches include:

- (i) any representation or warranty made by the University hereunder is false or misleading in any material respect on the date made and has a material adverse effect upon the Developer's rights hereunder; or
- (ii) the University fails to comply with, perform or observe any undertaking, obligation, covenant, agreement, term or condition in this Agreement; or
- (iii) the gross negligence or willful misconduct of the University in its performance of its obligations hereunder.

(c) Except as otherwise set forth in Section 8(d) below, the University or Developer may terminate this Agreement if Financial Closing is not achieved by the Financial Closing Deadline for reasons outside the reasonable control of the Developer.

(d) If, after ongoing good faith negotiations between the Parties, the Parties are unable to agree on final Project Agreements necessary to reach the Financial Closing by the Financial Closing Deadline, the Parties shall mutually agree in writing to terminate this Agreement.

(e) The University or Developer may terminate this Agreement if Financial Closing is not achieved by the Financial Closing Deadline because the University has failed to receive legislative approval of the Project.

(f) The University may unilaterally terminate this Agreement for its convenience at any time during the Term (a "**Termination for Convenience**"), upon no less than thirty (30) days' prior written notice to the Developer, which notice shall set forth the effective date of such termination. Upon receipt

by the Developer of such termination notice, the Developer shall discontinue all services with respect to this Agreement.

**9. Payment of Pre-Development Expenses.**

(a) The Pre-Development Expenses incurred by the Developer are to be reimbursed to the Developer at the Financial Closing with proceeds of the Project financing; provided, however, that

(i) if the University exercises its Termination for Convenience rights under Section 8(f) or if Developer terminates this Agreement pursuant to Section 8(b) (material breach by the University), or either Party terminates this Agreement pursuant to Section 8(e), then the University shall reimburse the Developer in an amount equal to one hundred percent (100%) of all of the actual Pre-Development Expenses incurred by Developer as of the date of termination for the items set forth in the Pre-Development Budget, which reimbursement shall in no event exceed the Pre-Development Cost Cap;

(ii) if this Agreement is terminated pursuant to either Section 8(c) (failure to close by the Financial Closing Deadline) or Section 8(d) (failure to agree on Project Agreements prior to Financial Closing Deadline), then the University shall reimburse the Developer in an amount equal to fifty percent (50%) of the actual Pre-Development Expenses incurred by Developer as of the date of termination for the items set forth in the Pre-Development Budget; and

(iii) if the University terminates this Agreement pursuant to Section 8(a) (breach by Developer), then the University shall not be obligated to pay any amount of Pre-Development Expenses to the Developer.

(b) The Parties acknowledge and agree that the payment set forth in subsection (a) shall constitute Developer's sole reimbursement for any Pre-Development Expenses incurred up until Financial Closing and compensation for performance of the Pre-Development Activities.

(c) In the event the University is required to reimburse the Developer for any Pre-Development Expenses as described above, the Developer shall submit itemized invoices (and supporting documentation) for such Pre-Development Expenses to the University. The University shall review such invoices (and supporting documentation) within thirty (30) days of such submission and shall pay the Developer for such Pre-Development Expenses within ninety (90) days of the Developer's submission.

**10. Work Product.**

(a) The Developer shall provide to the University copies of all written reports, studies, analyses, surveys, designs, plans, drawings and other written, graphic and three-dimensional work product prepared by or on behalf of the Developer by third parties (excluding Developer's attorneys) as part of the Pre-Development Activities for the Project (collectively, "**Work Product**"). All Work Product (other than any Work Product that is delivered with respect to the Energy Project) shall be and remain the property of Developer until (i) Financial Closing, in which event the Work Product shall be transferred to the University upon the reimbursement of Pre-Development Expenses pursuant to Section 9 (*Payment of Pre-Development Expenses*) or (ii) this Agreement terminates, and the University purchases such Work Product pursuant to the following provisions. The University shall not disclose any Work Product unless the University fully reimburses Developer for the cost of such Work Product.

(b) Upon termination of this Agreement, the University may elect to purchase the Work Product for a price equal to the Pre-Development Expenses owed to Developer as set forth in Section 9(a) (*Payment of Pre-Development Expenses*) up through the date of termination, and any amounts paid by the University pursuant to Section 9(a) (*Payment of Pre-Development Expenses*) shall be fully credited to the

University toward the purchase of such Work Product. In the event the University elects to purchase the Work Product, the Developer shall transfer, assign and convey to the University (or its nominee or designee) any and all of its right, title and interest in and to the Work Product produced by the Developer and any third-party professional service providers who were engaged by the Developer in its native form, free and clear of all liens, and the Developer shall cause the Work Product to be addressed to the University, with the University having the right to rely upon, to the same extent as the Developer, such Work Product. The Developer shall require all third-party professional service providers who provided any Work Product to name the University as a third-party beneficiary for such Work Product.

#### 11. **Compliance; Invoicing.**

The Developer agrees to the following:

(a) With respect to the Project, provide a single point of managerial-level contact for the University: (i) to coordinate all requirements; (ii) to be the point of contact for any problems/questions that may arise; (iii) meet periodically with personnel of CHF and the University upon reasonable notice; (iv) to research information; and (v) to deliver special reports as reasonably needed or directed by CHF or the University.

Developer's Single Point Contact Person:

Name: [ ]  
Title: [ ]  
Address: 7 Jackson Walkway  
Providence, RI 02903  
Email: [ ]  
Phone: [ ]

(b) Comply with all applicable federal, Commonwealth and local governmental laws, ordinances, regulations, in all material respects with respect to its performance of its obligations under this Agreement.

(c) Treat as a single point of contact for the University, including for the submitting of all invoices for reimbursements pursuant to Section 9 (*Payment of Pre-Development Expenses*):

Name: Andrea Anderson  
Title: General Counsel  
Address: Western Kentucky University  
Wetherby Administration Building, Suite 101  
Bowling Green, KY 42101  
Email: andrea.anderson@wku.edu  
Phone: (270) 745-5398

#### 12. **Confidentiality.**

(a) If the Developer considers any written or oral information concerning the Project that is delivered to the University from or on behalf of the Developer, including any Work Product, to be confidential, then the Developer shall mark such information as confidential (the “**Developer Confidential Information**”). The Developer Confidential Information will be used by the University, and each of their respective officers, representatives, agents, advisors, employees or legal counsel (collectively, the “**University Representatives**”) solely for the purpose of advancing efforts to achieve the Financial Closing (the “**Purpose**”). Subject to the Open Records Act and other applicable Law, the University agrees to keep in confidence and to prevent the disclosure to third-parties of any Developer Confidential Information

unless the Developer provides its prior written consent; provided that, any such Developer Confidential Information may be disclosed to the University Representatives to the extent necessary to advance the Purpose.

(b) If the University considers any written or oral information concerning the Project that is delivered to the Developer from or on behalf of the University, including any Work Product, to be confidential, then the University shall mark such information as confidential (the “**University Confidential Information**”). The University Confidential Information will be used by the Developer, and its officers, representatives, agents, advisors, employees or legal counsel (collectively, the “**Developer Representatives**”) solely for the Purpose. Subject to the Open Records Act and other applicable Law, the Developer agrees to keep in confidence and to prevent the disclosure to third-parties of any University Confidential Information unless the University provides its prior written consent; provided that, any such University Confidential Information may be disclosed to Developer Representatives to the extent necessary to advance the Purpose.

(c) The Parties agree to not disclose any information related to the Project or discuss the Project with the media or any third-parties without the express written consent of the other Party.

(d) Kentucky Open Records Act.

(i) Notwithstanding anything to the contrary in this Agreement, the Developer acknowledges and agrees that all submittals, records, documents, drawings, plans, specifications, other materials, and other Books and Records in the possession of the University, including materials submitted by Developer to the University, are subject to the provisions of the Kentucky Open Records Act, KRS 61.870 to .884, inclusive (the “**Open Records Act**”). For avoidance of doubt, Books and Records received by the University or any other Commonwealth agency or entity during a financial audit or program review shall be subject to the Open Records Act.

(ii) If the Developer believes information or materials submitted to the University are presumed excepted from disclosure, under KRS 61.878, then the Developer shall be solely responsible for designating, such information or materials as and how prescribed under applicable Law.

(iii) Nothing contained in this Section 12(c) (Confidentiality) shall modify or amend requirements and obligations imposed on the University by the Open Records Act or other applicable Law, and the provisions thereof shall control in the event of a conflict between the procedures described above and the applicable Law.

(iv) If the University receives a request for public disclosure of materials marked as excepted from disclosure under KRS 61.878, then the University will use reasonable efforts to notify the Developer of the request and give the Developer an opportunity to assert, in writing and at its sole expense, the claimed exception thereunder within the time period specified in the notice issued by the University and as may be allowed under the Open Records Act. Under no circumstances, however, will the University be responsible or liable to the Developer for the disclosure of any such labeled materials, whether the disclosure is required by applicable Law or court order, or occurs through inadvertence, mistake or negligence on the part of the University or any of its directors, office-holders, partners, officers, agents, representatives, consultants, attorneys, contractors, and employees, and successors and assigns.

(v) If any proceeding or litigation concerning the disclosure of any material submitted by the Developer to the University, then the sole involvement of the University will be as stakeholders retaining the material until otherwise ordered by a court or such other authority having

jurisdiction with respect thereto, and the Developer shall be fully responsible for otherwise prosecuting or defending any action concerning the materials at its sole cost and risk; provided, however, that the University reserves the right, in its sole discretion, to intervene or participate in the litigation in such manner as they deem necessary or desirable. The Developer shall pay and reimburse the University within thirty (30) days after receipt of written demand and reasonable supporting documentation for all costs and fees, including attorneys' fees and costs, the University incur in connection with any litigation, proceeding or request for disclosure.

(vi) Notwithstanding the foregoing, Books and Records and other prequalification information confidentially disclosed as part of the RFQ process shall not be deemed as directly pertinent to this Agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

### 13. **Indemnification.**

The Developer shall indemnify and hold harmless the University and the directors, office-holders, partners, officers, agents, representatives, consultants, attorneys, contractors, and employees, and successors and assigns, of each of them (the "**University Indemnified Parties**") from and against any and all liability, damage, loss, cost, and expense (including, but not limited to, court cost and reasonable attorney's fees) of any nature, including for personal injury (including death) or property damage to the extent that such liability, damage, loss, cost or expense is caused by or is attributable to the performance of the Pre-Development Activities on the Project Site or the entry of Permitted Persons onto the Project Site, except to the extent caused by the gross negligence or willful misconduct of the University Indemnified Parties.

### 14. **Representations and Warranties.**

(a) University Representations and Warranties. The University, as of the Effective Date, hereby represents and warrants to the Developer as follows:

(i) The University is a public body corporate, and an educational institution and agency of the Commonwealth.

(ii) The University has the power and authority to enter into this Agreement and to perform all acts and to execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(iii) The University has duly authorized and approved the execution and delivery of this Agreement and the performance by the University of its obligations contained in this Agreement.

(iv) This Agreement has been duly executed and delivered by the University and constitutes a valid and legally binding obligation of the University, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(b) Developer Representations and Warranties. The Developer, as of the Effective Date, hereby represents and warrants to the University as follows:

(i) The Developer is a corporation, created under the laws of the State of Rhode Island, is qualified to conduct business in the Commonwealth, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and perform each and all of its obligations under this Agreement.

(ii) The Developer has the power and authority to enter into this Agreement and to perform all acts and to execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with the terms hereof.

(iii) The Developer has duly authorized and approved the execution and delivery of this Agreement and the performance by the Developer of its obligations contained in this Agreement.

(iv) This Agreement has been duly executed and delivered by the Developer, the signatory for the Developer has been duly authorized to execute this Agreement on behalf of the Developer, and constitutes a valid and legally binding obligation of the Developer, enforceable against it in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

(v) To its knowledge, the Developer is in material compliance with all Laws applicable to the Developer or its activities in connection with this Agreement.

(vi) The Developer has revealed and disclosed to the University any final determination of a violation by the Developer within the previous five-year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to the Developer or the Developer's contractors or subcontractors.

(vii) The Developer, through its authorized signatory, swears under penalty of perjury that neither the Developer nor any of its offering employees have violated any provision of the campaign finance laws of the Commonwealth and that the award of the Agreement will not violate any provision of the campaign finance laws of the Commonwealth. For purposes of this paragraph, "knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

(viii) The Developer shall have (A) provided certification of authority to conduct business in the Commonwealth and (2) registered with the Commonwealth Department of Revenue to collect and remit the sales and use tax imposed by KRS Chapter 139 in accordance with KRS 45A.067(2) and have provided evidence as to each to the University.

## 15. **Dispute Resolution.**

### (a) General.

(i) The University and the Developer will attempt to resolve any Disputes arising out of this Agreement at the Project level through good faith negotiations between the Authorized Representatives.

(ii) Any of the time periods specified in this Section 15 (Dispute Resolution) may be extended by mutual written agreement of the Parties.

(iii) In any case where sole discretion is specified with respect to the University's consent or decision, such consent or decision will not be subject to the dispute resolution procedures set forth herein.

### (b) Steering Committee.



(i) If the Dispute cannot be resolved at the Project level in accordance with subsection (a) within ten (10) days following notice of a Dispute, then either Party will have the right to submit the Dispute to the Steering Committee for resolution. The Steering Committee will convene a meeting within ten (10) days after receipt of written notification by either Party of any unresolved Dispute. After the meeting has convened, the Steering Committee will have seven (7) days to resolve the Dispute.

(ii) The Steering Committee will be comprised of two (2) representatives of the Developer and two representatives of the University, none of which may be either Party's Authorized Representative. The University may invite other employees or agents of the University to attend any Steering Committee meeting, however any such additional participants shall not be entitled to make any determinations on issues before the Steering Committee.

(iii) In any case where sole discretion is specified with respect to the University's consent or decision, such consent or decision will not be subject to the dispute resolution procedures set forth herein.

(c) Mediation.

(i) If the Steering Committee has not resolved the Dispute pursuant to subsection (b), then following such process, either Party may request non-binding mediation of the Dispute or any other form of alternative dispute resolution process that is mutually acceptable to both Parties.

(ii) If the Dispute has not been resolved within sixty (60) days after the initiation of mediation proceedings or, if both Parties do not agree to mediation or another form of alternative dispute resolution process, then either Party will have the right to proceed to litigation.

(d) Conduct During Pendency of Dispute.

(i) Notwithstanding anything to the contrary, no Party to this Agreement will be required to await the resolution of dispute proceedings regarding the reasons for terminating this Agreement before exercising such Party's termination rights.

(ii) Pending final resolution of any Dispute (except a Dispute regarding the cause for terminating this Agreement), the Parties will continue to fulfill their respective obligations under this Agreement.

(e) Costs of Dispute Resolution. Each Party will bear its own attorneys' fees and costs in any Dispute or litigation arising out of or pertaining to this Agreement, and no Party will seek or accept an award of attorneys' fees or costs, except as otherwise expressly provided herein. The fees and costs of any mediator will be borne equally by each Party.

16. **Miscellaneous.**

(a) Survival. The Parties agree that the provisions of Section 12 (Confidentiality) and Section 13 (Indemnification) of this Agreement shall survive any termination of this Agreement.

(b) Entire Agreement. This Agreement including all attached exhibits shall constitute the entire agreement between the Parties related to the subject matter hereof and shall supersede all previous agreements, written or oral related to the subject matter hereof. No modification or waiver of any provision shall be valid unless in writing and signed by both Parties.

(c) Governing Law; Venue. This Agreement and the rights of the Parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the Commonwealth of Kentucky (the “Commonwealth”). The Parties consent to jurisdiction in the Franklin Circuit Court, in accordance with KRS 45A.245.

(d) Severability. In the event any portion of this Agreement is found to be invalid or unenforceable for any reason, the remainder of the Agreement shall remain intact. That portion deemed invalid shall be amended in writing to the minimum extent necessary to be considered valid and enforceable. Any Party’s failure to enforce provisions of this Agreement in whole or in part will not negate the Agreement or the enforcement of provisions at a future time.

(e) Assignment. The University may assign this Agreement only to an entity or enterprise directly or indirectly under the control of the University. The Developer may not assign this Agreement without prior written consent of the University in its reasonable discretion.

(f) Examination of Records.

(i) The Developer shall keep and maintain in the Commonwealth of Kentucky, at a place identified to the University, all Books and Records in accordance with this Agreement .

(ii) The Developer shall make all Books and Records available for review, by or on behalf of the University at all times during normal business hours and without charge. This obligation, for avoidance of doubt, includes making all such Books and Records available to the Commonwealth’s Finance and Administration Cabinet, the Auditor of Public Accounts, the Legislative Research Commission, and any of their duly authorized representatives, for purposes of financial audit or program review.

(iii) The Developer warrants that it shall use good faith efforts (i) to ensure the completeness and accuracy in all material respects of all Books and Records and all information it or its agents provides in connection with any University or Commonwealth review, and (b) to cause all subcontractors to warrant the same.

(iv) Nothing in this subsection shall in any way limit the constitutional and statutory powers, duties and rights of Commonwealth agencies or elected Commonwealth officials, including any University official, in carrying out his or her legal authority.

(g) Independent Parties; Independent Contractor.

(i) The Parties hereto are acting herein as independent parties. Nothing herein contained shall create or be construed as creating a partnership or joint venture relationship among two or more of the Parties and no Party shall have the authority to bind any other Party in any respect.

(ii) The Developer shall perform the Developer’s duties and obligations hereunder as an independent contractor and not as an employee.

(iii) Neither the Developer nor any agent or employee of the Developer shall be deemed to be an agent or employee of the Commonwealth or the University. The Developer shall not have authorization, express or implied, to bind the Commonwealth to any agreement, liability, or understanding, except as expressly set forth herein.

(iv) The Developer and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Commonwealth, and the Commonwealth shall not pay for or otherwise provide such coverage for the Developer or any of its agents or employees.

(h) Non-Discrimination, Equal Employment Opportunity.

(i) Developer agrees that Developer, any contractor or subcontractor, and any person acting on behalf of Developer, any contractor or subcontractor, shall not discriminate, by reason of race, color, religion, sex, age, disability, military status, national origin, or ancestry against any citizen of the Commonwealth in the employment of any person qualified and available to perform the Pre-Development Activities. Developer further agrees that Developer, any contractor or subcontractor, and any person acting on behalf of Developer, any contractor or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the Pre-Development Activities on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry.

(ii) Developer shall comply with and is subject to the Kentucky Equal Employment Act of 1978 (KRS 45.550 et seq.).

(i) Force Majeure. If a Party is unable to perform any part of its obligations under this Agreement by reason of a force majeure, the Party will be excused from its obligations, to the extent that its performance is temporarily prevented by a Force Majeure Event, for the duration of the Force Majeure Event. To the extent commercially feasible, the Party must remedy with all reasonable dispatch the cause preventing it from carrying out its obligations under this Agreement.

(j) No Personal Interest. No personnel of Developer who exercise any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any of the Pre-Development Activities shall, prior to the completion of the Pre-Development Activities, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of the Pre-Development Activities. Any such person who acquires an incompatible or conflicting personal interest on or after the Effective Date of this Agreement, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to the University in writing. Thereafter, he or she shall not participate in any action affecting the Work, unless the University shall determine in its sole discretion that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

(k) Replacement of CHF. The Parties acknowledge and agree that in the course of negotiating the Project Agreements, the Parties may determine that it is appropriate that an entity other than CHF, agreed to by the University and Developer (said other entity being referred to herein as “**New Project Company**”), lease the Project Site from the University, perform the obligations and enter into and fill the role of CHF under the Project Agreements.

(l) No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and the rights of action relating thereto, shall be strictly reserved to the Parties and nothing contained herein shall give or allow any claim or right of action by any other or third person.

(m) Order of Precedence. In the event of any conflict, ambiguity or inconsistency between or among this Agreement and the Exhibits attached hereto, as each may be amended from time to time, the order of precedence for purposes of resolving shall be as follows:

(i) duly-executed amendments or other documented changes, executed by both Parties, to the body of this Agreement (including **Exhibit A** (*Definitions*) and **Exhibit D** (*Project Site*));

(ii) the body of this Agreement, including **Exhibit A** (*Definitions*) and **Exhibit D** (*Project Site*);

(iii) duly-executed amendments or other documented changes, executed by both Parties, to **Exhibit E** (*Pre-Development Budget*);

(iv) **Exhibit E** (*Pre-Development Budget*);

(v) duly-executed amendments or other documented changes, executed by both Parties, to **Exhibit F** (*Pre-Development Schedule*);

(vi) **Exhibit F** (*Pre-Development Schedule*); and

(vii) **Exhibit B** (*RFQ Proposal*).

(n) **Sovereign Immunity**. Liability for claims for injuries to persons or property arising from the negligence of the Commonwealth, its departments, agencies, boards, commissions, committees, offices, employees, and officials shall be controlled and limited by the provisions of the Kentucky Revised Statutes, including, without limitation, KRS 49.060. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in such statutes.

(o) **Certain Violations of Commonwealth Law**. Developer shall comply with, and remain in compliance with, the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 that apply to apply to the Developer or the Developer's contractors or subcontractors for the Term.

(p) **Taxes**. Developer shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Developer shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the Commonwealth, and (iii) be solely responsible for its acts and those of its employees and agents.

(q) **Counterparts**. The Parties hereto may execute this Agreement in one or more counterparts (including by facsimile or .pdf signature), and all such counterparts shall be construed together and constitute one and the same instrument. The delivery of an executed counterpart of this instrument by electronic delivery, consistent with KRS 369.101-.139, will be deemed to be valid delivery thereof.

**[REMAINDER OF PAGE LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the duly authorized representatives of the Parties have executed this Agreement as of the Effective Date.

**UNIVERSITY:**

WESTERN KENTUCKY UNIVERSITY, a public body corporate, and an educational institution and agency of the Commonwealth of Kentucky

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

Name:

Title:

**DEVELOPER:**

GILBANE DEVELOPMENT COMPANY, a Rhode Island corporation

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

Name: Russell W. Broderick

Title: Executive Vice President

**EXHIBIT A**  
**DEFINITIONS**

“Agreement” has the meaning given in the Preamble to this Agreement.

“Architect” has the meaning given in Section 5(a) (*Access to Project Site*).

“Authorized Representative” means the individuals listed as the single point of contact for each of the Developer and the University pursuant to Section 11 (*Compliance; Invoicing*).

“Books and Records” means any books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement or otherwise relate to the Project.

“Business Days” means a calendar day on which the University is open for business operations.

“Campus” has the meaning given in the Recitals to this Agreement.

“CHF” means the Collegiate Housing Foundation.

“Commonwealth” has the meaning given in Section 16(c) (*Governing Law; Venue*).

“Contractor” has the meaning given in Section 5(a) (*Access to Project Site*).

“Developer” has the meaning given in the Preamble to this Agreement.

“Developer Confidential Information” has the meaning given in Section 12(a) (*Confidentiality*).

“Developer Representatives” has the meaning given in Section 12(b) (*Confidentiality*).

“Development Agreement” has the meaning given in Section 7(b) (*Project Agreements*).

“Development Fee” has the meaning given in Section 4(a) (*Development Fee*).

“Dispute” means any dispute between the Parties concerning their respective rights and obligations under this Agreement.

“Effective Date” has the meaning given in the Preamble to this Agreement.

“Existing Project” has the meaning given in Section 1(c) (*Project*).

“Facility Program” has the meaning given in the Recitals to this Agreement.

“Financial Closing” has the meaning given in Section 7(c)(i) (*Financial Closing*).

“Financial Closing Deadline” has the meaning given in Section 7(c)(ii) (*Financial Closing Deadline*).

“Financial Model” has the meaning given in Section 7(d)(i) (*Financial Closing*).

“Financing Documents” has the meaning given in Section 2(d)(xii) (*Pre-Development Proposal; Pre-Development Activities*).

“Force Majeure Event” means a prevention, delay or stoppage of a Party’s performance of its obligations under this Agreement which arises as a result of the following events (provided such event does not arise out of the fault, negligence or misconduct of the Party affected by the delay): (a) acts of God, acts of the public enemy, acts of war or terrorism, order of a governmental authority of jurisdiction that prohibits the

Developer from performing the Work, fires, floods, earthquakes, natural disasters, civil commotion, or pandemics, epidemics, and quarantine restrictions not existing as of the Effective Date; (b) unreasonable or unjustified delay, based on the dates set forth in the Pre-Development Schedule, in obtaining or otherwise maintaining once issued, a necessary Project-related governmental approval or permit from any governmental entity; and (c) other like events.

“Ground Lease” has the meaning given in Section 7(b) (*Project Agreements*).

“KRS” means Kentucky Revised Statutes.

“Law” or “Laws” means (a) any constitution, statute, law, code, regulation, ordinance, rule or common law, (b) any binding judgment (other than regarding any Dispute), (c) any binding judicial or administrative order or decree (other than regarding any Dispute), or (d) any written directive or other governmental restriction (including those resulting from the initiative or referendum process, but excluding those by the University within the scope of its administration of this Agreement), in each case which is applicable to the Work or to either Party or an affiliated person, whether taking effect before or after the Effective Date. For avoidance of doubt, “Laws” include laws applicable to discrimination and unfair employment practices.

“Management Agreement” has the meaning given in Section 7(b) (*Project Agreements*).

“New Construction Project” has the meaning given in Section 1(c) (*Project*).

“New Project Company” has the meaning given in Section 16(k) (*Miscellaneous*).

“Open Records Act” has the meaning given in Section 12(d)(i) (*Kentucky Open Records Act*).

“Oversight Committee” has the meaning given in Section 2(d)(xvii) (*Pre-Development Proposal; Pre-Development Activities*).

“Party” and “Parties” has the meaning given in the Preamble to this Agreement.

“Permitted Persons” has the meaning given in Section 5(a) (*Access to Project Site*).

“Plans” has the meaning given in Section 2(d)(ii) (*Pre-Development Proposal; Pre-Development*).

“Pre-Development Activities” has the meaning given in Section 2(d) (*Pre-Development Proposal; Pre-Development*).

“Pre-Development Budget” has the meaning given in Section 3(b)(i) (*Pre-Development Budget*).

“Pre-Development Cost Cap” means \$6,275,000.

“Pre-Development Expenses” has the meaning given in Section 3(a)(iii) (*Pre-Development Expenses*).

“Pre-Development Proposal” has the meaning given in Section 2(c) (*Pre-Development Proposal; Pre-Development Activities*).

“Pre-Development Proposal Deadline” has the meaning given in Section 2(c) (*Pre-Development Proposal; Pre-Development Activities*).

“Pre-Development Schedule” has the meaning given in Section 3(c) (*Pre-Development Schedule*).

“Project” has the meaning given in Section 1(c) (*Project*).

“Project Agreements” has the meaning given in Section 7(b)(i) (*Project Agreements*).

“Project Occupancy Deadline Goal” has the meaning given in Section 2(b) (*Pre-Development Proposal; Pre-Development Activities*).

“Project Site” has the meaning given in Section 1(d) (*Project Site*).

“Project Terms” means those terms designated as “Project Terms” in **Exhibit C** (*Project Terms*).

“Purpose” has the meaning given in Section 12(a) (*Confidentiality*).

“RFQ” has the meaning given in the Recitals to this Agreement.

“RFQ Proposal” has the meaning given in the Recitals to this Agreement.

“Services Agreement” has the meaning given in Section 7(b)(i) (*Project Agreements*).

“Standard of Care” means a manner at least equal to the standard of care, exercise of professional skill and judgment, and quality of services rendered by companies performing the same or similar type services in connection with projects comparable to the Project for owners sufficiently similar in kind to the University, with Work pursued expeditiously and diligently in accordance with any milestones agreed upon by the Parties, and coordinated as necessary with the University and other governmental entities with jurisdiction. The “Standard of Care” shall require the Developer use commercially reasonable efforts to mitigate delays and damages, and otherwise perform the Work so as to ensure that the Project satisfies each of the purposes, objectives, functions, uses, and requirements set forth in this Agreement.

“Steering Committee” means the steering committee described in Section 15(b) (*Steering Committee*).

“Term” has the meaning given in Section 7(a) (*Term*).

“Termination for Convenience” has the meaning given in Section 8(e) (*Termination*).

“University” has the meaning given in the Preamble to this Agreement.

“University Confidential Information” has the meaning given in Section 12(b) (*Confidentiality*).

“University Delay” means any delay to the Pre-Development Schedule to the extent caused by the University (excluding delays consistent with the established timeframes for the University to conduct reviews and/or grant or deny discretionary approvals), including without limitation as a result of the University’s failure to comply with the terms of this Agreement.

“University Guidelines” means the design and other guidelines provided by the University to the Developer during the Term.

“University Indemnified Parties” has the meaning given in Section 13 (*Indemnification*).

“University Representatives” has the meaning given in Section 12(a) (*Confidentiality*).

“Work” means the obligations of the Developer under this Agreement.

“Work Product” has the meaning given in Section 10(a) (*Work Product*).



**EXHIBIT B**  
**RFQ PROPOSAL**

**EXHIBIT C**  
**PROJECT TERMS**

<b>Project Term Category</b>	<b>Project Term</b>			
Project Occupancy Deadline Goal	May 31, 2028			
Development Fee	3.25% <sup>1</sup>			
Incentive Development Fee	0.65% <sup>2</sup>			
Management Fee	1.90% <sup>3</sup>			
Incentive Management Fee	0.85% <sup>4</sup>			
Construction Manager Fee	\$1,200,000			
CHF Annual Fee	\$300,000			
Architect Fee	[ ]%			
Construction Contractor Overhead and Profit Mark-Up	[ ]%			
Development Agreement Contingency and Savings	<b>Tier<sup>5</sup></b>	<b>% of Total Contingency</b>	<b>University Share</b>	<b>Developer Share</b>
	Tier 1	10%	80%	20%
	Tier 2	20%	60%	40%
	Tier 3	30%	40%	60%
	Tier 4	40%	20%	80%

<sup>1</sup> Paid as set forth in this Agreement. Fees are calculated as a % of hard and soft costs of the New Construction Project, net of fees on fees.

<sup>2</sup> Paid upon Project Occupancy. Fees are calculated as a % of hard and soft costs of the New Construction Project, net of fees on fees.

<sup>3</sup> Fees are senior to debt service and calculated as % of Net Revenues collected.

<sup>4</sup> Subject to KPIs to be set forth in the Management Agreement. Fees are subordinated to debt service and will be paid if agreed upon by the University.

<sup>5</sup> Percentages and tiers are preliminary and will be negotiated as part of the Work.

**EXHIBIT D**  
**PROJECT SITE**

**EXHIBIT E**  
**PRE-DEVELOPMENT BUDGET**  
(see attached)

**EXHIBIT F**  
**PRE-DEVELOPMENT SCHEDULE**

(see attached)

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**AUTHORIZATION TO LEASE PROPERTY**

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**REQUEST:**

The President requests authorization of a lease agreement for property located at 1909 Creason Street, owned by AFGV, LLC (dba Campus Flats) and Western Kentucky University.

**FACTS:**

This lease agreement will provide for additional student housing during the interim period of repairs to Regents and Normal Halls, demolition of Douglas Keen and Hugh Poland Halls, and construction of a new residential complex. The Lease will commence on August 1, 2026 for a two-year term to expire on July 31, 2028, with the option for Western Kentucky University to extend the lease for up to three, one-year terms.

**BUDGETARY IMPLICATIONS:**

The parties have agreed that Western Kentucky University will pay a base monthly rent of \$140,000 to AFGV, LLC (dba Campus Flats) which will be offset by student housing revenue.

**RECOMMENDATION:**

President Timothy C. Caboni requests approval of the Lease between AFGV, LLC (dba Campus Flats) and Western Kentucky University.

**MOTION:**

To approve the Lease between AFGV, LLC (dba Campus Flats) and Western Kentucky University.

LEASE AGREEMENT

November \_\_\_\_, 2025

LANDLORD:

**AFGV, LLC**

a Kentucky limited liability company

TENANT:

**WESTERN KENTUCKY UNIVERSITY.**

PREMISES:

1909 Campus Flats  
1909 Creason St., Bowling Green, Kentucky

## LAND AND BUILDING LEASE AGREEMENT

This Land and Building Lease Agreement (“**Lease**”), effective as of November \_\_, 2025 (the “**Effective Date**”), but commencing as of August 1, 2026 (the “**Commencement Date**”), is made by and between AFGV, LLC, a Kentucky limited liability company (“**Landlord**”), and WESTERN KENTUCKY UNIVERSITY, a public body corporate, and an educational institution and agency of the Commonwealth of Kentucky (“**Tenant**”), with reference to the recitals set forth below.

### RECITALS

A. Landlord is the owner of that certain real property and the improvements thereon further described in Exhibit “A” (“**Premises**”), and certain fixtures and furniture contained therein (such furniture owned by Landlord, “**Furniture**”

B. Landlord desires to lease the Premises and Furniture to Tenant, and Tenant desires to lease the Premises and Furniture from Landlord, pursuant to the provisions of this Lease and subject to approval by the Tenant’s governing board.

C. The Premises will be used by Tenant for student housing and related educational purposes.

### 1. DEFINITIONS

The following terms, when used in this Lease, shall have the meaning set forth in this Article.

#### 1.1. Base Monthly Rent

The term “**Base Monthly Rent**” shall mean One Hundred Forty Thousand Dollars and no cents (\$140,000.00).

#### 1.2. Lease Year

The term “**Lease Year**” shall mean the first twelve (12) full calendar months after the Commencement Date and each subsequent twelve (12) month period thereafter during the Term and any extensions. If the Commencement Date is other than the first day of the month, then the first Lease Year also will include the partial month in which the Commencement Date occurs.

#### 1.3. Hazardous Material

The term “**Hazardous Material**” includes, without limitation, (i) any material or substance which is defined as a “hazardous waste,” “extremely hazardous waste,” “restricted hazardous waste,” “hazardous substance,” or “hazardous material,” by any United States federal, local or state law, (ii) oil and petroleum products and their by-products (including without limitation, gasoline and diesel), pollutants, pollution, contaminants or contamination as those terms are commonly used or as defined or designated under any Environmental Law, (iii) asbestos, or asbestos-containing materials, (iv) any material or substance which is designated as a “hazardous



substance” pursuant to the Federal Water Pollution Control Act, (v) all chemical, petroleum, or biological wastes, contaminants, emissions, discharges, or pollutants, whether hazardous or non-hazardous, liquid, solid or gaseous, and whether from any production, operation, maintenance, manufacturing, processing, storage, use or other activity, where such waste is regulated under federal, state, or local law which is designed to protect health, safety or the environment, (vi) any material or substance which is defined as a “hazardous waste” pursuant to the Federal Resource Conservation and Recovery Act, or (vii) any material or substance which is defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.

#### 1.4. Environmental Laws

The term “**Environmental Laws**” shall mean any law, statute, ordinance, policy, common law, directive, demand, requirement, regulation, order, or rule now or hereafter promulgated by any governmental entity, whether local, state, or federal relating to Hazardous Materials, air pollution, water pollution, noise control, waste release, species, habitat, human health, occupational, environmental conditions, and/or transporting, storing, handling, release, discharge or disposal of Hazardous Material, including, without limitation, the following: the Clean Air Act; the Resource Conservation and Recovery Act, as amended by the Hazardous Waste and Solid Waste Amendments of 1984; the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act; the Federal Insecticide, Fungicide and Rodenticide Act, as amended; the Safe Drinking Water Act; OSHA; the Hazardous Liquid Pipeline Safety Act; the Hazardous Materials Transportation Act; and the National Environmental Policy Act, in each case, as now exist and as may at any later time be adopted or amended from time to time.

Landlord represents that, to the best of its knowledge, there are no existing violations of any Environmental Laws upon the Premises.

#### 1.5. Property Taxes.

The term “**Property Taxes**” shall mean all taxes, assessments, excises, levies, fees, and charges (and any tax, assessment, excise, levy, fee, or charge levied wholly or partly in lieu thereof or as a substitute therefor or as an addition thereto) of every kind and description, general or special, ordinary or extraordinary, foreseen or unforeseen, secured or unsecured, whether or not now customary or within the contemplation of Landlord and Tenant, that are levied, assessed, charged, confirmed, or imposed on or against, or otherwise with respect to, the Premises or any part thereof or any personal property used in connection with the Premises, including, without limitation, real, *ad valorem*, personal property, gross income, franchise, margin, commercial activity, withholding, profits, and gross receipts taxes. It is the intention of Landlord and Tenant that all new and increased taxes, assessments, levies, fees and charges be included within the definition of Property Taxes for the purpose of this Lease.

#### 1.6. Academic Year.

The term "Academic Year" shall mean the period from August 15 through May 15 of each calendar year during the Term, which corresponds to Tenant's standard academic calendar.

1.7. Student Resident.

The term "Student Resident" shall mean any student enrolled at Western Kentucky University who resides in the Premises pursuant to a housing agreement with Tenant.

**2. CONDITION OF THE PREMISES**

2.1. Landlord leases to Tenant and Tenant leases from Landlord the Premises and Furniture with representations and warranties that all building systems, including HVAC, electrical, plumbing, and structural elements, are in good working order as of the Commencement Date. Landlord shall, at its expense, promptly correct any defect identified during the Term of the Lease.

2.2. Pre-Commencement Inspection.

No later than thirty (30) days prior to the Commencement Date, representatives of Landlord and Tenant shall conduct a joint inspection of the Premises to identify any defects or deficiencies that require correction. Landlord shall, at its sole cost and expense, correct all such defects and deficiencies prior to the Commencement Date.

2.3. Compliance with Laws and Regulations.

Landlord represents and warrants that, as of the Commencement Date, the Premises shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, the Americans with Disabilities Act, building codes, fire codes, and health and safety regulations.

**3. TERM**

3.1. Term

The term ("Term") of this Lease shall commence upon the Commencement Date and expire July 31, 2028. As otherwise expressly stated, the terms and conditions of this Lease shall remain in effect during any extension, renewal or holdover of the Term.

3.2. Option to Extend.

Tenant shall have the option to extend the Term for three (3) additional periods of one (1) years each (each, an "Extension Term") upon the same terms and conditions as set forth in this Lease, except that the Base Monthly Rent for each Extension Term shall be increased by three percent (3%) over the Base Monthly Rent in effect during the immediately preceding Term or Extension Term. Tenant may exercise each option to extend by giving Landlord written notice of its intent to extend at least Three Hundred Sixty-five (365) days prior to the expiration of the then-current Term or Extension Term

### 3.3. Surrender of Premises; Holding Over

On the last day or sooner termination of the term of this Lease, Tenant shall quit and surrender the Premises and Furniture, together with all alterations, vacant and free of all tenancies and any leasehold rights therein and in good condition and repair, normal wear and tear and pre-existing conditions excepted, broom clean and free of violations, and shall surrender all keys for the Premises to Landlord at the place then fixed for the payment of rent and shall inform Landlord of all combinations of locks, safes, and vaults, if any, in the Premises. If Tenant does not surrender the Premises substantially as required, Tenant shall have a ten (10) business day grace period to vacate without penalty. Thereafter, Tenant shall be deemed a month-to-month tenant at a rent equal to the Base Monthly Rent payable during the last full month of the Term, subject to the same terms and conditions of this Lease. Tenant shall indemnify Landlord only for direct, reasonable losses caused by Tenant's delay in surrendering the Premises, provided Landlord provides written notice of such losses within thirty (30) days of the holdover.

## 4. **BASE MONTHLY RENT**

### 4.1. Base Monthly Rent

Tenant shall pay to Landlord the Base Monthly Rent within five (5) business days following the first day of each month, without prior notice, invoice, demand, deduction, or offset whatsoever.

If the Commencement Date is not the first day of the month or this Lease terminates on a day which is not the last day of the month, as the case may be, then Base Monthly Rent for the month in which this Lease commences or terminates shall be prorated based upon the actual number of days in the period subject to proration. If the first day of the calendar month falls on a day which is a Saturday, Sunday, or a day which is, in the city and state in which Tenant is located, either a legal holiday or a day on which banking institutions are authorized by law to remain closed for the entire day, then Base Monthly Rent shall be payable on the next business day.

### 4.2. Rent During Academic Breaks.

Notwithstanding anything to the contrary in this Lease, Tenant shall continue to pay Base Monthly Rent during academic breaks, including winter break, spring break, and summer break, regardless of the occupancy level of the Premises during such periods.

## 5. **SECURITY DEPOSIT**

### 5.1 Security Deposit

On or before the Commencement Date, Tenant shall deposit with Landlord the sum of Two Hundred Eighty Thousand and No/100 Dollars (\$280,000.00) (the "Security Deposit"). The Security Deposit shall be held by Landlord as security for the full and faithful performance by Tenant of all of the terms, covenants, and conditions of this Lease.

Landlord may use, apply, or retain all or any portion of the Security Deposit for the following purposes:

- (i) to cure any default in the payment of Base Monthly Rent or Additional Rent not cured by Tenant within applicable notice and cure periods;
- (ii) to reimburse Landlord for the cost of repairs to the Premises required to be made by Tenant under this Lease, beyond ordinary wear and tear;
- (iii) to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default under this Lease; and
- (iii) to clean the Premises or remove personal property left by Tenant after the expiration or earlier termination of the Lease.

Notwithstanding the foregoing, Tenant may elect, upon thirty (30) days' prior written notice to Landlord, to apply the Security Deposit to the final two (2) months of Base Monthly Rent Page 5 of 32 due under the Lease, provided that (a) no Event of Default then exists, and (b) Tenant has otherwise fully complied with all other material terms and obligations under the Lease.

## **6. USE OF THE PREMISES; PARKING**

### **6.1. Permitted Use**

Tenant shall use the Premises only for the purpose of furnishing housing to students of Western Kentucky University, hosting of university-related activities, including camps and conferences, and other uses for which university dormitories are typically used, and such other uses as may be incidental thereto, and any other purpose that supports the educational mission of Western Kentucky University ("Use") and no other uses without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed. Tenant has satisfied itself, and represents to Landlord, that such Use is lawful and conforms to all applicable zoning and other use restrictions and regulations applicable to the Premises.

### **6.2. No Covenant to Operate**

Nothing in this Lease shall be deemed to impose upon Tenant, either directly or indirectly, constructively or implicitly, any obligation to construct any improvements (other than Tenant's obligations to restore the Premises as set forth in this Lease), open for business, or remain open or operate at the Premises or any portion thereof at any time, in accordance with any operating schedule, or in any manner whatsoever. The methods and manner of Tenant's operation of the Premises, if any, shall be determined solely by Tenant in its sole and absolute discretion.

### **6.3. Parking**

Without limiting any other rights of Tenant to use parking available upon the Premises. Tenant shall have no obligation to maintain any such parking facilities, and Landlord shall be responsible for taking all action to cause the responsible parking under any such parking agreement to fulfill its maintenance and other obligations with respect to same.

6.4. Security.

Tenant shall have the right, but not the obligation, to provide security personnel and implement security measures at the Premises as Tenant deems appropriate in its sole discretion. Landlord shall cooperate with Tenant in the implementation of such security measures, including, without limitation, providing Tenant with access to security systems and equipment installed at the Premises.

**7. PROPERTY TAXES, OTHER CHARGES, ASSESSMENTS AND UTILITIES**

7.1. Property Taxes

Landlord shall remain responsible for all Property Taxes which shall be timely paid as the bills come due.

7.2. Utility Payments

Landlord shall promptly pay when due all charges all utilities, including but not limited to water, wastewater, gas, electricity, and all other utilities furnished to or used upon the Premises during the Term, including all charges for installation, termination, and relocations of such service.

7.3. Internet and Telecommunication Services.

Landlord shall provide, at its sole cost and expense, high-speed internet access and telecommunications services to the Premises, with sufficient bandwidth and capacity to accommodate the needs of Student Residents. Such services shall be available in all residential units and common areas of the Premises. Landlord shall be responsible for maintaining and repairing all equipment and infrastructure related to such services

7.4. Service Interruptions.

In the event of any interruption in utility services or internet access that continues for more than twenty-four (24) hours, Landlord shall use commercially reasonable efforts to restore such services as promptly as possible. If such interruption continues for more than seventy-two (72) hours and materially affects Tenant's use of the Premises, Tenant shall be entitled to a pro rata abatement of Base Monthly Rent for the affected portion of the Premises for the duration of the interruption

**8. FURNITURE AND FIXTURES**

8.1. Landlord's Furniture and Personal Property

During the Term, Tenant may use the Landlord's unit furniture, fixtures and appliances which the Landlord shall leave on the Premises. Landlord shall keep each unit furnished in a manner consistent with its operation prior to this Lease.

8.1.1. Damage to the Landlord's Furniture. If any of the Landlord's Furniture or Personal Property is damaged by any resident during the term of this Piece, the Tenant shall be responsible

to the Landlord for the cost to repair or replace such damaged item. Landlord shall repair or replace all damaged items with comparable items and shall provide Tenant written evidence of such costs. Tenant shall pay the actual cost incurred by Landlord for such repairs or replacements, without markup or premium.

#### 8.2. Tenant's Personal Property

During the Term Tenant may, at Tenant's expense, place or install such furniture, trade fixtures, machinery, furnishings, face plates of signage and other articles of movable personal property (collectively, "**Tenant's Personal Property**") on the Premises as may be needed for the conduct of Tenant's business. It is expressly understood that the term Tenant's Personal Property as used herein shall in no event extend to the Furniture or to leasehold improvements, fixtures or similar "vanilla shell" items such as light fixtures, HVAC, or other fixtures and Furniture permanently affixed to the Premises.

#### 8.3. Furniture

Tenant shall cause all Furniture to be free and clear of any lien or other security interest at all times during the Term of this Lease. Tenant shall have the right, at any time and from time to time, in its sole and absolute discretion, to install, alter, remove and/or replace the Furniture as it shall deem to be useful or desirable in connection with its business at the Premises, provided that Tenant agrees to leave sufficient Furniture in place at the expiration or earlier termination of this Lease such that the Premises shall be able to function consistent with industry standards and with the standards of Landlord's operations prior to the commencement of this lease. Any transfer, assignment, encumbrance, lien or security interest granted or filed with respect to all or any portion of the Furniture or other assets owned by Landlord in violation of the foregoing shall be void ab initio.

#### 8.4. Removal of Tenant's Personal Property at Expiration of Lease

At the expiration or earlier termination of the Lease, Tenant's Personal Property may be removed at the option of Tenant. In the alternative, at the expiration or earlier termination of the Lease, Landlord may require Tenant to remove Tenant's Personal Property within a reasonable time following receipt of written notice from Landlord. Tenant immediately shall make such repairs and restoration of the Premises as may be necessary to repair any damage to the Premises from the removal of Tenant's Personal Property. Any of Tenant's Personal Property not so removed shall be deemed abandoned, and Landlord may cause such property to be removed from the Premises and disposed of, but the reasonable cost of any such removal shall be borne by Tenant. The provisions of this paragraph shall survive the expiration or termination of this Lease.

#### 8.5. Right to Affix Signs, Banners and Decals

Tenant shall have the right to decorate the Premises and affix such signs, banners and decals customarily used in its business upon the windows, doors, interior and exterior walls (excluding the roof) of the Premises, and such sign panels or free-standing signs as may seem appropriate to Tenant and are authorized by any governmental authority having jurisdiction over the Premises and permitted by any covenants, conditions and restrictions encumbering the Premises ("**Signage**"). Upon the expiration or earlier termination of the Lease, Tenant shall remove such

Signage within a reasonable time following receipt of written notice from Landlord; provided, however, in no event may Tenant remove free-standing Signage (such as pole-mounted or monument signs) from the Premises. Any sign panels removed from any pylon sign structures promptly shall be replaced with blank sign panels, so as to preserve the integrity of the pylon sign structure. Tenant promptly shall make such repairs and restoration of the Premises as are necessary to repair any damage to the Premises from the removal of the Signage. Notwithstanding the foregoing, in no event shall Tenant exercise any rights under this Section 8.5 that may adversely affect any existing Signage rights benefiting the Premises (including without limitation any existing variance or legal-nonconforming Signage rights) without the prior written consent of Landlord.

#### **8.6. Inventory of Furniture and Equipment.**

Within thirty (30) days after the Commencement Date, Landlord and Tenant shall jointly prepare and sign an inventory of all Furniture and equipment provided by Landlord for Tenant's use during the Term. Such inventory shall include a description of the condition of each item. Landlord and Tenant shall update such inventory annually during the Term

### **9. MAINTENANCE AND REPAIRS OF THE PREMISES; COMPLIANCE**

#### **9.1. Landlord's Obligation to Maintain the Premises**

During the Term of this Lease, Landlord shall, at its sole cost and expense, keep and maintain the Premises in good order and repair. Landlord's maintenance obligations shall include, but are not limited to, the exterior and interior of the Premises, interior non-load-bearing walls, flooring, lighting, pool and pool components, the sidewalks, curbs, trash enclosures, landscaping and any sprinkler system (if installed), light standards, and parking areas located within the Premises. Landlord shall also be responsible for the routine maintenance and servicing of the HVAC system in accordance with manufacturer recommendations and industry standards; shall be responsible for replacement of the HVAC system or any of its major components.

#### **9.2. Obligation to Keep the Premises Clear**

Tenant shall keep the Premises clean and free from rubbish and debris. Tenant shall store all trash and garbage within the Premises and arrange for regular pickup and cartage of such trash and garbage at Tenant's expense.

#### **9.3. Compliance**

Tenant, at Tenant's sole expense, promptly shall comply with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the Term or any part of the Term hereof, regulating the use by Tenant of the Premises, including, without limitation, the obligation at Tenant's cost, to alter, maintain, repair, or restore the Premises (including, without limitation, access and accessible features) in compliance and conformity with all laws relating to the condition, use, accessibility or occupancy of the Premises during the Term and regardless of (i) whether the improvements were foreseen or unforeseen, and (ii) the period of time remaining in the Term. Tenant shall not be obligated to make structural

modifications to comply with legal requirements unless required solely as a result of Tenant's specific use or improvements. Notwithstanding the foregoing, Landlord, at Landlord's sole expense, shall be solely responsible for all maintenance, repairs, renovations, and alterations necessary to cause the Premises to be and remain in compliance with the Americans with Disabilities Act.

#### 9.4. Maintenance Standards and Response Times.

Landlord shall respond to maintenance requests from Tenant according to the following schedule:

1. Emergency maintenance requests (e.g., flooding, gas leaks, electrical hazards): within two (2) hours of notification.
2. Urgent maintenance requests (e.g., HVAC failure, hot water failure): within twenty-four (24) hours of notification.
3. Routine maintenance requests: within seventy-two (72) hours of notification.

Landlord shall provide Tenant with emergency contact information for maintenance issues that occur outside of normal business hours.

#### 9.5. Pest Control.

Landlord shall, at its sole cost and expense, provide regular pest control services for the Premises, including preventative treatments and response to specific pest issues reported by Tenant. Such services shall be performed by licensed pest control professionals and shall comply with all applicable laws and regulations.

### 10. **ALTERATIONS AND IMPROVEMENTS**

#### 10.1. Tenant Right to Make Alterations

At all times during the Term of this Lease, except as provided in this Lease, Tenant shall have the right to make alterations, additions and improvements ("**Alterations**") to the interior or exterior of the Premises and parking areas adjacent to the Premises. Nevertheless, the following shall not be made by Tenant without the prior written consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed): Alterations that (i) are structural in nature, (ii) materially negatively impact parking, (iii) in any manner involve or impact the roofing system, and/or (iv) require a variance, conditional use permit, or similar instrument from a governmental authority. Unless Landlord otherwise elects at its option, all Alterations shall upon installation become the property of Landlord and Tenant shall have no right or interest therein except to continue to use same during the remainder of the Term of this Lease. If Tenant shall make Alterations without Landlord's prior written consent or otherwise in violation of the provisions hereof, then at the request of Landlord, Tenant shall at its own cost and expense remove from the Premises all additions, changes, alterations or improvements not reasonably acceptable to Landlord, and Tenant shall repair all damage caused by such installation and removal. Alterations shall be accomplished by Tenant in a good, expeditious, quality workmanlike manner, in



conformity with applicable laws, zoning, regulations, ordinances, orders and covenants, conditions and restrictions encumbering the Premises, and by a licensed contractor; and with respect to Alterations requiring Landlord's consent, the contractor shall be approved by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. Prior to commencement of any Alterations, Tenant shall provide to Landlord copies of documents as shall reasonably be requested by Landlord, including, without limitation, permits and governmental approvals, architectural plans and manufacturer specifications. Upon written request from Landlord, within thirty (30) days of completion of any Alterations, Tenant shall provide to Landlord final "as-built" plans, copies of all construction contracts, inspection reports, proof of payment of all labor and materials (including final unconditional lien waivers from the general contractor and all subcontractors), and such documentation as reasonably may be requested by Landlord (including, without limitation, digital photographs documenting the progress and completion of the Alterations). Tenant shall pay when due all claims for such labor and materials and shall give Landlord at least ten (10) days' prior written notice of the commencement of any Alterations. Landlord may enter upon the Premises, in such case, for the purpose of posting appropriate notices, including, but not limited to, notices of non-responsibility.

#### 10.2. Landlord Alterations.

Landlord agrees that prior to the Commencement Date that it will convert all two room units to four room units.

#### 10.3. Tenant Shall Not Render Premises Liable For Any Lien

Tenant shall have no right, authority, or power to bind Landlord, or any interest of Landlord in the Premises, nor to render the Premises liable for any lien or right of lien for the payment of any claim for labor, material, or for any charge or expense incurred to maintain, to repair, or to make Alterations to the Premises. Tenant shall in no way be considered the agent of Landlord in the construction, erection, modification, repair, or alteration of the Premises. Notwithstanding the above, Tenant shall have the right to contest the legality or validity of any lien or claim filed against the Premises. No contest shall be carried on or maintained by Tenant after the time limits in the sale notice of the Premises for any such lien or claim unless Tenant (i) shall have duly paid the amount involved under protest; (ii) shall have procured and recorded a lien release bond from a bonding company acceptable to Landlord in an amount not less than one and one-half (1-1/2) times the amount involved; or (iii) shall have procured a stay of all proceedings to enforce collection. Upon a final adverse determination of any contest, Tenant shall pay and discharge the amount of the lien or claim determined to be due, together with any penalties, fines, interest, cost, and expense which may have accrued, and shall provide proof of payment to Landlord.

#### 10.4. Accessibility Improvements.

Landlord shall, at its sole cost and expense, make any alterations or improvements to the Premises required to comply with the Americans with Disabilities Act or other accessibility laws, regulations, or ordinances, regardless of when such requirements become effective. Tenant shall

promptly notify Landlord of any accessibility issues or concerns that come to Tenant's attention during the Term.

## 11. INDEMNITY AND INSURANCE

### 11.1. Indemnification

Tenant's Indemnification. To the fullest extent permitted by law, Tenant shall indemnify, defend and protect Landlord, its corporate parent(s) and affiliates, officers, directors, employees and agents (collectively, "**Indemnitees**") and hold Landlord harmless from any and all loss, cost, damage, expense and/or liability (including, without limitation, court costs and reasonable attorneys' fees) incurred in connection with or arising at any time and from any cause whatsoever in or about the Premises, other than damages proximately caused by reason of occurrences prior to the Commencement Date or the negligence or willful misconduct of Landlord or its agents and employees, including, without limiting the generality of the foregoing: (i) any default by Tenant in the observance or performance of any of the terms, covenants or conditions of this Lease on Tenant's part to be observed or performed; (ii) the use or occupancy of the Premises by Tenant or any person claiming by, through, or under Tenant; (iii) any acts, omissions or negligence of Tenant or any person claiming by, through or under Tenant or any of its affiliates, or of the contractors, agents, servants, employees, visitors or licensees of Tenant or any of its affiliates, in, on or about the Premises during the Term (including, without limitation, any holdovers in connection therewith), including, without limitation, any acts, omissions, or negligence on or after the Commencement Date in the construction and/or installation of the improvements and Furniture on the Premises in the making or performance of any Alterations. Tenant further agrees to indemnify and hold harmless the Indemnitees from and against any and all loss, cost, liability, damage, and expense (including, without limitation, reasonable attorneys' fees) incurred in connection with or arising from any claims by any persons by reason of injury to persons or damage to property occasioned by any use, occupancy, condition, occurrence, happening, act, omission or negligence referred to in the preceding sentence. The provisions of this Section shall survive the expiration or sooner termination of this Lease with respect to any claims or liability occurring during the Term prior to such expiration or termination and shall not be limited by reason of any insurance carried by Landlord and Tenant.

Defense of Claims. In case any action or proceeding is threatened or brought against any Indemnatee by reason of any such claim, (i) such Indemnatee may notify Tenant to resist or defend such action or proceeding, and such Indemnatee will upon the giving of such notice cooperate and assist in the defense of such action or proceeding if reasonably requested to do so by Tenant, and (ii) Tenant may, except during the continuance of an Event of Default and provided it acknowledges in writing that the claim is fully indemnified by it under this Lease, retain counsel of its choice reasonably acceptable to Landlord to defend such action. Notwithstanding the foregoing, Indemnatee shall have the right, but not the obligation, to assume control of the defense and settlement of any claim for which indemnity is required hereunder if (i) Indemnatee reasonably believes, after consultation with counsel, that the use of counsel chosen by Tenant to represent Indemnatee would present such counsel with an actual or potential conflict of interest, (ii) Tenant shall not have engaged counsel to have charge of the defense of such action within a reasonable period after the date of notice of the claim for which indemnification is sought is given to Tenant, or (iii) Indemnatee shall have reasonably concluded that there may be material defenses available

to it or them which are different from or additional to those available to Tenant or otherwise being pursued on behalf of Indemnitee after Landlord has exercised reasonable commercial efforts to cause Tenant's counsel to raise a reasonable defense and Tenant's counsel has not done so. If any event described in clauses (i) through (iii) shall occur, then Tenant shall not have the right to direct the defense of the indemnifiable action, and Indemnitee shall be entitled to direct the defense of such action with counsel of its own choice, and the reasonable fees and expenses of Indemnitee shall be borne by Tenant, provided that such counsel shall be reasonably acceptable to Tenant. In addition to the foregoing, if there is an Event of Default that has occurred and is continuing or if Tenant fails to acknowledge in writing that a claim for indemnification asserted by an Indemnitee is fully indemnifiable by Tenant under this Lease, then Indemnitee will have the right to select counsel, and the reasonable fees and expenses of such counsel shall be paid by Tenant.

#### 11.2. Landlord's Indemnification.

Landlord shall indemnify, defend, and hold harmless Tenant, its officers, directors, employees, and agents from and against any and all claims, demands, liabilities, damages, judgments, costs, and expenses (including reasonable attorneys' fees) arising from or related to (i) any breach by Landlord of its obligations under this Lease, (ii) any negligent act or omission or willful misconduct of Landlord or its agents, employees, or contractors, or (iii) any condition of the Premises existing prior to the Commencement Date. Landlord's indemnification obligations under this Section shall not extend to claims, demands, liabilities, damages, judgments, costs, and expenses occurring after the termination of this Lease. Landlord shall remain obligated to indemnify Tenant for claims, demands, liabilities, damages, judgments, costs, and expenses described in this Section before the termination of this Lease to the extent such claims, demands, liabilities, damages, judgments, costs, and expenses are unresolved before such termination.

#### 11.3 Insurance by Tenant

From and after the Commencement Date and continuing throughout the Term of this Lease, Tenant shall, at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance coverage:

- (a) Commercial general liability and property damage insurance (including contractual liability) providing coverage against liability for personal and bodily injury, death and property damage covering all operations of Tenant at the Premises, having limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, with a TWO MILLION DOLLAR (\$2,000,000) aggregate and umbrella coverage of no less than FIVE MILLION DOLLARS (\$5,000,000) per occurrence or FIVE MILLION DOLLARS (\$5,000,000) aggregate. Any deductibles or self-insured retentions or sub-limits must be declared and approved by Landlord. The insurance to be maintained by Tenant pursuant to this Section 11.2 may be procured in any combination of primary, umbrella and/or excess coverage (as long as the umbrella and/or excess policies are at least as broad as the primary policies). Such insurance, and any and all other liability insurance maintained by Tenant in excess of or in addition to that required hereunder, shall name Landlord as an additional insured.

All insurance policies required to be carried by Tenant as provided in this Article 11 shall be issued by insurance companies authorized and licensed to do business in the State in which the Premises is located and have an A.M. Best rating no less than A- (IX). All such policies shall be for periods of not less than one year and Tenant shall renew the same at least fifteen (15) days prior to the expiration thereof. All such policies shall name Landlord as additional insured or loss payee, as appropriate, as well as any mortgagee or collateral assignee of Landlord, at Landlord's request, and shall require not less than thirty (30) days written notice to Landlord prior to any cancellation thereof (ten (10) days for cancellation due to nonpayment) or any change reducing coverage thereunder. Tenant shall deliver to Landlord, or Landlord's designee, within thirty (30) days of Landlord's request for same, a certificate or certificates thereof.

Insurance required to be carried by this Lease may be carried under blanket policies provided that any such blanket policy otherwise complies with the requirements for insurance set forth in this Lease. Such allocated coverage shall equal or exceed the insurance requirements set forth in this Lease.

The insurance to be maintained by Tenant in this Article 11 in all events shall be primary and not contributory to any other insurance maintained by Landlord, it being expressly understood and agreed that any policy(ies) maintained by Landlord are solely for its own benefit (and not for the benefit of Tenant), and under no circumstances shall any such policy(ies) ever be deemed to be other insurance covering loss or damage otherwise the responsibility of Tenant pursuant to the terms hereof.

#### 11.4. Insurance Certificate Requirements

11.4.1. Certificate Delivery. Tenant shall deliver to Landlord or Landlord's designee evidence of the existence and amounts of the insurance with additional insured endorsements and loss payable clauses as required herein. Tenant shall deliver to Landlord or Landlord's designee the then most current versions of an ACORD 25 Certificate of Liability Insurance in connection with Tenant's liability policy(ies) and an ACORD 28 Evidence of Commercial Property Insurance in connection with Tenant's property policy(ies) (together, the "**ACORD Forms**"), such ACORD Forms to be delivered to Landlord or Landlord's designee, together with a copy of the additional insured endorsement set forth in Section 11.4 below, on or before the Commencement Date and thereafter, prior to expiration of the policies. In the event Tenant delivers ACORD Forms or procures policies that set forth an entity other than Tenant as the "insured" ("**Insured Party**") under the applicable policy(ies), Tenant hereunder represents and agrees that (i) the Insured Party is an affiliate of Tenant and has an insurable interest in Tenant and the Premises, (ii) Tenant has the right to bind the Insured Party and (iii) the Insured Party automatically shall be joined in this Lease for the purposes of being bound by the provisions of Articles 11 and 12 (but not otherwise). To the extent Tenant delivers ACORD Forms to Landlord that indicate a variance between the requirements of this Article 11 and the policy provisions and coverages maintained by Tenant, under no circumstances shall Landlord's acceptance of such ACORD Forms ever be deemed to constitute a waiver by Landlord of the express requirements set forth herein. Within ten (10) days following Landlord's request, Tenant shall deliver to Landlord complete, certified copies of Tenant's insurance policies. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to any insurance coverage, shall be deemed to limit or restrict in any way the liability of Tenant arising under or out of this Lease.

11.4.2. Blanket Policies. Insurance required to be carried by this Lease may be carried under blanket policies provided that any such blanket policy: (a) otherwise complies with the requirements for insurance set forth in this Lease; and (b) except in the case of Liability Insurance, specifies how much coverage, and which sub-limits, apply exclusively to the Premises. Such allocated coverage shall equal or exceed the insurance requirements set forth in this Lease.

11.5. Additional Insureds; Loss Payee

Tenant shall name as additional insureds, on all liability policies, the following parties:

AFGV, LLC, TOGETHER WITH ITS MEMBERS, EMPLOYEES, AGENTS, SUBSIDIARIES, AFFILIATES, SUCCESSOR(S) AND ASSIGN(S).

Tenant shall cause any and all contractors performing work on the Premises for or on behalf of Tenant to maintain commercial general liability insurance with limits of coverage commensurate with the scope of work being performed, and naming both Tenant and Landlord as additional insureds thereunder.

Tenant shall name Landlord as loss payee by way of a Lender's Loss Payable Provisions endorsement (ISO Form CP 12 18 06 95) without modification (or equivalent endorsement) on all property policies insuring the Premises.

11.6. Mortgage Endorsement

At Landlord's option, the policies of insurance required to be maintained hereunder shall bear a standard first mortgage endorsement in favor of any holder or holders of a first mortgage lien or security interest in the property with loss payable to such holder or holders as their interests may appear.

11.7. Renewals, Lapses or Deficiencies

Tenant shall, on or before the Commencement Date, and thereafter, prior to the expiration of such policies, furnish Landlord with the ACORD Forms evidencing its compliance with this Article 11. Should Tenant fail to timely deliver to Landlord the ACORD Forms, or in the event of a lapse or deficiency of any insurance coverage specified herein for any reason, Landlord (without the need for any notice or cure period) may immediately procure and replace the deficient insurance coverage with a policy of insurance covering the Premises of the type and in the limits set forth above. Upon written notice from Landlord of the placement of insurance, Tenant shall immediately pay to Landlord, as Additional Rent, an amount equal to (collectively, "**Insurance Costs**") (i) the total cost of premiums and expense of such insurance placement plus (ii) actual and reasonable handling fees. Tenant shall be responsible for payment of any deductible or self-insured retention maintained under policies procured by Landlord pursuant to this Section 11.6. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies. If Tenant does or permits to be done anything which shall increase the cost of the insurance policies, then upon Landlord's demand Tenant shall immediately pay to Landlord, as Additional Rent, an amount equal to the additional premiums attributable to any acts or omissions or operations of Tenant causing the increase in the cost of insurance.

#### 11.8. Waiver of Subrogation

Each party hereby waives and releases any and all right of recovery against the other, including, without limitation, employees and agents, arising during the Term of the Lease for any and all loss (including, without limitation, loss of rental) or damage to property located within or constituting a part of the Premises. This waiver is in addition to any other waiver or release contained in this Lease. Tenant shall have its insurance policies issued in such form as to waive any right of subrogation that might otherwise exist, and shall provide written evidence thereof to Landlord upon written request.

#### 11.9. Financial Assurance Requirements

Should any financial assurance requirements pursuant to Environmental Laws be imposed on Tenant's use of, or activities at, the Premises, Tenant promptly and timely shall comply with those requirements as they take effect.

#### 11.10. Landlord's Insurance Tracking Provider.

Upon written request from Landlord, Tenant shall register with Landlord's insurance tracking provider, "My COI", or such other tracking provider as may from time to time be designated by written notice from Landlord to Tenant, and shall use commercially reasonable efforts to respond to any inquiries and communications from such tracking provider.

#### 11.11. Landlord's Insurance Obligations.

Landlord shall, at its sole cost and expense, maintain in full force and effect throughout the Term the following types and amounts of insurance:

1. Commercial general liability insurance with limits of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence and FIVE MILLION DOLLARS (\$5,000,000) in the aggregate.
2. Property insurance covering the Premises and all improvements thereon, including the building, fixtures, and Landlord's Furniture, in an amount equal to the full replacement cost thereof, with no coinsurance penalty provision.
3. Rental interruption insurance covering a period of not less than twelve (12) months.
4. Workers' compensation insurance as required by applicable law.

Landlord shall provide Tenant with certificates of insurance evidencing the coverage required under this Section 10.10 upon Tenant's request

### **12. PARTIAL AND TOTAL DESTRUCTION OF THE PREMISES**

#### 12.1. Damage to the Premises

12.1.1. Repair and Restoration. In the event any part or all of the Premises shall at any time during the Term of this Lease be damaged, regardless of cause, Tenant shall give prompt notice to Landlord. Landlord shall repair and restore the Premises to its original condition (including buildings and all other improvements on the Premises, and with any and all modifications as may be necessary to meet code compliance) as soon as circumstances permit, up to the amount of insurance proceeds actually received by Tenant. Tenant shall hold Landlord free and harmless from any and all liability of any nature whatsoever resulting from such damage or destruction, and such repairs and restoration. Landlord shall be entitled to receive the net proceeds of property insurance maintained by Tenant and shall be required to use such proceeds for purposes of discharging its restoration and repair obligations under this Section 12.1. Tenant, shall be responsible for paying the insurance deductible, and Landlord shall be responsible for any cost of repairs and restoration in excess of the proceeds available from insurance policies procured by Tenant. Tenant is entitled to rent abatement during or resulting from any disturbance from partial or total destruction of the Premises, which shall be calculated as a pro rata reduction in the rental obligation based on the percentage of unusable square footage. If more than half of the available square footage is damaged or destroyed, Landlord shall repair the damage up to the limit of insurance, but may otherwise terminate its obligations under the lease if the repairs cannot reasonably be completed within ninety (90) days.

12.1.2. Insurance Claims. Following an Event of Default, Landlord in its discretion and upon notice to Tenant may adjust, collect and compromise all claims under any of the insurance policies obtained by Tenant with respect to the Premises (except commercial general liability insurance claims payable to a person other than Tenant, Landlord or Landlord's lender) and execute and deliver on behalf of Tenant all necessary proofs of loss, receipts, vouchers and releases required by the insurers. Tenant agrees to assign all such proofs of loss, receipts, vouchers and releases as Landlord may direct. If Landlord so requests, Tenant shall adjust, collect and compromise any and all such claims, and Landlord and Landlord's lender shall have the right to join with Tenant therein. Any adjustment, settlement or compromise of any such claim shall be subject to the prior written approval of Landlord, which shall not be unreasonably withheld, and Landlord shall have the right to prosecute or contest, or to require Tenant to prosecute or contest, any such claim, adjustment, settlement or compromise. Following an Event of Default, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to Landlord, in which event Landlord will deliver such payments to Tenant, subject to this Article 12 and Tenant hereby appoints Landlord as Tenant's attorney-in-fact to endorse any draft therefor. The rights of Landlord under this Section 12.1.2 shall be extended to Landlord's lender if and to the extent that any mortgage so provides.

## 12.2. Temporary Relocation of Student Residents.

In the event of damage to the Premises that renders any portion thereof uninhabitable, Landlord shall, at its sole cost and expense, provide temporary alternative housing for any displaced Student Residents for the duration of the repair and restoration period. Such alternative housing shall be of comparable quality and located within a reasonable distance from the Tenant's campus. Landlord shall coordinate with Tenant regarding the relocation of Student Residents and

shall provide transportation between the alternative housing and the campus if the alternative housing is located more than one mile from campus.

### 13. CONDEMNATION

#### 13.1. Condemnation Damages

In the event of the taking or conveyance in fee of, or temporary use of, or perpetual easement upon, the whole or any part of the Premises by reason of condemnation by any public or quasi-public body (“**Condemnation**”), Landlord and Tenant shall represent themselves independently in seeking damages before the condemning body (the “**Condemnor**”). Each party shall be entitled to the amount awarded respectively to each. Landlord shall be entitled to the entirety of the award and any and all damages arising from or associated with the Condemnation, except that Tenant shall have the right to make a claim against the Condemnor for the following:

13.1.1. That portion of the award expressly attributable to the value of Tenant’s leasehold improvements made to the Premises by Tenant in accordance with this Lease, so long as Tenant has the right to remove such improvements from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease, but elects not to remove;

13.1.2. That portion of the award expressly attributable to the value of Tenant’s Personal Property installed in the Premises in accordance with this Lease, so long as Tenant has the right to remove such Tenant’s Personal Property from the Premises upon the expiration or termination of the Lease pursuant to the provisions of this Lease;

13.1.3. All relocation benefits separately awarded for: (i) removing Tenant’s Personal Property; (ii) damage or loss to Tenant’s business and good will and (iii) moving and relocation expenses; and

13.1.4. Provided (i) Tenant is then occupying the Premises (i.e., at the time the Condemnor is physically occupying the portion of the Premises subject to a temporary Condemnation) and (ii) there is no then uncured Event of Default, that portion of the award attributable to a temporary Condemnation to the extent the temporary Condemnation affects Tenant’s leasehold interest in the Premises during the Term and not Landlord’s fee interest in the Premises, such as (by way of example only) the taking of a temporary construction easement.

#### 13.2. Termination of Lease Due to Condemnation

In the event the entirety of the Premises or a material or significant portion of the land (it being agreed that the loss or relocation of any access point to the Premises (including, but not limited to drive lanes and automobile queue areas) or parking available for the Premises shall be deemed to materially adversely affect the Use of the Premises) and/or the building comprising the Premises is permanently acquired in Condemnation, which Condemnation will materially adversely affect the Use of the Premises, Tenant may terminate this Lease by giving Landlord written notice of its intention to terminate the Lease within sixty (60) days following the date upon which Tenant receives written notice of the nature, extent and scope of the Condemnation or otherwise becomes aware of such facts sufficient to put Tenant on notice of the full effects of the



Condemnation. This Section 13.2 shall not alter the method of distribution of the Condemnation award set forth above in Section 13.1.

In the event this Lease is terminated as provided herein, the effective date of the termination shall be the date upon which fee simple interest in the Premises is deemed to have passed to the condemning authority, and Tenant shall be released from further obligations or liabilities arising under the Lease with respect to the Premises with the exception of those obligations which accrued or arose prior to the effective date of the Condemnation and those liabilities which, pursuant to the terms of the Lease, survive expiration or termination of the Lease. In the event of termination, Base Monthly Rent, Property Taxes, Other Charges and any other items of Additional Rent (collectively, "**Rent and Charges**") shall be prorated based upon the actual number of days in the period to be prorated. Within thirty (30) days following the termination, Landlord shall refund to Tenant any Rent and Charges paid to Landlord in advance of the termination.

### 13.3. Restoration

If Tenant does not elect or is not entitled to terminate this Lease in accordance with this Article 13, then (i) the Term of this Lease shall remain the same and unaffected by such condemnation, with the base Monthly Rent to be equitably reduced in proportion to the taking, (ii) Landlord shall be entitled to the entire award in connection therewith, and (iii) Landlord shall commence restoring the Premises to as close to the pre-taking condition as is reasonably practical given the area taken, as soon as reasonably possible and thereafter proceed with diligence (subject to reasonable time periods for obtaining the condemnation proceeds and required permits and approvals) to complete such restoration as soon thereafter as is practicable..

## 14. ASSIGNMENT AND SUBLETTING

### 14.1. Tenant's Right of Assignment and Subletting

- (a) Assignments Generally. Tenant shall not assign this Lease without in any such case the express prior written consent of Landlord. Tenant shall not be released from, and shall remain principally and primarily liable for, the full and prompt performance of each of the terms and provisions of this Lease following any assignment, except as may be provided to the contrary in subsection (c) herein below. The acceptance by Landlord of Rent following any assignment shall not be deemed to be a consent by Landlord to any such assignment, nor shall such acceptance of Rent be deemed a waiver of any right or remedy of Landlord hereunder. Tenant may sublease all or a portion of the Premises provided that Tenant shall remain liable hereunder, the permitted use and other terms hereof shall remain applicable, and the sublease shall be expressly subject and subordinate to this Lease.
- (b) Permitted Assignments. Notwithstanding anything to the contrary in this Lease, assignment by Tenant of its interest in this Lease that satisfies the requirements and conditions of any of the Permitted Assignments described in any of clauses (i), (ii) or (iii) below will be permitted without Landlord's approval/consent (but Tenant shall provide to Landlord with written notice thereof promptly following any such

Permitted Assignment and, in the case of clause (iii) below, shall also provide the applicable certification and documentation described therein) and, in furtherance of (but without limiting the generality of) the foregoing, it is expressly acknowledged and agreed by Landlord and Tenant that, except as may be provided to the contrary in clause (c) following, no Permitted Assignment will (x) release Tenant from any liability or obligations under this Lease, or (y) result in (or be deemed or construed to constitute, give rise to or form the basis of) a default, Event of Default or breach by Tenant of any covenant, agreement, obligation, undertaking or agreement of Tenant under (or otherwise relating to) this Lease. For purposes hereof, the term “**Permitted Assignment**” shall mean and include each of the following assignments:

- (i) an assignment to Western Kentucky University;
  - (ii) an assignment to an entity established for the purpose of supporting Western Kentucky University’s educational mission, to include student housing; or
  - (iii) an assignment in connection with a transaction involving a sale of substantially all of the assets of Tenant to a Third Party.
- (c) Conditions to Release of Assigning Tenant. While neither an assignment nor Permitted Assignment will release the assigning Tenant of any liability or obligation under or with respect to this Lease as aforesaid, Landlord does agree that, if assignment or Permitted Assignment of the Lease occurs hereunder, Landlord will agree in connection with such assignment or Permitted Assignment to release the assigning Tenant with regard to liabilities and obligations to be paid and performed under this Lease from and after the date of the assignment or Permitted Assignment or the date thereafter upon which such Assignee qualifies hereunder (but not any liabilities or obligations accrued but unpaid or unperformed prior thereto), provided and so long as (i) the Assignee under any such assignment or Permitted Assignment will not use the Premises other than for the permitted use, (ii) the Assignee together with any guarantor thereof will immediately following the assignment or Permitted Assignment at issue qualify as an Assignee under clause (b)(ii) or (b)(iii) above, and (iii) the Assignee assumes in writing for the benefit of Landlord the liabilities and obligations of the Tenant to be paid and performed under this Lease from and after the date of such assignment or Permitted Assignment. So long as Tenant is released in accordance with the foregoing, the cross-default provision set forth in Section 15.1.4 of this Lease automatically shall be deemed to have been removed from this Lease, and this Lease no longer shall be deemed to be a lease between Landlord and Tenant (or their respective affiliates) for the purposes of any cross-default provision contained in any other lease between Landlord and Tenant (or their respective affiliates).

#### 14.2. Landlord’s Right of Assignment

Landlord shall be free at all times, without need of consent or approval by Tenant, to assign its interest in this Lease and/or to convey fee title to the Premises. Each conveyance by Landlord

of Landlord's interest in the Lease or the Premises prior to expiration or termination hereof shall be subject to this Lease and, provided that the assignee agrees in writing to assume all of the obligations of Landlord hereunder, shall relieve the grantor of any further obligations or liability as Landlord, and Tenant shall look solely to Landlord's successor in interest for all future obligations of Landlord. Tenant hereby agrees to attorn to Landlord's successors in interest, whether such interest is acquired by sale, transfer, foreclosure, deed in lieu of foreclosure, or otherwise. The term "**Landlord**" as used in this Lease, so far as covenants and obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner at the time in question of the fee title of the Premises. Without further agreement, the transferee of such title shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder during its ownership of the Premises.

#### 14.3. Subletting to Student Residents.

Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to enter into housing agreements with Student Residents for the use and occupancy of residential units within the Premises without Landlord's consent. Such housing agreements shall not be deemed subleases for purposes of this Lease, and Tenant shall have the sole right to establish the terms and conditions of such housing agreements, including, without limitation, the rental rates, term, and rules and regulations governing the use and occupancy of the residential units.

### 15. **DEFAULT AND TERMINATION**

#### 15.1. Event of Default

The occurrence of any of the following events (each an "**Event of Default**") shall constitute a default by Tenant:

15.1.1. Failure by Tenant to pay Base Monthly Rent as and when such Base Rent becomes due, and such failure continues for twenty (20) days after written notice to Tenant reporting that such payment is past due; provided, however, that Landlord shall not be required to send more than two (2) notices of non-payment of monthly Base Rent within any twelve (12) month time period and any failure to pay any subsequent installment of monthly Base Rent when due during said twelve (12) month period shall be an Event of Default.

15.1.2. Failure by Tenant to deliver to Landlord evidence of the existence and amounts of the insurance with endorsements and loss payable clauses as required pursuant to Article 11, if the failure is not cured within ten (10) days after notice has been given to Tenant.

15.1.3. Failure by Tenant to perform or comply with any provision of this Lease not otherwise specifically mentioned in this Section 15, if the failure is not cured within thirty (30) days after notice has been given to Tenant, or in the event of an Emergency, within twenty-four (24) hours after notice has been given to Tenant. As used herein, the term "**Emergency**" shall mean a condition that gives rise to a reasonable basis for Landlord to believe the integrity of the improvements situated on the Premises or the safety of persons on or about the Premises may be or may imminently be in peril or jeopardy if immediate action is not taken. If, however, the failure cannot reasonably be cured within the above cure period, Tenant shall not be in default of this

Lease if Tenant commences to cure the failure within the cure period and diligently and in good faith continues to cure the failure.

15.1.4. To the extent permitted by law, a general assignment by Tenant or any guarantor of the Lease for the benefit of creditors, or the filing by or against Tenant or any guarantor of any proceeding under any insolvency or bankruptcy law, unless in the case of a proceeding filed against Tenant or any guarantor the same is dismissed within sixty (60) days, or the appointment of a trustee or receiver to take possession of all or substantially all of the assets of Tenant or any guarantor, unless possession is restored to Tenant or such guarantor within thirty (30) days, or any execution or other judicially authorized seizure of all or substantially all of Tenant's assets located upon the Premises or of Tenant's interest in this Lease, unless such execution or seizure is discharged within thirty (30) days.

15.1.5. Tenant shall fail to comply with the insurance requirements of Section 11.2 and such failure continues for more than three (3) business days following notice to Tenant of such failure.

15.1.6. Tenant shall enter into a transaction or series of transactions in violation of Section 14 (Assignment and Subletting).

Any notice delivered pursuant to this Section 15.1 shall be in lieu of, and not in addition to, any notice required by law.

## 15.2. Landlord's Remedies

Landlord shall have any one or more of the following remedies after the occurrence of an uncured default by Tenant. These remedies are exclusive.

15.2.1. Terminate this Lease by giving written notice of termination to Tenant, in which event Tenant immediately shall surrender the Premises to Landlord. If Tenant fails to so surrender the Premises, then Landlord, without prejudice to any other remedy it has for possession of the Premises or arrearages in rent or other damages, may re-enter and take possession of the Premises and expel or remove Tenant and any other person or entity occupying the Premises or any part thereof.

15.2.2. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of this Lease. Notwithstanding anything contained herein to the contrary, if Landlord elects to terminate this Lease, Landlord may, to the extent not prohibited under applicable law, recover as damages from Tenant the following: (i) all applicable Base Monthly Rent and Additional Rent then due under the Lease through the date of termination; (ii) the applicable Base Monthly Rent due for the remainder of the Term as such Base Monthly Rent is scheduled to become due, to be reduced by any rent or other amounts Landlord receives from reletting the Premises; (iii) the cost of reletting the Premises, including without limitation the anticipated period of vacancy until the Premises can be re-let at its fair market rental value; and (iv) any other costs and expenses that Landlord may reasonably incur in connection with the Event of Default.

15.2.3. Landlord may re-enter and take possession of the Premises without terminating this Lease. Landlord shall use commercially reasonable efforts to mitigate its damages, including taking reasonable steps to relet the Premises. Landlord's action under this Subsection is not considered an acceptance of Tenant's surrender of the Premises unless Landlord so notifies Tenant in writing. Tenant shall be immediately liable to Landlord for all costs Landlord incurs in reletting the Premises, including brokers' commissions, expenses of remodeling the Premises required by the reletting, and like costs. Tenant shall pay to Landlord the rent due under this Lease on the dates the rent is due, less the rent Landlord receives from any reletting.

If Landlord elects to relet the Premises without terminating this Lease, any rent received will be applied to the account of Tenant, not to exceed Tenant's total indebtedness to Landlord; no reletting by Landlord is considered to be for its own account unless Landlord has notified Tenant in writing that the Lease has been terminated. If Landlord elects to relet the Premises, rent that Landlord receives from reletting will be applied to the payment of: (i) first, any indebtedness from Tenant to Landlord other than rent due from Tenant; (ii) second, all costs, including costs of fulfilling maintenance obligations of Tenant hereunder, incurred by Landlord in reletting; and (iii) third, rent due and unpaid under the Lease. After deducting the payments referred to in this Subsection, any sum remaining from the rent Landlord receives from reletting will be held by Landlord and applied in payment of future rent as rent becomes due under this Lease. If, on the date rent is due under this Lease, the rent received from the reletting is less than the rent due on that date, Tenant will pay to Landlord, in addition to the remaining rent due, all costs, including costs of fulfilling maintenance obligations of Tenant hereunder, Landlord incurred in reletting which remain after applying the rent received from the reletting. Tenant shall have no right to or interest in the rent or other consideration received by Landlord from reletting to the extent it exceeds Tenant's total indebtedness to Landlord.

15.2.4. In all events, Tenant is liable for all direct damages suffered by Landlord as a result of the occurrence of an Event of Default. If Tenant fails to pay Landlord in a prompt manner for the damages suffered, Landlord may pursue a monetary recovery from Tenant.

### 15.3. Late Charge; Default Interest

If Tenant fails to pay when due any payment of rent or other charges which Tenant is obligated to pay to Landlord under this Lease, there shall be a late charge, immediately payable by Tenant as Additional Rent, in the amount of three percent (3%) of each such obligation if unpaid for more than five (5) days after the due date. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for accounting and administrative expenses incurred by Landlord. In addition to the foregoing, if any payment tendered by Tenant to Landlord is dishonored by the financial institution upon which the payment is drawn (e.g., insufficient funds, uncollected funds, account closed, payment stopped, etc.), Tenant shall pay to Landlord the greater of Twenty Dollars (\$20.00) or the actual service fee charged by Landlord's financial institution in connection with such dishonored payment.

In addition to the late charge, any and all rent or other charges which Tenant is obligated to pay to Landlord under this Lease which are unpaid, shall bear interest from the date said payment was due until paid at the lesser of (i) the prime commercial rate being charged by the Bank of America N.A. in effect on the date due plus two percent (2%) per annum; or (ii) the maximum rate permitted

by law, said interest to be payable by Tenant as Additional Rent. If Bank of America N.A. is no longer in existence, then another comparable bank or financial institution shall be substituted by Landlord. Landlord and Tenant agree that this sum is reasonable to compensate Landlord for the loss of the use of funds.

#### 15.4. Right of Landlord to Re-Enter

In the event of any termination of this Lease or of Tenant's possession of the Premises (without termination of the Lease), Landlord shall have the immediate right to enter upon and repossess the Premises, and any personal property of Tenant may be removed from the Premises and stored in any public warehouse at the risk and expense of Tenant.

#### 15.5. Surrender of Premises

No act or thing done by Landlord or any agent or employee of Landlord during the Term shall be deemed to constitute an acceptance by Landlord or a surrender the Premises unless such intent is specifically acknowledged in a writing signed by Landlord. The delivery of keys to the Premises to Landlord or any agent or employee of Landlord shall not constitute a surrender of the Premises or effect any partial or full termination of this Lease, whether or not the keys are thereafter retained by Landlord and, notwithstanding such delivery, Tenant shall be entitled to the return of such keys at any reasonable time upon request until this Lease shall have been terminated properly. The voluntary or other surrender of this Lease by Tenant, whether accepted by Landlord or not, or a mutual termination hereof, shall not work a merger, and at the option of Landlord shall operate as an assignment to Landlord of all subleases or subtenancies affecting the Premises.

#### 15.6. Default by Landlord

In the event Landlord fails to perform any provision of this Lease required of it, Tenant shall have any remedies now or later allowed by law or in equity, to include termination of the Lease if the default is not cured within thirty (30) days of Landlord being provided notice.

#### 15.7. Tenant's Right to Cancel

Pursuant to KRS 56.806(6), Tenant to required to reserve the right to cancel this Lease upon written notice within thirty (30) days.

### 16. **RIGHT OF ENTRY**

16.1. Landlord and Landlord's authorized representatives shall have the right (but not the obligation) after at least seventy-two (72) hours' written notice to Tenant (except in the event of an actual emergency that presents imminent risk of harm to persons or entities, when written notice is not required and notice may be given telephonically to Tenant by Landlord), to enter upon the Premises at all reasonable hours for the purpose of inspecting the Premises, or of making repairs, additions or Alterations in or upon the Premises, and addressing Events of Default concerning Emergencies, and for the purpose of exhibiting the Premises to prospective purchasers or others.

#### 16.2. Student Privacy.

Landlord acknowledges that the Premises will be occupied by Student Residents and agrees to respect their privacy and educational environment. Except in the case of an emergency, Landlord shall coordinate with Tenant regarding the timing of any entry into residential units to minimize disruption to Student Residents. Tenant shall have the right to have a representative present during any entry by Landlord into residential units

#### **17. WAIVER OF BREACH**

No waiver by either party of any breach of any one or more of the terms, covenants, conditions, or agreements of this Lease shall be deemed to imply or constitute a waiver of any succeeding or other breach. Failure of either party to insist upon the strict performance of any of the terms, conditions, covenants, and agreements of this Lease shall not constitute or be considered as a waiver or relinquishment of such party's rights to subsequently enforce any default, term, condition, covenant, or agreement, which shall all continue in full force and effect. The rights and remedies of either party under this Lease shall be cumulative and in addition to any and all other rights and remedies which such party has or may have.

#### **18. NOTICES**

All notices, requests, or demands herein provided to be given or made, or which may be given or made by either party to the other (excluding Emergencies), shall be given or made only in writing in the English language and shall be deemed to have been duly given:

- (i) upon delivery, or if delivery is rejected when delivery was attempted, of U.S. Certified Mail, properly addressed, postage prepaid with return receipt requested; or
- (ii) upon delivery, or if delivery is rejected when delivery was attempted, when sent via overnight or express mail courier, properly addressed and postage prepaid; or
- (iii) when delivered personally at the address set forth below, or to any agent of the party to whom notice is being given, or if delivery is rejected when delivery was attempted; or
- (iv) via facsimile transmission on a machine that prints the date and time of transmission on the notice or
- (v) by e-mail, and if so sent, (a) the subject line of the e-mail shall state "URGENT: NOTICE TO [LANDLORD] [TENANT]" (or substantially similar thereto) and (b) followed within one (1) business day by a copy sent by a method prescribed in (i), (ii) or (iv) above.

Notwithstanding the above-prescribed methods of delivery, actual receipt of written notice by a party designated below shall constitute notice given in accordance with this Lease on the date received, unless deemed earlier given pursuant to the foregoing methods of delivery. The proper address, facsimile number and e-mail to which notices, requests or demands may be given or made by either party shall be as set forth below, or to such other address or to such other person as any

party shall designate in writing. Such address, facsimile number or e-mail may be changed by written notice given to the other party in accordance with this Article.

**If to Landlord:** AFGV, LLC

\_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

With a copy to:

**If to Tenant:** Western Kentucky University.

\_\_\_\_\_  
\_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

With a copy to:

## **19. RELATIONSHIP OF THE PARTIES**

This Lease shall not be deemed or construed by the parties, nor by any third party, as creating the relationship of (i) principal and agent, (ii) partnership, or (iii) joint venture between the parties. Neither the method of computation of rent nor any other provision of this Lease, nor any acts of the parties are other than in the relationship of Landlord and Tenant.

## **20. SUBORDINATION, ATTORNMENT AND ESTOPPEL**

### **20.1. Subordination and Non-Disturbance**

Subject to the provisions of this Section, this Lease and the leasehold estate created hereby shall be, at the option and upon written declaration of Landlord, subject, subordinate, and inferior to the lien and estate of any liens, trust deeds, and encumbrances (“**Mortgages**”), and all renewals, extensions, or replacements thereof, now or hereafter imposed by Landlord upon the Premises; provided, however, that this Lease shall not be subordinate to any Mortgage, or any renewal, extension, or replacement thereof, unless and until Landlord provides Tenant with a subordination, non-disturbance and attornment agreement (“**Non-Disturbance Agreement**”), in a form satisfactory to Tenant in Tenant’s reasonable discretion, in recordable form, which Non-Disturbance Agreement also shall include such commercially reasonable modifications and additional provisions as are customarily requested by secured lenders with liens encumbering real property similar to the Premises, including, without limitation, Tenant’s agreement to attorn as set forth in Section 20.2 below. Tenant shall, promptly following a request by Landlord and after receipt of the Non-Disturbance Agreement, execute and acknowledge any subordination



agreement or other documents required to establish of record the priority of any such encumbrance over this Lease, so long as such agreement does not otherwise increase Tenant's obligations or diminish Tenant's rights hereunder.

## 20.2. Attornment

In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then (i) this Lease shall continue in force; (ii) Tenant's quiet possession shall not be disturbed if Tenant is not in default hereunder; (iii) Tenant shall attorn to and recognize the mortgagee or purchaser at foreclosure sale ("**Successor Landlord**") as Tenant's landlord for the remaining Term of this Lease; and (iv) the Successor Landlord shall not be bound by (a) any payment of rent for more than one month in advance; (b) any amendment, modification, or ending of this Lease without the Successor Landlord's consent after the Successor Landlord's name is given to Tenant, unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Landlord's prior agreement or consent; and (c) any liability for any act or omission of a prior Landlord. At the request of the Successor Landlord, Tenant shall execute a new lease for the Premises, setting forth all of the provisions of this Lease except that the Term of the new lease shall be for the balance of the Term of this Lease.

## 21. **AUTHORITY TO MAKE LEASE; COVENANT OF QUIET ENJOYMENT**

### 21.1. Full Power and Authority to Enter Lease

The parties covenant and warrant that each has full power and authority to enter into this Lease. If Tenant is a corporation, limited liability company, trust or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity. If Tenant is a corporation, limited liability company, trust or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord. If Tenant is a partnership, Tenant shall furnish Landlord with a copy of Tenant's partnership agreement and with a certificate from Tenant's attorney, stating that the partnership agreement constitutes a correct copy of the existing partnership agreement of Tenant.

Without limiting the generality of the foregoing, Landlord represents that it has the unconditional right to enter into this Lease and that Landlord's entry into this Lease will not violate any franchise, license, or other contractual agreements.

### 21.2. Quiet Enjoyment

Landlord covenants and warrants that Tenant shall have and enjoy full, quiet, and peaceful possession of the Premises, its appurtenances and all rights and privileges incidental thereto during the Term, as against all persons claiming by, through, or under Landlord, subject to the provisions of this Lease and any title exceptions or defects in existence on the Commencement Date.

### 21.3. No Violation of Covenants and Restrictions

Landlord represents and warrants to Tenant that the Use will not violate any encumbrances, covenants, conditions, restrictions, easements, rights of way, or other matters of record, including Title Instruments, pertaining to the Premises.

Subject to the foregoing, Tenant leases the Premises subject to all encumbrances, covenants, conditions, restrictions, easements, rights of way, and all other matters of record now or in the future affecting the Premises, including Title Instruments; (collectively, “**State of Facts**”). Tenant shall not violate, permit a violation, or cause Landlord to violate any zoning ordinance or regulation, recorded covenants or restrictions affecting the Premises, including the Title Instruments. Tenant shall defend, indemnify, and hold harmless Landlord (with counsel reasonably acceptable to Landlord) from any out-of-pocket costs or expenses (including, without limitation, attorneys’ fees and costs) actually incurred by Landlord as a result of a third-party claim for which Tenant has any liability hereunder with respect to (i) such a violation, (ii) any State of Facts, or (iii) any Title Instrument. Landlord and Tenant each covenant and agree that they will not enter into covenants, restrictions or agreements that would encumber the Premises without the consent of the other, which consent shall not be unreasonably withheld if same is reasonably necessary in connection with Landlord’s interest in the Premises or Tenant’s leasehold interest in the Premises.

Tenant hereby acknowledges and agrees that Landlord reserves the right, in its reasonable business judgment, at any time during the Term of this Lease, to enter into new (or amend or supplement existing) agreements encumbering the Premises that have the effect of benefiting and/or burdening the Premises; provided, however, no such agreements shall have the effect of unreasonably interfering with Tenant’s use and enjoyment of the Premises.

## **22. GENERAL PROVISIONS**

### **22.1. Recitals**

The Recitals set forth on Page 1 above are incorporated herein by this reference.

### **22.2. Gender; Number**

The use of (i) the neuter gender includes the masculine and feminine and (ii) the singular number includes the plural, whenever the context requires.

### **22.3. Captions**

Captions in this Lease are inserted for the convenience of reference only and do not define, describe, or limit the scope or the intent of this Lease or any of its terms.

### **22.4. Exhibits**

All attached exhibits are a part of this Lease and are incorporated in full by this reference. Except as specifically provided herein, if any provision contained in any exhibit hereto is inconsistent or in conflict with any provisions of this Lease, the provisions of this Lease shall supersede the provisions of such exhibit and shall be paramount and controlling.

### **22.5. Entire Agreement**

This Lease contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Lease.

22.6. Drafting

This Lease shall not be construed more strictly against one party than the other because it may have been drafted by one of the parties or its counsel, each having contributed substantially and materially to the negotiation and drafting hereof.

22.7. Modification

No modification, waiver, amendment, discharge, or change of this Lease shall be valid unless it is in writing and signed by the party against which the enforcement of the modification, waiver, amendment, discharge, or change is or may be sought.

22.8. Joint and Several Liability

If any party consists of more than one person or entity, the liability of each such person or entity signing this Lease shall be joint and several.

22.9. Governing Law

This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

22.10. Enforceability

Tenant warrants and represents that the terms of this Lease are fully enforceable in the localities in which the Premises are located. In the event any provision contained in this Lease is inconsistent or in conflict with local law, custom, or practice, the provisions of this Lease shall supersede and shall be paramount and controlling.

22.11. Attorneys' Fees

With respect to any provision in this Lease providing for payment or indemnification of attorneys' fees, such fees shall be deemed to include reasonable fees incurred through any applicable appeal process, and shall include fees attributable to legal services provided by any in-house counsel and staff to the prevailing or indemnified party. For purposes hereof, the services of in-house counsel and their staff shall be valued at rates for independent counsel prevailing in the metropolitan area in which such counsel and staff practice.

22.12. Time of Essence

Time is of the essence of every provision of this Lease.

#### 22.13. Severability

In the event any term, covenant, condition, or provision of this Lease is held to be invalid, void, or otherwise unenforceable by any court of competent jurisdiction, the fact that such term, covenant, condition, or provision is invalid, void, or otherwise unenforceable shall in no way affect the validity or enforceability of any other term, covenant, condition, or provision of this Lease.

#### 22.14. Successors and Assigns

Except as otherwise provided herein, all terms of this Lease shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective legal representatives, successors, and assigns.

#### 22.15. Independent Covenants

This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent, and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to any offset of the rent or other amounts owing hereunder against Landlord; provided, however, the foregoing shall in no way impair the right of Tenant to commence a separate action against Landlord for any violation by Landlord of the provisions hereof so long as notice is first given to Landlord and any holder of a mortgage or deed of trust covering the Premises (of whose address Tenant has theretofore been notified) and an opportunity is granted to Landlord and such holder to correct such violation as provided above.

#### 22.16. Information Provided

Tenant warrants and represents that all information Tenant has provided to Landlord is accurate and correct and Tenant acknowledges that Landlord has relied upon such information in entering into this Lease.

#### 22.17. Waiver of Trial by Jury

Landlord and Tenant do hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other, upon any matters whatsoever arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises and/or any claim of injury or damage. It further is agreed that in the event Landlord commences any summary proceeding for non-payment of rent or Additional Rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding.

#### 22.18. Characterization of Lease

Landlord and Tenant intend that:

this Lease is a "true lease" and not a financing lease, capital lease, mortgage, equitable mortgage, deed of trust, trust agreement, security agreement or other financing or trust arrangement, and the economic realities of this Lease are those of a true lease; and

the business relationship created by this Lease and any related documents is solely that of a long-term commercial lease between landlord and tenant and has been entered into by both parties in reliance upon the economic and legal bargains contained herein.

22.19. No Lease Until Accepted

Landlord's delivery of unexecuted copies or drafts of this Lease is solely for the purpose of review by the party to whom delivered and is in no way to be construed as an offer by Landlord nor in any way implies that Landlord is under any obligation to lease the Premises. When this Lease has been executed by both Landlord and Tenant, it shall constitute a binding agreement to lease the Premises upon the terms and conditions provided herein and Landlord and Tenant agree to execute all instruments and documents and take all actions as may be reasonably necessary or required in order to consummate the lease of the Premises as contemplated herein.

22.20. Counterparts

This Lease may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one agreement. Any signature on a copy of this Lease or any document necessary or convenient thereto sent by electronic transmission or facsimile shall be binding upon transmission and the electronic or facsimile copy may be utilized for the purposes of this Lease.

22.21. Survival.

The provisions of this Lease which by their terms, nature and content, or by any reasonable interpretation thereof, are intended to survive any termination, cancellation or expiration of this Lease, including, but not limited to, Tenant's or Landlord's indemnity obligations, shall so survive and continue after such termination, cancellation or expiration.

22.22. Force Majeure.

Neither Landlord nor Tenant shall be deemed in default with respect to any of the terms, covenants, and conditions of this Lease if such party's failure to timely perform is due to any cause beyond such party's control, including, without limitation, acts of God, war, terrorism, insurrection, civil commotion, strikes, labor disputes, fire, flood, earthquake, or other casualty, government regulation or restriction, or weather conditions (collectively, "Force Majeure Events"); provided, however, that this Section shall not apply to the obligations imposed with regard to Base Monthly Rent and other charges to be paid by Tenant pursuant to this Lease.

22.23. Compliance with University Policies.

Landlord acknowledges that Tenant is a public institution of higher education and agrees to comply with all applicable policies, procedures, and regulations of Tenant while on the Premises, including, without limitation, policies related to non-discrimination, sexual harassment, and campus safety

## 23. OPTION TO PURCHASE

### 23.1. Option to Purchase.

In consideration of Tenant's entry into this Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby grants to Tenant a conditional option to purchase the entirety of the Premises the purchase price and terms of which will be negotiated at a later date and in compliance with state law (such option to purchase, the "**Option**").

### 23.2. Option to Remain Applicable in Event of Third-Party Conveyance.

The Option shall remain in effect even in the event of a third-party conveyance of the Premises by Landlord to another party, and in no event shall any such conveyance deemed to nullify or terminate the Option. Any purchaser or other acquirer of the Premises while the Option remains in effect shall take the Premises subject to the Option.

## 24. ADDITIONAL PROVISIONS

### 24.1. Student Life Programming.

Landlord acknowledges that Tenant may conduct student life programming and activities at the Premises to enhance the educational experience of Student Residents. Landlord agrees to cooperate with Tenant in facilitating such programming and activities, including, without limitation, providing access to common areas and amenities for such purposes.

### 24.2. Academic Calendar Coordination

Landlord acknowledges that Tenant operates on an academic calendar and agrees to coordinate maintenance, repairs, and other activities that may disrupt Student Residents with Tenant's academic calendar to minimize disruption to Student Residents. To the extent practicable, Landlord shall schedule major maintenance and repair projects during academic breaks or summer months when occupancy is typically lower.

### 24.3. Sustainability Initiatives

Landlord and Tenant shall cooperate in implementing sustainability initiatives at the Premises, including, without limitation, energy and water conservation measures, waste reduction and recycling programs, and the use of environmentally friendly cleaning products and maintenance practices. Landlord shall, at its sole cost and expense, provide recycling facilities and services at the Premises.

### 24.4. Campus Safety and Security

Landlord acknowledges that campus safety and security are essential to Tenant's educational mission and agrees to cooperate with Tenant in implementing and maintaining safety and security measures at the Premises. Such measures may include, without limitation, controlled access systems, security cameras, emergency call boxes, and adequate lighting in all common areas

and parking facilities. Landlord shall provide Tenant with access to security systems and equipment installed at the Premises to facilitate coordination with Tenant's campus safety personnel.

#### 24.5. Resident Assistants and Staff

Tenant shall have the right to designate certain residential units within the Premises for use by resident assistants, resident directors, and other staff members who provide support services to Student Residents. Landlord acknowledges that such staff members play an important role in creating a positive living and learning environment for Student Residents and agrees to cooperate with Tenant in accommodating such staff housing needs.

#### 24.6. Move-In and Move-Out Procedures

Landlord and Tenant shall cooperate in establishing and implementing efficient move-in and move-out procedures for Student Residents at the beginning and end of each academic term. Such procedures shall be designed to minimize disruption to the Premises and surrounding areas and may include, without limitation, staggered move-in and move-out times, designated loading and unloading areas, and temporary parking arrangements.

#### 24.7. Maintenance Request System

Landlord shall establish and maintain an electronic maintenance request system that allows Student Residents to submit maintenance requests online. Such system shall provide automatic notifications to Tenant's designated representatives and shall track the status of all maintenance requests. Landlord shall provide Tenant with access to the maintenance request system and regular reports on the status of maintenance requests.

#### 24.8. Annual Inspection and Maintenance Plan

Prior to the beginning of each academic year, Landlord and Tenant shall conduct a joint inspection of the Premises to identify any maintenance or repair issues that need to be addressed. Based on such inspection, Landlord shall prepare an annual maintenance plan that addresses identified issues and includes preventative maintenance measures. Landlord shall provide Tenant with a copy of the annual maintenance plan and regular updates on its implementation.

*{Signature Page To Follow}*

*Signature Page to Land and Building Lease Agreement*

**LANDLORD**

**AFGV, LLC**

a Kentucky limited liability company

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

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

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

**TENANT**

**WESTERN KENTUCKY UNIVERSITY**

a public body corporate, and an educational institution  
and agency of the Commonwealth of Kentucky

By: *Dusna J. Hawthorn*

Title: *EVP Strategy, Ops & Finance*

Date: *11/18/25*



**LAND AND BUILDING LEASE AGREEMENT**

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PREMISE**