

**LEASE AGREEMENT**

---

between

**BOARD OF TRUSTEES FOR FRANCIS MARION UNIVERSITY,**  
as Lessor

and

**FMU STUDENT HOUSING, LLC,**  
as Lessee

---

**DATED AS OF MARCH 1, 2004**

TABLE OF CONTENTS

	<u>Page</u>
Parties .....	1
Recitals .....	1
Section 1 Definitions .....	2
Section 2 Term .....	6
Section 3 Rent .....	6
Section 4 Financing of the 2004 Student Housing Facility .....	6
Section 5 Taxes and Assessments .....	6
Section 6 Utility Services .....	7
Section 7 Payments for the Lessee by the Lessor .....	7
Section 8 Interest on Unpaid Accounts .....	7
Section 9 Compliance by the Lessee with Laws and Ordinances .....	7
Section 10 Quiet Enjoyment .....	8
Section 11 Construction of Improvements .....	8
Section 12 Operation of Student Housing Facility .....	12
Section 13 Security Interest .....	12
Section 14 Assignment of Lease .....	13
Section 15 Maintenance of Property .....	14
Section 16 Indemnification Agreement .....	14
Section 17 Police Services .....	14
Section 18 Obligations of the Lessee Regarding Insurance .....	15
Section 19 Obligations of the Lessor Regarding Insurance .....	17
Section 20 Damage and Destruction .....	17
Section 21 Mortgaging of the Leasehold .....	19
Section 22 Default .....	21
Section 23 Expiration or Termination .....	22
Section 24 Access to Premises .....	22
Section 25 Property Subject to Zoning .....	23
Section 26 Condemnation .....	23
Section 27 Estoppel Certificates .....	23
Section 28 Option to Purchase .....	24
Section 29 Notices .....	24
Section 30 Submission of Matters to the Lessor for Approval .....	25
Section 31 Holding Over by the Lessee .....	25
Section 32 Miscellaneous .....	25
EXECUTION BY THE LESSOR .....	27
EXECUTION BY THE LESSEE .....	28
EXHIBIT "A" LEGAL DESCRIPTION OF THE PROPERTY .....	A - 1
EXHIBIT "B" PRO FORMA .....	B - 1
EXHIBIT "C" SCHEDULE OF PERFORMANCE .....	C - 1

LEASE AGREEMENT

This LEASE AGREEMENT (this "*Lease*"), made and entered into as of the first day of March, 2004, is between the BOARD OF TRUSTEES FOR FRANCIS MARION UNIVERSITY f/k/a the Board of Trustees of Francis Marion College f/k/a the State College Board of Trustees (the "*Lessor*"), and FMU STUDENT HOUSING, LLC (the "*Lessee*"), a limited liability company organized and existing under the laws of the State of South Carolina (the "*State*"),

WITNESSETH:

WHEREAS, the Lessor is the owner of certain property (the "*Property*") located on the campus of Francis Marion University (the "*University*"), as more particularly described in Exhibit "A" attached hereto, incorporated in and by reference made a part hereof, which property includes fourteen (14) apartment style facilities having an aggregate of 416 beds and six (6) dormitory style facilities having an aggregate of 716 beds comprising all of the University's currently existing on-campus student housing facilities (the "*Existing Student Housing Facilities*"); and

WHEREAS, the Lessor and the Lessee desire for the Lessee to develop, construct, and operate a 235-bed student housing facility on the 2004 Project Site (as defined herein) along with associated site development and various related amenities and improvements (the "*2004 Student Housing Facility*"); and

WHEREAS, the Lessor desires to lease the Property to the Lessee for the purpose, *inter alia*, of developing, acquiring, constructing, furnishing, equipping, and operating the 2004 Student Housing Facility for the use and benefit of the students of the University; and

WHEREAS, the South Carolina Jobs - Economic Development Authority (the "*Issuer*") has determined to issue its Student Housing Revenue Bonds (the "*Series 2004 Bonds*") under and pursuant to the terms of a Trust Indenture (the "*Indenture*") of even date herewith between the Issuer and Wachovia Bank, National Association, as Trustee, and to lend the proceeds of the Series 2004 Bonds to the Lessee for the purpose of financing the costs of acquiring, constructing, furnishing, and equipping the 2004 Student Housing Facility and the costs of acquiring a leasehold interest in the Existing Student Housing Facilities under and pursuant to the terms of a Loan Agreement of even date herewith between the Issuer and the Lessee; and

WHEREAS, in the event that additional amounts should be necessary to improve or expand the 2004 Student Housing Facility or to refund the Series 2004 Bonds or any other bonds issued under the Indenture, provision may be made for the issuance of additional parity bonds of the Issuer from time to time as specified in the Indenture (collectively, "*Additional Bonds*"); and

WHEREAS, in order to secure repayment of the loan of the proceeds of the Series 2004 Bonds and the Additional Bonds (collectively, the "*Bonds*") from the Issuer to the Lessee, the Lessee has granted to the Bond Trustee a mortgage lien on its leasehold interest in the Property obtained under this Lease pursuant to a Leasehold Mortgage and Assignment of Rents and Leases of even date herewith by the Lessee in favor of the Bond Trustee,

NOW, THEREFORE, in consideration of the premises, the rental to be paid hereunder, the mutual covenants and agreements herein set forth by each party to be kept and performed, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged by each party hereto, the Lessor and the Lessee do hereby mutually covenant and agree as follows:

The Lessor does hereby let, subject only to Permitted Encumbrances (as defined herein), unto the Lessee and the Lessee does hereby take and hire from the Lessor, subject to all of such exceptions and encumbrances, the Property.

TOGETHER WITH all appurtenances, rights, privileges, and easements benefiting, belonging, or pertaining thereto, and together with the buildings, structures, and improvements erected or to be erected thereon.

TO HAVE AND TO HOLD the Property for a term of years set forth herein unless this Lease shall be sooner terminated as hereinafter provided.

This Lease and all rights of the parties hereunder are expressly subject to the provisions as hereinafter set forth, all of which the parties hereto respectively agree to keep, abide by, and perform during the term hereof.

**Section 1. Definitions.** The following terms as used in this Lease, shall have the following meanings, unless the context indicates otherwise:

"**2004 Project Site**" means that portion of the Land on which the 2004 Student Housing Facility is to be located as more particularly described as Tract "D" in Exhibit "A" attached hereto; incorporated in and by reference made a part hereof.

"**2004 Student Housing Facility**" means the 235-bed student housing facility on the 2004 Project Site along with associated site development and various related amenities and improvements.

"**Architect**" means Demarest & Associates Architects, Inc., a corporation organized under the laws of the State of Texas, with its principal place of business in Dallas, Texas, and its successors and assigns.

"**Architect's Agreement**" means that certain Standard Form of Agreement Between Design/Builder and Architect between the Developer, as design/builder, and the Architect, as architect, pursuant to which the Architect has agreed to provide certain architectural and engineering services in connection with the construction of the 2004 Student Housing Facility, and any amendments thereof and/or supplements thereto.

"**Assigned Agreements**" means, collectively, the Construction Documents and the Management Agreement.

"**Assignment of Agreements and Documents**" means the Assignment of Agreements and Documents of even date herewith by the Lessee in favor of the Bond Trustee, as the same may be amended and/or supplemented from time to time as permitted by the Indenture.

"**Bond Documents**" means, collectively, the Indenture, the Loan Agreement, the Bond Trustee Mortgage, the Security Agreement, the Assignment of Agreements and Documents, and all other instruments or agreements executed by the Issuer and/or the Lessee in connection with the issuance and delivery of the Bonds (each, a "**Bond Document**").

"**Bond Trustee**" means Wachovia Bank, National Association, as Trustee under the Indenture, and its successors and assigns in such capacity.

"**Bond Trustee Mortgage**" means the Leasehold Mortgage and Assignment of Rents and Leases of even date herewith by the Lessee in favor of the Bond Trustee, as the same may be amended and/or supplemented from time to time as permitted by the Indenture.

"**Bond Year**" means the twelve (12) month period beginning on June 2 of each calendar year and ending on June 1 of the immediately succeeding calendar year.

"**Campus**" means campus of the University.

"**Commencement Date**" means April 2, 2004.

"**Construction Documents**" means, collectively, the Development Agreement, the General Construction Contract, the Architect's Agreement, and all those other contracts and/or agreements between the Lessee and any person or firm rendering services or supplying material in connection with the design, acquisition, construction, furnishing, equipping, and operation of the Project.

"**Developer**" means Capstone Development Corp., a corporation organized under the laws of the State of Alabama, with its principal place of business in Birmingham, Alabama, and its successors and assigns.

"**Developer Guaranty**" means the Developer Guaranty of even date herewith by the Developer in favor of the Lessee.

"*Development Agreement*" means the Development Agreement of even date herewith between the Lessee and the Developer.

"*Existing Student Housing Facilities*" means all of the University's currently existing on-campus student housing facilities contained in fourteen (14) apartment style facilities having an aggregate of 416 beds and six (6) dormitory style facilities having an aggregate of 716 beds and located on the Land.

"*GAAP*" means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting that have other substantial authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented and amended.

"*General Construction Contract*" that certain Standard Form of Agreement Between Design/Builder and Contractor between the Developer, as design/builder, and the General Contractor, as Contractor, pursuant to which the General Contractor has agreed to construct the 2004 Student Housing Facility, and any amendments thereof and/or supplements thereto.

"*General Contractor*" means Capstone Building Corp., a corporation organized under the laws of the State of Alabama, with its principal place of business in Birmingham, Alabama, and its successors and assigns.

"*General Revenues*" means (i) the sum of (a) the gross receipts and operating and non-operating revenues derived by the Lessee from the ownership or operation of the Student Housing Facilities (other than contributions) including, without limitation, insurance proceeds, **and** (b) Unrestricted Contributions, all as determined in accordance with GAAP, but excluding, in any event, (ii) the sum of (a) earnings that constitute capitalized interest, (b) earnings on amounts that are irrevocably deposited in escrow to pay the principal of or interest on Indebtedness, **and** (c) security deposits received from student residents of the Student Housing Facilities and held by the Lessee until such time, if any, as the Borrower shall be permitted to apply such deposits to the payment of rent or to the repair and maintenance of the Student Housing Facilities in accordance with the terms of a lease or residency agreement.

"*Insurance Consultant*" means any Person that is not the Issuer or the Lessee appointed by the Lessee that is acceptable to the Trustee and that is qualified to survey risks and to recommend insurance coverage for student housing facilities and organizations engaged in like operations as that of the Student Housing Facilities in the State, and that has a favorable reputation for skill and experience in such surveys and such recommendations and who may be a broker or agent with whom the Issuer or the Lessee transacts business.

"*Lease*" means this Lease Agreement, as the same may be amended and/or supplemented from time to time in accordance with the provisions hereof.

"*Indenture*" means the Trust Indenture of even date herewith between the Issuer and the Bond Trustee, as the same may be amended and/or supplemented from time to time in accordance with the provisions thereof.

"*Issuer*" means the South Carolina Jobs - Economic Development Authority, and its successors and assigns.

"*Land*" means the land located on the Campus as more particularly described in Exhibit "A" attached hereto, incorporated in and by reference made a part hereof.

"*Lease Year*" means each twelve (12) month period commencing on the first day of July of a calendar year and ending on the last day of June of the immediately succeeding calendar year.

"*Leasehold Mortgage*" means, collectively, the Bond Trustee Mortgage, the Refinanced Bond Trustee Mortgage, and any other encumbrance of the Lessee's interest in this Lease as security for any indebtedness the Lessee or the Lessee's successors and assigns may incur, whether by deed to secure debt, mortgage, deed of trust, or other security instrument.

**"Leasehold Mortgage"** means the holder of the indebtedness secured by any Leasehold Mortgage or any agent or fiduciary therefor and any designee thereof for the purpose of taking title to the Lessee's interests in the Lease or entering into a Mortgage Lease.

**"Lessee"** means FMU Student Housing, LLC, a limited liability company organized and existing under the laws of the State, and its successors and assigns.

**"Lessor"** means the Board of Trustees for Francis Marion University f/k/a the Board of Trustees of Francis Marion College f/k/a the State College Board of Trustees.

**"Lessor Representative"** means the Person or Persons designated by the Lessor to serve as the Lessor's representatives in connection with the development, design, acquisition, construction, furnishing, equipping, and/or operation of the Student Housing Facilities.

**"Loan Agreement"** means the Loan Agreement of even date herewith between the Issuer and the Lessee, as the same may be amended and/or supplemented from time to time in accordance with the provisions of the Indenture.

**"Loan Payments"** means, collectively, all installments of principal and interest paid or payable for or during such period on or in connection with the financing or refinancing of the development, design, acquisition, construction, furnishing, and equipping of the 2004 Student Housing Facility and the acquisition of a leasehold interest in the Existing Student Housing Facilities.

**"Manager"** means, initially, the University, and thereafter, any other management company employed by the Lessee to manage the Student Housing Facilities.

**"Management Agreement"** means (i) the Management Agreement of even date herewith between the Lessee and the Manager, as the same may be amended and/or supplemented from time to time, and (ii) any management or similar agreement between the Lessee and any successor Manager relating to the management of the Student Housing Facilities, as the same may be amended and/or supplemented from time to time.

**"Maximum Annual Debt Service on the Bonds"** means the maximum annual debt service on the Bonds in the then current Bond Year or in any future Bond Year, whether at maturity or subject to mandatory sinking fund redemption, all determined in accordance with the provisions of the Indenture.

**"Mortgage Lease"** means a lease of the Premises entered into between a Leasehold Mortgagee, as lessee, and the Lessor, as lessor, as a result of a termination of this Lease by reason of any default by the Lessee for the remainder of the term effective as of the date of termination of this Lease, at the same Rent and upon the same terms, provisions, covenants, and agreements as contained in this Lease and subject to no additional exceptions or encumbrances other than Permitted Encumbrances.

**"Net Available Cash Flow,"** for each Lease Year, means the amount transferred to the Surplus Fund in accordance with the provisions of the Indenture net of any amounts withdrawn therefrom in accordance with the provisions of the Indenture less an amount agreed to by the Lessee and the University.

**"Operating Expenses,"** with respect to each Lease Year, means those cash expenditures made by the Lessee or which the Lessee is obligated to make for or during such Lease Year in connection with the operation of the Student Housing Facilities, including advertising and leasing expenses, compensation of on-site personnel, on-site administrative expenses, fees payable to a manager of the Student Housing Facilities, common area expenses, landscaping expenses, utility charges, resident turnover expenses, maintenance and repair expenses, insurance premiums, necessary expenses incurred by the Lessee in connection with the inspection of the Student Housing Facilities, collection and payment of arbitrage rebate as required by federal law, enforcement of the obligations of other parties to documents executed in connection with the Student Housing Facilities, and to the performance of any other obligations of the Lessee under the Bond Documents directly related to the Student Housing Facilities, and any other costs payable under this Lease, other than Rent (each such expenditure, an **"Operating Expense"**).

**"Permitted Encumbrances"** means, as of any particular time, (i) liens for *ad valorem* taxes, special assessments, and other charges not then delinquent or for taxes, assessments, and other charges being contested in accordance with the terms of this Lease, (ii) the Bond Documents, (iii) currently existing utility, access, and other easements and rights of way, restrictions, and exceptions, (iv) inchoate mechanics' and materialmen's liens that arise by operation of law, but that have not been perfected by the required filing of record, for work done or materials delivered after the date of recording this Lease, (v) any mechanics' and materialmen's liens permitted by the Loan Agreement, (vi) liens or encumbrances securing Additional Bonds, and (vii) any additional exceptions or encumbrances created or consented to by the Lessor.

**"Person"** means natural persons, firms, joint ventures, associations, trusts, partnerships, corporations, limited liability companies, public bodies, and similar entities.

**"Personalty"** means all machinery, equipment, fixtures, appliances, furniture, and any other personal property of any kind or description owned by the Lessee and used in connection with the Student Housing Facilities.

**"Plans and Specifications"** means the detailed plans and specifications for the construction of the Project fully identifying and describing all mechanical, electrical, and plumbing systems, materials, signage, design, colors of exterior paints, and other finishes prepared by the Architect or by architects and engineers acceptable to the Architect, as amended from time to time by the Lessee with the consent of the Lessor, a copy of which is or will be on file with the Lessor.

**"Premises"** means the 2004 Student Housing Facility and the Property.

**"Pro Forma"** means the *pro forma* set forth on Exhibit "B," attached hereto, incorporated in and by reference made a part hereof .

**"Project"** means the 2004 Student Housing Facility and all Personalty located therein or used in connection therewith.

**"Property"** means the Land and the Existing Student Housing Facilities.

**"Refinanced Bond Trustee Mortgage"** means any encumbrance of the Lessee's interest in this Lease resulting from the refinancing of the Bonds.

**"Rent"** means the annual rental payable by the Lessee to the Lessor in accordance with Section 3 hereof.

**"Reserve Account"** means a reserve account established by the manager of the Student Housing Facilities for the benefit of the Student Housing Facilities.

**"Reserve Amounts,"** with respect to each Lease Year, means the amount of the entry for "Total Reserves" for such Lease Year on the Pro Forma.

**"Schedule of Performance"** means the construction schedule set forth in the General Construction Contract.

**"Security Agreement"** means the Security Agreement if even date herewith by and between the Lessee and the Bond Trustee, as the same may be amended and/or supplemented from time to time as permitted by the Indenture.

**"Series 2004 Bonds"** means, collectively, the South Carolina Jobs - Economic Development Authority Student Housing Revenue Bonds (FMU Student Housing, LLC - Francis Marion University Project) Series 2004A and the South Carolina Jobs - Economic Development Authority Taxable Student Housing Revenue Bonds (FMU Student Housing, LLC - Francis Marion University Project) Series 2004B to be issued in the maximum aggregate principal amount of \$16,000,000.

**"State"** means the State of South Carolina,

"*Student Housing Facilities*" means, collectively, the Existing Student Housing Facilities, the 2004 Student Housing Facility, and any student housing facilities project acquired, constructed, furnished, and equipped with the proceeds of Additional Bonds.

"*Surplus Fund*" means the fund of that name created in accordance with the provisions of the Indenture.

"*Termination Date*" means the date on which the term hereof ends by termination or expiration of this Lease

"*University*" means Francis Marion University.

"*Unrestricted Contributions*" means contributions to the Lessee that are not restricted in any way that would prevent their application to the payment of debt service on indebtedness of the Lessee.

**Section 2. Term.** (a) The term of the leasehold estate of the Lessee in the Property created hereunder shall commence as of the Commencement Date and shall expire at 12:00 Midnight on March 1, 2044, unless otherwise extended or sooner expired or terminated in accordance with this Lease or by operation of law.

(b) The Lessor and the Lessee, within thirty (30) days after request of the other, shall confirm in writing, and if so requested, by an instrument in recordable form, the date of the Termination Date.

**Section 3. Rent.** (a) The Lessee covenants and agrees to pay to the Lessor, upon the issuance and delivery of the Series 2004 Bonds, the amount of \$3,288,507.12, which the Lessor agrees to use to defease the outstanding \$3,080,000 in principal amount of the Francis Marion University Revenue Refunding Bonds Series 1999 initially issued in the principal amount of \$7,245,000

(b) The Lessee covenants and agrees to pay to the Lessor throughout the term of this Lease the Rent, which shall be equal to the Net Available Cash Flow.

(c) The Rent shall be payable in respect of each Lease Year within thirty (30) days of receipt by the Lessee and the Bond Trustee of the annual financial statements and audit report for the immediately preceding fiscal year of the Lessee provided to the Bond Trustee in accordance with the provisions of the Loan Agreement.

(d) If the Net Available Cash Flow for a Lease Year is zero (0) or a negative amount, no Rent shall be paid to the Lessor hereunder, and it is understood that the Lessor is under no obligation, express or implied, to contribute or pay the Lessee for any such deficit in available cash flow.

(e) For purposes of this Lease, the Lessor agrees that the Lessee may, in each Lease Year, charge or, as manager of the Student Housing Facilities, the Lessor may, in each Lease Year, cause to be charged rent for the units comprising the Student Housing Facilities sufficient to pay the Reserve Amounts, the Operating Expenses, and the Loan Payments.

(f) Payment of all Rent and all other sums due to the Lessor under this Lease shall be made payable to the Lessor and delivered to the Lessor at the address shown in Section 29 of this Lease or at such other place as the Lessor may notify the Lessee from time to time.

(g) Notwithstanding that this Lease is dated as of March 1, 2004, the Commencement Date hereof shall be April 2, 2004. The Lessor and the Lessee agree that on April 2, 2004, the University shall pay to the Lessee its *pro rata* share of all room rental payments received by the University in respect of the second semester of the University's 2003-2004 academic year, such *pro rata* share being equal to thirty-two percent (32%).

**Section 4. Financing of the 2004 Student Housing Facility.** The Lessee shall, at its own cost and expense, obtain all financing required for the design, acquisition, construction, furnishing, equipping, and operation of the Student Housing Facilities, including the issuance of the Bonds. The Lessee agrees to provide the Lessor with copies of all material information and documentation relating to any form of proposed financing. The Lessee agrees that except for the financing contemplated by the Bond Documents, all financing relating to the design, acquisition, construction, furnishing, equipping, and operation of the Student Housing Facilities, or any amendment, renewal, refinancing, or



refunding of same during the term of this Lease shall be subject to the prior approval of the Lessor, which approval shall not be unreasonably withheld. In no event shall any financing approved by the Lessor hereunder be modified so as to increase the principal amount outstanding or the term or amortization period of the financing except with respect to an increase in number of student housing units contemplated by this Lease.

**Section 5. Taxes and Assessments.** (a) It is hereby determined and declared by the Lessor and the Lessee that nothing contained in this Lease is intended to change the degree to which the interest or estate of the Lessee created by this Lease is subject to *ad valorem* property taxes; however, to the extent assessed, the Lessee shall as an Operating Expense bear and pay to the public officer charged with the collection thereof, before the same shall become delinquent, and shall indemnify, save, and hold harmless the Lessor from the payment of, any and all taxes, assessments, license fees, excises, imposts, fees, and charges of every sort, nature and kind (hereinafter referred to singularly and collectively as "*Tax*"), which during the term of this Lease are or might be levied, assessed, charged, or imposed upon or against the Premises or the interest or estate of the Lessee or the Lessor in and to the Premises. If the transfer of fee simple title to the Premises alone results in the levy, assessment, charge, or imposition of *ad valorem* taxes against the Premises or causes the Premises to become subject to such levy or assessment, the successor Lessor shall be responsible for the payment of such taxes, and the Lessee shall have no liability therefor.

(b) If the imposition of any Tax shall be deemed by the Lessee or the Lessor to be improper, illegal, or excessive, the Lessee may, in its own name, as an Operating Expense, dispute and contest the same and, in such event and to the extent permitted by law, any such Tax need not be paid until adjudged to be valid; provided, however, the Lessee shall in writing first notify the Lessor of such dispute and contest and shall comply with the requirements of the Bond Documents or any other Leasehold Mortgage permitted hereunder and related documents concerning the contest of taxes. Unless so contested, any Tax shall be paid by the Lessee within the time provided by law, and if contested, any such Tax shall be paid before the imposition of a lien on the Premises with respect thereto.

**Section 6. Utility Services.** The Lessor shall provide for or furnish all utilities required, used, or consumed on the Premises, including, but not limited to gas, water (including water for domestic uses and for fire protection), chilled water, telephone/data, electricity, cable TV, sewer service, garbage collection services, or any similar service (herein sometimes collectively referred to as "*Utility Services*" and each such service as a "*Utility Service*"). In the event that any charge for any Utility Services supplied to the Premises is not billed directly to the Lessee by the utility supplier but is included in amounts billed to the Lessor, then the Lessor shall equitably apportion such charges and the Lessee agrees to pay such amount as an Operating Expense within twenty (20) days of notice from the Lessor.

**Section 7. Payments for the Lessee by the Lessor.** If the Lessee fails to procure the insurance required to be procured by the Lessee under this Lease or fails to pay any premium of insurance, Tax, or any other sum in this Lease required to be paid by the Lessee (other than Rent), the Lessor may, after expiration of the applicable cure period and after notifying the Lessee and the Bond Trustee, at the Lessor's option, elect to follow one of the options provided in Section 22(c) of this Lease or may, without declaring a default of this Lease by the Lessee, procure on behalf of the Lessee any such insurance, and pay on behalf of the Lessee any such payment or payments as may be necessary. Any sum(s) so paid or expended by the Lessor on behalf of the Lessee shall immediately be reimbursed and paid by the Lessee to the Lessor, as additional rent, and as an Operating Expense, within twenty (20) days after demand by the Lessor.

**Section 8. Interest on Unpaid Amounts.** Any sums that are payable by the Lessee to the Lessor under this Lease (including any Rent) and that are not paid to the Lessor within ten (10) days after the due date thereof shall bear interest at the rate of twelve percent (12%) per annum from the due date thereof through the date payment of the same is made. If it becomes necessary for the Lessor to bring suit for collection of any sum(s) herein stipulated to be paid by the Lessee, the Lessee agrees to pay any and all such reasonable expenses and costs as the Lessor may incur, including, but not limited to, reasonable attorneys' fees actually incurred or reasonably determined to be the cost of legal services supplied by salaried employees of the Lessor.

**Section 9. Compliance by the Lessee with Laws and Ordinances.** At all times during the term of this Lease, the Lessee shall conform to, obey, and comply in all material respects with all present and future laws, ordinances, and regulations of all legally constituted authorities existing at the commencement of the term of this Lease or at any time during the continuance of the term hereof which in any way are applicable to this Lease or the use of the

Premises or any repair, replacement, demolition, renovation, construction, restoration, or excavation being done on or to the Premises. The Lessee, in its own name and at its sole cost and expense, shall have the right to contest the validity of any law, ordinance, rule, regulation, or requirement contemplated under this Section 9. The Lessee shall use its best efforts not to use, or to suffer or to permit the Premises, or any part thereof to be used in any manner that would constitute a legal nuisance or an unreasonable annoyance to any student, employee, or visitor to the Campus or for any hazardous purpose. In the event, at any time during the term of this Lease, or thereafter, as the result of the Lessee's acts or omissions to act during the term of this Lease, any addition, alteration, change, or repair or other work of any nature, structural or otherwise, be lawfully required or ordered by an applicable governmental body or become necessary on account of any law, ordinance, or regulation of any governmental authority then in effect, or on account of any other reason with respect to the Premises, the entire expense thereof, regardless of when the same shall be incurred or become due, shall be paid as an Operating Expense by the Lessee and, in no event, shall the Lessor be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.

**Section 10 Quiet Enjoyment.** The Lessor represents and warrants that it owns fee simple, marketable title to the Property subject to no restrictions, liens, or other encumbrances other than Permitted Encumbrances. The Lessor further covenants and agrees that, throughout the term of this Lease, the Lessee may peaceably and quietly enjoy the Premises subject, however, to zoning and land use restrictions, Permitted Encumbrances, and the Lessee's fulfillment of the covenants and agreements contained in this Lease.

**Section 11. Construction of Improvements.** (a) The Lessee shall enter into the Development Agreement which shall contemplate the Developer's entering into the General Construction Contract and the Architect's Agreement. The Lessor hereby approves the Construction Documents and acknowledges receipt of copies of the final forms thereof for the Lessor's approval.

(b) *Lessee's Security for Performance.* As security for the Lessee's performance hereunder as it relates to the design and construction of the 2004 Student Housing Facility, the Lessee grants to the Lessor a security interest in the Construction Documents as provided in Section 13(a) hereof.

(c) *Default in Construction.* In the event of a default by the Developer, the General Contractor, or the Architect in connection with the design and construction of the 2004 Student Housing Facility, the Lessee shall exercise all of the rights and remedies available to the Lessee in each such agreement in consultation with the Lessor. In the event of the Lessee's default in its obligation to design and build the 2004 Student Housing Facility pursuant to this Lease or the Lessee's default under the Development Agreement, the Lessor may, subject to the rights of the Bond Trustee, assert the rights of the Lessee under the terms of the Development Agreement, the General Construction Contract, and/or the Architect's Agreement.

(d) *Commencement of Construction.* The Lessee shall commence and pursue to substantial completion the construction of the 2004 Student Housing Facility on the 2004 Project Site and associated site development on the Campus outside the boundaries of the Land, in accordance with the Construction Documents and in accordance with the construction schedule set forth in the General Construction Contract (the "*Schedule of Performance*"), a copy of which is attached hereto as Exhibit "C." The 2004 Student Housing Facility, all Personalty located and to be located therein or used in connection therewith, and the associated site development described above shall be referred to in this Lease as the "*Project*." As used herein, the term "*Personalty*" shall mean all machinery, equipment, fixtures, appliances, furniture, and any other personal property of any kind or description owned by the Lessee and used in connection with the Student Housing Facilities.

(e) *Construction Approvals by the Lessor.* Prior to commencing any excavation, construction, paving, or any other work associated with the 2004 Project Site or the Project, the Lessee shall deliver to the Lessor for its approval three (3) sets of the Plans and Specifications. The right of approval of the Lessor with respect to the Plans and Specifications shall include, but not be limited to, the compatibility of the exterior appearance of any improvement with the public activities of the Lessor on adjacent portions of the Campus. The Lessor shall have a period of fifteen (15) business days after receipt to approve or reject such submissions, with any rejection being accompanied with a description of measures to be taken by the Lessee that will result in approval on resubmission (or why resubmission of any similar proposal would be rejected). **Failure to approve or reject any submissions within such fifteen (15) day period shall be deemed approved by the Lessor.** The Lessor agrees not to withhold unreasonably the approval required by this subsection (e). Approval of submissions by the Lessor shall not relieve the Lessee from the obligation

to obtain all other necessary approvals and permits required by various governmental agencies and authorities or from complying in all material respects with the Plans and Specifications, the Construction Documents, and all applicable building codes and ordinances.

(f) Change Orders. Once the Plans and Specifications are submitted to and approved by the Lessor or the Plans and Specifications are deemed approved in accordance with subsection (e) of this Section, the Lessee may, with the consent or approval of the Lessor, order, authorize, or perform any change, substitute work or materials in prosecuting the construction of the improvements (a "Change Order"). The Lessor agrees not to withhold unreasonably the approval required by this subsection (f). The Lessor shall have a period of five (5) business days after receipt to approve or reject any such Change Order. **Any such Change Order that is not approved or rejected within such five (5) day period shall be deemed to be approved by the Lessor; provided, however, any Change Order that will delay the completion date of the 2004 Student Housing Facility or change the guaranteed maximum price under the Development Agreement must be approved in writing by the Lessor .**

(g) Construction According to Approved Plans. To the extent reasonably possible, development and construction of the Project shall be done so as to minimize disruption of the Lessor's operations. All construction activities must be coordinated with the appropriate departments of the University. The Lessor shall designate one or more individuals to serve as the Lessor's representatives in connection with the acquisition or construction of the Project and/or the operation of the remaining Student Housing Facilities (the "*Lessor Representative*"). A mandatory pre-construction meeting shall be conducted by the Lessee prior to the start of any construction activities for the purpose of reviewing security procedures, utility coordination, access to the 2004 Project Site, and construction coordination issues. The meeting shall be attended, at a minimum, by the Lessor Representatives, the Lessee, and the Lessee's General Contractor's project manager and superintendent. All building materials for the 2004 Student Housing Facility must be new and of good quality in accordance with the Construction Documents and Plans and Specifications. The Lessor reserves the right to monitor the Lessee's acquisition and construction of the Project from its inception to its completion, including participation in all construction meetings contemplated by the Construction Documents. At a minimum, the following restrictions must be placed upon construction activities, and the Lessee will provide for the incorporation of these restrictions in the Construction Documents:

- (i) access to the construction site will be limited to those involved with the work;
- (ii) for construction activities requiring access to the Lessor's drives and parking areas, access will be restricted to those times approved by the Lessor, which approval will not be unreasonably withheld;
- (iii) construction activities must not unreasonably interfere with entry or exit to the Campus, Campus parking or drives, or pedestrian circulation paths or walks without prior written consent from the Lessor;
- (iv) the Lessee must notify the Lessor in writing at least seventy-two (72) hours in advance when coordination meetings requiring the Lessor's participation are required;
- (v) the Lessee will provide a six foot (6') high chain link security fence (which may not contain razor or barbed wire) with lockable gates at the perimeter of the construction site and staging area;
- (vi) the Lessee, throughout the construction period, shall be responsible for the enforcement of discipline and good order among the workers on the site;
- (vii) campus toilet facilities, parking areas, and student dining facilities may not be used by construction personnel;
- (viii) signage, which shall be subject to the Lessor's prior approval, shall be provided and maintained at all entrances to the Campus to direct deliveries, construction personnel, etc. to the construction site; and
- (ix) the Lessee and the Lessee's General Contractors shall not bury or burn or otherwise dispose of construction debris on the Land or on any other portion of the Campus.

(h) Non-Exclusive Easements.

(i) the Lessor agrees and does hereby grant to the Lessee and its successors, assigns, successors-in-title, invitees, employees, and sublessees, a non-exclusive easement appurtenant to the Property on, over, across, and through the roadways and accessways within the Campus for all forms of pedestrian and vehicular ingress, egress, and access between the Property and the public streets and roadways abutting the Campus in accordance with a traffic control plan approved by the Lessor. Such non-exclusive easement herein granted shall expire automatically on the Termination Date.

(ii) the Lessor agrees and does hereby grant to the Lessee and its employees and General Contractors a non-exclusive, temporary easement on, over, across, and through the roadways and accessways within the Campus for vehicular ingress and egress for construction activities in connection with the Project. Such construction easements shall expire automatically upon the earlier to occur of (A) the Termination Date or (B) the full completion of the 2004 Student Housing Facility.

(iii) the Lessor agrees and does hereby grant to the Lessee and its successors, assigns, successors-in-title, invitees, employees, and sublessees, non-exclusive easements appurtenant to Tract "A," Tract "B," Tract "C," and Tract "D," as described on the attached Exhibit "A" on, over, across, and through the portion of the Campus described as the "24 FOOT ACCESS EASEMENT" on the attached Exhibit "A" for all forms of pedestrian and vehicular ingress, egress, and access between said Tract "A," Tract "B," Tract "C," and Tract "D" and U.S. Highway 76 & 301. Such non-exclusive easements herein granted shall expire automatically on the Termination Date.

(iv) the Lessor agrees and does hereby grant to the Lessee and its successors, assigns, successors-in-title, invitees, employees, and sublessees, a non-exclusive easement appurtenant to the Property for the purpose of pedestrian and vehicular ingress and egress and vehicular parking on, over, across, and through the portions of the Campus that are now or may hereafter be used for vehicular parking. Such non-exclusive easement herein granted shall expire automatically on the Termination Date.

(i) Payment of Bills for Construction. As a construction expense, the Lessee covenants and agrees to pay or cause to be paid, currently as they become due and payable in accordance with the terms of the Construction Documents and the Bond Documents, all bills for labor, materials, insurance, and bonds, and all fees of architects, engineers, General Contractors, and sub Contractors and all other costs and expenses incident to any construction in or on the Project; provided, however, that the Lessee may, in good faith, in its own name, as an Operating Expense, dispute and contest any such bill, fee, cost, or expense, and in such event, any such item need not be paid until adjudged to be valid. Unless so contested by the Lessee, all such items shall be paid by the Lessee within the time provided by law, and if contested, any such item shall be paid before the issuance of an execution on a final judgment with respect thereto. The Lessee agrees to provide the Lessor with copies of each Application for Payment submitted by the General Contractor, each Certificate of Payment issued by the Architect prior to payment thereof, and evidence of payment of each such Application for Payment.

(j) All Liens and Rights are Subordinate to the Lessor. Except for the rights of the Bond Trustee and/or another permitted Leasehold Mortgagee, including, without limitation, their respective rights referenced in Sections 11(b), 13(a), 21, and 32(i) hereof, the Lessee's rights, as well as the rights of anyone else, including, but not limited to, any mortgagee, architect, independent contractor, assignee, sublessee, sub-General Contractor, prime or general contractor, mechanic, laborer, materialman, or other lien or claim holder, shall always be and remain subordinate, inferior, and junior to the Lessor's title, interest, and estate in the Property. The Lessee shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance, or charge levied on account of any mechanic's, laborer's, or materialman's lien, or any security agreement, conditional bill of sale, title retention agreement, chattel mortgage, or otherwise (a "Lien") that might or does constitute a lien, encumbrance, or charge upon the Premises, or any part thereof, or the income therefrom, having a priority or preference over or ranking on a parity with the estate, rights, or interest of the Lessor in the Premises or any part thereof, or the income therefrom. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of the Lessor, express or implied, by inference or otherwise, to the filing of any Lien against the Premises by any contractor, subcontractor, laborer, materialman, architect, engineer, or other Person for the performance of any labor or the furnishing of any materials or services for or in connection with the Premises or any part thereof.

(k) Completion of Construction by the Lessor. The Lessor acknowledges that the Lessee shall assign to the Bond Trustee pursuant to the Assignment of Agreements and Documents all of the Lessee's right, title, interest, and remedies in and to the Construction Documents, as such term is defined in such Assignment of Agreements and Documents. The Lessee covenants and agrees that in the event (i) the Lessee abandons or fails to complete the construction of improvements undertaken by the Lessee in accordance with all material requirements of this Lease, (ii) such failure is not solely the result of the Lessor's being in material default under this Lease, and (iii) the Bond Trustee does not elect to complete construction of such improvements pursuant to the terms of the Assignment of Agreements and Documents, the Lessor may, at its option (but without any obligation so to do and without prejudice to any other rights the Lessor may have under this Lease) complete the construction of the improvements undertaken by the Lessee as an expense of the Project and, as nearly as practicable and proper, according to the Plans and Specifications previously approved by the Lessor.

(l) Title to the Improvements. The title to all improvements now or hereafter located on the 2004 Project Site including those to be constructed in accordance with the Plans and Specifications and the Construction Documents shall be vested in the Lessee until the Termination Date, at which time all title to and ownership of said improvements shall automatically and immediately vest (without the necessity of any further action being taken by the Lessee or the Lessor or any instrument being executed and delivered by the Lessee to the Lessor) in the Lessor. The title to all improvements constituting the Existing Student Housing Facilities shall remain vested in the Lessor.

(m) Architects, Engineers, Contractors, Specialists, and Consultants. The Lessee shall require any architects, engineers, General Contractors, subcontractors, specialists, and consultants engaged in connection with the acquisition or construction of the Project to perform their respective obligations under the terms of the Construction Documents to be licensed in accordance with South Carolina law and to obtain and maintain for a period of five (5) years after the substantial completion of the Project errors and omissions insurance pursuant to Section 18(a)(iii) hereof and payment and performance bonds pursuant to subsection (p) of this Section 11.

(n) Permits, Laws, and Ordinances. The Lessee shall as a construction expense, comply and cause its contractors and subcontractors to comply in all material respects with all building codes, ordinances, rules, regulations, orders, directives, and statutes of all governmental authorities that may now or hereafter, from time to time, be established and that are or shall be applicable to the Lessee as they relate to the Project, including without limitation, the Americans With Disabilities Act of 1990, and shall take, as otherwise provided herein, all action necessary to cause the Project to comply in all material respects with all provisions of the Construction Documents, the Loan Agreement, and this Lease applicable to the Lessee.

(o) Construction Site. The Lessee shall confine its operations to the Land and shall not store any material or equipment on property of the Lessor outside the boundaries of the Land, except as approved in writing and subject to such conditions as may be specified and approved by the Lessor. The Lessee shall protect all work and shall at all times keep and cause its contractors to keep the construction site reasonably clean and free from waste materials and rubbish.

(p) Payment and Performance Bonds. The Lessee shall provide or cause to be provided to the Lessor payment and performance bonds in a form and from a surety approved by the Lessor, in accordance with the Construction Documents, to include requiring the General Contractor and appropriate subcontractors to provide payment and performance bonds. The bonds shall be dual obligee surety bonds payable in favor of the Bond Trustee, as primary obligee, and in favor of the Lessee and the Lessor as additional obligees.

(q) Reports and Information. The Lessee shall provide the Lessor with copies of all material documents and correspondence provided to or generated by the Lessee in connection with the performance of the Construction Documents including those related to the satisfaction of the items in the Schedule of Performance and shall provide the Lessor with monthly progress reports in a form reasonably satisfactory to the Lessor demonstrating compliance with the construction requirements of the Plans and Specifications and the Construction Documents and this Lease for the previous month. In addition, the Schedule of Performance must be updated at least monthly to assure the Lessor that acquisition and construction of the Project will be complete in sufficient time to allow for occupancy of the 2004 Student Housing Facility on or before August 15, 2004. The Lessee shall deliver or cause to be delivered to the Lessor copies of all soil reports, surveys, hazardous wastes or toxic materials reports, feasibility studies, and other similar written materials prepared for the Lessee pursuant to the Construction Documents with respect to the 2004 Project Site within ten (10) days after receipt by the Lessee.

(r) Substantial Completion of Improvements. As soon as practicable (however, in no event to exceed six (6) calendar months) after the substantial completion of the 2004 Student Housing Facility, the Lessee shall furnish to the Lessor:

(i) one complete set of final "as-built" plans and specifications of the completed improvements in auto-CAD format;

(ii) a current, accurate, properly labeled, and certified (by the hereafter stated surveyor or engineer), "as-built" plat of survey prepared by a South Carolina registered land surveyor or professional engineer depicting to scale the location of the completed improvements, as the same have been constructed; and

(iii) one complete set of operations and maintenance manuals for all systems, equipment, furniture, and fixtures relating to the 2004 Student Housing Facility.

The term "substantial completion" as used in this Lease shall be deemed to mean satisfaction of both of the following conditions: the issuance of a certificate of occupancy by the appropriate authority and such completion as will make the improvements sufficient, suitable, and ready for immediate occupancy and for the use intended.

(s) Failure to Provide the 2004 Student Housing Facility on Schedule. If the Lessee does not deliver the number of student rooms contemplated in the Construction Documents in accordance with the Schedule of Performance, the Lessee shall be liable for the incremental costs of providing housing for students who were designated to occupy student rooms in the 2004 Student Housing Facility. Incremental costs shall mean the sum of:

(i) the cost of reasonable transportation of affected students to and from the Campus; and

(ii) for all affected students, the cost of the alternative housing until occupancy is provided in the 2004 Student Housing Facility to the extent such cost exceeds the estimated cost of housing for such students had the 2004 Student Housing Facility been completed in accordance with the Schedule of Performance.

In the event that student rooms are not delivered for occupancy on time as described above, the Lessor and the Lessee shall nevertheless proceed with the execution of leases for the 2004 Student Housing Facility with the intent that revenues from such leases will be paid by affected students and then paid to the Bond Trustee as if the 2004 Student Housing Facility had been completed on time and with the Lessee providing payment of the actual costs of alternative housing and transportation as described above. The Lessee's obligations under this subsection (s) are being guaranteed by the Developer pursuant to the Developer Guaranty.

**Section 12. Operation of Student Housing Facilities.** (a) Lessee's Obligation to Operate. The Lessee shall operate the Premises as student housing facilities to serve resident students of the University and shall enter into the Management Agreement with the Manager for the management and operation of the Student Housing Facilities.

(b) Management of Improvements. The Lessee shall not enter into any other management agreement of the Student Housing Facilities without the Lessor's consent, which consent shall not be unreasonably withheld.

(c) Lessor's Commitment. It is the intention of the parties hereto that the Student Housing Facilities be treated at all times as part of the Lessor's student housing program on an equal basis, whether or not the Student Housing Facilities are managed by the Lessor. To such end:

(i) The Lessor agrees to:

(A) include the Student Housing Facilities in all information and marketing materials regarding student housing that it provides to students and prospective students;

(B) to the extent possible, provide to students residing at the Student Housing Facilities the same services and access it provides to students in its own housing facilities, if any, from

time to time, including, without limitation, access to the Lessor's computer network and student transportation system;

(C) take into account the Student Housing Facilities and their occupancy in any planning for future housing projects; and

(D) if the Student Housing Facilities or any portion thereof is not being managed by the Lessor, implement procedures to assist students in applying for residence at the Student Housing Facilities.

(ii) The Lessee shall provide information regarding the Student Housing Facilities appropriate to assist the Lessor in carrying out its undertakings pursuant to this Section and, if the Lessor is not the manager of the Student Housing Facilities or any portion thereof, provide in any management contract for the Student Housing Facilities or any such portion thereof provisions requiring the manager to implement appropriate procedures to facilitate the Lessor's undertakings pursuant to this Section.

**Section 13. Security Interest.** (a) *Pledge, Assignment, and Grant of Security.* As security for the Lessee's performance of its obligations hereunder and subject to the rights of the Bond Trustee, the Lessee hereby assigns and pledges to the Lessor, and hereby grants to the Lessor a security interest in, all of the Lessee's right, title, and interest in and to the Construction Documents and the Management Agreement, as such agreements may be amended or otherwise modified from time to time (collectively, the "*Assigned Agreements*" or the "*Collateral*"), including, without limitation: (i) all rights of the Lessee to receive moneys due and to become due under or pursuant to the Assigned Agreements; (ii) all rights of the Lessee to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to the Assigned Agreements; (iii) claims of the Lessee for damages arising out of or for breach of or default under the Assigned Agreements; and (iv) the right of the Lessee to terminate the Assigned Agreements, to perform thereunder, and to compel performance and otherwise exercise all remedies thereunder. The Lessor acknowledges that, pursuant to the Assignment of Agreements and Documents, the Lessee will grant to the Bond Trustee security interests in various items of collateral including, but not limited to, the Assigned Agreements and certain rights and remedies with respect thereto (collectively, the "*Bond Trustee Security Interests*"). Any and all security interests granted to the Lessor by the Lessee pursuant to this Lease (including, but not limited to, the security interest granted in this Section 13) shall be subject to the provisions of Section 32(i) hereof and subordinate in all respects to the Bond Trustee Security Interests and the interest of any permitted Leasehold Mortgage including, without limitation, the Bond Trustee.

(b) *Further Action and Documents.* The Lessee agrees that from time to time, the Lessee will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Lessor may reasonably request, in order to perfect and protect any pledge, assignment, or security interest granted or purported to be granted hereby or to enable the Lessor to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

(c) *Financing Statements.* The Lessee hereby authorizes the Lessor to file one or more financing and/or continuation statements, and amendments thereto, relating to all or any part of the Collateral without the signature of the Lessee where permitted by law. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(d) *Lessor Appointed Attorney-in-Fact.* The Lessee hereby irrevocably appoints the Lessor the Lessee's attorney-in-fact, with full authority in the place and stead of the Lessee and in the name of the Lessee or otherwise, if an event of default shall have occurred under this Lease, to take any action and to execute any instrument which the Lessor may deem necessary or advisable to accomplish the purposes of this Agreement, subject in all cases to the rights of the Bond Trustee, including, without limitation:

(i) to obtain insurance required to be paid to the Lessor pursuant to Section 18 of this Lease in the event the Lessee shall fail to obtain such insurance;

(ii) to ask, demand, collect, sue for, recover, compromise, receive, and give acquittance and receipts for moneys due and to become due under or in connection with the Collateral; and

(iii) to file any claims or take any action or institute any proceedings which the Lessor may deem necessary or desirable to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Lessor with respect to any of the Collateral.

(e) Lessor May Perform. If the Lessee shall fail to perform any agreement contained herein, the Lessor may itself perform, or cause performance of, such agreement, and the reasonable expenses of the Lessor incurred in connection therewith shall be payable by the Lessee under Section 22(a) hereof.

(f) Lessor's Duties. The powers conferred on the Lessor hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lessor shall have no duty to take any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

**Section 14. Assignment of Lease.** (a) Written Consent. Except as otherwise provided in this Lease (including, without limitation, Section 21 hereof), the Lessee, and its successors and assigns, shall not have the right to assign or transfer this Lease or any interest herein or any right or privilege appurtenant hereto or to sublease the Premises or any portion thereof, unless the written consent of the Lessor is first had and obtained, such consent not to be unreasonably withheld. Any assignment or transfer for which consent is required but which is nevertheless made without such written consent shall be void *ab initio*.

(b) Resident Leases. Any other provisions of this Lease to the contrary notwithstanding, the Lessee, and its successors and assigns, shall, without the consent or approval of the Lessor, have the right, in the ordinary course of business, to enter into rental agreements ("Resident Leases") of no more than twelve (12) months in duration with residents of the Student Housing Facilities. Rates under the Resident Leases shall be determined by the Lessee, but must be acceptable to the University in its reasonable discretion.

(c) Assignment to Leasehold Mortgagee. Any other provisions of this Lease to the contrary notwithstanding, the Lessee, and its successors and assigns, shall have the right without the consent or approval of the Lessor to assign or transfer this Lease or any interest herein or any right or privilege appurtenant hereto which the Lessee desires to assign or transfer to a Leasehold Mortgagee to the extent permitted in Section 21 hereof. The Lessor agrees to recognize any assignee or transferee of an assignment or transfer for which the Lessor's consent is not required as lessee for the performance of all duties and obligations arising by reason of the interest of this Lease being so assigned or transferred; provided, however, it is hereby agreed and acknowledged by the Lessor and the Lessee that the Lessee, its successors and assigns, shall not be relieved of its liability for the performance of such duties or obligations by any such assignment or transfer.

**Section 15. Maintenance of Property.** The Lessee shall, at all times during the term of this Lease, keep and maintain the Premises and all adjoining areas out to the perimeter pavement, and appurtenances and every part thereof, and any and all buildings, other structures or improvements that may exist on, in, or be made a part of the Premises, in good order and condition, ordinary wear and tear excepted, and make all necessary repairs thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, and foreseen and unforeseen. The Lessee shall be required to follow the maintenance schedule set forth on Exhibit "F" attached hereto, incorporated herein and by reference made a part hereof. In the event the Lessee fails to perform any of its obligations as required hereunder, after notice and right to cure pursuant to the terms and provisions of Section 22(a) hereof, the Lessor may (but shall not be required to) perform and satisfy same, and the Lessee hereby agrees to reimburse the Lessor, as additional rent, for the reasonable cost thereof promptly upon demand. The parties agree that it shall be the Lessee's sole responsibility at all times during the term of the Lease to maintain the Premises consistent with the maintenance standards for the other premises located on the Campus. All normal maintenance and repair during the term of this Lease shall be complete when the Premises are surrendered to the Lessor. The provisions of this Section shall not prohibit the Lessor's taking, at its own expense, any action in respect of the maintenance or repair of the Premises that it deems necessary or appropriate.

**Section 16. Indemnification Agreement.** The Lessee hereby releases and agrees to indemnify and hold harmless the Lessor and all of its trustees, officers, employees, directors, agents, and consultants (hereinafter collectively referred to as the "Indemnitees") of and from any and all claims, demands, liabilities, losses, costs, or expenses for any loss including but not limited to bodily injury (including death), personal injury, property damage, expenses, and reasonable attorneys' fees, caused by, growing out of, or otherwise happening in connection with this Lease, due to any negligent act or omission on the part of the Lessee, its agents, employees, or others working at the direction of the



Lessee or on its behalf, or due to the application or violation of any pertinent federal, State, or local law, rule, or regulation. This indemnification extends to the successors and assigns of the Lessee, and this indemnification survives the expiration or termination of the Lease and the dissolution or, to the extent allowed by law, the bankruptcy of the Lessee. This indemnification does not extend beyond the scope of this Lease and the Construction Documents and the work undertaken thereunder, and does not extend to claims exclusively between the undersigned parties arising from the terms or regarding the interpretation of this Lease.

**Section 17. Police Services.** The Premises shall be subject, at all times during the term of this Lease, to the jurisdiction of the Lessor's campus security force.

**Section 18. Obligations of the Lessee Regarding Insurance.** (a) 2004 Student Housing Facility Construction Phase. (i) The Lessee agrees that it will, at all times during the construction of the 2004 Student Housing Facility, maintain or cause the Developer and/or the General Contractor to maintain in full force and effect Builder's Risk - Completed Value Form insurance insuring all buildings, structures, boilers, equipment, facilities, fixtures, supplies, and other property constituting the 2004 Student Housing Facility on an "all risk of loss or damage basis" including coverage for soft costs and lost rents due to damage and destruction prior to completion in an amount not less than Maximum Annual Debt Service on the Bonds in including perils of fire, lightning, and all other risks covered by the extended coverage endorsement then in use in the State to the full replacement cost of the 2004 Student Housing Facility. Such policy or policies of insurance shall name the Issuer, the Lessee, the Bond Trustee, and the Lessor as insureds, as their respective interests may appear, and shall name the Bond Trustee as mortgagee under the Standard New York Mortgagee Endorsement providing that no act or omission by the named insured shall in any way prejudice the rights the Bond Trustee thereunder. While the Bonds are outstanding, all proceeds received under such policy or policies by the Lessee or the Issuer shall be paid over to the Bond Trustee and held and disbursed in accordance with the provisions of the Bond Documents and thereafter, shall be applied to the restoration and/or completion of the 2004 Student Housing Facility. In addition, the Lessee shall cause the Developer and/or the General Contractor at all times during the construction of the 2004 Student Housing Facility to maintain (i) general liability insurance in an amount not less than that required to be maintained by the Lessee under item (iv) of subsection (c) of this Section, and (ii) workers' compensation insurance as required by law. Said insurance policy or policies shall contain a provision that such insurance may not be canceled by the issuer thereof without at least thirty (30) days' advance written notice to the Issuer, the Lessee, the Bond Trustee, and the Bond Insurer. All such policies or copies thereof or certificates that such insurance is in full force and effect shall be delivered to the Bond Trustee at or prior to the delivery of the Bonds.

(ii) The Lessee further agrees that it will cause the Developer to require the General Contractor to deliver to the Bond Trustee separate performance and labor and material payment bonds with respect to the applicable Construction Contracts, and in the full amount of such Construction Contracts, made by the contractor thereunder as the principal and a surety company or companies, acceptable to the Lessor, as surety; such bonds shall be in such forms as are acceptable to the Lessor. Said bonds shall name the Issuer, the Lessee, the Bond Trustee, and the Lessor as the obligees. While the Bonds are outstanding, all proceeds received under said bonds shall be paid over to the Bond Trustee and held and disbursed in accordance with the provisions of the Bond Documents and thereafter, shall be used to acquire, construct, install, and equip the Student Housing Facilities.

(iii) The Lessee shall obtain and maintain or cause to be obtained and maintained Professional Errors and Omissions Insurance covering all architects, engineers, specialists, and consultants in an amount and with coverage subject to the reasonable approval of the Lessor. Coverages shall be specific for this project and not aggregated with insurance for other undertakings of the insureds.

(b) General In addition to the insurance required by subsection (a) hereof, throughout the term of this Lease, the Lessee shall keep the Student Housing Facilities or cause the same to be kept continuously insured against such risks as are customarily insured against with respect to facilities of like size and type, as recommended by an Insurance Consultant, including, but not limited to:

(i) commencing on the date that the 2004 Student Housing Facility is completed (the "2004 Completion Date") and on the completion date of any other component of the Student Housing Facilities (other than the Existing Student Housing Facilities), insurance thereon upon the repair or replacement basis in an amount of not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations, and foundations but without deduction for depreciation) thereof (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per casualty) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke and such other risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures (including vandalism and malicious mischief);

(ii) commencing on the date hereof to the 2004 Completion Date, business interruption insurance (also referred to as "business income" or "loss of rents insurance") covering loss of revenues and other income by the Lessee by reason of total or partial suspension of, or interruption in, the operation of the Existing Student Housing Facilities caused by damage or destruction thereof in an amount acceptable to the Lessor;

(iii) commencing on the 2004 Completion Date, business interruption insurance (also referred to as "business income" or "loss of rents insurance") covering loss of revenues and other income by the Lessee by reason of total or partial suspension of, or interruption in, the operation of the Student Housing Facilities caused by damage or destruction thereof in an amount not less than the Maximum Annual Debt Service on the Bonds plus twelve (12) months' budgeted operating expenses minus those operating expenses avoided as a result of and during the period of interruption;

(iv) commencing on the date hereof with respect to the Existing Student Housing Facilities and commencing on the completion date of the 2004 Student Housing Facility or any other component of the Student Housing Facilities with respect thereto, comprehensive general liability insurance providing insurance (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence and including professional liability) covering all claims for bodily injury and property damage, including not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, to include personal and advertising injury, general aggregate, products and completed operations aggregate insurance component, and contract liability to cover all insurable obligations herein;

(v) commencing on the date any vehicle is acquired or hired by the Lessee for use with respect to the Student Housing Facilities, automobile liability insurance providing insurance (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence) to the extent of not less than a combined single limit of One Million Dollars (\$1,000,000) per accident covering liability out of the use of any Lessee vehicle for such vehicles used in conjunction with the Student Housing Facilities, whether owned, non-owned, or hired, and including personal injury protection and uninsured motorist protection in the minimum statutory limits where required by law;

(vi) with respect to the 2004 Student Housing Facility and any other component of the Student Housing Facilities (other than the Existing Student Housing Facilities) at all times insurance under the Federal Flood Insurance Program within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the same are eligible under such program;

(vii) commencing on the date the first employee of the Lessee is hired, workers' compensation coverage or other similar coverage covering all of the Lessee's employees on the Premises, as required by the laws of the State, including, with respect to workers' compensation insurance, the policy must include Coverage B-Employer's liability limits of: bodily injury by accident - Five Hundred Thousand Dollars (\$500,000) each accident; and bodily injury by disease - Five Hundred Thousand Dollars (\$500,000) each employee (and, in this regard, the Lessee shall require all subcontractors performing work on the Project to obtain an insurance certificate showing proof of workers' compensation insurance);

(viii) commencing on the 2004 Completion Date and on the completion date of any other component of the Student Housing Facilities (other than the Existing Student Housing Facilities), to the extent that the 2004 Student Housing Facility or such component contains a steam boiler, pressure vessels, or pressure

pipng, boiler explosion insurance on steam boilers, if any, pressure vessels, and pressure piping in an amount not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the 2004 Student Housing Facility or such component, respectively, (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence) provided, that such insurance need not be taken out until steam boilers, pressure vessels, or pressure piping are installed therein,

(ix) commencing on the date hereof, fidelity bonds or employee dishonesty insurance in the amount of One Hundred Thousand Dollars (\$100,000) for all officers, agents, and employees of the Lessee with the responsibility of handling General Revenues, and

(x) additional umbrella or all risk coverage in an amount of Ten Million Dollars (\$10,000,000) in the aggregate, which shall include all coverages required by (iv), (v), and (vii) hereof.

(c) Application of Net Proceeds of Insurance. While the Bonds are outstanding, the proceeds of the insurance carried pursuant to the provisions of this Section shall be applied in accordance with the provisions of the Bond Documents. If the Bonds are no longer outstanding, such proceeds shall be applied as described in Section 20(c) hereof or as shall be mutually agreeable to the Lessor and the Lessee

(d) Additional Provisions Respecting Insurance. All insurance required by this Section shall be taken out and maintained in generally recognized responsible insurance companies qualified to do business in the State and that have a rating of "A-VII" or better by the latest Best Insurance Report. All policies evidencing such insurance shall provide for payment to the Issuer, the Lessee, the Lessor, and the Bond Trustee as their respective interests may appear, the policies required by items (iv), (v), and (ix) of subsection (b) of this Section shall name the Issuer, the Lessor, and the Bond Trustee as additional insureds, and the policies required by items (i), (vi), and (viii) of subsection (b) of this Section shall name the Bond Trustee as mortgagee and loss payee under the Standard New York Mortgage Endorsement providing that no act or omission by the Lessee shall in any way prejudice the rights of the Bond Trustee under such policies. A certificate or certificates of the insurers that such insurance is in force and effect shall be deposited with the Bond Trustee and the Lessor, and prior to the expiration of any such policy the Lessee shall furnish the Bond Trustee and the Lessor with a certificate or certificates that the policy has been renewed or replaced or is no longer required by this Lease. In lieu of separate policies, the Lessee may maintain one or more blanket policies of insurance having the coverage required by this Section. All such policies shall provide that such insurance may not be modified adversely to the interests of the Issuer, the Bond Trustee, or the Lessor or canceled by the issuer thereof before the Bonds have been fully paid without at least thirty (30) days' written notice to the Lessee, the Issuer, the Bond Trustee, and the Lessor.

(e) Review by Insurance Consultant; Insurance Certification. At all times during the term of this Lease, an Insurance Consultant shall be designated by the Lessee. The Lessee shall procure from the Insurance Consultant a review of its insurance requirements not less than every two (2) years along with a written recommendation, if any, for increasing or decreasing any of the insurance or coverages hereinabove required, and shall furnish a copy of such review to the Bond Trustee and the Lessor. If any such review by the Insurance Consultant contains recommendations for increasing any of such insurance or coverages, the Lessee shall promptly increase such insurance or coverages in accordance with such recommendations, and if any such review by the Insurance Consultant contains recommendations for decreasing any of such insurance or coverages, the Lessee may, with the consent of the Lessor, decrease such insurance or coverages in accordance with such recommendations. In addition, on or before the execution and delivery of this Lease and, thereafter, upon the request of the Bond Trustee, the Lessee shall furnish to the Bond Trustee and the Lessor a certificate of the Insurance Consultant to the effect that the insurance procured by the Lessee satisfies in all respects the requirements of this Section.

**Section 19. Obligations of the Lessor Regarding Insurance.** The Lessor shall keep the Existing Student Housing Facilities or cause the same to be kept continuously insured against such risks as are customarily insured against with respect to facilities of like size and type, including, but not limited to:

(a) insurance thereon upon the repair or replacement basis in an amount of not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations, and foundations but without deduction for depreciation) thereof (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per casualty) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a

strike, civil commotion, aircraft, vehicles, and smoke and such other risks as are now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures (including vandalism and malicious mischief);

(b) at all times insurance under the Federal Flood Insurance Program within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the same are eligible under such program; and

(c) to the extent that any of the Existing Housing Facilities contains a steam boiler, pressure vessels, or pressure piping, boiler explosion insurance on steam boilers, if any, pressure vessels, and pressure piping in an amount not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Existing Student Housing Facilities (with deductible provisions not to exceed Twenty-Five Thousand Dollars (\$25,000) per occurrence) provided, that such insurance need not be taken out until steam boilers, pressure vessels, or pressure piping are installed therein.

**Section 20. Damage and Destruction.** (a) Repair of Damaged Improvements. (i) Should any building or other structures or improvements included in the 2004 Student Housing Facility be damaged or destroyed by fire or any other casualty whatsoever during the term of this Lease, the Lessee, except as hereafter provided in this subsection (a), shall, within one hundred eighty (180) days from the date of such damage or destruction, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the same with all reasonable dispatch, such buildings, other structures or improvements shall have been repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such damage or destruction. Anything in this Lease to the contrary notwithstanding, the period of time within which the Lessee is hereinabove obligated to complete the repair, reconstruction, restoration, or replacement of any buildings or other structures or improvements so damaged or destroyed shall be extended for the period of any delay in said completion not within the reasonable control of the Lessee. However, if any building or other structures or improvements included in the 2004 Student Housing Facility shall be damaged or destroyed at any time after payment in full of any debt secured by the Lessee's interest under this Lease, the Lessee shall be relieved of any obligation to repair, reconstruct, restore, or replace the said damaged or destroyed buildings, other structures or improvements upon payment by the Lessee to the Lessor, in a single total payment, of the net proceeds received by the Lessee from the insurance company or companies insuring the same. The Lessee shall also be relieved of any such obligation in the event a Leasehold Mortgagee shall elect to apply insurance proceeds to the reduction of the Lessee's outstanding indebtedness as permitted pursuant to subsection (c) of this Section. The release of the Lessee from the Lessee's obligation to repair, reconstruct, restore, or replace the said damaged or destroyed building or other structures or improvements shall be conditioned, in addition to the payment by the Lessee of the sums herein enumerated, upon delivery by the Lessee to the Lessor of an instrument releasing, demising, conveying, and transferring to the Lessor all of the Lessee's rights, title, and interest in and to the Premises. Notwithstanding the above, the parties recognize that the Loan Agreement contains provisions governing the actions of the Lessee upon damage or destruction of all or part of the Premises and agree that so long as the Loan Agreement is outstanding, (A) the compliance by the Lessee with the provisions thereof regarding damage or destruction shall constitute compliance by the Lessee hereunder, and (B) this Lease shall be interpreted in a manner consistent with the provisions of the Loan Agreement.

(ii) Should any building or other structures or improvements included in the Existing Student Housing Facilities be damaged or destroyed by fire or any other casualty whatsoever during the term of this Lease, the Lessor, shall, within one hundred eighty (180) days from the date of such damage or destruction, commence the work of repair, reconstruction, restoration, or replacement and shall prosecute the same with all reasonable dispatch, such buildings, other structures or improvements shall have been repaired, reconstructed, or restored as nearly as practicable to the same condition as prior to such damage or destruction. Anything in this Lease to the contrary notwithstanding, the period of time within which the Lessor is hereinabove obligated to complete the repair, reconstruction, restoration, or replacement of any buildings or other structures or improvements so damaged or destroyed shall be extended for the period of any delay in said completion not within the reasonable control of the Lessor.

(iii) The Lessor and the Lessee specifically agree that, except as otherwise provided in this Lease, damage to or destruction of any building or other structures or improvements on or within the Land at any time during the term of this Lease, by fire or any other casualty whatsoever, shall not work a termination of this Lease or authorize the Lessee or those claiming by, through or under the Lessee to quit or surrender possession of the Premises or any part thereof, and shall not release the Lessee in any way from its liability to pay the Lessor the Rent herein provided for, or from any of the provisions of this Lease.

(b) Damages for Failure to Comply with Repair Obligation. If the repair, reconstruction, restoration, or replacement of damaged or destroyed buildings, other structures or improvements is not substantially completed in accordance with subsection (a)(i) hereof within a reasonable time after the date of such damage or destruction (if such completion date is prior to the end of the term of this Lease and if the Lessee is under the affirmative requirement of such subsection (a)(i) to commence the repair, reconstruction, restoration, or replacement), the Lessor may terminate this Lease immediately upon written notice thereof to the Lessee and, in such event, the Lessor shall receive the proceeds of all insurance obtained in accordance with Section 18 of this Lease to the extent such proceeds have not been expended on or committed to such repairs.

(c) Use of Proceeds of Insurance. Except as otherwise provided herein, the proceeds of all insurance obtained in accordance with items (i), (vi), and (viii) of subsection (b) of Section 18 of this Lease shall be used for the repair, reconstruction, restoration, or replacement of any building or other structure or improvement located on or within the Premises unless the Lessee shall be relieved of the Lessee's obligation to so repair, reconstruct, restore, or replace such damaged or destroyed building or other structure or improvement pursuant to Section 20(a)(i) of this Lease. Subject to the provisions of the Bond Documents, the proceeds of such insurance, if not required to be used for the repair, reconstruction, restoration, or replacement of the Premises, shall be deposited in a reserve account established by the manager of the Student Housing Facilities for the benefit of the Student Housing Facilities (the "*Reserve Account*"). Notwithstanding anything to the contrary contained herein, a Leasehold Mortgagee shall have the right to apply insurance proceeds to any outstanding indebtedness owed to it by the Lessee and secured by a Leasehold Mortgage if there shall exist any default by the Lessee in the performance of any of the terms or provisions of such Leasehold Mortgage on the Lessee's part to be performed.

(d) Termination Prior to Completion of Repair. In the event of the termination of this Lease before the expenditure of the full amount of such insurance proceeds in the repair, reconstruction, restoration, or replacement of such damaged or destroyed buildings, other structures or improvements, any unexpended balance thereof, including any interest previously earned by such balance, shall inure to and become the sole property of the Lessor.

(e) Subordination to Bond Documents. Notwithstanding anything else herein contained, the provisions of the Bond Documents shall control in all respects the receipt, handling, and application of any and all insurance proceeds, it being acknowledged and agreed that the Bond Trustee and any other permitted Leasehold Mortgagee, as their respective interests may appear, shall have a first and prior security interest therein.

**Section 21. Mortgaging of the Leasehold.** The Lessee, and every successor and assign of the Lessee, shall have the right in addition to any other rights granted in this Lease to encumber its interest in this Lease with the Lessor's consent, which consent shall not be unreasonably withheld, under any one or more Leasehold Mortgages, upon the condition that all rights acquired under any such Leasehold Mortgage shall be subject to each of the provisions set forth in this Lease and to all rights and interests of the Lessor therein. In accordance with the foregoing, the Lessor hereby consents to the Lessee's encumbrance of its interest in this Lease pursuant to the Bond Trustee Mortgage which shall secure outstanding principal indebtedness of no more than the outstanding principal amount of the Bonds. The Lessor further consents to any encumbrance of the Lessee's interest in this Lease resulting from the refinancing of the indebtedness initially secured by the Bond Trustee Mortgage (the "*Refinanced Bond Trustee Mortgage*"). If, from time to time, the Lessee or the Lessee's successors and assigns shall encumber this Lease with a Leasehold Mortgage, and if the holder thereof delivers to the Lessor an executed counterpart of such Leasehold Mortgage, together with each assignment thereof certified by such holder to be true together with written notice specifying the name and address of such holder and the pertinent recording data with respect to such Leasehold Mortgage, the Lessor agrees that, anything in this Lease to the contrary notwithstanding, from and after the date of receipt by the Lessor of such notice and for the term (duration) of such Leasehold Mortgage, the following provisions shall apply:

(a) Consent to Amendment. There shall be no cancellation, surrender or modification of this Lease by the Lessor or the Lessee without the prior written consent of any Leasehold Mortgagee. Notwithstanding the foregoing (but, in any event, subject to a Leasehold Mortgagee's curative rights set forth in subsections (c) and (d) hereof), nothing herein shall be deemed to prohibit the Lessor from terminating this Lease in accordance with its terms or exercising its option to purchase as provided for in this Lease. Except for a refinancing pursuant to this subsection, there shall be no material modification in the Leasehold Mortgage or related documentation without the Lessor's prior written consent.

(b) Notices to Leasehold Mortgagees. The Lessor, upon serving the Lessee with any notice of default or termination, shall simultaneously serve a copy of such notice on any Leasehold Mortgagee. The Leasehold Mortgagee shall then have the same period after service of the notice on it as was given to the Lessee under this Lease to remedy or cause to be remedied the default complained of and the Lessor shall accept performances by or at the instigation of any Leasehold Mortgagee as if it had been done by the Lessee. Any notice required to be given to any Leasehold Mortgagee shall be posted in the United States mail, postage prepaid, certified, return receipt requested (and wired by telegraphic means or transmitted by facsimile transmission) and addressed to the Leasehold Mortgagee at the address and to the attention of the person designated to the Lessor by such Leasehold Mortgagee to receive copies of such notices and shall be deemed to have been served as of the date the said notice is received or refused by such Leasehold Mortgagee.

(c) Curative Rights of Leasehold Mortgagees. In addition to the rights granted to any Leasehold Mortgagee under subsection (b) of this Section, a Leasehold Mortgagee shall have an additional period of ninety (90) days to remedy or cause to be remedied any default of which it receives notice.

(d) Limitation Upon Termination Rights of the Lessor. If the Lessor shall elect to terminate this Lease by reason of any default of the Lessee, the Leasehold Mortgagee shall also have the right to postpone and extend the date of termination as fixed by the provisions of this Lease for a period of not more than six (6) months from the expiration of the ninety (90) day period specified in subsection (c) of this Section 21, provided that the Leasehold Mortgagee shall pay the Rent and other charges required to be paid under this Lease during such period, and provided further, that the Leasehold Mortgagee of this Lease shall forthwith take steps necessary to acquire the Lessee's interest and estate in this Lease by foreclosure of its Leasehold Mortgage, or otherwise, and shall prosecute such action to completion with due diligence. If at the end of the six (6) month period, the Leasehold Mortgagee of this Lease shall be actively engaged in steps to acquire or sell the Lessee's interest in the Lease, the time for Leasehold Mortgagee to comply with the provisions of this subsection (d) shall be extended for such period as shall be reasonably necessary to complete these steps with reasonable diligence and continuity.

(e) Assignment. The Lessor agrees that in the event of any foreclosure under any Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein all right, title and interest encumbered by such Leasehold Mortgage may, without the consent of the Lessor, be assigned to and vested in the purchaser at such foreclosure sale subject and subordinate, however, to the rights, title and interests of the Lessor; and, notwithstanding that the Lessor's consent to said assignment shall not have been obtained, any such assignee shall be vested by virtue of such assignment with any and all rights of the party whose estate was encumbered by such Leasehold Mortgage as though the Lessor had consented thereto.

(f) Mortgagee Leases. The Lessor agrees that in the event of a termination of this Lease by reason of any default by the Lessee, and subject to the rights herein granted to Leasehold Mortgagees, the Leasehold Mortgagee shall have the option, but not the obligation, to enter into a lease (hereinafter referred to as the "Mortgagee Lease") of the Premises with the Lessor for the remainder of the term effective as of the date of termination, at the same Rent and upon the same terms, provisions, covenants and agreements as contained in this Lease and subject to no additional exceptions or encumbrances other Permitted Encumbrances and to the rights, if any, of the parties then in possession (actual or constructive) of any part of the Premises; provided:

(i) The Leasehold Mortgagee shall enter into a Mortgagee Lease within the six (6) month period specified in subsection (d) of this Section.

(ii) The Leasehold Mortgagee shall perform and observe all covenants contained in the Mortgagee Lease on the Lessee's part to be performed during such period of time commencing with the date of the execution of the Mortgagee Lease and terminating upon the abandonment or surrender of possession of the Premises under the said Mortgagee Lease; provided, however, that if an event occurs that gives the Lessor

the right to terminate the Mortgage Lease, as a condition to the exercise of such right of termination, the Lessor shall either (A) pay to the Leasehold Mortgagee the outstanding amount payable by the Lessee under the Bond Documents which shall in any event be sufficient to pay the Bonds in full in accordance with the provisions of the Indenture or (B) assume in writing the Lessee's Obligations under the Bond Documents and grant to the Leasehold Mortgagee a perfected, first priority security interest in the gross revenues generated by the operation of the Student Housing Facilities for the purpose of securing such Obligations.

(iii) The Leasehold Mortgagee, as lessee under the Mortgage Lease shall have the same right, title and interest in and to the Premises and the right to use the buildings and improvements thereon as the Lessee had under this Lease.

(g) Notwithstanding anything else contained herein, if (i) an event occurs that gives the Lessor the right to terminate this Lease and (ii) the Leasehold Mortgagee does not elect to enter into a Mortgage Lease, then, as a condition to the Lessor's right to terminate this Lease, the Lessor shall either (A) pay to the Leasehold Mortgagee the outstanding amount payable by the Lessee under the Bond Documents which shall in any event be sufficient to pay the Bonds in full in accordance with the provisions of the Indenture or (B) assume in writing the Lessee's Obligations under the Bond Documents and grant to the Leasehold Mortgagee a perfected, first priority security interest in the gross revenues generated by the operation of the Student Housing Facilities for the purpose of securing such Obligations.

(h) Agreement Between the Lessor and Leasehold Mortgagee. The Lessor, upon request, shall execute, acknowledge and deliver to each Leasehold Mortgagee an agreement, in form reasonably satisfactory to Leasehold Mortgagee and the Lessor, by and among the Lessor, the Lessee and Leasehold Mortgagee (provided the same has been previously executed by the Lessee and Leasehold Mortgagee) agreeing to all of the provisions of this Section 21.

(i) Limitation on Liability of Leasehold Mortgagee. Notwithstanding any other provision of this Lease, the Lessor agrees that any Leasehold Mortgagee permitted under this Lease shall in no manner or respect whatsoever be (i) liable or responsible for any of the Lessee's obligations or covenants under this Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the satisfaction of such obligations or covenants), or (ii) required to cure any default by the Lessee under this Lease, provided; however, that if such Leasehold Mortgagee becomes the owner of the Leasehold Estate created hereunder or becomes the lessee under a Mortgage Lease, then such Leasehold Mortgagee shall be responsible and liable for all obligations and covenants accruing during such Leasehold Mortgagee's tenure as owner of such leasehold estate or as lessee under a Mortgage Lease. Notwithstanding the foregoing, the liability of a Leasehold Mortgagee with respect to its obligations under this Lease or any Mortgage Lease shall be "non-recourse" and, accordingly, the Lessor's source of satisfaction of such obligations shall be limited to the Net Available Cash Flow and the Lessor shall not seek to obtain payment through any judicial process or otherwise from any person or entity comprising such Leasehold Mortgagee or from any assets of such Leasehold Mortgagee other than the Net Available Cash Flow.

**Section 22. Default.** (a) Events of Default. In the event the Lessee fails or refuses to observe, perform, or comply with any of the provisions of this Lease, the Lessor may, by serving written notice on the Lessee declare the Lessee to be in default of the Lessee's obligations under this Lease. Except as otherwise provided in subsection (b) of this Section, in the event of the Lessee's failure to remedy or cure any such default within thirty (30) days after the date of the written notice from the Lessor, or, if remedy or cure (except for a default with respect to the payment of monetary sums) cannot be effected despite a good faith effort to effect such remedy or cure within the said thirty (30) days, in the event of the Lessee's failure to commence within the said thirty (30) days a good faith effort to cure the default within a reasonable period commensurate with the nature of the default but in no event longer than (6) months after the commencement, the Lessor may pursue one of the options set forth in subsection (c) below.

(b) Bankruptcy - Appointment of a Receiver - Debtor Relief Proceedings - General Assignment for Benefit of Creditors - Levy Upon Property. In addition to the happening of any event set forth in subsection (a) of this Section, the Lessor may, at its option, declare a default of this Lease and immediately elect one of the options provided in subsection (c) of this Section upon the happening of any or all of the following events:

(i) If the Lessee is adjudicated a bankrupt; or

(ii) If a permanent receiver is appointed for the Lessee's interest in the Premises (unless such receiver is appointed pursuant to a request of a Leasehold Mortgagee) and such receiver is not removed within ninety (90) days after notice from the Lessor to the Lessee to obtain such removal; or

(iii) If the Lessee voluntarily takes advantage of any debtor relief proceedings under any present or future law whereby the Rent or any part thereof is reduced or payment thereof deferred or becomes subject to any such involuntary proceedings and said involuntary proceedings are not dismissed within ninety (90) days after notice from the Lessor to the Lessee to obtain such dismissal; or

(iv) If the Lessee makes a general assignment for benefit of creditors; or

(v) If the Premises or the Lessee's effects or interests therein are levied upon or attached under process against the Lessee, and the same is not satisfied or dissolved within ninety (90) days after notice from the Lessor to the Lessee to obtain satisfaction or dissolution thereof.

(c) Remedies. Subject to the provisions of Section 21(e) and 32(i) hereof, upon the occurrence of an event of default and the expiration of the applicable cure period, as provided in subsections (a) or (b) of this Section, the Lessor may pursue one of the following options:

(i) Terminate this Lease immediately upon written notice thereof to the Lessee, and thereafter, without legal process, enter upon and take possession and control of the Premises to the complete exclusion of the Lessee. The Lessor may also demand, collect and retain all rents due from tenants occupying the Premises and the Lessor may otherwise treat and occupy the Premises as if this Lease had expired of its own limitation. The failure of the Lessor to exercise such rights after one or more defaults shall not be a waiver of the rights of the Lessor upon any subsequent default; or

(ii) As the Lessee's legal representative, without terminating this Lease, re-let the Premises upon obtaining the written consent of the Leasehold Mortgagee. Such re-letting may be accomplished without advertisement and by private negotiations for such term or terms and at such rental or rentals as the Lessor in its sole discretion may deem proper and advisable, with the right to make alterations and repairs to the Premises. Upon each such reletting:

(A) the Lessee shall be immediately liable to pay to the Lessor, in addition to any sums due hereunder, the reasonable cost and expenses of such reletting and of such alterations and repairs incurred by the Lessor; and

(B) Subject to applicable law, rents received by the Lessor from such reletting shall be applied: First, to the payment of any costs and expenses of such re-letting and of such alteration and repair; Second, to the payment of Rent due and unpaid under this Lease; and Third, the residue, if any, shall be held by the Lessor, in escrow, and (1) applied to the payment of the Rent as the same becomes due under this Lease and (2) if any balance then remains, paid to the Lessee at the termination of this Lease. The Lessor shall in no event be liable to the Lessee for any interest on the said residue.

**Section 23. Expiration or Termination.** (a) Extinguishment of the Lessee's Rights. Upon the termination or expiration of this Lease from any cause, all rights and interests of the Lessee, and all persons whomsoever claiming by, through or under the Lessee (with the exception of the rights of Leasehold Mortgagees arising under Section 21 hereof), shall immediately cease and terminate, and the Premises, including all buildings, improvements, engines, machinery, dynamos, generators, boilers, furnaces, elevators, fire escapes, and all lifting, lighting, heating, cooling, refrigerating, air conditioning, ventilating, gas, electric and plumbing apparatus, appliances and fixtures, as well as other fixtures attached to or within the Premises, and all personal property located thereon, shall thence forward constitute and belong to and be the absolute property of the Lessor, without further act or conveyance, and without liability to make such compensation to the Lessee or to anyone whomsoever, and free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by the Lessee at any time. The Lessee agrees, at the termination of this Lease, to surrender unto the Lessor, all and singular the Premises with then existing buildings, other structures and improvements constructed and located thereon and therein, in the same condition as when the construction of such



buildings, other structures, and improvements was completed, only natural and normal wear and tear excepted, unless the Lessee shall be relieved of the Lessee's obligation to repair, reconstruct, restore or replace damaged or destroyed buildings, other structures or improvements pursuant to Section 20(a)(i) of this Lease.

(b) Prepaid Items Assigned. Upon the expiration of the term of this Lease, or upon the prior termination of this Lease from any cause, all expense items prepaid by the Lessee with respect to constructing, operating, maintaining and protecting the Premises, including, but not limited to, prepaid insurance premiums, any tax and utility deposits, shall inure to the benefit of and become the property of the Lessor and to this extent the Lessee does hereby transfer, assign and convey any such prepaid expense items to the Lessor.

(c) Amounts Remaining in Funds and Accounts. Upon the expiration of the term of this Lease, or upon the prior termination of this Lease from any cause, and subject to the interest of the Bond Trustee and/or the Leasehold Mortgagee and subject to the satisfaction of all obligations of the Lessee under the Bond Documents, any amounts remaining in any fund, account or reserve created in connection with the maintenance of the Property, or the management of the Student Housing Facilities, including, but not limited to the Reserve Account, shall inure to the benefit of and become the property of the Lessor and to this extent the Lessee does hereby transfer, assign, and convey any such funds to the Lessor.

**Section 24. Access to Premises.** The Lessor, its authorized representatives, agents, employees, and attorneys may, but shall be under no duty to, enter the Premises at reasonable times and hours, subject to the rights of tenants in possession, if any, to inspect the Premises in order to determine whether the Lessee is complying with its undertakings, duties and obligations under this Lease, to make such necessary repairs, additions, improvements, changes, or alterations to the Premises as the Lessor may elect to make in accordance with the terms and provisions of this Lease (the Lessor agreeing to provide five (5) days' written notice of its intent to make such necessary repairs, additions, improvements, changes, or alterations to the Premises, except in the case of an emergency where no such prior notice shall be required), and to exhibit the same to prospective purchasers, operators, mortgagees, or tenants of the Premises. Such entry, inspection and repairs, additions, improvements, changes, or alterations as the Lessor may make of the Premises shall not constitute an eviction of the Lessee in whole or in part, and the Rent shall in no way abate by reason of loss or interruption of the business of the Lessee or otherwise while such work is being done. The Lessor agrees to employ its reasonable efforts to minimize any interruption to the business operations of the Lessee resulting from the Lessor's (or its designated representatives') work in or on the Premises. Nothing herein contained, however, shall be deemed or construed to impose upon the Lessor any obligation or liability whatsoever for care, supervision, repair, improvement, additions, improvement, change, or alteration to the Premises other than as herein expressly provided.

**Section 25. Property Subject to Zoning.** The Lessee takes the Property subject to all zoning regulations and ordinances now or hereafter in force including, but not limited to, those as to building line and setback.

**Section 26. Condemnation.** (a) General. The term "Condemned" as used in this Lease means taken or appropriated by the exercise of the power or right of eminent domain or taken or appropriated for public or quasi-public use or, while not actually taken or appropriated, the occurrence of any state of facts relating to the taking or appropriation of property which, without an actual taking or appropriation, has resulted in direct or consequential damages thereto. Such term shall also be deemed to include to the extent not otherwise defined in this paragraph, temporarily taken for a period of one year or more.

(b) Total Condemnation. If all of the Premises (or such substantial portion thereof as shall, in the Lessor's sole discretion, make it economically infeasible to continue to operate the remaining portion for the purpose herein) is Condemned, this Lease shall terminate on the date title to the Property vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the Lessor to recover just and adequate compensation from any such condemnor. If this Lease is terminated as provided in this subsection, the Lessee shall pay the Lessor Rent for the year in which the Premises are taken, up to the date of such termination. The Rent shall be payable within sixty (60) days after the date the Lease is terminated.

(c) Partial Condemnation. In the event that less than all of the Premises or less than all of the Lessee's leasehold interest in the Property is Condemned, this Lease shall terminate as to the condemned portion of the Premises or the Lessee's leasehold interest in the Property on the date title to the Condemned portion of the Premises or leasehold interest vests in the condemnor; provided, however, that such termination shall be without prejudice to the rights of the

Lessor to recover just and adequate compensation from any such condemnor. The provisions of this Lease shall remain in full force and effect as to the portion of the Property not condemned.

(d) Division of Award. Subject to the controlling provisions of the Bond Documents, if the Premises is totally or partially Condemned as provided in subsections (b) or (c) of this Section, the condemnation proceeds shall be paid as follows:

(i) the Lessee first shall be entitled to receive such portion of the condemnation proceeds as shall equal Leasehold Mortgagee's equitable portion of the principal balance and accrued interest on and all other sums owing under the Leasehold Mortgage. Such amount shall be directly paid to such Leasehold Mortgagee; and

(ii) the remaining condemnation proceeds shall be apportioned between the Lessor and the Lessee pro rata, with Lessor's *pro rata* share being equal to the value of the Condemned portion of the Premises (after deduction of the value of the Condemned portion of Lessee's leasehold estate under this Lease), and with Lessee's *pro rata* share being the remainder, if any.

**Section 27. Estoppel Certificates.** The Lessor and the Lessee will execute, acknowledge and deliver to the other promptly upon request, a certificate certifying as to the following:

(a) Validity of Lease. That this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications);

(b) Payment of Rent. The dates through which the Rent under this Lease has been paid;

(c) Amount of Rent Due. The amount of the Rent then payable;

(d) Defaults by the Lessee. That no notice has been given by the Lessor to the Lessee of any default under this Lease which has not been cured and to the best of its knowledge and belief no default exists (or, if there has been any notice given or a default exists, describing the same).

Certificates from the Lessor and the Lessee pertaining to the same matters may be relied upon by any prospective Leasehold Mortgagee or by any prospective assignee of an interest under this Lease or by any prospective sublessee as to all or any portion of the Property.

**Section 28. Option to Purchase.** Throughout the term of this Lease, the Lessor shall have the right and option to purchase the Lessee's right, title, and interest in and to the Premises.

(a) Exercise Notice. The Lessor may exercise such option to purchase the Lessee's right, title and interest in and to the Premises by delivering written notice (the "Exercise Notice") of such exercise to the Lessee.

(b) Purchase Price. If the option to purchase is exercised, the purchase price of the Lessee's right, title, and interest in and to the Premises shall be the principal balance then outstanding of all sums secured by any Leasehold Mortgage then in effect, plus any premium payable on such indebtedness, plus all interest accrued or to accrue on such indebtedness through the date of payment of such indebtedness and any other amounts required to redeem or defease the Bonds in accordance with the provisions of the Indenture. This provision for the Lessor's option shall not be in derogation of the Lessor's power of eminent domain.

(c) Closing. Closing shall be held on or before the date ninety (90) days after the date of the Exercise Notice, on such date and at such time and place as the Lessor shall specify in a notice to the Lessee. At Closing, title to the 2004 Student Housing Facility shall be conveyed by a limited warranty deed in recordable form executed by the Lessee, and the Lessee shall convey its interest in the leases with the student residents of the Student Housing Facilities by Assignment of Leases containing limited warranties of title.

(d) Title. The 2004 Student Housing Facility shall be conveyed free and clear of all loans, and shall be subject only to the Resident Leases and to Permitted Encumbrances, to all matters occurring subsequent to the date of this Lease

that would be disclosed by an accurate survey and inspection of the Premises and to all encumbrances created or consented to by the Lessor.

(e) Closing Costs. The Lessor shall pay all recording fees for satisfaction of the Lessee's loans, all transfer taxes in connection with the sale of the 2004 Student Housing Facility and all recording fees in connection with recording of the deed and assignment. The purchase price shall be paid to the Lessee in cash at Closing.

**Section 29. Notices.** Until a different address is provided in writing by the party to whom notice is required to be given hereunder,, all notices required to be given to the Lessor or to the Lessee hereunder shall be mailed by United States certified or registered mail, return receipt requested, with a copy thereof wired by telegraphic means or delivered by commercial overnight delivery service, to the Lessor and the Lessee at the following addresses:

If to the Lessor: Francis Marion University  
4822 East Palmetto Street  
Florence, South Carolina 29506  
Attention: Vice President for Business Affairs  
Telephone: (843) 661-1110  
Facsimile: (843) 661-1484

If to the Lessee: FMU Student Housing, LLC  
c/o FMU Real Estate Foundation  
4822 East Palmetto Street  
Florence, South Carolina 29506  
Attention: Executive Director  
Telephone: (843) 661-1214  
Facsimile: (843) 661-1484

Notwithstanding anything contained in this Lease to the contrary, any notice required to be given by the Lessor or the Lessee hereunder shall be deemed to have been given and shall be effective as of the date such notice is received or refused reflected on said notice. All notices, demands or requests made by either party to the other which are required or permitted by the provisions of this Lease shall be in writing.

**Section 30. Submission of Matters to the Lessor for Approval.** Any matter that must be submitted to and consented to or approved in writing by the Lessor or any matter that must be submitted to the Lessor that may become effective if not denied by the Lessor, as required under this Lease, shall be submitted to the Lessor by hand or mailed by United States certified or registered mail return receipt requested, to the address of the Lessor designated for the giving of notice to the Lessor under Section 29 hereof and shall either be approved or rejected by the Lessor within sixty (60) days after receipt unless a shorter period of time is expressly stated elsewhere in this Lease. If the Lessor should fail so to approve or reject within such sixty (60) day period as provided for herein, the Lessor's approval shall be assumed to have been unconditionally granted, and the Lessee shall have the right to proceed on such matter so submitted. The Lessor shall inform the Lessee in writing of its rejection or approval of such submitted matter by United States certified or registered mail, return receipt requested, to the address of the Lessee designated for the giving of notice to the Lessee under Section 29 hereof. Any review by the Lessor of any matter submitted to the Lessor is for the Lessor's own convenience and purpose only. By undertaking such review, the Lessor does not obtain or have any liability to the Lessee or any other person, including, without limitation, the insurers and lenders of the Lessee.

**Section 31. Holding Over by the Lessee.** The Lessee shall not use or remain in possession of the Premises after the termination of this Lease. Any holding over, or continued use or occupancy by the Lessee after the termination of this Lease, without the written consent of the Lessor, shall not constitute a tenant-at-will interest in behalf of the Lessee, but the Lessee shall become a tenant-at-sufferance and liable for Rent and all other expenses, obligations and payments in effect for the immediately preceding year of the term of this Lease. There shall be no renewal whatsoever of this Lease by operation of law.

**Section 32. Miscellaneous.** (a) No Waiver of Rights by the Lessor. No failure of the Lessor to exercise any power given the Lessor hereunder or to insist upon strict compliance by the Lessee with its undertakings, duties and

obligations hereunder, and no custom or practice of the parties hereto at variance with the provisions hereof shall constitute a waiver of the Lessor's right to demand exact compliance with the provisions contained in this Lease.

(b) Rights are Cumulative. All rights, powers, and privileges conferred herein upon both parties hereto shall be cumulative.

(c) Provisions are Binding Upon Assigns and are Real Covenants. It is mutually covenanted, understood and agreed by and between the parties hereto, that each of the provisions of this Lease shall apply to, extend to, be binding upon and inure to the benefit or detriment of not only the parties hereto, but also the legal representatives, successors and assigns of the Lessor and the Lessee hereto, and shall be deemed and treated as real covenants running with the Land during the term of this Lease. The parties further acknowledge and agree that the Bond Trustee and any other Leasehold Mortgagee and their respective successors and assigns shall be deemed third party beneficiaries hereunder. Whenever a reference to the parties hereto is made, such reference shall be deemed to include the legal representatives, successors and assigns of said party, the same as if in each case expressed.

(d) Applicable Law. This Lease shall be governed, construed, performed and enforced in accordance with the laws of the State of South Carolina.

(e) All Genders and Numbers Included. Whenever the singular or plural number, or masculine, feminine, or neuter gender is used in this Lease, it shall equally apply to, extend to, and include the other.

(f) Invalidity of Provision or Part Thereof. In the event any provision, or any portion of any provision of this Lease is held invalid, the other provisions of this Lease and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

(g) Time is of the Essence. All time limits stated in this Lease are of the essence of this Lease.

(h) Section Captions are to be Disregarded. The captions of the numbered Sections of this Lease are for purposes of identification and convenience only and are to be completely disregarded in construing this Lease.

(i) Subordination. Notwithstanding anything else contained herein, the Lessor agrees that the financing of the acquisition, construction, and furnishing of the 2004 Student Housing Facility will directly benefit the Lessor's operations and the Lessor agrees that its interest in and to the rents, revenues, issues and profits relating to the operation of the Student Housing Facilities, including, without limitation, all insurance proceeds, condemnation awards, reserve funds and Gross Revenue, as well as any and all rights to any and all contracts, agreements and other instruments in connection with the design, acquisition, construction, equipping, installation and operation of the 2004 Student Housing Facility, including, without limitation, all Collateral shall be junior and subordinate to the interest of the Bond Trustee and/or any other Leasehold Mortgagee in any such Collateral as granted or provided in any of the Bond Documents (collectively, the "**Bond Collateral**"). So long as any of the indebtedness created, evidenced, or secured by any of the Bond Documents remains outstanding and unpaid, the Lessor shall not exercise any rights or remedies with respect to the Bond Collateral without obtaining in each instance the prior written consent of the Bond Trustee and any other Leasehold Mortgagee.

(j) Entire Agreement Contained Herein. The making, execution and delivery of this Lease by the Lessee has not been induced by any representations, statements, covenants or warranties by the Lessor except for those contained in this Lease. This Lease constitutes the full, complete and entire agreement between and among the parties hereto; no agent, employee, officer, representative or attorney of the parties hereto has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith modifying, adding to or changing the provisions of this Lease. No amendment of this Lease shall be binding unless such amendment shall be in writing, signed by both parties hereto and approved by the Leasehold Mortgagee and attached to, incorporated in and by reference made a part of this Lease.

(k) No Partnership or Agency. Nothing in this Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the parties. The parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Lease shall be

construed to make either party liable for any of the indebtedness of the other, except as specifically provided in this Lease.

(l) Limitation of Liability. Notwithstanding anything herein to the contrary, the liability of the Lessee hereunder (including, but not limited to its indemnity obligations) under this Lease shall be "non-recourse" and, accordingly, the Lessor's sole source of satisfaction of such obligations shall be limited to the Lessee's interest in the Property and 2004 the Student Housing Facility and the rents, issues and surplus related thereto, and the Lessor shall not seek to obtain payment from any person or entity comprising the Lessee or from any assets of the Lessee other than those described herein, notwithstanding the survival of any obligation of the Lessee beyond the term hereof.

(m) Recordation of Memorandum of Lease. The Lessor and the Lessee agree that the parties shall execute, seal, acknowledge and delivery simultaneously with the execution of this Lease, in recordable form, a memorandum of lease setting forth the basic terms hereof

(n) Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed original and all of which, when taken together, shall constitute one in the same document. The signature of any party to any counterpart shall be deemed a signature too, and may be appended to, any other counterpart.

(o) Preservation of Tax Exemption. The Lessor shall not take any action with respect to the Student Housing Facilities that would adversely affect the exemption of interest on any Bonds from gross income for federal income tax purposes or would otherwise result in a breach of any representations, conditions or covenants of the Lessee as set forth in the Bond Documents.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Agreement to be duly executed in duplicate counterparts each of which shall be deemed to be an original, the day and year first above written.

WITNESSES:

LESSOR:

THE BOARD OF TRUSTEES FOR FRANCIS MARION UNIVERSITY f/k/a The Board of Trustees for Francis Marion College f/k/a The State College Board of Trustees

By Gail Ness Richardson  
Gail Ness Richardson, Chair

LESSEE:

FMU STUDENT HOUSING, LLC

By: FMU REAL ESTATE FOUNDATION, its sole member

By Howard G. Lundy  
Howard G. Lundy, Executive Director

Rachel L. Ferguson  
[Signature]

[Signature]  
JEREMY L COOK

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named **The Board of Trustees for Francis Marion University f/k/a The Board of Trustees for Francis Marion College f/k/a The State College Board of Trustees**, by Gail Ness Richardson, its Chair, sign, seal, and as its act and deed, deliver the within written instrument, and that (s)he with the other above-subscribed witness witnessed the execution thereof.

Rachel L. Ferguson  
(First Witness Signs Here)

SWORN to before me this 30th  
day of March, 2004

[Signature] (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 2/10/2010

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF FLORENCE )

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named **FMU Student Housing, LLC**, by FMU Real Estate Foundation, by Howard G. Lundy, its Executive Director, sign, seal, and as its act and deed, deliver the within written instrument, and that (s)he with the other above-subscribed witness witnessed the execution thereof.

[Signature]  
(First Witness Signs Here)

SWORN to before me this 30th  
day of March, 2004

Jeremy Z. Cook (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 1/11/2009

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**TRACT "A"**

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being on the campus of Francis Marion University, in the County of Florence, South Carolina, containing 8.96 acres, more or less, designated as TRACT "A" on a Plat made by Ervin Engineering Co., Inc. on January 15, 2004, recorded March 23, 2004 in Plat Book 83, Pages 259-259D, Florence County, South Carolina Public Records, which is by reference incorporated herein and made a part hereof, and is more fully described as follows to wit: Beginning at a point on the above mentioned plat as P.O.B. "A"; which is arrived at by coming from a point where the centerline of U.S. Highway No. 76 and 301 intersects the centerline of Francis Marion Road (State Route No. 327); thence, going along the said centerline of U.S. Highway No. 76 and 301 in an easterly direction S89°55'53"E, a distance of 1728.38 feet to a point where the said centerline of U.S. Highway No. 76 AND 301 intersects the centerline (projected) of a 24 Foot Access Easement, over the Francis Marion University campus; thence, turning and going along the said projected centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 78.72 feet to a point on the southern margin of said U.S. Highway No. 76 & 301, and where the said 24 Foot Access Easement actually begins (STA.0+00); thence, along the said centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 563.31 feet to the beginning of a curve; thence, along said curve (which has a radius of 1648.68 feet and a chord of S18°36'10"E-159.81 feet), a distance of 159.87 feet to a point; thence again along the centerline of said 24 Foot Access Easement, in a southerly direction S21°22'51"E, a distance of 34.38 feet to the beginning of another curve; thence, along said curve (which has a radius of 100.98 feet and a chord of S05°51'57"W - 92.46 feet) a distance of 96.04 feet to a point; thence, in a southwesterly direction S33°06'46"W, a distance of 37.13 feet to the beginning of yet another curve; thence, along said curve (which has a radius of 185.70 feet and a chord of S16°53'57"W - 103.70 feet), a distance of 105.10 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 47.54 feet to easement sta. 10+43.37 (which is the point of beginning, and indicated on plat as P.O.B. "A"); thence, in an easterly direction N89°57'56"E, a distance of 47.06 feet to a 5/8" ROD; thence, in a southerly direction S00°03'20"E, a distance of 669.11 feet to a 5/8" ROD; thence, in a westerly direction S89°56'23"W, a distance of 34.65 feet to a point (STA. 17+14.11) on the said centerline of the 24 Foot Access Easement; thence, continuing in a westerly direction, S89°56'23"W, a distance of 588.47 feet to a 5/8" ROD; thence, in a southerly direction N00°17'48"E, a distance of 412.92 feet to a 5/8" ROD; thence, in a northeasterly direction, N44°49'43"E, a distance of 189.26 feet to a 5/8" ROD; thence, in a northerly direction N01°02'38"E, a distance of 122.36 feet to a 5/8" ROD; thence, in an easterly direction N89°57'56"E, a distance of 437.62 feet to the point of beginning (P.O.B. "A").

AND

**TRACT "B"**

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being on the campus of Francis Marion University, in the County of Florence, South Carolina, containing 3.64 acres, more or less, and is designated as TRACT "B" on a Plat made by Ervin Engineering Co., Inc. dated January 15, 2004, recorded March 23, 2004 in Plat Book 83, Pages 259-259D, Florence County, South Carolina Public Records, which is by reference incorporated herein and made a part hereof, and is more fully described as follows to wit: beginning at a point on the above mentioned plat as P.O.B. "B"; which is arrived at by coming from a point where the centerline of U.S. Highway No. 76 AND 301 intersects the centerline of Francis Marion Road (State Route No. 327); thence, going along the said centerline of U.S. Highway No. 76 and 301 in an easterly direction S89°55'53"E, a distance of 1728.38 feet to a point where the said centerline of U.S. Highway No. 76 AND 301 intersects the centerline (projected) of a 24 Foot Access Easement, over the Francis Marion University campus; thence, turning and going along the said projected centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 78.72 feet to a point on the southern margin of said U.S. HIGHWAY No. 76 & 301, and where the said 24 Foot Access Easement actually begins (STA 0+00); thence, along the said centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 563.31 feet to the beginning of a curve; thence, along said curve (which has a radius of 1648.68 feet and a chord of S18°36'10"E - 159.81 feet), a distance of 159.87 feet to a point; thence again along the centerline of said 24 Foot Access Easement, in a southerly direction S21°22'51"E, a distance of 34.38 feet



to the beginning of another curve; thence, along said curve (which has a radius of 100.98 feet and a chord of S05°51'57"W – 92.46 feet) a distance of 96.04 feet to a point; thence, in a southwesterly direction S33°06'46"W, a distance of 37.13 feet to the beginning of yet another curve; thence, along said curve (which has a radius of 185.70 feet and a chord of S16°53'57"W – 103.70 feet), a distance of 105.10 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 47.54 feet to Easement Station 10+43.37 (which is the point of beginning of TRACT "A" – P.O.B. "A"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 37.78 feet to a point; thence, S14°39'24"E, a distance of 49.46 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 672.58 feet to Easement Station 18+03.19 (which is the point of beginning of TRACT "B") and indicated on plat as P.O.B. "B"; thence, going in an easterly direction N89°54'25"E, a distance of 52.71 feet to a 5/8" ROD; thence in a northerly direction N00°05'35"W a distance of 16.00 feet to a 5/8" ROD; thence in an easterly direction N89°54'23"E a distance of 115.98 feet to a 5/8" ROD; thence, in a southerly direction S00°05'35"E, a distance of 279.31 feet to a 5/8" ROD; thence, in a westerly direction S89°54'25"W, a distance of 168.67 feet to a point on the center line of said 24 Foot Access Easement (Easement Sta. 20+66.50); thence, continuing in a westerly direction S89°54'25"W, a distance of 455.03 feet to a 5/8" ROD; thence, in a northerly direction N00°05'35"W, a distance of 140.92 feet to a 5/8" ROD; thence, in a northeasterly direction N44°54'25"E, a distance of 173.08 feet to a 5/8" ROD; thence, in an easterly direction N89°54'25"E, a distance of 332.62 feet to the point of beginning (P.O.B. "B").

AND

#### TRACT "C"

ALL THAT CERTAIN piece, parcel, or tract of land, situate, lying, and being on the campus of Francis Marion University, in the County of Florence, South Carolina, containing 5.23 acres, more or less, and is designated as Tract "C" on a plat made by Ervin Engineering Co., Inc., dated January 15, 2004, recorded March 23, 2004 in Plat Book 83, Pages 259-259D, Florence County, South Carolina Public Records, which is by reference incorporated herein and made a part hereof, and is more fully described as follows to wit: Beginning at a point on the above mentioned plat as P.O.B. "C"; which is arrived at by coming from a point where the centerline of U.S. Highway No. 76 and 301 intersects the centerline of Francis Marion Road (State Route No. 327); thence, going along the said centerline of U.S. Highway No. 76 and 301 in an easterly direction S89°55'53"E, a distance of 1728.38 feet, to a point where the said centerline of U.S. Highway No. 76 and 301 intersects the centerline (projected) of a 24 Foot Access Easement, over the Francis Marion University campus; thence, turning and going along the said projected centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 78.72 feet, to a point on the southern margin of said U.S. Highway No. 76 & 301, and where the said 24 Foot Access Easement actually begins (Sta. 0 +00); thence, along the said centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 563.31 feet, to the beginning of a curve; thence, along said curve (which has a radius of 1648.68 feet and a chord of S18°36'10"E – 159.81 feet), a distance of 159.87 feet to a point; thence again along the centerline of said 24 Foot Access Easement, in a southerly direction S21°22'51"E, a distance of 34.38 feet, to the beginning of another curve; thence, along said curve (which has a radius of 100.98 feet and a chord of S05°51'57"W – 92.46 feet) a distance of 96.04 feet to a point; thence, in a southwesterly direction S33°06'46"W, a distance of 37.13 feet to the beginning of yet another curve; thence, along said curve (which has a radius of 185.70 feet and a chord of S16°53'57"W – 103.70 feet), a distance of 105.10 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 47.54 feet to Easement Station 10+43.37 (which is the point of beginning of Tract "A" – P.O.B. "A"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 37.78 feet to a point; thence, S14°39'24"E, a distance of 49.46 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 672.58 feet to Easement Station 18+03.19 (which is the point of beginning of Tract "B" – P.O.B. "B"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 556.17 feet to Easement Station 23+59.36 (which is the point of beginning, and indicated on plat as P.O.B. "C"); thence, going in an easterly direction N89°58'28"E, a distance of 232.98 feet to a 5/8" rod; thence, in a southerly direction S00°01'19"W, a distance of 365.20 feet to a 5/8" rod; thence in a westerly direction S89°58'28"W, a distance of 232.22 feet to a point on the center line of said 24 Foot Access Easement (Easement Sta. 27+24.55 which is the point of beginning of Tract "D" - P.O.B. "D"); thence continuing in a westerly direction S89°58'28"W, a distance of 304.54 feet to a 5/8" rod; thence in a northwesterly direction N45°00'59"W a distance of 252.52 feet to a 5/8" rod; thence in a northeasterly direction N45°01'45E a distance of 264.16 feet to a

5/8" rod; thence in an easterly direction N89°58'28"E a distance of 295.65 feet to the point of beginning (P.O.B. "C").

AND

TRACT "D"

ALL THAT CERTAIN piece, parcel, or tract of land, situate, lying, and being on the campus of Francis Marion University, in the County of Florence, South Carolina, containing 10.81 acres, more or less, and is designated as Tract "D" on a plat made by Ervin Engineering Co., Inc. dated January 15, 2004, recorded March 23, 2004 in Plat Book 83, Page 259-259D, Florence County, South Carolina Public Records, which is by reference incorporated herein and made a part hereof, and is more fully described as follows to wit: Beginning at a point on the above mentioned plat as P.O.B. "D"; which is arrived at by coming from a point where the centerline of U.S. Highway No. 76 and 301 intersects the centerline of Francis Marion Road (State Route No. 327); thence, going along the said centerline of U.S. Highway No. 76 and 301 in an easterly direction S89°55'53"E, a distance of 1728.38 feet, to a point where the said centerline of U.S. Highway No. 76 and 301 intersects the centerline (projected) of a 24 Foot Access Easement, over the Francis Marion University campus; thence, turning and going along the said projected centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 78.72 feet, to a point on the southern margin of said U.S. Highway No. 76 & 301, and where the said 24 Foot Access Easement actually begins (Sta. 0 +00); thence, along the said centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 563.31 feet, to the beginning of a curve; thence, along said curve (which has a radius of 1648.68 feet and a chord of S18°36'10"E – 159.81 feet), a distance of 159.87 feet to a point; thence again along the centerline of said 24 Foot Access Easement, in a southerly direction S21°22'51"E, a distance of 34.38 feet, to the beginning of another curve; thence, along said curve (which has a radius of 100.98 feet and a chord of S05°51'57"W – 92.46 feet) a distance of 96.04 feet to a point; thence, in a southwesterly direction S33°06'46"W, a distance of 37.13 feet to the beginning of yet another curve; thence, along said curve (which has a radius of 185.70 feet and a chord of S16°53'57"W – 103.70 feet), a distance of 105.10 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 47.54 feet to Easement Sta. 10+43.37 (which is the point of beginning of Tract "A" – P.O.B. "A"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°41'08"W, a distance of 37.78 feet to a point; thence, S14°39'24"E, a distance of 49.46 feet to a point; thence, again along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 672.58 feet to Easement Station 18+03.19 (which is the point of beginning of Tract "B" – P.O.B. "B"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 556.17 feet to Easement Sta. 23+59.36 (which is the point of beginning of Tract "C" - P.O.B. "C"); thence, continuing along the centerline of said 24 Foot Access Easement in a southerly direction S00°05'51"E, a distance of 365.20 feet to Easement Station 27+24.55 (which is the point of beginning, and indicated on plat as P.O.B. "D"); thence, in an easterly direction N89°58'28"E, a distance of 371.04 feet to a 5/8" rod; thence, in a southerly direction S00°00'22"W a distance of 216.30 feet to a 5/8" rod; thence, in a westerly direction N90°00'00"W a distance of 202.15 feet to a 5/8" rod; thence, in a southerly direction S00°00'00"W a distance of 200.62 feet to a 5/8" rod; thence, in an easterly direction S00°00'00"E a distance of 63.30 feet to a 5/8" rod; thence, in a southerly direction S00°00'00"E a distance of 286.11 feet to a 5/8" rod; thence, in a westerly direction S90°00'00"W, a distance of 458.30 feet to a 5/8" rod; thence, in a northwesterly direction N45°00'00"W a distance of 313.97 feet to a 5/8" rod; thence, in a northerly direction N00°00'00"E a distance of 480.66 feet to a 5/8" rod; thence, in an easterly direction N89°58'28"E a distance of 448.13 feet to the point of beginning (P.O.B. "D").

**TOGETHER WITH AN EASEMENT OF INGRESS AND EGRESS ON, OVER, ACROSS AND THROUGH THE FOLLOWING 24 FOOT ACCESS EASEMENT as set forth in Section 11(h)(iii) hereof:**

ALL THAT CERTAIN piece, parcel or tract of land situate, lying and being on the campus of Francis Marion University, in the County of Florence, South Carolina, containing 1.50 acres, more or less, and is designated as "24 Foot Access Easement" on a plat made by Ervin Engineering Co., Inc. dated January 15, 2004, recorded March 23, 2004 in Plat Book 83, Pages 259-259D, Florence County, South Carolina Public Records, which is by reference incorporated herein and made a part hereof, and is more fully described as follows to wit: Beginning at a point on the above mentioned plat as P.O.B. 24 Foot Access Easement; which is arrived at by coming from a point where the centerline of U.S. Highway No. 76 and 301 intersects the centerline of Francis Marion Road (State Route No. 327); thence, going along the said centerline of U.S. HIGHWAY No. 76 and 301 in an easterly direction S89°55'53"E, a

distance of 1728.38 feet to a point where the said centerline of U.S. Highway No. 76 and 301 intersects the centerline (projected) of the 24 Foot Access Easement, over the Francis Marion University campus; thence, turning and going along the said projected centerline of the 24 Foot Access Easement in a southerly direction S15°49'29"E, a distance of 78.72 feet to a point on the southern margin of said U.S. highway No. 76 & 301, (which is the point of beginning and indicated on plat as P.O.B. 24 Foot Access Easement); thence, along said southern margin of U.S. Highway No. 76 & 301 in an easterly direction S89°56'41"E a distance of 12.48 feet to a point; thence in a southerly direction S15°49'29"E a distance of 559.89 feet to the beginning of a curve; thence, along said curve (which has a radius of 1636.68 feet and a chord of S18°36'10"E - 158.65 feet) a distance of 158.71 feet to a point; thence, in a southerly direction S21°22'51"E a distance of 34.38 feet to the beginning of a curve; thence, along said curve (which has a radius of 112.98 feet and a chord of S05°51'57"W - 103.45 feet) a distance of 107.45 feet to a point; thence, in a southwesterly direction S33°06'46"W a distance of 37.13 feet to the beginning of a curve; thence, along said curve (which has a radius of 173.70 feet and a chord of S16°53'57"W - 97.00 feet) a distance of 98.31 feet to a point; thence, in a southerly direction S00°41'08"W a distance of 83.70 feet to a point; thence; in a southerly direction S14°39'24"E a distance of 49.37 feet to a point; thence, in a southerly direction S00°05'51"E a distance of 1595.49' to a point; thence, in a westerly direction S89°58'28"W a distance of 24.00 feet to a point; thence, in a northerly direction N00°05'51"W a distance of 1592.39 feet to a point; thence, in a northerly direction N14°39'24"W a distance of 49.54 feet to a point; thence, in a northerly direction N00°41'08"E a distance of 86.94 feet to the beginning of a curve; thence, along said curve (which has a radius of 197.70 feet and a chord of N16°53'57"E - 110.41 feet) a distance of 111.89 feet to a point; thence, in a northeasterly direction N33°06'46"E a distance of 37.13 feet to the beginning of a curve; thence, along said curve (which has a radius of 88.98 feet and a chord of N05°51'57"E - 81.47 feet) a distance of 84.63 feet to a point; thence, in a northerly direction N21°22'51"W a distance of 34.38 feet to the beginning of a curve; thence, along said curve (which has a radius of 1660.68 feet and a chord of N18°36'10"W - 160.98 feet) a distance of 161.04 feet to a point; thence, in a northerly direction N15°49'29"W A distance of 566.68 feet to a point on the southern margin of U.S. Highway 76 & 301; thence, along said southern margin of U.S. Highway 76 & 301 in an easterly direction N89°54'09"E a distance of 12.47 feet to the point of beginning (P.O.B. 24 Foot Access Easement).

AND ALSO TOGETHER WITH a non-exclusive easement appurtenant to the Property on, over, across, and through the roadways and accessways within the Campus for all forms of pedestrian and vehicular ingress, egress, and access between the property and the public streets and roadways abutting the Campus in accordance with a traffic control plan approved by the Lessor.

AND ALSO TOGETHER WITH a non-exclusive, temporary easement on, over, across, and through the roadways and accessways within the Campus for vehicular ingress and egress for construction activities in connection with the Project.

AND ALSO TOGETHER WITH a non-exclusive easement appurtenant to the Property for the purpose of pedestrian and vehicular ingress and egress and vehicular parking on, over, across, and through the portions of the Campus which are now or may hereafter be used for vehicular parking.

**Derivation:**

Tracts A, B, C, D and the 24' Access Easement tract are portions of the property conveyed as follows:

(1) Title to Real Estate from Amelia Wallace Vernon, Amelia M. Wallace and Louise Wallace Sallenger to State College Board of Trustees dated December 19, 1969, recorded July 22, 1970 in Deed Book A90 at Page 3, Public Records of Florence County, South Carolina;

(2) Title to Real Estate from Amelia Wallace Vernon and Amelia M. Wallace and Louise Wallace Sallenger to State College Board of Trustees dated December 19, 1969, recorded in Deed Book A107, Page 222, Public Records of Florence County, South Carolina;

(3) Title to Real Estate from Amelia Wallace Vernon, Amelia M. Wallace and Louise Wallace Sallenger to State College Board of Trustees dated July 18, 1972 in Deed Book A126, Page 25, Public Records of Florence County, South Carolina; and

(4) Title to Real Estate from Pee Dee Educational Foundation to State College Board of Trustees dated June 30, 1970, and recorded July 22, 1970, in Deed Book A90, Page 2, Public Records of Florence County, South Carolina.

Tracts A, B, C, D and part of the 24' Access Easement are portions of TMS 276-01-002 and TMS 276-01-004. The remainder of the 24' Access Easement is on a portion of TMS 276-01-020.

**EXHIBIT "B"**

**PRO FORMA**

EXHIBIT "C"

SCHEDULE OF PERFORMANCE