
MANAGEMENT AGREEMENT

between

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

and

**FRANCIS MARION UNIVERSITY,
as University**

DATED AS OF MARCH 1, 2004

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MANAGEMENT AGREEMENT

This **MANAGEMENT AGREEMENT** (this "*Agreement*"), made and entered into as of the 1st day of March, 2004, is between **FMU Student Housing, LLC** (the "**LLC**"), a single member limited liability company organized and existing under the laws of the State of South Carolina (the "*State*"), and **Francis Marion UNIVERSITY** (the "*University*"), a non-profit corporation organized and existing under the laws of the State.

WITNESSETH:

WHEREAS, the LLC intends to design, acquire, construct, furnish, equip, and operate a 235-bed student housing facility and various related amenities and improvements on property leased by the LLC from the University and

WHEREAS, the LLC has leased the University's 1132 bed student housing facilities and

WHEREAS, the LLC has agreed to contract with the University to provide management services for the new facilities and the 1132 bed student housing facilities (collectively the "**Project**") and

WHEREAS, the University has agreed to provide management services for the Project pursuant to this Agreement.

In consideration of the mutual promises and covenants herein contained, the LLC and the University agree as follows:

Section 1. Appointment and Acceptance. The LLC hereby contracts with the University as exclusive manager for the management of the Project, and the University accepts such contract, subject to the terms and conditions set forth herein.

Section 2. Description of the Project. The property to be managed by the University under this Agreement is the 1132-bed student housing facility consisting of land, buildings, and other improvements to be located on the campus of the University (the "*Campus*") and the new 235 bed student village.

Section 3. Management Services of the Project. For a negotiated annual fee, the University shall provide management services consistent with practices that will result in the Project being managed in the same manner as is customary and usual in the management of comparable student residential facilities and in the Project having such services as are customarily provided by management of student residential facilities of comparable class and standing as the Project. These specific requirements are set forth in this Agreement and the exhibits hereto, including, but not limited to, the following minimum requirements:

(a) **Staff and Personnel.** Staff and personnel on-site (and off-site) as necessary for the management of the Project.

(b) **Marketing.** The University shall prepare a marketing program for the Project and shall supervise the marketing activities for the Project in accordance with University guidelines, including all advertising layouts, brochures, campaigns, and model apartments

(c) **Occupancy.** The University shall supervise the staff in the management of the dwelling units. Incident thereto, the following provisions shall apply:

(i) The University and the LLC shall coordinate the occupancy of the dwelling units.

(ii) The University shall follow its student resident selection and assignment policies.

(iii) The University shall supervise the collection, deposit, and disbursement of advance reservation deposits and security deposits; the collection of all rents, charges, and other amounts receivable; and enforcement of leases on the LLC's account in connection with the management of the Project to include summer camps.

- (iv) The University shall withhold the distribution of academic transcripts to students who are residents of the Project and who are in default of their rental agreement for nonpayment of rent.
- (d) Maintenance and Repair. The University shall cause the Project to be maintained in good repair and at a minimum as required by University policy for student housing facilities.
- (e) Capital Improvements. The LLC in conjunction with the University shall prepare a Student Housing Capital Budget Plan (the "**Capital Budget Plan**") relating to proposed capital expenditures for building, grounds, and furniture ("**Capital Improvements**"). The University is hereby authorized at the LLC's expense to make contracts for all renovations, repairs, additions, or improvements falling under the category of Capital Improvements and outlined in the Capital Budget Plan.
- (f) Utilities and Services. The LLC will arrange with the University, as an expense to the Project, to execute any necessary agreements including, but not limited to, for water, electricity, gas, telephone, data, CATV, sewage and trash disposal, laundry services, vermin extermination, snow removal, and landscape care.
- (g) Employees. All personnel required in the course of providing management services shall be employees of or contracted by the University.
- (i) The compensation, including fringe benefits, of all employees performing functions for the Project shall be within the University's sole discretion.
 - (ii) No dwelling unit shall be furnished rent-free to an employee of the Project without the prior approval of the LLC.
 - (iii) The University is an equal opportunity employer and conforms to all applicable laws regarding employment. The University provides information concerning its employment practices and procedures upon request. The University does not engage in or permit discrimination against any person or groups of persons on the grounds of race, color, handicap, religion, national origin, age, or sex in any manner prohibited by the laws of the United States or the State of South Carolina.
 - (iv) The LLC, the Project, and the University shall adhere to all policies, procedures, and regulations of the University and State of South Carolina (including but not limited to parking, smoking, security, and drug and alcohol policies).
 - (v) The University understands the importance of diversity within the University community and residential population as reflected in its official policies and guidelines, and adheres to all Federal, State, and Local regulations.
- (h) Annual Budgets. The LLC in consultation with the University shall develop a line-item operation budget for the Project for each year (the "**Annual Budget**"). The University shall provide management services for the Project and the LLC shall make expenditures in connection with the Project in accordance with Annual Budget. The Annual Budget shall set forth among other matters, items usually contained in budgets of similar nature:
- (i) the categories of anticipated Gross Revenues relating to the Project and the projected amounts of each category of such Gross Revenues based on the anticipated rents to be charged to the occupants;
 - (ii) the amounts to be deposited to the Repair and Replacement Fund (as defined in the Indenture) during such Lease Year and the amounts contained therein as of the first day of such Lease Year;

- (iii) all anticipated capital expenditures;
- (iv) the projected reasonable amounts of all Operating Expenses to include the fee to be paid to the University for providing management services as set forth herein;
- (v) sufficient information to explain the basis for the budgeted Gross Revenues, capital expenditures; and
- (vi) reflect all Operating Expenses paid, incurred, accrued, or anticipated or to be paid, incurred, accrued, or anticipated associated with the Project.

From time to time during the year, the LLC shall have the right, upon mutual agreement, to modify the Annual Budget. The LLC and the University acknowledge that there may be certain periods (e.g., the summer months) when the Gross Revenues may be inadequate to pay all of the Operating Expenses (collectively, the "*Shortfall Periods*" and each, a "*Shortfall Period*") and agree that provision should be made for the funding of any such liquidity shortfalls (collectively, the "*Shortfalls*" and each, a "*Shortfall*") during the periods when the Gross Revenues are more than adequate to pay all of the Operating Expenses (collectively, the "*Surplus Periods*" and each, a "*Surplus Period*").

(i) *Records and Reports.* The LLC shall be responsible, with the assistance of the University, for all reports related to the operations of the Project that the LLC is obligated to prepare. The University shall use its policies and procedures to establish and maintain a system for records and accounts related to the management services of the Project. All records and accounts shall be subject to examination by any authorized representative of the LLC.

(j) *Specific Management Practices.* The University shall provide management services for the Project in accordance with University guidelines and industry standards, including, but not limited to, services related to: student staff coordination, mail services, key management, customer service, student contract issuance, and summer programs.

(k) *Student Conduct.* The University shall be responsible for holding all residents accountable to the University's Code of Student Conduct and all other University policies, procedures, regulations and guidelines.

(l) *Law Enforcement.* The University shall provide law enforcement services through the University's Department of Public Safety.

(m) *Food Service.* The University shall provide food services, including meal plans, through the University's Food Service Program.

(n) *Housekeeping.* The University shall provide custodial and housekeeping services through the University's Physical Plant Department.

(o) *Evaluation of the Project's Performance.* The LLC and the University shall evaluate the performance of the Project on an annual basis. The criteria to be used in such evaluation (the "*Evaluation Criteria*") shall be determined by mutual agreement of the University and the LLC (in a timely manner) after the end of each fiscal year. The results of the annual evaluation shall be reviewed by the LLC and the University, and, to the extent performance deficiencies are noted, shall use their best efforts to cure such performance deficiencies.

Section 4. Funds and Accounts. The LLC shall establish and maintain such funds and accounts in accordance with University guidelines and/or as required and as determined by mutual agreement of the University

and the LLC (the "*Operating Accounts*") for the payment of expenses of operating the Project. The Operating Account shall be funded by deposits as agreed upon by the University and the LLC.

These funds and/or accounts shall include, but are not limited to,

- (a) *Security Deposit Account.*
- (b) *Rental Revenue Account.*
- (c) *Repair and Replacement Fund.*
- (d) *Operations Contingency Fund.*

Section 5. Fidelity Bond. All employees of the University and/or the Project who handle or who are responsible for the safekeeping of any monies are to be covered by a fidelity bond with the University and/or LLC as Loss Payee in an amount of not less than One Hundred Thousand Dollars (\$100,000) with a company selected by the University.

Section 6. Environmental Matters. The University shall adhere to any applicable Federal, State, or Local "Hazardous Materials Laws".

Section 7. Compliance with Laws. The University and its employees and subcontractors, shall perform all of the services under this Agreement in compliance with all applicable rules, regulations, orders, determinations, ordinances, or laws of any federal, state, or local authority. If the University shall fail or refuse to comply with or abide by any rule, order, determination, ordinance, or law of any federal, state, or local authority, the LLC upon giving seventy-two (72) hours' written notice to the University may terminate this Agreement.

Section 8. Limitations on the University's Authority. Notwithstanding the authority granted to the University in the foregoing provisions of this Agreement, the University shall not have the authority and shall not do any of the following without the prior written consent of the LLC:

- (a) enter into any contract that is not cancelable by the LLC or the University on thirty (30) days' notice;
- (b) enter into any contract or group or series of related contracts that are not within the parameters of the budgets, funds and/or accounts referenced herein;
- (c) institute any legal action, other than eviction proceedings;
- (d) expend or commit any funds other than as approved by the LLC and the University pursuant to the budgets, funds and/or accounts referenced herein;
- (e) execute any deed, note, mortgage, or security agreement binding on the LLC and/or the University; or
- (f) enter into any lease or contract that would obligate the LLC and/or the University for any liability beyond its interest in the Project.

Section 9. Rights of LLC. Notwithstanding the authority granted to the LLC or the University in the foregoing provisions of this Agreement, the LLC shall have the authority to enter into any contract or group or series of related contracts that are within the parameters of the budgets, funds and/or accounts referenced herein and institute any legal action instead of the University if it is in the best interests of the Project and mutually agreed upon by the LLC and the University.

Section 10. Assignment. The University may not transfer, assign, pledge, or hypothecate any of their respective rights, duties, or obligations under this Agreement without the express written consent of the LLC and any attempt to do so without such express written consent shall be null and void and of no force or effect.

Section 11. Term of Agreement. This Agreement shall be in effect for a period beginning on the first day of April of 2004 and ending the last day of June of 2004, unless either the LLC or the University shall notify the other in writing that it elects to terminate this Agreement, in which case this Agreement shall be thereby terminated on the last day of such period. This Agreement may also be terminated in accordance with the following conditions:

- (i) This Agreement may be terminated by the mutual consent of the LLC and the University as of the end of any calendar month.
- (ii) Except as hereinafter provided, in the event a petition in bankruptcy is filed by or against either the LLC or the University, or in the event either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other.
- (iii) Either the LLC or the University may terminate this Agreement by written notice to the other party in the event that the other party shall breach its obligations, duties, or covenants under the terms of this Agreement. Such notice shall specify the nature and scope of the claimed breach of this Agreement and shall provide the breaching party with the right to cure the claimed breach within one hundred twenty (120) days of the receipt thereof. If the claimed breach is not cured to the satisfaction of the non-breaching party within the one hundred twenty (120) day cure period, this Agreement shall terminate. The non-breaching party shall also have the right to seek damages and exercise such other remedies as may be provided by law or in equity against the breaching party.
- (iv) Upon termination of this Agreement, the University shall submit to the LLC financial statements reasonably requested by the LLC. The termination of this Agreement shall not affect the rights and obligations of the parties hereto as set forth herein as to matters, events, obligations, and duties that pertained or accrued prior to the date of termination.

Section 12. University's Representations. The University represents and warrants that it is qualified to do business in the State of South Carolina, is in good standing in the state in which it is organized and in the State of South Carolina, has full power and authority to enter into this Agreement and perform its obligations hereunder, and has obtained all permits, approvals or licenses necessary for the performance of its obligations under this Agreement and it will cooperate in good faith with the LLC in the transfer of any permits, approvals or licenses upon a termination of this Agreement.

Section 13. Interpretative Provisions. This written Agreement and attachments hereto (if any) constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the LLC and the University with respect to the Project. It is expressly agreed that there are no verbal understandings or agreements that in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the LLC and the University.

- (a) This Agreement has been executed in several counterparts, each of which constitute a complete original Agreement and which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.
- (b) As used herein, whenever appropriate, the masculine gender shall be construed to mean the feminine or neuter gender, or both of them; the feminine gender shall be construed to mean the masculine or neuter gender, or both of them, and the neuter gender shall be construed to mean the masculine or feminine gender, or both of them.
- (c) As used herein, whenever expressed, the singular number shall be construed to mean the plural number and the plural number shall be construed to mean the singular number.
- (d) The paragraph headings or captions appearing in this Agreement are for convenience only, and are not to be considered in interpreting this Agreement.

(e) Notwithstanding anything herein to the contrary, to the extent that any term of this Agreement shall conflict with any term in the current or any future Indenture or the Loan Agreement, the term or terms of the Indenture and/or the Loan Agreement shall control the terms hereof with respect thereto.

Section 14. Notices. All notices, certificates, demands, requests, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed or given when dispatched by facsimile transmission, or by personal delivery addressed as follows:

If to the LLC: FMU Student Housing, LLC
Attention: Howard G. Lundy, Jr.
4822 East Palmetto Street
Florence, South Carolina 29506
Telephone: (843) 661-1214
Facsimile: (843) 661-1484

If to the University: Francis Marion University
Attention: John J. Kispert
4822 East Palmetto Street
Florence, South Carolina 29506
Telephone: (843) 661-1110
Facsimile: (843) 661-1484

(a) Either party hereto may, by notice given to each of the other, designate any additional or different addresses to which subsequent notices, certificates, demands, requests, or other communications shall be sent.

(b) Notwithstanding anything contained herein to the contrary, any notice required to be given by the LLC or the University 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, certificates, demands, requests, or other communications made by either party to the other which are required or permitted by the provisions of this Agreement shall be in writing.

Section 15. LLC's Liability. Notwithstanding anything to the contrary in this Agreement, the liability of the LLC under this Agreement shall be "non-recourse" except to the extent of the LLC's interest in the Project and accordingly, no party shall have any right to obtain payment from any person or entity comprising the LLC or from any assets of the LLC other than the Project. If the University shall recover any judgment against the LLC in connection with this Agreement, the University shall look solely to the LLC's interest in the Project for the collection or enforcement of any such judgment, and no other assets of the LLC shall be subject to levy, execution, or other process for the satisfaction or enforcement of such judgment, and neither the LLC nor any person having an interest in the LLC shall be liable for any deficiency.

Section 16. Applicable Law. This Agreement and all obligations hereunder shall be construed and interpreted under and in accordance with the laws of the State of South Carolina.

Section 17. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their successors and assigns.

Section 18. Preservation of Tax Exempt Status. The University shall not take any action with respect to the Project that would adversely affect the tax-exempt status of the LLC.

Section 19. Other, New or Additional Housing Facilities.

(a) The University agrees not to give preference in the tenant referral process to any other student housing facilities that it may own in the future or may be offered by the University ("Other Facilities"), except and to the degree that the University has student development program goals and policies that favor the placement or encouragement of certain groups of students to live in specialty housing (i.e. student families, freshmen, and transfer students).

(b) The University may not construct or cause to be constructed any new or additional off-campus facility (the "New Facility") for the primary purpose of housing students, staff or faculty which competes with the Project on the basis of rental rate, unless the Vice President for Business Affairs of the University shall have provided an officer's certificate to the LLC based upon the analysis and conclusion of a neutral, qualified student housing consultant (the "Consultant") mutually agreed upon by the University and the credit facility provider for the Project that the following are true:

- (i) The findings of a market and feasibility analysis conducted by the Consultant evidence that (i) the market exists to support both the Project and the New Facility so that the operation of the New Facility will not cause a default by the LLC of its existing underwriting and credit obligations and covenants relative to the Project, (ii) that such underwriting and credit obligations and covenants are forecasted to be met for each of the two fiscal years of the Project immediately succeeding the fiscal year during which the New Facility shall become operational (the "New Facility Fiscal Year"), and (iii) that such underwriting and credit obligations would have been met for the two fiscal years of the Project immediately prior to the New Facility Fiscal Year (assuming that the New Facility had been operational during such prior two-year period); and
- (ii) The New Facility shall not compete with the Project so as to adversely affect the Project in terms of the LLC's ability to meet its underwriting obligations relative thereto and the University's actions shall not give preference to (except as provided in this Section 19(a) above) the New Facility so as to adversely affect the Project in terms of the LLC's ability to meet its underwriting obligations relative thereto.

(c) The provisions of this Section 19(a) and (b) shall survive the termination of this Agreement and, therefore, remain binding upon the University following such termination and shall not be amended so as to be violative of the existing underwriting obligations of the LLC, relative to the Project.

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

LLC:

FMU STUDENT HOUSING, LLC

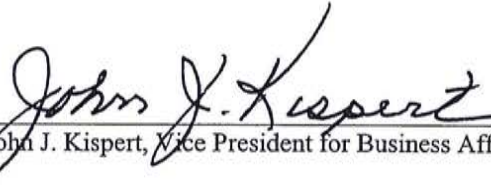
[SEAL]

By: **Francis Marion University Real Estate
Foundation, Inc., its sole member**

By 
Howard G. Lundy, Jr., Executive Director

UNIVERSITY:

FRANCIS MARION UNIVERSITY

By 
John J. Kispert, Vice President for Business Affairs