

**FLORIDA ATLANTIC UNIVERSITY**  
**INNOVATION VILLAGE APARTMENTS**  
**STUDENT HOUSING FACILITIES**  
**PROJECT DEVELOPMENT AGREEMENT**

dated as of the \_\_\_\_ day of \_\_\_\_, 2009

by and among

**B-C Development, LLC,**  
**CP IV Acquisition, LLC**

and

**FAU Finance Corporation**

**STUDENT HOUSING FACILITIES  
PROJECT DEVELOPMENT AGREEMENT**

**PREAMBLE**

This Student Housing Facilities Project Development Agreement (this "Agreement") is made as of the \_\_\_ day of \_\_\_\_\_, 2009 (the "Effective Date") by and among B-C Development, LLC, a Delaware limited liability company ("B-C"), CP IV Acquisition, LLC ("CP" and together with B-C, the Developer"), and the FAU Finance Corporation, a Florida non-profit corporation (the "Owner").

**RECITALS**

A. Florida Atlantic University (the "University") wishes to add new student residential LEED-certified (silver) facilities consisting of approximately 2,400 beds, to be known as Innovation Village (the "Project"), located on the campus of the University in the City of Boca Raton (the "City"), Palm Beach County (the "County"), Florida (the "Project Site"). The Project is contemplated to include an initial development phase containing approximately 1,200 beds ("Phase I" or "Student Housing Facilities") and may include a subsequent development phase containing approximately 1,200 additional beds ("Phase II" and together with Phase I, the "Project").

B. The University awarded the right to develop the Project to Crocker Partners LLC and its "Development Team" pursuant to a Preliminary Development Agreement effective as of August 20, 2009 (the "PDA"). The University has vested ownership of the Project in the Owner, a direct-support organization of the University and the Developer has now been formally established as the Development Team for the purposes of the Project.

C. Developer has agreed to undertake the obligations contained in this Agreement (which obligations include the requirement that Developer cause Substantial Completion of Phase I on or before the Guaranteed Date and for a cost equal to the Development Sum subject to the terms of this Agreement).

D. The Project Site on which the Student Housing Facilities are to be constructed will be subleased by the University to the Owner pursuant to a ground sublease ("Ground Sublease") and the University is the lessee of certain parcels of real property located in Palm Beach County, Florida, which parcels include the Project Site, under that certain Lease No. 2724, dated as of January 22, 1974, as amended, between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the University (the "Master Ground Lease" and, together with the Ground Sublease, the "Ground Lease").

E. Developer (or its affiliates) is an experienced manager of planning, development, design, construction and equipping of post-secondary student housing and related projects and the Owner and Developer (the "Parties") have negotiated this Agreement.

F. Subject to the terms of this Agreement, Developer is committed to substantially completing both Phase I substantially in accordance with the Plans and Specifications (attached as Exhibit 3) by the respective Guaranteed Date for Phase I and keeping Development Cost in an amount less than or equal to the Development Sum, all in accordance with and subject to the terms and conditions of this Agreement.

G. To finance development of the Student Housing Facilities, the Owner will issue its Senior Series 2010 A Bonds in the principal amount of [\$113,280,000.00] (the "Series 2010 A Bonds" and,

together with any Additional Bonds (hereinafter defined) issued on a parity with the Series 2010 A Bonds, the “Senior Bonds”); and its Junior Series 2010 B Bonds in the principal amount of [\$3,365,000.00] (the “Series 2010 B Bonds”).

H. Pursuant to the terms of the Indenture, the Series 2010 B Bonds will be subordinate to the Series 2010 A Bonds, as described in the Indenture.

I. Owner will enter into a management agreement (the “Management Agreement”) with B-C Management, LLC and the University (the “Managers”) under which the Managers will operate the Student Housing Facilities as a part of the campus housing system to house students at the University pursuant to the terms of the Management Agreement.

J. The Parties wish to enter into this Agreement to set forth their respective rights and obligations concerning the Project.

### TERMS

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the adequacy and sufficiency of which are mutually acknowledged, the Parties agree as follows:

#### 1. Introduction.

1.1 Exhibits. The Preamble, Recitals, and Exhibits 1 through 11 are parts of this Agreement and are incorporated herein by reference. The Exhibits are as follows:

Exhibit 1	Defined Terms
Exhibit 2	The Project
Exhibit 3	Plans and Specifications [Construction Documents & Fixtures, Furniture & Equipment]
Exhibit 4	Mobilization Plan
Exhibit 5	Development Budget
Exhibit 6	Project Schedule
Exhibit 7	Developer Insurance
Exhibit 8	Principal Consultants’ Insurance
Exhibit 9	Performance Bond and Payment Bond
Exhibit 10	Dispute Resolution
Exhibit 11	Utilities and Access
Exhibit 12	Change Order Request Form

The Parties contemplate that certain of the Exhibits will be completed or modified subsequent to the execution and delivery of this Agreement. All such Exhibits shall be executed by both Parties to indicate their agreement to the subsequent completion or modification, and shall be attached to this Agreement.

1.2 Definitions. Capitalized terms used in this Agreement are defined in the text or in Exhibit 1.

## 2. The Project.

2.1 Project Description. Phase I is generally described and defined in Exhibit 2.

2.2 Plans and Specifications. The “Plans and Specifications” for Phase I, as approved by the Owner, are attached as Exhibit 3.

2.3 Site Visits. The University, the Owner, and the Bond Trustee each may visit the Project Site at any time, upon reasonable prior notice to Developer, Developer’s Representative or the General Contractor. However, the University, the Owner and the Bond Trustee, as applicable, must sign-in with Developer at the Project Site and follow Developer’s safety rules and regulations in all respects. No such visits shall be permitted to cause any delays in the progress of the development of Phase I. The provisions of this Section 2.3 shall be separate and apart from any inspections conducted by the University as the permitting authority for the Project, as more specifically set forth in Section 6.3.

## 3. Developer’s Services.

3.1 Project Development. Subject to the terms and conditions set forth in this Agreement, Developer shall act as developer in connection with the development and construction of the Project, and shall deliver a Finally Complete Phase I to the Owner for the Development Sum, subject to Change Orders as contemplated in Section 21, and as otherwise provided herein. Developer shall supervise the development and construction process with the objective of causing the Student Housing Facilities to be developed and completed in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s and similar liens, all in accordance with the terms of this Agreement and the Ground Lease. Developer shall develop the Project in accordance with the Construction Contract and the Architect’s Contract.

3.2 Intentionally Omitted.

3.3 Consultants. Developer may contract with any qualified Consultant to perform services for the Project, subject to the terms and conditions of this Agreement.

3.4 Warranties. The warranties of the Developer with respect to the Student Housing Facilities are those warranties of the General Contractor provided in the Construction Contract and all applicable subcontractors retained pursuant thereto. All warranties shall commence upon Substantial Completion and shall be assigned to Owner upon Substantial Completion.

3.5 Warranty Inspection. Developer shall assist the Owner in conducting a warranty inspection of Phase I prior to the expiration of the applicable warranty periods as identified in the Construction Documents. Developer shall assist the Owner in enforcement of warranties and coordinate all warranty work until all provisions of the applicable warranty periods are satisfied. Developer shall provide such services within the Development Sum.

3.6 Certifications. Prior to Final Completion, the Developer will obtain and submit to the Owner all certifications and other documents required to be submitted by the Developer, the Architect, and the General Contractor pursuant to the terms of the Indenture.

#### 4. The Term.

4.1 Term. The term of this Agreement begins on the Effective Date and ends on the Termination Date or otherwise as provided in this Agreement (the "Term"). The Parties recognize that Developer has performed some services prior to the Effective Date, pursuant to the PDA.

4.2 Substantial Completion. If the Student Housing Facilities are not Substantially Complete on or before the Guaranteed Date, subject to any extension of such date permitted under the terms of this Agreement, then the Developer, at its cost and expense, as liquidated damages and not as a penalty, shall provide (a) alternative housing of a quality similar to, but required not to exceed, that of the Student Housing Facilities for the residents who executed student housing agreements and were to occupy bedrooms in Phase I, such alternative housing to be provided not earlier than four (4) days prior to the start of classes, which will be one day after the Guaranteed Date, (b) transportation of such persons to and from the campus of the University, as reasonably required by the University, and (c) storage facilities for the possessions of such persons; all of which shall be provided until such persons are delivered occupancy of their respective bedrooms, at which time the Developer shall provide arrangements for moving such persons from the alternative housing to the Student Housing Facilities. The Developer shall only be liable for the costs of (a), (b), and (c) above if and to the extent such costs are actually incurred. This provision for liquidated damages for delay shall in no manner affect the Owner's right to terminate the Agreement due to an Event of Default as set forth in Section 18.3 and/or assume sole control of the Project Development Account as provided for in Section 8.6. The Owner's exercise of the right to terminate shall not release the Developer from the obligation to pay said liquidated damages in the amount stipulated herein. The Owner may deduct from the balance remaining for the final payment, the liquidated damages stipulated herein, or such portion thereof as the remaining balance will cover.

The Parties agree that the Guaranteed Date will be extended to the extent of any delays caused by: (a) the failure of the Owner or the University to reasonably cooperate with the Developer; (b) the breach by the Owner or the University of any obligation under the Construction Documents, this Agreement or the Indenture, or any action or omission of the Owner or University which causes Developer to be in breach of the Construction Contract or this Agreement; (c) the failure of the Owner or the University to timely review documents, provide responses or give consent; (d) the failure of the Owner or the University to issue an order to commence work on or before February 1, 2010; (e) the failure to close upon the transactions set forth in the Indenture on or before January 28, 2010; (f) the failure of the Owner or the University to timely provide access or limit access to the Project Site, or the failure to timely provide, or limit access to required utilities, (g) the occurrence or existence of Unknown Site Conditions, the handling of which will have a material adverse impact on the Project Schedule and/or the Development Budget, (h) the failure of the University to provide timely inspections as the permitting authority for construction purposes as set forth in Section 6.3, (i) site visits authorized by Section 2.3 by the Owner, the University and/or the Bond Trustee, (j) the failure to obtain or maintain in effect any land use or other governmental approval affecting, or that may affect, adversely the performance of this Agreement or the Construction Contract, (k) any change in any law or regulation applicable to the Project, (l) any breach of the Ground Lease, (m) the occurrence of any event constituting Force Majeure, or (n) schedule impacts of an increase in scope of work required by Owner or the University. The Parties further agree that the Guaranteed Date shall only be extended for the minimum time necessary or impacted by the above causes and all Parties shall use commercially reasonable efforts to minimize any delay period to the extent commercially practicable.

4.3 Liquidated Damages. The Parties acknowledge and agree that the remedies contained in Section 4.2, do not constitute a penalty, but rather constitute the Parties' best estimate as actual damages that may be incurred upon the failure of the Student Housing Facilities to be completed in a timely manner.

4.4 Phase II. This Agreement governs the development of Phase I of the Project. In the event the Owner and the University desire to implement Phase II of the Project, this Agreement shall be amended, as appropriate, or the Parties may enter into a separate project development agreement for Phase II; provided, however, that any such amendment or agreement on Phase II shall be entered into on or before July 1, 2020; but further provided that this date shall be extended by the mutual agreement of the Parties in the event that preliminary development work has commenced but construction is delayed beyond this date.

## 5. **Limitations and Restrictions.**

5.1 Changes. Except as set forth in Section 4.2 above, Developer, Consultants, and their respective contractors, subcontractors, sub-consultants, agents, employees, and others supplying labor, equipment, or material by or through them to Phase I may not without the prior written consent of the Owner and the University, in their sole and absolute discretion, (a) make any material change to the scope of Phase I (specifically including without limitation any material change to the Plans and Specifications, the Construction Contract or the Architect's Contract), or (b) make any change to the Guaranteed Date for Substantial Completion or the date for Final Completion. The Parties understand and agree that the General Contractor may adjust near-term schedules from time to time in order for Developer to achieve Substantial Completion by the Guaranteed Date and/or Final Completion by the date for Final Completion.

5.2 Public Safety. Notwithstanding Section 5.1, Developer shall act, if Developer in its reasonable, good faith judgment considers that such action is necessary to preserve the structural integrity of Student Housing Facilities, to protect the safety and welfare of people or property, or to comply with the requirements of a governmental authority with jurisdiction (an "Emergency"). If Developer takes such Emergency action, Developer will immediately notify the Owner and University of the action taken, and any appropriate Change Order (see Section 21) shall be issued in connection with such Emergency action.

## 6. **Development Team.**

6.1 Qualified Staff. Developer shall employ qualified development staff and engage qualified Consultants to perform all of Developer's responsibilities and obligations under this Agreement in a prompt and timely manner.

The Developer has selected PGAL as Architect, Balfour Beatty Construction as General Contractor, Miller Legg as civil engineer, JLRD as mechanical/electrical and plumbing engineer, Johnson Structural Group as structural engineer, RBC Capital Markets as underwriter, and Capstone On-Campus Management as a property manager. The University and Owner each hereby approves these Consultants, and acknowledges that Consultants may be added to or removed if it is determined to be in the best interest of the Parties and the Project, but only with the written notice to the University and Owner, who shall have the opportunity for input into such engagements.

6.2 Applicable Laws. In the performance of this Agreement, Developer and Consultants (including, but not limited to, the General Contractor) shall comply in all material respects with all applicable laws and regulations, including those affecting employees and all applicable University Regulations and Policies.

6.3 Licenses. Developer and all Principal Consultants shall obtain, have and keep all required licenses, permits, and insurance coverages for the Project. Developer acknowledges and agrees that the University is the permitting authority for construction purposes for the Project and the Project

Site. Developer further agrees that the Developer shall compensate the University (or, at the sole discretion of the University, the University's third party permitting inspector) for the costs associated therewith. The University agrees that, in its capacity as the permitting authority for construction purposes for the Project, the University shall in all respects conduct inspections in a timely and otherwise commercially reasonable manner.

In order to position the Project for the most efficient and timely construction, delivery and occupancy, the University and Developer shall work together cooperatively and in good faith to have the Project permitted for construction and certified for temporary and/or permanent occupancy as follows: by (a) building, (b) area, or (c) floor (subject to other required agency approvals and the University's finding, in the exercise of its authority and discretion, that phased occupancy will not violate any statutes, rules or codes, or present a danger to life or property).

6.4 Single Point-of-Contact; Designated Representatives of Each Party. The Parties agree that in order to facilitate an efficient working relationship throughout the Project planning, design and construction periods, the Developer will be the single point-of-contact and responsibility to the University and Owner for the development of the Project, but will actively involve and make available Consultants to participate in regularly scheduled planning and progress meetings with University and Owner officials ("University-Development Team" or "UDT Meetings"), to be held every two to three weeks through the design and construction phases of the Project. The Developer and the Consultants will present ideas, concepts, and ultimately plans, specifications, budget and other proposals to the University and Owner and their designated project team, in an effort to provide updates on progress and to solicit input, feedback, and when appropriate, decisions and/or approvals on material matters pertaining to the development and delivery of the Project.

For ease and clarity of communication, and accountability, David Kian, FAU Senior Vice President and General Counsel, will serve as the designated representative and "point person" for the University, and Walker May will serve as the designated representative and "point person" for the Developer, as the "Development Manager" for day-to-day coordination of the Consultants and communication/interaction with the University and Owner. Lou DeRogatis of Balfour Beatty Capital, and Jeff Jones of Capstone Development, will serve as the Project Executives for the Developer, with overall responsibility for the Project and for the relationship with the University and Owner. All official communication about material issues related to the development of the Project must flow through David Kian and Walker May, with each of these designated representatives responsible for the further dissemination of information to other members of their respective teams. The designated representatives of each Party may be amended by written notice to the other Parties.

## **7. Development Budget.**

7.1 Development Budget. The Parties have negotiated the Development Budget (see Exhibit 5). It is the total budget for design, development and construction (including furniture, fixtures & equipment) of Phase I. The term "Development Sum" means the Development Budget exclusive of the Owner's Contingency. The "Development Sum" equals \$95,150,541.00, unless adjusted pursuant to the terms of this Agreement, the Indenture, and the Ground Lease. The Owner's Contingency, equals \$1,250,000.00, and is to be utilized for funding increases in the Development Sum as the result of Change Orders requested by Owner or the University in accordance with Section 21.2 of this Agreement.

7.2 Revisions. The Development Sum will be revised and/or the Project appropriately modified, by mutual agreement of the Parties, as needed to: (i) reflect changes to Phase I as a result of

increased costs arising from (a) any of the events set forth in the last paragraph of Section 4.2 or (b) acceleration of the Guaranteed Date required by Owner or the University and (ii) reflect reductions due to Owner direct tax-exempt purchases.

7.3 Reallocation. Developer may reallocate amounts in any component line items of the Development Sum to other component line items of the Development Sum, so long as the Development Sum and the Project are unaffected.

## 8. The Project Development Account.

8.1 Account. Within ten (10) days after the execution of this Agreement, Developer shall open and thereafter keep open one operating account (the "Project Development Account"). The Project Development Account shall be at a bank or other financial institution as specified in the Indenture.

8.2 Deposits. Developer shall deposit all Draws into the Project Development Account.

8.3 Payments. Developer shall make all payments to itself, Consultants, and Suppliers from the Project Development Account.

8.4 Intentionally Omitted.

8.5 No Commingling. All funds in the Project Development Account shall be separate from all other funds of Developer. Developer may not commingle any of Developer's funds with funds in the Project Development Account.

8.6 Event of Default. If there exists an Event of Default by Developer, then the Owner may assume sole control of the Project Development Account after written notice to Developer.

8.7 Upon Final Completion, the funds remaining in the Construction Fund(as defined in the Indenture), except for any funds constituting the Owner's Contingency, including any interest earned, shall be distributed to the Developer in accordance with Section 16.4, but only if:

8.7.1 All Development Costs owed to others, including all Owner direct tax-exempt purchases as contemplated in Section 7.2(ii), have been paid; and

8.7.2 No Default by Developer has occurred that has not been cured in all respects.

## 9. Draw Requests and Draws.

9.1 Draw Requests. Developer shall make all requests ("Draw Requests") for payments ("Draws") of Development Cost in accordance with the Indenture in writing to the Owner and Bond Trustee. A copy of all Draw Requests shall contemporaneously be provided to the University. Developer shall also provide the Owner and the University with a copy of any Architect's deliverables and/or certifications contemplated under the Architect's Contract applicable to the work performed for the Draw Request. All Draw Requests must be approved by Owner's Inspector prior to the delivery of any Draws to the Developer.

9.2 Information. Draw Requests shall include all information and documents required as a condition for Draws in the Indenture.



9.3 Discharge of Liens. Developer shall discharge or cause to be discharged of record by bond or otherwise, within twenty (20) days following the date whereupon Developer receives actual knowledge of the filing, of any mechanics or similar lien filed against Project for work or materials claimed to have been furnished at Developer's request to or for the benefit of Developer and/or the Project. If Developer shall fail to cause such lien or claim to be so discharged or bonded within such period, in addition to any other right or remedy the Owner may have, the Owner may, but shall not be obligated to, discharge such lien or claim by procuring the discharge of such lien or claim by the deposit in a court or by bonding, and, in any event, the Owner shall be entitled, if the Owner so elects, to compel the prosecution of any action for the foreclosure of such lien or claim by the lien or claimant and to pay the amount of the judgment, if any, in favor of the lien or, with interest, costs and allowances. Developer shall be liable to the Owner, on demand and from time to time, for any sum or sums so paid by or on behalf of the Owner and all costs or expenses incurred by the Owner, including, but not limited to, reasonable attorney's fees actually incurred in prosecuting such discharge or in defending any such action. Developer agrees to provide the Owner with written notice of any lien filed against the Project promptly following Developer's obtaining actual knowledge of such lien.

## **10. Developer Records.**

10.1 Financial Records. Developer shall make and keep records and accounts on a cash basis. They shall be sufficient for financial statements in accordance with generally accepted accounting principles, consistently applied, to be prepared from them.

10.2 Location. Books and records kept by Developer pertaining to the Project shall always be accessible and they shall be available locally for inspection by the Owner, the University, the Bond Trustee or their respective representatives during normal business hours, within three (3) days after reasonable request therefor.

## **11. Protecting Tax-Exempt Status of Bonds.**

11.1 Opinions. If this Agreement is revised or modified, the Owner, at its expense, may seek an opinion of counsel, in form and substance satisfactory to the Owner:

11.1.1 That the revision or modification will not adversely affect the exclusion of interest on the Bonds from gross income of the bondholders; or

11.1.2 That without the deletion or modification the Bonds will be fully or partially taxable for purposes of federal income taxation.

11.2 Modifications. To the extent amendments, modifications, or changes to this Agreement are required by law to maintain the tax-exempt status of the Bonds, Developer will consent to and execute such reasonable amendments, modifications, and changes; provided, however, that Developer's reasonable costs actually incurred in connection therewith shall be reimbursed by issuing a Change Order with appropriate modification to the compensation provisions of this Agreement.

11.3 Control. Developer will not act or allow others within its control to act in any way that would cause the tax exempt status of the Bonds to be revoked or compromised.

## **12. Project Site Safety and Access; Utilities.**

12.1 Developer Responsibilities.

12.1.1 Project Site Safety and Access. Subject to the University's permitting authority and the University's Policies and Regulations, Developer will have full and exclusive responsibility for Project Site safety during the course of performance of this Agreement. Access to the Project Site by the Owner, the University, and the Bond Trustee shall be as set forth in Section 2. Developer, and all persons acting, by, through, under, or at the direction of, Developer, shall have unfettered access to the Project Site, on a twenty-four (24) hour per day, seven (7) day per week basis, beginning on the Effective Date and continuing throughout the term; provided, however, that Developer shall use commercially reasonable efforts to perform construction work only during University business hours and within the parameters of the local municipal ordinance pertaining to sound pollution. In the event the Developer desires out of necessity to perform construction work during non-University business hours, the Developer shall provide the University with at least 72 business hours notice in writing of the specific work to be performed, the need for the work during non-University hours, and the estimated number of persons performing such work.

12.1.2 Mobilization Plan. The Developer's mobilization plan for the Project, including without limitation proposed fence lines, gates and traffic flow is attached hereto as Exhibit 4 (the "Mobilization Plan"). The Developer shall ensure that work at the Project Site, specifically including all aspects of the Mobilization Plan, does not unreasonably impede use, access or access points for neighboring facilities of the Project Site, specifically including those neighboring facilities of the University, Palm Beach Community College, and the Florida Atlantic Research and Development Authority. To the extent a temporary or permanent impediment or modification is necessary for the Project that will be in effect for more than one day, the Developer shall coordinate same with the University, and as necessary, Developer shall coordinate through the University with the other neighboring lessees, and receive written approval from all affected parties, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that in no event shall access between Northwest Fortieth (40<sup>th</sup>) Street and Glades Road be temporarily impaired without the use of temporary detours or alternate routes.

12.1.3 Utilities. The Developer will provide all utilities within the Project Site and certain utilities outside the perimeter of the Project Site, including connections and extensions, as shown on the Construction Documents, in accordance with Exhibit 11.

## 12.2 University Responsibilities.

12.2.1 Utilities. The University will provide utilities to the perimeter of the Project Site as shown on the Construction Documents, in accordance with Exhibit 11. Such utilities shall be provided on the various dates specified in the Project Schedule so that Developer may perform in a timely manner.

12.2.2 Off-Site Access by Developer. The University will have full and exclusive responsibility for ensuring access by Developer and its Consultants to any University controlled property not within the Project Site to enable Developer to perform and complete all off-site Project work contemplated in the Plans and Specifications ("Off-Site Improvements"). The Developer shall coordinate with the University on all work pertaining to the Off-Site Improvements in order to minimize interruption to University business.

## 13. **Developer Insurance**

13.1 Developer Insurance. Throughout the Term, Developer shall acquire and maintain or cause to be acquired and maintained in force "Developer Insurance" as provided in Exhibit 7.

13.2 Waiver. The Owner and Developer waive all rights against each other and the University, and the contractors, subcontractors, consultants, agents, and employees of each other, for damages caused by fire or any other peril to the extent covered by any property insurance obtained under this Section or any other property insurance applicable to the Project work, except rights to proceeds of that insurance.

#### 14. Environmental Matters.

14.1 Restrictions. Except for its employees fully qualified to do so, Developer may not:

14.1.1 Direct, suffer, or permit any of its Project employees to handle, transport, use, manufacture or store any Hazardous Materials in or about the Project Site; or

14.1.2 Knowingly or negligently suffer or permit:

14.1.2.1 Any Hazardous Materials to be used by any employee or third party in any manner not fully in compliance with all Environmental Laws; or

14.1.2.2 The Project Site or adjoining areas to become contaminated with any Hazardous Materials.

14.2 "Hazardous Materials" are pollutants, contaminants, flammables, explosives, radioactive materials, hazardous wastes, substances, chemicals, or materials, toxic wastes substances, chemicals or materials, or other similar substances, petroleum products, or derivatives, or any substance subject to regulation by or under Environmental Laws.

14.3 "Environmental Laws" are all Federal, state, and local laws and ordinances and common law principles relating to the protection of the environment, human health or natural resources or the generation, transportation, treatment, storage, disposal, recycling, keeping, use, or disposition of Hazardous Materials, substances, or wastes, presently in effect or adopted after the Effective Date. This includes all amendments to Environmental Laws, and all rules and regulations under any Environmental Laws.

14.4 Disposal. Notwithstanding the limitations set forth in Section 14.1, Developer may handle, store, use, or dispose of Hazardous Materials to the extent customary and necessary for the performance of Developer's duties under this Agreement, provided all disposal occurs offsite. Developer shall always handle, store, use, and dispose of those Hazardous Materials in a safe and lawful manner and shall ensure that all disposal of Hazardous Materials and any other waste occurs offsite and in conformity with University Policies and Regulations relating to safety matters. Developer shall also take reasonable precautions to prevent those Hazardous Materials from contaminating the land or the environment, harming human health, harming natural resources or violating any applicable laws, regulations, or ordinances of any federal, state, or local governmental authority. Except as contemplated by the Construction Contract, Developer is not required to handle or dispose of Hazardous Materials. With respect to the disposal of hazardous wastes and materials, B-C shall participate in the University's Environmental Health & Safety (EH&S) Hazardous Materials Auxiliary, or other such hazardous wastes and materials disposal program implemented by the University. All hazardous wastes and materials generated at the Property shall be disposed of in coordination with EH&S.

**15. Indemnities.**

15.1 Developer Indemnity. Developer will indemnify, defend, and hold harmless the Owner, the University, TIF and their respective trustees, members, designated members, officers, directors, agents, volunteers, and employees and their successors and assigns from and against any and all claims, demands, losses, liabilities, actions, lawsuits, and other proceedings, judgments, awards, costs, and expenses (including reasonable attorneys' fees and disbursements) related to the Project arising out of the alleged or actual willful or negligent acts or omissions or breach of this Agreement by Developer, its agents, employees, or Consultants except for:

15.1.1 Such claims, demands, losses, liabilities, actions, lawsuits, and other proceedings, judgments, awards, costs, and expenses (including reasonable attorneys' fees and disbursements) as are caused directly by the gross negligence, acts or omissions of the Owner, and/or the University, or the breach of this Agreement by the Owner or its officers, designated members, members, directors, or employees; and

15.1.2 Such claims, demands, losses, liabilities, actions, lawsuits, and other proceedings, judgments, awards, costs and expenses (including reasonable attorneys' fees and disbursements) as are caused, directly or indirectly by the Existing Site Conditions.

15.2 Owner and University Indemnity. To the extent provided under Section 768.28 of the Florida Statutes, University and Owner assumes any and all risks of personal injury and property damage, deprivation or infringement (including, but not limited to, intellectual property) attributable to the negligent acts or omissions of the University and the Owner and their respective officers, employees, servants, and agents while acting within the scope of their employment by the University or Owner, as applicable. Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28 of the Florida Statutes.

15.3 Survival. This Section's provisions survive termination of this Agreement, Final Completion of Phase I, and all services and other activities contemplated by this Agreement.

15.4 Consequential Damages. None of the Parties shall be liable to the other(s) for any special or consequential damages, lost profits and punitive damages.

**16. Development Cost; Developer Overhead; Developer Fee; Savings.**

16.1 Development Cost. "Development Cost" means sum of the actual costs to perform all services under this Agreement. Subject to Section 7.2, Developer will bear the risk if the Development Cost exceeds the Development Sum, subject to Change Orders as contemplated in Section 21 for additional costs for which the Owner may be responsible as set forth in this Agreement, the Bond Indenture and the Ground Lease.

16.2 Developer Overhead. To cover the costs of the personnel and central office support services associated with the responsibility of the Developer to provide, manage, coordinate and oversee the planning, design, and construction phases of the Project, to recommend, order and install furniture, furnishings, and equipment, to provide advice, assistance and financial modeling in support of the structuring of the financing for the Project, and to assure a smooth and seamless transition into the operational phase of the Project, Developer will receive the following payments:

16.2.1 At Closing, \$1,195,000.00 payable in cash.

16.2.2 Thereafter, the aggregate amount of \$600,000.00 payable in cash in 16 installments, each in the amount of \$35,295.00 and one final installment in the amount of \$35,280.00, to be paid monthly concurrent with payments for that month's Draw.

16.2.3 Upon Final Completion, \$200,000.00 payable in cash.

16.3 Developer Fee. In exchange for Developer's services hereunder and the additional efforts of the Developer in furtherance of the Project, Developer will receive the following payments (the "Developer Fee"):

At Closing, \$1,550,000.00 payable in cash.

On December 1, 2010, \$1,550,000.00 payable in cash.

Upon Final Completion, \$1,550,000.00 payable in cash.

16.4 Savings. If the actual Development Cost is less than the Development Sum, Developer will receive one hundred percent of the savings. The unapplied portion of the Owner's Contingency, inclusive of any interest, shall be returned to the Owner. Each of these payments shall be made on Final Completion of Phase I.

**17. Payment Bonds and Performance Bonds.** Developer shall cause to be provided the Performance Bond and Payment Bond attached as Exhibit 9 (each bond in the amount of the "Contract Sum" as defined in the Construction Contract, with the General Contractor as contractor and principal; B-C, acting as Developer for the Owner as the Owner/Obligee; together with a multiple obligee rider, naming the Owner, the University and Bond Trustee as obligees). The Performance Bond and Payment Bond surety shall be obligated to perform all obligations of the General Contractor.

**18. Force Majeure; Termination; Default.**

18.1 Neither party shall be in default to the extent that any of the following delays its performance or makes its performance impossible ("Force Majeure"): act of God, war, act of terrorism, civil commotion, governmental action, fire, storm, flood, hurricane, explosion, strike, walkout, other industrial disturbance, Abnormal Weather Conditions (as defined herein), Unknown Site Conditions, the delay or inability to obtain necessary permits for any portion of Phase I after using commercially reasonable efforts to obtain same or any other cause beyond its reasonable control. Developer shall not incur any cost or expense as a result of Force Majeure, and time frames required for performance under this Agreement shall be extended, on a day-to-day basis, during the pendency of any events of Force Majeure. For purposes of this Agreement, "Abnormal Weather Conditions" shall consist of weather conditions that deviate from the average of the proceeding five (5) year climatic range during the same time interval based on National Oceanic and Atmospheric Administration National Weather Service statistics for the locality of the Project Site and based on weather logs kept at the Project Site reflecting the effect of the weather on the progress in completing Phase I.

18.2 This Agreement will remain in effect until Developer fulfills all of its obligations under this Agreement, and Phase I is Finally Complete, or as otherwise provided in this Agreement.

18.3 The Owner may terminate this Agreement (subject to Developer's right to cure) for any default ("Developer Default") by Developer (a Developer Default, after expiration of any applicable grace or cure period hereunder, shall constitute an "Event of Default"). Developer Default includes any one or more of the following:

18.3.1 Developer files a voluntary proceeding under any bankruptcy or insolvency laws, or is the subject of an order of relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors;

18.3.2 Developer seeks, consents to, or acquiesces in the issuance of an order of relief, appointment of any trustee, receiver, custodian, conservator, or liquidator of Developer, for all or any substantial part of its properties ("acquiesce" includes the failure to file a petition or motion to vacate or discharge any order of relief, judgment, or decree providing for that appointment within the time specified by law);

18.3.3 A court of competent jurisdiction enters an order of relief, judgment, or decree approving an involuntary bankruptcy proceeding filed against Developer;

18.3.4 Developer seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors, or Developer consents to or acquiesces (as defined above) in the entry of an order of relief, judgment, or decree, or it is not vacated and not stayed for an aggregate of sixty (60) days after its entry;

18.3.5 Any trustee, receiver, custodian, conservator, or liquidator of Developer or of all or any substantial part of its properties is appointed without the consent or acquiescence of Developer and that appointment is not vacated and not stayed for an aggregate of sixty (60) days;

18.3.6 Developer materially fails or refuses to perform any obligation under this Agreement in the manner and within the time required by this Agreement;

18.3.7 Developer or a Consultant commits or permits a material breach of any of Developer's duties, liabilities, or obligations under this Agreement without full and timely cure or remedy; or

18.3.8 Any act by Developer or any Consultant or other third party employed by or claiming through Developer that causes, or with the passage of time or the giving of notice would cause, an Event of Default under the Ground Lease or the Lease.

18.3.9 Substantial Completion has not occurred more than sixty (60) days after the Guaranteed Date (as extended pursuant to the provisions of this Agreement), after giving effect to any period of delay caused by the failures, occurrences or conditions set forth in Section 4.2 or 19.3.

18.4 The Owner shall provide the Developer, the University and the Bond Trustee with a written notice of Developer Default that describes the nature of the Developer Default, after which:

18.4.1 Developer will have twenty-one (21) days to cure the Developer Default.

18.4.2 However, Developer can cure a Developer Default not reasonably capable of being cured within twenty-one (21) days, if Developer begins the cure within twenty-one (21) days and then diligently pursues the cure thereof to completion to the reasonable satisfaction of the Owner.

18.5 Intentionally Omitted.

18.6 Developer may terminate this Agreement (subject to the Owner's, the University's and Bond Trustee's right to cure) for any default ("Owner Default") by the Owner (an Owner Default, after expiration of any applicable grace or cure period hereunder, shall constitute an "Event of Default"). Owner Default includes any one or more of the following:

18.6.1 The Owner materially fails or refuses to pay Development Costs or the Owner or the University otherwise materially fails or refuses to perform any obligation under this Agreement in a manner and within the time required by this Agreement;

18.6.2 The Owner, the University, an Owner Representative or a University Representative commits or permits a material breach of any of the Owner's or the University's duties, liabilities or obligations under this Agreement without full and timely cure or remedy;

18.6.3 Any act by the Owner, the University, any Owner Representative, any University Representative or any third party employed or claiming through the Owner that causes, or with the passage of time would cause, an Event of Default under the Ground Lease; or

18.6.4 The Owner or the University unreasonably refuses to approve Project work or otherwise cooperate with Developer hereunder.

18.7 Notice of Default. Developer shall provide the Owner, the Bond Trustee and University with a written Notice of Default that describes the nature of the Owner Default, after which:

18.7.1 The Owner shall have twenty-one (21) days to cure the Owner Default;

18.7.2 However, the Owner can cure an Owner Default not reasonably capable of being cured within twenty-one (21) days, if Owner begins to cure within twenty-one (21) days and then diligently pursues the cure thereof to completion to the reasonable satisfaction of Developer.

In the event that Owner fails to cure the Owner Default or to commence and diligently pursue cure of the Owner Default within said twenty-one (21) day period, the University may (but shall not be obligated to), upon written notice to the Developer given within ten (10) days following the expiration of the applicable Owner cure period, undertake cure of the Owner Default on behalf of the Owner and at the Owner's expense. If the University undertakes such cure it shall have an additional twenty-one (21) days in which to cure the Owner Default or to commence and diligently pursue such cure. The University may at any time following notice of undertaking the cure of the Owner Default, abandon such efforts by written notice to the Developer. In the event that Owner or University undertakes to cure an Owner Default, the Guaranteed Date for Substantial Completion shall be extended by number of days during which such cure is being pursued, beginning with the date of Notice of Default.

## 19. Phase I Completion.

19.1 Substantial Completion. For purposes of this Agreement, the Student Housing Facilities will be deemed substantially complete ("Substantially Complete" or "Substantial Completion") when the Student Housing Facilities' improvements are:

19.1.1 Substantially completed as required by the Plans and Specifications, inclusive of the Construction Documents and the installation of Fixtures, Furniture and Equipment, and the Indenture, including all life safety systems, all required temporary certificates of occupancy are issued, the Student Housing Facilities are capable of being occupied for its intended purposes, and a punch list of unfinished items has been prepared by Developer and provided to the Owner and University; and

19.1.2 All governmental authorities having jurisdiction over occupancy prior to the Final Completion, including the State Fire Marshal, if applicable, have given their approval for occupancy of the Student Housing Facilities on a temporary basis pending the occurrence of Final Completion.

19.2 Final Completion. For purposes of this Agreement, the Student Housing Facilities will be deemed finally complete (“Finally Complete” or” Final Completion”) when such respective components of the Phase I improvements are:

19.2.1 Fully completed as required by the Construction Documents and the Indenture (including all punch list items) and all required final certificates of occupancy are issued; and

19.2.2 Fully paid for and free from all liens of Developer, Consultants, Suppliers, and Project laborers; and

19.2.3 All governmental authorities with jurisdiction, including the State Fire Marshal, have given their final approval of Phase I; and

19.2.4 All final releases, warranties, manuals, contractor marked as-built drawings, CADD drawings, equipment cuts, operating guides and any other documents necessary for full operation of the Project are delivered to Owner.

19.3 Substantial Completion for the Student Housing Facilities shall occur on or before the Guaranteed Date, which may be extended at no expense to or obligation of Developer due to any of the events set forth in the last paragraph of Section 4.2.

19.4 Final Completion shall occur within a reasonable time (but in no event more than one hundred fifty (150) days) after the occurrence of Substantial Completion for the Student Housing Facilities; provided however, if one or more of the above conditions to Final Completion is unfulfilled thirty (30) days after written notice thereof from Developer to the Owner because of any Owner Default, then Developer may disregard that condition and declare the Student Housing Facilities completed under this Agreement.

## **20. Related Contracts.**

20.1 Developer shall use commercially reasonable efforts to include in all agreements and contracts it executes in connection with the Project an indemnity provision requiring the other contracting party to defend, indemnify and save harmless the Owner, the Bond Trustee, the University, TIIIF and their respective trustees, members, designated members, officers, directors, shareholders, agents, and employees (“the Owner Indemnified Parties”) from and against all claims, losses, and liability resulting from any damage to property, or injury to or death of people, caused by, occasioned by, in connection with, or arising out of the performance of the services or work of that contracting party, its employees, or agents, and from and against all related fees, costs, and attorneys’ fees and costs.



20.2 Before allowing any Consultant to enter the Project Site to begin any Project work, and for the duration of the Term, Developer shall obtain and deliver to the Owner and the Bond Trustee copies of the "Principal Consultants' Insurance" as required in Exhibit 8.

**21. Other University Development; Change Orders.**

21.1 The Owner and/or the University may further develop or improve portions of the University campus not included within the Project Site as they or any of them may wish, without Developer's interference or hindrance; provided, however, in no event shall any such development or improvement interfere with the development of the Project or impede access by Developer, General Contractor, any Contractor, Consultant or Supplier to the Project Site.

21.2 The Owner may request the issuance of a Change Order to modify Phase I together with appropriate modifications to the cost, time, scope of work, or compensation provisions of this Agreement; provided, however, that no such Owner requested Change Order shall be issued to the extent that such Change Order would result in an expenditure of funds in excess of those available in the Owner's Contingency unless the Owner agrees to provide additional funds to cover the cost of the Change Order. Developer may raise a reasonable, timely objection to the issuance of any such Change Order that does not include an appropriate modification of the development cost, time, scope of work, or compensation provisions of this Agreement.

21.3 A Change Order shall not be effective until such time as it is executed by the Owner, University, and Developer, specifying any modifications of the development cost, time, scope of work, or compensation provisions of this Agreement. If Phase I is thus modified by a Change Order, Developer will perform the Project as changed, change the Construction Documents as needed, and consent to and execute any modifications of this Agreement and the services agreements related to it as may be reasonably required. Change Orders shall not include any Developer profit or overhead. Change Orders shall not modify the Guaranteed Date unless such modification is expressly agreed to in writing by all Parties.

21.4 Change Orders Requests initiated by the Developer shall be implemented in the manner contemplated by the Construction Contract and in accordance with the following:

21.4.1 Intentionally Omitted,

21.4.2 Each Change Order Request initiated by Developer shall be presented using the form attached hereto as Exhibit 12, containing all information reasonably necessary to evaluate the proposed change. Each Change Order Request shall be submitted by Developer to the Owner within thirty (30) days after the occurrence of the event that prompts the request, or as soon thereafter as practicable, and the Owner shall respond within the time requested (no more than seven (7) days) in the Change Order Request.

21.4.3 Developer shall include with each Change Order Request the following information.

21.4.3.1 State the proposed change (if any) to the Development Sum.

21.4.3.2 State the proposed change (if any) in the Guaranteed Date. If the request is for an extension of time, Developer shall provide a critical path schedule indicating the date of Substantial Completion before the change, identifying activities impacted by the change and the new date

of Substantial Completion. Developer shall also provide a recovery plan indicating methods and costs for maintaining the date of Substantial Completion.

21.4.3.3 Include all supportive information including detailed, itemized proposals from all affected Consultants.

21.5 Notwithstanding the foregoing, in the event any proposed revision of the Project will not result in any modification of the Development Sum or the Guaranteed Date, and will not alter any substantive component of Phase I (consisting of any material change to quality, scope or function), then the approval by the Owner and the University of such proposed revision would not be required; provided however, Developer shall provide - in lieu of issuing a Change Order Request - written notice to the Owner and the University of each such proposed revision at least one (1) University business day prior to implementation of proposed revision. In the event the Owner or the University respond to Developer within one (1) University business day following Developer's provision of such notice indicating concerns or questions regarding the proposed revision, the Developer agrees to consult with the Owner or the University, as applicable, prior to implementation of such proposed revision if practicable and unless there is an urgency that cannot be avoided; provided, however, that in the event that the Owner or University does not respond to Developer's notification within one (1) University business day, no consultation shall be required.

## 22. Developer's Duties in Case of Loss.

22.1 Notification. Developer shall promptly notify the Owner, the Bond Trustee and the University of any fire or other damage to Student Housing Facilities or any portion of the Project Site. Developer will arrange for an insurance adjuster to view the Project Site or Student Housing Facilities before repairs are started. Developer may not settle any losses, complete loss reports, adjust losses, or endorse loss drafts without the Owner's and the Bond Trustee's prior written consent.

22.2 Damage. Developer shall promptly notify the Owner and University of any personal injury or property damage occurring to the Student Housing Facilities or on the Project Site.

## 23. Taxes and Contributions.

23.1 Withholding. Developer has full and exclusive responsibility and liability for withholding and paying, as may be required by law:

23.1.1 All federal, state, and local taxes and contributions concerning, assessed against, or measured by:

23.1.1.1 Developer's earnings under this Agreement, or

23.1.1.2 Salaries, other contributions, or benefits paid or made available to anyone employed by Developer in connection with Phase I; and

23.1.2 All other taxes and contributions applicable to the services provided hereunder for which Developer may be responsible.

23.2 Filing. Developer shall file all returns and reports required in connection with those laws, taxes, contributions, and benefits.

23.3 Assistance. Developer shall assist and cooperate with the Owner in the Owner's preparation of federal, state, or local governmental tax or other corporate or non-profit reports or forms.

24. **Ownership of Information and Materials.**

24.1 Return of Information. On termination of this Agreement, Developer shall deliver to the Owner all originals of written data and information generated by or for Developer in connection with the Project; provided, however, (i) the Owner shall have provided Developer during the Project with the required compensation for such generated data and information, and (ii) Developer shall, for the purposes of Developer's post-termination obligations and dispute resolution, be permitted to retain copies of the written data and information generated by or for Developer in connection with the Project. All such data and information are the Owner's property. This includes:

24.1.1 Data and information supplied to Developer by the Owner or the Owner's contractors or agents;

24.1.2 All drawings, plans, logs, photographs, books, records, contracts, and agreements in Developer's possession or control relating to the Project; and

24.1.3 Plans, specifications, and drawings (including as-built Construction Drawings) for the Project or any other element of the Project.

24.2 Use. The Owner and University may use that data and information without further compensation to Developer or any of its Consultants and their respective contractors, subcontractors, sub-consultants, agents, employees and their supplying labor, equipment, or material by or through them to the Project; provided, however, (i) all such reuse shall be identified on the respective documents, disclosed to third parties, and contain stamped notations that the documents may not be relied upon and that neither Developer or the respective Consultant shall have any obligations or liability therefor, (ii) shall be in accordance with the applicable limitations set forth in Article 6 of the Architect's Contract, and (iii) shall in no way limit or compromise the Developer's rights with respect to Phase II as set forth in Section 4.4.

24.3 Developer Use. Developer may use that data and information (except the University's and any other's proprietary financial information) in marketing its services to other owners or governmental agencies.

24.4 Advertisement. Developer may identify itself as the developer of the Project on any sign, advertisement, promotional publication, commercial, or other dissemination of any information about the Project (generically, "Publication"); provided, however, that nothing herein shall grant Developer any interests in or rights to use the Owner or University name, logo or trademarks without the prior written consent of the Owner or University, as applicable, which consent may be withheld in each party's sole and absolute discretion..

24.5 Naming. Owner and/or the University shall retain all naming rights of all components of the Project.

25. **Notices**. Each notice, request, and communication required under this Agreement (other than those under Section 2.3 shall be in writing. It will be deemed to have been received: (i) on personal delivery; (ii) on the second business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if by facsimile, on receipt of electronic confirmation of its receipt (but only if the facsimile is followed by delivery by United States mail); or (iv) if mailed, on actual receipt

(but only if sent by registered or certified mail, with return receipt requested, addressed to the other Party's address below):

If to the Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

If to Developer:

B-C Development, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to the University:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

With a copy to:

Capstone Companies  
Tonia N. Christensen  
431 Office Park Drive  
Birmingham, Alabama 35223  
Fax: (205) 414-6405

AND

Balfour Beatty Capital, Inc.  
Attention: General Counsel  
10 Campus Boulevard  
Newtown Square, Pennsylvania 19073  
Fax: (610) 325-2032

If to the Bond Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax: \_\_\_\_\_

**26. Non-Discrimination Policy.** Developer will not deny the benefits of this Agreement to any person, or discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or other applicable protected classification. Developer, unless exempt, will abide by the terms of all applicable Federal, state, and local non-discrimination provisions, specifically including without limitation University Regulation 5.010.

**27. Dispute Resolution.** The Parties will resolve all disputes as provided in Exhibit 10.

**28. Agent for Service of Process; Venue.**

28.1 Agent for Process. Developer will appoint an agent for service of process in the State of Florida.

28.2 **Venue.** Subject to the dispute resolution provisions of this Agreement, venue for any litigation between the Owner and Developer which relates to or arises out of this Agreement or its breach will be exclusively in a trial court in Palm Beach County, with Developer expressly waiving any rights to begin, defend, or remove any such litigation in any other forum or venue.

29. **Attorneys' Fees.** In any lawsuit, arbitration, or injunctive proceeding between the Parties concerning any part of this Agreement or the rights and duties of either Party, each Party shall bear their own respective attorneys' fees and costs.

30. **Independent Contractor.** Developer will be an independent contractor of the Owner, not its employee or agent.

31. **Severability.** Each part of this Agreement is intended to be severable. If an arbitration panel or court of competent jurisdiction finds any part of this Agreement to be unenforceable or invalid for any reason, that finding will not invalidate or adversely affect the rest of this Agreement. But if that finding would result in unjust enrichment or extreme hardship to either of the Parties, or make performance of either Party's obligations under this Agreement unreasonable or impossible, the remaining portions of this Agreement may be invalidated or modified, in whole or in part, as determined by the arbitration panel or the court of law.

32. **Waiver; Consents.** No consent or waiver to a Default may be deemed or construed to be a consent or waiver to any other Default.

33. **Governing Law.** This Agreement is entered into in the State of Florida, and is governed by its laws, without regard to its principles of conflicts of laws.

34. **Assignment.** At Closing, CP IV Acquisition LLC may assign its rights and obligations to the Project to B-C Development, LLC and the University and CP IV Acquisition LLC shall provide a mutual written release regarding the Project at that time releasing one another from all claims and liability of any type or nature relating to the Project and arising or accruing from actions or omissions occurring on or after the effective date of the assignment. Developer may not otherwise assign its rights or obligations without the prior written consent of the Owner, the Bond Trustee and University, which consent shall not be unreasonably withheld. All of the rights, benefits, duties, liabilities, and obligations of the Parties will inure to the benefit of and be binding on their respective successors and assigns. Developer acknowledges the collateral assignment under the Assignment of Contracts and Documents of the Owner's rights hereunder to Bond Trustee (the Bond Trustee, together with any successor in title to the Project prior to completion thereof as described herein, "Permitted Assignees"). Developer consents to such assignment, recognizes the Bond Trustee as the party entitled to exercise or enforce such rights (including consent rights), and agrees to make payment of all sums assigned by the Owner directly to the Bond Trustee without defense or set-offs by reason of any dispute between the Owner and the Issuer or Bond Trustee. Nothing herein or in the Deed of Trust shall be construed, however, to require the Bond Trustee to perform any obligations of the Owner under this Agreement. Provided that the Development Sum, including Developer Overhead and Developer Fee, is paid to Developer as provided in this Agreement: (i) Developer agrees to perform all obligations of this Agreement for or for the benefit of any one or more of the Permitted Assignees; and (ii) Developer shall cause the General Contractor to cause the Performance Bond and Payment Bond surety for the General Contractor to perform all obligations of the General Contractor for the benefit of any one or more of the Permitted Assignees.

35. **Modification of Agreement.** To be effective, any modification of this Agreement shall be in writing and signed by both Parties, the University and the Bond Trustee.

36. **Headings.** The headings are inserted for convenience only. They may not affect the construction or meaning of anything in this Agreement.
37. **Interpretation.** “Include” and “including” each refers to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term, or matter appearing before it. All references to Articles, Sections, Paragraphs, Recitals, Preamble, and Exhibits mean designated parts of this Agreement.
38. **Further Assistance.** Each Party will execute other documents and take other actions as may be reasonably required by the other Party to carry out the purposes of this Agreement.
39. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.
40. **Entire Agreement.** This Agreement and its exhibits contain the entire agreement between the Parties concerning its subject matter. Neither Party nor its agents have made representations or promises concerning this Agreement except as expressly stated in this Agreement. No claim or liability may arise for any representations or promises not expressly stated in this Agreement. This agreement expressly supersedes the PDA and to the extent there is any conflict between the terms of this Agreement and the PDA, the terms of this Agreement shall fully govern and control; provided, however, that in the event of any ambiguity in this Agreement, the PDA may be used to ascertain the Parties intent hereof.
41. **Bond Trustee as Third Party Beneficiary.** As to the provisions hereof benefiting the Bond Trustee, the Bond Trustee shall be a third party beneficiary hereof, for so long as the Indenture is in effect.
42. **University as Third Party Beneficiary.** As the Owner is a direct-support organization of the University operating exclusively for the benefit of the University and as the Project is for the direct benefit of the University and its students, the University shall be a third party beneficiary of the Owner’s rights under this Agreement, specifically including without limitation the Owner’s rights under the Construction Contract and the Architect’s Contract.

[Signature page follows]

Effective on the first date set forth above.

WITNESS:

Developer:

B-C Development, LLC

By: \_\_\_\_\_  
Print Name:  
Title:

By: \_\_\_\_\_  
Print Name:  
Title:

WITNESS:

CP IV Acquisition, LLC

By: \_\_\_\_\_  
Print Name:  
Title:

By: \_\_\_\_\_  
Print Name:  
Title:

Owner:

WITNESS:

FAU Finance Corporation

By: \_\_\_\_\_  
Print Name:  
Title:

By: \_\_\_\_\_  
Print Name:  
Title:

CONSENTED AND AGREED TO:

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES

By: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

By: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

CROCKER PARTNERS LLC

By: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

By: \_\_\_\_\_  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

EXHIBIT 1

DEFINED TERMS

- A. This "Agreement" is defined in the Preamble.
- B. "Architect" means PGAL a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ with its principal place of business at 791 Park of Commerce Blvd. Suite 400, Boca Raton, FL 33487 and its successors and assigns.
- C. "Architect's Contract" means the architect's contract dated \_\_\_\_\_ as amended on \_\_\_\_\_, between the Architect and the University, as assigned by the University to the Developer by Assignment dated \_\_\_\_\_ for design of the Student Housing Facility
- D. The "Bonds" are the Series 2010 A Bonds and the Series 2010 B Bonds.
- E. The "Bond Trustee" means the trustee and any co-trustee at the time serving as such hereunder. [\_\_\_\_\_] is the initial Trustee.
- F. "Bond Underwriter" means [\_\_\_\_\_] , and its successors and assigns.
- G. "Change Order" is a written instrument executed by the Developer, Owner and the University to document changes in the Project, including any modifications to the Development Sum or the Guaranteed Date.
- H. "Change Order Request" is the request for a Project Change Order described in Section 21
- I. "City" is the City of Boca Raton, Florida.
- J. "Closing" is defined as the closing on the Bonds.
- K. Intentionally Omitted.
- L. The "Construction Contract" means the construction contract dated July 21, 2008 as amended on \_\_\_\_\_, \_\_\_\_\_ between Balfour Beatty Construction, LLC and the University, as assigned by the University to the Developer by Assignment dated \_\_\_\_\_ for construction of the Student Housing Facility.
- M. The "Construction Documents" are the Construction Drawings, plans, and specifications prepared by Developer, the Architect, or other Consultant and approved by the Owner for the construction of Phase I and any changes, modifications, or supplements to them.
- N. "Construction Drawings" are the drawings, including schematic drawings, design development drawings, and construction drawings, prepared by Developer, the Architect, or other Consultant and approved by the Owner for the construction of Phase I and any changes, modifications, or supplements to them.



- O. "Consultant" is any company, entity, firm, attorney, person, individual, or advisor (other than the Owner, the University, Bond Trustee, Developer, and their employees) that contracts with and is paid by or charges a fee to Developer, the General Contractor, or any number of them, to perform any duties or services relating to Project design, development, demolition, or construction. The Project Engineer, the Architect, and the General Contractor are Principal Consultants (and Consultants). Contractors and Suppliers are Consultants.
- P. "Contractor" is any of the General Contractor, subcontractors, and sub-subcontractors providing work, labor, equipment, or materials, each of whom shall be licensed, selected by Developer.
- Q. "County" is Palm Beach County, Florida.
- R. "Developer" is defined in the Preamble.
- S. "Developer Default" is defined in Section 18.
- T. "Developer Insurance" is attached as Exhibit 7.
- U. "Developer Overhead" is defined in Section 16.2.
- V. "Developer Fee" is defined in Section 16.3.
- W. "Developer's Representative" is the person designated in writing by Developer as its agent and contact for all purposes under this Agreement. The initial Developer's Representative is Walker May.
- X. The "Development Budget" is shown on Exhibit 5.
- Y. "Development Cost" is the sum of the actual costs to perform all services under this Agreement, as defined in Section 16.1.
- Z. The "Development Sum" is the amount set forth in Section 7.
- AA. "Draw" is defined in Section 9.
- BB. "Draw Requests" are defined in Section 9.
- CC. The "Effective Date" is defined in the Preamble.
- DD. "Emergency" is defined in Section 5
- EE. "Environmental Laws" are defined in Section 14.
- FF. "Event of Default" is defined in Section 18.
- GG. "Existing Site Conditions" are any and all conditions of the Project Site as of the Effective Date, including, but not limited to, geological, geotechnical, archeological, paleontological and environmental, including the presence or absence of any Hazardous Materials and compliance or non-compliance with Environmental Laws as of the commencement of construction.

- HH. “Finally Complete” and “Final Completion” are defined in Section 19.
- II. The “Financial Guaranty Insurance Policy” is that certain Financial Guaranty Insurance Policy relating to the Bonds effective as of the date of issuance of the Bonds, as amended, supplemented, or restated from time to time.
- JJ. “Force Majeure” is defined in Section 18
- KK. “General Contractor” means Balfour Beatty Construction, LLC, a \_\_\_\_\_ organized under the laws of the State of \_\_\_\_\_ with its principal place of business at 4 Harvard Circle, Suite 200, West Palm Beach, FL 33409 and its successors and assigns.
- LL. The “Guaranteed Date” is the date on or before which the Student Housing Facilities must be Substantially Complete and is five (5) days prior to the first day of classes for the fall semester of 2011, as may be extended from time-to-time as provided in this Agreement.
- MM. The “Ground Lease” is defined in the Recitals.
- NN. The “Ground Sublease” is defined in the Recitals.
- OO. “Hazardous Materials” are defined in Section 14.
- PP. The “Indenture” is the indenture of trust providing for the issuance, terms, and security for the Bonds.
- QQ. “Management Agreement” means (i) the Management Agreement of even date herewith between the Owner and the Managers, as the same may be amended and/or supplemented from time to time, and (ii) any management or similar agreement between the Owner and any successor Managers relating to the management of the Student Housing Facilities, as the same may be amended and/or supplemented from time to time.
- RR. “Managers” means, initially, [B-C Management, LLC] and the University and thereafter, any other management company engaged by the Owner pursuant to the provisions of the Ground Lease to manage the Student Housing Facility.
- SS. “Mobilization Plan” is defined in Section 12.1.2 and attached as Exhibit 4.
- TT. “Off-Site Improvements” are defined in Section 12.2.2
- UU. “Other Supporting Documentation” is defined in Section 9.
- VV. “Owner” is defined in the Preamble.
- WW. “Owner’s Contingency” is \$1,250,000.00, as included in the Development Budget.
- XX. “Owner Default” is defined in Section 18.
- YY. “Owner Indemnification Parties” are defined in Section 20.

- ZZ. The “Owner’s Inspector” is the person or entity selected by the Owner to approve Draw Requests submitted by Developer.
- AAA. “The Owner’s Representative” is the person designated in writing by the Owner as its agent and contact for all purposes under this Agreement. The initial Owner’s Representative is David Kian.
- BBB. “Party” and “Parties” are defined in the Recitals.
- CCC. “Performance and Payment Bond” are the performance bond and payment bond for the Student Housing Facility required by this Agreement, the forms of which are shown in Exhibit 9.
- DDD. Plans and Specifications” are attached as Exhibit 3.
- EEE. “Pre-Development Expenses” is defined in Section 7.
- FFF. “Principal Consultants” are the Project Engineer, the Architect, and the General Contractor. Principal Consultants are also Consultants.
- GGG. “Principal Consultants’ Insurance” is the insurance described in Exhibit 8.
- HHH. The “Project” is generally described and defined in Exhibit 3.
- III. The “Project Development Account” is defined in Section 8.
- JJJ. The “Project Engineer” is the Project’s professional engineering firm and its subcontractors selected by Developer with the written approval of the Owner. The Project Engineer will perform Project Site inspections of Project demolition, construction, materials, and testing reports; review Change Order Requests; monitor the Project Schedule; and perform other duties required by Developer.
- KKK. The “Project Schedule” is a schedule prepared and updated by Developer of events and activities to be undertaken by the various parties concerning development of Phase I. The initial Project Schedule approved by the Owner is attached as Exhibit 6.
- LLL. The “Project Site” is defined in Recital A.
- MMM. “Publication” is defined in Section 24.4.
- NNN. “Plans and Specifications” are attached as Exhibit 3.
- OOO. “The Project Development Account” is defined in Section 8.
- PPP. The “Series 2010 A Bonds” are the bonds described in the Recitals.
- QQQ. The “Series 2010 B Bonds are the bonds described in the Recitals.
- RRR. Intentionally deleted.
- SSS. “Student Housing Facilities” is defined in the Recitals.

- TTT. “Substantially Complete” and “Substantial Completion” is defined in Section 19.
- UUU. “Summary Report” is defined in Section 9.
- VVV. “Suppliers” are suppliers of materials to the Project.
- WWW. “Supporting Documentation” is defined in Section 9.
- XXX. “Term” is defined in Section 4.
- YYY. The “Termination Date” is the date that is the earlier of: (i) 6 months after Final Completion, (ii) the abandonment of the Project by the Owner, or (iii) another date mutually agreed in writing by the Owner and Developer.
- ZZZ. “TIIF” is the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida.
- AAAA. Intentionally Omitted.
- BBBB. “UDT Meetings” is defined in Section 6.
- CCCC. The “University” is defined in the Recitals.
- DDDD. “University-Development Team” is defined in Section 6.
- EEEE. “University Regulations and Policies” are the regulations and policies of the University, as amended from time to time, found at the following weblink: <http://www.fau.edu/policies/policiesregulations.php>, including without limitation those pertaining to the conduct of persons on University property, the conduct of persons doing business with the University and/or providing University services, and those pertaining to environmental, health and safety matters on University property.
- FFFF. “Unknown Site Conditions” are the Existing Site Conditions of which the Developer (i) does not have actual knowledge as of the Effective Date and (ii) would not have been discovered through the use of commercially reasonable observations, inspections, investigations or testing by the Developer on or before the Effective Date.
- GGGG. “Warranty Defects” are any defects, deficiencies, or needed repairs as a result of breach of any warranties extended by the General Contractor, Consultants, or Suppliers, but shall exclude ordinary wear and tear, misuse, abuse or use for other than the originally-intended purpose.

## EXHIBIT 2

### THE PROJECT

The Project will include the phased development of new residential communities within the Innovation Village area of the University campus. It will accommodate in the range of 2,400 upper-division undergraduate, graduate, and professional students. These communities will include apartment-style units in mid-rise buildings, with appropriate building amenities, common and service areas, and office space for managerial and residential life staff. The development sites will include site amenities and surface parking, on lighted and landscaped grounds. The Project shall not include any new beds the University or the Owner may construct for lower division undergraduates unless expressly agreed to by the parties. The University and/or the Owner retain the right to develop and operate any new housing marketed toward lower division undergraduate (i.e., freshman and sophomore level) students.

Phase I will include approximately 1,218 residential beds, to be constructed on the "East Site" of Innovation Village, near the intersection of Lee Street and St. Lucie Avenue. To provide a ratio of 0.7 parking spaces per bed, approximately 853 parking spaces will be developed.

Phase I will include two commercial grade apartment buildings, surrounding a courtyard area with swimming pool and recreation areas. The South Building will be seven floors and the North Building will be eight floors. Construction will include a poured-in-place concrete structure, stucco exterior, and flat roofs. The buildings are planned to have a central 2-pipe heating and cooling system, fire protection sprinklers, fire alarm system, security system, and elevators and will be constructed to meet applicable building codes.

Phase I will include approximately 376 units, each with private bedrooms and fully equipped kitchen. All of the units, along with the common areas and amenity spaces, will be provided furniture and accessories appropriate to the student residential market, as more particularly described in the Plans and Specifications.

Phase I will be completed in accordance with the Construction Contract and the Architect's Contract.

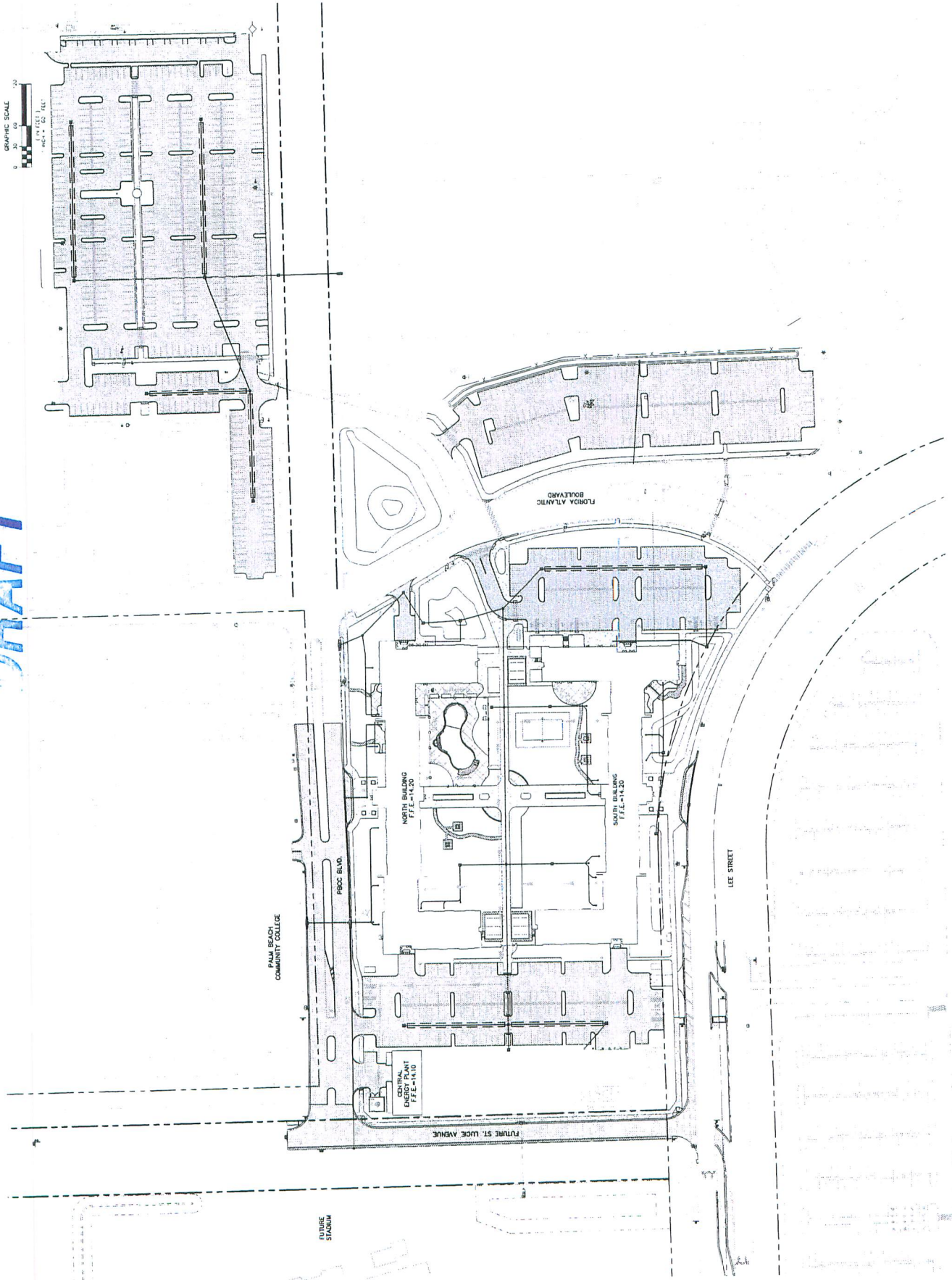
The current unit mix includes:

952 beds / 238 units:	4 bedrooms, 2 baths
240 beds / 120 units:	2 bedrooms, 2 baths
14 beds / 14 units:	1 bedroom, 1 bath (Resident Advisors)
12 beds / 4 units:	3 bedrooms, 2 baths (Resident Managers)

**EXHIBIT 3  
PLANS AND SPECIFICATIONS**

**[CONSTRUCTION DOCUMENTS & FIXTURES, FURNITURE & EQUIPMENT]**

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 33487  
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 (F) (561) 988-3002

ARCHITECT  
 AS ARCHITECT  
 CONSULTANT



PROJECT TITLE  
 B1561  
 INNOVATION VILLAGE  
 PHASE 1  
 PROJECT NUMBER  
 714-68003100  
 PROJECT LOCATION  
 FAU - BOCA RATON  
 CAMPUS  
 DATE OF ISSUE  
 December 18, 2009  
 REVISIONS

PROJECT TITLE  
 B1561  
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 CAMPUS  
 DATE OF ISSUE  
 December 18, 2009  
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 Boca Raton, FL 33431  
 (561) 988-4002  
 (561) 988-3002  
 CHUBER@PG&AL.COM  
 SHEET TITLE

SITE PLAN  
 EXHIBIT

EX-1





DRAFT



OWNER  
 FLORIDA ATLANTIC UNIVERSITY  
 777 GLADES ROAD, BLDG. CO B69  
 BOCA RATON, FL 33431  
 (P) 561 297 3141  
 (F) 561 297 2260



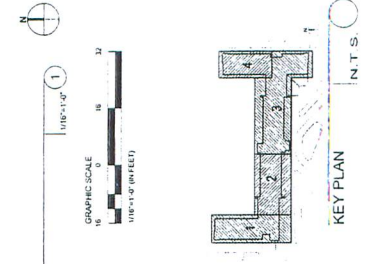
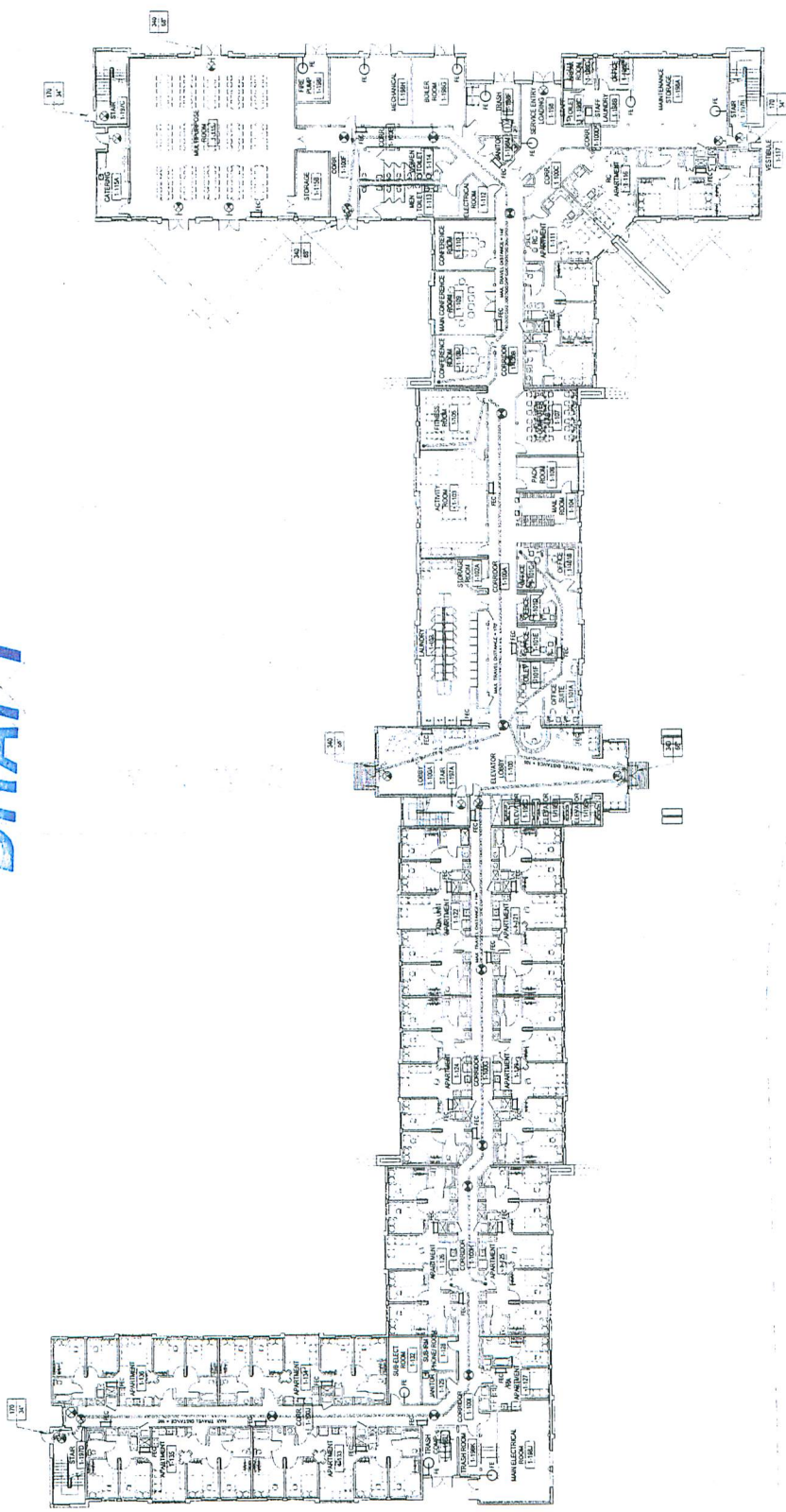
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 791 PARK OF COMMERCE  
 BLVD. SUITE 400  
 BOCA RATON, FLORIDA  
 33487  
 (P) 561 988 4002  
 (F) 561 988 3002  
 AIA #000237  
 CONSULTANT

PROJECT TITLE  
 INNOVATION VILLAGE  
 APARTMENTS -  
 PHASE 1  
 PROJECT NUMBER  
 714-08003.00  
 PROJECT LOCATION  
 FAU - BOCA RATON  
 CAMPUS  
 November 16, 2009  
 REVISIONS

DESIGNER  
 CHECKED BY  
 DATE  
 SUBMITTAL NUMBER  
 DATE  
 SCALE  
 CONSTRUCTION  
 DOCUMENTS  
 APPROVED

JAY L. BAILEY, AIA  
 REGISTERED ARCHITECT  
 1000 N. UNIVERSITY AVENUE  
 SUITE 400  
 BOCA RATON, FL 33431  
 (P) 561 988 4002  
 (F) 561 988 3002  
 CONTRACT # 200

SHEET TITLE  
 OVERALL LIFE SAFETY  
 GROUND FLOOR PLAN  
 SOUTH BUILDING  
 SHEET NUMBER  
 LS1.2.10

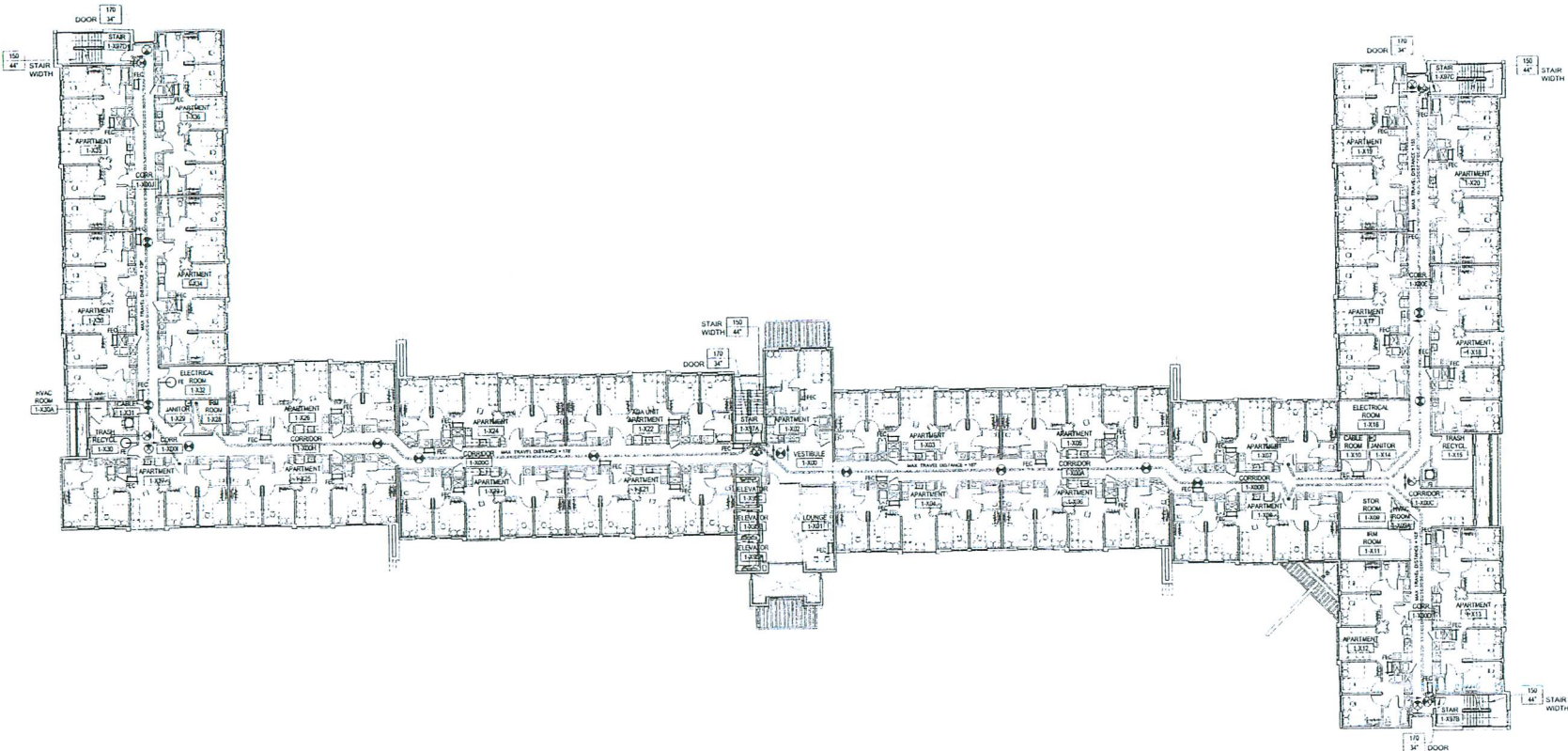


LEGEND:

PRINTER TRAIL	SMOKE DETECTOR (PHOTODIODE)	HEAT DETECTOR	FRS - HAND PULL STATION	FRS - ALARM STROKE (WEATHER PROOF)	FRS - ALARM HORN	COMBINATION FIRE ALARM HORN/STROKE	FRS - NAME CONTROL PANEL
SMOKE RESISTANT PARTITION	FRS - FIRE RESISTANT PARTITION	FRS - FIRE RESISTANT CURTAIN	FRS - FIRE RESISTANT CURTAIN	FRS - ALARM STROKE (ETHANOL/PROPANE BRACKET)	EXIT SIGN	EXIT SIGN	EXIT SIGN
FRS - ALARM STROKE	FRS - ALARM HORN	FRS - ALARM HORN/STROKE	FRS - NAME CONTROL PANEL	FRS - ALARM STROKE (ETHANOL/PROPANE BRACKET)	FRS - ALARM HORN	FRS - ALARM HORN/STROKE	FRS - NAME CONTROL PANEL
FRS - ALARM STROKE	FRS - ALARM HORN	FRS - ALARM HORN/STROKE	FRS - NAME CONTROL PANEL	FRS - ALARM STROKE (ETHANOL/PROPANE BRACKET)	FRS - ALARM HORN	FRS - ALARM HORN/STROKE	FRS - NAME CONTROL PANEL

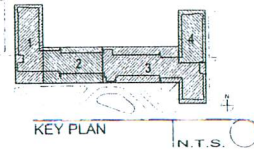
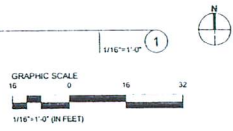
OVERALL LIFE SAFETY GROUND FLOOR PLAN - SOUTH BUILDING

# DRAFT



OVERALL LIFE SAFETY LEVEL 2 THRU 7 FLOOR PLAN SOUTH BUILDING

LEGEND:	
---	PATH OF TRAVEL
SR	SMOKE RESISTANT PARTITION
1F	1HR FIRE RESISTANT PARTITION
2F	2HR FIRE RESISTANT PARTITION
EEC	FIRE EXTINGUISHER CABINET
W	WALL MOUNTED FIRE EXTINGUISHER ON BRACKET
X	EXIT SIGN
X	EXIT CAPACITY
X	EXIT WIDTH
UL	UL LISTED ANGLA SYSTEM AT KITCHEN HOOD
SD	SMOKE DETECTOR
SDP	SMOKE DETECTOR (PHOTOMETRIC)
HD	HEAT DETECTOR
FAS	FIRE ALARM PULL STATION
LS	FIRE ALARM STROBE
LSW	FIRE ALARM STROBE (WEATHER PROOF)
FAH	FIRE ALARM HORN
CFAS	COMBINATION FIRE ALARM HORN/STROBE
FCP	FIRE ALARM CONTROL PANEL



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 BLVD. SUITE 400  
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 [F] 561 988 3002  
 AA 002339  
 CONSULTANT

PROJECT TITLE  
 BT 651  
 INNOVATION VILLAGE  
 APARTMENTS -  
 PHASE 1  
 PROJECT NUMBER  
 714-0600310  
 PROJECT LOCATION  
 FAU - BOCA RATON  
 CAMPUS  
 DATE OF ISSUE  
 November 16, 2009  
 REVISIONS

DESIGNER  
 JB  
 CHECKED BY  
 JB-JS  
 DRAWN BY

SUBMITTAL PHASE I  
 SET DESCRIPTION  
 50% CONSTRUCTION  
 DOCUMENTS  
 APPROVED

Joby L. Baskin, AIA  
 REGISTRATION NO. 00000000  
 I, Joby L. Baskin, AIA, certify that I am the author of the design and construction documents herein, and that I am a duly licensed professional architect in the State of Florida.  
 COPYRIGHT © 2009

SHEET TITLE  
 OVERALL  
 LIFE SAFETY LEVEL  
 2 THRU 7 FLOOR PLAN  
 SOUTH BUILDING  
 PHASE I SUBMITTAL

LS1.2.20

**DRAFT**



OWNER:  
FLORIDA ATLANTIC UNIVERSITY  
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BLVD. SUITE 400  
BOCA RATON, FLORIDA  
TEL: (561) 988-4102  
FAX: (561) 988-3002  
AL 000227  
CONSULTANT

PROJECT TITLE:  
INNOVATION VILLAGE  
APARTMENTS  
PHASE 1

PROJECT LOCATION:  
FAU - BOCA RATON  
CAMPUS

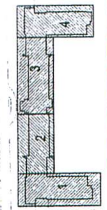
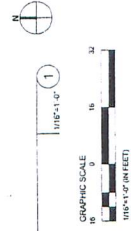
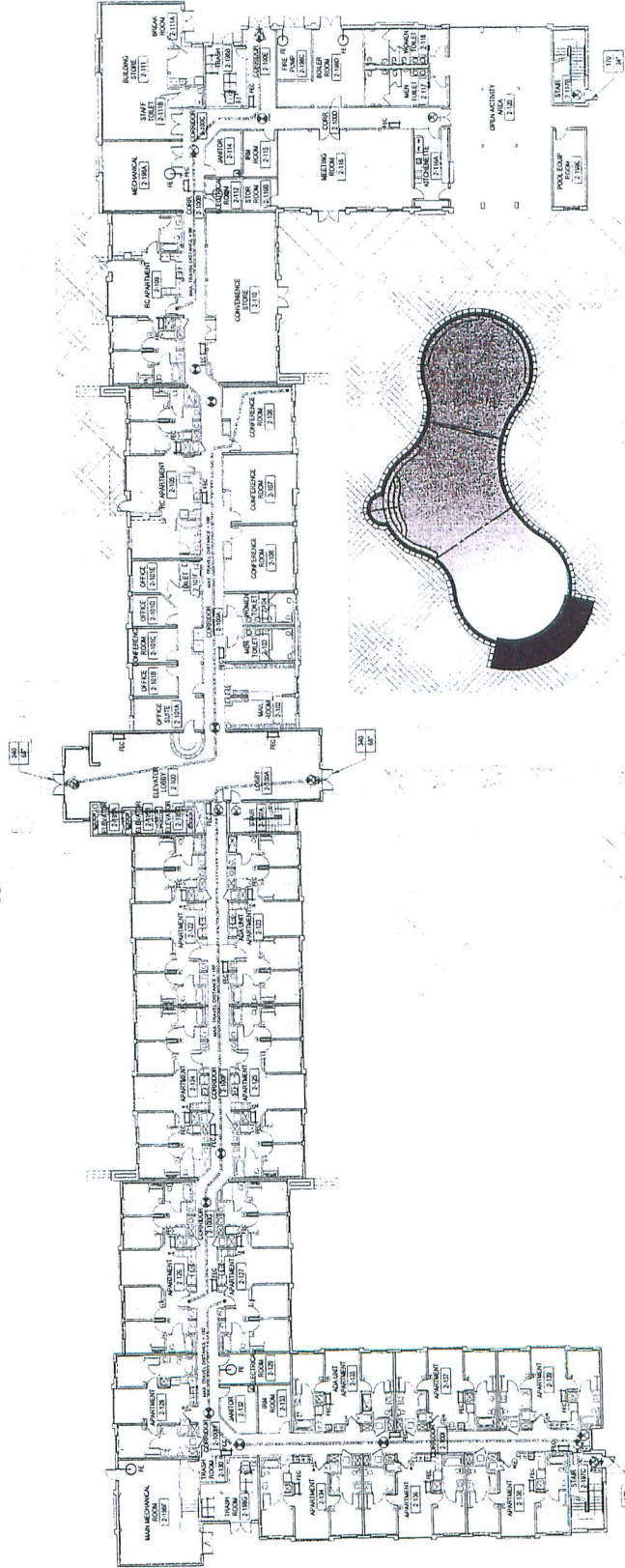
DATE OF ISSUE:  
November 16, 2009  
REVISIONS

DESIGNED BY:  
CHECKED BY:  
DATE:  
PROJECT NUMBER:  
50% CONSTRUCTION  
DOCUMENTS  
APPROVED

DATE OF ISSUE:  
PROJECT NUMBER:  
50% CONSTRUCTION  
DOCUMENTS  
APPROVED

SHEET TITLE:  
NORTH BUILDING  
OVERALL LIFE SAFETY  
GROUND FLOOR PLAN  
SHEET NUMBER

**LS2.2.10**



KEY PLAN

N.T.S.

TYPICAL GROUND FLOOR PLAN

**EXHIBIT 4**

**MOBILIZATION PLAN**

**EXHIBIT 5**

**DEVELOPMENT BUDGET**

**A = Total Development Costs** \$ \_\_\_\_\_

**B = Initial Ground Lease Payment** \_\_\_\_\_

**C = Development Sum (A+B)** \_\_\_\_\_

**D = Owner's Contingency** \_\_\_\_\_

**E = Total Financing Costs** \$ \_\_\_\_\_

**F = Development Budget (C+D\_E)** \$ \_\_\_\_\_

- Excess interest earned on the Construction Fund (as defined in the Indenture) (beyond that forecasted by the Bond Underwriter) shall be utilized to increase the Development Sum.

**EXHIBIT 6**

**PROJECT SCHEDULE**

**EXHIBIT 7**

**DEVELOPER INSURANCE**

1. Developer shall, at no cost to the Owner, provide and maintain, or cause to be provided and maintained in force, with responsible companies with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger and permitted to conduct the business of insurance in the State of Florida, the following minimum insurance coverage and such other insurance as may be specifically required in the Lease.

- (a) Worker's Compensation (statutory amount);
- (b) Employer's Liability (\$1,000,000.00 per accident or disease);
- (c) Commercial General Liability;

Bodily injury (including death) and property damage arising from premises and operations liability, products and completed operations liability, personal injury and advertising liability, contractual liability, fire legal liability, blasting and explosion, collapse of structures, and underground damage liability:

per occurrence ..... \$1,000,000.00;

general aggregate ..... \$2,000,000.00;

- (d) Commercial Business Automobile Liability

(owned, non-owned, and hired vehicles) (occurrence basis):

combined single limit ..... \$1,000,000.00;

- (e) Commercial Umbrella Excess Liability (occurrence basis):

per occurrence ..... \$10,000,000.00;

aggregate ..... \$10,000,000.00.

2. The Commercial General Liability and Umbrella Excess Liability policies shall include contractual liability coverage to cover the insurable liabilities assumed by Developer under this Agreement, subject to standard policy stipulations. The cost of all insurance required under this Agreement is agreed to be included in the Development Sum. The Commercial General, Automobile, and Umbrella Excess Liability policies shall include endorsements naming the Owner, the University and TIIIF as additional insureds.

3. The University and the Owner shall be furnished a Certificate(s) of Insurance with respect to said insurance upon execution of this Agreement. All insurance policies shall provide for thirty (30) days' prior written notice of cancellation, expiration, or modification to the Owner and the Bond Trustee. The University and the Owner shall have the right to request certified copies of insurance policies from any or all insurance companies providing any insurance policies on the Project. With a 7 day advanced written notice to Developer, the University and/or the Owner has the right to physically inspect all required insurance policies at the local Florida office of Developer.

4. Developer shall bear all costs of all deductibles and shall be held responsible for any and all damages as may result from the failure of Developer to exercise its responsibilities as defined under this Agreement.
5. The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for Developer for acts or omissions of it and its Consultants and representatives who may be engaged in performing any Services or activities under or in connection with this Agreement.
6. Developer shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required of Developer under this Agreement. In the event Developer neglects, refuses, or fails to provide or maintain any of the insurance required under this Agreement or if such insurance is canceled, ceases, or expires for any reason, the Owner shall have the right, but not the duty, to procure or maintain the same. In the event the Owner does procure or maintain such insurance, the Owner shall have, in addition to any and all other available remedies, the right to recover from Developer (including the right of set-off against sums otherwise due Developer) all of the costs associated with procuring or maintaining such insurance.
7. The Owner may require Developer at any time, and from time to time, during the Term of this Agreement, to obtain and maintain in force additional insurance with coverage or limits in addition to those above-described. The additional premium cost of any such additional insurance required by the Owner, however, shall be borne by the Owner, and Developer shall arrange to have such costs billed separately and directly to the Owner by the insuring carrier or carriers.
8. The Owner may purchase and maintain such other insurance as it may deem appropriate. No purchase of any insurance by the Owner shall in any way be deemed to alter or amend the rights or responsibilities of the Owner or Developer under this Agreement.
9. The Owner or Developer shall purchase and maintain or cause to be purchased and maintained builder's risk property insurance upon the Project for the full cost of replacement (or the Development Sum, whichever is greater) at the time of loss and written on a 1991 Causes of Loss - Special Form, or its equivalent. This insurance shall name the Owner as loss payee and shall insure against loss from the perils of Fire and Extended Coverage, including flood and hurricane, and the value of related soft costs as confirmed by the Owner's insurance administrator.
10. It is understood that all of the foregoing provisions requiring Developer to carry insurance shall not be construed as in any manner waiving or restricting the liability of Developer as to any obligations imposed under this Agreement.



**EXHIBIT 8**

**PRINCIPAL CONSULTANTS' INSURANCE**

**EXHIBIT 9**

**PERFORMANCE BOND AND PAYMENT BOND**

**General Contractor-Executed Performance Bond and Payment Bond**

## EXHIBIT 10

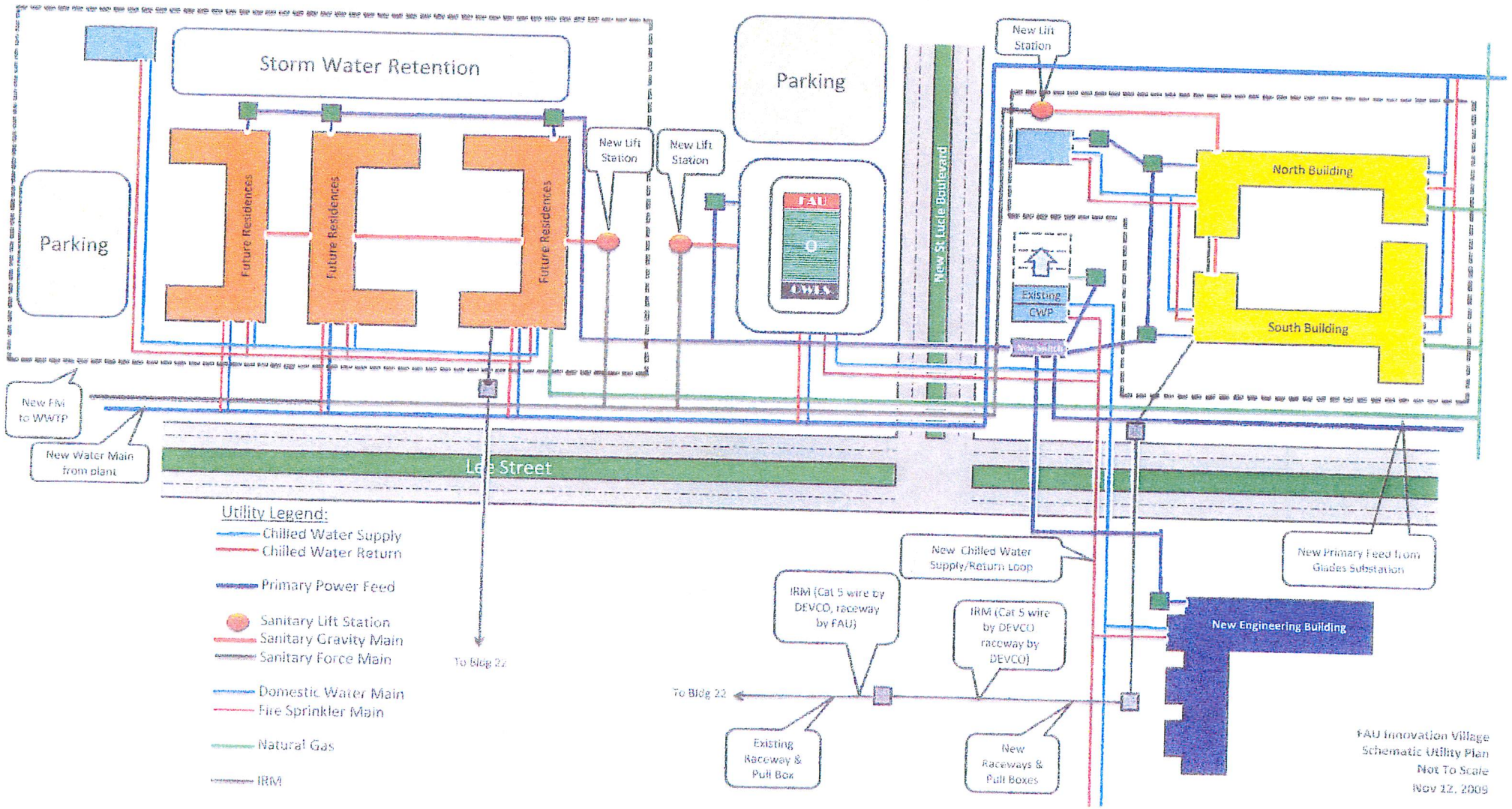
### DISPUTE RESOLUTION

1. In the event a claim, dispute, or controversy (defined for the purposes of this Exhibit as "Claim") arises out of or relates to this Agreement, Developer's performance under this Agreement, or the relationship or obligations of the Parties, Developer and the Owner agree that, as a condition precedent to mediation under this Agreement, the Developer's Representative and the Owner's Representative shall meet and attempt to resolve the matter. If the matter is not resolved by these representatives within fifteen (15) days after the date the Claim arose, then Developer and the Owner shall each designate a senior representative (with similar or equivalent organizational stature). Each designated senior representative shall have the authority to settle or compromise the Claim, and they shall meet at a mutually agreeable time and place within thirty (30) days after the date the Claim arose, and thereafter as often as they deem reasonably necessary to exchange relevant information and to attempt to resolve the Claim.
2. If the Claim has not been resolved within fifteen (15) days after the date on which the senior representatives first meet, then either Party may request a non-binding mediation of the Claim by providing the other written notice of the desire to mediate the Claim. Once such a mediation notice is issued by one of the Parties, the following mediation procedures shall be mandatory unless the Parties agree in writing to waive mediation. All such mediations shall occur before a single mediator. The mediator shall be selected by the senior representatives referred to in Paragraph 1 above, but if they are unable to agree upon an acceptable mediator within ten (10) days after the date the written notice of desire to mediate is received, either Party may petition the Miami Regional Office of the American Arbitration Association ("AAA") for the appointment of a mediator, and the mediation, including the selection of the mediator, shall occur pursuant to the AAA's Construction Industry Mediation Rules then in effect. The Parties shall be equally responsible for the fees of the mediator. Notwithstanding the above, demand for mediation shall be made within a reasonable time after the Claim has arisen, but in no event after the date when notification of legal or equitable proceedings would be barred by the applicable statute of limitations.
3. If the Claim has not been resolved pursuant to mediation within sixty (60) days after initiation of the mediation procedure, then either Party may pursue any remedies available under this Agreement, at law or in equity in furtherance of a Claim.
4. Notwithstanding any Claim between the Owner and Developer or any claim or controversy between Developer and any Consultant, or any claim or controversy between or among such Consultants, and so long as the Draws, pursuant to Article 9, and the Development Cost, pursuant to Article 16, are being timely paid, then it shall be the responsibility of Developer to continue to perform all of its Services diligently in a good and workmanlike manner in conformity with this Agreement.

**EXHIBIT 11**

**UTILITIES AND ACCESS**

# DRAFT



**EXHIBIT 12**

**CHANGE ORDER REQUEST FORM**

Florida Atlantic University Board of Trustees  
CONSTRUCTION CONTRACT CHANGE ORDER

DRAFT

Change No: \_\_\_\_\_ Date: \_\_\_\_\_  
 Project: \_\_\_\_\_ Project \_\_\_\_\_  
 A/E: \_\_\_\_\_ A/E Job No: \_\_\_\_\_  
 CM): \_\_\_\_\_

Your proposal dated \_\_\_\_\_ has been accepted for making the following changes:

DESCRIPTION OF CHANGE				DECREASE	INCREASE
(attach additional sheets if required)				\$	\$
NOTICE TO PROCEED DATE :					
ORIGINAL CONTRACT SUM :					
CONTRACT TIME	DAYS	COMPLETE*	Subtotal	\$	\$
Present Contract				New (Add) (Deduct)	\$
This Change				Present Contract Sum	\$
New Contract Time				New Contract Sum	\$

\*SUBSTANTIAL COMPLETION DATE

This Change Order is an Amendment to the Owner and Construction Manager Agreement, and all contract provisions shall apply unless specifically exempted. The amount and time change designated are the maximum agreed to by both the Owner and the CM for this change. In consideration of the foregoing adjustments in Contract Time and Contract Sum, the CM hereby releases Owner from all claims, demands, or causes of action arising out of the transactions, events and occurrences giving rise to this Change Order. This written Change Order is the entire agreement between Owner and CM with respect to this Change Order. No other agreement or modification shall apply to this contract amendment unless expressly provided herein.

AGREED

CM	DATE
A/E	DATE
President or Designee	DATE: