



UNIVERSITY OF CENTRAL FLORIDA

**Board of Trustees  
Finance and Facilities Committee Teleconference Meeting  
September 26, 2017  
8:30 a.m.**

**Conference call in phone number 800-442-5794, passcode 463796**

**REVISED AGENDA**

- |   |   |
|---|---|
| <b>I. CALL TO ORDER</b>   | Alex Martins<br><i>Chair, Finance and Facilities Committee</i>  |
| <b>II. ROLL CALL</b>  | Tracy D. Slavik<br><i>Coordinator for Administration Services for<br/>Administration and Finance Division</i>   |
| <b>III. NEW BUSINESS</b>  | Chair Martins   |
| <ul style="list-style-type: none"><li>• Lease Agreement between Ustler Development, Inc., and Development Ventures Group, Inc., and University of Central Florida Board of Trustees (<a href="#">FFC-1</a>)</li><li>• WUCF TV Channel Sharing Agreement (<a href="#">FFC-2</a>)</li></ul> | <div>William F. Merck II<br/><i>Vice President for Administration and Finance<br/>and Chief Financial Officer</i></div> <div>Jennifer Cerasa<br/><i>Associate General Counsel</i></div> <div>Grant J. Heston<br/><i>Vice President for Communications<br/>and Marketing</i></div> |
| <b>IV. OTHER BUSINESS</b>   | Chair Martins   |
| <b>V. CLOSING COMMENTS</b>  | Chair Martins   |

**ITEM: FFC-1**

**University of Central Florida  
Board of Trustees  
Finance and Facilities Committee**

**SUBJECT:** Lease Agreement between Ustler Development, Inc., and Development Ventures Group, Inc., and University of Central Florida Board of Trustees

**DATE:** September 26, 2017

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**PROPOSED COMMITTEE ACTION**

Recommend approval of the lease agreement for the UCF Downtown Campus (Creative Village) located on West Livingston Street in Orlando, Florida. Please see attached map for site location.

**BACKGROUND INFORMATION**

The agreement involves the lease of approximately 45,000 to 48,000 square feet of academic support space in Creative Village by UCF, as tenant, from Ustler Development, Inc., and Development Ventures Group, Inc., as landlord. The academic support space will be in the same building as the privately developed student housing that will be managed by UCF Housing. The lease agreement contains a base rent of \$17.25 per square foot for 20 years. The first year's base rent includes controllable operating expenses. A subsequent budget will be established for controllable operating expenses, and increases are capped at 3 percent per year. An option to terminate the lease at 10 years is available for a penalty, and two options exist to extend the lease term. The rent for any extensions would be determined based on fair market value.

The landlord will undertake all agreements related to the construction of the space. UCF will be a third-party beneficiary of any contracts related to tenant's work.

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**Supporting documentation:** Attachment A: Lease Agreement  
Attachment B: Location Map

**Prepared by:** Jennifer Cerasa, Associate General Counsel

**Submitted by:** William F. Merck II, Vice President for Administration and Finance  
and Chief Financial Officer

Attachment A

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**LEASE AGREEMENT**

**BETWEEN**

**USTLER DEVELOPMENT, INC. and  
DEVELOPMENT VENTURES GROUP, INC. [and their Permitted Assignee]**

**AS LANDLORD**

**AND**

**UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES,**

**AS TENANT**

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**SCHEDULE OF EXHIBITS**

|             |   |                                  |
|-------------|---|----------------------------------|
| EXHIBIT "A" | - | BUILDING LAND LEGAL DESCRIPTION  |
| EXHIBIT "B" | - | PREMISES FLOOR PLANS             |
| EXHIBIT "C" | - | EXCLUSIONS TO OPERATING EXPENSES |
| EXHIBIT "D" | - | WORK LETTER                      |
| EXHIBIT "E" | - | INTENTIONALLY OMITTED            |
| EXHIBIT "F" | - | RULES AND REGULATIONS            |
| EXHIBIT "G" | - | INTENTIONALLY OMITTED            |

**LEASE**

**THIS LEASE AGREEMENT** ("Lease") is made by and between **USTLER DEVELOPMENT, INC.**, a Florida corporation ("Ustler"), and **DEVELOPMENT VENTURES GROUP, INC.**, a Delaware corporation ("DEVEN," and together with Ustler, "Landlord"), and **UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES** ("Tenant" or "UCF") .

**WITNESSETH:**

**SUMMARY OF LEASE PROVISIONS**

– **BASIC DATA.** Certain fundamental provisions of this Lease are presented in this summary format in this Section 1 to facilitate convenient reference by the parties hereto. All references in this Lease to the following terms shall be accorded the meanings or definitions given in this Section, as though such meaning or definition were fully set forth throughout the text hereof, unless such meanings are expressly modified, limited or expanded elsewhere in this Lease. This Section, together with the terms herein referenced, shall constitute an integral part of this Lease. Additional defined terms may appear in other provisions of this Lease and, if so, will have the respective meanings assigned to them. The definition of a term or phrase in the singular will include and allow for a reference to such term or phrase in the plural or vice versa.

A. "Alteration" shall mean any improvements, changes or alterations in or about the Premises (as defined herein) other than the initial Tenant's Work (as defined herein).

B. "Base Rent" shall mean and Tenant shall pay base rental ("Base Rent") for the Term (as defined herein) as follows:

| <u>Lease Year</u> | <u>Base Rate Per Rentable<br/>Square Foot</u> | <u>Annual Base Rental</u> | <u>Monthly Base Rental</u> |
|-------------------|---|---------------------------|----------------------------|
| <b>1-20</b>       | <b>\$17.25</b>                                | \$_____                   | \$_____                    |

C. "Building" shall mean the building and related improvements to be constructed by Landlord on the Building Land (as defined herein). The current address of the Building Land is \_\_\_West Livingston Street, Orlando, Florida 32801. A general description of the Building is a 15-story student housing project with student housing beds and related amenities, education and/or education support space, commercial space and a parking garage, containing the Premises (as defined herein).

D. "Building Land" shall mean that certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof.

E. "Business Days" shall mean all days, except Saturdays, Sundays, New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other day during which commercial banks and savings & loans institutions are closed for business to the public in Orlando, Florida.

F. "Commencement Date" shall mean the earlier of (i) August 1, 2019, or (ii) such other date as agreed between Tenant and Landlord if the Premises are ready for use and occupancy pursuant to this Lease and the City of Orlando has issued a certificate allowing occupancy of the Premises by Tenant.

G. “Common Areas” shall mean the following areas: (i) any areas in the Building outside of the Premises devoted to shared lobbies, hallways, elevators, restrooms, janitorial closets, mailrooms, vending areas and other similar facilities provided for the common use or benefit of residents and tenants generally and/or for the public located in the Building (but shall not include any such areas within the Premises or designated for the exclusive use or benefit of a particular resident or tenant, including Tenant, nor any areas for the exclusive benefit of Tenant and/or Valencia College as co-tenant); (ii) portions of the Building used for mechanical rooms, electrical facilities, telephone closets, fire towers and stairs (but shall not include any such areas designated for the exclusive use or benefit of a particular resident or tenant, including Tenant) that serve Common Areas, provided Tenant is not granted a license to utilize such areas; (iii) elevator shafts, vents, stacks, pipe shafts and vertical ducts, provided Tenant is not granted a license to utilize such areas; and (iv) those portions of the Building and/or the Building Land which are provided and maintained for the common use and benefit of residents or tenants of the Building and their employees, invitees and licensees; including, without limitation, walkways, and all streets, sidewalks and landscaped areas comprising the Building Land. Notwithstanding herein to the contrary, the Parking Garage (as defined herein) is not part of the Common Areas.

H. “Effective Date” shall be the date defined above as the Effective Date in the first line of this Lease.

I. “Governmental Authority” shall have the meaning set forth in Section 56.

J. “Governmental Requirements” shall have the meaning set forth in Section 56.

K. Intentionally Omitted.

L. Intentionally Omitted.

M. “Hazardous Substances” shall mean any flammables, explosives, radioactive material, hazardous wastes, hazardous or toxic substances or related materials, asbestos or any material containing asbestos, medical waste, special and infectious waste, biological materials (including without limitation blood and blood products), electromagnetic fields, mold and chemicals known to cause cancer or reproductive toxicity, or any other substance or material as defined in any federal, state or local environmental Governmental Requirement, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 42 U.S.C. § 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq.; the regulations of the Occupational Safety and Health Administration, 29 C.F.R. § 1910.1001; the National Emission Standard for Hazardous Air Pollutants, 40 C.F.R. Part 61, Subpart M; and the regulations adopted in publications promulgated pursuant to each of the foregoing.

N. “Landlord’s Work” shall have the meaning set forth in the Work Letter attached hereto and made a part hereof as Exhibit “D” (the “Work Letter”).

O. “Lease Year” shall mean the following for the first Lease Year of the Term: the twelve (12) full month period beginning on the Commencement Date. If the Commencement Date falls on a day other than the first day of a month, then the first Lease Year shall include the period from the Commencement Date through the end of the calendar month in which the first anniversary of the Commencement Date falls. Commencing with the second Lease Year and for each Lease Year thereafter occurring during the Term and any extension or renewal thereof, “Lease Year” shall mean each twelve (12) month period commencing on the first day of the second Lease Year and each anniversary thereof. For example, if the Commencement Date occurred on July 15, 2019, then the first Lease Year would commence on July 15, 2019 and would end on July 31, 2020, and each subsequent Lease Year would be the twelve (12) month period from August 1 through July 31.

P. “Management Agreement” shall mean the certain Management Agreement between Landlord and Tenant dated \_\_\_\_\_ for the management and operation of the student housing component of the Building (as defined herein).

Q. “Material Alterations” shall mean any alteration which: (i) in any way affects the exterior of the Building or is not limited solely to the interior of the Premises; or (ii) is structural in nature or otherwise affects the structural integrity or design of the Building; or (iii) affects the mechanical, electrical, sanitary (including plumbing), heating, ventilating, and air-conditioning (“HVAC”), life safety, or other services of the Building; or (iv) has an aggregate cost greater than Five Thousand Dollars (\$5,000.00).

R. “Normal Business Hours” shall mean from 7:30 a.m. to 6:00 p.m. during all Business Days.

S. “Notice Address”:

To Landlord at:

Mr. Craig Ustler  
Ustler Development, Inc.  
800 North Orange Avenue, Suite 200  
Orlando, FL 32801  
Telephone (407) 839-1070  
Email: Custler@ustler.net

Mr. Dennis Biggs  
President  
Development Ventures Group, Inc.  
1251 Avenue of the Americas, Suite 910  
New York, NY 10020  
Telephone: (212) 899-4581  
Email: [DBiggs@devengroup.us](mailto:DBiggs@devengroup.us)

with a required  
simultaneous copy of  
notices to:

Michael A. Ryan, Esquire  
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.  
215 North Eola Drive  
Orlando, FL 32801  
Telephone: (407) 418-6355  
Email: [mike.ryan@lowndes-law.com](mailto:mike.ryan@lowndes-law.com)

Karen W. Wankelman, Partner  
Shutts & Bowen, LLP  
300 South Orange Avenue, Suite 1000  
Orlando, FL 32801  
Telephone: (407) 835-6780  
Email: [kwankelman@shutts.com](mailto:kwankelman@shutts.com)



To Tenant at: Mr. William F. Merck II  
Vice President  
University of Central Florida  
4365 Andromeda Loop North, Suite 328  
Orlando, Florida 32816  
Telephone: (407) 823-2351  
Email: William.Merck@ucf.edu

with a required  
simultaneous copy of  
notices to: Scott Cole, Esq.  
General Counsel  
University of Central Florida  
4365 Andromeda Loop North, Suite 360  
Orlando, Florida 32816  
Telephone (407) 823-2482  
Email: Scott.Cole@ucf.edu

T. “Parking Garage” shall mean the parking garage to be constructed in the Building pursuant to the Work Letter, the Plans and Specifications (as defined in the Work Letter), and the terms of this Lease. The Parking Garage is not part of the Common Areas as defined in Section 1(G) above.

U. “Premises” shall mean that portion of floors 1 through 5 of the Building, as depicted on the floor plans attached hereto and made a part hereof as Exhibit “B” and as shown on the Plans and Specifications, containing 45,000 to 48,000 gross square feet of Rentable Area (as defined herein), subject to adjustment as provided in Section 2 hereof.

V. “Project” means the Building Land, together with all improvements constructed or to be constructed thereon from time to time including, but not limited to, the Building, Parking Garage and Common Areas.

W. “Project Agreement” shall mean the certain Project Agreement (UCF and Ustler/DEVEN) between Landlord and Tenant dated \_\_\_\_\_ for the development of the Building and Project (as defined herein).

X. “Rentable Area” or “Rentable Square Footage” shall mean the square footage measured to the outside face of the exterior walls and the centerline of demising walls, and includes the allocable or applicable share of Common Areas, but excludes vertical penetrations (i.e., elevator shafts and stairwells), subject to adjustment as provided in Section 2 hereof.

Y. “Rent Payment Location” shall mean \_\_\_\_\_, Florida \_\_\_\_\_, or such other location as Landlord may designate in writing from time to time.

Z. “Stipulated Rate” means interest at the lesser of (a) the rate of ten percent (10%) per annum, or (b) the highest legal rate of interest permitted under Florida law.

AA. “Tenant Property” shall mean all partitions, business and trade fixtures, machinery and equipment, work stations, tables, chairs, desks, furnishings, racks, computers, signage, communications equipment and office equipment, whether or not attached to or built into the Premises which are installed within the Premises by or for the account of Tenant and can be removed without structural damage to the Building and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises, specifically excluding any of the Tenant’s Work (as defined herein).

BB. “Tenant’s Allocable Share” shall mean the applicable percentage as reasonably established by Landlord based on relevant factors, including, but not limited to (i) the mixed-use design and function of the Building, (ii) the occupancy and use of the Premises by Tenant, and (iii) the nature of a particular expense item or cost, subject to adjustment as provided in Section 2 hereof.

CC. “Tenant’s Work” shall have the meaning set forth in the Work Letter.

DD. “Term” shall mean, collectively, the Initial Term and any Extension Term(s), to the extent properly exercised pursuant to the provisions of Section 3 below, unless sooner terminated pursuant to the provisions of this Lease or pursuant to law.

EE. “Use” shall mean and be limited to the following: education or education support services by Tenant or by Valencia College, and for no other use or purpose without the Landlord’s prior written consent, which consent may be granted or denied in Landlord’s sole discretion. Tenant’s use of the Premises shall conform to all applicable law, zoning, ordinances and other such Governmental Requirements. Tenant shall maintain all necessary licenses and certifications to legally and lawfully occupy and use the Premises.

FF. “Valencia College” shall mean the educational institution governed by THE DISTRICT BOARD OF TRUSTEES OF VALENCIA COLLEGE, FLORIDA, as a co-tenant within the Building with certain rights and responsibilities as outlined in a separate development agreement and/or lease agreement with Landlord. Valencia College and Tenant have agreed to shared occupancy, use and co-tenancy of certain areas of each others Premises, which is (or shall be) the subject of a “Space Sharing Agreement” between the Tenant and Valencia College. At all times Landlord shall be provided with a current copy of the Space Sharing Agreement.

## STANDARD PROVISIONS OF LEASE

### 2.– PREMISES.

A. Subject to the Rent (as defined herein), terms and conditions herein set forth, Landlord hereby leases to Tenant and Tenant hereby rents from Landlord the Premises, subject to the terms and provisions of this Lease to have and to hold for the Term, unless the Term shall be sooner terminated as hereinafter provided.

B. Upon completion of the Premises and on or before the Commencement Date, Landlord shall, at Landlord’s expense, direct its architect (or engineer) to determine the revised Rentable Area, as applicable, of the Premises and the Building to reflect the actual and as-built condition of the Premises and the Building and certify the same to Landlord and Tenant. In the event that the foregoing measurements as determined in good faith by Landlord’s architect (or engineer) are different than the square footage specified in Section 1 of this Lease, the Rentable Area of the Premises and Building shall be adjusted accordingly, and the Base Rent, the Finish Allowance (as defined in the Work Letter), and all other amounts specified in this Lease which are a function of the Rentable Area of the Premises and/or Building shall be revised. The final Rentable Area of the Premises shall be subject to confirmation by Tenant’s architect (or engineer), at Tenant’s expense.

The parties acknowledge that Tenant, or Tenant in conjunction with Valencia College, is a full floor tenant, and therefore responsible for the entire floor area of each occupied floor, except as such relates to the ground floor.

– TERM. Notwithstanding that the Term commences at a date later than the Effective Date, this Lease shall be a fully binding obligation of the parties as of the Effective Date.

C. Initial Term. The initial term of this Lease (the “Initial Term”) shall commence on the Commencement Date and shall expire on the last day of the twentieth (20th) Lease Year (“Expiration Date”), or on such earlier date on which the Term of this Lease shall expire or be cancelled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to law. In the event the Extension Option(s) to extend the Term (as set forth below) are duly exercised, all references contained in this Lease to the Expiration Date or Term, whether by number of years or number of months, shall be construed to refer to the Term hereof as extended.

D. Extension Terms. Unless this Lease has expired or has been sooner terminated as provided in this Lease, or an event of default (as defined in Section 24A) below) has occurred and is continuing, Tenant shall have the right and option (each, an “Extension Option”) to extend the Initial Term for two (2) additional successive periods of ten (10) years each (each, an “Extension Term”). Each Extension Term shall commence on the day succeeding the expiration of the Initial Term or the preceding Extension Term, as the case may be. All of the terms, covenants and provisions of this Lease shall apply to each such Extension Term.

Tenant may exercise the Extension Options by providing written notice to Landlord of such election no later than the date that is twelve (12) months prior to the then-current Expiration Date (the “Extension Notice”). If written notice of the exercise of any Extension Option is not received by Landlord on or before such date, this Lease shall terminate on the last day of the Initial Term or Extension Term then in effect, as applicable. If Tenant shall fail, or shall not be entitled, to extend the Term for an additional Extension Term, all remaining Extension Options shall automatically expire.

E. Early Termination. Notwithstanding anything herein to the contrary, Tenant shall have the right to terminate this Lease effective as of the last day of the tenth (10<sup>th</sup>) Lease Year (the “Early Termination Date”); provided however that Tenant must provide written notice to Landlord of such election to terminate the Lease no later than the date that is twelve (12) months prior to such Early Termination Date. If Tenant exercises such right to terminate this Lease as of the Early Termination Date, Tenant shall pay to Landlord a termination fee equal to twelve (12) months Rent at the rate applicable to the eleventh (11<sup>th</sup>) Lease Year, and Tenant shall pay to Landlord the unamortized portion of any leasing commissions as well as any unamortized portion of the Finish Allowance for the Premises. Tenant shall be responsible for all reasonable fees and costs associated with documenting such termination.

– PERMITTED USE. It is understood that the Premises are to be used solely for the Use set forth in Section 1 and for no other purposes without Landlord’s prior written consent. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant’s business in the Premises, Tenant shall, at its expense, duly procure and thereafter maintain such license or permit and shall at all times comply with the terms and conditions of same. Tenant shall not at any time suffer the Premises to be used or occupied (a) in violation of (i) the Certificate of Occupancy for the Premises or for the Building, (ii) any of the provisions of this Lease, or (iii) zoning ordinances, and rules and regulations of Governmental Authorities having jurisdiction. The Premises shall be used and occupied so as not to contravene any present or future Governmental Requirements, or the requirements of the Landlord’s or Tenant’s insurers, subject to the terms of Section 56 below. Tenant agrees not to use or permit the use of the Premises for any purpose which is illegal, dangerous to life, limb, or property or which, in Landlord’s reasonable opinion, creates a nuisance or which would increase the cost of insurance coverage with respect to the Building. During the Term, Tenant shall continuously, actively, and diligently carry on the permitted Use on the whole of the Premises, except when prevented from doing so by Excusable Delay (as hereinafter defined). Tenant acknowledges that its ongoing use, occupancy and operation of the Premises for the permitted Use is of utmost importance to Landlord in the development of the Project and ongoing development and operation of the overall Creative Village project to be developed on property in the vicinity of the Project. Tenant and Landlord acknowledge that the ongoing use, occupancy and operation of the Premises for the Use is integral to the Tenant’s overall plans for the UCF Downtown Campus, and the education space and education support space are necessary to facilitate the overall student enrollment and programs. Landlord is executing this Lease in reliance upon the foregoing acknowledgments and the same are material elements inducing Landlord to execute this Lease.

**3.– BASE RENT.**

A. Tenant hereby covenants and agrees to pay to Landlord in lawful United States currency, together with any and all applicable sales and use taxes (including, without limitation, sales tax on rents unless Tenant provides its tax exemption certificate to Landlord) levied upon the use and occupancy of the Premises as set forth in Section 6, the Base Rent specified in Section 1 payable in equal monthly installments in advance, beginning on the Commencement Date and continuing on the first day of each and every calendar month thereafter during the Term, subject to increases as set forth in this Section. All forms of Rent (as defined below) due under this Lease shall be paid to Landlord, without demand, setoff or deduction whatsoever, unless otherwise expressly set forth herein, at the Rent Payment Location specified in Section 1 or at such other place as Landlord shall designate in writing to Tenant. If the Term commences on a day other than the first day of a calendar month or terminates on a day other than the last day of a calendar month, then the installments of Base Rent for such month or months shall be prorated on a per diem basis, based on a 365-day year and the number of days in such month.

B. Within thirty (30) days after receipt of an Extension Notice from Tenant, Landlord will determine Landlord's best estimate of the market rental value of the Premises for the applicable Extension Term, taking into account the rentals at which new leases and/or extensions or renewals of existing leases are being concluded in comparable office buildings in downtown Orlando at that time and for such a term, and considering the terms and conditions of this Lease, including the services, concessions, costs and allowances made available to Tenant, as compared to the comparable leases and necessary adjustments for inflation (the "Prevailing Market Rate"). Landlord shall advise Tenant of its estimate of the Prevailing Market Rate, and its proposed Base Rent rate for the applicable Extension Term ("Landlord's Rent Proposal"). Within thirty (30) days following receipt of Landlord's Rent Proposal, Tenant shall either: (i) if Tenant agrees with Landlord's Rent Proposal, give Landlord final binding written notice ("Binding Notice") of Tenant's exercise of its Extension Option with Base Rent established at Landlord's Rent Proposal, or (ii) if Tenant disagrees with Landlord's Rent Proposal, provide Landlord with written notice that Tenant desires to submit determination of the Prevailing Market Rate to arbitration in accordance with the terms of the arbitration provision below (the "Arbitration Notice"). If Tenant provides Landlord with a Binding Notice, Landlord and Tenant shall enter into an Extension Amendment (as defined below) upon the terms and conditions set forth in the last paragraph of this Section 5B. If Tenant fails to provide Landlord with a Binding Notice or Arbitration Notice within thirty (30) days following Tenant's receipt of the Landlord's Rent Proposal, the Base Rent shall be the Landlord's Rent Proposal.

If Landlord fails to provide Landlord's Rent Proposal within the aforesaid time period, Tenant shall have thirty (30) days following the expiration of Landlord's thirty (30) day response period to provide Landlord with an Arbitration Notice. If Tenant provides Landlord with an Arbitration Notice, Landlord and Tenant shall, within ten (10) days after the date of Landlord's receipt of the Arbitration Notice, meet and negotiate in an attempt to reach agreement on the Prevailing Market Rate for the applicable Extension Term. If the Base Rent is not resolved by the parties within ten (10) business days after the date of Landlord's receipt of Tenant's Arbitration Notice, the parties shall mutually agree upon a real estate appraiser or broker to resolve the disagreement, and the Prevailing Market Rate shall be determined as follows:

- i. The appraiser or broker so selected shall be a licensed commercial real estate appraiser or broker who has not previously been engaged by either party and shall have at least ten (10) years of experience within the previous fifteen (15) years as a real estate broker and/or appraiser working with similar properties in the downtown Orlando, Florida area with working knowledge of current rental rates and practices. If the parties are unable to agree on real estate appraiser or broker, the parties will ask the commercial division of the Orlando Board of Realtors to designate an appropriate real estate appraiser or broker meeting the qualifications set forth above. The real estate appraiser or broker agreed upon by the parties or designated by the Orlando Board of Realtors is referred to herein as the "Arbitration Broker".

- ii. Within five (5) business days of the selection of the Arbitration Broker, Landlord and Tenant shall each submit to the Arbitration Broker in a sealed envelope their determinations of the Prevailing Market Rate (each an "Estimate"). The Arbitration Broker shall select the Estimate that most closely reflects the Prevailing Market Rate and shall not be empowered to craft any additional or further estimates. If the Arbitration Broker believes that expert advice would materially assist him, he may retain one or more qualified persons to provide such expert advice. The parties shall share equally in the hourly costs (not to exceed \$300 per hour or a total/combined fee of \$5,000) of the Arbitration Broker and of any experts retained by the Arbitration Broker. Any fees of any broker, counsel or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such broker, counsel or expert. The Arbitration Broker shall render his/her determination within thirty (30) days of the date the Estimates are delivered to the Arbitration Broker. If either party fails to submit its Estimate within the five (5) business day period, the Estimate submitted by the other party shall be selected. The Estimate selected by the Arbitration Broker shall be final and binding upon both Landlord and Tenant and the basis upon which the Base Rent rate for the applicable Extension Term is finally determined.

If Tenant is entitled to and properly exercises an Extension Option, once the Base Rent is determined pursuant to this Section 5B, Landlord shall prepare an amendment to this Lease (the "Extension Amendment") to reflect changes in the Base Rent, the Term, the Expiration Date and other appropriate terms. The parties shall work together in good faith to finalize and sign the Extension Amendment within thirty (30) days after Tenant's receipt thereof from Landlord; provided, however, that any failure of Landlord or Tenant to execute and deliver such Extension Amendment shall not negate any proper and timely exercise of the Extension Option by Tenant.

C. Promptly upon the occurrence of the Commencement Date, the parties shall execute an instrument confirming the Commencement Date and the Expiration Date of the Initial Term hereof, but the failure of any party to do so shall not release any of the parties from any of their obligations hereunder.

D. Any and all sums of money or charges, other than Base Rent, required to be paid by Tenant under this Lease, whether or not the same be so designated, shall be considered "Additional Rent." Landlord shall have the same rights and remedies with respect to Additional Rent as with respect to Base Rent. The term "Rent" is hereby defined to mean the Base Rent and any Additional Rent payable by Tenant to Landlord under this Lease.

E. Landlord and Tenant acknowledge that the Base Rent which is being charged to Tenant is substantially below market. Tenant acknowledges Landlord's intent to characterize the present value of the difference as a donation or gift to Tenant, and that Landlord and Tenant will work collaboratively with the UCF Foundation to determine and evidence the value of this donation. Tenant's acknowledgment of this difference as a donation or gift is not to be deemed a representation as to the federal tax laws and regulations applicable to this gift or donation.

– SALES AND USE TAX. Landlord recognizes that Tenant is currently exempt from sales and use tax and Tenant will provide a tax exemption certificate to Landlord. If the law should change or for any other reason Tenant is determined not to be tax exempt, Tenant agrees to pay monthly to Landlord as Additional Rent, any sales and use tax hereafter imposed upon the Rent, use or occupancy of the Premises by the United States of America, the State of Florida, the County of Orange, the City of Orlando or any political subdivision thereof, notwithstanding the fact that such statute ordinance or enactment imposing the same may endeavor to impose the tax on Landlord.

– REAL ESTATE TAXES AND ASSESSMENTS. This Lease assumes that the Premises shall be exempt from Taxes (as defined herein) based on the public education Use by Tenant as specified herein. Landlord shall submit the appropriate applications to the appropriate authorities necessary for obtaining and documenting such tax exemption from ad valorem real estate taxes and, as applicable special assessments, with respect to the Premises, and Tenant agrees to support, and diligently pursue with Landlord, Landlord's application and process for documenting such exemption. The term "Taxes" shall mean and include all ad valorem real estate taxes and general and special

assessments (whether foreseen or unforeseen, ordinary or extraordinary, and including, without limitation, non-ad valorem assessments), which shall, beginning on the Commencement Date and continuing during the Term, accrue and become due and payable and specifically attributable to the Premises and the Use thereof, other than any fine, penalty, cost or interest for any tax or assessment or part thereof which Landlord failed to pay prior to delinquency (except if same are imposed by reason of Tenant's default hereunder), other than any fine, penalty, cost or interest for any tax or assessment or part thereof which Landlord failed to pay prior to delinquency (except if same are imposed by reason of Tenant's default hereunder). Nothing contained in this Lease shall require Tenant to pay any estate, inheritance, succession, capital levy, corporate franchise, gross receipts, transfer or income tax of Landlord.

#### **4.– LANDLORD'S OPERATING EXPENSES AND RENT.**

A. For the purpose of this Lease, the term "Operating Expenses" shall mean the applicable costs and expenses associated with Common Areas, including costs and expenses allocable to portions and components of the Parking Garage, incurred by Landlord in operating, managing, maintaining and repairing the Project. The items and charges comprising Operating Expenses shall specifically include, without limitation: gardening and landscaping; the cost of public liability, property damage and other insurance as is customary for similar projects located in Orange County (including, without limitation, the insurance described in Section 26 of this Lease); repairs, janitorial services, lighting, electricity, sewer and water allocable to the Common Areas; sanitary control, removal of trash, rubbish, garbage and other refuse from the Common Areas; service and maintenance agreements for the Common Areas, and/or for elevators, HVAC, and other Building systems exclusively serving or benefitting the Premises if contracted for by Landlord; and the cost of personnel (including a property manager and employees supervised and reporting to such manager, but not including any employees above the grade of property manager nor any executives, principals, partners, investors or related or affiliated parties of Landlord or the property manager and the salary of such personnel shall be equitably apportioned among other portions of the Project and any other properties which such personnel are responsible for) necessary or convenient to implement the services specified in this Lease, with all customary employment and normal retirement benefits incident thereto, including without limitation, pension and medical and life insurance benefits, and security personnel, if such personnel are employed. Tenant acknowledges that Landlord shall not be required to directly employ security personnel at the Project. Operating Expenses shall include a commercially reasonable management fee. Landlord shall have the right with regard to any and all management and maintenance obligations of Landlord under this Lease, to contract with such person(s) or entity or entities for the performance and accomplishment of such of the obligations as Landlord shall deem proper, including entities in which Landlord may hold an ownership or other interest. In all events, Operating Expenses are to be at competitive market rates and are not to exceed those which will be payable generally to an "independent contractor," which term is hereby defined as a person or firm having no direct or indirect financial or other business interest in, or relationship with, Landlord or Landlord's management agent or any of their respective principals, agents, servants, employees, stockholders, officers or directors. No Operating Expenses shall be commingled with any other property or building or with those of any other person or entity unless such expenses are bona fide expenses which are incurred in connection with the Project and provided such commingling does not result in greater Operating Expenses for the Project. Operating Expenses shall not include any capital expenditures, except for the monthly amortization of capital improvements (or the rentals thereof if the item in question is leased rather than purchased) if the capital improvements are (a) intended by Landlord in good faith to achieve a verifiable expense savings to the Tenant, provided that the annual amount included in Operating Expenses shall not exceed the annual amount of the savings achieved, or (b) required to comply with Governmental Requirements not in effect on the Commencement Date of this Lease. The monthly amortization of any given capital improvement shall be the sum of the (i) quotient obtained by dividing the cost of the capital improvement by the number of months of useful life of such improvement based on GAAP plus (ii) interest imputed on the unamortized portion at the Stipulated Rate. Notwithstanding anything to the contrary contained in this Lease, Operating Expenses shall not include those costs and expenses set forth in Exhibit "C" attached hereto and made a part hereof.

B. Base Rent payable by Tenant pursuant to this Lease includes Tenant's Allocable Share of the Operating Expenses up to an amount equal to Tenant's Allocable Share of Operating Expenses for the Base Year (the "Operating Expense Stop"). Prior to the Commencement Date, Landlord will provide Tenant with Landlord's written estimate of the Tenant's Allocable Share of the Operating Expenses for the first partial

calendar year, along with specifications for reporting of projected expenses for future years. The "Base Year," as used herein, shall mean the first full year of stabilized occupancy and expenses for operation of the Building, as reasonably determined by Landlord. Prior to and during the Base Year, Base Rent will include Tenant's Allocable Share of the Operating Expenses. On or before April 1 of each year, or at such time as otherwise agreed by Landlord and Tenant, Landlord shall deliver to Tenant a statement (the "Operating Expense Statement") certified by Landlord in reasonable detail setting forth the total Operating Expenses actually incurred for the preceding calendar year and the allocation thereof. If Tenant's Allocable Share of the actual Operating Expenses for the preceding year exceeds the Operating Expense Stop, Tenant shall pay Landlord the difference within thirty (30) days of Landlord's delivery to Tenant of the Operating Expense Statement: provided however that notwithstanding anything to the contrary in this Lease, with regard to Taxes, if any, that may be specifically attributable to the Premises and the Use thereof, the amount for Taxes in the Operating Expense Stop will be \$0.00. Notwithstanding anything herein to the contrary, after the Operating Expense Stop is established, Tenant's Allocable Share of Landlord's controllable Operating Expenses for any Lease Year shall not exceed one hundred three percent (103%) of the Tenant's Allocable Share of Landlord's controllable Operating Expenses for the immediately preceding Lease Year; provided however, that such cap shall not apply to uncontrollable Operating Expenses (including, without limitation, insurance costs, Common Area utilities, and other costs that are not in Landlord's reasonable control).

C. Notwithstanding anything herein to the contrary, payment for any Operating Expense required by Tenant that is disproportionately or unfairly overburdening the Project or other tenants therein may be allocated to Tenant based on Tenant's contribution to such Operating Expense, in Landlord's discretion. The obligations of Tenant to make payments under this Section 8 shall survive the expiration or earlier termination of this Lease.

D. At reasonable times and on reasonable notice (but not more than one (1) time per year; and provided that no default exists under this Lease beyond applicable notice and cure periods), Tenant, at Tenant's expense, shall have the right, within three hundred sixty-five (365) days following Landlord's delivery to Tenant of the Operating Expense Statement, to audit all of Landlord's (or Landlord's agent's) records pertaining to the Operating Expenses for the preceding year with a third party certified public accountant of its choice (not to include a contingency fee lease auditor). Prior to Tenant making an election to conduct an audit, upon Tenant's request, Landlord will reasonably cooperate with Tenant in order to review the Operating Expenses in question and the back-up documentation therefor with Tenant and Tenant's employee or representative, in order to explain any questions Tenant may have prior to Tenant electing to conduct the audit. If Tenant elects to audit, and the audit reveals that the Operating Expenses used in the calculation of Tenant's Allocable Share, as billed to Tenant, exceeded the actual Operating Expenses as revealed by the audit, then within thirty (30) days of Landlord's receipt of a copy of the audit, Tenant shall receive a refund of Tenant's Allocable Share of any such discrepancy discovered in the course of such audit. Landlord shall retain its records regarding Operating Expenses for a preceding year for a period of at least three hundred sixty-five (365) days following Landlord's delivery to Tenant of the Operating Expense Statement with respect to such preceding year (or longer during the pendency of an audit or dispute, or if Florida law requires retention of such records by Landlord for a longer period). The failure of Tenant to elect to examine Landlord's records pertaining to Operating Expenses within said three hundred sixty-five (365) day period shall be deemed to be a waiver of Tenant with respect to such examination or auditing and the acceptance by Tenant of the annual statement for the particular calendar year to which the annual statement relates. Landlord shall cause such records to be made available for such inspection during weekday Normal Business Hours as are reasonably prescribed by Landlord and at such location in the continental United States where Landlord regularly keeps its books and records, upon ten (10) Business Days' prior notification to Landlord. Such audit shall be done in accordance with GAAP. If, at the conclusion of such audit, should Landlord disagree with the results of Tenant's audit, then Landlord and Tenant shall refer the matter to a mutually acceptable independent certified public accountant, who shall work in good faith with Landlord and Tenant to resolve the discrepancy. The fees and costs of such independent accountant to which such dispute is referred shall be borne by the unsuccessful party and shall be shared pro rata to the extent each party is unsuccessful as determined by such independent certified public account, whose decision shall be final and binding. With regard to Tenant's initial audit, Tenant, its employees or agents, may make copies thereof at Tenant's expense, but such books and records, any copies thereof, and the results of any such audit are to be

kept strictly confidential and are not to be made available or published to anyone (except for Tenant's attorneys, accountants, lenders, consultants and advisors who have a need to know such information, all of whom shall be informed in writing by Tenant of the confidential nature of the information), unless required by any Governmental Requirements. Landlord shall pay the cost of Tenant's audit if the total amount of Operating Expenses used for the calculation of Tenant's Allocable Share for the year in question exceeded five (5%) percent or more of the total amount of Operating Expenses that should properly have been used.

E. Costs for services being provided solely for Tenant, including without limitation any services required to be provided to Tenant outside of Normal Business Hours, and costs for any systems exclusively serving the Premises ("Tenant Expenses") shall be passed-through to Tenant in their entirety and shall not be included in Tenant's Allocable Share of Operating Expenses. Tenant shall pay to Landlord, as Additional Rent, an amount sufficient to reimburse Landlord for any such Tenant Expenses paid for by Landlord, and such payment shall be made on the first day of the month following the month in which Landlord notified Tenant of any such Tenant Expense. In addition to and without limiting the foregoing, Landlord shall not be responsible for any expenses or outlays of any nature arising from or relating to the Premises, the use or occupancy thereof, the contents thereof, or the business carried on therein, except as expressly stated in this Lease. Tenant shall pay (or reimburse Landlord for) all charges, impositions, and outlays of every nature and kind relating to the Premises except as expressly herein stated.

– USE OF COMMON AREAS AND PARKING GARAGE.

F. The use and occupation by Tenant of the Premises shall include the nonexclusive use, in common with others entitled thereto, of the Common Areas including, without limitation, the elevators, stairways, lobbies, waiting areas and other areas for the nonexclusive use of tenants, and agents, employees, customers and invitees of Tenants, within the Building as such Common Areas may hereafter be constructed as a part of the Building, and other facilities as may be designated from time to time by Landlord, subject, however, to the terms and conditions of this Lease and the reasonable nondiscriminatory Rules and Regulations for the use thereof as prescribed from time to time by the Landlord. Subject to the terms of this Lease, all Common Areas shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the full right and authority to employ all personnel and to make all reasonable nondiscriminatory Rules and Regulations as Landlord may in its reasonable discretion deem proper, pertaining to the proper operation and maintenance of the Common Areas. Landlord shall have the right to temporarily close all or any portion of the Common Areas to such extent as may, in the reasonable opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; and to close temporarily any portion thereof in connection with the completion of necessary repairs thereto, and except as otherwise expressly provided herein, Tenant shall not be entitled to any compensation, damages, or diminution or abatement of Rent, nor shall same be deemed a constructive or actual eviction. Tenant shall not place any furniture, fixtures or equipment in the Common Areas without the prior written consent of Landlord.

G. The use and occupation by Tenant of the Premises shall include the nonexclusive use, in common with others entitled thereto, of the Parking Garage, subject to the terms and conditions, including Rules and Regulations, established by Landlord. Tenant's use of the Parking Garage shall also be subject to applicable parking fees and charges as established by Landlord.

– WASTE OR NUISANCE. Tenant shall not commit or suffer to be committed any waste upon the Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the Project.

**5.– CONSTRUCTION OF LANDLORD'S WORK AND TENANT'S WORK.**

A. Landlord's Work. Landlord shall design and construct the Project in order to make the Premises available for Tenant's occupancy as of the Commencement Date pursuant to this Lease, the Work Letter and the Project Agreement.



B. Tenant's Work. All work necessary to design, construct, build out, occupy and otherwise prepare the Premises for Tenant's occupancy as of the Commencement Date, other than the Landlord's Work, shall be performed by Landlord and Landlord's appointed architect, contractor and consultants ("Project Team"), at Tenant's expense and pursuant to this Lease, the Work Letter and the Project Agreement. Landlord shall require that the Landlord's designated general contractor and designated architect (currently Batson-Cook Construction and Baker Barrios Architects), list the Tenant as a third party beneficiary under any contracts or agreements that each may have with Owner related to Tenant's Work. The Tenant's Work is defined and further prescribed in the Work Letter as may be updated by the Parties from time to time. The Finish Allowance shall be used initially to fund a portion of the Tenant's Work, and after the Finish Allowance has been exhausted, the balance of costs for the Tenant's Work shall be funded by Tenant in accordance with the Work Letter.

Prior to commencement of Tenant's Work, Tenant shall meet with the Project Team to establish and update the schedule, budget and related documents for Tenant's Work to ensure there is a clear understanding of Tenant's construction budget. Landlord agrees to facilitate open communication between Tenant and each member of the Project Team, and to coordinate an authorized representative from each member of the Project Team, and said person shall be responsible for all communication and authorizations related to Tenant's Work. Tenant shall have the right to review, inspect, or approve any of Tenant's Work. Applications for payment, or other submittals shall be solely for the purpose of determining whether the same are generally consistent with Tenant's requirements. Any change orders related to Tenant's Work must be reviewed and approved by Tenant, as well as any budget increases and schedule extensions.

Landlord will ensure that Project Team submits invoices at least every ninety (90) days during construction, and in no event will invoices be submitted more than one hundred eighty (180) days after work is completed. Each invoice to Tenant will include: (a) a current, itemized statement of amounts invoiced, amounts received, reimbursable expenses invoiced and received and all other funds sought from Tenant; and (b) such other information as Tenant shall reasonably require to enable Tenant to verify and evaluate the work completed and reimbursable expenses incurred in accordance with the terms and conditions of applicable agreements. Payment of an invoice will be made within twenty (20) days of receipt of a complete invoice accompanied by supporting information and documentation. Should Tenant dispute any portion of an invoice, Tenant shall pay the undisputed portion of the invoice in accordance with the timeframe and terms set forth above and shall work diligently to resolve any such dispute.

C. Landlord and Tenant will work collaboratively and in good faith to perform their responsibilities under this Lease, the Work Letter and the Project Agreement to complete the necessary work in order to make the Premises ready for occupancy as of the Commencement Date. Each party will keep the other informed of its timing, schedule, milestones dates, etc., as prescribed in the Project Agreement, and each party will provide timely responses to requests for information.

– CONDITION OF PREMISES. Tenant acknowledges that Landlord has made no representations or promises as to the condition of the Premises, nor shall Landlord be required to construct any alterations or improvements to the Premises, except as expressly set forth in this Lease.

– ALTERATIONS. All Alterations by Tenant must be in accordance with the requirements of this Lease. The Tenant may, provided the Tenant is in compliance with all applicable provisions of this Section 13, make at its sole cost and expense Alterations which are not Material Alterations without the consent of Landlord, provided that Tenant provides Landlord with prior written notice thereof, and Tenant shall be required to obtain Landlord's prior written consent with regard to Material Alterations, which consent shall not be unreasonably withheld or delayed; provided further, however, that in connection with Material Alterations which would (a) in any way affect the exterior of the Building, or (b) involve significant structural alterations such as penetration all (or substantially all) the way through a floor slab, or alteration of structural columns or structural steel, (c) materially adversely affect the Building systems or Landlord's costs to maintain, operate or repair same, or (d) materially adversely affect other tenants in the Building or use of the Common Areas or Parking Garage, then Landlord's consent is in Landlord's sole discretion. Before proceeding with any Material Alteration, Tenant shall submit to Landlord for Landlord's approval, the name of the contractor and plans and specifications for the work to be done and Tenant shall not proceed with such work until it

obtains Landlord's approval, as provided above. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of the Alterations and for final approval thereof upon completion and shall cause the Alterations to be performed in a good and workmanlike manner in accordance with the requirements of all applicable governmental authorities. All Alterations shall be diligently performed in a good and workmanlike manner, using materials and equipment at least equal in quality and class to the original installations of the Premises. All decorations, additions, improvements or other Alterations to the Premises, except for the Tenant's Property, shall, unless Landlord elects otherwise in writing, become the property of Landlord upon the expiration of this Lease, and shall be surrendered with the Premises at the expiration of this Lease. Landlord shall have the right to designate at the time of its approval of any request by Tenant for permission to make Material Alterations to the Premises or following receipt by Tenant of notice of other Alterations to be made by Tenant those items for which Landlord reasonably reserves the right to require Tenant to remove upon the expiration or sooner termination of the Term of this Lease. Any such designation shall be in Landlord's reasonable discretion, based upon sound business judgment as to the probable effect of such Alteration upon Landlord's ability to re-let the Premises upon the expiration or sooner termination of the Term of this Lease. If required by Landlord in accordance with the foregoing, any such Alteration to the Premises shall be removed at Tenant's expense upon the expiration or sooner termination of the Term of this Lease and Tenant, at its expense, shall also repair any damage to the Premises caused by such removal and shall restore the affected portions of the Premises to a tenantable whole, reasonable wear and tear, casualty, condemnation and acts of nature excepted, unless Landlord elects not to require such removal.

If Tenant makes alterations to the Premises in accordance with the foregoing paragraph, and such alterations enhance energy performance within the Premises, then during the Term and so long as Tenant is in good standing under this Lease, Tenant shall be the beneficiary of any utility rebates and any tax credits available under Internal Revenue Service Code Section 170D that result from such alterations by Tenant, except that upon termination of this Lease all rebates and credits thereafter accruing for the Premises shall accrue to Landlord or to a future tenant as assigned by Landlord.

– LIENS. Nothing contained in this Lease shall be construed as a consent on the part of the Landlord to subject the estate of Landlord to liability under the Construction Lien Law of the State of Florida, it being expressly understood that the Landlord's estate shall not be subject to such liability. As a political subdivision of the State of Florida, Tenant is not subject to the Construction Lien law of the State of Florida, as set forth in Chapter 713, Florida Statutes. Notwithstanding the foregoing, Tenant, at its expense, shall cause any lien filed against the Tenant's or Landlord's interest under this Lease, the Premises, the Building, the Project, the Common Areas or the Parking Garage for work, services or materials claimed to have been furnished to or for the benefit of Tenant (other than on account of the Landlord's Work) to be satisfied or transferred to bond within twenty (20) days after Tenant's receipt of written notice of the filing of such lien. In the event that Tenant fails to satisfy or transfer to bond such claim of lien within said twenty (20) day period, the Landlord may do so and thereafter charge the Tenant as Additional Rent, all costs incurred by the Landlord in connection with the satisfaction or transfer of such claim, including attorneys' fees through all levels of appeals plus interest thereon at the Stipulated Rate. In accordance with applicable laws of the State of Florida, Landlord may file in the public records of Orange County, Florida, a public notice containing a true and correct copy of this Section, and Tenant hereby agrees to inform all contractors, and material suppliers performing work in or for or supplying materials to the Premises of the existence of said notice.

– NEGATIVE COVENANTS. Except as required by law or on a temporary basis in connection with repair or restoration work, Landlord agrees not to make any change, alteration or addition to the Project which would have a material and adverse effect on vehicular access to the Parking Garage or pedestrian access to the Premises.

## **6.– REPAIRS.**

A. Subject to the provisions of Sections 17, 18 and 53 hereof, Landlord will maintain, repair and if necessary replace: (a) the roof, structure, columns, exterior walls and exterior windows and foundation in good state of repair; (b) the Common Area elevators, and all Building systems and facilities including, but not limited to, the Building electrical, water, gas, sewer, life safety, mechanical and HVAC (excluding separate air-conditioning systems specially installed to serve the Premises by or for Tenant for Tenant's sole use, if any) supplied to the Premises in good operating condition, maintenance and repair; and (c) the

sidewalks, curbs, parking areas, and landscaping in good condition and repair, open and free of debris or other obstruction, subject to Project construction and repair activities. Landlord will also maintain, repair and if necessary replace, subject to the provisions of Sections 17, 18 and 53 hereof, the Parking Garage and Common Areas in clean, sightly, good operating condition and repair. All repairs, replacements and restorations made by Landlord shall be equal in quality and class to the originals thereof and shall be completed in compliance with applicable law. The Landlord covenants that any repairs or replacements (as the case may be) required by the terms of this Lease to be made by Landlord shall be commenced and completed expeditiously. All repair, and replacement obligations of Landlord hereunder with respect to the Project, except as expressly set forth in Exhibit "C" hereto, shall be deemed a component of Operating Expenses.

B. Tenant shall not suffer any damage, waste or deterioration to occur to the Premises and shall, at Tenant's expense, maintain the interior non-structural portions of the Premises and the fixtures and appurtenances therein, and Tenant's Property, in first-class condition in a manner no less stringent than the standards applied to Tenant's on-campus education facilities, and shall make all repairs necessary to keep them in good working order and condition (including structural repairs when those are necessitated by the negligence or willful misconduct of Tenant or its agents, employees or invitees) reasonable wear and tear and acts of nature excepted, and subject to the provisions of Sections 17, 18, and 53 hereof. The maintenance required to be performed by Tenant pursuant to this Section 16 specifically includes, without limitation, replacement of light bulbs, maintenance and repair of any HVAC system specially installed to serve the Premises by or for Tenant for Tenant's sole use, and maintenance of appropriate pest control by and for the Premises. All repairs, replacements and restorations made by Tenant shall be equal in quality and class to the originals thereof and shall be completed in compliance with applicable law. The Tenant covenants that any repairs or replacements (as the case may be) required by the terms of this Lease to be made by Tenant shall be commenced and completed expeditiously. The exterior walls of the Building, the exterior windows and the portions of all window sills outside same are not part of the Premises and Landlord reserves all rights to maintain and repair such parts of the Building (subject to the terms and provisions of this Lease).

C. Landlord agrees that it shall during the Term of this Lease, maintain the Building, the Parking Garage, the Common Areas and the Project in a safe, good, clean and sightly first-class condition. Landlord shall be responsible for remedying or repairing any work performed by Landlord at the Premises or the Project to the extent such work was not constructed by Landlord in accordance with all applicable Governmental Requirements in effect as of the Commencement Date.

D. Landlord and Tenant covenant and agree, at each party's expense, that Landlord and Tenant will build and maintain its respective areas as allocated under this section in compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., as amended from time to time, and all rules and regulations promulgated to further the purpose of and to enforce the Act (collectively, the "ADA").

## **7.- EMINENT DOMAIN.**

A. If there shall be taken during the Term by any condemning authority of more ten percent (10%) of the Rentable Area of the Premises, each of Tenant and Landlord, upon written notice to the other within thirty (30) days after such taking, shall have the option to terminate this Lease. In the event that less than ten percent (10%) of the Rentable Area of the Premises shall be taken by such condemning authority and the remaining part of the Premises shall be reasonably usable by Tenant in Tenant's reasonable discretion, or in the event more than ten percent (10%) of the floor area of the Premises is so taken and this Lease is not terminated in accordance with this Section, then the Base Rent shall be reduced in the same proportion that the amount of Rentable Area in the Premises is reduced by such taking.

B. Whether or not any portion of the Premises may be taken by such authority, Landlord may nevertheless elect to terminate this Lease or to continue this Lease in effect in the event any portion of the Building or more than ten percent (10%) of the Common Areas or of the Parking Garage be taken by such authority.

C. All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the fee or the leasehold estate, whether as damages or as compensation, shall be the property of Landlord. Tenant hereby assigns to Landlord all proceeds, whether by way of compensation or damages, for loss of the leasehold interest by reason of such taking.

D. Any amounts specifically awarded or agreed upon by Tenant and the condemning authority for the taking of Tenant's removable trade fixtures and/or the unamortized cost of Tenant's leasehold improvements shall be the property of Tenant. Tenant shall have the right to pursue any separate award from the condemning authority for relocation expenses, loss of business, or other non-real estate related awards; provided any such award does not decrease the amount of the award otherwise due Landlord for the taking of the fee simple interest in the Building. Landlord shall not be liable to Tenant for any such amounts in connection with such taking.

E. If this Lease should be terminated under any provision of this Section, Rent and other sums due and payable by Tenant hereunder shall be payable up to the date that possession is taken by the taking authority, and Landlord will refund to Tenant an equitable portion of any such rental and other sums paid in advance but not yet earned by such date.

#### **8.- DAMAGE AND DESTRUCTION.**

A. If at any time during the Term, any portion of the Premises, Building or Parking Garage should be destroyed or damaged by fire or other casualty, Landlord shall have the election to repair and reconstruct the damaged portion to its pre-existing condition or alternatively, to cancel this Lease. Landlord will notify Tenant of its election within sixty (60) days after receipt of written notice from Tenant of such damage or destruction. The foregoing notwithstanding, if more than ten percent (10%) of the Rentable Area of the Premises is destroyed or damaged and such destruction results in the Premises being untenable for a period of one hundred twenty (120) days or longer, either party shall have the right to cancel the Lease upon written notice to the other party at least thirty (30) days prior to the termination date.

B. Notwithstanding anything to the contrary contained herein, in the event the Premises are damaged by fire or other casualty: (i) during the last six (6) months of the Term; (ii) such damage was not caused by one or more acts or omissions of Tenant, its employees, agents, contractors, subcontractors, invitees, guests, assignees, sublessees, concessionaires or licensees; and (iii) the damage to the Premises exceeds twenty percent (20%) of the replacement cost of the Premises, then Tenant shall have the right to terminate this Lease upon thirty (30) days written notice to Landlord provided Tenant assigns to Landlord Tenant's insurance proceeds related to leasehold improvements and continues to cooperate with Landlord, at no cost to Landlord, in the collection of all insurance proceeds due to Tenant, including the participation in any and all mediations, lawsuits or court proceedings related to the collection of such insurance proceeds. In such event, Tenant shall notify Landlord in writing within thirty (30) days after the date of the aforesaid casualty.

C. In any circumstances described above where Landlord elects to repair and restore the Premises, this Lease shall continue in full force and effect, and such repairs will be diligently pursued by Landlord. To the extent that the Premises are unfit for use by Tenant and not able to be actually used by Tenant in the ordinary course of its business, Rent shall abate proportionately until the Premises are repaired and restored.

D. Without limitation, the deadlines for performance set forth in this Section are subject to extension pursuant to Section 53 below.

#### **9.- INTENTIONALLY OMITTED.**

– RIGHT OF ENTRY. Upon reasonable prior notice, Landlord and Landlord's agents shall have the right during Normal Business Hours (and at all times in the case of emergency) to enter the Premises, to examine the same, and to show them to prospective purchasers or lenders of the Building. Upon reasonable prior notice (except in the case of an emergency), Landlord and Landlord's agents shall have the right during or outside of Normal Business Hours to enter the Premises to make such repairs, alterations, improvements or additions as required under this Lease or as

Landlord may reasonably deem necessary or desirable, and Landlord shall be allowed to take all material into and upon the Premises that may be required therefore without the same constituting an eviction of Tenant in whole or in part, and the Rent shall not abate while said repairs, alterations, improvements, or additions are being made unless Tenant is prevented from operating in the Premises, in which event Base Rent shall be proportionately abated during said period. Upon reasonable prior notice, during the twelve (12) months prior to the expiration of the Term of this Lease or any Extension Term, Landlord may, during Normal Business Hours, show the Premises to prospective tenants. Nothing herein contained, however, shall be deemed or construed to impose upon Landlord any obligation, responsibility or liability whatsoever, for the care, maintenance or repair of the Premises or any part thereof, except as otherwise herein specifically provided.

– SERVICES.

A. Landlord covenants that it will furnish to the Premises and Building the following services during the Term:

- i. Electrical lighting service, including fluorescent, incandescent and other bulb replacement, in the Common Areas and service areas of the Building, subject to applicable after-hours charges or other costs incurred by Landlord as a result of use by Tenant outside of Normal Business Hours.
- ii. Janitorial services for the Common Areas on all Business Days. Tenant, at Tenant's expense, shall provide janitorial services for the Premises with persons or firms engaged by Tenant and the entry for such cleaning personnel entering the Building shall be coordinated with Landlord. Tenant, at its expense, shall be responsible for the replacement of light bulbs and ballasts within the Premises.
- iii. Access to the Premises twenty four (24) hours per day, three hundred sixty five (365) days per year, subject to reasonable security measures and except for emergency events which cause Landlord to limit access to Tenant. Tenant (at its expense) is responsible for the security of the Premises, including without limitation the installation, maintenance and monitoring of any security cameras and life safety alarm systems. Tenant may supply security systems, services and/or personnel for the Premises and Building, subject to specifications to be mutually agreed upon by Landlord and Tenant.
- iv. Trash removal from the Building dumpsters. Tenant is responsible for trash removal from the Premises to the Building dumpsters.
- v. Heating and air-conditioning in season at such temperatures and in such amounts as shall provide comfortable working conditions throughout the Common Areas during Normal Business Hours. Said HVAC system shall provide the proper outside make-up air in accordance with local mechanical code requirements. Tenant shall be responsible for maintaining an ongoing service contract for the HVAC system for the Premises. The Premises will be separately metered or sub metered for electricity, and Tenant shall pay all electricity costs relating to the Premises (including HVAC), at whatever rates are charged by the utility provider from time to time. Tenant may, at its expense, install supplementary air-conditioning systems to service the Premises. All costs in connection with such supplementary systems shall be at Tenant's sole cost and expense and shall otherwise comply with the other provisions of this Lease in connection with any improvements or Alterations to the Premises.
- vi. Waste water and sewer system serving the Building.

- vii. Operation, repair and maintenance of Common Areas, including elevators, stairs and access ways.
- viii. Operation, repair and maintenance of the Parking Garage.

Tenant acknowledges that Tenant's Use of the Premises and Landlord's agreement to provide and furnish services to the Premises and Building for time periods over and above Normal Business Hours will adversely impact the longevity of certain Building components, systems, elements, finishes and similar items and such may result in a decrease in their typical, customary and industry-standard useful life. Landlord reserves the right to have a duly qualified engineer or consultant perform periodic analysis of the Building to determine the remaining useful life of its components, systems, elements, finishes and similar items. If the analysis substantiates that any Building components, systems, elements, finishes or similar items applicable to the Premises (and Tenant's use thereof) are exhibiting an accelerated reduction in their useful life, Tenant shall be responsible for applicable costs. Landlord will provide Tenant with options, including, but not limited to, Tenant participation in a reserve fund, longevity maintenance fund or funding agreement as supported by the analysis. The requirement for funding will be determined by calculating the costs incurred to keep the Building components, systems, elements, finishes and similar items in Grade A condition under the Tenant's extended operating hours less the calculated costs for maintaining the same under Normal Business Hours, or as otherwise determined by the analysis.

Except as provided below, Landlord's failure to furnish, or the interruption or termination of, the services described in this Section in whole or in part resulting from causes beyond the reasonable control of Landlord, its agents, or employees, shall not render Landlord liable in any respect, shall not be construed as an eviction of Tenant, nor entitle Tenant to any abatement of any Rent under this Lease; provided, however, that Landlord shall use its commercially reasonable efforts diligently and continuously to restore such service in the least amount of time. Any provision to the contrary notwithstanding but subject to the provisions of Sections 17, 18 and 53 hereof, if Landlord fails to provide in any material respect any services to be provided by Landlord pursuant to this Section for a period of three (3) consecutive Business Days after written notice to Landlord by Tenant of the interruption thereof, and if such failure materially and adversely affects Tenant's use and occupancy of the Premises such that Tenant is unable to conduct its normal business operation in the Premises, and provided the correction of the problem is within Landlord's reasonable control, then Tenant shall be entitled to an equitable abatement of Base Rent for the period during which the above-described situation exists.

B. Tenant shall be responsible for all services related to the operation, upkeep and maintenance of the Premises other than as specifically provided herein. At least once per Lease Year, Tenant will provide to Landlord, for Landlord's reasonable approval, a list of all vendors and contractors that Tenant will use for services related to the Premises.

C. Tenant is not responsible leaks or spikes in consumption caused by anomalies or failures in those portions of the Building system for which Landlord has responsibility under this Lease; provided that Tenant shall be responsible leaks or spikes in consumption caused by anomalies or failures in those portions of the Building system for which Tenant has responsibility under this Lease.

– SECURITY DEPOSIT. No security deposit is required under this Lease.

#### **10.– ASSIGNMENT AND SUBLETTING.**

A. Notwithstanding any other provision in the Lease, neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall assign this Lease or sublease the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises without the prior written consent of Landlord, in Landlord's sole discretion. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. Notwithstanding the foregoing or anything herein to the contrary, Tenant may sublease the Premises or any portion thereof to Valencia College, without Landlord's prior consent, so long as Tenant provides prior written notice of such sublease to Landlord.

B. In the event of a proposed assignment or subletting, Tenant shall notify Landlord in writing of its desire to assign or sublet the Premises. Along with such notice, Tenant shall supply Landlord with the name of the proposed assignee or sublessee, a certified and audited financial statement of the proposed assignee or sublessee (including both an income statement and balance sheet), a resume covering the business experience of the proposed assignee or sublessee and a check made payable to Landlord in the amount of One Thousand Dollars (\$1,000.00), which shall be non-refundable when paid regardless of whether Landlord shall grant consent of Tenant's proposed assignment or sublet transaction shall go into effect.

C. Any transfer of this Lease from Tenant by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the ownership interests in Tenant's corporation or other entity outstanding at the time of execution of this Lease (or at any future time) shall constitute an assignment for the purpose of this Lease.

D. Notwithstanding any other provision in this Lease, neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall assign this Lease or sublease the Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Premises without the prior written consent of Landlord, in Landlord's sole discretion. This prohibition against assigning or subletting shall be construed to include a prohibition against any assignment or subletting by operation of law. If, with Landlord's consent, this Lease is assigned or if the Premises is subleased (whether in whole or in part) or in the event of the mortgage, pledge or hypothecation of the leasehold interest or grant of any concession or license within the Premises or if the Premises is occupied in whole or in part by anyone other than Tenant, Landlord may nevertheless collect all Rent and other amounts due under this Lease from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and apply the net amount collected to the amounts payable hereunder, but no such transaction or collection or application thereof by Landlord shall be deemed a waiver of the provisions of this Section or a release of Tenant from its primary obligations or performance as Tenant under this Lease.

E. Prior to the Commencement Date, Landlord shall have the right to transfer and assign all or part of its interest in this Lease to a limited liability company or other entity to be formed by Landlord (a "Permitted SPE"), which entity shall assume all of the rights and obligations of Landlord under this Lease; provided that (i) Ustler and DEVEN have an equity interest in the Permitted SPE; and (ii) the Permitted SPE assumes all of the obligations of Landlord under this Lease as of and after the assignment date; and (iii) such assignment and assumption is effective simultaneously with the Permitted SPE's becoming the subsequent owner or master lessee of the Project; and (iv) Landlord has provided Tenant with reasonable evidence of the financial ability of the SPE to fulfill its obligations under this Lease. After completion of the Building, Landlord shall have the right to transfer and assign all or part of its interest in this Lease to a transferee (a "Permitted Transferee") that is a customary investor in investment grade real estate assets, including without limitation pension funds, insurance companies, real estate investment trusts, private equity funds, and private companies in the student housing business. Any Permitted SPE or Permitted Transferee is referred to herein as a "Permitted Assignee." Upon any assignment to and assumption by a Permitted Assignee of this Lease, Landlord shall be released from all obligation and liability under this Lease, except as to any liability, the claim for which may have accrued prior to the date of such assignment and assumption. Notwithstanding anything herein to the contrary, without Tenant's prior written consent, Landlord shall have the right to mortgage and pledge its interest in the Building or its interest in the Lease to a lender in connection with obtaining a loan or financing for the Project.

F. Notwithstanding anything contained herein to the contrary, Landlord acknowledges that Tenant has or will enter into a Space Sharing Agreement with Valencia College which shall permit Tenant and Valencia College to share portions of the Premises so long as Tenant and Valencia College are not in default under their respective leases with Landlord; provided, however, it being understood that in the event of a termination or expiration of this Lease, the Space Sharing Agreement and the rights of Valencia College to use or occupy any portion of the Premises shall be null and void. Tenant shall include the language from this Section 23(F) in the Space Sharing Agreement.

## 11.– DEFAULT, REMEDIES AND DETERMINATION OF DAMAGES.

A. Each of the following acts or omissions of Tenant or occurrences shall constitute an “event of default”:

- i. Failure or refusal by Tenant to timely pay Rent or any other sum when due and such failure shall continue for ten (10) days after the due date; and from and after Tenant’s third (3rd) such failure or refusal during any calendar year, Landlord shall be entitled to exercise any or all of the remedies set forth herein without prior notice to Tenant; or
- ii. Failure or refusal by Tenant to comply with the obligations of Tenant set forth in Section 4 and/or Section 23 of this Lease and such failure or refusal continues for a period of ten (10) days after written notice thereof to Tenant; or
- iii. Failure or refusal by Tenant to timely perform or observe any other covenant, duty or obligation of Tenant under this Lease, other than as described in subsections (i) and (ii) above; provided, however, notwithstanding the occurrence of such event of default, Landlord shall not be entitled to exercise any of the remedies provided for in this Lease or by law unless a non-monetary event of default continues beyond the expiration of the cure period set forth in the notice, or if no cure period is set forth in the notice then ten (10) days following notice to Tenant of such event of default; however, in the event such other covenant, duty or obligation reasonably requires more than the time period set forth in the notice for the curing thereof, such failure to cure shall not be deemed to be an event of default if Tenant shall have commenced the curing within the cure period set forth in the notice (or ten (10) days if no cure period is set forth in the notice) and having commenced such curing carries forward the curing thereof to completion with reasonable diligence but in no event longer than ninety (90) days; or
- iv. Abandonment or vacating of the Premises; or
- v. The entry of a decree or order for relief by a court having jurisdiction over Tenant or any guarantor of Tenant’s obligations hereunder in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee (or similar official) of Tenant or any guarantor of Tenant’s obligations hereunder or for any substantial part of either of said parties’ property, or ordering the winding-up or liquidation of either of said parties’ affairs.

B. This Lease is subject to the limitation that if and whenever any event of default shall occur, after such notice, if any, as is required herein, Landlord may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

- i. Terminate this Lease or Tenant’s right to possession of the Premises; in either event, Tenant shall immediately surrender possession of the Premises to Landlord; or
- ii. Enter upon and take possession of the Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated the Lease.

Exercise by Landlord of any one or more remedies granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises, whether by agreement or by operation of law, it being understood that such surrender can be affected only by the written agreement between Landlord and Tenant.

Upon the occurrence of an event of default, provided Landlord has given the notice required in this Lease, if any, Landlord shall not be obligated to give any additional notice prior to exercising any available remedy. Tenant hereby waives any and all notices required under statutory or common law in favor of the notices set forth herein. To the



extent of any inconsistency between this Lease and any statutory or common law, and to the extent permitted under applicable law, this Lease shall prevail.

If Tenant should fail to make any payment or cure any default hereunder within the time herein permitted, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Tenant (and enter the Premises for such purpose), and thereupon Tenant shall be obligated to, and hereby agrees to pay Landlord, upon demand, all costs, expenses and disbursements incurred by Landlord in taking such remedial action.

C. In the event Landlord elects to terminate this Lease due to an event of default or in the event Landlord elects to terminate Tenant's right to possession of the Premises without terminating this Lease, Landlord may by notice to Tenant, accelerate and declare due and payable in full all Rent and other indebtedness due hereunder for the remaining Term. Actions to collect amounts due under the Lease, including Rent, may be brought from time to time, on one or more occasions, without the necessity of waiting until expiration or termination of the Term. In case of an event of default, Tenant shall be liable for and shall pay to Landlord, in addition to all other amounts due under this Lease: (i) broker's fees incurred by Landlord in connection with reletting the whole or any part of the Premises; and (ii) the costs of repairing or otherwise putting the Premises into condition acceptable to a new tenant or tenants; and (iii) the unamortized portion of the Finish Allowance paid to Tenant pursuant to the Work Letter; and (iv) all actual expenses (including attorney's fees) by Landlord in enforcing Landlord's remedies.

D. Should Landlord be in default under any of the terms of this Lease, Tenant shall give Landlord prompt written notice thereof specifying any alleged default in specific detail, and Landlord shall thereupon have a reasonable period of time, but in no event less than thirty (30) days to cure such default. A default hereunder shall be deemed cured if Landlord in good faith commences to cure the same within ten (10) days after receipt of notice and thereafter continuously and with reasonable diligence proceeds to complete the cure of such default, but in no event later than one hundred ninety (90) days from the date of Tenant's notice. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed following the applicable notice and cure period which materially adversely affects Tenant's use of the Premises ("Material Default"), Tenant may, at its sole option, elect to either (i) terminate the Lease within ten (10) Business Days following the second notice and cure period set forth below by written notice to Landlord specifying the termination date, provided however Tenant must first provide Landlord with a second written notice and cure period of thirty (30) days prior to exercising its rights to terminate the Lease, or (ii) seek monetary damages. Tenant hereby waives any and all rights or claims to incidental, consequential or special damages.

E. Notwithstanding anything herein contained to the contrary, it is specifically understood and agreed that there shall be no personal liability for any deficiency or otherwise on the part of Landlord, its agents, representatives, employees, or any of its members, partners or shareholders, or their respective legal representatives, heirs, successors and assigns as the case may be, with respect to any of the terms, provisions, covenants and conditions of this Lease or otherwise, and that Tenant shall look solely to the estate, property and equity of Landlord (or such Permitted Assignee or other successor in interest) in the Building and subject to the prior rights of any mortgagees for the satisfaction of each and every remedy of Tenant in the event of any breach of any of the terms, provisions, covenants and conditions of this Lease to be performed by Landlord, or in the event of any other claim which Tenant may allege against Landlord, its agents, officers, representatives, employees, members, partners or shareholders, or their respective legal representatives, heirs, successors and assigns, which exculpation of personal liability shall be absolute and without exception. In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the Project to a Permitted Assignee or otherwise, Landlord shall be released from all subsequent liability and obligations hereunder and subsequent landlord shall be deemed, without further action, to have assumed all of the obligations of Landlord arising under this Lease as of the date of such sale or transfer.

F. The late payment of any amount due under this Lease will cause Landlord to incur various expenses not contemplated by this Lease the exact amount of which is presently difficult to ascertain. Accordingly, if any payment of Rent or any other amount due under this Lease shall not be received by Landlord within ten

(10) days after the date due, then, in addition to such required payment, Tenant shall also pay to Landlord a "Late Charge" of equal to ten percent (10%) of the delinquent amount. Tenant agrees that such Late Charge represents a fair and reasonable estimate of the expenses that Landlord will incur by reason of such late payment. Acceptance of such Late Charge by Landlord shall not constitute a waiver of Tenant's default nor prevent Landlord from exercising any remedies granted to Landlord under this Lease or any remedy at law or in equity. Neither Landlord nor Tenant shall ever be liable hereunder for incidental, consequential or special damages.

G. Should Landlord or Tenant be in default under the Project Agreement or the Management Agreement, such default shall also be a default under this Lease subject to the cure and remedy provisions herein.

## **12.- INTENTIONALLY OMITTED.**

## **13.- INSURANCE.**

A. Tenant hereby assumes responsibility for the condition of the Premises and agrees to give Landlord written notice within thirty (30) days after discovery of any damage, defect or disrepair therein. Notwithstanding the foregoing, the parties acknowledge that Tenant's liability may be limited by sovereign immunity as set forth in Section 768.28 of the Florida Statutes, as may be amended from time to time. Tenant shall be responsible for the safety and security of Tenant's employees upon or about the Premises. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to person in, upon or about the Premises, from any cause other than Landlord's negligence, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises. Further, Landlord and its employees, officers, directors, members, managers, affiliated and related entities and parent corporation shall not be liable for interference with the light or air in the Premises. Landlord and Tenant further agree that 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 for the State of Florida or its agents and agencies to be sued, or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

B. Tenant shall, throughout the Term, at its sole cost and expense, provide and keep in force, with (i) responsible insurance companies reasonably acceptable to Landlord or (ii) the State of Florida, in respect to this Lease and the Premises in the following amounts for any one accident or occurrence: (a) comprehensive general public liability insurance with limits for property damage claims and personal injury or death consistent with the amount provided to the Tenant by the State of Florida Division of Risk Management per occurrence; and (b) casualty insurance insuring Tenant against loss or damage to its equipment and other personal property in the Premises by fire and all other casualties usually covered under an extended policy of casualty insurance. Tenant shall furnish the Landlord with proof of all such insurance at least annually and upon demand of the Landlord.

C. The policies of insurance required to be maintained by Tenant hereunder are referred to herein as a "Required Policy" and in the plural as "Required Policies". All Required Policies shall be with a company licensed or authorized to do business in such state and with a company that has an "A.M. Best" rating of at least A-IV or through the State of Florida and be non-cancellable with respect to Landlord except upon thirty (30) days prior written notice to Landlord, and provide that the amount thereof shall not be reduced and that none of the provisions, agreements or covenants contained therein shall be modified or cancelled by the insurance company without thirty (30) days prior written notice to Landlord. Tenant agrees to deliver to Landlord a duplicate original or certificate of insurance for each Required Policy upon tender of possession of the Premises, and at all times during the Term to update such duplicate original or certificate of insurance with current insurer, term and policy limit details prior to the expiration or cancellation of any such policy.

D. Tenant at its expense shall comply with all requirements of the Board of Fire Underwriters, or any other similar body affecting the use of the Premises, and shall not use the Premises in a manner which shall

increase the rate of fire insurance or other insurance of Landlord or of any other tenant, over that in effect as of the Commencement Date of this Lease. If Tenant's use of the Premises increases the fire insurance rate for the overall Building, Tenant shall reimburse Landlord for all such increased costs.

E. Landlord shall, at its expense (as part of the Operating Expenses), at all times during the Term hereof, maintain or cause to be maintained in effect coverage under a policy or policies of special form property insurance covering the Building (excluding any leasehold improvements constructed by Tenant), in an amount not less than Landlord's good faith estimate of one hundred percent (100%) of the full replacement value (exclusive of the costs of excavations, foundations and footings) from time to time during the Term of this Lease, together with rent loss insurance and insurance against sprinkler damage, vandalism, malicious mischief and flood (if located within a designated flood zone). Such property insurance may also include loss of rent insurance for all or part of the Building in amounts and with property insurance deductibles in the amount of the greater of (i) Two Hundred Fifty Thousand Dollars (\$250,000.00) and (ii) such deductible as Landlord may determine in its good faith discretion based on deductibles that would be carried by an institutional owner of a comparable building in Orlando, Florida (and recognizing that portions of the property insurance may have higher deductibles, such as windstorm coverage).

F. Landlord shall, at its expense (as part of the Operating Expenses), at all times during the Term hereof, carry commercial general public liability and property damage insurance against claims for injury to persons and property occurring in the Common Areas and Parking Garage naming Tenant as an additional insured, such insurance to be in the combined single limit of not less than Five Million Dollars (\$5,000,000.00).

G. Notwithstanding anything to the contrary contained with this Section 26, either party's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by such party; provided, however, that the coverage afforded Landlord and Tenant will not be reduced or diminished by reason of the use of such blanket policy of insurance, and provided further that the requirements set forth herein are otherwise satisfied (including, without limitation, that Tenant shall provide Landlord with reasonably satisfactory evidence that (i) such blanket policy (or the Certificate of Insurance delivered to Landlord in connection with the blanket policy) expressly references, includes and covers the Premises, and (ii) such blanket policy (or the Certificate of Insurance delivered to Landlord in connection with the blanket policy) contains a guaranteed amount of insurance for the Premises, which guaranteed amount shall equal the amounts of coverage required under this Lease). Landlord and Tenant agree to permit the other at all reasonable times to inspect the policies of insurance of Landlord and Tenant covering risks upon the Premises or the Building for which policies or copies thereof are not required to be delivered to the other.

#### **14.- INTENTIONALLY OMITTED.**

– LOSS AND DAMAGE. Landlord shall not be liable for any damage to any property of Tenant or of others located in the Premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise caused by other residents, tenants or persons or occupants in the Building, or of adjacent property or the public. All property of Tenant kept or stored in the Premises shall be so kept or stored at the sole risk of Tenant and Tenant shall hold Landlord and its members, managers, officers, directors, employees, agents, servants, representatives, affiliates, successors and assigns including, without limitation, any successors by merger, consolidation or acquisition of all or a substantial portion of the assets and business of Landlord harmless from any and all claims arising out of damage to same, including subrogation claims by Tenant's insurance carriers.

– END OF TERM. Tenant shall surrender the Premises to Landlord at the expiration or sooner termination of this Lease in good order and condition, except for reasonable wear and tear, casualty, condemnation and acts of nature. Tenant agrees that if Tenant remains in possession of the Premises after the date of the expiration or sooner termination of this Lease without the consent of Landlord, there shall be no tacit renewal of this Lease or the Term, Tenant shall be deemed to be in default, and Tenant shall be deemed to be occupying the Premises as a holdover tenant at sufferance. During the holdover, the Rent, payable in advance on the first day of each month during such holdover,

shall be equal to (i) during the first six (6) months of the holdover, one hundred fifty percent (150%) of the monthly amount of Rent payable during the last month of the Term, and (ii) after the first six (6) months of the holdover, two hundred percent (200%) of the monthly amount of Rent payable during the last month of the Term, and such holdover shall otherwise be upon the same terms as are set forth in this Lease, so far as they are applicable to a tenancy at sufferance. Notwithstanding the foregoing or anything herein to the contrary, Tenant shall pay to Landlord all damages that Landlord may suffer on account of Tenant's failure to surrender to Landlord possession of the Premises. The inclusion of the preceding sentence shall not be construed as Landlord's consent for Tenant to hold over. The aforesaid provisions of this Section shall survive the expiration or sooner termination of this Lease. Upon the termination or expiration of this Lease, Tenant shall remove all Tenant Property and, in addition to other applicable provisions of this Lease regarding such removal, the following shall apply: (i) such removal must be made prior to termination or prior to the expiration of the Term, as applicable; (ii) Tenant must not be in default of any obligation or covenant under this Lease at the time of such removal; and (iii) such removal must be effected without damage to the Premises or the Building. Tenant shall promptly repair all damage caused by such removal. In no event shall Tenant remove from the Premises any component of the HVAC system, any plumbing fixture(s) or lighting fixture(s), or any pipes, paneling, wall covering or floor covering. All plumbing or electrical wiring connections exposed as a result of the removal of the Tenant Property, or removal of any other alteration(s), addition(s), fixture(s), equipment or property installed or placed in the Premises by Tenant shall be capped by Tenant in a safe and workmanlike manner.

#### **15.– SIGNS.**

A. With Landlord's prior approval, which approval shall not be unreasonably withheld or delayed, and subject to the Tenant's compliance with all applicable Governmental Requirements and approval from any applicable Governmental Authority, and the terms hereof, Tenant, at its expense (but payable out of the Finish Allowance), shall have the right to install and maintain exterior Building signage for the Premises within the overall limitations of the governmental approvals provided to Landlord. Landlord, at Tenant's expense, will cooperate with Tenant in the obtaining of required permits and licenses, but Landlord makes no representation or warranty that applicable Governmental Requirements will permit Tenant to install the signage. The signage for the Premises shall be removed by Tenant at the expiration or earlier termination of this Lease, and Tenant shall repair all damage caused thereby, all at Tenant's sole expense, within thirty (30) days following such removal. Tenant's obligation to repair any damage pursuant to this Section will survive the expiration or earlier termination of this Lease.

B. Tenant shall be permitted to display signage at or near the entry to its Premises as approved by Landlord (not to be unreasonably withheld or delayed). Landlord's approval is not required for any signage of Tenant wholly within the Premises, so long as such signage cannot be seen from the Common Areas or from anywhere outside of the Premises.

C. Except as otherwise set forth herein or in the Project Agreement, Tenant shall not place any signs or other advertising matter or material on the exterior of the Building or anywhere upon the Common Areas or Parking Garage. The foregoing is not intended to limit any signage that Landlord may be required to display pursuant to Governmental Requirements or pursuant to agreements with other tenants of the Building.

– NOTICES. All notices, demands, requests, consents, approvals or other communications in this Lease provided or permitted to be given, made or sent by either party hereto to the other shall be in writing (whether or not so stated elsewhere in this Lease) and shall be deemed to have been duly given on the second (2<sup>nd</sup>) Business Day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth in Section 1 hereof. Notwithstanding the foregoing, any of such notices, demands or other communications to be made pursuant to this Lease may be sent by a national overnight carrier service (e.g. Federal Express) but shall only be deemed given when received (or when delivery thereof is refused, as the case may be). The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by ten (10) days prior written notice given by such party as above provided. Any notice or other communication given in the manner provided above by counsel for either party shall be deemed to be notice or such other communication from the party represented by such counsel.

– **LANDLORD’S REPRESENTATIONS.** Landlord, in order to induce Tenant to enter into this Lease, hereby represents that, as of the Effective Date:

D. Landlord has no actual knowledge of the presence of any Hazardous Substances on or about the Building Land, other than as described in the Limited Site Investigation Report described in Section 49 below. Landlord covenants to cooperate with Tenant, at Tenant’s expense, in order for Tenant to obtain a reliance letter or other appropriate documentation from Landlord’s environmental consultant in connection with said Report, and any other environmental report related solely to the Building Land obtained or to be obtained by Landlord, if any.

E. Landlord has full power and authority to conduct its business as presently conducted and to enter into this Lease, and that this Lease has been duly authorized, executed and delivered by Landlord and constitutes a legal and binding obligation of Landlord, subject to the terms hereof.

F. The execution, delivery and performance of this Lease will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions or provisions of any indenture, mortgage, bank loan, credit agreement, deed of trust, instrument, document, land use document, agreement or contract of any kind or nature to which Landlord is a party or by which Landlord may be bound.

G. To Landlord’s actual knowledge, no litigation or proceedings (or threatened litigation or proceeding or basis therefor) exists which could materially and adversely affect the ability of Landlord to perform its obligations under this Lease or which would constitute a default on the part of Landlord under this Lease, or which would constitute such a default with the giving of notice or lapse of time, or both, subject to the terms hereof.

H. Landlord has no actual knowledge of any pending or threatened condemnation or similar proceeding affecting the Building Land or any portion thereof.

I. The Project is (or prior to the Commencement Date will be) zoned to permit the use and operation of the Premises for the permitted Use, and there is not any survey or title matter which prohibits or restricts the use and operation of the Premises for the permitted Use.

– **NON-WAIVER.** No waiver of any covenant or condition of this Lease by either party shall be deemed to imply or constitute a further waiver of the same covenant or condition or of any other covenant or condition of this Lease. Any such waiver must be in writing and signed by the party granting the waiver. Except as expressly set forth in this Lease, no act or omission of Landlord or its agents shall constitute an actual or constructive eviction, unless Landlord shall have first received written notice of Tenant’s claim and shall have had a reasonable opportunity to remedy such claim.

– **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT.** This Lease and all rights of Tenant shall be subject and subordinate to any and all mortgages, security agreements, or like instruments resulting from any financing, refinancing, or collateral financing (including renewals or extensions thereof), and to any and all ground leases, made or arranged by Landlord of its interests in all or any part of the Building or the Project, from time to time in existence against the Building or the Project, whether now existing or hereafter created. Such subordination shall not require any further instrument to evidence such subordination. However, on request, Tenant shall further evidence its agreement to subordinate this Lease and its rights under this Lease to any and all documents and to all advances made under such documents. The form of such subordination shall be made as required by Landlord, its lender, or ground lessor and shall include a non-disturbance agreement with Tenant regarding the Lease. If Tenant shall fail or refuse to sign a subordination in accordance with the provisions of this Section within ten (10) days following a request by Landlord, Tenant irrevocably constitutes and appoints Landlord as its attorney in fact to execute and deliver the subordination to any such third party, it being stipulated that such power of attorney is coupled with an interest and is irrevocable and binding. Tenant shall promptly on request attorn to any mortgagee, or to the future owner(s) of the Building or the Project, or the purchaser at any foreclosure or sale under proceedings taken under any mortgage, security agreement, like instrument, or ground lease, and shall recognize such mortgagee, owner, or purchaser as Landlord under this Lease.

**16.– ESTOPPEL CERTIFICATES; FINANCIAL STATEMENTS.**

A. Landlord and Tenant agree at any time and from time to time, upon not less than fifteen (15) days' prior written request by either of them to the other, to execute, acknowledge and deliver to the requesting party a statement in writing certifying that: this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications); the amount of the Rent then being paid and the dates to which same have been paid; the space being occupied by Tenant; whether or not, to the best of the certifying party's knowledge, there is any existing or alleged default by either party with respect to which a notice of default has been served, or any facts which, with the passing of time or the giving of notice or both, would constitute a default and, if there is any such default or facts, specifying the nature and the extent thereof; and such other factual information pertaining to this Lease as may be reasonably requested by the requesting party, it being intended that any such statement delivered pursuant to this Section 35 may be relied upon by Landlord, any prospective purchaser of the fee, or leasehold, or any mortgagee or assignee of any mortgage upon the fee or leasehold interest in the Premises (whether prospective or existing), or by any Tenant, assignee, subtenant or lender of Tenant (whether prospective or existing). If Tenant shall fail or refuse to sign such a statement in accordance with the provisions of this Section within fifteen (15) days following a request by Landlord, Tenant irrevocably constitutes and appoints Landlord as its attorney in fact to execute and deliver the statement to any such third party, it being stipulated that such power of attorney is coupled with an interest and is irrevocable and binding.

B. Within thirty (30) days after written request from Landlord, Tenant shall deliver to Landlord any information regarding Tenant or Tenant's business reasonably requested by Landlord, Landlord's lender, Landlord's equity partner, or any other third party requiring such information from Landlord.

**17.– INTENTIONALLY OMITTED.**

– RULES AND REGULATIONS. Subject to the last sentence of this Section 37, Tenant agrees to fully comply with all rules and regulations for the Project in effect as of the Commencement Date ("Rules and Regulations"), a copy of which Rules and Regulations as they exist on the Commencement Date will be attached hereto as Exhibit "F" and by this reference incorporated herein. Landlord shall have the right from time to time to prescribe additional reasonable Rules and Regulations, which in its judgment, may be desirable for the use, entry, operation and management of the Building and the Project, each of which additional Rules and Regulations shall, upon Tenant's receipt of thirty (30) days prior written notice thereof, be deemed incorporated herein and made a part hereof by this reference. The Rules and Regulations shall not be applied in a discriminatory manner to Tenant, nor shall any of the Rules and Regulations be inconsistent with the rights of Tenant under this Lease.

– BROKER. Tenant and Landlord represent and warrant that there are no claims for brokerage commissions or finder's fee in connection with the execution of this Lease, or with any extensions hereof, and each party agrees to be responsible for its own brokerage fees, if any. The provisions of this Section shall survive the expiration or sooner termination of this Lease.

**18.– INTENTIONALLY OMITTED.**

**19.– INTENTIONALLY OMITTED.**

– CONSTRUCTION OF LANGUAGE. The terms "Lease," "Lease Agreement" or "Agreement" shall be inclusive of each other, and shall include renewals, extensions or modifications of this Lease. The Section headings and titles are for convenience only and shall have no effect upon the construction or interpretation of any part of this Lease.

This Lease has been prepared, reviewed and revised mutually by Landlord and Tenant and their respective professional advisors. Landlord, Tenant and their separate advisors believe that this Lease is the product of their joint efforts, that it expresses their agreement, and that it should not be interpreted in favor of either Landlord or Tenant or against either Landlord or Tenant merely because of their efforts in its preparation.

– **LIABILITY OF LANDLORD.** Except for the willful misconduct or criminal acts of Landlord, Tenant shall look solely to (i) the estate and property of the Landlord in the Project, (ii) the rents and other income (including, without limitation, insurance proceeds payable to Landlord) from the Project receivable by Landlord, and (iii) the consideration received by Landlord from the sale of all or any part of the Project, for the collection of any judgment, or in connection with any other judicial process, requiring the payment of money by Landlord in the event of any default by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and performed by Landlord, and no other property or estates of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of Tenant's remedies and rights under this Lease. The provisions of this Section 42 are not designed to relieve Landlord from the performance of any of its obligations hereunder, but rather to limit Landlord's liability in the case of a recovery of a money judgment against Landlord. The foregoing limitation shall not apply to or limit any injunctive or other equitable declaratory or other forms of relief to which Tenant may be entitled. The word "Landlord" as used in this Lease shall mean only the owner from time to time of Landlord's interest in this Lease. In the event of any assignment of Landlord's interest in this Lease to a Permitted Assignee or to any other third party, the assignor (and all prior assignor landlords) shall no longer be liable for, and shall be deemed to be released from, the performance or observation of any agreements or conditions on the part of Landlord to be performed or observed subsequent to the effective date of such assignment provided the assignee specifically assumes all such obligations.

– **GOVERNING LAW.** This Lease shall be construed and interpreted according to the laws of the State of Florida and exclusive venue with respect to any litigation shall be in Orange County, Florida.

– **TIME OF ESSENCE.** Subject to Section 53, time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

– **ACCORD AND SATISFACTION.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated to be paid shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided herein or by law. No acceptance of any Rent by Landlord shall constitute a waiver by Landlord of any prior or subsequent default of Tenant, notwithstanding any knowledge of such default by Landlord at the time of receipt of such Rent.

– **ENTIRE AGREEMENT.** This Lease and exhibits attached hereto and forming a part hereof as if fully set forth herein, constitute all covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, the Building and the Project and there are no covenants, promises, conditions or understandings, either oral or written, between them other than are herein set forth, except the Project Agreement and Management Agreement. Neither Landlord nor Landlord's agents have made nor shall be bound to any representations with respect to the Premises, the Building or the Project except as herein expressly set forth, and all representations, either oral or written, shall be deemed to be merged into this Lease. Except as herein otherwise provided, no subsequent alteration, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by both parties.

– **SEVERABILITY.** If one or more of the provisions of this Lease shall, for any reason, be held to be unenforceable in any respect, such enforceability shall not affect any other provision of this Lease.

– **INTEREST ON PAST DUE OBLIGATIONS.** In addition to any and all other amounts which may be due as provided in this Lease, any amount due from either party to the other party hereunder that is not paid within five (5) days after the due date expressly provided herein (or if no date is specified, then within thirty (30) days of written demand) shall thereafter bear interest at the Stipulated Rate from the date due until paid.

– **ENVIRONMENTAL.** As used herein, "Environmental Law" shall mean any current or future legal requirement pertaining to (a) the protection of health, safety, and the indoor or outdoor environment, (b) the conservation, management, or use of natural resources and wildlife, (c) the protection or use of surface water and groundwater, (d) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal or Release (as hereinafter defined) of Hazardous Substances, (e) pollution (including any Release to air, land, surface

water, and groundwater), and includes, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 USC 9601 et seq., Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and Hazardous and Solid Waste Amendments of 1984, 42 USC 6901 et seq., Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq., Clean Air Act of 1966, as amended, 42 USC 7401 et seq., Toxic Substances Control Act of 1976, 15 USC 2601 et seq., Hazardous Materials Transportation Act, 49 USC App. 1801 et seq., Occupational Safety and Health Act of 1970, as amended, 29 USC 651 et seq., Oil Pollution Act of 1990, 33 USC 2701 et seq. Emergency Planning and Community Right-to-Know Act of 1986, 42 USC 11001 et seq., National Environmental Policy Act of 1969, 42 USC 4321 et seq., Safe Drinking Water Act of 1974, as amended, 42 USC 300(f) et seq., any similar implementing or successor law, any similar State law or regulation, and any amendment, rule, regulation, order, or directive issued thereunder.

As used herein, "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the indoor or outdoor environment, including, without limitation, the abandonment or discarding of barrels, drums, containers, tanks, and other receptacles containing or previously containing any Hazardous Substances.

Tenant acknowledges that Tenant has been provided a copy of that certain Limited Site Investigation report dated January 26, 2017 prepared by Terracon Consultants, Inc., under Project No. H1167624A (the "Report"), and that the Report confirms there are certain Hazardous Substances present on the Building Land that will require Landlord to undertake a soil management plan in connection with the proposed redevelopment of the Building Land. Landlord will obtain a soil management plan from its licensed consultants, and will undertake to follow the recommendations of that plan, such that to Landlord's knowledge the redeveloped Building Land and the Project (i) will comply with applicable Environmental Laws in effect at the time of such redevelopment, and (ii) will permit Tenant's occupancy of the Premises and Building for the Use.

Tenant shall not, and except for Landlord Tenant shall not allow others to, dig, grow gardens or otherwise have contact with the soil under or outside of the Building. Tenant shall not cause or permit any Hazardous Substances to be used, stored, generated or disposed of on or in the Premises or any portion of the Project by Tenant, Tenant's employees, agents, assignees, sublessees, concessionaires, licensees, contractors, subcontractors, guests or invitees. Subject to limitations, if any, of 768.28 FL Statutes, Tenant shall be responsible for any and all damages from causing or permitting Hazardous Substances on the Premises or any portion of the Project. If Tenant causes or permits the presence of any Hazardous Substances on the Premises or any portion of the Project and such results in contamination, Tenant shall promptly, notify Landlord and then at Landlord's option, (i) Tenant shall at Tenant's sole expense, take any and all necessary actions approved by Landlord to return the Premises or the Project to the condition existing prior to the presence of any such Hazardous Substances on the Premises or the Project, or (ii) pay Landlord to take any and all necessary actions to return the Premises or the Project to the condition existing prior to the presence of any Hazardous Substance. Tenant shall undertake no testing for Hazardous Substances on the Premises or the Project or take any remedial actions without in each instance obtaining Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Landlord shall have access to the Premises in order to investigate and test with respect to any suspected release of Hazardous Substances in contravention of this subparagraph, and to access the Premises as needed for any remedial action deemed necessary by Landlord.

Except to the extent that any of the following described circumstances arises from a failure of Tenant to comply with the immediately preceding paragraph, Landlord shall protect, indemnify, save, defend, and hold harmless Tenant from and against any and all liability, loss, damage, actions, causes of action, costs or expenses whatsoever (including reasonable attorneys' fees and expenses) and any and all claims, suits and judgments which Tenant may suffer, as a result of or with respect to: (a) any environmental claim relating to or arising from the Project; (b) the violation of any Environmental Law in connection with the Project; (c) any release, spill, or the presence of any Hazardous Materials affecting the Project; and (d) the presence at, in, on or under, or the release, escape, seepage, leakage, discharge or migration at or from, the Project of any Hazardous Materials, whether or not such condition was known or unknown to Landlord. This indemnity shall survive the expiration or termination of this Lease.

– RADON DISCLOSURE. In accordance with the requirements of Florida Statutes Section 404.056(8), the following notice is hereby given to Tenant: "RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE



GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY HEALTH DEPARTMENT.”

– OFAC COMPLIANCE. Tenant and Landlord (each, a “Representing Party”) each represents and warrants to the other that (a) neither the Representing Party nor any person or entity that directly owns a twenty five percent (25%) or greater equity interest in it nor any of its officers, directors, or managing members is a person or entity (each, a “Prohibited Person”) with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224 (the “Executive Order”) signed on September 24, 2001 and entitled “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or other governmental action, (b) the Representing Party’s activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the “Money Laundering Act”) (i.e., Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “Patriot Act”), and (c) throughout the Term of this Lease the Representing Party shall comply with the Executive Order, the Money Laundering Act, and the Patriot Act.

## **20.– INTENTIONALLY OMITTED.**

– EXCUSE OF PERFORMANCE. If either party to this Lease, as the result of any (i) strikes, lockouts or labor disputes, (ii) inability to obtain labor or materials or reasonable substitutes therefor, (iii) acts of nature (including, without limitation, lightning, earthquake, hurricane, tornado, and flood), or any governmental action, condemnation, civil commotion, war, terrorism, fire or other casualty, or (iv) other conditions similar to those enumerated in this Section (other than inability to pay monies due under this Lease) beyond the reasonable control of the party obligated to perform, fails punctually to perform any non-monetary obligation on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent occasioned by such event and only if the excused party gives notice of such circumstance to the other party within ten (10) days after the commencement of the delaying occurrence. If any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time and such named date shall be deemed to be extended or delayed, as the case may be, for a period equal to the period of the delay occasioned by any event described above.

– TENANT’S REPRESENTATIONS. Tenant, in order to induce Landlord to enter into this Lease, hereby represents that, as of the date of this Lease:

A. Tenant has full power and authority to conduct its business as presently conducted and to enter into this Lease. That this Lease has been duly authorized, executed and delivered by Tenant and constitutes and legal and binding obligation of Tenant.

B. The execution, delivery and performance of this Lease will not conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions or provisions of any indenture, mortgage, bank loan, credit agreement, deed of trust, instrument, document, agreement or contract of any kind or nature to which Tenant is a party or by which Tenant may be bound.

C. To the best of Tenant’s knowledge, no litigation or proceedings (or threatened litigation or proceeding or basis therefor) exists which could materially and adversely affect the ability of Tenant to perform its obligations under this Lease or which would constitute a default on the part of Tenant under this Lease, or which would constitute such a default with the giving of notice or lapse of time, or both.

– NO JOINT VENTURE. The parties intend by this Lease to establish the relationship of Landlord and Tenant only, and do not intend to create a partnership, joint venture, joint enterprise or any business relationship other than that of Landlord and Tenant.

– COVENANTS OF TENANT. Tenant hereby agrees and covenants to Landlord that, at all times during the Term of this Lease:

D. Tenant, at its expense, agrees to comply with all “Governmental Requirements” (as hereinafter defined) regarding Tenant’s permitted Use of the Premises or regarding the Tenant’s Work or subsequent Alterations to the Premises made by Tenant. The term “Governmental Authority” shall mean any federal, state, county, municipal, or other governmental, governmental department, commission, board, bureau, court, agency, or instrumentality having jurisdiction or authority over Landlord, Tenant and/or all or any part of the Project. The term “Governmental Requirement” shall mean any law, statute, code, rule, regulation, ordinance, order, authorization, registration, or other direction or requirement of any Governmental Authority which is now or in the future applicable to the Project or any part thereof.

E. Tenant is and will be licensed to conduct the Use contemplated and carried on in the Premises and Tenant agrees to maintain at all times, at its sole cost and expense, all requisite permits and/or licenses in connection therewith (including but not limited to alcoholic beverage permits).

F. Tenant shall not bring or keep, or permit to be brought or kept, any inflammable, combustible, or explosive fluid, material, chemical, or substance in or about the Premises. Neither Tenant nor its agents, employees, contractors, subtenants, assignees and invitees will use the Premises, or any portion thereof, in a manner which causes any Hazardous Substances to be released, and will not release (as hereinafter defined) any Hazardous Substances, in, on, beneath, at or about the Premises, or any portion thereof, including, without limitation, into the atmosphere, soil or groundwater thereof. If Tenant or its agents, employees, contractors, subtenants, assignees or invitees or any other person or entity during the Term of this Lease causes or permits the spilling, leaking, pumping, pouring, emitting, discharging, injection, escaping, leaching, dumping, or disposing in, on, beneath, at or about the Premises, including, without limitation, into the interior spaces, building materials, equipment, atmosphere, soil, parking lots or groundwater thereof (each such event or occurrence being a “release”) of any Hazardous Substances, Tenant, upon knowledge thereof, shall immediately notify Landlord in writing of such release and immediately commence, diligently conduct and complete the investigation, assessment, clean-up and remediation of each such release of Hazardous Substances, and take all such other action, as may be necessary or required by the Governmental Requirement, all at Tenant’s sole cost and expense.

G. Tenant shall not pour or otherwise dispose of any chemical, chemical waste, chemical by-products, or other such material, through the drainage (plumbing) system of the Premises other than customary cleaning fluids. This representation by Tenant is a material inducement to Landlord to enter into this Lease, and without such inducement, Tenant acknowledges that Landlord would not have entered into this Lease agreement. Accordingly, Tenant’s breach of this agreement shall be deemed a material default under this Lease, entitling Landlord to exercise any and all of its rights for Tenant’s default.

– SUCCESSORS AND ASSIGNS. The covenants, agreements and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, administrators, successors and permitted assigns.

## **21.– COMMUNICATIONS AND DATA SERVICES.**

A. Tenant shall, at Tenant’s sole cost and expense, be solely responsible for securing such communications, telephone and other electronic communications service to the Premises as Tenant may require for its use and occupancy thereof, and Landlord shall have no obligations or liability whatsoever to Tenant with respect to the provision of such services to the Premises. None of Landlord’s approval of, or requirements concerning, any communications work, lines, equipment, plans, specifications or drawings or any equipment related thereto, Tenant’s communications provider or Tenant’s and/or Tenant’s

communications provider's contractors, subcontractors, or Landlord's future designation of a preferred communications provider for the Building (if any), shall be deemed a warranty as to the adequacy, suitability, competence or financial strength thereof, and Landlord hereby disclaims any responsibility or liability for the same. Further, Tenant hereby acknowledges that Landlord shall have no obligation or liability and hereby waives any claim against Landlord for any damages or problems in the event that Tenant's communications services, lines or equipment are in any way inadequate, do not satisfy Tenant's requirements, are interrupted, curtailed, discontinued, disconnected, terminated, damaged or otherwise interfered with, or fail, except to the extent caused by the gross negligence or willful misconduct of Landlord, its employees or agents. Tenant's communications provider(s) shall be subject to Landlord's approval, which shall not be unreasonably withheld or delayed.

B. Any telegraphic, telephone or data lines installed in the Premises and/or the Building by or for Tenant shall be appropriately tagged with Tenant's name and the name of the provider, and all of such wiring shall be removed by Tenant, at Tenant's expense, upon the expiration or termination of this Lease, unless otherwise directed by Landlord.

– **COUNTERPART EXECUTION.** This Lease may be executed and delivered in counterparts for the convenience of the parties by facsimile or e-mail, all of which taken together shall constitute one and the same instrument. If requested, the parties agree to follow-up counterpart execution with signature pages signed by both parties.

– **WAIVER OF JURY TRIAL.** THE PARTIES HERETO WAIVE TRIAL BY JURY IN CONNECTION WITH ANY PROCEEDINGS OR COUNTERCLAIMS BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER.

– **LEASE TERMINATION FOR FAILURE OF CONTINGENCIES.** Landlord's and Tenant's obligations under this Lease are contingent upon Landlord (or any successor Landlord to whom this Lease is assigned as contemplated herein) acquiring good, marketable and insurable title to the Building Land. If the Project Agreement is terminated prior to Substantial Commencement, as defined therein, then this Lease shall automatically terminate without any further liability on the part of Landlord or Tenant.

– **MEMORANDUM OF LEASE.** Neither Landlord nor Tenant shall record this Lease. However, Landlord and Tenant shall promptly, upon the request of the other, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of Florida. The requesting party shall pay all costs and expenses of recording such memorandum.

– **ANNUAL APPROPRIATIONS.** Tenant's performance and obligation to pay Rent hereunder is contingent upon an annual appropriation by the Florida state legislature.

[signatures appear on next page]

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease, or have caused the same to be executed as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

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

LANDLORD:

USTLER DEVELOPMENT, INC.,  
a Florida corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

DEVELOPMENT VENTURES GROUP, INC.  
a Delaware corporation

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TENANT:

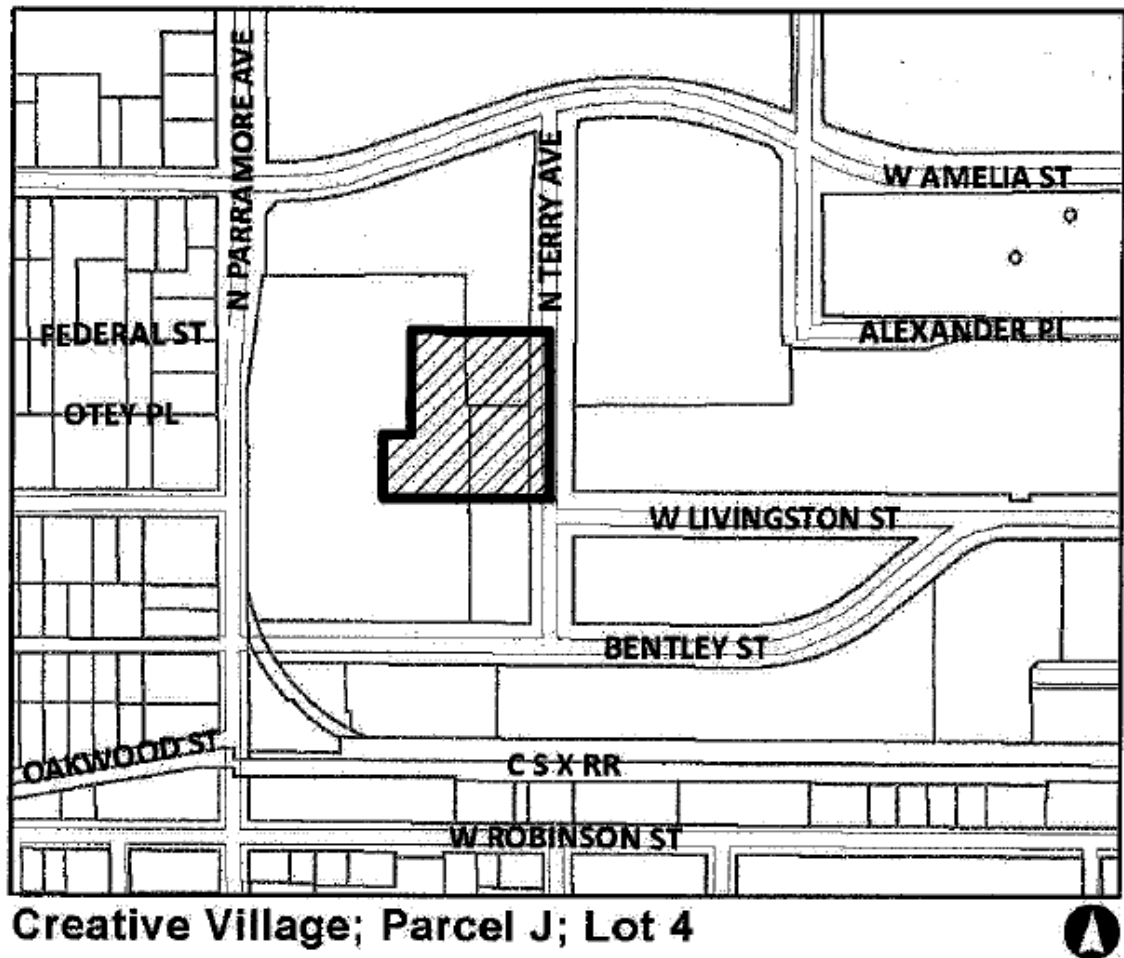
UNIVERSITY OF CENTRAL FLORIDA BOARD OF  
TRUSTEES,

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

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT "A"**

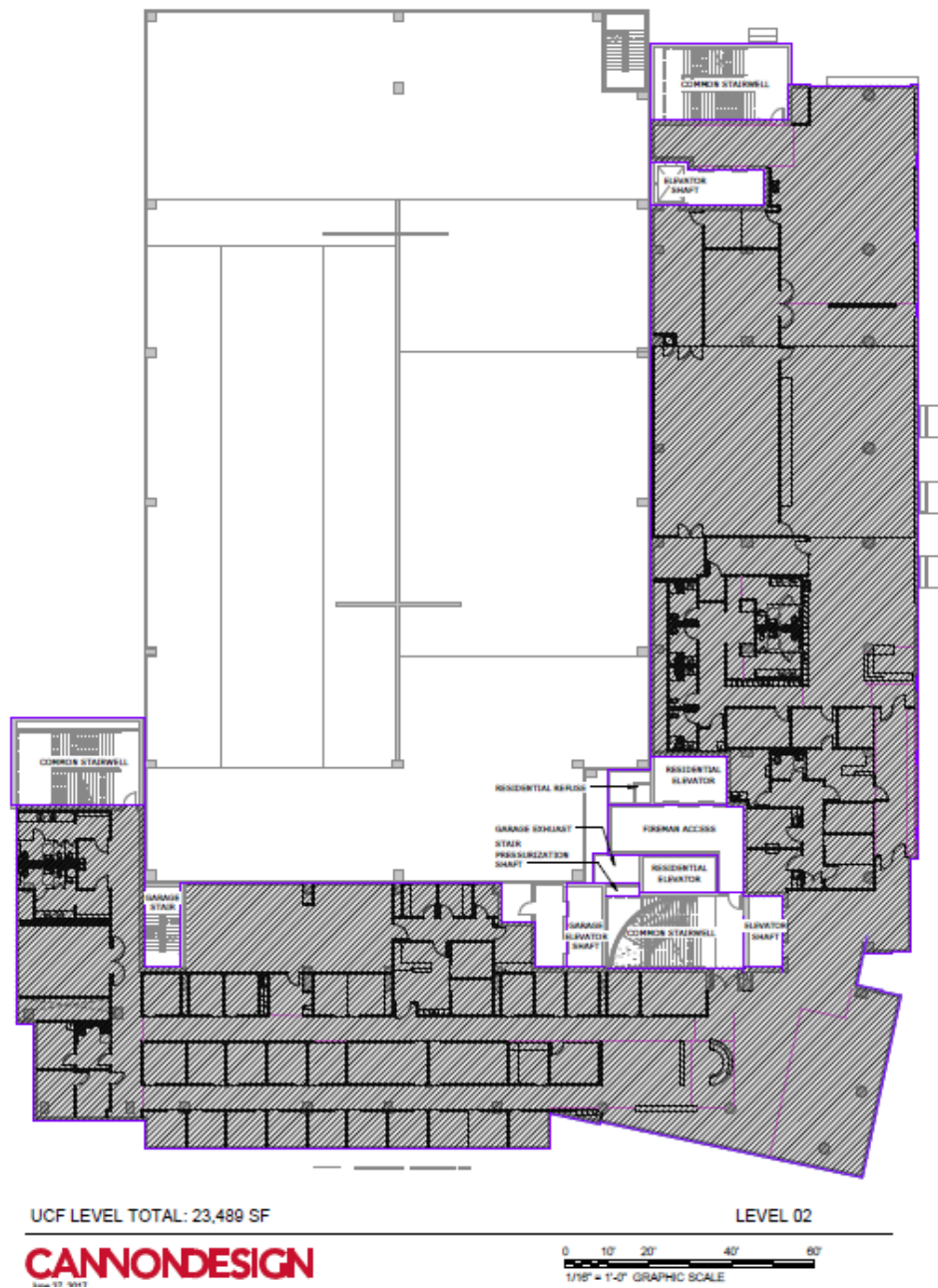
**BUILDING LAND LEGAL DESCRIPTION**



A-1

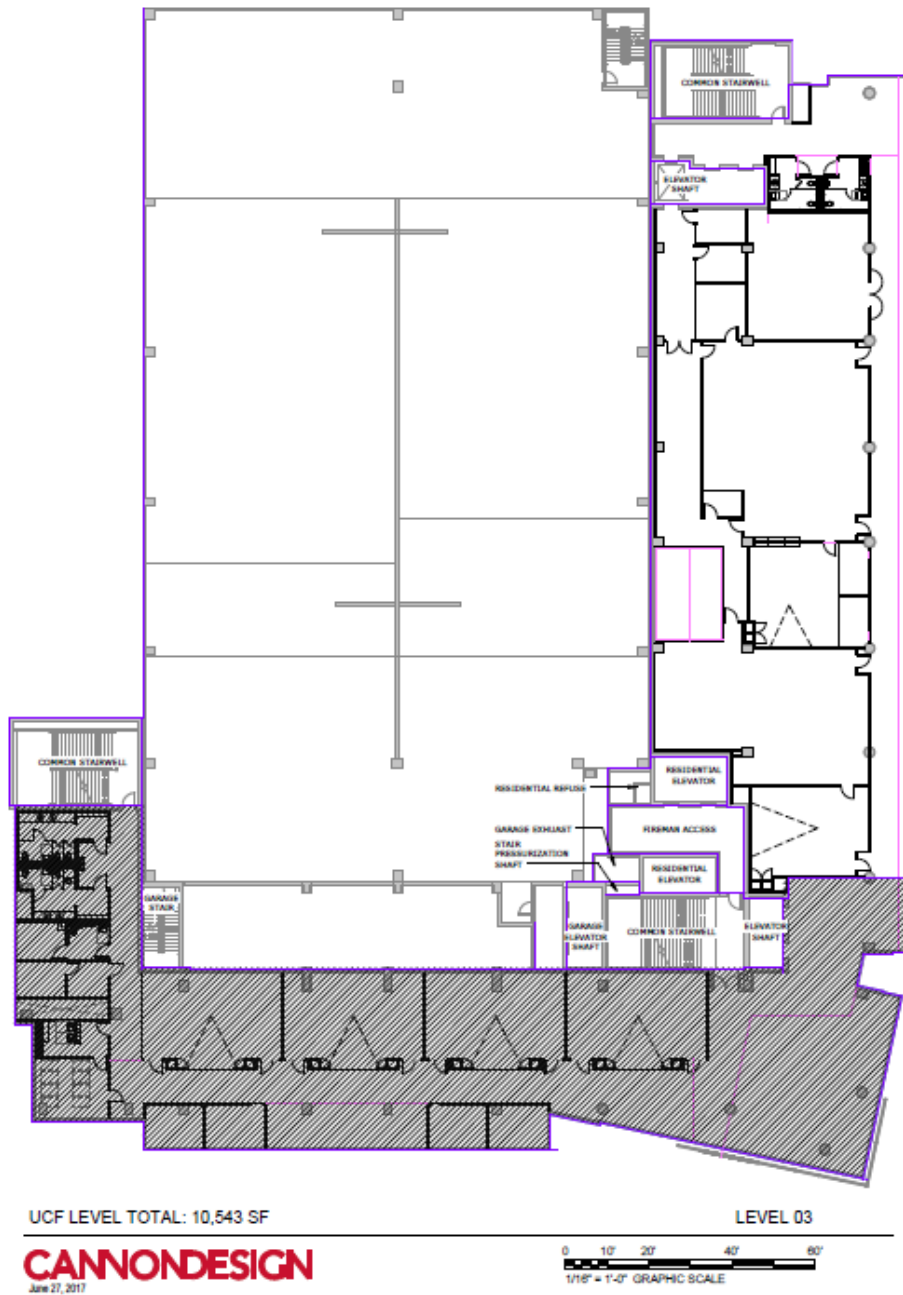
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B-2

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B-3

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**EXHIBIT "C"**

**EXCLUSIONS TO OPERATING EXPENSES**

Notwithstanding anything to the contrary contained in the Lease in the definition of "Operating Expenses," Operating Expenses shall not include, and the Landlord and Tenant have agreed with respect to certain of such excluded expenses as follows:

- (a) all capital expenditures, determined by reference to GAAP, and rentals for any item which, if the same had been purchased, would have constituted a capital expenditure, except as otherwise expressly set forth in the Lease;
- (b) all costs and expenses of leasing space in the Building, including advertising, promotion, other marketing, brokerage commissions, legal fees, tenant finish allowances, and all costs and expenses of any demolition in, painting, carpeting, or refurbishing of, or alterations or improvements to, any leasable space made for any tenant or occupant or to enhance the marketability thereof or prepare the same for leasing;
- (c) electricity and other utilities furnished to the student housing component or any other separately leased tenant spaces in the Building;
- (d) all costs and expenses arising from repairs or reconstruction due to fire or other casualty to the extent reimbursed by insurance proceeds (provided that deductibles are includible in Operating Expenses subject to the requirements of the Lease regarding deductibles);
- (e) any taxes and any related interest or penalties, other than sales taxes on amounts otherwise on services provided as part of Operating Expenses; ground lease rents; depreciation, amortization and debt service and other financing expenses;
- (f) Taxes; provided however that notwithstanding such exclusion and anything else to the contrary in this Lease, in the unanticipated event that the exemption for Taxes assumed in Section 7 is not achieved or maintained throughout the Term, with respect to the actual amount of Taxes, if any, that may accrue during the Term and become due and payable and specifically attributable to the Premises and the Use thereof, Landlord and Tenant have agreed to share responsibility for payment as follows: (1) for the initial ten (10) years of the Term (i) Landlord and Tenant will share responsibility with a two-thirds / one-thirds split (67% being the responsibility of Landlord and 33% being the responsibility of Tenant) for the payment of the actual amount of such Taxes up to a total amount of such Taxes equal to \$100,000.00, and (ii) Landlord will have full responsibility for payment of such Taxes exceeding \$100,000.00; and (2) after the initial ten (10) years of the Term, (i) Landlord and Tenant will share responsibility 50/50 for the payment of the actual amount of such Taxes equal to \$100,000.00, and (ii) Landlord will have full responsibility for payment of such Taxes exceeding \$100,000.00. Tenant shall pay to Landlord its share, if any, of such Taxes within thirty (30) days after Landlord's request for payment accompanied by a copy of the tax bill and a calculation of and support for Landlord's determination of Tenant's share. Any of such Taxes accruing during a partial calendar year at the beginning or the end of the Term shall be prorated.
- (g) all labor costs for personnel above the grade of building manager; all labor costs allocable to any part of an employee's time during which such employee is not engaged at the Building in the operation and maintenance thereof;
- (h) All costs and expenses associated with the construction, repair, and/or maintenance of the Parking Garage, other than costs and expenses allocable to portions and components of the Parking Garage serving the Building such as dumpsters, chillers, emergency generator, etc.

**EXHIBIT “D”**

**WORK LETTER**

**UCF Education and Education Support Services Space**

The “Common Area Improvements,” “Parking Garage Improvements” and “Landlord’s Work” (defined below) are provided by Landlord. The “Tenant’s Work” (defined below), or any portion thereof, are purchased with the “Finish Allowance” (defined below), except that any costs for Tenant’s Work exceeding the Finish Allowance shall be paid by Tenant either through reimbursement to Landlord or by payment directly to the contractor, as described below. Together and collectively, the Common Area Improvements, Parking Garage Improvements, Landlord’s Work and applicable Tenant’s Work comprise the scope of work associated with design and buildout of the Premises.

Landlord shall construct the Project and the Premises in a good and workmanlike manner pursuant to this Work Letter and the Plans and Specifications for the Project prepared by Baker Barrios Architects (the “Plans and Specifications”).

**1. Common Area Improvements and Parking Garage:**

Landlord, at its expense, shall make all necessary improvements to (i) the interior and exterior common areas that are outside of the demised Premises including, but not limited to, elevators, stairs, corridors, sidewalks, service areas, landscaping, required off-site improvements and streetscaping in finished condition, and (ii) the Parking Garage, substantially in accordance with the Plans and Specifications (the “Common Area Improvements” and the “Parking Garage Improvements” respectfully). The Building, Common Area Improvements, Parking Garage Improvements and Premises will be designed and constructed in accordance with current building codes enforced by the City of Orlando and built to the quality, specifications and materials generally depicted in the renderings, floor plans and other illustrative materials provided to Tenant and shall be refined and revised over time to ultimately be reflected in the final Plans and Specifications.

**(a) Parking Spaces:**

The Project includes the Parking Garage which may be used by Tenant and its students, faculty, employees, tenants, guests and invitees. The Parking Garage use shall be subject to commercially reasonable and industry-standard rules and regulations as established by Landlord or the Landlord’s property manager. Parking in the Parking Garage will be subject to hourly, daily or monthly fees and/or charges established by Landlord.

The Parking Garage will contain approximately six hundred twenty five (625) spaces. Up to three hundred (300) of the parking spaces may be reserved and designated for exclusive use by the student housing residents. Additionally, up to one hundred (100) of the parking spaces may be reserved and assigned for exclusive use as designated by Landlord. The use of the balance of parking spaces will be on a first-come, first-serve, unreserved and unassigned basis. The numbers herein are only estimates and allocations and are subject to revision based on the final Plans and Specifications as well as commercially reasonable discretion of the Landlord.

The Landlord or its property manager shall administer the use of the Parking Garage and parking areas pursuant to the rules and regulations, as amended from time to time. Landlord or its property manager may assign or designate parking spaces in the Parking Garage for particular uses or purposes, except that the Landlord may not materially adversely affect Tenant’s ability to use the Parking Garage as specified herein.

## 2. Landlord Standard Items:

Landlord, at its expense, shall make the following improvements to the Building shell pursuant to the Plans and Specifications to facilitate construction and buildout of the Premises (the "Landlord's Work"):

- (a) **Ceiling System.** No ceiling system is provided by Landlord.
- (b) **Interior Surface of Exterior Walls.** Exterior walls shall be insulated as required by code with no drywall and code minimum electrical service. The City of Orlando may require drywall on exterior fire-rated walls to receive a certificate of completion for the shell Building.
- (c) **Sprinklers.** Upright heads in a standard distribution pattern installed per NFPA code. Any relocation or additions of sprinkler heads shall be at Tenant's cost.
- (d) **Heating, Ventilation and Air Conditioning.** HVAC system will consist of air handling units sized at one (1) ton for every three hundred fifty (350) square feet of occupied space. Supply air will be ducted from the air handling units to the main distribution ducts (i.e., main trunk line) and VAV boxes will provide cooling, dehumidification, ventilation and electric heating during Normal Business Hours. Floors will be divided into zones, each served by a variable air volume (VAV) unit and controlled by individual thermostats. VAV units to be set approximately one per 1,500 square feet of occupied space. Heating will be supplied by utilizing boxes with electric heating elements located in exterior zones. Fire dampers are included as part of the shell Building package at the corridor wall(s) only.
- (e) **Electrical.** One main panel will be located in the electrical room on each building floor. Any conduit or connection from the main panel to Tenant's sub-panel(s) is a Tenant expense. Building standard electrical design allows for the Premises to have up to 13.75 watts per square foot of occupied space.

Electrical distribution will be provided to the main panel boxes in the electrical closet on each floor. The electrical system shall be sized for a connected load of 5 watts per usable square foot exclusive of lighting and HVAC. An emergency generator will be provided to operate emergency life safety systems.

- (f) **Telephone and Data Distribution.** Telephone service will be brought to Building's main telephone room. The Building will include necessary conduit/sleeves to distribute data and telephone cables between floors. Fiber optic cable (if available), will be provided to the Building and will have a redundant feed if required by Tenant.
- (g) **Life Safety.** Building standard exit lighting, emergency lighting, and fire and safety equipment required by applicable codes to be placed in exit corridors and as required to identify means of egress shall be furnished by Landlord. Throughout the Building, including any common corridors and stairwells, a life safety system will be installed in accordance with the more stringent of applicable national, state and local codes or the Americans with Disabilities Act regulations. It shall consist of sprinklers, smoke detectors, internal fire alarm and annunciator system, elevator recall, emergency lighting, self-illuminating exit signs, fire hoses, stairwell pressurization and extinguishers as required by applicable codes. The sprinkler system will have an approved water flow alarm connection and tamper-proof detection device, connected to a central station or direct to the fire/police departments. It will include all distribution of mains, laterals, uprights and upright heads.
- (h) **Demising Walls.** None provided by Landlord.
- (i) **Restrooms.** Building standard restrooms for professional office use, load and occupancy shall be built out by Landlord. Restroom facilities will be based on the latest edition of the Standard

Plumbing Code. In accordance with the Americans with Disabilities Act, handicapped, accessible water closets will be provided for both men and women, as required by applicable laws or building codes. Restrooms will be built out according to the quality and specifications described in the Plans and Specifications. The following fixtures and restroom facilities will be provided by Landlord and are reflective of standard and typical professional office occupancy: fixture counts per floor – 4 male water closets, 4 female water closets, 3 male lavatories, 3 female lavatories, 3 water fountains and 1 janitor sink.

- (j) **Elevators.** Building standard elevators for professional office use, load and occupancy shall be built out by Landlord. Elevators will be provided at the approximate ratio of 1 elevator per 55,000 square feet of occupied space. Elevator cabs will be equipped with an emergency communications/alarm system, including a bell annunciator, connected to the building security guard station or a central alarm system. The elevator controls will conform with all ADA requirements. Elevators specifically serving the education space are the responsibility of the education tenants.
- (k) **Lobbies.** Common Area lobbies will be built out to a quality and finish depicted in the Plans and Specifications. The elevator lobbies or other internal lobbies on the education lease floors are the responsibility of the education tenants.
- (l) **Building Shell.** The base Building shell will include exterior perimeter walls, stairwells and all building columns/structural elements. The interior base Building core will include electrical, telephone, and mechanical closets, stairways and elevator shaft enclosures per applicable codes and as shown on the Plans and Specifications. A loading dock will be provided with adequate tractor/van clearance and delivery area.
- (m) **Security.** An electronically controlled access security system will be installed within the Building. This system will control main Building systems to ensure adequate and industry-standard security. The system will be configured for a multitude of authorized access levels. Such system may not specifically meet the standards of the education tenants, and it does not specifically serve the Premises or the interior of Tenant's space.
- (n) **Plumbing.** Base Building plumbing system will be provided per the Plans and Specifications. Landlord will reasonably coordinate and facilitate rough-in of plumbing for Tenant's kitchen(s), restrooms or other facilities per Tenant's approved plans.
- (o) **Roof.** Complete roof system pursuant to Plans and Specifications.
- (p) **Floor.** On upper floors, an exposed concrete floor slab will be provided in a condition ready to accept Tenant floor coverings or treatment. The floor will be 5 inch minimum thickness, normal weight concrete with a minimum compressive strength of 4000 psi. Design live loads shall be per the Plans and Specifications. On the ground floor, no concrete floor will be provided and the space shall be delivered in unfinished condition with exposed dirt floor.
- (q) **Exterior Walls.** Per Plans and Specifications. Ground floor storefront shall be insulated, clear glass. Any revisions or modifications by Tenant must match the base Building design and specifications.
- (r) **Impact Fees.** Unless otherwise specified in the Lease, Landlord shall be responsible for base Building impact fees for general office use. Tenant is responsible for any impact fees associated with its particular use and occupancy that are over and above the general office use impact fees paid by Landlord.

### 3. Tenant Standard Items:

In addition to the Common Area Improvements and Parking Garage Improvements set forth in Paragraph 1.1 and the Landlord's Work in Paragraph 1.2 above, Landlord shall provide Tenant with an allowance of Thirty

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and 00/100 Dollars (\$30.00) per useable square foot of the Premises (the "Finish Allowance") to be applied toward the following Tenant standard items and improvements to the Premises ("Tenant's Work"). Tenant is responsible for any and all costs exceeding the Finish Allowance. The entire Finish Allowance based on Tenant's total applicable square footage shall be available to Tenant regardless of whether or not Tenant intends to occupy or buildout all of the Premises as of the Commencement Date. The square footage calculation for the Finish Allowance shall be based on the actual square footage to be used and occupied by Tenant. On an education tenant floor, where the entire floor is being leased by education tenants, the square footage calculation is the entire floor area, less vertical penetrations, and there are no common areas (hallways, lobbies, restrooms and similar facilities) constructed by Landlord. On a multi-tenant floor (if any) where only a portion of the floor is being leased by Tenant, the square footage calculation is the useable area within the occupied space, which excludes common areas (hallways, lobbies, restrooms and similar facilities) as such common areas are controlled by Landlord. Landlord's architect shall provide adequate documentation to Tenant and Landlord showing the useable square footage of the Premises and the size of the Premises. Tenant and Landlord shall further memorialize the Landlord's Work, Tenant's Work and Finish Allowance in accordance with this Work Letter and as required by ongoing refinement of the Plans and Specifications, as well as Tenant's plans. Prior to Tenant's occupancy of the Premises, Landlord's architect or other duly qualified professional shall provide adequate documentation evidencing the final size, rentable area and useable square footage of the Premises.

- (a) **Architectural Services/Construction Drawings and Contractor.** Drawings, plans and specifications for the interior buildout of the Premises will be prepared by Baker Barrios Architects in consultation with Cannon Design, and said drawings and specifications shall be submitted to Landlord and Tenant for approval. Notification of Landlord or Tenant approval shall be provided within ten (10) business days, said approval not to be unreasonably withheld, conditioned or delayed. Failure by either party to deliver such approval, or details as to revisions required for such approval, within ten (10) business days shall be deemed approval by such party. Landlord and Tenant shall both use their best efforts to obtain a building permit and certificate of occupancy for the Premises in a timely and professional manner. The construction and interior build out work for the Premises will be performed by Batson-Cook Construction in cooperation with Tenant's construction manager, if any, subject to Landlord approval. Notwithstanding, all Tenant design and buildout work is subject to approval by Landlord and Tenant and shall conform to all applicable building codes.
- (b) **Interior Partitions.** Building standard partitions to ceiling, consisting of 5/8" sheetrock on both sides of 3-5/8" metal studs taped, floated and painted.
- (c) **Suite Entry Door and Hardware.** Full height doors (8' or 9' TBD), including wood veneer or metal door with painted metal frame and closer. Hardware is a heavy duty lever style lock consistent with Building standard finish.
- (d) **Interior Doors and Hardware.** Full height doors (7' or 8' TBD), including wood veneer doors with painted metal frame, or as otherwise approved by Landlord.
- (e) **Painting.** Per Tenant's design, as approved by Landlord.
- (f) **Light Fixtures.** Per Tenant's design. Building standard lighting to be provided, or otherwise approved by Landlord.
- (g) **Light Switches.** Per Tenant's design, as approved by Landlord.
- (h) **Electrical.** Duplex electrical wall outlets 20A, 120V circuited in accordance with National Electrical Code. Any conduit or connection from the main panel to Premises space and/or sub-panel(s) is the responsibility of the Tenant. Any increased electrical loads or upgrades as compared to the Landlord's Work are the responsibility of the Tenant.

- (i) **Telephone/Data Outlets.** Necessary base Building service for telephone, internet, cabling, cable TV, computer networking, broadband and similar service will be provided to the main telephone terminal board or electrical panel on each floor per the Plans and Specifications. This is commonly referred to as “main stub out”. Tenant is responsible for installation and/or connection from main terminal board or electrical panel to the Premises.
- (j) **Floor Covering.** Per Tenant’s design, as approved by Landlord. Adequate insulation and soundproofing is required.
- (k) **Ceiling System.** Ceiling system consisting of a suspended painted aluminum grid (4' x 4' main grid) suitable for 2' x 2' textured, reveal edge, acoustical ceiling tiles and cross tees, or as otherwise approved by Landlord.
- (l) **Mechanical and HVAC System.** Interior zone diffusers furnished and installed per Building standard partition design. Thermostats installed and system adjusted as required. Fire dampers in demising partitions as required for Building standard design. Tenant is responsible for low-pressure ductwork and air distribution/circulation devices. Any increased mechanical or HVAC system loads or upgrades as compared to the Landlord’s Work are the responsibility of the Tenant.
- (m) **Restrooms.** Any additional work or upgrades to the restrooms and fixture count as compared to the Landlord’s Work are the responsibility of the Tenant.
- (n) **Elevators.** Any additional elevators as well as any work or upgrades to the base Building elevators as compared to the Landlord’s Work are the responsibility of the Tenant.
- (o) **Signage.** Per Tenant’s design, as approved by Landlord.
- (p) **Exterior Window Coverings.** All exterior window coverings, if required by Landlord, will be Building standard window blinds, which are to be one inch (1”) horizontal mini-blinds with a clear anodized aluminum finish, or other such window coverings as approved by Landlord.
- (q) **Life Safety and Sprinklers.** Any modifications due to Tenant’s design (such as moving, lowering or adjusting sprinkler heads) is a Tenant expense. All modifications or revisions to life safety items and/or sprinklers shall be designed or approved by the base Building engineer.
- (r) **Other Work.** All other Tenant work (and associated hard costs and soft costs) as depicted on the Tenant’s drawings, plans and specifications approved by Landlord are the responsibility of Tenant.
- (s) **Tenant Buildout Budget and Schedule.** As part of the Tenant’s drawings, plans and specifications for the Premises, Tenant shall provide a buildout budget showing total costs; line item breakdown of hard costs and soft costs; and application of the Finish Allowance specified herein. A detailed project schedule shall also be provided.
- (t) **Utilities.** As part of the base Building design, Landlord shall separate all utilities serving the Premises. There will be individual service meters for utilities for the Premises, including electric and natural gas, and Tenant is responsible for setting and installing its own meters. Sanitary sewer, domestic water and natural gas service connections shall be provided by Landlord per the Plans and Specifications. Any upgrades or changes are a Tenant cost. Tenant is responsible for any deposits or fees customarily charged for service activation and any fees specifically related to Tenant’s use.

Building standard items shall be determined by Landlord and Landlord’s architect, subject to the applicable terms and provisions of this Lease. It is understood and agreed that Building standards:

- (i) may vary in accordance with normal manufacturer variations in color and finish quality; or

- (ii) may not be available from the manufacturer at the time the Building or the Premises are under construction. In the event items identified as Building standard are not available for any reason, Tenant agrees to accept substitute or alternative materials from a different manufacturer of equal quality and value.

**4. Revisions to Drawings and Specifications:**

If Tenant desires to make revisions to Tenant's approved drawings, plans, and specifications for the Premises, any such revisions are subject to Landlord's written approval, which shall not be unreasonably withheld, conditioned or delayed. Further, no revisions or modifications affecting base Building systems or structural elements of the Building are permitted without Landlord's written approval. Once any revisions have been approved in writing by Landlord, and any cost impacts are reconciled, work may proceed in accordance with the drawings and specifications, as revised. Landlord, at its option, can require Tenant to pay in lump sum to Landlord any and all increases in cost which result from the approved revisions.

Landlord reserves the absolute right to make minor architectural, structural, or design modifications or changes in the Building and to the Plans and Specifications as it deems necessary or desirable, and Tenant will not object to such changes as long as the modifications and changes do not materially or adversely affect the Premises or its access or alter the overall rentable area of the Premises by more than two percent (2%). Any consent which is required to be obtained from Tenant shall not be unreasonably withheld, conditioned or delayed and Tenant will promptly work with Landlord to make any applicable changes to the Premises required by any entity or governmental authority with approval power over the Building or required due to any necessary structural, engineering or construction change for the Building.

**5. Construction Completion Date:**

The "Completion Date" for the Premises is targeted to be May 31, 2019, subject to (i) Force Majeure as defined in Paragraph 1.8 of this Work Letter, (ii) the Project Agreement, and (iii) mutual approval by Tenant and Landlord. This Lease assumes that all parties will be completing their work in accordance with this Work Letter and delivering the Premises in a specified condition acceptable to Tenant pursuant to Paragraph 1.7 of this Work Letter.

Landlord will professionally and diligently construct the Building per the Plans and Specifications. Landlord or Tenant, as applicable, will professionally and diligently build out the interior of the Premises. Landlord will give Tenant a minimum of sixty (60) days written notice prior to Landlord's anticipated Completion Date of the Building shell or the Premises, as applicable per Paragraph 1.7. Landlord shall provide written notice fifteen (15) days in advance of the actual Completion Date, recognizing that this date could vary slightly as compared to the anticipated date provided in the sixty (60)-day notice. Occupancy or possession of the Premises shall not be permitted prior to the Completion Date; however, so called "early occupancy" may be mutually agreed to by Landlord and Tenant to facilitate the Tenant's move-in schedule.

If the Premises have not been completed and made available for Tenant's occupancy and Use on or before the Commencement Date, then Tenant's obligation to pay Rent under the Lease shall be postponed until completion is achieved, unless such delay is caused by Tenant. The postponement of the Commencement Date and Tenant's obligation to pay Rent will constitute Tenant's sole remedy for Landlord's delay in achieving completion of the Building or the Premises by the Completion Date. Any delay caused by Tenant shall not postpone or extend the Commencement Date or Tenant's obligation to pay Rent.

**6. Tenant's Additional Work:**

All work in or about the Premises which is not provided by the Landlord as specified herein, but necessary for Tenant occupancy, shall be Tenant's responsibility at Tenant's cost and expense. Tenant shall adopt a schedule for performing such additional work consistent with the schedule of Landlord's general contractor and shall see that such work is conducted in such a manner as to not interfere unreasonably with or to delay

the work of constructing the Building. All such additional work and Tenant's use of the Premises shall be performed in accordance with this Lease.

Tenant has elected to have Landlord complete the design and buildout of the interior of the Premises in coordination with Tenant and in accordance with Tenant's approved plans and specifications and per the terms and conditions of this Work Letter. Tenant shall pay for all costs and expenses that exceed the Finish Allowance necessary to obtain the desired finish and build out for the Premises. Tenant is responsible for all furniture, fixtures and equipment.

**7. Delivery of Possession:**

The Tenant will take possession of the Premises in finished condition. It is the intent and understanding of Landlord and Tenant that finished condition is consistent with so-called "turn key" and "move in ready" condition in accordance with industry-standards and in general accordance with Tenant's approved drawings, plans and specifications, subject to reasonable punchlist items.

Landlord shall be deemed to have delivered possession of the Premises to Tenant on the date on which the Premises have been substantially completed as evidenced by a certificate of occupancy, or similar type document evidencing completion, for finished condition as indicated above. Tenant's acceptance of the Premises is subject only to completion of punchlist items, which are minor in nature and do not interfere with Tenant's use and occupancy of the Premises. Punchlist items shall be only defects in material and/or their installation that are substandard and not reflective of industry-standard. Landlord and Tenant will do a walk through of the Premises no later than three (3) days prior to the Completion Date and document the punchlist items. Landlord, prior to or following Completion Date, shall be required to in good faith and with reasonable diligence correct all punchlist items to Tenant's reasonable satisfaction. Tenant shall not be permitted to delay the Commencement Date due to any punchlist item. Landlord shall furnish to Tenant a certificate of substantial completion from the architect, as reasonably required.

**8. Delays in Delivery of Possession:**

Landlord's construction and delivery obligations, and the Commencement Date, are subject to impacts or delays caused by "Force Majeure" which include:

- (a) availability and/or shortages of materials;
- (b) strikes;
- (c) labor unrest;
- (d) war, terrorism, riot or insurrection affecting the Building or ability to construct or utilize the Building or Premises;
- (e) vandalism;
- (f) Acts of God;
- (g) rainy weather (that is in excess of the average for the area), casualty or fire damage affecting the Building or ability to construct the Premises;
- (h) named storms as determined by the National Weather Service, and only if directly impacting the Building, or;
- (i) any other cause beyond the Landlord's reasonable control (other than financial).



**9. Completion of Work:**

When required under this Lease, Landlord and Tenant shall work together to diligently and professionally pursue design and buildout of the Premises and receipt of the certificate of occupancy. Both parties acknowledge that time is of the essence and Tenant's interior buildout is to be completed in accordance with the schedule. Any intentional or purposeful delays on the part of either party or its representatives, agents or contractors to circumvent specific Lease provisions or performance deadlines will be treated as a default hereunder. Each party's architect, general contractor and other consultants shall reasonably and professionally assist the other as necessary.

**10. Minimum Information Required for Tenant's Plans:**

Tenant will provide the following information, no later than the dates established within the agreed schedule, so that Landlord and Landlord's architect can complete the necessary permit drawings required for construction of Tenant's Premises:

- (a) Architectural floor plans.
- (b) Location and type of all walls and partitions.
- (c) Location and type of all doors. Indicate hardware and provide keying schedule.
- (d) Location and type of glass partitions, windows and doors – indicate framing type.
- (e) The occupant count and occupancy type of every area.
- (f) Location of telephone equipment rooms.
- (g) Indicate critical dimensions necessary for construction.
- (h) Location of all Building standard electrical items - outlets, switches, telephone outlets and lighting, including complete design drawing showing all circuiting and switching.
- (i) Location and type of all Non-Building standard electrical items including lighting and complete design drawings showing all circuiting and switching.
- (j) Location and type of equipment that will require special electrical requirements, including electrical design. Provide manufacturer's specifications for use and operation.
- (k) Location, weight per square foot and description of any exceptionally heavy equipment filing system exceeding 50 pounds psf live load.
- (l) Requirements for special air conditioning or ventilation with complete design of ductwork and CFM requirements.
- (m) Building standard HVAC design showing diffuser drops, ductwork and CFM requirements or any upgraded design as applicable.
- (n) Type and color of floor covering.
- (o) Location, type and color of wall coloring.
- (p) Location, type and color of painting or finishes.

- (q) Location and type of plumbing, including complete riser design and fixture specs.
- (r) Location and type of kitchen equipment or other equipment.
- (s) Plans must meet all local and state building codes.
- (t) Any internal restrooms and other such facilities that are specifically for the use of the Premises.
- (u) Any internal corridors, hallways, lobbies, stairways, elevators or other areas that are specifically for the use of the Premises.
- (v) Critical dimensions needed for construction.
- (w) Location of electrical and data rooms.
- (x) Any internal elevators and equipment that are specifically for the use of the Premises.

Details Showing:

- (a) All millwork with verified dimensions and specifications of all equipment to be built-in or installed.
- (b) Corridor entrance.
- (c) Bracing or support of special walls, glass partitions, etc.
- (d) Applicable custom or special-purpose features.
- (e) Plans and specifications for furniture, fixtures and equipment.

**11. Cost of Work for the Premises**

As of the Effective Date, Landlord and Tenant have approved the Cost of Work and budget for design and build-out of the Premises (“Cost of Work”) based on the status of the Schematic Design Documents and pricing provided by Landlord’s Architect, Consulting Engineers, Contractor and Design Build Subcontractors. The Cost of Work shall be updated as the Tenant’s Plans evolve through the customary design, permitting and construction process. The Cost of Work may be revised subject to approval by Landlord and Tenant.

**12. Delivery of As-Built Drawings and Specifications:**

Within ninety (90) days of completion of the Building and Premises, Landlord and Tenant shall deliver to the other electronic copies of the as-built drawings and specifications.

**13. Appointment of Designated Representatives:**

Landlord and Tenant shall each appoint a designated representative to make timely and binding decisions on design and construction matters required under this Work Letter.

**14. Payment by Tenant to Landlord for Tenant’s Work:**

Construction of the Tenant’s Work will be completed by Landlord at Tenant’s sole cost and expense, subject to application of the Finish Allowance. For all costs and expenses associated with Tenant’s Work that exceed the Finish Allowance, Landlord shall submit to Tenant on a monthly basis an invoice for such costs and expenses, on or before the tenth (10th) day of each calendar month, together with documentation describing

the work completed as of the invoice date. Tenant shall pay to Landlord, or directly to the contractor specified in such invoice, the full amount of each such invoice within twenty (20) days after delivery of the invoice. The statements of costs submitted to Landlord by Landlord's contractors shall be conclusive for purposes of determining the cost of the work described in the invoices submitted to Tenant. The failure of Tenant to timely pay the amounts payable by Tenant under this Work Letter constitutes an event of default under the Lease.

[End of Work Letter]

**EXHIBIT “E”**

INTENTIONALLY OMITTED.

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**EXHIBIT “F”**

**RULES AND REGULATIONS – EDUCATION TENANTS**

**[Draft as of Effective Date; updated version to be included as of Commencement Date]**

1. Landlord may from time to time in its reasonable judgment adopt systems and procedures that are appropriate for adoption in similar higher education facilities, for the security or safety of the Building, any persons occupying, using, or entering the same, or any equipment, furnishings, or contents thereof, and the Tenant shall comply with the Landlord’s reasonable requirements relative thereto.
2. Only persons approved from time to time by the Landlord may prepare, solicit orders for, sell, serve, or distribute foods or beverages in the Common Areas, such approval to not be unreasonably withheld, conditioned or delayed.
3. No additional locks or similar devices shall be placed upon doors of the Premises and no locks shall be changed except with written consent of Landlord, except in the event that an emergency re-key is required, and written consent of the Landlord cannot be obtained in a timely manner. Upon termination of the Lease, Tenant shall surrender to Landlord all keys to the Premises. Such consent of Landlord shall not be unreasonably withheld.
4. Tenant shall be permitted to move furniture, fixtures and equipment and other Tenant’s Property into or out of the Building at Tenant’s own risk only at such times and in such a manner designated by Landlord so as to cause the least inconvenience of other tenants. Any damage caused to the Premises or Building by Tenant or its agents shall be repaired at the expense of Tenant.
5. The sidewalks, entrances, passages, courts, corridors, vestibules, halls, stairways and elevators serving the Premises and Building shall not be obstructed or used for storage or for any purpose other than ingress and egress by Tenant or its invitees.
6. Landlord reserves the right at all times to exclude news delivery persons, loiterers, vendors, solicitors and peddlers from the Building and Building Land as deemed necessary to avoid disruptions to Tenant’s Use.
7. Service animals, guide dogs and comfort animals are permitted in the Common Areas, Parking Garage and the Premises.
8. Landlord and/or its property manager shall control all vending machines, ATMs, overnight delivery package services (e.g. Fed Ex and UPS) and similar functions in the Common Areas, Parking Garage and student housing components of the Building. Tenant shall be allowed to provide its own vending machines or similar functions within the Premises.
9. Tenant shall cooperate fully with Landlord to assure the most effective and efficient operation of the Building and the use of utilities.
10. Except to the extent expressly provided in the Lease, Landlord assumes no responsibility for protecting the Premises from theft, robbery, pilferage and other crimes.
11. Tenant, its employees, its invitees and guests shall not smoke in the Premises, Parking Garage, Building or any Common Areas.
12. Tenant shall be responsible for any damage, including stoppage caused by failure to use the apparatus as instructed or for the purpose constructed, done to the Premises or areas serving the Premises,

including but not limited to restrooms, elevators, stairways, hallways, and lobby solely caused by Tenant's, its employees', its students', its invitees' and guests' negligence or misuse.

13. Landlord reserves the right to establish reasonable Rules and Regulations which shall govern the access, activity, conduct and set specific Rules and Regulations with respect to contractors, subcontractors, agents or consultant which perform activities or work in the Building or Parking Garage (excluding with respect to Tenant's education activities and programs).

14. Landlord reserves the right to make such further reasonable Rules and Regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and the preservation of good order therein without materially adversely affecting Tenant's permitted Use of the Premises or Tenant's rights under this Lease. Any additional reasonable Rules and Regulations promulgated by Landlord shall be binding upon the parties hereto with the same force and effect as if they had been inserted herein at the time of execution hereof. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees. Tenant shall require its agents, clients, students, invitees and guests to similarly comply. Landlord shall not be responsible for any violation of the foregoing Rules and Regulations by other tenants of the Building, unless such violation is clearly due to Landlord's failure to take reasonable steps to enforce compliance with such Rules and Regulations by another tenant in the Building who is subject to such Rules and Regulations.

15. In these Rules and Regulations, "Tenant" includes the employees, agents, invitees, and licensees of the Tenant and others permitted by the Tenant to use or occupy the Premises.

In the case of any conflict between the provisions of the Lease and these Rules and Regulations, the provisions of the Lease shall control.

**EXHIBIT “G”**

**INTENTIONALLY OMITTED**

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## Attachment B

# CREATIVE VILLAGE A REPLAT

REPLATING A PORTION OF LOT 1, BOB CARR PERFORMING ARTS CENTER  
AS RECORDED IN PLAT BOOK 33 PAGE 17 AND ALL OF LOT 1, EXPO CENTRE ADDITION  
AS RECORDED ON PLAT BOOK 48, PAGE 34  
LOCATED IN SECTION 26, TOWNSHIP 22 SOUTH, RANGE 29 EAST  
CITY OF ORLANDO, ORANGE COUNTY, FLORIDA

## LEGAL DESCRIPTION

A TRACT OF LAND, BEING A PORTION OF LOT 1, BOB CARR PERFORMING ARTS CENTER, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 33, PAGE 17 AND ALL OF LOT 1, EXPO CENTRE ADDITION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 48, PAGE 34 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND ALL OF THE LAND DESCRIBED IN THAT CERTAIN WARRANTY DEED, AS RECORDED IN OFFICIAL RECORDS BOOK 4272, PAGE 4205 OF SAID PUBLIC RECORDS AND A PORTION OF THE LANDS LYING IN THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 22 SOUTH, RANGE 29 EAST, BEING DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF NORTH TERRY AVENUE, ACCORDING TO THE PLAT OF PARRAMORE STREET LYMMO - A REPLAT, AS RECORDED IN PLAT BOOK 78, PAGE 110 OF SAID PUBLIC RECORDS; THENCE RUN NORTH 00°15'30" EAST, ALONG THE EAST RIGHT-OF-WAY LINE OF SAID NORTH TERRY AVENUE, 174.87 FEET TO A POINT LYING ON THE SOUTH RIGHT-OF-WAY LINE OF WEST LIVINGSTON STREET; THENCE RUN SOUTH 89°44'30" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 230.40 FEET TO A POINT LYING ON THE NORTHERLY EXTENSION OF THE WESTERLY LINE OF LOT 1, CENTROPLEX, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 14, PAGE 92 OF SAID PUBLIC RECORDS; THENCE RUN ALONG SAID NORTHERLY EXTENSION AND THE WESTERLY LINE OF SAID LOT 1, THE FOLLOWING 3 COURSES: THENCE RUN SOUTH 00°24'05" EAST, 300.16 FEET; THENCE RUN SOUTH 89°36'05" EAST, 1.00 FEET; THENCE RUN SOUTH 00°24'05" EAST, 108.00 FEET TO A POINT LYING ON THE NORTHERLY LINE OF THE PLAT OF T.O. & A. RY COMPANY'S ADDITION TO ORLANDO, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "C", PAGE 99 OF SAID PUBLIC RECORDS; SAID POINT ALSO LIES ON THE NORTH RIGHT-OF-WAY LINE OF SEABOARD AIR LINE RAILROAD, AS RECORDED IN RIGHT-OF-WAY AND TRACT MAP, SEABOARD AIR LINE RAILROAD CO., LAKE CHARM BRANCH, STATION 2769+20 TO STATION 2812+00; THENCE RUN NORTH 89°36'05" WEST, ALONG SAID NORTH LINE, 888.35 FEET; THENCE RUN NORTH 89°36'44" WEST, ALONG SAID NORTH LINE, 335.18 FEET TO A POINT LYING ON THE EASTERLY LINE OF SAID WARRANTY DEED, AS RECORDED IN OFFICIAL RECORDS BOOK 4272, PAGE 4205 OF SAID PUBLIC RECORDS; SAID POINT ALSO LIES ON A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY; THENCE RUN ALONG THE EASTERLY, SOUTHERLY AND WESTERLY LINE OF SAID WARRANTY DEED, THE FOLLOWING FOUR COURSES: THENCE RUN SOUTHEASTERLY, ALONG SAID NON-TANGENT CURVE, HAVING A RADIUS OF 357.21 FEET, A CENTRAL ANGLE OF 0°12'54", AN ARC LENGTH OF 6.59 FEET, A CHORD LENGTH OF 6.59 FEET AND A CHORD BEARING OF SOUTH 81°15'03" EAST; THENCE RUN SOUTH 00°28'33" WEST, NON RADIAL TO SAID CURVE, 28.51 FEET; THENCE RUN NORTH 89°24'37" WEST, 185.93 FEET; THENCE RUN NORTH 00°21'01" WEST, 31.94 FEET; THENCE RUN NORTH 89°36'44" WEST, 30.27 FEET TO A POINT LYING ON THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE RUN NORTH 00°29'20" WEST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 26, A DISTANCE OF 106.82 FEET; THENCE DEPARTING SAID WEST LINE, RUN SOUTH 89°35'30" EAST, 303.12 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE SOUTHERLY; THENCE RUN EASTERLY, ALONG SAID CURVE, HAVING A RADIUS OF 1042.50 FEET, A CENTRAL ANGLE OF 0°54'32", AN ARC LENGTH OF 89.32 FEET, A CHORD LENGTH OF 89.29 FEET AND A CHORD BEARING OF SOUTH 87°23'16" EAST TO THE POINT OF TANGENCY; THENCE RUN SOUTH 84°56'00" EAST, 54.04 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE NORTHERLY; THENCE RUN EASTERLY, ALONG SAID CURVE, HAVING A RADIUS OF 957.50 FEET, A CENTRAL ANGLE OF 0°46'30", AN ARC LENGTH OF 80.35 FEET, A CHORD LENGTH OF 80.33 FEET AND A CHORD BEARING OF SOUTH 87°20'15" EAST TO THE POINT OF TANGENCY; THENCE RUN SOUTH 89°44'30" EAST, 81.69 FEET TO A POINT LYING ON THE WESTERLY RIGHT-OF-WAY LINE OF AFORESAID NORTH TERRY AVENUE; THENCE RUN ALONG THE WESTERLY AND SOUTH RIGHT-OF-WAY OF NORTH TERRY AVENUE THE FOLLOWING COURSES: SOUTH 03°46'46" EAST, 85.21 FEET; THENCE RUN SOUTH 00°15'30" WEST, 180.65 FEET; THENCE RUN SOUTH 89°35'35" EAST, 85.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND LIES IN CITY OF ORLANDO, ORANGE COUNTY, FLORIDA AND CONTAINS 14.505 ACRES, MORE OR LESS.

## NOTICE:

"THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL, IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY."

**PEC SURVEYING AND MAPPING, LLC**  
CERTIFICATE OF AUTHORIZATION NUMBER LB 7808  
2100 Alafaya Trail, Suite 203 • Orlando, Florida 32765 • 407-542-4967  
WWW.PECONLINE.COM

## SURVEYOR'S NOTES:

- (1) BEARINGS SHOWN HEREON ARE ASSUMED RELATIVE TO THE SOUTH RIGHT-OF-WAY LINE, LIVINGSTON STREET, PARRAMORE STREET LYMMO - A REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 78, PAGE 110 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING SOUTH 89°44'30" EAST.
- (2) [□] - DENOTES A PERMANENT REFERENCE MONUMENT (P.R.M.) A SET 4" x 4" CONCRETE MONUMENT WITH A BRASS DISC, STAMPED LS # 4044 UNLESS OTHERWISE NOTED.
- (3) [•] - DENOTES A PERMANENT CONTROL POINT (P.C.P.) A SET NAIL AND LOCK STAMPED P.C.P. LS # 4044 UNLESS OTHERWISE NOTED.
- (4) DEVELOPMENT OF THIS PROPERTY DEPICTED ON THIS PLAT IS SUBJECT TO THE REQUIREMENTS OF CHAPTER 58, THE CONCURRENTLY MANAGEMENT ORDINANCE OF THE CITY OF ORLANDO, WHICH COVERS THE CITY'S ABILITY TO ISSUE BUILDING PERMITS ON THIS PROPERTY. APPROVAL OF THIS PLAT SHALL NOT BE DEEMED TO PROVIDE ANY VESTED RIGHTS, EXCEPT AS TO THOSE MATTERS DEPICTED HEREON, THAT ARE CONSISTENT WITH THE REQUIREMENTS OF CHAPTER 177, FLORIDA STATUTES, OR WERE REQUIRED BY THE CITY OF ORLANDO AS A CONDITION OF PLATTING.



SHEET 1 OF 2

PLAT  
BOOK

92

PAGE 19

## CREATIVE VILLAGE A REPLAT

## DEDICATION

KNOWN ALL MEN BY THESE PRESENTS that the Municipal Corporation named below, being the owner in fee simple of the lands described in the foregoing caption to this plat, hereby dedicates said lands and plot for the uses and purposes therein expressed and hereby dedicates Tracts A, B and C (Right-of-way dedication), for the perpetual use of the public.

IN WITNESS WHEREOF, has caused these presents to be signed by the officers named below on:  
CITY OF ORLANDO, ORANGE COUNTY, FLORIDA.

By: Laurie Butts Laurie Butts  
Printed Name Real Estate Mgr.

Attest:  
By: Denise Aldridge Denise Aldridge  
Printed Name

Signed in the presence of:

By: John Freeman John Freeman  
Printed Name  
By: Todd McNeary Todd McNeary  
Printed Name

STATE OF FLORIDA COUNTY OF ORANGE

THIS IS TO CERTIFY, that on April 24th 2017, before me, an officer duly authorized to take oaths in the State and County aforesaid, personally appeared LAURIE BUTTS, to me and did not take an oath that they are the person described in and who executed the foregoing dedication and severally acknowledged the execution thereof to be their free act and deed as such official thereto duly authorized and that said dedication is the act and deed of said entity.

IN WITNESS WHEREOF, I have hereto set my hand and seal on the above date.

NOTARY PUBLIC

My Commission Expires 11/6/2019Printed Name Anne McNeary

### QUALIFICATION STATEMENT OF SURVEYOR AND MAPPER

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, being a professional surveyor and mapper that has prepared the foregoing plat and was made under my direction and supervision and that the plot complies with all of the survey requirements of Chapter 177, Florida Statutes; and that said land is located in the City of Orlando, Orange County, Florida.

Dated: APRIL 21 2017 Signed: David A. White  
DAVID A. WHITE  
REGISTRATION NUMBER LS: 4044  
PEC - SURVEYING AND MAPPING, LLC  
2100 ALAFAYA TRAIL, SUITE 203  
ORLANDO, FLORIDA 32765  
CERTIFICATE OF AUTHORIZATION NO. LB-7808

### CERTIFICATE OF APPROVAL BY MUNICIPALITY

THIS IS TO CERTIFY, that on the 2-13-17 the

Orlando City Council approved the foregoing plat.

Mayor: Jim Gray  
ATTEST: Denise Aldridge City Clerk: Denise Aldridge



### CERTIFICATE OF APPROVAL BY CITY PLANNING OFFICIAL

Examined and Approved: Kevin P. Smith Date: 4-21-17

City Planning Official: Kevin P. Smith

### CERTIFICATE OF APPROVAL BY CITY ENGINEER

Examined and Approved: John Smith Date: 04/21/2017

City Engineer: John Smith

### CERTIFICATE OF REVIEW BY CITY SURVEYOR

Reviewed for conformity to Florida State Statute 177

City Surveyor: Paul D. Smith Date: 4/21/2017

### CERTIFICATE OF COUNTY COMPTROLLER

I HEREBY CERTIFY that the foregoing plat was recorded in the Orange County Official Records on April 24, 2017 as File No. 20170226470 County Comptroller in and for Orange County, Florida

By: P.D. Smith







**ITEM: FFC-2**

**University of Central Florida  
Board of Trustees  
Finance and Facilities Committee**

**SUBJECT:** WUCF TV Channel Sharing Agreement

**DATE:** September 26, 2017

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**PROPOSED COMMITTEE ACTION**

Approve a 30-year channel-sharing agreement between WUCF TV and Good Life Broadcasting, Inc.

**BACKGROUND INFORMATION**

In 2012, UCF paid \$3.3 million to WMFE to acquire its non-commercial television broadcast license. With that license, WUCF TV broadcasts PBS and four additional channels to nearly four million regional viewers.

Good Life Broadcasting, Inc., a Florida not-for-profit organization, broadcasts Christian-based content on its own local TV channel. Good Life recently sold its broadcast license and wants WUCF TV to use a portion of its broadcast spectrum to continue the Good Life channel.

WUCF TV can accommodate the additional channel and retain enough capacity to provide the station future flexibility. The agreement also preserves WUCF TV's ability to participate in a future broadcast spectrum auction, should one occur.

This agreement — much like when the university hosts outside events and speakers — is not an endorsement of content. The new channel will air under its own name and brand and will not contain any reference to UCF or WUCF TV. The contract is a lease agreement for a portion of WUCF TV's broadcast spectrum.

WUCF TV will receive \$4.25 million for the agreement, payable within the first six months. Additionally, Good Life Broadcasting, Inc., will pay WUCF TV 25 percent of annual broadcast operating costs for the life of the agreement, a conservatively estimated commitment of more than \$1 million.

If approved by the UCF Board of Trustees, the agreement is also subject to approval by the Federal Communications Commission.

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**Supporting documentation:** Attachment A: Contract with Good Life Broadcasting, Inc.

**Prepared by:** Grant J. Heston, Vice President for Communications and Marketing

**Submitted by:** Grant J. Heston, Vice President for Communications and Marketing

Attachment A

CHANNEL SHARING AGREEMENT

THIS CHANNEL SHARING AGREEMENT (this “**Agreement**”) is made as of September 27, 2017 (“**Effective Date**”) by and between the University of Central Florida Board of Trustees (“**Sharer**”) and Good Life Broadcasting, Inc., a Florida not-for-profit corporation (“**Sharee**”). Capitalized terms shall have the meanings in this Agreement.

WHEREAS, Sharer is licensee of noncommercial educational television station WUCF-TV (Facility ID 12855), currently licensed by the Federal Communications Commission (the “**FCC**”) to operate on Channel 23 (“**WUCF Pre-Transition Channel**”) at Orlando, Florida, but reassigned in the *Auction 1000 Closing and Channel Reassignment Public Notice* released by the FCC on April 13, 2017 (“**CCRPN**”) to Channel 34 (“**WUCF Post-Transition Channel**”) in the repacking process associated with the broadcast television spectrum auction conducted pursuant to Section 6403 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403, 126 Stat. 156, 225-30 (the “**Incentive Auction**”);

WHEREAS, Sharee is licensee of television station WTGL (Facility ID 9881), currently licensed by the FCC to operate on Channel 46 (“**WTGL Channel**”) at Leesburg, Florida, but subject of a winning channel relinquishment bid in the Incentive Auction as announced in the CCRPN, and Sharee will be required to cease operating on the WTGL Channel in accordance with the *Post-Incentive Auction Broadcast Transition Public Notice* released by the FCC on January 27, 2017 (“**Transition Public Notice**”); and

WHEREAS, Sharer and Sharee desire to enter into an agreement to share the WUCF broadcast channel (the “**Shared Channel**”) in accordance with all existing and future FCC rules and published policies governing channel sharing agreements (“**Channel Sharing Rules**”). The parties acknowledge and agree that the Shared Channel shall initially be the WUCF Pre-Transition Channel, but shall be transitioned following the commencement of channel sharing to the WUCF Post-Transition Channel.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Term. Unless earlier terminated in accordance with this Agreement, the term of this agreement (“**Term**”) shall begin on the Effective Date and shall continue for thirty (30) years following the date on which Sharee, or any authorized vendor or other representative of Sharee acting on its behalf, first enters into possession or otherwise occupies, pursuant to the terms and conditions set forth in this Agreement, any space on, or in, the WUCF Master Control Site or Transmitter Site, delivers any Sharee communications equipment to the WUCF Master Control Site or Transmitter Site for installation, or Sharee’s use, in connection with this Agreement, or connects any Sharee communications equipment to the WUCF Master Control Site, Transmitter Site or Transmission Facility (such date being the “**Agreement Commencement Date**”). To avoid any uncertainty, upon Sharer’s reasonable conclusion that Sharee has taken an action above that establishes the Agreement Commencement Date, Sharer, in accordance with the notice provisions herein, shall provide written notice of the Agreement Commencement Date to Sharee.

2. FCC Filings and Required Notifications. Pursuant to the requirements of the Channel Sharing Rules and the Transition Public Notice, the parties shall each timely file the following FCC

filings and required notifications, as well as such other filings and notifications that may be required by the circumstances and the Channel Sharing Rules, the Transition Public Notice or other FCC rules, policies and directives throughout the Term of this Agreement to maintain their licenses in good standing, implement facility modifications for the shared channel and otherwise implement the channel sharing arrangement contemplated by this Agreement. In connection with all such filings and notifications, Sharer and Sharee shall provide to the other, or submit to the FCC, all certifications or other information required of a Sharer or Sharee under the Channel Sharing Rules or other FCC rules, policies and directives, and shall furnish the other with such information and assistance as the other may reasonably request in connection therewith. The parties shall cooperate in good faith with respect to FCC filings and required notifications, and each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to the FCC filings and required notifications. Each party shall also promptly notify and provide a copy to the other of all documents filed with or received from the FCC with respect to this Agreement or the transactions contemplated hereby. Neither party shall take any action that would reasonably be expected to result in the dismissal of any FCC application without the prior written approval of the other party.

(a) Sharer CP Application and Construction Permit. Sharer has timely filed an application (FCC File No. 0000027156) and has been granted a construction permit for the WUCF Post-Transition Channel specifying a construction deadline of January 17, 2020, and Sharer shall hereafter file and prosecute such Sharer CP modification applications and/or amendments, special temporary authorizations, waiver requests, extensions of time as appropriate to obtain and maintain authorization to modify WUCF's facilities to the WUCF Post-Transition Channel.

(b) Sharee CP Application. No later than November 24, 2017 (one hundred twenty (120) days following the official date of Sharee's receipt of Incentive Auction proceeds), Sharee shall timely file and thereafter diligently prosecute an application ("**Sharee CP Application**") for a construction permit to operate on the WUCF Pre-Transition Channel on a shared basis with Sharer.

(b) Sharee Notice to Viewers. No later than thirty (30) days prior to Sharee's discontinuance of operations on the WTGL Channel, Sharee shall air FCC-required notifications alerting Sharee's viewers of the termination of operations on the WTGL Channel.

(c) Sharee and Sharer Notices to MVPDs. No later than thirty (30) days prior to Sharee's discontinuance of operations on the WTGL Channel, Sharee shall each provide FCC-required notices to MVPDs that no longer will be required to carry WGTL, or that currently carry and will continue to be obligated to carry WGTL, or that will become obligated to carry WGTL, and Sharer shall provide FCC-required notices to MVPDs that continue to be obligated to carry WUCF.

(d) Sharee Suspension Notice. No later than two (2) days prior to Sharee's discontinuance of operations on the WTGL Channel, Sharee shall file a Suspension of Operations Notification with the FCC.

(e) License Applications. No later than ten (10) days following the commencement of operation of the Shared Channel on program test authority, Sharer and Sharee shall each file and thereafter diligently prosecute applications for licenses for shared operations on the WUCF Pre-Transition Channel.

(f) Sharee Second CP Application. No later than sixty (60) days prior to Sharer's deadline for construction of the transmission facilities for the WUCF Post-Transition Channel, and at

such earlier time as appropriate in light of Sharer's schedule for testing and commencement of program testing on the WUCF Post-Transition Channel, Sharee shall file and thereafter diligently prosecute an application for a construction permit to operate on the WUCF Post-Transition Channel.

(g) Sharer and Sharee Notices to Viewers. No later than thirty (30) days prior to Sharer's and Sharee's transitioning to the WUCF Post-Transition Channel, Sharer and Sharee shall each air FCC-required notifications alerting its viewers of such transition.

(h) Sharer and Sharee Notices to MVPDs. No later than thirty (30) days prior to Sharer's and Sharee's transitioning to the WUCF Post-Transition Channel, Sharer and Sharee shall each provide FCC-required notices to MVPDs that currently are required to carry its station and will continue to be obligated to carry its station.

(i) Second License Applications. No later than ten (10) days following the commencement of operations under program test authority for the WUCF Post-Transition Channel, Sharer and Sharee shall each file and thereafter diligently prosecute applications for licenses on the WUCF Post-Transition Channel.

### 3. Commitment to Channel Share/Allocation of Bandwidth.

(a) Generally. Pursuant to the Channel Sharing Rules and no later than three (3) business days following the last to occur of the FCC's grant of the Sharee CP Application and the Sharee's discontinuance of operations on the WTGL Channel, Sharer shall be entitled to transmit its television broadcast content over the Shared Channel. Sharer and Sharee shall share the capacity of the Shared Channel (or 19.39 Megabits per second ("**Mbps**") of capacity as allocated under the current ATSC 1.0 standard) in the manner set forth in this Agreement, which may be modified from time to time by mutual written agreement of the parties but which, at a minimum throughout the Term, shall result in (i) each of the Sharer and Sharee having spectrum usage rights hereunder that are adequate to ensure a sufficient amount of the Shared Channel capacity to allow it to broadcast at least one (1) High Definition ("**HD**") program stream at all times; and (ii) for Corporation for Public Broadcasting ("**CPB**") compliance purposes, Sharer having the right to use at least one-half of the total capacity of the Shared Channel.

(b) Capacity Allocation. Subject to Section 3(a) above, Sharer shall be entitled to an undivided seventy-five percent (75%) of the capacity of the Shared Channel (e.g., 14.543 Mb/s under the current ATSC 1.0 standard) and Sharee shall be entitled to an undivided twenty-five percent (25%) of the capacity of the Shared Channel (e.g., 4.847 Mb/s under the current ATSC 1.0 standard) for their respective broadcast services (in each case, a party's "**Allocated Bandwidth**"). Sharer and Sharee shall allocate the requisite amount of bits of the Shared Channel for the common Program and System Information Protocol ("**PSIP**") information necessary to provide the required tuning and guide information such that: (i) the bits devoted to the common requirements will be deducted proportionally from each party's bit allowance; (ii) the parties shall mutually agree to the minimum number of days of Event Information Table ("**EIT**") information to be provided; and (iii) the parties acknowledge that a number of null packets may be required for television receivers to respond properly (and the amount of required null packets shall be deducted proportionally from each party's bit allowance), and the parties shall cooperate to ensure proper reception and decoding of the signal. Subject to Section 3(a) above, each of Sharer and Sharee may elect, but is not required to elect, to make a portion of its Allocated Bandwidth on the Shared Channel available to the other party for use under mutually agreed upon terms.

(c) Statistical Multiplexing and Other Technologies. Subject to Section 3(a), and notwithstanding anything to the contrary in this Agreement, the parties agree to employ statistical multiplexing (“**Stat Mux**”), signal compression, and other dynamic spectrum usage technologies and arrangements in order to increase carriage capacity, improve picture quality and ensure that Sharer and Sharee can utilize greater capacity as required by periodic content demands for certain high-bandwidth programming.

(d) Use of Shared Capacity. Each of Sharer and Sharee shall have the right to use its Allocated Bandwidth on the Shared Channel in any way it sees fit, in accordance with this Agreement (subject to compliance with the Channel Sharing Rules and with the Communications Act of 1934, as amended, and the rules, regulations and written policies of the FCC and all other applicable laws); provided, however, until the conversion to ATSC 3.0 as contemplated in Section 4, below, Sharee’s Allocated Bandwidth shall be used only for transmission of a single HD signal. Each of Sharer and Sharee shall be responsible, at its sole expense, for providing its station’s programming, in a broadcast-ready final format, to Sharer’s Master Control Site. Throughout the Term hereof, the Sharer shall transmit the Sharee’s broadcast content using the Shared Equipment. Except as provided herein, Sharer shall not alter the Sharee’s broadcast content; provided, however that Sharer may: (i) encode, compress or modulate the Sharee’s broadcast content to the extent required in order to multiplex Sharer and Sharee broadcast content streams using the parameters set forth in this Agreement and (ii) combine the EIT and other information into a common PSIP format for transmission as set forth in this Agreement.

(e) Encoding. Initially, Sharer and Sharee shall have separate encoding facilities and utilize a single combiner at Sharer’s Master Control Site to combine their respective programming streams for transmission. The ordinary and reasonable business cost of acquiring and installing the combiner shall be borne by Sharee. Following the conversion to ATSC 3.0, Sharer and Sharee shall utilize a single encoding pool located at Sharer’s Master Control Site. Each of Sharer and Sharee shall have the right to monitor and audit the Shared Channel’s encoding system(s) in order to ensure compliance with this Section 3. Each of Sharer and Sharee shall make all records of such encoding available to the other upon written request during normal business hours.

(f) Sharee Signal Delivery. Sharee will be responsible for, and bear all costs associated with, the delivery of its broadcast signal, in a mutually agreeable format, to Sharer’s Master Control Site. In the event that Sharee seeks to deliver its signal by microwave, such costs shall include structural and engineering analyses of the STL tower located at the Master Control Site, and any work on the STL tower necessary to add the microwave antenna.

#### 4. ATSC 3.0 and Other New Transmission Technologies.

(a) Generally. The parties acknowledge that new transmission technologies may become available for use during the Term of this Agreement. Subject to Section 4(b) below, Sharer shall have the right to determine whether, and at what time, to adopt or deploy new transmission technologies for the Shared Channel, but prior to any such deployment, Sharer shall (i) give written notice of each deployment plan associated with such new transmission technology (in each instance, a “Technology Implementation Notice”) to Sharee, which Technology Implementation Notice shall, in each instance, (1) reasonably inform the Sharee of the material benefits that each of the parties can reasonably expect to receive as a result of the implementation of such new transmission technology, the proposed date of implementation (in each instance, the “Implementation Date”) of such new transmission technology, a good faith estimate of the costs associated with the Sharer’s implementation of such new transmission technology, and whether such implementation will result in any service outage to the Sharee’s Channel,

and (2) be received by the Sharee sufficiently far enough prior to the Implementation Date in order to provide the Sharee with a reasonable amount of time to study such deployment plan and (ii) consult with Sharee, in good faith, with respect to each deployment plan. The Sharee shall sixty (60) days from its receipt of a Technology Implementation Notice within which to notify the Sharer, in writing (in each instance, a “New Technology Participation Notice”) as to whether or not the Sharee will participate in the new transmission technology identified in the applicable Technology Implementation Notice. In the event that the Sharee shall fail to deliver a timely New Technology Participation Notice, it shall be deemed to have declined to participate in the implementation of the new transmission technology identified in the applicable Technology Implementation Notice. Notwithstanding any language set forth in this subsection (a) to the contrary, the Sharee may not decline to participate in the implementation of ATSC 3.0 technology as provided for in subsection (b) below. The parties agree that they shall otherwise cooperate in good faith to develop, adopt, implement and deploy new transmission technologies and upgrades consistent with industry standards, and CPB and PBS requirements, provided that such development, adoption, implementation or deployment does not materially or adversely affect the other party’s broadcast service in existence at such time.

(b) ATSC 3.0. Specifically, with respect to ATSC 3.0, the parties agree that the Shared Channel shall be converted to ATSC 3.0 as of the commencement of broadcasting on the WUCF Post-Transition Channel, so long as the implementation of such conversion complies with applicable FCC rules and generally accepted industry standards.

(c) Upgrade Costs and Capabilities. Sharer shall timely undertake, and perform, any and all activities that are required in order to accomplish transmission system upgrades and new transmission technologies, including ATSC 3.0, Provided that the Sharee, has elected to participate in such system upgrades or new transmission technologies in a timely New Technology Participation Notice or the upgrade is to ATSC 3.0 technology, then the parties shall be responsible for the costs of such upgrades and new technologies as specified in Section 7(c), below. Following such upgrades or the implementation of such technologies, the parties shall share the benefits created by such upgrades or technologies in proportion to their Allocated Bandwidth.

## 5. FCC Compliance and Other Rights and Obligations.

(a) FCC Documents. Each party shall notify the other party of all documents filed with or received from the FCC with respect to this Agreement or the transactions contemplated hereby, and shall provide the other party with copies of such documents.

(b) Authorizations and Applications. Each of Sharer and Sharee shall maintain all FCC and any other governmental licenses, approvals and authorizations necessary for its operations on its respective television station in full force and effect during the Term. Neither party shall make any filing with the FCC to modify the Shared Channel without the prior written consent of the other party, such consent not to be conditioned, withheld or delayed unreasonably or in any manner inconsistent with this Agreement.

(c) Compliance with Law. Sharer shall comply with this Agreement, the Channel Sharing Rules, and with all FCC and other applicable laws with respect to its ownership and operation of Sharer’s Station and its use of the Shared Channel, and Sharee shall comply with this Agreement, the Channel Sharing Rules, and with all FCC and other applicable laws with respect to its ownership and operation of Sharee’s Station and its use of the Shared Channel. Sharer shall be solely responsible for all content it transmits on the Shared Channel, and Sharee shall be solely responsible for all content it



causes to be transmitted on the Shared Channel. The parties' performance of their respective duties and obligations under this Agreement are subject to the rules, regulations and policies of the FCC and all other applicable laws. In addition, Sharer and Sharee, in connection with their shared use of the Transmission Facilities (as defined below), shall comply with all laws and governmental licenses, if any, applicable thereto and with the duties and obligations of the tenant/lessee under any lease applicable to any of the Transmission Facilities (the "**Transmission Facility Agreements**") provided however, that the Sharee shall not, by virtue of the foregoing, be deemed to have assumed any liability to any landlord/lessor under any Transmission Facility Agreement. Sharer has provided Sharee with true and correct copies of all Transmission Facility Agreements in effect as of the date of this Agreement. Sharer covenants with, and for the benefit of the Sharee, that, following the Effective Date hereof, it will not (i) enter into any modification of a Transmission Facility Agreement, or (ii) enter into a new Transmission Facility Agreement without, in each instance, having received the prior written consent of the Sharee which consent shall not be unreasonably withheld, conditioned or delayed and that it shall promptly provide Sharee with copies of all modified and new Transmission Facility Agreements entered into during the Term.

(d) Control. Consistent with FCC rules, Sharer shall control, supervise and direct the day-to-day operation of Sharer's Station (including Sharer's employees, programming and finances, as well as the Transmission Facilities of the Shared Channel), and Sharee shall control, supervise and direct the day-to-day operation of Sharee's Station (including Sharee's employees, programming and finances), and nothing in this Agreement shall be deemed to affect either party's respective obligations with regard to licensee control. Neither Sharer nor Sharee shall hold itself out as the licensee of the other's television station using the Shared Channel, and nothing in this Agreement shall give either party an ownership interest in the other party's television station. Neither Sharer nor Sharee shall use the call letters of the other party's television station in a false or misleading manner, or in a manner suggesting common ownership, control or association.

(e) FCC Fees. The parties acknowledge that Sharer and Sharer's Station are exempt from FCC fees as of the date of this Agreement. Each of Sharer and Sharee shall be responsible for timely payment of all fees owed by it to the FCC, if any, with respect to the operation of its television station on Shared Channel. Sharer shall be responsible for seventy-five (75%) percent and Sharee shall be responsible for twenty-five percent (25%) (as to each, it's "**Pro-Rata Share**") of the joint fees, if any, assessed by the FCC on the Shared Channel, provided that Sharer is not exempt from such joint fees. For purposes of clarity, joint fees shall include only those fees directly imposed on the Shared Channel and for which Sharer cannot claim noncommercial exemption, and shall not include any fees assessed by the FCC against either party or party's station on a separate and individual basis. If Sharer pays Sharee's Pro-Rata-Share of the joint fees imposed on the Shared Channel, Sharee shall reimburse Sharer, for the amount so paid up to the Sharee's Pro-Rata-Share, within forty-five(45) days after the date of the invoice for the same.

(f) Cooperation. Each of Sharer and Sharee shall cooperate with one another in good faith as to any reasonable requests made by the other with respect to operation of the Shared Channel or the Transmission Facilities. Neither Sharer nor Sharee shall take any action, or fail to take any action, which interferes, or is reasonably likely to interfere, with the other party's use of capacity on the Shared Channel or the Transmission Facilities.

(g) Carriage Rights. Sharer shall be solely responsible for exercising must-carry rights for Sharer's Station or any other right of distribution. Sharee shall be solely responsible for exercising must-carry and retransmission consent rights for Sharee's Station or any other right of

distribution. Neither Sharer nor Sharee shall have any use, claim, or benefit of, or derive any carriage rights under or have any obligation under any carriage agreement of the other party.

6. Facilities for Shared Channel

(a) Definitions. For the purposes of this Agreement, “**Transmitter Site**” means the land and tower assets leased or owned by Sharer located at 4498 TV Tower Road, Christmas, FL 32709. “**Master Control Site**” means Sharer’s building and equipment managed by Digital Convergence Alliance, 1300 North Boulevard, Tampa, FL 33607.

“**Transmission Facilities**” means the Master Control Site, Transmitter Site and the Shared Equipment used to generate television signals and broadcast on the Shared Channel.

(b) Shared Equipment; Operational Responsibility. Sharer shall, at its expense, purchase, provide, own and hold title to the transmitter and other equipment necessary for channel sharing hereunder and for the simultaneous encoding (following the implementation of ATSC 3.0) and transmission of content streams on the Shared Channel that will be used by Sharer and Sharee in the operation of their respective television stations broadcasting on the Shared Channel (“**Shared Equipment**”). During the Term, Sharer shall (i) maintain, operate and repair the Transmission Facilities and Shared Equipment in accordance with good engineering practices customary in the television industry and shall keep Sharee informed as to all material repairs to such facilities; (ii) make timely utility payments for the operation of the Transmission Facilities; (iii) maintain the insurance specified in Section 6(i); (iv) faithfully perform all of its duties and obligations under each of the Transmission Facilities Agreements; (v) keep and maintain, in full force and effect, its ownership and leasehold rights and interests, as the case may be, in and to the Transmission Facilities and Shared Equipment (or functionally equivalent replacements thereto); (vi) comply with all laws applicable to the operation of the Transmission Facilities, the Shared Equipment and the Shared Channel; (vii) oversee, administer and manage, in accordance with best practices customary in the television industry, the day to day technical aspects of the Transmission Facilities the Shared Equipment and the Shared Channel; and (viii) provide television broadcast engineering services required for the operation of the Transmission Facilities in accordance with the terms and conditions set forth in this Agreement and good engineering practices customary in the television industry (the “**Sharer Operational Duties**”). The ordinary and reasonable costs and expenses incurred by Sharer in connection with its performance of Sharer Operational Duties are referred to as “**Shared Operations Expenses.**”

(c) Access to Transmission Facilities. Sharee personnel shall be entitled to access to the Master Control Site, Transmitter Site, Transmission Facilities, Shared Equipment and Dedicated Sharee Equipment located at the Master Control Site at all times during the Term. Neither party shall permit to exist any lien, claim or encumbrance on the Transmission Facilities or the Shared Equipment, or make material alterations to the Transmission Facilities or Shared Equipment that have a material adverse effect on the operation of the Shared Channel, except with mutual written consent, or interfere with the business and operation of the other party’s television station or use of the Transmission Facilities, the Shared Equipment, or the Shared Channel. Each of Sharer and Sharee shall comply in all material respects with all federal, state and local laws applicable to its operations from the Transmission Facilities.

(d) Modifications to Implement Channel Sharing. The parties shall mutually agree upon and implement modifications to the Transmission Facilities, in order to accommodate the insertion of multiple program streams on the Shared Channel. The parties have agreed that Sharer will purchase

a new combining system (described in Schedule A hereto) as part of the Shared Equipment at a cost not to exceed \$\_35,000.00, and that Sharee shall, as an inducement to Sharer entering into this Agreement, pay Sharer for such cost within forty-five (45) days of the date of Sharer's invoice therefor.

(e) Exclusive Equipment. Each of Sharer and Sharee shall provide, install, maintain, repair and replace any equipment owned solely by it that is not Shared Equipment but is located at the Master Control Site, and/or Transmitter Site, including, for Sharee, all equipment dedicated to the sole use of Sharee ("**Dedicated Sharee Equipment**"), in accordance with good engineering practices customary in the broadcasting industry. Title to all such equipment solely owned by Sharer or Sharee shall remain with such party, and the other party shall not move, repair, damage or interfere with any such equipment.

(f) Contractors. All contractors and subcontractors of each of Sharer and Sharee who perform any service for such party at or on the Master Control Site, Transmitter Site or any other Transmission Facilities shall hold licenses or governmental authorizations appropriate to and necessary for the work being performed. Any such contractor shall carry insurance issued by companies licensed in the state where the Master Control Site, Transmitter Site or such other Transmission Facility is located.

(g) Hazardous Materials. Each of Sharer and Sharee shall (i) comply in all material respects with all environmental laws applicable to its operations from the Master Control Site, Transmitter Site and any other Transmission Facilities, (ii) not cause or knowingly and intentionally permit the release of any hazardous materials on, to or from the Master Control Site, Transmitter Site or any other Transmission Facilities in violation of any applicable environmental laws, (iii) not take any action that, if otherwise taken, would subject the Master Control Site, Transmitter Site or any other Transmission Facilities to new or additional permit requirements for storage, treatment or disposal of hazardous materials, and (iv) not dispose of hazardous materials on the Master Control Site, Transmitter Site or any other Transmission Facilities except in compliance with applicable law.

(h) Termination. Within thirty (30) days after the end of the Term (or upon any earlier termination of this Agreement), Sharee shall vacate the Master Control Site, Transmitter Site and any other Transmission Facilities and remove all of its Dedicated Sharee Equipment and return all keys and other means of entry to Sharer.

(i) Insurance.

(i) Sharer's Insurance. Sharer, at its own expense, shall maintain insurance covering the Transmission Facilities and Shared Equipment at a customary level and in accordance with past practice which shall include, but not be limited to, general liability and comprehensive errors and omissions insurance (including coverage for libel/slander, invasion of privacy, copyright, trademark and service mark infringement, and violations of rights of privacy and publicity) covering production and broadcast of its television programming. All such insurance policies shall contain a standard loss payable clause and shall be endorsed to provide, with respect to the interests of Sharee, that (a) Sharer's general liability insurance policy shall include Sharee and its officers and directors as additional insureds for the acts and omissions of Sharer, and (b) 30 days' prior written notice of any cancellation or reduction of coverage or limit shall be given to Sharee.

(ii) Sharee's Insurance. Sharee, at its own expense, shall maintain insurance covering its access to and work on the Transmission Facilities and its Dedicated Sharee Equipment at a

customary level and in accordance with past practice. Without limiting the foregoing, Sharee shall maintain general liability and comprehensive errors and omissions insurance (including coverage for libel/slander, invasion of privacy, copyright, trademark and service mark infringement, and violations of rights of privacy and publicity) covering production and broadcast of its television programming. All such insurance policies shall contain a standard loss payable clause and shall be endorsed to provide that, with respect to the interests of Sharer, that (a) Sharee's general liability and errors and omissions insurance policies shall include Sharer and its officers and directors as additional insureds for the acts and omissions of Sharee, and (b) 30 days' prior written notice of any cancellation or reduction of coverage or limit shall be given to Sharer.

(j) Interference. Sharer shall be responsible for operating the Transmission Facilities in accordance with all applicable laws and regulations. The parties shall use commercially reasonable efforts to avoid interference between their respective operations and shall promptly resolve any interference that arises in connection with such operation. Neither Sharee nor Sharer shall modify their respective operations in any manner that could be reasonably expected to interfere with, or otherwise impair, the other party's broadcast operations or the video quality of end-user viewers in such a way that would be perceptible to the average viewer. In the event interference to such signals or operations does occur, the party experiencing interference shall notify the other party in writing and both parties shall take all commercially reasonable steps to correct such interference in all material respects within two (2) business days. Neither party shall have the right to alter the Transmission Facilities or Shared Equipment in such a way that would materially alter Sharer's Station's or Sharee's Station's coverage areas without the other party's prior written consent.

(k) Cooperation. In the event it is necessary for Sharer to reduce, limit or temporarily cease shared operations of the Shared Channel, the Shared Equipment or its own equipment or any other Transmission Facilities so that Sharer or Sharee may install, maintain, repair, remove or otherwise work upon its broadcast equipment or the Shared Equipment at the Master Control Site, Transmitter Site or any other Transmission Facilities, the parties shall cooperate in a commercially reasonable manner. Sharer may temporarily reduce, limit or cease use of the Shared Equipment, the Shared Channel or its own equipment located at the Master Control, Transmitter Site or any other Transmission Facilities; provided that Sharer takes all reasonable steps to minimize the amount of time the Shared Channel shall cease operations or operate with reduced facilities and that Sharer shall take all reasonable steps to schedule such installation, maintenance, repairs, removal or work at a time convenient to the parties. Except as may be required in the event of an emergency, neither party shall have the right to temporarily reduce or suspend the broadcast service of the other party without the prior consent of such other party (which consent shall not be unreasonably conditioned, withheld or delayed) if such temporary reduction or suspension requires prior approval of the FCC.

(l) Technical Failures. In the event that the Transmission Facilities suffer a failure, such that the Transmission Facilities must temporarily cease broadcasting or operate at reduced power levels, Sharer shall promptly notify Sharee and use commercially reasonable efforts, consistent with good engineering practices customary in the television industry, to repair the Transmission Facilities to return the Shared Channel as quickly as practicable to operations at its full authorized power. Sharer shall not have any liability to Sharee for loss of revenue or other damages resulting from any work under Section 6(k) or technical failure under this Section 6(l).

(m) Force Majeure. Neither party shall be liable to the other for any default or delay in the performance of its non-monetary obligations under this Agreement to the extent that the default

or delay is caused by an event outside of its reasonable control, including a fire, flood, earthquake, war, act of terrorism, labor dispute, government or court action, failure of facilities or act of God.

7. Payments and Costs

(a) Sharing Fees. In consideration of Sharee's right to receive its Allocated Bandwidth and to otherwise share capacity on the Shared Channel with Sharer throughout the Term, Sharee shall pay the sum of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) (the "**Monetary Compensation**") to the Sharer in accordance with the following terms and conditions:

(i) The Sharee shall pay One Million (\$1,000,000.00) Dollars of the Monetary Consideration (the "**First Monetary Consideration Payment**") to the Sharer, or its 501(c)(3) qualified foundational designee (the "**Sharer Foundation**") on the date that is the third business day following the date of the FCC's issuance of a public notice reflecting the grant of the Sharee CP Application; and

(ii) The Sharee shall, subject to the terms and conditions set forth in this Agreement, pay the remaining Three Million Two Hundred Fifty Thousand Dollars (\$3,250,000.00) Dollars of the Monetary Consideration (the "**Second Monetary Consideration Payment**") to the Sharer, or the Sharer Foundation, on the date, if ever, that is the third business day following the sixth (6<sup>th</sup>) monthly anniversary of the Agreement Commencement Date.

(b) Repacking Costs. Unless otherwise agreed by the parties, any costs incurred by Sharee associated with the repacking process, including the installation or modification of any Dedicated Sharee Equipment, will be borne by Sharee.

(c) Capital Costs. In the event that Sharer reasonably determines that any of the Transmission Facilities requires replacement in the ordinary course of business, or Sharer incurs costs related to new transmission technologies or upgrades that have been agreed to by the parties as provided for in Section 4, or costs associated with repair or replacement as a result of the loss of, or damage occurring to, any of the Transmission Facilities that are not covered by the Sharer's insurance (collectively, "**Capital Costs**"), which costs are not the result of the wrongful act or neglect of either of the parties, Sharer and Sharee shall share such Capital Costs, unless such costs are covered by insurance or as otherwise mutually agreed by Sharee and Sharer in writing. Sharee shall reimburse Sharer, within forty five (45) days after date of the invoice documenting such Capital Costs, for its Pro-Rata Share (25%) of such Capital Costs. In the event of the loss of, or damage occurring to, any of the Transmission Facilities or Shared Equipment that is the result of the wrongful act or neglect of either of the parties, then the party at fault shall be solely responsible for all costs necessary to remedy such loss or damage.

(d) Shared Operations Expenses. Beginning on the date on which Sharer first transmits its broadcast content on the Shared Channel, Sharer shall, on a monthly basis, invoice Sharee for its Pro-Rata Share of the Shared Operations Expenses and, in conjunction with each such invoice, deliver an accounting, including commercially reasonable back-up documentation, of each of such Shared Operations Expenses set forth on such invoice to the Sharee.

(e) Payment Terms. Sharer's invoices to Sharee for all amounts due and owing under this Agreement shall be issued on a monthly basis in arrears. All payments hereunder shall be made by check or wire transfer to an account designated by Sharer from time to time and shall be due and payment shall be received by Sharer within forty-five (45) days of the date of Sharer's invoice.

(f) Invoice Disputes. In the event that Sharee desires to dispute an invoice from the Sharer hereunder, it shall provide written notice to Sharer within thirty (30) days of the date of Sharer's invoice, which notice shall include an explanation of the basis of the dispute in reasonable detail. Sharee, in good faith, may withhold payment of the amount(s) set forth therein that is/are under dispute pending resolution of the dispute but, nevertheless, must pay the non-disputed portion of the invoice when due. Sharee's payment of a disputed amount in an invoice shall deprive it of its right to dispute such amount within the 30-day dispute period referenced above. Sharer shall promptly investigate Sharee's claim with a view toward resolving the dispute within thirty (30) days of its receipt of a notice of dispute from Sharee. Following an investigation, in which the parties shall cooperate with each other, Sharer may, in good faith, reject Sharee's claim, in whole or in part, however, in any event, Sharer shall promptly notify Sharee, in writing, of its decision on the dispute, including therein the reason for its action, and Sharee shall then make timely payment of such portion of the disputed invoice that has been determined by Sharer to be correct. If the dispute is not resolved to Sharee's satisfaction, the parties may further address the dispute pursuant to Section 12.

(g) Sole Costs. Each of Sharer and Sharee shall be solely responsible for its own insurance costs for the Transmission Facilities and Shared Equipment, its own costs for any necessary fiber or microwave link between its station's studio site and the Master Control Site, any capital expenses related solely to its own television station's use of the Shared Channel, all expenses related to any equipment solely owned by it and located at the Master Control Site and/or Transmitter Site, and all of its own expenses not directly related to the Transmission Facilities.

8. Representations and Warranties. Each party hereto represents and warrants to the other party hereto that, as of the Effective Date: (a) it is duly organized and validly existing under the laws of its jurisdiction of formation; (b) it has full power and authority and has taken all corporate action necessary to enter into and perform this Agreement and to consummate the transactions contemplated hereby; (c) the execution, delivery and performance by it of its obligations hereunder will not constitute a breach of, or conflict with, any other material agreement or arrangement, whether written or oral, by which it is bound; (d) this Agreement is its legal, valid and binding obligation, enforceable in accordance with the terms and conditions hereof; (e) it has obtained all material licenses, approvals and authorizations of the FCC and any other governmental agency necessary for its operations on its television station; and (f) its ownership and operation of its station complies with the FCC rules, regulations and published policies and applicable laws in all material respects.

9. Indemnification.

(a) General Indemnification. To the extent permitted by applicable law and subject to the limitations set forth herein, each of Sharer and Sharee shall indemnify, defend and hold the other harmless from and against, and compensate and reimburse the other for, any and all loss, liability, cost and expense, including reasonable attorneys' fees ("**Losses**") arising from any Third Party Claim relating to (i) any breach of or default under any representation, warranty, covenant or other term of this Agreement by the indemnifying party; or (ii) any violation of applicable law or regulation by the indemnifying party.

(b) Specific Indemnification. Without limiting the terms of Section 9(a), Sharee shall indemnify, defend and hold Sharer harmless from and against, and compensate and reimburse Sharer for, any and all Losses arising from any Third Party Claim relating to the termination by Sharee of its current transmitter site lease(s). To the extent permitted by applicable law and subject to the limitations set forth herein, Sharer shall indemnify, defend and hold Sharee harmless from and against, and

compensate and reimburse Sharee for, any and all Losses arising from any Third Party Claim relating to Sharer's ownership or operation of the Transmission Facilities, including Sharer's obligations under any leases for the Transmitter Site and any Transmission Facility Agreement.

(c) Programming Indemnification. Without limiting the terms of Sections 9(a) or 9(b), to the extent permitted by applicable law, each of Sharer and Sharee shall indemnify, defend and hold the other harmless from and against, and compensate and reimburse the other for, any and all Losses arising from any Third Party Claim relating to the operation of its television station using the Shared Channel and the programming or advertising broadcast on such station, including for indecency, libel, slander, infringement of trademarks or trade names, infringement of copyrights and proprietary rights, violation of rights of privacy and other violations of rights or FCC rules or other applicable law.

(d) Sovereign Immunity. *Any consideration defined by this Section 9 is not the sole consideration for this Agreement.* Sharer expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes, as amended. Notwithstanding anything set forth in any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or of limits of liability of Sharer beyond any statutory limited waiver of immunity or of limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, *and the cap on the amount and total liability of Sharer for damages, regardless of the number or nature of claims in tort, equity or contract (hereinafter, the "Indemnity Cap")*, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit on any third party for the purpose of allowing any claim against Sharer which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law. Notwithstanding any language set forth in this Section 9 to the contrary, under no circumstances whatsoever, shall the liability of the Sharee to the Sharer for indemnity hereunder in connection with any Third-Party Claim, or Loss, exceed the Indemnity Cap.

(e) Indemnification Procedures. If a party receives notice of a claim that has been made against it (based on Sections 9(a), (b) and/or (c)) by a natural person or business entity that is not a party to this Agreement or an affiliate of a party to this Agreement (in each case, a "Third-Party Claim") and therefore becomes an Indemnified Party under the terms of Sections 9(a), (b) and/or (c), above, then the Indemnified Party shall deliver as promptly as practicable a written notice (a "**Claim Notice**") to the Indemnifying Party, which Claim Notice shall describe such Third-Party Claim in reasonable detail. The failure to provide such Claim Notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except, and only to the extent that, such Indemnifying Party forfeits rights or defenses by reason of such failure or is otherwise materially prejudiced thereby.

(i) The Indemnifying Party shall have the right to participate in or, by giving written notice to the Indemnified Party within thirty (30) days after its receipt of a Claim Notice, to assume the defense of, the Third-Party Claim described in such Claim Notice at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; provided, that in the event that the Indemnifying Party assumes the defense of any Third-Party Claim, then (A) subject to Section 5.3(e), the Indemnifying Party shall have the right to take such action as it deems necessary to avoid, dispute, defend or appeal such Third-Party Claim in the name and on behalf of the Indemnified Party and (B) the Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it as provided in Section 5.3(e)(i). The assumption of the defense of a Third-Party Claim by the Indemnifying Party shall not be construed as an acknowledgment that the Indemnifying Party is liable to indemnify any Indemnified Party in respect of the Third-Party Claim.

(ii) Notwithstanding anything to the contrary contained in this Agreement, the Indemnifying Party shall not be entitled to assume control of the defense of a Third-Party Claim, , if (A) such Third-Party Claim seeks an injunction or equitable relief against the Indemnified Party; (B) the named parties to such Third-Party Claim (including any impleaded parties) include both the Indemnified Party and the Indemnifying Party, and such Indemnified Party has been advised in writing by such counsel that there is one or more legal defenses available to the Indemnified Party which are not available to the Indemnifying Party, or are available to the Indemnifying Party but the assertion of which would be adverse to the interests of the Indemnified Party; or (C) upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to prosecute or defend such Third-Party Claim. Each party hereto shall cooperate with each other in all commercially reasonable respects in connection with the defense of any Third-Party Claim, including making available records relating to such Third-Party Claim.

(f) Settlement of Third-Party Claims.

(i) Any Indemnified Party shall have the right to employ separate counsel and to participate in the defense of any Third-Party Claim, but the fees and expenses of such counsel shall not be at the expense of the Indemnifying Party unless (A) the Indemnifying Party shall have failed, to assume the defense of such Third-Party Claim in accordance with Section 9e; (B) the employment of such counsel has been specifically authorized in writing by the Indemnifying Party; For so long as the Indemnifying Party is reasonably contesting any such Third-Party Claim in good faith, the Indemnified Party shall not pay or settle any such Third-Party Claim.

(ii) If the Indemnifying Party does not notify the Indemnified Party, in writing and within thirty (30) days after the receipt of a Claim Notice with respect to a Third-Party Claim hereunder, that it elects to undertake the defense thereof, or if the Indemnified Party assumes the defense of such Third-Party Claim pursuant to Section 9e, the Indemnified Party shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal, contest, settle or compromise the Third-Party Claim; however, the Indemnified Party shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed)..

(iii) Notwithstanding any other provision hereof, the Indemnifying Party shall not, without the prior written consent of the Indemnified Party, enter into any settlement of a Third-Party Claim that does not include as an unconditional term thereof the giving by the person or entity asserting such Third-Party Claim to all Indemnified Parties of an unconditional release from all liability with respect to such Third-Party Claim.

10. LIMITATIONS OF LIABILITY.

(a) Limitations. EXCEPT AS PROVIDED IN SECTION 10(b), IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, FOR ANY PUNITIVE DAMAGE SUFFERED BY THE OTHER ARISING FROM OR RELATED TO THE PERFORMANCE OR NONPERFORMANCE OF THIS AGREEMENT.

(b) Exceptions. Notwithstanding anything contained herein to the contrary, the limitations of liability contained in Section 10(a) shall not apply to (i) either party's indemnification obligations under Section 9; and (ii) personal injury, including death, and damage to tangible property caused by the



negligent or wrongful acts or omissions of a party or its employees, agents, or subcontractors, provided, however, that the foregoing shall be expressly limited to the limits of Section 768.28, Florida Statutes with respect to Sharer and to the Indemnity Cap with respect to the Sharee.

11. Default and Remedies

(a) Breach by Sharee. In the event of a breach of or default under this Agreement by Sharee in any material respect which is not cured within thirty (30) days after a written notice of breach or default, Sharer may take the dispute to binding arbitration, pursuant to Section 12(c); provided that Sharer shall have first attempted in good faith to resolve the matter pursuant to the procedures set forth in Section 12(b). Following any such arbitration, if Sharee is found to be in material breach of the Agreement, Sharee shall have an additional thirty (30) days to cure its breach, and if no such cure is made, Sharer may commence an action for damages against the Sharee in a Court of competent jurisdiction located in Orlando, Orange County, Florida.

(b) Breach by Sharer. In the event of a breach of or default under this Agreement by Sharer in any material respect which is not cured within thirty (30) days after a written notice of a breach or default, Sharee may take the dispute to binding arbitration, pursuant to Section 12(c); provided that Sharee shall have first attempted in good faith to resolve the matter pursuant to the procedures set forth in Section 12(b). Following any such arbitration, if Sharer is found to be in material breach of the Agreement, Sharer shall have an additional thirty (30) days to cure its breach, and if no such cure is made, Sharee may commence an action for damages against the Sharer in a Court of competent jurisdiction located in Orlando, Orange County, Florida.

(c) Other Termination. In the event this Agreement is terminated following the Agreement Commencement Date in accordance with a right of termination afforded to a party hereunder, to the extent permissible under applicable law, Sharer shall permit Sharee to continue to share spectrum with Sharer as provided in Section 3, and Sharer shall continue to provide the access and services set forth in Section 6, for a period of 180 days after such termination; provided that Sharee continues to comply with the terms of this Agreement, including all terms requiring payment to Sharer.

(d) Loss of License.

(i) Loss of License Prior to Channel Sharing. This Agreement shall terminate automatically if the FCC authorization to operate either Sharer's Station or Sharee's Station is revoked, relinquished, withdrawn, rescinded, canceled or not renewed prior to the Agreement Commencement Date.

(ii) Loss of Sharer's License After Channel Sharing has Commenced. After the Agreement Commencement Date, this Agreement shall terminate automatically if the FCC license of Sharer's Station (or Sharer's FCC authorization to operate on the Shared Channel) is revoked, relinquished, surrendered, withdrawn, rescinded, canceled, or not renewed (and the FCC order providing for such action is a Final Order). In such event the parties, acting in good faith, may negotiate the sale to Sharee of the Shared Equipment and/or the Transmitter Site at fair market value, free and clear of liens, claims and encumbrances. In such event, Sharer and Sharee shall cooperate in good faith to effectuate such sale and conveyance of assets as promptly as practicable. For purposes of this Agreement, "**Final Order**" means that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for a stay, petition

for rehearing, appeal or certiorari or *sua sponte* action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such *sua sponte* action by the FCC shall have expired or otherwise terminated.

(iii) Loss of Sharee's License after Channel Sharing has Commenced. After the Agreement Commencement Date, this Agreement shall terminate automatically if the FCC license of Sharee's Station (or Sharee's FCC authorization to operate on the Shared Channel) is revoked, relinquished, surrendered, withdrawn, rescinded, canceled or not renewed and the FCC order providing for such action is a Final Order. In such event, notwithstanding such termination, the shared spectrum rights shall revert to Sharer (subject to FCC approval) and Sharer may file an application with the FCC to change its authorization for use of the Shared Channel to non-shared status and acquire the spectrum usage rights of Sharee. In such event, the parties, acting in good faith, may negotiate the sale to Sharer of Sharee Dedicated Equipment (if desired by Sharer), at fair market value, free and clear of liens, claims and encumbrances. In such event, Sharer and Sharee shall cooperate in good faith to effectuate such sale and conveyance of assets as promptly as practicable.

(e) Bankruptcy. Either party may terminate this Agreement for cause by written notice to the other party if a party (i) terminates its business activities or becomes insolvent, (ii) admits in writing to an inability to pay its debts as they mature, (iii) makes an assignment for the benefit of creditors, or (iv) becomes subject to direct control of a trustee, receiver or similar authority. Notwithstanding anything to the contrary herein, in the event any of the foregoing shall occur, or be reasonably likely to occur, and impairs, or may be reasonably likely to impair, Sharer's ability to fulfill its obligations hereunder (including, without limitation, its obligation to share the Shared Channel with Sharee and to transmit content provided to Sharer by Sharee as required by this Agreement), in addition to any remedies it may have at law, in equity or under this Agreement, Sharee shall have the right to access the Transmission Facilities and Shared Equipment and take all reasonable measures to transmit such content on the Shared Channel and to maintain Sharee's FCC license, provided that Sharee shall transmit content provided by Sharer using the Transmission Facilities and Shared Equipment and further provided that Sharee's access to the Transmission Facilities and Shared Equipment shall not impair Sharer's access to the Transmission Facilities or otherwise impair Sharer's Allocated Bandwidth and usage rights under this Agreement. Notwithstanding anything to the contrary herein, in the event any of the foregoing shall occur, or be reasonably likely to occur, and impairs, or may be reasonably likely to impair, Sharee's ability to fulfill its obligations hereunder, Sharer shall have any and all remedies it may have at law, in equity or under this Agreement.

(f) Future Incentive Auction. Notwithstanding any other provision in this Agreement, in the event that there is another incentive auction similar in nature to the Incentive Auction at which the parties would be permitted to bid on relinquishing the license for the Shared Channel, Sharer shall have the right to request that Sharee join with Sharer in bidding on the relinquishment of the Shared Channel for a price no lower than a reserve price agreed to by the parties. In the event that the parties' relinquishment bid is successful, the proceeds of the auction shall be used to reimburse Sharee for its initial investment of Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) (the "**Monetary Compensation**") to the Sharer in accordance with the following terms and conditions: in years one to ten of the inception of this agreement, Sharee would receive the full Four Million Two Hundred Fifty Thousand Dollars (\$4,250,000.00) (the "**Monetary Compensation**") as reimbursement, in years eleven to twenty of the inception of this agreement, Sharee would receive half of the Monetary Compensation, Two Million One Hundred Twenty Five Thousand Dollars (\$2,125,000.00) (the "**Monetary Compensation**") as reimbursement, and in years twenty-one to thirty of the inception of

this agreement, Sharee would receive One Half of a Million Dollars (\$500,000.00) (the “**Monetary Compensation**”) as reimbursement, to the Sharer in accordance; and at such time as the Shared Channel operations are terminated following such auction, this Agreement shall terminate.

(g) Survival. No termination shall relieve a party of liability for failure to comply with this Agreement prior to termination.

## 12. Dispute Resolution

(a) Governing Law; Jurisdiction. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida without giving effect to the choice of law or conflict of law provisions thereof. Any action, suit or other proceeding arising from or relating to this Agreement must first be brought in the U.S. District Court for the Middle District of Florida, Orlando Division.

(b) Issue Resolution Process. In the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties hereto shall consult and negotiate in good faith with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties through consultations among their respective senior executives. If the issue remains unresolved within a period of sixty (60) days, either party may elect to submit the dispute to binding arbitration pursuant to Section 12(c).

(c) Arbitration. Any dispute, controversy or claim arising from or relating to this Agreement and submitted by either party to arbitration pursuant to the procedures set forth in Section 12(b) or as otherwise set forth in this Agreement shall be settled by arbitration administered by the American Arbitration Association under its applicable Procedures for Large, Complex Commercial Disputes, and judgment on the award rendered by the arbitrator(s) may be entered in any court have jurisdiction thereof. The arbitrators will be selected from a panel of persons having experience with and knowledge of the commercial and noncommercial broadcast television industry.

(d) Preliminary Relief; Remedies; Specific Performance. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this Agreement, seek from any court having jurisdiction, any interim or provision relief that is necessary to protect the rights or property of that party pending the establishment of the arbitral tribunal (or pending the arbitral tribunal’s determination of the merits of the controversy). In the event of failure or threatened failure by either party to comply with the terms of this Agreement, and in addition to any rights or process provided for in Section 11, the other party shall be entitled to seek an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to seeking enforcement of this Agreement by a decree of specific performance requiring compliance with this Agreement.

## 13. General Provisions

(a) Confidentiality. Subject to the requirements of applicable law or court order or as otherwise agreed upon by the parties, all non-public information regarding Sharer and Sharee and their respective businesses and properties that is disclosed in connection with the negotiation, execution or performance of this Agreement (including any financial information) shall be confidential and shall not be disclosed to any other person or entity, except that such information may be disclosed to either party’s respective lenders, counsel, accountants, governing boards, and other representatives and principals assisting the parties (as the case may be) who will be bound by the confidentiality imposed herein, or as required by subpoena or other legal process. Notwithstanding anything to the contrary

herein, the parties acknowledge that they may be required to submit to the FCC a copy of this Agreement with their applications for construction permits and/or licenses for operation pursuant to this Agreement. This section shall survive any termination or expiration of this Agreement for as long as the confidential information is still in a party's possession, but a party may destroy any such information in accordance with applicable law, including public records retention requirements, following the expiration of any pertinent retention periods, in which case the confidentiality obligations shall cease at that time.

(b) Information.

(i) Each party shall provide the other party with copies of any FCC notice of violation or notice of apparent liability, or any other notice from any governmental entity, that it receives with respect to the technical operations of its station.

(ii) If either party becomes subject to litigation or similar proceedings before the FCC (including without limitation initiation of enforcement actions), Internal Revenue Service or other court or governmental authority that is reasonably likely to have a material adverse effect on such party or its television station using or proposed to be using the Shared Channel, then it shall immediately provide written notice of such proceeding to the other party and provide all information with respect thereto as reasonably requested by the other party.

(iii) If either party files a petition in bankruptcy, has an involuntary petition in bankruptcy filed against it, files for reorganization or arranges for the appointment of a receiver or trustee in bankruptcy or reorganization of all or a substantial portion of its assets or of the assets related to its television station using or proposed to be using the Shared Channel, or it makes an assignment for such purposes for the benefit of creditors, then it shall immediately provide written notice of such proceeding to the other party and provide all information with respect thereto as reasonably requested by the other party.

(c) Rights of First Refusal. Neither party hereto shall transfer, sell, assign or otherwise dispose of (each, a "**Transfer**") its FCC channel sharing television broadcast license authorizing it to broadcast on the Shared Channel ("**Transferred License**") unless such party (the "**Selling Party**"), first offers to sell the Transferred License to the other party ("**Non-Selling Party**") pursuant to the terms of this Section 13(c); provided, however, that this Section 13(c) shall not apply in any circumstance in which the Non-Selling Party is not legally qualified under FCC rules and policies to hold the Transferred License.

(i) No Transfer may be made under this Section 13(c) unless the Selling Party has received a Bona Fide Offer (the "**Purchase Offer**") from a legally-qualified third party (the "**Purchaser**") to purchase the Transferred License for a purchase price (the "**Offer Price**") payable at a closing, which offer shall be in writing, signed by the Purchaser and shall be irrevocable for a period ending no sooner than the day following the end of the Offer Period pursuant to Section 13(c)(iii) below.

(ii) Prior to making any Transfer that is subject to the terms of this Section 13(c), the Selling Party shall give to the Non-Selling Party written notice (the "**Offer Notice**") that it has received a Purchase Offer and shall include a copy of such Purchase Offer therein. The Offer Notice shall constitute an offer (the "**Firm Offer**") to sell the Transferred License to the Non-Selling Party under the same terms and conditions as are set forth in the Purchase Offer.

(iii) The Firm Offer shall be irrevocable for a period (the "**Offer Period**") ending at 11:59 P.M., local time at the Non-Selling Party's principal place of business, on the thirtieth (30th) day following the day of the Offer Notice.

(iv) At any time during the Offer Period, the Non-Selling Party, if legally qualified to do so, may elect to accept the Firm Offer by providing written notice thereof (a "**Purchase Election Notice**") to the Selling Party prior to the expiration of the Offer Period. If the Non-Selling Party so elects to purchase the Transferred License, then the closing of such purchase shall be held at the principal office of the Non-Selling Party at a time and on a date mutually agreeable to the Selling Party and the Non-Selling Party (or, in the absence of an agreement between the Selling Party and the Non-Selling Party, at 10:00 A.M. on the later of the closing date specified in the Purchase Offer or the thirtieth (30th) calendar day after the date of the Non-Selling Party's acceptance of the Firm Offer). The closing of such purchase shall be expressly conditioned upon and subject to obtaining any required FCC approvals.

(v) If, at the conclusion of the Offer Period, the Non-Selling Party shall not have delivered a timely Purchase Election Notice to the Selling Party, then the Selling Party shall have the right to proceed to sell Transferred License to the Purchaser on the terms and conditions, and on the closing date, specified in the Purchase Offer. If the Transferred License is not sold to the Purchaser on the terms and conditions and the closing date specified in the Purchase Offer, such Transferred License shall again become subject to, and may not be sold except after compliance with this Section 13(c).

(vi) As used herein, the term "**Bona Fide Offer**" means any written offer to purchase Transferred License which (i) sets forth with specificity all its material terms and conditions; (ii) is made by a third party who is legally and financially capable of completing such offer; (iii) the closing of which will occur no later than one (1) year after the date on which such offer is received by the Selling Party; and (iv) states that the proposed transferee agrees to be bound by the terms of this Agreement upon Transfer of Transferred License to it.

(d) Assignment. Neither party may assign, delegate or otherwise transfer this Agreement, except that, subject to Sections 11 and 13(c) and the receipt of any required FCC consents, (i) upon prior written notice, Sharer may assign this Agreement to any FCC-approved assignee of Sharer's FCC license for Sharer's Station or transferee of Sharer or Sharer's Station and who assumes this Agreement effective upon consummation of such assignment or transfer, in a writing delivered to the Sharee; and (ii) upon prior written notice, Sharee may assign this Agreement to any FCC-approved assignee of Sharee's FCC license for Sharee's Station or transferee of Sharee or Sharee's Station and who assumes this Agreement effective upon consummation of such assignment or transfer, in a writing delivered to the Sharer. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and upon any such succession or assignment, the successor or transferee shall be deemed to be a party to this Agreement in substitution for the assigning or transferring party, whereupon the assigning or transferring party shall cease to be a party to this Agreement and shall cease to have any rights or obligations under this Agreement. No assignment, delegation or other Transfer shall relieve any party of any obligation or liability under this Agreement whose performance, or payment, became due prior to the date of such assignment, delegation or transfer. Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

(e) Severability. The transactions contemplated by this Agreement are intended to comply with the Communications Act of 1934, as amended, and the rules of the FCC. If any provision

of this Agreement is deemed invalid or unenforceable to any extent by any court of competent jurisdiction or the FCC, the remainder of this Agreement and the application of such provisions shall not be affected thereby and shall be enforced to the greatest extent permitted by law, except that if such invalidity or unenforceability shall change the basic economic positions of the parties, then the parties shall negotiate in good faith such changes in other terms as shall be practicable in order to restore them to their prior positions while still ensuring compliance with such court or FCC decision.

(f) Notices. Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, or on the third day after prepaid mailing by certified U.S. mail, return receipt requested, and shall be addressed as follows (or to such other address as any party may request by written notice):

if to Sharer:                      University of Central Florida  
12461 Research Parkway, Suite 550  
Orlando, FL 32826  
Attn: Phillip Hoffman

with a copy to (which shall not constitute notice):

Todd D. Gray  
Gray Miller Persh, LLP  
1200 New Hampshire Ave., N.W., Suite 410  
Washington, DC 20036

if to Sharee:                      Good Life Broadcasting, Inc.  
31 Skyline Drive  
Lake Mary, FL 32746  
Attn: Steven Stiger

with copies to (which shall not constitute notice) to:

Robert B. White Jr.  
White & Luczak, P.A.  
615 West Morse Boulevard, Suite 111  
Winter Park, Florida 32789

(f) Relationship of the Parties. The parties to this Agreement are independent contractors. Neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon the parties.

(g) Amendment, Construction; Entire Agreement; Counterparts. This Agreement may not be amended except in a writing executed by both parties. No waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such waiver or consent is sought. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and execution of this Agreement. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect to the subject matter hereof. This Agreement may be executed in counterparts, and once signed, any reproduction of this Agreement made by reliable means (for example, .pdf or .TIFF format), will be considered an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Channel Sharing and Facilities Agreement as of the date first set forth above.

SHARER:

UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

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

Name:

Title:

SHAREE:

GOOD LIFE BROADCASTING, INC., a Florida  
not-for-profit corporation

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

Name:

Title:

Schedule A

Description of New Combiner