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Master Agreement for Lease of UNM Sites for Student Housing

University of New Mexico

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**MASTER AGREEMENT FOR LEASE
OF UNM SITES FOR STUDENT HOUSING**

THIS MASTER AGREEMENT FOR LEASE OF UNM SITES FOR STUDENT HOUSING (this "**Master Agreement**") is dated as of _____, 2009 ("**Effective Date**"), and entered into by and between the REGENTS OF THE UNIVERSITY OF NEW MEXICO, a body corporate (the "**Regents**"), on behalf of THE UNIVERSITY OF NEW MEXICO, a constitutionally created educational institution of the State of New Mexico (the "**University**"), LOBO DEVELOPMENT CORPORATION, a New Mexico non-profit corporation organized to benefit the University ("**Lobo**"), and AMERICAN CAMPUS COMMUNITIES, INC., a Maryland corporation ("**ACC**") (each a "**Party**"; collectively, the "**Parties**").

RECITALS

A. The Regents wish to grant separate long-term ground leases of University real estate to a well-qualified developer-lessee that possesses the knowledge, experience, organization and financial ability to design, develop, manage, and operate large scale and complex student housing projects.

B. Through and following the issuance of Request for Information-Qualifications and Request for Proposal RFI No. LDC-001, ACC was selected as the best-qualified developer-lessee to design, develop, manage and operate a multi-phase student housing program ("**Student Housing Program**" or "**Program**") on ground lease sites at both the Main Campus and the South Campus of the University (collectively, the "**Campus**") in Albuquerque, New Mexico. The Program will involve demolition and, possibly, redevelopment, renovation and refurbishment of existing housing on Main Campus.

C. ACC will use an entity owned or controlled, directly or indirectly, by ACC or American Campus Communities Operating Partnership LP, a Maryland limited partnership ("**ACC Affiliate**" or "**ACC Affiliates**") to implement the Student Housing Program. It is anticipated that there will be a separate ACC Affiliate for each Ground Lease.

D. Granting ground leases to ACC Affiliates to implement projects in furtherance of the Program on terms and conditions to be negotiated as contemplated by this Master Agreement is in the best interest of the University and its students for, among other reasons: (1) ACC Affiliates will make available additional quality student housing for University students, and (2) ACC Affiliates will be solely responsible for financing and debt repayment of the Program that the University or Lobo would otherwise be required to undertake to ensure adequate student housing for its students.

E. The Student Housing Program will include, but may not be limited to, the following components on the Campus (individually, a "**Component**" and collectively, the "**Components**"):

Component I will be a new apartment style student housing project primarily for upperclassmen on the South Campus consisting of approximately 700 to 1,100 beds. The location for the Component I student housing project is set forth on Exhibit A.

Component II, except as revised by the Lobo-approved Strategic Housing Plan, will be a new phased residence hall student housing project on the Main Campus consisting of approximately 1,300 beds in the locations generally described or depicted on Exhibit A, as such locations may be amended in the Strategic Housing Plan.

Component III will consist of a phased build out of the balance of the total number of beds called for and as set forth in the Lobo-approved Strategic Housing Plan, discussed *infra*, on South Campus and on Main Campus, not included in Component I or Component II, in the locations set forth in the Strategic Housing Plan, provided that on Main Campus there shall be no less than a 1,000 bed net gain over the number of beds on Main Campus as of the Effective Date of this Master Agreement, except as otherwise agreed by the Parties. Notwithstanding anything else provided herein, unless Lobo and ACC otherwise agree in writing, the Component III review and approval process may not commence until a Ground Lease for a significant portion of Component II has been executed by the Regents and an ACC Affiliate. Any work on Component III, while Component II remains uncompleted, is for the purpose of providing housing to meet student needs while the work necessary to complete Component II is underway. In the event Component II has not been completed or substantially completed by August 15, 2013 (the "**Component II Completion Date**") due solely to the actions or inactions of ACC or the applicable ACC Affiliate (and not due to any cause, condition or circumstance beyond the reasonable control of ACC and the applicable ACC Affiliate), there shall be no Component III and, unless Lobo and ACC otherwise agree in writing, this Master Agreement shall as of such date be deemed terminated and of no further force or effect, except for any duties or obligations which, pursuant to the terms and provisions of this Agreement, survive such termination.

F. If a Component is approved by the Regents, as evidenced by an Approved Component Notification, ACC and Lobo, acting for the Regents, will undertake to negotiate a ground lease agreement (a "**Ground Lease**") with respect to such Component consistent with the Term Sheet (Ground Lease) attached hereto as Exhibit B (the "**Term Sheet (Ground Lease)**"), whereby the ACC Affiliate will undertake to lease, develop and construct such Component, subject to the terms and provisions of the Ground Lease.

G. ACC and the Regents and Lobo (which was organized and incorporated by the Regents to benefit the University and is authorized and empowered to act on behalf of the Regents in the implementation of this Master Agreement as herein provided), desire to memorialize their agreements relating to the Components and the contemplated Ground Leases, including the due diligence to be undertaken by the Parties with respect to each Ground Lease, the planning for the project to be placed on the Ground Lease property and the approval, design, development and construction of the Component.

THEREFORE, intending to be legally bound, for valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

AGREEMENTS

The Recitals set forth hereinabove are hereby restated and incorporated herein as part and parcel of this Master Agreement.

1. PREDEVELOPMENT PHASE.

1.1 Strategic Housing Plan. Within forty-five (45) days after Lobo delivers to ACC written documentation identifying a sufficient number of potential sites of sufficient size to reasonably accommodate 1,300 beds within new student housing facilities on Main Campus (the “**Main Campus Sites**”), with the understanding demolition, and, possibly, redevelopment, renovation and refurbishment of existing housing on Main Campus may be involved, ACC shall prepare, at its sole cost and expense, for the review and approval of Lobo a comprehensive strategic housing plan (“**Strategic Housing Plan**”) for student housing on the Campus. The Strategic Housing Plan shall include, without limitation, the following:

1.1.1 A housing market study, including an evaluation of the marketability of the existing on-Campus facilities.

1.1.2 An evaluation of prospective development sites, including a site density analysis for each site.

1.1.3 Feasibility analysis, including development and operational proformas.

1.1.4 Recommendations for demolition or refurbishment of existing facilities and/or the development of new housing.

1.1.5 Schedules for commencement and completion of various projects.

1.1.6 Recommendations relative to the timing, sequencing or phasing of the various Components.

1.1.7 Recommendations regarding other projects which might be added as additional Components.

1.2 Goals, Objectives and Understandings. The Parties acknowledge the following goals and objectives of ACC and the Regents in connection with the development of the Components:

1.2.1 The pursuit of LEED Certification objectives.

1.2.2 The provision of data and communications systems for each Component which will be integrated with the University’s systems.

1.2.3 Designation by each Party of a single point of contact for decision making and approvals related to obligations under this and future agreements contemplated herein, as will be set forth in the Ground Lease for each Approved Component.

1.2.4 The Regents will assist in maintaining or acquiring ad valorem tax exemptions for the Components contemplated herein, if available, to the benefit of the Components.

1.2.5 If it is able to do so, the Regents will assist in obtaining beneficial pricing of utilities for the Components.

1.2.6 The interim and permanent funding for the development and construction of the Components is intended to be excluded in the calculation of direct or indirect debt of the University. However, an ACC Affiliate will be permitted to finance and refinance such development and construction and grant a lien or security interest, with respect to the Component, solely on its leasehold interest in the Components to secure such financing, if ACC or an ACC Affiliate provides evidence reasonably satisfactory to the Regents that such financing will not be included in the calculation of direct or indirect debt of the University or result in any negative credit rating implication for the University and with the further understanding that the Regents will not subordinate any interest of the University in connection with such financing. To the extent an ACC Affiliate wishes to pledge or mortgage other non-Component assets in connection with any financing or refinancing for the development and construction of any Component, it is free to do so.

1.2.7 The Regents expect to receive fair market ground rental for the Components. Such ground rent shall be negotiated and may reflect, among other items, the cost of upgrades or other items requested by Lobo to or in addition to the Outline of Specifications (hereinafter defined) with respect to Component I which are set forth on Exhibit C. Detail for each of the items set forth on Exhibit C, if applicable, with respect to other Components will be submitted by ACC as part of the Preliminary Materials relative to such other Components.

1.2.8 Management of the Components by ACC Affiliates, which management shall include provision of residence life services by employees of the ACC Affiliates and implementation of the University's code of conduct and other University standards set forth in the Ground Lease for each Component.

1.2.9 To the extent that any governmental authority other than the University will be permitting the development and construction of Components, that the Components benefit from the University's status relative to permitting of development and construction, if practical.

1.2.10 Completion of Component I by August 15, 2011 or as modified by the Strategic Housing Plan.

1.2.11 Completion of Component II by August 15, 2013 or as modified by the Strategic Housing Plan.

1.2.12 Completion of Component III as soon as reasonably practicable after August 15, 2013 or as modified by the Strategic Housing Plan.

1.3 University Review of Strategic Housing Plan. Within twenty (20) business days following Lobo's receipt of the initial Strategic Housing Plan and within twenty (20) business days following Lobo's receipt of each of any revisions thereto, as applicable, Lobo, following consultation with the University, shall provide comments to ACC on the Strategic Housing Plan and separately on the revisions, if any. ACC and Lobo shall discuss Lobo's comments on each separate submittal and, following agreement by both ACC and Lobo on the Strategic Housing Plan and any revisions thereto, ACC shall revise the Strategic Housing Plan as soon as reasonably practicable. If Lobo ultimately disapproves the Strategic Housing Plan, this Master Agreement shall be null and void and of no further force or effect with respect to all Components, other than Component I, and no Party shall have any rights, responsibilities, or obligations with regard to this Master Agreement, except as otherwise set forth herein and except with respect to Component I, and each Party shall bear its costs incurred to date.

1.4 Preliminary Materials/Approval of Component/Predevelopment Services.

1.4.1 If Lobo approves the Strategic Housing Plan, ACC may elect, by written notice ("**Preliminary Notification**", which is to include an estimate of the cost to prepare the Preliminary Materials) delivered to Lobo that ACC intends to proceed with the preparation of the materials relative to the proposed Component, which shall be consistent with the Strategic Housing Plan, to proceed to prepare the following materials: (a) conceptual plans, designs and drawings relative to such Component, including conceptual site development plans, conceptual building architecture and conceptual infrastructure plans, (b) a preliminary schedule ("**Preliminary Schedule**") for the development and construction of such Component including any required governmental approvals and the provision of the University Support Services (hereinafter defined) as applicable, (c) a preliminary budget and preliminary development and operational proforma, identifying ground rent or other consideration to be paid to the University and financing terms and equity return rates anticipated for ACC ("**Preliminary Budget**") for the design, development, construction and operation of such Component, (d) a list of requested support services that may be provided by the University, for adequate consideration, including, without limitation, parking, recreation, food service, and utilities (collectively, the "**University Support Services**"), together with a housing support and service plan identifying and analyzing, in conjunction with the University, the impact of the Component on Main Campus student housing and on all related University Support Services, (e) a conceptual residential life and academic program (the "**Preliminary Residence Life Program**"), (f) actual out-of-pocket expenses incurred in preparing the Preliminary Materials, (g) additional terms proposed for inclusion in the Ground Lease for such Component or proposed changes to the Term Sheet (Ground Lease) relative to such Component, and (h) a schedule (as same may be modified with the mutual agreement of ACC and the University, the "**Reimbursable Schedule**") setting forth the amounts of Reimbursables (hereinafter defined) the ACC Affiliate expects will be incurred on a monthly basis from the date of ACC's receipt of Lobo approval of the Preliminary Materials until such time as the Ground Lease for such Component is executed (items (a) through (h) in this Section 1.4.1 collectively constitute the "**Preliminary Materials**").

Because of the urgent need for student housing on Campus, it is agreed that ACC may proceed with the preparation of Preliminary Materials for Component I prior to Lobo approval of the Strategic Housing Plan. In order to expedite the provision of student housing on Campus, ACC, upon and as of the Effective Date of this Master Agreement, hereby provides to Lobo a Preliminary Notification, together with an estimate of the cost to prepare the Preliminary Materials, relative to Component I. All other requirements and approvals otherwise applicable to or required of or for a Component, as set forth hereinabove and hereinafter, apply to Component I.

Upon completion of the development of the Preliminary Materials, ACC shall provide the Preliminary Materials to Lobo. Lobo shall notify ACC of any clarifications or supplemental materials Lobo believes are required for Lobo and the Regents to fully analyze the Preliminary Materials, and ACC and Lobo shall cooperate with one another relative to any such requests and subsequent clarifications or supplements. Upon approval by Lobo of the Preliminary Materials (in the form submitted or amended by ACC), Lobo shall submit the Preliminary Materials together with its recommendation for approval to the Regents.

Lobo shall use reasonable efforts to obtain Regent approval of the Preliminary Materials as soon as possible. If the Regents do not approve the Preliminary Materials within ninety (90) days following Lobo's receipt of the Preliminary Materials, unless extended by mutual agreement, the Component that is the subject of the Preliminary Notification may (at the option of Lobo and/or the Regents), by written notice thereof to ACC, be severed from the Student Housing Program and discontinued under Section 5.2 of this Master Agreement and the ACC Affiliate shall thereafter have no rights or other interest in such Discontinued Component (hereinafter defined), except as provided in Section 2.1 and Sections 5.1 and 5.2 of this Master Agreement.

1.4.2 Regent approval of the Preliminary Materials and, thereby, of a Component shall constitute notification by the Regents to ACC ("**Approved Component Notification**") of the Regents' election to proceed with the development of the Component (now an "**Approved Component**"). Upon receipt of an Approved Component Notification, (a) ACC shall provide such services as may be required to cause the design of the Approved Component in accordance with the Preliminary Materials and the preparation of Plans and Specifications, a Budget and a Schedule (as those terms are defined herein) in Section 4.1 hereof (collectively, "**Predevelopment Services**"), provided that ACC may, at its option, commence Predevelopment Services upon approval of the Preliminary Materials by Lobo; and (b) ACC and Lobo shall use their reasonable efforts to agree as soon as possible upon the form and content of the Ground Lease for the Approved Component incorporating the terms and conditions set forth in the Term Sheet (Ground Lease), and such other relevant terms and conditions as may be agreed upon which are consistent with the Term Sheet (Ground Lease) including proposed changes thereto set forth in the Preliminary Materials with the understanding that, once Lobo and ACC have reached agreement on the final form and content of the Ground Lease, Lobo shall recommend approval of the Ground Lease in final form to the Regents who shall review, consider, and approve, approve conditionally, or disapprove the Ground Lease. Construction of the Approved Component shall not proceed until execution of the Ground Lease by the Regents and the ACC Affiliate.

1.4.3 ACC shall pay the costs and expenses of the Predevelopment Services. The Regents hereby agree that ACC and its agents, contractors, representatives, inspectors and engineers shall be entitled to have access to the site of the Approved Component for purposes of providing the Predevelopment Services, subject to the applicable insurance and indemnity obligations of this Master Agreement for the Approved Component.

1.4.4 Lobo shall reasonably cooperate with ACC and assist ACC in connection with the application for and pursuit of development approvals and/or permits for the Approved Components from applicable governmental authorities having jurisdiction over such Approved Components.

1.5 Conditions to Approved Component Development. Neither ACC nor the ACC Affiliate shall have any obligation to proceed with the actual construction and development of any Approved Component unless and until ACC or the applicable ACC Affiliate and the Regents have executed and delivered a Ground Lease relative to such Approved Component. ACC or the applicable ACC Affiliate and the Regents, with the assistance of Lobo, will use reasonable efforts to enter into and execute a Ground Lease relative to an Approved Component within ninety (90) days of the date on which ACC receives Approved Component Notification, except that such date by which the Ground Lease must be executed may be extended by mutual consent of ACC and Lobo. If the Regents and ACC or the applicable ACC Affiliate are unable to agree upon and execute a Ground Lease within such allotted time, the Approved Component may be declared a Discontinued Component by either the Regents or ACC, by written notice thereof to the other Parties.

1.6 Master Plan. The Regents have advised ACC that the University is considering a Master Plan (herein so called) for future development on the Campus. The Master Plan is expected to be consistent with the Main Campus Sites designated by Lobo pursuant to Section 1.1 hereinabove. However, if, for any reason, the Master Plan is inconsistent with the Main Campus Sites, such inconsistency shall not invalidate or, in any way, interfere with the intended effect of the Main Campus Sites. The Master Plan will be consistent with the Strategic Housing Plan if the Strategic Housing Plan is approved first. In the event the Master Plan is adopted first, the provisions of the Strategic Housing Plan shall govern if and to the extent there is a conflict or inconsistency in the provisions of the Master Plan and of the Strategic Housing Plan. The Regents shall deliver to ACC a copy of the Master Plan within five (5) days after it is implemented. In the event that the final Master Plan is inconsistent with the prior designation of the Main Campus Sites and such inconsistency causes delay in the implementation of Component II by either ACC or the applicable ACC Affiliate, then the Component II Commencement Date and the Component II Completion Date shall each be extended by a number of days equal to the number of days between the date Lobo initially designated the Main Campus Sites and the date on which ACC receives the final Master Plan.

2. REIMBURSABLES AND RENT.

2.1 Reimbursement. ACC shall be entitled to reimbursement of its reasonable out-of-pocket costs and expenditures paid or incurred in connection with a Component or an Approved Component, including without limitation costs and expenditures associated with

preparation of Preliminary Materials and Predevelopment Services, excluding profit or overhead (collectively, “**Reimbursables**”), only as follows:

2.1.1 Preliminary Materials Submitted to Lobo. In the event that ACC delivers to Lobo the Preliminary Materials relative to a Component, but either (a) ACC and Lobo are unable to reach agreement relative to the Preliminary Materials or (b) Lobo does not approve the Preliminary Materials, then that Component may be discontinued by written notice thereof by either Lobo or ACC to the other Party, whereupon the University shall pay to ACC an amount equal to fifty percent (50%) of all Reimbursables for the Component that is the subject of the Preliminary Notification (but such total amount of Reimbursables to be multiplied by fifty percent (50%) shall not exceed the amounts set forth in the estimate delivered with the Preliminary Notification) (the “**Preliminary Materials Reimbursement**”).

2.1.2 Lobo Recommends Approval of Component but no Regent Approval, or Approved Component but no Ground Lease. In the event that Lobo approves the Preliminary Materials, it will make a favorable recommendation to Regents, but if either (a) Regent approval is not obtained or (b) there is an Approved Component, but ACC and Lobo are unable to agree upon the form and content of the Ground Lease for such Approved Component, then the Approved Component may be discontinued by written notice thereof by either ACC or Lobo to the other Party, whereupon the University shall pay to ACC an amount equal to (a) the Preliminary Materials Reimbursement plus (b) fifty percent (50%) of all additional Reimbursables incurred by ACC to the point at which the Component or Approved Component is discontinued (but such total amount of Reimbursables to be multiplied by fifty percent (50%) shall not exceed the amounts set forth in the Reimbursable Schedule for the applicable period of time).

2.1.3 Approved Component Discontinued by Regents, or Master Agreement Terminated by Regents or ACC. In the event that ACC receives an Approved Component Notification, but either (a) the Approved Component is discontinued by the Regents, for reasons other than an inability to negotiate the form and content of the Ground Lease, or this Master Agreement is terminated by the Regents for reasons other than a default by ACC or (b) this Master Agreement is terminated by ACC pursuant to Section 7.2 hereof, then University shall pay to ACC (i) one hundred percent (100%) of all Reimbursables theretofore paid or incurred by ACC and (ii) an amount equal to one percent (1%) of the costs of design, development and construction of the Approved Component as set forth in the Preliminary Materials.

2.1.4 Post-Executed Ground Lease Termination by Regents. In the event the Ground Lease has been executed by an ACC Affiliate and the Regents, the Regents shall have the right to terminate the Ground Lease before construction has commenced with respect to the Approved Component by the payment by the University to the ACC Affiliate of an amount equal to (a) one hundred percent (100%) of all Reimbursables theretofore paid or incurred by ACC and/or the ACC Affiliate in connection with such Approved Component, plus (b) an amount determined as follows:

2.1.4.1 If such termination occurs on or before that date which is one hundred eighty (180) days before the date on which the ACC Affiliate anticipates construction to commence - one percent (1%) of the costs of design, development and construction of the Approved Component, as set forth in the Preliminary Materials.

2.1.4.2 If such termination occurs after that date which is one hundred eighty (180) days before the date on which the ACC Affiliate anticipates construction to commence but on or before that date which is thirty (30) days before the date on which the ACC Affiliate anticipates construction to commence - two percent (2%) of the costs of design, development and construction of the Approved Component, as set forth in the Preliminary Materials.

2.1.4.3 If such termination occurs after that date which is thirty (30) days before the date on which the ACC Affiliate anticipates construction to commence but on or before the date on which the ACC Affiliate anticipates construction to commence - three percent (3%) of the costs of design, development and construction of the Approved Component, as set forth in the Preliminary Materials.

2.1.5 The Parties agree that the reimbursement and other payments called for in this Section 2.1 is not a penalty, but rather reasonable compensation to ACC or the ACC Affiliate, as applicable, for the efforts to be expended and resources to be devoted by ACC or the ACC Affiliate, as applicable, hereunder and costs to be incurred by ACC or the ACC Affiliate hereunder.

2.1.6 In the event that the ACC Affiliate actually develops and constructs an Approved Component, ACC and the ACC Affiliate will be entitled to reimbursement for their costs and expenses of providing Predevelopment Services out of the ACC Affiliate's project funding for such Approved Component.

2.1.7 It is anticipated that a Ground Lease for an Approved Component will be executed prior to completion of all of the Predevelopment Services with respect to such Approved Component, in which case the terms and provisions of this Section 2.1, as applicable, shall be included in the Ground Lease for such Approved Component.

2.2 Timing of Payments. Any payment due by the University to ACC or the ACC Affiliate pursuant to the terms of this Section 2.1 shall be due and payable by the University to ACC or the ACC Affiliate within thirty (30) days after the University's receipt of ACC's or the ACC Affiliate's invoice therefor.

2.3 Survival. The terms and provisions of Sections 2.1 and 2.2 shall survive any termination of this Master Agreement.

2.4 Rental. The Ground Lease for each Component shall provide that the Regents shall be paid fair market value ground rent for such Component, which ground rent may be comprised of (a) a stipulated payment at the beginning of the lease term, (b) a fixed periodic payment, (c) a variable periodic payment based on an agreed percentage of the gross revenues of

the Component, or (d) a combination thereof, as agreed to by the Parties as set forth in the Ground Lease.

3. REPRESENTATIONS AND WARRANTIES.

3.1 ACC hereby represents to the Regents and Lobo as follows:

3.1.1 ACC has all requisite power and authority to enter into this Master Agreement and consummate the transaction herein contemplated, and by proper action has duly authorized the execution and delivery of this Master Agreement and the consummation of the transaction herein contemplated and no permission, approval or consent by third parties or governmental authorities is required in order for ACC to enter into and consummate this Master Agreement.

3.1.2 This Master Agreement is a valid obligation of ACC and is binding upon and enforceable against ACC in accordance with its terms.

3.1.3 The consummation by ACC of the transaction contemplated hereby does not, and will not, constitute a violation of any order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over ACC.

3.2 The Regents hereby represent to ACC and Lobo as follows:

3.2.1 The Regents have all requisite power and authority to enter into this Master Agreement and consummate the transaction herein contemplated, and by proper action have duly authorized the execution and delivery of this Master Agreement and the consummation of the transaction herein contemplated and no permission, approval or consent by third parties or governmental authorities, except as disclosed in Exhibit D, is required in order for the Regents to enter into and consummate this Master Agreement.

3.2.2 This Master Agreement is a valid obligation of the Regents and is binding upon and enforceable against the Regents in accordance with its terms.

3.2.3 The University does not have actual knowledge that the consummation by the University of the transaction contemplated in this Master Agreement would constitute a violation of any order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over the University. In the event that the University acquires actual knowledge of any such violation or potential violation, the University shall separately disclose such violation or potential violation to ACC and Lobo within ten (10) business days following such discovery.

3.2.4 The University does not have actual knowledge that the University is a party to, or bound by, any indenture, mortgage, deed of trust, loan agreement, restriction, restrictive covenant, or any order or decree of any court or governmental agency, which might to a material degree adversely affect any Component or any portion of the property on which any Approved Component will be located, except as disclosed by the Real Estate Department no later

than ten (10) business days following receipt of ACC's Preliminary Notification for any Component provided that with respect to Component I, the University has no actual knowledge of such matters other than the matters disclosed in the Stewart Title title commitment and related items delivered to ACC by transmittal dated August 12, 2009. Thereafter, in the event that the University acquires actual knowledge of any such indenture, deed of trust, loan agreement restriction, restriction, restrictive covenant, order or decree, the University shall separately disclose the same to ACC and Lobo within ten (10) business days following such discovery.

For purposes of this Section 3.2, the University's "actual knowledge" or similar phrase shall be deemed limited to the actual (not constructive) knowledge of the employees of the University's Real Estate Department, which Real Estate Department oversees all University properties on which Components will be located and has the responsibility of providing such disclosures as the University is required to disclose pursuant to this Section 3.2.

3.3 Lobo hereby represents to ACC and the Regents as follows:

3.3.1 Lobo has all requisite power and authority to enter into this Master Agreement and consummate the transaction herein contemplated, and by proper action has duly authorized the execution and delivery of this Master Agreement and the consummation of the transaction herein contemplated and no permission, approval or consent by third parties or governmental authorities is required in order for Lobo to enter into and consummate this Master Agreement.

3.3.2 This Master Agreement is a valid obligation of Lobo and is binding upon and enforceable against Lobo in accordance with its terms.

3.3.3 Lobo does not have actual knowledge that the consummation by Lobo of the transaction contemplated in this Master Agreement would constitute a violation of any order, rule or regulation of any court or of any federal or state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lobo. In the event that Lobo acquires actual knowledge of any such violation or potential violation, Lobo shall separately disclose such violation or potential violation to ACC and the Regents within ten (10) business days following such discovery.

For purposes of this Section 3.3, Lobo's "actual knowledge" or similar phrase shall be deemed limited to the actual (not constructive) knowledge of the employees of the University's Real Estate Department, which Real Estate Department oversees all University properties on which Components will be located and has the responsibility of providing such disclosures as Lobo is required to disclose pursuant to this Section 3.3.

4. DELIVERABLES AND APPROVAL PROCESS.

4.1 Deliverables.

4.1.1 Following ACC's receipt of Lobo approval of a Component, ACC may prepare or cause to be prepared, as a cost of the Approved Component, the following (collectively, the "**Final Materials**"): (a) plans, specifications and drawings relative to such

Approved Component (“**Plans and Specifications**”), (b) refinements of the Preliminary Budget relative to such Approved Component (“**Budget**”), (c) refinements of the Preliminary Schedule relative to such Approved Component (“**Schedule**”), (d) refinements to the University Support Services and (e) refinements to the Preliminary Residence Life Program (the “**Residence Life Program**”). ACC shall provide to Lobo the Budget, Schedule, and Residential Life Program for review and comment. All schematic drawings and construction drawings relative to exterior building elevations, site plans, landscaping plans (subject to the approved allowance therefor), exterior lighting plans and emergency call-box locations relative to such Approved Component and any material increases to the level or amount of University Support Services (collectively, the “**Approval Items**”), and material revisions thereto, shall be delivered to Lobo from time to time for approval, which approval shall not be unreasonably withheld, conditioned or delayed, and which approval shall not be withheld so long as the Approval Items are a logical extension of and consistent with prior submittals that have been approved or deemed approved by the Regents.

4.1.2 The Parties agree that all Preliminary Materials and Final Materials submitted pursuant to this Master Agreement are the proprietary intellectual property of ACC. Following the discontinuance of any Component pursuant to this Master Agreement, ACC shall, upon request of the University, assign to the University all of ACC’s right, title and interest in and to the Preliminary Materials and Final Materials upon payment by the University to ACC of (a) an amount equal to one hundred percent (100%) of the cost of all Reimbursables theretofore paid or incurred by ACC in connection with such Component to the extent not theretofore otherwise reimbursed and (b) a fee in the amount of one and one-half percent (1.5%) of the costs of design, development and construction of the Approved Component, as set forth in the Preliminary Materials.

4.1.3 It is anticipated that a Ground Lease for a Component will be executed prior to the delivery and, where required under Section 4.1.1 hereof, approval of Final Materials and Approval Items with respect to any Component, therefore the terms and provisions of this Section 4.1, as applicable, shall be included in the Ground Lease for such Component (except that the Ground Lease will require the ACC Affiliate to cause to be prepared and provided Final Materials as herein set forth).

4.2 Approval Process. Lobo agrees that Lobo’s approval or consent relative to any document or materials submitted by ACC to Lobo pursuant to this Master Agreement shall not be unreasonably withheld, conditioned or delayed. In the event that Lobo does not specifically disapprove or request additional information and documentation concerning any document or materials submitted by ACC to Lobo pursuant to this Master Agreement within fifteen (15) business days after approval is requested in writing by ACC (or within such other period of time as is specifically provided elsewhere in this Master Agreement), Lobo shall be deemed to have approved the requested item.

5. EXCLUSIVITY.

5.1 Components. The Regents acknowledge and agree that ACC and ACC Affiliates will expend significant resources to assist the Regents in the pursuit of the University’s

goals and objectives relative to student housing, all without assurance of reimbursement or payment except as expressly set forth herein. In consideration of such expenditures, the Regents agree that, so long as ACC and ACC Affiliates are not in default under this Master Agreement or under the Ground Lease for the applicable Approved Component beyond the expiration of any applicable notice, grace and/or cure period, the Regents will deal exclusively with ACC relative to the ground leasing or third-party development of any Component until that date which is five (5) years following the Effective Date (“**Exclusivity Period**”), and the Regents will not deal with another developer or third party regarding the provision of such services during such period. The terms and provisions of this Section 5.1 shall survive any termination of this Master Agreement. Notwithstanding anything else provided herein, at the Regents’ option the Exclusivity Period shall terminate, expire and be of no further force or effect in the event (a) Lobo ultimately disapproves either the Strategic Housing Plan or the Preliminary Materials for Component I, or (b) an ACC Affiliate, solely as a result of its own action or inaction and not due to any cause, condition or circumstance beyond the reasonable control of ACC or the ACC Affiliate, does not initiate construction of the first phase of Component II on or before that date (the “**Component II Commencement Date**”) which is thirty (30) months following the date on which Lobo approves the Strategic Housing Plan.

5.2 Discontinued Components. In the event that any Component is discontinued, and the University has paid to ACC or an ACC Affiliate any and all sums due and owing to ACC or an ACC Affiliate pursuant to Section 2.1 hereof, then such Component (a “**Discontinued Component**”) shall be subject to the terms and provisions of this Section 5.2. Section 5.1 shall not be deemed to prevent the Regents from seeking from another third party developer the same type services as would have been provided by ACC under this Master Agreement relative to the Discontinued Component; provided, however, that if at any time during the applicable Exclusivity Period the Regents desire to offer to such other third party developer material terms which are more favorable than those which the Regents had offered to ACC, then the Regents shall first offer such more favorable terms to ACC (and ACC shall have an opportunity to accept such terms, whereupon such Discontinued Component shall again be a Component or Approved Component, as applicable, subject to this Master Agreement), and ACC must reject such terms (and such terms shall be deemed rejected if ACC does not accept such terms in writing within thirty (30) days after the Regents offer such terms to ACC), before the Regents may proceed or continue with negotiations with such other third party developer.

5.3 New Student Housing Projects. If the Regents elect to develop a student housing project on the Campus at a location other than the excluded parcels identified on Exhibit E (the “**Excluded Parcels**”), such project shall be considered to be a new Component subject to the terms of this Master Agreement.

6. INDEMNIFICATION AND INSURANCE.

6.1 ACC shall indemnify, defend and hold harmless the University, the Regents, and Lobo, and each of their respective officers, employees, agents and representatives from and against any and all claims, demands, suits, actions, proceedings, judgments, liabilities, damages, losses, liens, costs and expenses of every kind and nature (including, without limitation, reasonable attorneys’ fees and court costs) to the extent arising from or as a result of

the acts or omissions of ACC or any of ACC's directors, officers, employees or agents entering upon any Component or otherwise acting in connection with this Master Agreement (the "ACC Parties") or a default by ACC under this Master Agreement. The terms of this Section 6.1 shall survive the termination of this Master Agreement.

6.2 Insurance.

6.2.1 During the term of this Master Agreement, ACC shall maintain insurance coverages (a) for general liability in the minimum amount of Five Million Dollars (\$5,000,000.00) per occurrence, (b) for automobile liability in the minimum amount of Five Million Dollars (\$5,000,000.00) per occurrence with respect to owned, hired or non-owned vehicles, (c) for property damage of Two Hundred Fifty Thousand Dollars (\$250,000.00) per occurrence and (d) workers' compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of ACC, its employees or both engaged in activities relating to this Master Agreement and employer's liability insurance with a minimum limit of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each accident, One Hundred Thousand Dollars (\$100,000.00) disease for each employee and Five Hundred Thousand Dollars (\$500,000.00) disease policy limit. The liability insurance coverage of ACC shall be primary and not contributing with respect to any insurance maintained by the University. The Regents, the University, and Lobo will be named as additional insureds on ACC insurance coverage to the extent of the acts or omissions of ACC or the ACC Parties (defined above). The ACC insurance coverage shall be on the basis that the coverage will not be invalidated due to any act or omission of the Regents, the University, or Lobo, or the officers, employees, or agents of any of them. ACC will deliver to the University a certificate of insurance showing such insurance coverages within ten (10) days after execution of this Master Agreement and before any ACC Parties enter upon any Component. ACC coverages will include acts and omissions of ACC Parties occurring on University property.

6.2.2 The insurance policy must contain a provision requiring the insurer to notify Lobo in writing of any cancellation, alteration or non-renewal at least thirty (30) days prior thereto, except in the case of a cancellation or non-renewal for failure to pay a premium payment, in which case the insurer must notify Lobo no less than ten (10) days prior to cancellation or non-renewal.

6.3 If ACC fails to carry and maintain the required insurance or to deliver certificates of insurance, then, in addition to being a default by ACC under this Master Agreement, Lobo will be entitled, but not obligated, to obtain the policies at the University's expense, and the cost thereof will be deemed to be a payment due by ACC to the Regents and shall be due and payable by ACC to the Regents upon demand.

6.4 Upon request by Lobo, ACC will provide Lobo with certified copies of any and all required insurance policies and endorsements.

6.5 Any third party performing Predevelopment Services for or on behalf of ACC hereunder who has access to any Component shall be required to satisfy the following insurance requirements prior to entering upon any Component:

6.5.1	General Commercial Liability	\$1,000,000.00
6.5.2	Automotive Liability	\$1,000,000.00
6.5.3	Professional Liability (if applicable)	\$1,000,000.00

7. MEDIATION, DEFAULT AND TERMINATION.

7.1 In the event that there is a dispute pertaining to this Master Agreement which the Parties cannot resolve among themselves, the Parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation in Bernalillo County, New Mexico before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Lobo and ACC. In the event that the Parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, Lobo and ACC shall request the presiding judge of the District Court in and for the County of Bernalillo, State of New Mexico, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating commercial real estate disputes. The cost of any such mediation shall be divided equally between the University and ACC. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate litigation subsequent to the moratorium, but the Parties' rights to monetary damages under Section 2.1 and Section 5.1 shall be limited as set forth in such Section 2.1. Notwithstanding the foregoing, any Party shall be entitled to seek injunction or other equitable remedy without first resorting to the procedures set forth in this Section 7.1.

7.2 Either the Regents or ACC may terminate this Master Agreement upon five (5) business days' prior written notice to the other Party, given after the expiration of any applicable cure period, if the other Party fails to comply with any of its material obligations under this Master Agreement, and such failure continues for thirty (30) days after the defaulting Party's receipt of written notice thereof from the non-defaulting Party (provided, however, that if such failure is not reasonably capable of being cured within such thirty (30) day period, the defaulting Party shall have such additional time as is reasonably necessary to cure such failure so long as the defaulting Party promptly commences curative actions and thereafter diligently pursues such curative actions).

7.3 Except as otherwise provided in this Master Agreement, this Master Agreement shall terminate upon the earlier to occur of (a) the date on which a Ground Lease is executed and delivered by all Parties with respect to the last Component ("**Final Component**"), (b) the date on which the Final Component becomes a Discontinued Component, or (c) five years after the Effective Date, unless extended by mutual agreement of the Parties.

7.4 Notwithstanding anything set forth or implied herein to the contrary, in no event shall either the Regents, the University, Lobo or ACC be liable hereunder for (and each Party hereby waives the right to claim or sue for) any indirect, speculative, consequential or punitive damages.

8. GENERAL PROVISIONS.

8.1 Notices. All notices and other communications under this Master Agreement shall be in writing and shall be deemed duly given (a) when delivered personally or by prepaid overnight courier, with a record of receipt, (b) the third day after mailing if mailed by certified mail, return receipt requested or (c) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses or telecopy numbers (or to such other address or telecopy number as a Party may have specified by notice given to the other Party pursuant to this provision):

**To the Regents, the
University, and/or Lobo:**

Street Address:

Mailing Address:

Real Estate Department
University of New Mexico
Attention: Kim D. Murphy, Director of Real Estate
2811 Campus Boulevard NE
Albuquerque, NM 87106
MSC 3595, 1 University of New Mexico
Albuquerque, NM 87131-0001
Facsimile: (505) 277-6290
Telephone: (505) 277-4620

with copies to:

Office of the University Counsel
University of New Mexico
Attention: Patrick Apodaca, General Counsel
Scholes Hall, Room 152
MSC05 3310
1 University of New Mexico
Albuquerque, NM 87131-0001
Facsimile: (505) 277-4154
Telephone: (505) 277-5035

and to:

Street Address:

Mailing Address:

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Attention: John P. Salazar, Esq.
201 Third Street NW, Suite 2200
Albuquerque, NM 87102
P.O. Box 1888
Albuquerque, NM 87103-1888
Facsimile: (505) 768-7395
Telephone: (505) 765-5900

to ACC: American Campus Communities, Inc.
Attention: President (URGENT)
805 Las Cimas Parkway, Suite 400
Austin, TX 78746
Facsimile: (512) 732-2450
Telephone: (512) 732-1000

with copies to: Glast, Phillips & Murray, P.C.
Attention: R. Craig Warner
2200 One Galleria Tower
13355 Noel Road
Dallas, TX 75240
Facsimile: (972) 419-8329
Telephone: (972) 419-8314

8.2 Construction. The language in all parts of this Master Agreement shall in all cases be construed as a whole and simply according to its fair meaning and not strictly for nor against any of the Parties, and the construction of this Master Agreement and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of any of the Parties. The Parties do not intend to become, and nothing contained in this Master Agreement shall be interpreted to deem that the Regents, the University, and/or Lobo and ACC are, partners or joint venturers in any way or that ACC is an agent or representative of the Regents, the University, and/or Lobo for any purpose or in any manner whatsoever. A male or female person may be referred to in this Master Agreement by a neuter or masculine pronoun. The singular includes the plural, and the plural includes the singular. A provision of the Master Agreement which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Master Agreement specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Master Agreement at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. **“Including”** means “including but not limited to.” **“Include”** means “include but not limited to.” **“Any”** means “any and all.” Except to the extent context requires otherwise, **“may”** means “may but shall not be obligated to.” **“At any time”** means “at any time and from time to time.” An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party’s behalf and pursuant to its request or consent shall be deemed to have been performed by the Party. If a Party is required not to unreasonably withhold consent or approval, the Party shall also be required not to unreasonably delay consent or approval.

8.3 Nonliability of the Regents, Representatives of the University and Lobo and ACC Officials and Employees. No regent, officer, official, employee, agent or representative of the Regents, the University or Lobo shall be personally liable to ACC or any successor in interest, in the event of any default or breach by the Regents, the University or Lobo for any amount which may become due to ACC, or any successor in interest, or on any obligation incurred under the terms of this Master Agreement. No officer, official, employee, agent, member or representative of ACC shall be personally liable to the Regents, the University, or

Lobo, or any successor in interest, in the event of any default or breach by ACC for any amount which may become due to the Regents, the University, or Lobo, or any successor in interest, or on any obligation incurred under the terms of this Master Agreement.

8.4 Prior Agreements and Discussions. Any agreements between the Regents on the one hand and ACC on the other hand before the date of this Master Agreement with respect to the subject matter of this Master Agreement are superseded by this Master Agreement. All prior negotiations are merged into this Master Agreement. The submission of any unexecuted copy of this Master Agreement shall not constitute an offer to be legally bound by the provisions of the document submitted; and no Party shall be bound by this Master Agreement until it is executed and delivered by both Parties.

8.5 Exhibits. This Master Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Master Agreement includes the following exhibits:

Exhibit A	Location of Component I and Component II
Exhibit B	Term Sheet (Ground Lease)
Exhibit C	Outline of Specifications for Component I and Component II
Exhibit D	Governmental Approvals
Exhibit E	Excluded Parcels

8.6 Executed. This Master Agreement shall be taken and deemed to have been fully made and executed by the Parties hereto in the State of New Mexico for all purposes and intents and shall be governed by and subject to the laws of the State of New Mexico without giving effect to conflict of law principles.

8.7 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Master Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. Any reference to a Section or Article means a Section or Article of this Master Agreement, unless otherwise defined.

8.8 No Third Party Rights. Nothing in this Master Agreement shall be construed to permit anyone other than the Regents, the University, and ACC and their respective affiliates to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

8.9 Non-Discrimination. The Regents and ACC agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunities, immigration, non-discrimination and affirmative action. To that end, ACC shall not discriminate in the conduct and operation of its business at the Program against any person or group of persons because of race, religion, color, sex, age, national origin, ancestry, handicap or Vietnam veteran or disabled veteran status of such person or group of persons.

8.10 Force Majeure. For the purposes of any of the provisions of this Master Agreement, neither the Regents nor ACC shall be considered in breach of or in default of its obligations hereunder in the event of any delay in the performance of such obligations due to causes beyond the control of, and without the fault or negligence of, such Party, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, severe or inclement weather, shortages in labor, supplies or materials, or delays due to such causes; it being the purpose and intent of this Section 8.10 that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Party suffering such delay hereunder shall be extended for the period of the delay.

8.11 Assignment.

8.11.1 ACC may assign this Master Agreement to an affiliate owned or controlled by ACC, with University consent, which consent shall not be unreasonably withheld, provided the assignee expressly assumes the duties and obligations of ACC under this Master Agreement which arise following the date of such assignment.

8.11.2 Regents may assign their position in this Master Agreement to Lobo with ACC consent, which consent shall not be unreasonably withheld, provided that (a) the Regents or the University remains obligated to perform the duties and obligations under this Master Agreement which may only be performed by the Regents or the University and (b) Lobo assumes the duties and obligations of the Regents under this Master Agreement which arise following the date of such assignment.

8.12 Compliance with Law.

8.12.1 All work and obligations by and of the Parties under this Master Agreement shall be performed and undertaken in compliance with all applicable laws, rules regulations, and executive orders issued by the President of the United States or the Governor of the State of New Mexico.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused their respective duly authorized representatives to execute this Master Agreement on their behalf as of the date first above stated.

REGENTS OF THE UNIVERSITY OF NEW MEXICO, a constitutionally created educational institution of the State of New Mexico

AMERICAN CAMPUS COMMUNITIES, Inc., a Maryland corporation

By: _____
David W. Harris
Executive Vice President for
Administration, COO and CFO

By: _____
Name: _____
Title: _____

APPROVED BY:

Bruce E. Cherrin, Chief Procurement Officer
University of New Mexico
Purchasing Department
LOBO DEVELOPMENT CORPORATION, a New Mexico non-profit corporation organized to benefit the University

By: _____
David W. Harris, President

ACKNOWLEDGEMENT OF THE REGENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this _____ day of _____, 2009, by David W. Harris, Executive Vice President for Administration, COO and CFO, University of New Mexico, on behalf of the Regents of the University of New Mexico.

Notary Public

My commission expires:

ACKNOWLEDGEMENT OF AMERICAN CAMPUS COMMUNITIES, INC.

STATE OF NEW _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me this _____ day of _____, 2009,
by _____ [name], _____ [title] of American Campus
Communities, Inc., a Maryland corporation, on behalf of said corporation.

Notary Public

My commission expires:

ACKNOWLEDGEMENT OF LOBO DEVELOPMENT CORPORATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this _____ day of _____, 2009,
by, David W. Harris, President of Lobo Development Corporation, a New Mexico non-profit
corporation organized to benefit the University of New Mexico, on behalf of said corporation.

Notary Public

My commission expires:

LOCATION OF COMPONENT I AND COMPONENT II

EXHIBIT A

Page 1 of 1

**TERM SHEET
(GROUND LEASE)**

Any capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed to such terms in the Master Agreement for Lease to which this Outline of Ground Lease Terms is attached.

- I. Parties.
 - A. Regents (Lessor).
 - B. An Affiliate of American Campus Communities, Inc. or of American Campus Communities Operating Partnership LP (Lessee).
 - C. Separate lease for each Component.
- II. Purpose.
 - A. Student housing.
- III. Ownership Structure.
 - A. Fee Simple Land/Building – UNM.
 - B. Leasehold Interest in Land/Buildings – ACC.
- IV. Term.
 - A. 65 year base term.
 - B. One Extension of 9 years.
- V. Rent.
 - A. Fair market value.
 - B. To be paid per University direction:
 - 1. A stipulated payment at the beginning of the lease term.
 - 2. A fixed periodic payment.
 - 3. A variable periodic payment based on an agreed percentage of the Gross Revenues of the Component.
 - 4. A combination thereof, as agreed to by the Parties as set forth in the Ground Lease.

- VI. UNM Assistance in Marketing.
 - A. ACC may advertise on campus.
 - B. UNM to provide ACC with student contact information to extent permitted by law.
 - C. Students to be informed of ACC housing product on non-discriminatory basis.
 - D. ACC permitted to market its product for summer event housing.
- VII. UNM Student Housing/University Support Services.
 - A. UNM may not promote comparable housing on preferential basis.
 - B. UNM may build comparable project by demonstrating sufficient demand.
 - C. UNM may independently set rental rate for future UNM project not comparable to Approved Component.
 - D. University will provide University Support Services set forth in the Preliminary Materials if and as approved by Lobo and the Regents and, thereafter, by Lobo if there are suggested material increases to the level or amount of University Support Services set forth in the previously approved Preliminary Materials.
- VIII. University Purchase Option.
 - A. UNM may, at its option, after 10 years of operations under a Ground Lease, purchase ACC's interest under the Ground Lease by giving ACC at least twelve (12) months' advance written notice of the exercise of such option and paying to ACC an amount to be described in the Ground Lease, which amount will be calculated in a manner consistent with public company and/or fair market methodologies, but which amount will be no less than such amount as will result in ACC receiving an agreed upon minimum rate of return.
- IX. ACC Residents Same Access to Student Support Services.
 - A. UNM internet system.
 - B. Student support services.
- X. Taxes.
 - A. UNM and ACC cooperate to reduce/eliminate ad valorem taxes.
- XI. Minimum Standards of Operation.

- A. ACC committed to maintain each Component to Class A condition for the term of the lease.
 - B. Operational plan.
- XII. Management and Governance.
- A. Component managed per joint ACC and UNM approved management plan.
- XIII. Assignment.
- A. ACC may assign to an affiliate owned or controlled by American Campus Communities or a qualified assignee, with UNM consent, during construction of the Component, which consent shall not be unreasonably withheld, provided the assignee expressly assumes the duties and obligations of ACC under the Ground Lease which arise following the date of such assignment. Following completion of construction of the Component, ACC may assign to an affiliate owned or controlled by American Campus Communities or a qualified assignee without the need for further UNM consent. Objective criteria by which the qualifications of a prospective assignee may be determined will be set forth in the Ground Lease.
 - B. Regents may convey the real and personal property and assign the ground lease to Lobo Development Corporation, provided that (a) the Regents or the University remains obligated to perform the duties and obligations under the Ground Lease which may only be performed by the Regents or the University and (b) Lobo assumes the duties and obligations of the Regents under the Ground Lease which arise following the date of such assignment.
- XIV. Reasonable Assurances of ACC Performance relative to specified duties and obligations.
- A. ACC to provide a guarantee of certain obligations of its Affiliate lessee's performance reasonably acceptable to UNM. Such guarantee will be given by American Campus Communities Operating Partnership LP or another guarantor reasonably acceptable to UNM, and will be subject to agreed-upon limitations and conditions to be set forth in the Ground Lease.
- XV. Mortgages/Mortgagee Protective Provisions.
- A. ACC may finance, refinance and mortgage solely ACC's leasehold interest in a Component; provided (1) financing and/or refinancing shall not exceed 75% loan-to-value and (2) ACC provides evidence reasonably satisfactory to UNM that such financing will not be included in direct or indirect debt of the University. No lien on UNM's interest. No subordination of UNM's interest.
 - B. Reasonable and customary mortgagee protection provisions in Ground Lease. No subordination of UNM's interest.

EXHIBIT B

XVI. Insurance.

- A. Including Business Interruption/Lost Revenues Protection.

XVII. Default.

- A. By ACC.

- 1. UNM remedies.

- a. Following expiration of agreed-upon notice, cure and grace periods, equitable relief, self-help, offset, suit for past due rent and monetary damages (to be further defined in Ground Lease to include, exclude or substitute (1) actual and/or out-of-pocket but not consequential and/or future damages or (2) all remedies at law and equity or (3) equitable remedies only).
 - b. Termination of Ground Lease subject to notice of default, opportunity to cure, and satisfaction of other agreed-upon pre-termination conditions to be set forth in the Ground Lease.

- B. By UNM.

- 1. ACC remedies.

- a. Following expiration of agreed-upon notice, cure and grace periods, equitable relief, offset and monetary damages (to be further defined in Ground Lease to include, exclude or substitute (1) actual and/or out-of-pocket but not consequential and/or future damages or (2) all remedies at law and equity or (3) equitable remedies only).

XVIII. Compliance with Law.

- A. All work and obligations by and of the Parties under the Ground Lease shall be preformed and undertaken in compliance with all applicable laws, rules, regulations, and executive orders issued by the President of the United States or the Governor of the State of New Mexico.

XIX. Standard Lease Terms.

OUTLINE SPECIFICATIONS FOR COMPONENT I

**APPROVALS OR CONSENTS OF GOVERNMENTAL AUTHORITIES
REQUIRED FOR UNM ACTION**

EXCLUDED PARCELS

NONE.