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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

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SC Court of Appeals

University of South Carolina Aiken, Plaintiff,

v.

University Housing Services, Inc., HG Reynolds Company, Inc., Southern Wall Systems, Inc.,
McElroy Specialty Interiors, Inc., Croft Hill Siding Inc., East Coast Painting, Inc., and John Does
1 through 3, Defendants,

And

H.G. Reynolds Co., Inc., Third-Party Plaintiff,

v.

William Bell, Bell Siding and Roofing, William Bell d/b/a Bell Siding & Roofing a/k/a Bell
Siding and Roofing, LLC, Third-Party Defendants,

Of Which University Housing Services, Inc., and H.G. Reynolds Company, Inc. are the
Appellants,

And

Of Which University of South Carolina Aiken is the Respondent.

**RESPONDENT UNIVERSITY OF SOUTH CAROLINA AIKEN'S MOTION TO
DISMISS THE APPEAL OF H.G. REYNOLDS COMPANY, INC.,**

Respondent, University of South Carolina Aiken (hereinafter “USC”), pursuant to Rule 240 of the South Carolina Appellate Court Rules, herein moves this Honorable Court for an Order dismissing the Notice of Appeal filed by Appellant H.G. Reynolds Company, Inc. (hereinafter “Reynolds”) for the reasons stated herein:

INTRODUCTION

USC initiated this action alleging certain construction defects affecting the Pacer Commons dormitory at the University of South Carolina at Aiken. USC brought claims against multiple defendants, including Reynolds, who built the dormitory, and University Housing Services, Inc., (hereinafter “Developer”) who served as the project developer.

By way of its First Amended Complaint, USC asserted causes of action against Reynolds for “Negligence/Gross Negligence” and “Breach of Implied Warranties.” Thereafter, USC moved to amend its Complaint to dismiss certain claims against other parties. The trial court granted USC leave to file a second amended complaint. However, this did not alter any cause of action against Reynolds.¹ Further, Reynolds unsuccessfully moved to compel USC’s claims to arbitration relying on an arbitration provision contained within the Design Build Agreement to which neither Reynolds nor USC were parties. Reynolds now appeals both the trial court’s order granting of leave to amend the pleadings as well as the denial of its motion to compel arbitration.

Because neither USC nor Reynolds are parties to the Design Build Agreement and further because Reynolds is not affected by the trial court’s interlocutory order granting USC leave to amend the complaint and dismiss claims against other parties, the instant appeal must be dismissed.

¹ For comparison, the First Amended Complaint is attached as (Exhibit 1) and the Second Amended Complaint as (Exhibit 2), both being fully incorporated herein by reference.

BACKGROUND

I. FACTS

In 2003, the land on which Pacer Commons is located was owned by the Aiken County Commission on Higher Education (the “Commission”) which it leased to Collegiate Housing Properties Inc., (“Tenant”) pursuant to a “Lease Agreement.” (Exhibit 3). The Lease Agreement does **not** contain an arbitration provision.

In August of 2003, Tenant entered into a “Design Build Agreement” (Exhibit 4) with Appellant, University Housing Services, Inc., (Developer)². Thereafter, Developer entered into a “Construction Agreement” (Exhibit 5) with Reynolds, wherein Reynolds was hired as the general contractor. The Design Build Agreement between Developer and Tenant contains an arbitration provision; however, the Construction Contract between Developer and Reynolds does **not**.

After completion of construction, on May 20, 2005, the Aiken Student Housing Foundation (the “Foundation”) assumed the lease from Tenant. On April 4, 2006, the Commission, as owner and landlord, properly terminated the Lease Agreement and transferred the property *via* Warranty Deed to USC. (Exhibit 6). The Warranty Deed to USC is the only relevant document to which USC is a party and does **not** contain an arbitration provision.

Reynolds’s Motion to Compel Arbitration, and this appeal, concern the enforcement of the arbitration provision contained at Article 12 of the Design Build Agreement to which neither Reynold’s nor USC is a party.³

² Developer has separately filed Notice of Intent to Appeal. This Motion addresses only Reynolds’s Appeal, not Developer’s.

³ The instant Motion does not address the merits of Reynold’s claim and therefore the language of the subject arbitration provision is not relevant to the Motion. However, for the Court’s convenience the following documents are attached as exhibits: the Design Build Agreement (Exhibit 3); the “Lease Agreement” (Exhibit 4); the “Construction Contract” (Exhibit 5); the “Warranty Deed” (Exhibit 6). All of which were submitted as exhibits in support of Reynolds’s Motion to Compel Arbitration and incorporated herein by reference.

II. PROCEDURAL HISTORY

A. USC's Motion to Amend the Complaint.

USC initially brought suit against Reynolds and Developer (among others) on October 21, 2016. On March 6, 2017, USC filed a Motion to Amend its Complaint seeking to dismiss, without prejudice, certain claims against Developer. *See Second Amended Complaint (Exhibit 2)*. Developer opposed this Motion in which Reynolds joined. Pursuant to Rule 15, SCRCPP, the trial court granted USC the requested leave to amend the complaint. *See Notice of Appeal*. This Second⁴ Amended Complaint left all causes of action against Reynolds unchanged. Reynolds herein takes appeal from this Order.⁵

B. Reynold's Motion to Compel Arbitration.

Both Reynolds and Developer separately moved to compel USC's claims against them to arbitration based upon the Design Build Agreement. Because neither USC nor Reynolds are parties to the Design Build Agreement, the trial court denied both Reynolds's and Developer's Motions to Compel Arbitration in a single Order. *See Notice of Appeal*. Reynolds and Developer separately filed notice of intent to appeal.⁶

Reynolds's appeal is not justiciable because Reynolds lacks appellate standing and it is not aggrieved by the trial court's rulings. Therefore, the instant appeal should be dismissed.

⁴ The trial court's Order mistakenly references this as the "third" amendment.

⁵ Both Developer and Reynolds unsuccessfully moved, pursuant to Rule 59(e), SCRCPP and thereafter filed the instant notice of appeal.

⁶ On June 6, 2018, this Court, upon its own motion, consolidated Reynolds' appeal with Developer's.

LAW AND ANALYSIS

I. The instant appeal should be dismissed because Reynolds is not aggrieved by the trial court's rulings and lacks appellate standing.

"Only a party aggrieved by an order, judgment . . . or decision. . . ." may appeal. Rule 201(b), SCACR. This Court has explained that a party who lacks standing cannot be aggrieved because "[t]here is no material distinction in general standing principles juxtaposed to the ability of an 'aggrieved party' to appeal pursuant to Rule 201(b)." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 447, 665 S.E.2d 237, 242 (Ct. App. 2008). No matter how erroneous or prejudicial a court decision may be to the rights or interest of another, a party may not appeal from a decision that does not affect its own interests. *Bivens v. Knight*, 254 S.C. 10, 173 S.E.2d 150 (1970). A party is "aggrieved" as required by law, only when the ruling of the trial court operates on some personal or property right. *Id.* An appellate Court "has a duty to reject an appeal that is initiated by a party who is not aggrieved as contemplated by law." TOAL, J.H., *Appellate Practice in South Carolina*, Ed. 2, p. 109 (2004); citing *Cission v. McWhorter*, 255 S.C. 174, 177 S.E.2d 603 (1970).

Where a party lacks standing to appeal or the issue presented is not a justiciable controversy, this Court should dismiss the appeal. See Rule 201(b), SCACR; *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996) (before an appeal may be maintained there must exist a justiciable controversy); see e.g., *Lennon v. South Carolina Coastal Council*, 330 S.C. 414, 415, 498 S.E.2d 906 (Ct. App. 1998) (an appellate court should dismiss an appeal in the absence of a justiciable controversy).

A. Reynolds lacks standing to appeal the trial court's order refusing to compel arbitration and therefore, the appeal is not justiciable.

Generally, "contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it." *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.*, 354 S.C. 549,

554 (Ct. App. 2003). Whether there is an agreement to arbitrate is unavoidably an issue of contract law, and our Supreme Court has recognized that a non-party lacks standing to compel arbitration. *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 127 (2013) (acknowledging that a non-party to a contract lacked standing to compel arbitration pursuant to that contract).

Similarly, the preference for arbitration contained in the Federal Arbitration Act (“FAA”)⁷ does not remove standing as a requirement to compel arbitration. Court’s applying the FAA have continuously demonstrated that arbitration rests on the core principles of contract law and the preference for arbitration does not operate to provide a non-party with standing to compel arbitration. *See Brantley v. Republic Mortg. Ins. Co.*, 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004) (affirmed *Brantley v. Republic Mortg. Ins. Co.* 424 F.3d 392 (4th Cir. 2005); citing *Britton v. Co-Op Banking Group*, 4 F.3d 742, 744 (9th Cir. 1993) (“An entity that is neither a party to nor agent for nor beneficiary of the contract lacks standing to compel arbitration[.]”); *Trompeter v. Boise Cascade Corp.* 877 F.2d 686, 687 (8th Cir. 1989); *Lorber Industries v. Los Angeles Printworks Corp.*, 803 F.2d 523 (9th Cir. 1986); *Mutual Benefit Life Ins. Co. v. Zimmerman*. 783 F.Supp. 853, 865 (D.N.J. 1992); *see also Jones v. Moneytree*, 686 So.2d 1166, 1168 (Ala. 1998) (“First Colonial has no standing to seek enforcement of the arbitration provision First Colonial is not a party to the contract containing the arbitration agreement, and it is clear from the language of the arbitration agreement that it applies only to the Joneses and Money Tree, the debtor and the creditor.”).

⁷ *See* 9 U.S.C. § 1 *et seq.* Reynolds maintains its claim for arbitration is proper under the FAA. USC does not concede that this matter is subject to the FAA. Instead, USC reserves the right to assert this matter is controlled by the South Carolina Uniform Arbitration Act (“SCUAA”). *See* SC Code Ann. §§ 15-48-10 *et seq.* However, because this Motion does not address the merits of Reynolds claims, USC assumes (without conceding) for the limited scope of this Motion that this matter is subject to the FAA.

There is no “third-party standing” afforded to a non-party, such as Reynolds, to compel arbitration against another non-party, such as USC. Rather, third-party standing may only be conferred: (1) where a signatory seeks to compel a non-signatory to arbitrate the non-signatory’s claims against the signatory; or (2) where a non-signatory seeks to compel arbitration against a signatory because of the so-called “intertwined claims test.” See *Weckesser v. Knight Enterprises SE, LLC*, 2018 U.S.App.Lexis15751, 4th Cir. (2018) (unpublished) citing *Raymond James Fin. Servs., Inc., v. Cary*, 709 F.3d 382, 386 (4th Cir. 2013) (the presumption in favor of arbitration applies “only when a validly formed and enforceable arbitration agreement is ambiguous about whether it covers the dispute at hand, not when there remains a question as to whether an agreement [to arbitrate] even exists between the parties in the first place.”). In either scenario, at least one party (i.e., the compelling party or compelled party) must necessarily be a signatory/party to the arbitration agreement. See e.g., *id.*; accord *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 291 (Ct. App. 2012) (acknowledging third-party standing to permit a non-signatory to compel a signatory to arbitration as well as standing of a signatory to compel a non-signatory to arbitration, but not acknowledging standing when a non-signatory seeks to compel another non-signatory to arbitration).

Here, the merits of Reynolds’s appeal would ask this Court to declare the rights as between USC and Reynolds under the Design Build Agreement. However, because neither USC nor Reynolds are a party to the Design Build Agreement, Reynolds has no rights as against USC under that agreement, and therefore, the merits need not be reached. As a non-party, Reynolds has no standing to enforce the Design Build Agreement against USC, and thus, no standing to appeal. The trial court’s ruling on the enforceability of the Design Build Agreement—whether right or wrong—simply does not implicate a right belonging to Reynolds. See; *Thomas*, 354 S.C. at 554

(a non-party does not have standing to enforce a contract); *see also Bivens*, 254 S.C. 10, 173 S.E.2d 150 (a party who's rights or interests are not implicated by a trial court's order cannot be aggrieved as required to appeal). Reynolds is not, and cannot be, "aggrieved" as required by Rule 210, SCRCF. Consequently, Reynolds lacks standing to appeal. *See Powell*, at 447, 665 S.E.2d at 242 (finding that a party without standing cannot be "aggrieved").

Additionally, "[a] justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Waters v. South Carolina Land Resources Conservation Comm'n*, 321 S.C. 219, 227 467 S.E.2d 913, 918 (1996); *citing Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983) (internal quotations omitted); *see also Hitter v. McLeod*, 274 S.C. 616, 266 S.E.2d 418 (1980).

The lack of justiciability of Reynolds's appeal is underscored by comparison to that of Developer. Unlike Reynolds, Developer is, at least, a party to the Design Build Agreement, and has certain rights under that agreement. Because USC disputes whether Developer is entitled to enforce those rights against USC, those rights are in controversy and are ripe for judicial resolution. This is not the case of Reynolds' appeal. Reynolds has no rights under the Design Build Agreement. Instead, it seeks to enforce a right that belongs, if at all, to Developer. Thus, even if Reynolds's argument held water—which it does not—its rationale makes plain that Reynolds's alleged right to participate in arbitration is contingent upon Developer's right to compel USC to arbitration. This is fatal to Reynolds's ability to pursue the instant appeal because a contingent or hypothetical right is not ripe for adjudication. *See Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996) (finding that before an appeal may be maintained there must be a justiciable controversy which encompasses various doctrines, including ripeness, mootness and standing);

Waters, 321 S.C. at 227 467 S.E.2d at 918 (the absence of a non-contingent right renders and issue not justiciable); accord *Johnson v. Brandon Corp.*, 221 S.C. 160, 69 S.E.2d 594 (1952) (finding that although a party may have an interest giving right to appeal, if that interest is divested pending the appeal, the appeal will be dismissed).

B. *Appeal from the Order granting leave to amend complaint is an impermissible interlocutory appeal which is further not justiciable.*

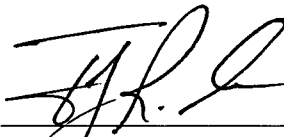
As a threshold matter, an order granting leave to amend pleadings is interlocutory and direct appeal is not permitted. See *Pruitt v. Bowers*, 330 S.C. 483, 488, 499 S.E.2d 250, 253 (Ct. App. 1998) (stating an appeal of an order granting a motion to amend a complaint is interlocutory and generally not appealable); see also *Briggs v. Richardson*, 272 S.C. 376, 256 S.E.2d 544 (1979); *Lake City Dev. Corp., v. Gilbert Constr. Co.*, 283 S.C. 10, 320 S.E.2d 494 (Ct. App. 1984) (both holding that an order allowing amendment of the pleadings is not immediately appealable). While an interlocutory appeal may be joined with a non-interlocutory appeal, Reynolds has no standing to pursue appeal of the non-interlocutory Order refusing to compel arbitration. See *supra*.

Additionally, even if the appeal of this order is not barred as interlocutory, it remains that the Second Amended Complaint did not amend any claim asserted against Reynolds. Therefore, Reynolds is not aggrieved or affected the Order granting leave to amend from which Reynolds appeals. See TOAL, J.H., *Appellate Practice in South Carolina*, Ed. 2, p. 19 (2004) (An appellate Court “has a duty to rejects an appeal that is initiated by a party who is not aggrieved as contemplated by law.”); citing *Cission*, 255 S.C. 174, 177 S.E.2d 603. Thus, the instant appeal should be dismissed.

CONCLUSION

As set forth above, the instant appeal must be dismissed as a result of Reynolds's lack of standing and failure to present a justiciable controversy.

Respectfully submitted,



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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 1

USC's First Amended Complaint

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

University of South Carolina Aiken,

Plaintiff,

v.

University Housing Services, Inc.;
H. G. Reynolds Co., Inc.; Southern
Wall Systems, Inc.; McElroy
Specialty Interiors, Inc.; Croft Hill
Siding, Inc.; East Coast Painting,
Inc.; and John Does 1 to 3;

Defendants.

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2016-CP-02-02339

First Amended Summons
Jury Trial Demanded

To: All Defendants Above-Named

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscriber at his office, Alford & Thoreson, LLC, P.O. Drawer 8008, Hilton Head Island, SC 29938, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to appear and defend the action as required by law, judgment by default will be rendered against you for the relief demanded in the Complaint.

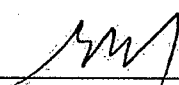
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AIKEN COUNTY
CLERK OF COURT

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**Attorneys for University of South
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October 21, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

University of South Carolina Aiken,
Plaintiff,

v.

University Housing Services, Inc.;
H. G. Reynolds Co., Inc.; Southern
Wall Systems, Inc.; McElroy
Specialty Interiors, Inc.; Croft Hill
Siding, Inc.; East Coast Painting,
Inc.; and John Does 1 to 3;

Defendants.

COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2016-CP-02-02339

First Amended Complaint
Jury Trial Demanded

The Plaintiff, University of South Carolina Aiken ("Plaintiff"), complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a government body created under S.C. Code § 59-56-10, et seq. of the laws of South Carolina and is the owner of the University of South Carolina Aiken Pacer Commons dormitory student housing (the "Subject Property"). The building houses 316 residents and contains 79 four-person residential apartments, with associated lounges, computer room, game room, and laundry area.

2. Defendant University Housing Services, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Florida, that is no longer authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

3. Defendant H. G. Reynolds Co., Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

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AIKEN COUNTY
CLERK OF COURT

4. Defendant Southern Wall Systems, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Georgia, that is authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

5. Defendant McElroy Specialty Interiors, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Georgia, that is authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

6. Defendant Croft Hill Siding, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

7. Defendant East Coast Painting, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of Florida, that is not authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

8. Each Defendant John Does 1 through 3 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property as a roofing contractor or subcontractor. John Does 1 through 3 could encompass multiple potential defendants, each of which "whose true name is unknown." John Does 1 through 3 are named pursuant to Rule 10(a)(1), SCRCF, and Plaintiff will amend this pleading when any or all of their true names are discovered. Because John Does 1 through 3 could encompass multiple potential defendants, multiple future substitutions for John Does 1 through 3 might be proper.

9. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

10. This is a construction defects matter arising from negligent design and construction of the Pacer Commons student-housing dormitory at University of South Carolina Aiken.

11. Upon information and belief, construction of the Subject Property commenced in or around August 18, 2003, and was substantially complete in or around 2004.

12. Upon information and belief, University Housing Services, Inc. acted as developer for the Subject Property, and was responsible for coordination, hiring of contractors, and supervision of construction.

13. Upon information and belief, H. G. Reynolds Co., Inc. acted as general contractor for the Subject Property, and was responsible for coordination and supervision of construction.

14. Upon information and belief, Southern Wall Systems, Inc. installed the stucco, waterproofing, flashings, or other related appurtenances at the Subject Property, and otherwise observed construction of same.

15. Upon information and belief, McElroy Specialty Interiors, Inc. installed the framing, masonry, decks, windows and doors, building wrap, flashings, or related appurtenances at the Subject Property, and otherwise observed construction of same.

16. Upon information and belief, Croft Hill Siding, Inc. installed the gutters, downspouts, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise observed construction of same.

17. Upon information and belief, East Coast Painting, Inc. worked as an exterior painter and caulker at the Subject Property, and otherwise observed same.

18. Upon information and belief, John Does 1 through 3 installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise observed construction of same.

19. Defendants Southern Wall Systems, Inc.; McElroy Specialty Interiors, Inc.; Croft Hill Siding, Inc.; East Coast Painting, Inc.; and John Does 1 through 3 are hereinafter referred to collectively as "Subcontractors."

20. Upon information and belief, the Subject Property contains numerous design and construction defects including, but not limited to, the following:

- a) Improper application of stucco;
- b) Improper installation of exterior trim board;
- c) Improper installation of exterior masonry;
- d) Improper installation and lack of weather resistant barriers;
- e) Improper installation of doors and windows;
- f) Improper roof installation;
- g) Improper deck installation;
- h) Failure to notice defective work of other trades prior to performing subsequent work;
- i) Improper design and failure to install drainage systems;
- j) Improper accounting for routine thermal expansion and contraction of construction components;
- k) Improper deck waterproofing installation and use of improper materials for deck waterproofing;
- l) Use of improper fasteners;
- m) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows; and
- n) Improper shingle-roof and roof framing installation.

21. Due to the design and construction deficiencies, continuous and repeated exposure to harmful conditions, including water intrusion, has occurred, resulting in physical and consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other

subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of his residence.

22. As a direct and proximate result, Plaintiffs have suffered injuries and continue to suffer injuries and are entitled to the recovery of damages in the amount of the cost to repair the Subject Property; consequential damages, including loss of use and loss of value; special damages including attorney fees and punitive damages where applicable; plus costs, prejudgment interest, and post judgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence — As to University Housing Services, Inc.)

23. Each and every allegation set forth above is incorporated here.

24. University Housing Services, Inc., acting as developer of the Subject Property, owed duties to Plaintiff to exercise that degree of skill necessary to develop, construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

25. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of University Housing Services, Inc., as developer, in one or more of the following particulars:

- a) In failing to properly develop, construct and renovate the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;
- b) In failing to properly supervise the general contractor, subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the cus-

tomary and ordinary standards of the construction industry;

- c) In accepting non-conforming or defective materials;
- d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions; and
- e) In constructing the Subject Property in violation of applicable building codes.

26. University Housing Services, Inc. failed to use slight care and breached its duty in a reckless manner such that a developer of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

27. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, pre-judgment and post judgment interest.

SECOND CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to
University Housing Services, Inc.)

28. Each and every allegation set forth above is incorporated here.

29. University Housing Services, Inc. held itself out to the public and to Plaintiff as specifically qualified to residential development in Aiken County, South Carolina.

30. University Housing Services, Inc. provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

31. Additionally, certain implied warranties arose from the work performed by University Housing Services, Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

32. University Housing Services, Inc. further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

33. As set forth above, University Housing Services, Inc. breached its implied and/or express warranties.

34. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

THIRD CAUSE OF ACTION

(Breach of Contract - As to University Housing Services, Inc.)

35. Each and every allegation set forth above is incorporated here.

36. University Housing Services, Inc. contracted to construct the Subject Property for Plaintiff in accordance with the plans and specifications and in accordance with established industry standards and all applicable building codes.

37. As set forth more fully above, University Housing Services, Inc. breached its obligation to construct the Subject Property in accordance with the plans and specifications and in accordance with established industry standards and all applicable building codes.

38. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, special damages including attorney fees, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to H. G. Reynolds Co., Inc.)

39. Each and every allegation set forth above is incorporated here.

40. H. G. Reynolds Co., Inc. owed duties to Plaintiff to exercise the degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

41. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of H. G. Reynolds Co., Inc., as general contractor, in one or more of the following particulars:

- a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;
- b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;
- c) In accepting non-conforming or defective materials;
- d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;
- e) In failing to inform the architect and/or owner of defects in the plans and specifications;
- f) In constructing the Subject Property in violation of applicable building codes; and

g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

42. H. G. Reynolds Co., Inc. failed to use slight care and breached its duties in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

43. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, pre-judgment and post judgment interest.

FIFTH CAUSE OF ACTION

(Breach of Express & Implied Warranties — As to H.G. Reynolds Co., Inc.)

44. Each and every allegation set forth above is incorporated here.

45. H.G. Reynolds Co., Inc. held itself out to the public and to Plaintiff as specifically qualified to perform construction in Aiken County, South Carolina

46. H.G. Reynolds Co., Inc. provided construction services to the Subject Property which were accompanied by express and implied warranties that said construction would conform to the requirements of the agreements and any applicable building code requirements, laws, ordinances, rules, and regulations.

47. Certain implied warranties arose from the work performed by H.G. Reynolds Co., Inc., including, but not limited to, a warranty of workman-like construction and habitability.

48. H.G. Reynolds Co., Inc. further expressly and/or impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

49. As set forth above, H.G. Reynolds Co., Inc. breached its implied and/or express warranties.

50. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

SIXTH CAUSE OF ACTION

(Negligence/Gross Negligence — As to Subcontractors)

51. Each and every allegation set forth above is incorporated here.

52. Each of the Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workman-like manner, free of defects, and in conformance with the applicable building codes and industry standards.

53. Each of the Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiffs' rights.

54. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashings, flooring, painting, and other components of the residential dormitory, inclusive of work of other trades.

55. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SEVENTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship — As to Subcontractors)

56. Each and every allegation set forth above is incorporated here.

57. Each of the Subcontractors impliedly warranted that its respective scope would be performed in a careful, diligent, and workmanlike manner, free of construction defects.

58. As set forth more fully above, each of the Subcontractors breached the implied warranty of workmanship.

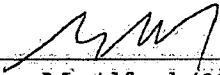
59. As a direct and proximate result, Plaintiffs have suffered injuries and continue to suffer injuries and are entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

Wherefore, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the Subject Property; consequential damages, including loss of use and loss of value; special damages including attorney fees and punitive damages where applicable; plus costs, prejudgment interest, and post judgment interest.

Jury Trial Demanded.

SIGNATURES ON FOLLOWING PAGE

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**Attorneys for University of South
Carolina Aiken**

October 21, 2016
Hilton Head Island, South Carolina

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 2

USC's Second Amended Complaint

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE SECOND JUDICIAL CIRCUIT
) CASE NO.: 2016-CP-02-02339

COUNTY OF AIKEN

UNIVERSITY OF SOUTH CAROLINA,

Plaintiff,

SECOND AMENDED SUMMONS

vs.

UNIVERSITY HOUSING SERVICES, INC.,
H.G. REYNOLDS COMPANY, INC.,
SOUTHERN WALL SYSTEMS, INC.,
MCELROY SPECIALTY INTERIORS, INC.,
**CROSBY BROADWATER D/B/A
BROADWATER CONSTRUCTION, TIM
STEPHENS D/B/A SAN-GLO CAROLINA
A/K/A SAN-GLO GLASS, INC., WILLIAM
BELL D/B/A BELL SIDING & ROOFING
A/K/A BELL SIDING & ROOFING, LLC,**
CROFT HILL SIDING, INC., EAST COAST
PAINTING, INC. and JOHN DOE 3,

Defendants.

TO: THE ABOVE-NAMED DEFENDANTS:

IF YOU ARE IDENTIFIED IN **BOLD** PRINT, YOU ARE HEREBY SUMMONED and required to answer the Plaintiff's Second Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Second Amended Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Second Amended Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff will apply to the Court for the relief demanded

in the Second Amended Complaint and judgment by default will be rendered against you.

All other parties who have been previously named and served in the above-referenced action are hereby summoned and required to answer the Plaintiff's Second Amended Complaint and to serve a copy of your Answer to the Second Amended Complaint upon the subscriber, Jesse A. Kirchner, at his office located at 15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina, 29401, **within the time prescribed pursuant to SCRPC 15(a)**; and if you fail to answer the Second Amended Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff will apply to the Court for the relief demanded in the Second Amended Complaint and judgment by default will be rendered against you.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

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Attorneys for Plaintiff

May 23, 2017
Charleston, South Carolina

residents and contains 79 four-person residential apartments, with associated lounges, computer room, game room, and laundry area.

2. Defendant University Housing Services, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Florida, that is no longer authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

3. Defendant H. G. Reynolds Co., Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

4. Defendant Southern Wall Systems, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Georgia, that is authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

5. Defendant McElroy Specialty Interiors, Inc. is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of Georgia, that is authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

6. Defendant Crosby Broadwater d/b/a Broadwater Construction ("Broadwater") is, upon information and belief, an individual doing business as a sole proprietorship or unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

7. Defendant Broadwater is hereby substituted for John Doe 1 *nunc pro tunc*.

8. Defendant Tim Stephens d/b/a San-Glo Carolina is, upon information and belief, an individual doing business as an unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

9. Defendant San-Glo Glass, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

10. Upon information and belief, San-Glo Carolina and San-Glo Glass, Inc. are successors in interest and/or are amalgamated with one another in that they involve the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

- a) the legal distinction between the two entities is blurred;
- b) there was an agreement for one entity to assume the debts of the other;
- c) the two entities were or are consolidated;
- d) one entity is a mere continuation of the other; and
- e) the transfer from one company to the other was fraudulent in fact.

11. Defendant Tim Stephens d/b/a San-Glo Carolina a/k/a San-Glo Glass, Inc. (hereinafter collectively "San-Glo") is hereby substituted for John Doe 2 *nunc pro tunc*.

12. Defendant William Bell d/b/a Bell Siding & Roofing is, upon information and belief, an individual doing business as an unincorporated business organization, domiciled in and with a principal place of business in South Carolina, and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

13. Defendant Bell Siding & Roofing, LLC is, upon information and belief, a limited liability company organized and existing pursuant to the laws of the State of South Carolina and conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

14. Upon information and belief, Bell Siding & Roofing and Bell Siding & Roofing, LLC are successors in interest and/or are amalgamated with one another in that they involve the same people, performing the same type of work, from the same location, and because the entities are characterized by one or more of the following:

- a) the legal distinction between the two entities is blurred;
- b) there was an agreement for one entity to assume the debts of the other;
- c) the two entities were or are consolidated;
- d) one entity is a mere continuation of the other; and
- e) the transfer from one company to the other was fraudulent in fact.

15. The newly named Defendant William Bell d/b/a Bell Siding & Roofing a/k/a Bell Siding & Roofing, LLC (hereinafter collectively referred to as "Bell Siding & Roofing") is hereby substituted for John Doe 3 *nunc pro tunc*.

16. Defendant Croft Hill Siding, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of South Carolina and

conducted business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

17. Defendant East Coast Painting, Inc. is, upon information and belief, a corporation organized and formerly existing pursuant to the laws of the State of Florida, that is not authorized to conduct business in South Carolina, and that did conduct business, in whole or in part, at all times relevant hereto in Aiken County, South Carolina.

18. Each Defendant John Does 4 through 10 is an individual, entity, or entities, domiciled and/or operating under the laws of one of the United States of America that participated in the construction of the Subject Property as a contractor or subcontractor. John Does 4 through 6 could encompass multiple potential defendants, each of which "whose true name is unknown." John Does 4 through 10 are named pursuant to Rule 10(a)(1), SCRCF, and Plaintiff will amend this pleading when any or all of their true names are discovered. Because John Does 4 through 10 could encompass multiple potential defendants, multiple future substitutions for John Does 4 through 10 might be proper.

19. This Court has jurisdiction over the subject matter and the parties to this action.

FACTUAL ALLEGATIONS

20. This is a construction defects matter arising from negligent design and construction of the Pacer Commons student-housing dormitory at University of South Carolina Aiken.

21. Upon information and belief, construction of the Subject Property commenced in or around August 18, 2003, and was substantially complete in or around the Fall of 2004.

22. Upon information and belief, University Housing Services, Inc. acted as developer for the Subject Property, and was responsible for coordination, hiring of contractors, and supervision of construction.

23. Upon information and belief, H. G. Reynolds Co., Inc. acted as general contractor for the Subject Property, and was responsible for coordination and supervision of construction.

24. Upon information and belief, Southern Wall Systems, Inc. installed the stucco, waterproofing, flashings, or other related appurtenances at the Subject Property, and otherwise-observed construction of same.

25. Upon information and belief, McElroy Specialty Interiors, Inc. installed the framing, masonry, decks, windows and doors, building wrap, flashings, or related appurtenances at the Subject Property, and otherwise observed construction of same.

26. Upon information and belief, Defendant Broadwater installed the masonry, building wrap, flashings, and related appurtenances at the Subject Property, and otherwise observed construction of same.

27. Upon information and belief, Defendant San-Glo supplied and installed the storefront windows and doors, flashings, and related appurtenances at the Subject Property, and otherwise observed construction of same.

28. Upon information and belief, Defendant Bell Siding & Roofing installed the roofing components, subcomponents, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise observed construction of same.

29. Upon information and belief, Croft Hill Siding, Inc. installed the gutters, downspouts, waterproofing, and related flashings or appurtenances at the Subject Property, and otherwise observed construction of same.

30. Upon information and belief, East Coast Painting, Inc. worked as an exterior painter and caulker at the Subject Property, and otherwise observed same.

31. Defendants Southern Wall Systems, Inc.; McElroy Specialty Interiors, Inc.; **Crosby Broadwater d/b/a Broadwater Construction; Tim Stephens d/b/a San-Glo Carolina a/k/a San-Glo Glass, Inc.; William Bell d/b/a Bell Siding & Roofing a/k/a Bell Siding & Roofing, LLC**; Croft Hill Siding, Inc.; East Coast Painting, Inc.; and John Does 4 through 10 are hereinafter referred to collectively as "Subcontractors."

32. Upon information and belief, the Subject Property contains numerous design and construction defects including, but not limited to, the following:

- a) Improper application of stucco;
- b) Improper installation of exterior trim board;
- c) Improper installation of exterior masonry;
- d) Improper installation and lack of weather resistant barriers;
- e) Improper installation of wall sheathing;
- f) Improper installation of doors and windows;
- g) Improper roof installation;
- h) Improper roof sheathing installation;
- i) Improper installation of aluminum roof vents;
- j) Improper installation of gutters and downspouts;
- k) Improper deck and concrete balcony installation;
- l) Improper balcony framing;
- m) Failure to notice defective work of other trades prior to performing subsequent work;
- n) Improper design and failure to install drainage systems;
- o) Improper accounting for routine thermal expansion and contraction of construction components;

- p) Improper deck waterproofing installation and use of improper materials for deck waterproofing;
- q) Use of improper fasteners;
- r) Lack of or improper flashing and waterproofing at junction of roofs, decks, walls, concrete and windows; and
- s) Improper shingle-roof and roof framing installation.

33. Due to the design and construction deficiencies, continuous and repeated exposure to harmful conditions, including water intrusion, has occurred, resulting in physical and consequential damages. These events have occurred every year since construction and constitute "occurrences" and compensable damages. Further, the negligence/gross negligence of each Defendant herein has resulted in damage to the work of the other subcontractors and trades and in damage to Plaintiff's residence and property and Plaintiff's use and enjoyment of his residence.

34. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property; consequential damages, including loss of use and loss of value; special damages including attorney fees and punitive damages where applicable; plus costs, prejudgment interest, and post judgment interest.

FIRST CAUSE OF ACTION

(Negligence/Gross Negligence as to University Housing Services, Inc.)

35. Each and every allegation set forth above is incorporated here.

36. University Housing Services, Inc., acting as developer of the Subject Property, owed duties to Plaintiff to exercise that degree of skill necessary to develop, construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

37. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of University Housing Services, Inc., as developer, in one or more of the following particulars:

- a) In failing to properly develop, construct and renovate the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;
- b) In failing to properly supervise the general contractor, subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;
- c) In accepting non-conforming or defective materials;
- d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions; and
- e) In constructing the Subject Property in violation of applicable building codes.

38. University Housing Services, Inc. failed to use slight care and breached its duty in a reckless manner such that a developer of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

39. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SECOND CAUSE OF ACTION

(Breach of Implied Warranties as to University Housing Services, Inc.)

40. Each and every allegation set forth above is incorporated here.

41. University Housing Services, Inc. held itself out to the public and to Plaintiff as specifically qualified to residential development in Aiken County, South Carolina.

42. Certain implied warranties arose from the work performed by University Housing Services, Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

43. University Housing Services, Inc. further impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

44. As set forth above, University Housing Services, Inc. breached its implied warranties.

45. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

THIRD CAUSE OF ACTION

(Negligence/Gross Negligence as to H. G. Reynolds Co., Inc.)

46. Each and every allegation set forth above is incorporated here.

47. H. G. Reynolds Co., Inc. owed duties to Plaintiff to exercise the degree of skill necessary to construct, supervise, and review the design and otherwise deliver the Subject Property free of construction and design defects and in conformity with customary and ordinary standards of the building and construction industry.

48. The deficiencies and defects which exist at the Subject Property are the proximate and direct result of the negligence and/or gross negligence of H. G. Reynolds Co., Inc., as general contractor, in one or more of the following particulars:

- a) In failing to properly construct the Subject Property by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturers' instructions;
- b) In failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;
- c) In accepting non-conforming or defective materials;
- d) In accepting and performing deficient and/or defective workmanship and/or materials without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturers' instructions;
- e) In failing to inform the architect and/or owner of defects in the plans and specifications;
- f) In constructing the Subject Property in violation of applicable building codes; and
- g) In failing to act as a reasonable and prudent general contractor would have acted under the circumstances then and there existing.

49. H. G. Reynolds Co., Inc. failed to use slight care and breached its duties in a reckless manner such that a general contractor of ordinary reason or prudence under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

50. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

FOURTH CAUSE OF ACTION

(Breach of Implied Warranties as to H.G. Reynolds Co., Inc.)

51. Each and every allegation set forth above is incorporated here.

52. H.G. Reynolds Co., Inc. held itself out to the public and to Plaintiff as specifically qualified to perform construction in Aiken County, South Carolina.

53. Certain implied warranties arose from the work performed by H.G. Reynolds Co., Inc., including, but not limited to, a warranty of workmanlike construction and habitability.

54. H.G. Reynolds Co., Inc. further impliedly warranted that the materials, components, and services were suitable and fit for use in constructing the Subject Property and would be free of defects.

55. As set forth above, H.G. Reynolds Co., Inc. breached its implied warranties.

56. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

FIFTH CAUSE OF ACTION

(Negligence/Gross Negligence as to Subcontractors)

57. Each and every allegation set forth above is incorporated here.

58. Each of the Subcontractors had duties and standards of care to properly perform its trade on the Subject Property in a good and workman-like manner, free of defects, and in conformance with the applicable building codes and industry standards.

59. Each of the Subcontractors failed to use slight care and breached its duties and standards in a reckless manner such that a contractor of ordinary reason or prudence

under such circumstances would have been conscious of it as an invasion of Plaintiff's rights.

60. This breach of duty included faulty workmanship resulting in physical, consequential damages including water intrusion and defects in the framing, siding, decking, waterproofing/flashing, flooring, painting, and other components of the residential dormitory, inclusive of work of other trades.

61. As a direct and proximate result of such negligence, carelessness, and recklessness, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages, plus costs and expenses, prejudgment and post judgment interest.

SIXTH CAUSE OF ACTION

(Breach of Implied Warranty of Workmanship as to Subcontractors)

62. Each and every allegation set forth above is incorporated here.

63. Each of the Subcontractors impliedly warranted that its respective scope would be performed in a careful, diligent, and workmanlike manner, free of construction defects.

64. As set forth more fully above, each of the Subcontractors breached the implied warranty of workmanship:

65. As a direct and proximate result, Plaintiff has suffered injuries and continues to suffer injuries and is entitled to the recovery of damages in the amount of the cost to repair the Subject Property, consequential damages, including loss of use and loss of value, punitive damages where applicable, plus costs, prejudgment interest and post judgment interest.

WHEREFORE, Plaintiff prays for judgment against the Defendants and is entitled to recover the cost to repair the Subject Property; consequential damages, including loss of use and loss of value; special damages including attorney fees and punitive damages where applicable; plus costs, prejudgment interest, and post judgment interest.

Jury Trial Demanded.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

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Attorneys for Plaintiff

May 23, 2017
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 3

The Lease Agreement

2.00

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

LEASE AGREEMENT
(WITH EASEMENTS)

LESSOR: Aiken County Commission for Higher Education

LESSEE: Collegiate Housing Properties, Inc., a Florida corporation

DEMISED PREMISES: All that certain piece, parcel or tract of land and all improvements thereon located South and West and adjoining the current corporate limits of the City of Aiken, County of Aiken, State of South Carolina, and being more particularly described as follows:

AIKEN COUNTY, S.C. REC: 8-12-3 WIT: 8-1-3

All that certain piece, parcel or tract of land containing 11.6433 acres (the "Demised Premises") as more fully shown as "Lease Area" upon a survey thereof prepared for the Aiken County Commission for Higher Education by Hass & Hilderbrand, Inc. dated July 29, 2003 (the "Plat"), said plat being recorded on the records of Aiken County, South Carolina in Plat Book 47, Page 1.

NOT OPEN

1. This Lease Agreement (this "Lease") is entered into between the above named Lessor and Lessee to be binding upon their successors and assigns, upon the terms and in consideration of the mutual promises set forth.

2. The terms of the Lease shall be for forty (40) years which shall begin on August 1, 2003 and shall terminate on July 31, 2043. For such term, the Lessor leases to the Lessee, and the Lessee leases from the Lessor, the Demised Premises described above.

3. The rental during the Lease term shall be One Dollar (\$1.00) per year, paid in advance on the second day of January each year, at such place as the Lessor may designate in writing. It is agreed that any continued use or occupancy by Lessee of the Demised Premises after expiration of the Lease, shall operate as a tenancy from month to month at the same monthly rent and under the same conditions in force at the expiration of the Lease.

4. Lessor hereby declares, creates, establishes, and grants unto Lessee and its successors and assigns as lessee of the Demised Property, non-exclusive, easements in, over, under, on, and through that certain parcel of real property designated as "A-25: Ingress/Egress & Regress Easement From University Parkway Along An Existing Access to Pacer Downs" (the "Access Easement Area") as shown on the Plat for the following uses and purposes:

(a) A general, non-exclusive easement for the term of the Lease for the purpose of vehicular and pedestrian ingress, egress, and access through, across, and over paved roadways now or hereafter situated upon the Access Easement Area. Lessor agrees that no barricade or other divider will be constructed which would block access to the Demised Premises, and the Lessor will do nothing to prohibit or discourage the free and uninterrupted flow of pedestrian and vehicular traffic in the Access Easement Area.

- (b) A general, non-exclusive easement for a period of 18 months from the date hereof for ingress, egress and access on and over the Access Easement Area for the construction, widening and improving the existing roadway within the Access Easement Area. For purposes of construction, such easement shall extend an additional twenty (20) feet on each side of the Access Easement Area until such time that the construction, widening and improvement of the roadway is completed.
- (c) Lessor shall maintain the Access Easement Area and the roadway within the Access Easement Area, including paving, patching, striping, sweeping and snow removal, all at its sole expense.

5. Lessor further agrees to provide to Lessee, its successors and assigns, with uninterrupted service from utilities located on lands of Lessor and the use thereof of all walkways, drives, mechanical and electrical equipment, piping, constructed on adjoining lands of Lessor, located outside the limits of the Demised Property. Without limiting the generality of the foregoing, Lessor hereby declares, creates, establishes, and grants unto Lessee and its successors and assigns as lessee of the Demised Premises, non-exclusive, easements in, over, under, on, and through all real property of the Lessor (the "Lessor Property") for the following uses and purposes:

- (a) A general, non-exclusive easement for the term of the Lease in, under, and across any and all portions of Lessor Property for access and connection to and installation and maintenance, repair, and replacement of any and all necessary lines, piping or connectors to any and all utilities contained on the Lessor Property, including, without limitation, water, sewer, electricity, and telephone. Any facilities installed pursuant to this paragraph shall be located so as to not unreasonably interfere with the use or occupancy of any existing or proposed buildings on the Lessor Property, and any damage occasioned by the installation or maintenance of such facilities shall be promptly repaired and restored at the cost and expense of the party causing such work to be performed.

Upon completion of any utilities described in this paragraph, the Lessee shall have the right to dedicate such utilities to the appropriate governmental authority having jurisdiction over the maintenance and operation thereof. The Lessor and the holders of any mortgages shall join in such dedication, to the extent necessary, and to execute such documents, instruments, and certificates as may be necessary to effect and complete such dedication.

- (b) A general, non-exclusive easement for the term of this Lease in, over, under, on, and through portions of Lessor Property for surface water and storm drainage run-off from and off the Demised Property, including over and across drainage facilities as they exist from time to time on Lessor Property including the right of access and egress to Lessor Property to install, maintain, and use for surface water and storm drainage such appliances, apparatus, and fittings reasonably necessary for such purposes.

- (c) A general, nonexclusive access construction easement for the period of 18 months from the date hereof over all of the Lessor Property for the purpose of vehicular and pedestrian ingress, egress and access on and over the Lessor Property to the Demised Premises, provided such use shall not unreasonably interfere with the use or occupancy by the Lessor of the Lessor Property.
6. Lessor agrees to defend the title to the Demised Premises and easement areas, and Lessor agrees that Lessee, paying the rents and keeping the covenants of this Lease, shall peaceably enjoy and occupy the Demised Premises and the easement areas during the term without any hindrance or ejection by Lessor or any other persons.
7. Lessee agrees not to use the Demised Premises for any unlawful purpose and to conform in all material respects to all present and future laws and ordinances, and requirements and orders of all governmental authorities, respecting the use and occupation of the Demised Premises. Subject to Section 10 hereof, Lessee agrees not to assign this Lease, nor underlet the Demised Premises, without the written consent of Lessor, provided, however, that such consent shall not be unreasonably withheld by Lessor. Lessee agrees not to use the Demised Premises for any purpose deemed extra-hazardous on account of fire or otherwise; provided, the use of the Demised Premises as a student housing complex shall not be deemed to violate this covenant.
8. All improvements, additions and fixtures made to or placed upon the Demised Premises, shall remain the property of Lessor at the end of the term of this Lease unless otherwise agreed to in writing at the time of the additions.
9. Lessee agrees that any such building or buildings shall be architecturally compatible with the other buildings on the campus of the University of South Carolina, Aiken, as determined by Lessor in its reasonable judgment. Lessor agrees that the student housing complex depicted on the plans for such complex available as of the date hereof is architecturally compatible with the other buildings on the campus of the University of South Carolina, Aiken. Lessee agrees to indemnify the Lessor against any loss or liability arising out of any default or any tortious act on the part of the Lessee, its agents or employees.
10. During the term of this Lease, Lessee shall be entitled to any and all insurance and condemnation proceeds with respect to the Demised Premises.
11. This Lease shall be binding upon the parties hereto and their successors and assigns. The parties hereto understand and agree that Collegiate Housing Properties, Inc. will assign all of its interest in this Lease and all of its rights and obligations hereunder to Aiken Student Housing Foundation (the "Foundation") upon receipt by the Foundation of a determination as to its status as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. From and after such assignment and substitution, the Foundation will be the Lessee under this Lease without further action or consent by Lessor.
12. It is intended that the covenants, agreements, promises, and duties of each party, as set forth in this Lease, shall be construed as covenants and not as conditions and that, to the

DEED

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fullest extent legally possible, all such covenants shall, for the term of the Lease, run with and be enforceable against Lessor and Lessee and the land.

IN WITNESS WHEREOF, pursuant to official actions of their respective governing bodies, the parties have caused this instrument to be duly executed to be effective as of the 1st day of August, 2003.

LESSOR:

AIKEN COUNTY COMMISSION FOR HIGHER EDUCATION

By: [Signature]
Name: Timothy W. Simmons
Title: Chairman

WITNESSES:

[Signature]
[Signature]

LESSEE:

COLLEGIATE HOUSING PROPERTIES, INC.

By: [Signature]
Name: David A. Gatchell
Title: President

WITNESSES:

[Signature]
[Signature]

NOT OFFICIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY appeared before me, the undersigned, who upon being first duly sworn, deposes and says that s/he saw the within named AIKEN COUNTY COMMISSION FOR HIGHER EDUCATION, as Lessor, by Timothy W. Simmons its Chairman, sign, seal, and as their act and deed deliver the within written Lease Agreement, and that s/he with the other subscribing witness witnessed the execution thereof.



Sworn to before me this
12th day of August, 2003.

[Handwritten Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6/16/13

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN) PROBATE

PERSONALLY appeared before me, the undersigned, who upon being first duly sworn, deposes and says that s/he saw the within named COLLEGIATE HOUSING PROPERTIES, INC., as Lessee; by David A. Gatchell its President, sign, seal, and as their act and deed deliver the within written Lease Agreement, and that s/he with the other subscribing witness witnessed the execution thereof.

David A. Gatchell

Sworn to before me this
12th day of August, 2003.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6-16-23
NOTARY OFFICIAL

8-12-03 16104
RECORDED
Aiken County

B. Pitt

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 4

The Design Build Agreement between "Tenant" and "Developer"

**LUMP SUM
DESIGN-BUILD AGREEMENT
BETWEEN COLLEGIATE HOUSING PROPERTIES, INC., AS OWNER AND
UNIVERSITY HOUSING SERVICES,
INC., AS DEVELOPER**

**ARTICLE 1
AGREEMENT**

This Agreement is made this 13th day of August the year 2003 by and between the

OWNER

Collegiate Housing Properties, Inc.
12202 N. 22nd St. #638
Tampa, Florida 33612

and the

DEVELOPER

University Housing Services, Inc.
25 Second Street North, Suite 400
St. Petersburg, Florida 33701

for services in connection with the following

PROJECT

The Project shall consist of certain housing facilities of the Owner, including buildings, improvements and equipment, which facilities, when completed, will be utilized by the University of South Carolina Aiken (the "University") to house a portion of their student population. The Project is more particularly described in EXHIBIT A hereto.

The Developer is responsible for the total design and construction of the Project, including all professional design services and all labor, materials and equipment used or incorporated in such design and construction.

It is understood between the parties hereto that the construction of the Project is being accomplished on land which has been leased by the Owner from the Aiken County Commission for Higher Education (the "Lessor") pursuant to a Land Lease and that the Lessor and the University maintains certain rights with respect to the construction of the Project pursuant various financing documents.

Notice to the parties shall be given at the above addresses or to such other and additional addresses as either party may hereafter designate to the other party in writing.

ARTICLE 2

GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP. The Owner and the Developer agree to proceed with the Project on the basis of trust, good faith and fair dealing. The Developer agrees to procure architectural, engineering, and construction services set forth below, to furnish administration and supervision of the Work and to assist in obtaining financing for the Project. The Developer represents that it has investigated or will investigate all applicable laws and regulations pertaining to this Project, including laws and regulations regarding the licensing of construction professionals in the State of South Carolina (i.e., contractors, engineers, and architects) and agrees to comply with the same. The Developer will indemnify and hold harmless the Owner, its successors and assigns from any expenses, including fines, and delays to the Project incurred as a result of the Developer's failure to comply with applicable laws and regulations.

2.2 ARCHITECT/ENGINEER AND BUILDING CONTRACTOR. Architectural, engineering and construction services shall be procured from licensed, independent professionals retained by the Developer. The persons or entities providing architectural and engineering services shall be referred to as the Architect/Engineer. The persons or entities providing construction services shall be referred to as the Building Contractor. The professional obligations of the Architect/Engineer and the Building Contractor shall be undertaken and performed in the interest of the Developer. Any contracts entered into between the Developer and the Architect/Engineer and /or the Building Contractor shall be made pursuant to separate agreements, which agreements shall be subject to review and approval by the Owner. Such review shall be done promptly and such approval shall not be unreasonably withheld. Nothing contained herein shall create any professional obligations between the Architect/Engineer or the Building Contractor and the Owner.

2.3 EXTENT OF AGREEMENT. This Agreement is solely for the benefit of the parties and the Lessor and the University, which are third party beneficiaries hereof. It represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.

2.4 DEFINITIONS

1. Contract Documents consist of:
 - a. Change Orders and written amendments to this Agreement signed by the Owner and Developer;
 - b. this Agreement;

- c. the most current Drawings and Specifications approved by the Owner pursuant to Subparagraph 3.1.1;
- d. the information provided by the Owner pursuant to Clause 4.1.2.1;
- e. the Owner's Program provided pursuant to Subparagraph 4.1.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above. In case of inconsistency, conflict or ambiguity between the Drawings and the Specifications, the Developer shall determine which of the two shall govern.

- 2. Day shall mean calendar day.
- 3. Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.
- 4. Subcontractor is a person or entity (including, without limitation, the Building Contractor, and the Architect/Engineer) that has an agreement with the Developer to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed by the Owner or any separate contractor's subcontractors.
- 5. Work comprises the completed construction of the Project and includes labor necessary to produce such construction, materials and equipment incorporated or to be incorporated in such construction, the Design and Preconstruction Services procured in accordance with Paragraph 3.1, the Construction Services provided in accordance with Paragraph 3.2, Additional Services in accordance with Paragraph 3.7, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.
- 6. Substantial Completion of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Developer. The certificate shall state the respective responsibilities of the Owner and Developer for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction. The Owner shall have the right and authority, in the Owner's sole and absolute discretion, to accept less than the entire project as substantially complete in order to occupy or utilize such portion(s).

ARTICLE 3

DEVELOPER'S RESPONSIBILITIES

The Developer shall be responsible for procuring the design and construction of the Work and monitoring and overseeing the performance of the Subcontractors consistent with this Agreement. The Developer shall exercise reasonable skill and judgment in the performance of the Work. The Developer's responsibility and scope of liability shall be the same as if it were performing the work being done by the Subcontractors, but it shall not have to personally perform such work.

3.1 DESIGN AND PRECONSTRUCTION SERVICES: The Developer shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.1.1 DRAWINGS AND SPECIFICATIONS: The Developer shall submit for the Owner's written approval Drawings and Specifications based on the Contract Documents, including the Budget attached hereto as Exhibit A, or any further development of Contract Documents that have been approved in writing by the Owner. The Drawings and Specifications shall set forth in detail the scope of the Work and shall be based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Drawings and Specifications. One (1) set of these documents shall be furnished to the Owner prior to commencement of construction.

3.1.2 OWNERSHIP OF DOCUMENTS: The drawings, specifications and other documents furnished by the Developer are instruments of service and shall not become the property of the Owner whether or not the Project for which they are made is commenced. Drawings, specifications and other documents furnished by the Developer shall not be used by the Owner on other projects, for additions to this Project or, unless the Developer is in default under this Agreement, for completion of this Project by others, except by written agreement relating to use, liability and compensation. In effect, the Owner is being granted hereby a non-exclusive license to use the drawings, specifications and other documents for the completion of this Project. **THIS LICENSE SHALL NOT EXTEND TO THEIR USE WITH RESPECT TO ANY OTHER PROJECT OR FOR ADDITIONS TO THIS PROJECT.**

3.1.3 BUDGET: The Developer has reviewed and advised the Owner with respect to the budget attached or to be attached hereto as Exhibit A, which as it may be amended from time to time by agreement of the Owner and the Developer shall be the Budget of the Project.

3.1.4 PRECONSTRUCTION CONFERENCE: The Developer shall schedule and coordinate a preconstruction conference to be attended by the Owner, the Developer, the Subcontractors, and representatives of all involved utilities to discuss the coordination of all aspects of the Project and the required completion time.

3.1.5 SUPERVISION: Developer will, both before and during construction, monitor and provide regular and continuous management of the Project and to exert its best efforts to assure the Project is finished on schedule.

3.1.6 PAYMENT AND PERFORMANCE BOND: The Developer shall require its Building Contractor to provide performance and payment bonds in form and substance reasonably

satisfactory to the Owner.

3.1.7 FINANCING. The Developer has experience in the financing of the development and construction of facilities similar to the Project and has used and shall continue to use its best efforts to assist and advise the Owner in designing a method of financing and making recommendations for financing the Project. To the extent desired, the Developer has extensive contacts with investment bankers experienced in the financing of student housing facilities and can make available to the Owner the services of an appropriate investment banker. The financing of the student housing facilities can be structured such that the compensation for the investment bankers will be paid largely or entirely from the money raised for the financing.

3.1.8 VALUE ENGINEERING. Developer will both prior to and during construction review or cause to be reviewed, materials, systems, furniture, fixtures and equipment for cost, desirability, maintainability and replacement availability in order to achieve cost effective savings for the Owner.

3.1.9 LIFE CYCLE ANALYSES. Developer will perform, or cause to be performed, life cycle analyses in the selection of operating systems, as required by the Owner.

3.1.10 FACILITY OPERATION. The Developer can engage for the Owner the services of an entity experienced in the operation of facilities such as the Project. The Developer will work closely with such entity in developing a plan for the operation of the Project, including projected costs per student, per semester for the use of the Project, along with projected annual increases in that cost.

3.2 CONSTRUCTION SERVICES

3.2.1 Construction will not commence until the issuance by the Owner of a written Notice to Proceed.

3.2.2 In order to complete the Work, the Developer shall provide or cause to be provided all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools and subcontracted items.

3.2.3 The Developer shall give or cause to be given all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement that govern the proper performance of the Work.

3.2.4 The Developer shall maintain or cause to be maintained the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work.

3.2.5 The Developer shall assist the Owner in securing the building permits necessary for the construction of the Project.

3.2.6 The Developer shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Developer, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and

the public. The Developer, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the Owner or its employees, agents, separate contractors or tenants. The Owner agrees to cause its employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.2.7 The Developer shall provide monthly progress reports in such form as shall be agreed to by the Owner and Developer.

3.2.8 At all times the Developer shall maintain, or cause to be maintained, the site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, the Developer shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

3.3 HAZARDOUS MATERIAL

3.3.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Developer shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.3.2 If after the commencement of the Work, known or suspected Hazardous Material is discovered at the Project site, the Developer shall be entitled to immediately stop Work in the affected area, and the Developer shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.3.3 The Developer shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual consent of the Owner and the Developer.

3.3.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Developer. Work in the area affected by any Hazardous Material shall be resumed only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.

3.3.5 If the Developer incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Developer shall be entitled to an equitable adjustment in the Contract Price and/or the date of Substantial Completion.

3.3.6 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Developer and Subcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in.

connection with litigation or arbitration, arising out of or relating to any personal injury or property damage claims resulting from any such Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

3.3.6 The terms of this Paragraph 3.3 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.4 ROYALTIES, PATENTS AND COPYRIGHTS. The Developer shall pay or cause to be paid all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Developer, directly or indirectly, and incorporated in the Work. The Developer shall defend, indemnify and hold the Owner harmless from all suits claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Developer harmless from any suits or claims of infringement of any patent rights arising out of any patented materials, methods or systems specified by the Owner, directly or indirectly.

3.5 TAX EXEMPTION. If in accordance with the Owner's direction an exemption is claimed for taxes (including but not limited to sales taxes), the Owner agrees to defend, indemnify and hold the Developer harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Developer as a result of any action taken by the Developer in accordance with the Owner's direction.

3.6 WARRANTIES AND COMPLETION.

3.6.1 The Developer warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. The Developer agrees to correct all construction performed under this Agreement which proves to be defective in design, workmanship or materials within a period of one year from the date of Substantial Completion as set forth in Paragraph 6.2 or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents. The one-year obligation to correct work, as described herein shall not limit, alter, or prejudice any other right or remedy available to the Owner under the Agreement or implied by law. All of the owner's rights under this one-year warranty are cumulative, and in addition to, all other rights and remedies under the Agreement.

3.6.2 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties that extend beyond the description on the face thereof. All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.

3.6.3 The Developer shall secure required certificates of inspection, testing or approval and deliver them to the Owner upon Substantial Completion of the Work.

3.6.4 The Developer shall collect all written warranties and equipment manuals and deliver them to the Owner upon Substantial Completion of the Work.

3.6.5 With the assistance of the Owner's maintenance personnel, the Developer shall direct the

checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

3.7 ADDITIONAL SERVICES. The Developer shall provide or procure the following Additional Services upon the request of the Owner. A Change Order shall define the extent of such Additional Services and an appropriate change shall be made in the Contract Price.

1. Documentation of the Owner's Program, general business planning and other information and documentation as may be required to establish the feasibility of the Project beyond the financial feasibility study already performed by the Developer.
2. Surveys, site evaluations, legal descriptions and aerial photographs.
3. Appraisals of existing equipment, existing properties, new equipment and developed properties.
4. Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.
5. Consultations and representations, other than normal assistance in securing building permits, before governmental authorities or others having jurisdiction over the Project.
6. Investigation or making measured drawings of existing conditions or the verification of drawings or other Owner-provided information.
7. Artistic renderings, models and mockups of the Project or any part of the Project or the Work.
8. Inventories of existing furniture, fixtures, furnishings and equipment that might be under consideration for incorporation into the Work.
9. Interior design and related services, excluding those relating to the coordination and delivery of furniture, fixtures and equipment.
10. Making revisions to design documents after they have been approved by the Owner when revisions are due to causes beyond the control of the Developer.
11. Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed which are not a part of this Agreement.
12. Estimates, proposals, appraisals, consultation, negotiations and services in connection with the repair or replacement of an insured loss.
13. The premium portion of overtime work ordered by the Owner.
14. Document reproduction exceeding the limits provided for in this Agreement.

15. Out-of-town travel by the Developer and Subcontractors in connection with the Work.
16. Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up, and adjusting and balancing of systems and equipment.
17. Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.
18. Serving or preparing to serve as an expert witness in connection with any proceeding legal or otherwise, regarding the Project.
19. Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes in the Work made during the construction.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 The Owner shall provide, or cause to be provided, full information in a manner timely so as to meet the Schedule of Work regarding requirements for the Project, including the Owner's Program and other relevant information and additionally the Owner shall provide, or cause to be provided:

1. all necessary information describing the physical characteristics of the site, including geotechnical and other surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations;
2. inspection and testing services during construction as required by law or as mutually agreed;
3. the fulfillment of all conditions and requirements imposed, and obtaining of all approvals required by any governing school authorities; and
4. unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, utility connections, necessary permits, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required services.

4.1.2 The Owner shall provide reasonable evidence satisfactory to the Developer, prior to commencing the Work and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including an allowance for changes the Work as may be approved in the course of the Work. The Developer may stop Work after seven (7) days' written notice to the Owner if such evidence is not presented within a reasonable time. The

failure of the Developer to insist upon the providing of this evidence at any one time shall not be a waiver of the Owner's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of the Developer's right to request or insist that such evidence be provided at a later date.

4.1.3. The Owner shall provide an access/construction road for use by those working on the Project during such work. The road shall be of a size and quality appropriate to safety, efficiency and use requirements.

4.1.4. The Developer shall be entitled to rely on the completeness and accuracy of the information and services required by this Paragraph 4.1.

4.2 RESPONSIBILITIES DURING DESIGN

4.2.1. The Owner shall review and approve in a manner timely so as to meet the Schedule of Work further development of the drawings and specifications as set forth in Article 3.

4.3 RESPONSIBILITIES DURING CONSTRUCTION

4.3.1. The Owner shall review the Schedule of Work and timely respond to its obligations.

4.3.2. If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Developer.

4.3.3. The Owner shall communicate with the Subcontractors and suppliers only through the Developer or its designee appointed in a writing delivered to Owner. The Owner shall have no contractual obligations to Subcontractors.

4.3.4. The Owner shall provide insurance for the Project as provided in Article 10.

4.4. OWNER'S REPRESENTATIVE. The Owner's representative is Tony Ateca who is agreed to by the Developer. The representative:

1. shall be fully acquainted with the Project;
2. agrees to furnish the information and services required of the Owner pursuant to paragraph 4.1 so as not to delay the Developer's Work; and
3. shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Developer in advance in writing.

ARTICLE 5

SUBCONTRACTS

Work not performed by the Developer with its own forces shall be performed by Subcontractors.

5.1 SUBCONTRACTORS: The Developer shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to adjust the Contract Price for any additional costs incurred by the Developer as a result of such objection. The Developer shall not be required to retain any Subcontractor to whom the Developer has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS: The Developer shall be responsible for the management of the Subcontractors in the performance of their work.

5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS: The Developer shall provide for assignment of subcontract agreements to the Owner in the event that the Owner terminates this Agreement for cause as provided in paragraph 11.2. Following such termination, the Owner shall notify in writing those Subcontractors whose assignments will be accepted, subject to the rights of sureties, if any.

ARTICLE 6

CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK: The Work shall commence on or about August 13, 2003 and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.3 and Subparagraph 4.1.2.

6.2 SUBSTANTIAL COMPLETION: In the event that the Owner issues the Notice to Proceed in accordance with Paragraph 3.2.1 by or before August 13, 2003, then the Developer shall achieve substantial completion of the Work by or before August 1, 2004, subject to authorized adjustments to the date of Substantial Completion in accordance with the provisions of Article 8. Time shall be of the essence of this Agreement. Should the Project not be available for occupancy by students at the beginning of the fall semester, 2004, there shall be paid to the Owner an amount equal to \$30 per day per student for which the Owner must seek alternative accommodations. This sum is hereby agreed between the parties as the proper measure of liquidated damages that the Owner will sustain for failure to complete the construction in the time stipulated and is not to be construed in any sense as a penalty.

6.3 DELAYS IN THE WORK

6.3.1 If causes beyond the Developer's or its Subcontractors' control delay the progress of the Work, then the Schedule of Work and the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner preventing the Developer from performing the Work pending dispute resolution, presence or suspected presence of Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, inaction of governmental authorities, epidemics, war, embargoes, fire, earthquakes, Acts of God, defaults of common carrier, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances. No default, delay, or failure to

perform on the part of the Developer or its Subcontractors shall be considered a default, delay or failure to perform if it is the result of one of the aforesaid causes.

6.3.2 In the event delays to the Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

CONTRACT PRICE

For performance of the duties and responsibilities described in this Agreement, the Developer shall be paid the sum of Twelve Million Four Hundred forty Three Thousand Six Hundred Seventy Nine Dollars (\$12,443,679), subject to adjustment in accordance with the provisions of Article 8.

ARTICLE 8

CHANGES IN THE WORK

Changes in the Work may be accomplished by Change Order without invalidating this Agreement.

8.1 CHANGE ORDERS. A Change Order is a written instrument issued after execution of this Agreement, signed by the Owner, the Lessor and Developer stating their agreement upon a change and any adjustment in the Work Contract Price and/or the date of Substantial Completion.

8.2 DETERMINATION OF COST. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by mutual agreement between the Owner, the Lessor and the Developer.

8.3 NO OBLIGATION TO PERFORM. The Developer shall not be obligated to perform changed Work until a Change Order has been executed by the Owner, the Lessor and Developer.

8.4 ADJUSTMENT OF UNIT PRICES. If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the Owner or the Developer, the unit prices and the Contract Price shall be equitably adjusted.

8.5 UNKNOWN CONDITIONS AND DELAY

8.5.1 UNKNOWN CONDITIONS. If in the performance of the Work the Developer finds latent, concealed or subsurface physical conditions which differ from the conditions the Developer reasonably anticipated, or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the Contract Price and/or the date of Substantial Completion shall be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

8.5.2 DELAY. In the event of delay caused by actual interference by the Owner or the Lessor in the performance of the Work or other occurrences beyond the reasonable control of the

Developer and those for whom the Developer is responsible, the Developer shall be entitled to an equitable adjustment in the Contract Price and/or the date of Substantial Completion by Change Order to compensate it and those for whom it is responsible for onsite overhead expenses and other reasonable costs and expenses incurred thereby; and additional Costs of the Work resulting from damage caused by the event causing the delay.

8.5.3 REGULATORY CHANGES. The Developer shall be compensated for changes in the Work necessitated by the enactment or revision of codes, laws or regulations subsequent to the date of this Agreement.

8.6 CLAIMS FOR ADDITIONAL COST OR TIME. For any claim for an increase in the Contract Price and/or an extension in the date of Substantial Completion, the Developer shall give the Owner written notice of the claim within fourteen (14) days after the occurrence giving rise to the claim or within fourteen (14) days after the Developer first recognizes the condition giving rise to the claim, whichever is later. Any claims not so asserted shall be deemed waived. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within fourteen (14) days after the decision is made not to proceed. Any change in Contract Price and/or date of Substantial Completion resulting from such claim shall be authorized by Change Order.

8.7 EMERGENCIES. In any emergency affecting the safety of persons and/or property, the Developer shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or extension of the date of Substantial Completion on account of emergency work shall be determined as provided in this Article.

ARTICLE 9

PAYMENT

9.1 INITIAL PAYMENT. Upon execution of this Agreement, an initial payment of One Hundred Thirty One Thousand Nine Hundred Twenty Eight Dollars (\$131,928) shall be made to the Developer. The amount of the initial payment shall be credited against the Contract Price at final payment.

9.2 PROGRESS PAYMENTS.

9.2.1 On or before the fifth day of each month after the Work has commenced, the Developer shall submit to the Owner an Application for Payment based upon the Work completed and materials stored on the site or at other locations approved by the Owner.

9.2.2 Within ten days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Developer.

9.2.3 The Application for Payment shall constitute a representation by the Developer to the Owner that, to the best of the Developer's knowledge, information and belief, the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, and the Developer is entitled to payment in the amount requested.

9.2.4 The Developer shall pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Developer on account of such Subcontractor's work, the amount to which said Subcontractor is entitled in accordance with the terms of the Developer's contract with such Subcontractor. The Developer shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to their respective subcontractors in similar manner.

9.2.5 The Owner shall have no obligation to pay or to be responsible in any way for payment to a Subcontractor of the Developer except as may otherwise be required by law.

9.2.6 No progress payment or partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

9.2.7 The Developer warrants that: (1) title to Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the Developer, whichever occurs first; (2) Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, Security interests or encumbrances; hereinafter referred to as "liens", and (3) no Work, materials or equipment covered by an Application for Payment will have been acquired by the Developer, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Developer or such other person.

9.2.8 If the Owner fails without justification to pay at the time payment of any amount becomes due, then the Developer may, at any time thereafter, upon serving written notice that the Work will be stopped within five (5) days after receipt of the notice by the Owner, and after such five (5) day period, stop the Work until payment of the amount owing has been received.

9.2.9 Payments due but unpaid shall bear interest at the "prime rate" quoted in the *Wall Street Journal*, plus two percentage points.

9.2.10 Notwithstanding anything herein to the contrary, should there be a Leasehold Mortgagee as defined in the Ground Lease, and such Leasehold Mortgagee requires documentation in addition to that which is set forth above, the Developer agrees to comply with any requirements of such Leasehold Mortgagee with respect to the making of progress payments.

9.3 PAYMENT UPON SUBSTANTIAL COMPLETION: Upon Substantial Completion of the Work, the Owner shall pay the unpaid balance of the Contract Price, less a sum equal to the estimated cost of completing any defective, incomplete or unfinished items as agreed to between the Owner, the Lessor and Developer as to extent and time for completion. The Owner thereafter shall pay monthly the amount retained for such items as each item is completed.

9.4 FINAL PAYMENT

9.4.1 Final payment, consisting of the unpaid balance of the Contract Price shall be due and payable when the Work is fully completed in accordance with the Contract Documents. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work, have been paid or otherwise satisfied.

9.4.2 In making final payment the Owner waives all claims except for:

1. outstanding liens and claims previously made in writing and which remain unsettled;
2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;
3. work not in conformance with the Contract Documents; and
4. terms of any special warranties required by the Contract Documents.

9.4.3 In accepting final payment, the Developer waives all payment claims except those previously made in writing and which remain unsettled and which the Developer reconfirms in writing at the time of accepting final payment are still unsettled.

9.5 Payment to Multiple Parties. The Owner agrees to make any payment due and owing the Developer directly to multiple parties if so directed by the Developer.

ARTICLE 10

INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, the Developer shall defend, indemnify and hold the Owner harmless from all claims for bodily injury and property damage (other than to the Work itself and other property insured under Paragraph 10.5), including resulting loss of use that may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions by the Developer, Subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Developer shall not be required to defend, indemnify or hold harmless the Owner for any acts, omissions or negligence of the Owner, Owner's employees, agents or separate contractors.

10.2 DEVELOPER'S LIABILITY INSURANCE

10.2.1 The Developer shall obtain and maintain, or cause to be obtained and maintained, insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from the Developer's operations or by the operations of any Subcontractor, anyone directly or indirectly in the employ of any of them, or by an individual or entity for whose acts they may be liable:

1. workers' compensation, disability benefit and other employee benefit claims under acts applicable to the Work;
2. under applicable employers liability law, bodily injury, occupational sickness, disease or death claims of the Developer's employees;
3. bodily injury, sickness, disease or death claims for damages to persons not employed by the Developer.

4. usual personal injury liability claims for damages directly or indirectly related to the person's employment by the Developer or for damages to any other person.
5. damage to or destruction of tangible property, including resulting loss of use, claims for property other than the work itself and other property insured under Paragraph 10.5.
6. bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle, and
7. contractual liability claims involving the Developer's obligations under subparagraph 11.1.1.

10.2.2 The Developer's Commercial General and Automobile Liability Insurance as required by subparagraph 10.2.1 shall be written for not less than the following limits of liability:

1. **Commercial General Liability Insurance**
 \$1 million per occurrence
 \$2 million general aggregate
 \$1 million personal injury
 \$2 million completed operations aggregate
2. **Comprehensive Automobile Liability Insurance**
 \$1 million per accident

10.2.3 Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies and an Excess or Umbrella Liability policy.

10.2.4 The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to the Owner. Certificates of insurance showing required coverage to be in force shall be filed with the Owner prior to commencement of the Work.

10.2.5 The amounts of coverage set forth herein do not constitute a representation by the Owner or Developer of the adequacy of such amounts, but rather are merely required minimums. Any party providing such insurance may obtain coverage with higher limits if they so choose.

10.3 ARCHITECT/ENGINEER PROFESSIONAL LIABILITY INSURANCE The Architect/Engineer's professional liability insurance for claims arising from the negligent performance of professional services under this Agreement and the agreement between the Developer and the Architect/Engineer shall each be written for not less than \$1,000,000 per claim and \$2,000,000 in the aggregate with a deductible not to exceed \$25,000. These requirements shall be continued in effect for five years after the date of Substantial Completion.

10.4 OWNER'S LIABILITY INSURANCE Except as provided in Paragraph 10.5 below, the Owner, in its sole discretion, shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement solely for the Owner's benefit may be purchased and maintained at the Owner's discretion.

10.5 BUILDER'S RISK INSURANCE

10.5.1 The Owner shall obtain and maintain property insurance in a form acceptable to the Developer upon the entire Project for the full insurable value thereof, but not less than the full cost of replacement at the time of any loss. This insurance shall include as named insureds the Owner, Developer, Architect/Engineer, Subcontractors and any known subcontractors of the Subcontractors. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include "all risk" insurance for physical loss or damage including without duplication of coverage, at least theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, testing, and damage resulting from defective design workmanship or material. The said insurance coverage shall include an endorsement for delay coverage for all named insureds. The Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Owner shall be responsible for any co-insurance penalties or deductibles.

10.5.2 If the Owner occupies or uses a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Developer and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be canceled or lapsed on account of partial occupancy. Consent of the Developer to such early occupancy or use shall not be unreasonably withheld.

10.5.3 The Owner shall obtain and maintain boiler and machinery insurance as necessary. The interests of the Owner, Developer, Subcontractors and any known subcontractors of the Subcontractors shall be protected under this coverage.

10.5.4 The Owner shall purchase and maintain insurance to protect the Owner, Developer, Subcontractors and subcontractors of the Subcontractors against loss of use of Owner's property due to those perils insured pursuant to Paragraph 10.5. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Owner and the Developer, Subcontractors and subcontractors of the Subcontractors, necessary labor expense including overtime, loss of income by the Owner and other determined exposures. Exposures of the Owner, Developer, Subcontractors and subcontractors of the Subcontractors shall be determined by mutual agreement with separate limits of coverage fixed for each item.

10.5.5 Upon the Developer's request, the Owner shall provide the Developer with a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements shall be furnished to the Developer as soon as they are available. The Developer shall be given thirty (30) days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage. The Owner shall give written notice to the Developer before commencement of the Work if the Owner will not be obtaining property insurance. In that case, the Developer may obtain insurance in order to protect its interest in the Work as well as the interest of the Subcontractors. The Contract Price shall be increased by the cost of this insurance through Change Order. If the Developer is damaged by failure of the Owner to purchase or maintain property insurance or to so notify the Developer, the Owner shall bear all reasonable costs incurred by the Developer arising from the damage.

10.6 PROPERTY INSURANCE LOSS ADJUSTMENT

10.6.1 Any insured loss shall be adjusted with the Owner and the Developer and made payable to the Owner and the Developer as trustee for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

10.6.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustee shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with an arbitration award pursuant to Article 12. If the Owner and the Developer are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 12.

10.7 WAIVER OF SUBROGATION

10.7.1 The Owner and Developer waive all rights against each other, the Subcontractors, and any of their respective employees, agents, consultants, for damages caused by risks covered and paid for by insurance provided in Paragraph 10.5 to the extent they are covered and paid for by that insurance, except such rights as they may have to the proceeds of such insurance held by the Owner and Developer as trustees. The Developer shall require similar waivers from the Subcontractors, and shall require each of them to include similar waivers in their subcontracts and consulting agreements.

10.7.2 The Owner waives subrogation against the Developer, Subcontractors and subcontractors of the Subcontractors on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.

10.7.3 If the policies of insurance referred to in this Paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

ARTICLE 11

TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO PERFORM DEVELOPER'S RESPONSIBILITIES

11.1 TERMINATION BY THE DEVELOPER

11.1.1 Upon seven (7) days' written notice to the Owner and the Lessor, the Developer may terminate this Agreement for any of the following reasons:

1. if the Work has been stopped for a thirty (30) day period;
 - a. under court order or order of other governmental authorities having jurisdiction;
 - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Developer, materials are not available; or
 - c. because of the Owner's failure to pay the Developer in accordance with this Agreement.
2. if the Work is suspended, delayed or interrupted by the Owner or the Lessor for sixty (60) days;

3. if the Owner or the Lessor materially delays the Developer in the performance of the Work;
4. if the Owner otherwise materially breaches this Agreement; or
5. if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Subparagraph 4.1.2 of this Agreement.

11.1.2 Upon termination by the Developer in accordance with subparagraph 11.1.1, the Developer shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Developer shall be paid an amount calculated as set forth either in subparagraph 11.3.1 or 11.3.2, depending on when the termination occurs, and Subparagraphs 11.3.3 and 11.3.4.

11.2 TERMINATION BY THE OWNER FOR CAUSE AND OWNER'S RIGHT TO PERFORM DEVELOPER'S OBLIGATIONS

11.2.1 If the Developer persistently fails to perform any of its obligations under this Agreement, the Owner may, after seven (7) days' written notice, during which period the Developer fails to perform such obligation, undertake to perform such obligations. The Contract Price shall be reduced by the reasonable cost to the Owner of performing such obligations.

11.2.2 Upon seven (7) days' written notice to the Developer and the Developer's surety, if any, the Owner may terminate this Agreement for any of the following reasons:

1. if the Developer persistently utilizes improper materials and/or inadequately skilled workers;
2. if the Developer does not make, or cause to be made, proper payment to laborers, material suppliers or Subcontractors;
3. if the Developer persistently fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
4. if the Developer otherwise materially breaches this Agreement.

If the Developer fails to cure within the seven (7) days, the Owner, without prejudice to any other right or remedy, may take possession of the site and complete the Work utilizing any reasonable means. In this event, the Developer shall not have a right to further payment, if at all, until the Work is completed.

11.2.3 If the Developer files a petition under the Bankruptcy Code, this Agreement shall terminate if the Developer or the Developer's trustee rejects the Agreement or, if there has been a default, the Developer is unable to give adequate assurance that the Developer will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.2.4 In the event the Owner exercises its rights under Subparagraphs 11.2.1 or 11.2.2, upon the request of the Developer, the Owner shall provide a detailed accounting of the cost incurred by the Owner.

11.3 TERMINATION BY OWNER WITHOUT CAUSE. If the Owner terminates this Agreement other than as set forth in Paragraph 11.2, the Owner shall pay the Developer for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Developer shall be paid an amount calculated as set forth below:

1. If the Owner terminates this Agreement prior to commencement of the construction the Developer shall be paid all amounts due under Article 9 upon Application for Payment therefore plus 5% of the remaining balance of the Contract Price.
2. If the Owner terminates this Agreement after commencement of the construction, the Developer shall be paid all amounts due under Article 9 upon Application for Payment therefore plus 5% of the remaining balance of the Contract Price.
3. In either event, the initial payment as provided in Paragraph 9.1 shall be credited to the Owner's account at the time of termination.
4. The Owner shall also pay fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Developer or any Subcontractor has previously undertaken or incurred in good faith in connection with the Project or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 11, the Developer shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Developer's rights and benefits to the Owner, including the execution and delivery of required papers.

11.4 SUSPENSION BY THE OWNER FOR CONVENIENCE

11.4.1 The Owner may order the Developer in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

11.4.2 Adjustments caused by suspension, delay or interruption shall be made for increases in the Contract Price and/or the date of Substantial Completion. No adjustment shall be made if the Developer is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 12

DISPUTE RESOLUTION

12.1 INITIAL DISPUTE RESOLUTION. If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct

discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association before recourse to arbitration. Issues to be mediated are subject to the exceptions in Paragraph 12.2 for arbitration. The location of the mediation shall be the location of the Project. Once one party files a request for mediation with the other contracting party, the parties agree to conclude such mediation within sixty (60) days of filing of the request.

12.2 AGREEMENT TO ARBITRATE. Any controversy or claim arising out of or relating to this Agreement or its breach not resolved by mediation, except for claims that have been waived by the making or acceptance of final payment, shall be decided by arbitration. Such arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association, unless the parties agree otherwise.

12.3 NOTICE OF DEMAND. A written demand for arbitration shall be filed with the American Arbitration Association and the other party to this Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. The parties by agreement can choose to arbitrate subject to the aforesaid rules but not using the services of the American Arbitration Association, should they so agree.

12.4 AWARD. The arbitration award shall be final and binding in accordance with law. Judgment upon the award may be confirmed in any court having jurisdiction.

12.5 WORK CONTINUANCE AND PAYMENT. Unless otherwise agreed in writing, the Developer shall continue the Work and maintain the approved Schedule of Work during any arbitration proceedings. If the Developer continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

12.6 MULTIPARTY PROCEEDING. The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of arbitrations.

12.7 COST OF DISPUTE RESOLUTION. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the nonprevailing party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation. The arbitrator(s) shall have jurisdiction and authority to award such fees, costs and expenses.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 ASSIGNMENT. Neither the Owner nor the Developer shall assign its interest in this Agreement without the written consent of the other.

13.2 GOVERNING LAW. This Agreement shall be governed by the law of the State of South Carolina.

13.3 SEVERABILITY. The partial or complete invalidity of any one or more provisions of

this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.4 NO WAIVER OF PERFORMANCE. The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

13.5 TITLES. The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.6 THIRD PARTY BENEFICIARIES. The Owner and Developer agree that the Owner is an intended third-party beneficiary of all contracts for design, engineering, and construction services between the Developer and third parties. The Developer shall include a provision in its contracts for design and construction services that the Owner is a third-party beneficiary of the services provided thereby. It is further understood that the Architect and Contractor, though contractually obligated to the Developer, are working for the benefit of the Owner. The Architect will perform project administration services for the benefit of both the Owner and the Developer.

This Agreement is entered into as of the date entered in Article 1.

OWNER
COLLEGIATE HOUSING PROPERTIES,
INC.

BY: *D. Gilbert*

PRINT NAME: *David A. Gilbert*

PRINT TITLE: *President*

DEVELOPER
UNIVERSITY HOUSING SERVICES, INC.

BY: *W. Mills, Jr.*

PRINT NAME: *WILLIAM H. MILLS, JR.*

PRINT TITLE: *President/CEO*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 5

The Construction Contract between "Developer" and Reynolds

AIA Document A111 - 1997

Standard Form of Agreement Between Owner and Contractor

where the basis for payment is the **COST OF THE WORK PLUS A FEE** with a negotiated **Guaranteed Maximum Price**

AGREEMENT made as of the 13th day of August in the year 2003
(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, address and other information)

University Housing Services, Inc.
25 Second Street, North
Suite 400
Saint Petersburg, Florida 33701

and the Contractor:

(Name, address and other information)

H.G. Reynolds Company, Inc.
113 Contract Drive
Aiken, South Carolina 29801

The Project is:

(Name and location)

University of South Carolina Aiken
Student Housing (Phase I)
471 University Parkway
Aiken, South Carolina

The Architect is:

(Name, address and other information)

Aiken Aiken Beauchamp & Sheetz Architects, Inc.
P.O. Box 52639
Atlanta, Georgia 30355

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto, and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.



ARTICLE 2 THE WORK OF THIS CONTRACT

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AIA DOCUMENT A111 - 1997
OWNER - CONTRACTOR AGREEMENT

The American Institute of Architects
1735 New York Avenue, N.W.
Washington, D.C. 20006-5292

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

3.1 Collegiate Housing Properties, Inc. a non-profit Florida corporation, is and intended third-party beneficiary of the services provided under this Agreement.

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

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If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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4.2 The Contract Time shall be measured from the date of commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

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, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

Liquidated Damages shall be assessed against the Contractor at \$30/day/bed not able to be used by the Owner for it's intended purpose.

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

Fixed Fee of Eight percent (8%) of the actual cost of the work. Fee includes all



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Contractor overhead and profit. The Cost of the Work plus the Fee cannot exceed the Guaranteed Maximum Price.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed Nine Million Eight Hundred Fifty Thousand Dollars (\$9,850,000.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

To the extent that the Actual Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price, the difference will be split equally between the Owner and the Contractor.

5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

None

5.2.3 Unit prices, if any, are as follows:

None

5.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

All Allowance items include labor, materials and tax.

| | |
|---------------------------------|------------------|
| Bike Racks and Smokers Stations | \$ N.I.C. |
| Signage | \$5,000. |
| Irrigation Well | \$10,000 |
| Irrigation System | \$20,000 |
| Landscaping | \$120,000 |
| Exterior Site Lighting (Yard) | \$14,000 |
| Parking Lot Lighting | (By SCE&G) |
| Carpet | \$13.00 per yard |
| Brick | \$280 per 1000 |
| Gazebo | \$3,000 |

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

See attached Exhibit A.

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee) the terms "cost" and "fee" as used in Clause 7.3.3 of

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AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.



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7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner and the Lender.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents, and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's

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Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

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8.1.7 Any cost not specifically and expressly described in Article 7:

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if:
(1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments

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on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 45 days after the Architect receives the Application for Payment.

The Contractor understands and agrees that the Lender shall have an important role in the monthly approval of the Contractor's pay application. The Lender will cause to have independently verified the percentages submitted by the Contractor and may cause the Contractor to modify or resubmit the Pay Application based on this review. While it is not the intent of the Owner to delay payment to the Contractor, the Contractor understands that the resubmission of the Pay Application may cause the above timeline to be modified. The Owner has provided to the Contractor copies of the project financing documents which include the Lender's payment program and requirements. The Contractor agrees to comply with all Lender requirements, and to cooperate the Owner and Lender in the inspection process.

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12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

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12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of



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the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997.

2. add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. subtract the aggregate of previous payments made by the Owner;
5. subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
6. subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

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12.1.8. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.9. In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment has been issued by the Architect.

12.2.2. The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:
Final payment to be made upon approval of Lender.



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12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment, failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor. Contractor shall be entitled to apply said cost against the warranty reserve fund established in Article 14.6.4.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

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This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project, and elsewhere, may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:
(Name, address and other information.)
Robert M. Mills
25 Second Street, North
Suite 400
Saint Petersburg, Florida 33701

14.4 The Contractor's representative is:
(Name, address and other information.)
Jeffrey Reynolds
113 Contract Drive
Aiken, South Carolina 29801

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

1. Project Manager Billings: Up to 50% of the wages of the Project Manager (David Sharpe) may be charged to the job starting on the date of the contract and proceeding until final acceptance is achieved.

2. Labor Burden: Labor burden may be charged against hourly workers at the rate of 30% of the hourly rate.

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3. Contractor agrees not to change either the Project Manager (David Sharpe) or the Project Superintendent without the express written approval of the Owner.

4. Warranty Reserve: If there are savings realized at the completion of the project then submitted with the final billing to be paid to the Contractor, a Warranty Reserve will be established and held by the Contractor to pay for all late invoices, punchlist work, warranty work, closeout fees, insurance premiums, etc. which may arise after the final accounting has been performed. The amount will be held by the Contractor for a period of 12 months up to the expiration of the one-year warranty period. At the end of the one-year period, the fund shall be reconciled and any unspent funds shall be equally divided between the Contractor and Owner. The amount of the Warranty Reserve shall be set at a maximum of \$15,000.00.

5. All costs incurred by the Contractor prior to the date of this Agreement are included in the Contractor's Fee as stated in Article 5.1.2.

6. Contractor understands that included within the scope of this Agreement is the Contractor's responsibility to assist the Owner in the full coordination of construction and design activities with all jurisdictional authorities and utility providers, including the coordination of USCA provided utilities and services. The Contractor is responsible to independently verify all information provided by the Owner or Architect or their consultants and to advise the Owner prior to the execution of this Agreement of any scope gaps which may result from conflicts between the Contractor's GMP, to what is shown on the project drawings, to what will be required by the jurisdictional authorities and utilities.

7. Contractor agrees to name University Housing Services, Inc., Collegiate Housing Properties, Inc. and Bank of America as additional obligees on all payment and performance bonds and insurance. This requirement shall also be included in all subcontractor agreements for subcontractors who will be required to have bonds.

8. Governing law will be those of the State of South Carolina.

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This document has been approved and endorsed by The Associated General Contractors of America.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated August 8, 2003, and are as follows:

Document Title Pages

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section Title Pages



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15.1.5 The Drawings are as follows, and are dated (see attached Exhibit 'B') unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

15.1.6 The Addenda, if any, are as follows:

| Number | Date | Pages |
|--------|------|-------|
|--------|------|-------|

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15:

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

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This document is not intended for use in competitive bidding.

ARTICLE 16 INSURANCE AND BONDS


(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

See Insurance Certificates attached as Exhibit 'C'.

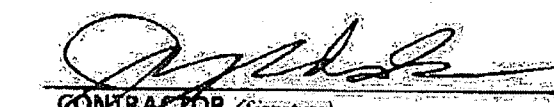
AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.



 OWNER (Signature)
William H. Mills, Jr.
 President
 (Printed name and title)



 CONTRACTOR (Signature)
Jeffrey Reynolds
 President
 (Printed name and title)

Corporate Seal



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Exhibit 'A'

Clarifications and Assumptions

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

University of South Carolina Aiken,.....Respondents,

v.

University Housing Services, Inc., and H.G. Reynolds Company, Inc., areAppellants.

EXHIBIT 6

The Warranty Deed issued to USC

2006010480



DEED
RECORDING FEES \$10.00
EXEMPT
PRESENTED & RECORDED:
04-04-2006 10:50 AM
JUDITH WARNER
REGISTER OF DEEDS CONVEYANCE
AIKEN COUNTY, SC
By: JOYCE H EGGLE DEPUTY RMC
BK:RB 4055
PG:1632-1635

AIKEN COUNTY ASSESSOR
Tax Map:
087-15-01-012

TMS #: 087-15-01-012

Grantee's Address:

University of South Carolina
109 Osborne Administration Building
Columbia, South Carolina 29208

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that the AIKEN COUNTY COMMISSION FOR HIGHER EDUCATION (herein Grantor), for an in consideration of Five and 00/100 (~~\$5.00~~) Dollars, and other valuable consideration to Grantor in hand paid by the UNIVERSITY OF SOUTH CAROLINA, an educational institution and agency of the State of South Carolina (herein Grantee), the receipt of which is hereby acknowledged, and subject to easements and other matters as hereinafter set forth, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said UNIVERSITY OF SOUTH CAROLINA:

All that certain piece, parcel or tract of land, together with the improvements thereon, located inside the current corporate limits of the City of Aiken, County of Aiken, State of South Carolina, the same containing 11.6295 acres, and being shown on a plat prepared for the Aiken County Commission for Higher Education by Hass & Hilderbrand, Inc. dated March 14, 2006, and recorded in the RMC Office for Aiken County in Plat Book 51, page 118; and according to said plat having the following metes and bounds, to-wit:

Commencing at the centerline intersection of Physician Drive and University Parkway thence turning and running North 21 degrees 53 minutes 56 seconds West for a distance of 155.14 feet to a 1 1/4" open top pipe, thence turning and running South 86 degrees 55 minutes 38 seconds West for a distance of 268.96 feet to a No. 4 rebar pin found, then turning and running South 88 degrees 47 minutes 53 seconds West for a distance of 691.13 feet, thence turning and running South 87 degrees 00 minutes 16 seconds West for a distance of 460.03 feet to a No. 5 rebar iron pin set, thence turning and running North 03 degrees 00 minutes 08 seconds West for a distance of 199.34 feet to a No. 5 rebar iron pin set labeled as the Point of Beginning (P.O.B).

Thence S 87-00-16 W for a distance of 753.71 feet to a #5 rebar iron pin;
Thence N 03-00-08 W for a distance of 708.26 feet to a #5 rebar iron pin;
Thence N 87-11-10 E for a distance of 601.93 feet to a #5 rebar iron pin;
Thence S 02-46-22 E for a distance of 173.15 feet to a #5 rebar iron pin;
Thence N 87-11-10 E for a distance of 152.47 feet to #5 rebar iron pin;

Thence S 03-00-08 E for a distance of 532.72 feet to a #5 rebar iron pin;
Returning to the Point of Beginning.

Derivation: This being a portion of the same premises conveyed to the Aiken County Commission for Higher Education by deeds of the Graniteville Company, one recorded in Deed Book 527, page 515, and the other in Deed Book 413, page 91, both in the RMC Office for Aiken County, South Carolina.

This conveyance is made subject to all recorded easements, restrictions or rights-of-way existing against the aforesaid premises. This conveyance is further subject to the condition that should the premises cease to be used by Grantee for student housing at the University of South Carolina Aiken (herein "USCA"), or for student, faculty and/or staff members attending or employed by USCA, or for individuals attending USCA-sanctioned activities at USCA, ownership of the premises shall automatically revert to Grantor, provided, however, Grantor acknowledges and agrees that such reversion cannot under any circumstances occur prior to June 30, 2026.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in any way incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto Grantee forever, subject to the reversion clause to Grantor as set forth above, **AND** Grantor does hereby bind Grantor and Grantor's successors and assigns, to warrant and forever defend all and singular the said premises, subject to those matters hereinabove referred to, unto Grantee, its successors and assigns, against Grantor and Grantor's successors and assigns, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand and seal of the undersigned this 30th day of MARCH, 2006.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**



Virginia SteefHudock

**GRANTOR:
AIKEN COUNTY COMMISSION FOR
HIGHER EDUCATION**



Timothy W. Simmons
Chairman

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that s/he saw the within named Aiken County Commission for Higher Education, by its Chairman, Timothy W. Simmons, sign, seal and as Grantor's act and deed, deliver the within written General Warranty Deed for the uses and purposes therein described, and that s/he with the other witness whose name appears above witnessed the execution thereof.

SWORN to before me this 30th
day of MARCH, 2006.

Walter H. Hall

Notary Public for South Carolina
My Commission Expires 2/26/2013

T. Hall

OFFICIAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

AFFIDAVIT

PERSONALLY appeared before me the undersigned who, being duly sworn, deposes and says:

1. Property located at 110 Pacer Downs Way, University of South Carolina Aiken, Aiken, South Carolina, bearing Aiken County Tax Map Number 087-15-01-012 was transferred by the Aiken County Commission for Higher Education to the University of South Carolina on March 30, 2006.

2. The transaction was (check one):

an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$ _____.

not an arm's length real property transaction and the fair market value of the property is \$ _____. [Pursuant to S. C. Code Ann. Section 12-24-70(A), value is not required to be stated because the deed is exempt from the recording fee (see below).]

3. The above transaction is exempt from the recording fee pursuant to S. C. Code Ann. Section 12-24-40(2) because the deed transfers realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts. Grantee, University of South Carolina, is a body corporate and politic and an agency of the State of South Carolina.

4. As required by S. C. Code Ann. Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: General Counsel, University of South Carolina.

5. I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined no more than one thousand dollars or imprisoned not more than one year, or both.

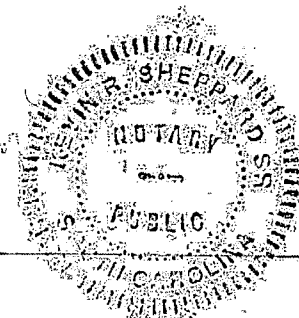
Walter H. Parham

Walter H. Parham, General Counsel
(Legal Representative of the Purchaser)

SWORN to before me this 3
day of April, 2006.

Ken Spald
Notary Public for South Carolina

My Commission Expires: _____ My Commission Expires
October 19, 2015



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge

Case No. 2016-CP-02-02339
Appellate Case No. 2018-001039

RECEIVED
OCT 04 2018
SC Court of Appeals

University of South Carolina Aiken, Plaintiff,

v.

University Housing Services, Inc., HG Reynolds Company, Inc., Southern Wall Systems, Inc.,
McElroy Specialty Interiors, Inc., Croft Hill Siding Inc., East Coast Painting, Inc., and John Does
1 through 3, Defendants,

And

H.G. Reynolds Co., Inc., Third-Party Plaintiff,

v.

William Bell, Bell Siding and Roofing, William Bell d/b/a Bell Siding & Roofing a/k/a Bell Siding
and Roofing, LLC, Third-Party Defendants,

Of Which University Housing Services, Inc., and H.G. Reynolds Company, Inc. are the
Appellants,

And

Of Which University of South Carolina Aiken is the Respondent.

AFFIDAVIT OF SERVICE

I hereby certify that I have on this date, served via U.S. Mail to counsel for Appellants and electronic mail to all other counsel of record, a true and correct copy of Respondent's Motion to Dismiss as follows:

FOR APPELLANT UNIVERSITY HOUSING SERVICES, INC.

John L. McCants, Esquire
Rogers Lewis Jackson Mann and Quinn, LLC
P.O. Box 11803
Columbia, SC 29201
jmccants@rogerslewis.com

FOR APPELLANT HG REYNOLDS CO., INC.

Mark S. Barrow, Esquire
Christy E. Mahon, Esquire
Sweeny Wingate & Barrow, PA
P.O. Box 12129
Columbia, SC 29211
msb@swblaw.com
cem@swblaw.com

FOR MCELROY SPECIALTY INTERIORS, INC.

Emily R. Gifford, Esquire
Richardson Plowden & Robinson, PA
P.O. Drawer 7788
Columbia, SC 29201
egifford@richardsonplowden.com

FOR SOUTHERN WALL SYSTEMS, INC.

Jonathan G. Roquemore, Esquire
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, SC 29211
jroquemore@hedrickgardner.com

FOR WILLIAM BELL, BELL SIDING AND ROOFING, WILLIAM BELL D/B/A BELL SIDING & ROOFING A/K/A BELL SIDING AND ROOFING, LLC, AND BELL SIDING AND ROOFING, LLC

W. Duffie Powers, Esquire
Carter R. Massingill, Esquire
Gallivan White & Boyd, PA
P.O. Box 10589
Greenville, SC 29603
dpowers@gwblawfirm.com
cmassingill@gwblawfirm.com

FOR TIM STEPHENS D/B/A SAN-GLO CAROLINA A/K/A SAN-GLO GLASS, INC.

Chris A. Majure, Esquire
Murphy & Grantland, PA
P.O. Box 6648
Columbia, SC 29260
cmajure@murphygrantland.com

**FOR DEFENDANT CROFT HILL
SIDING, INC.**

Thomas F. Dougall, Esquire
William A. Collins, Jr., Esquire
Michal Kalwajtys, Esquire
Dougall & Collins
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Elgin, SC 29405
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wcollins@dougallfirm.com
mkalwajtys@dougallfirm.com

**ATTORNEYS FOR AIKEN, AIKEN
BEAUCHAMP & SHEETZ
ARCHITECTS, INC.**

Kent T. Stair, Esquire
Paul E. Sperry, Esquire
Carlock Copeland & Stair, LLP
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kstair@carlockcopeland.com
psperry@carlockcopeland.com

**FOR DEFENDANT CROSBY
BROADWATER**

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jcuttino@gwblawfirm.com

THURMOND KIRCHNER & TIMBES, P.A.



Moira K. McIntire
Paralegal to Michael A. Timbes & Thomas J. Rode

October 2, 2018
Charleston, South Carolina



October 2, 2018

VIA UPS OVERNIGHT DELIVERY

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *USC v. University Housing Services, Inc.*
Appellate Case No. 2018-001039

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SC Court of Appeals

Dear Ms. Kitchings:

This firm represents Respondent University of South Carolina Aiken in connection with the above-referenced appeal. Enclosed for filing, please find an original and seven (7) copies of the following documents:

- (1) Respondent's Motion to Dismiss the Appeal of H.G. Reynolds Company, Inc.;
- (2) Respondent's Affidavit of Service; and
- (3) This firm's check in the amount of \$25.00 in satisfaction of the filing fee.

After filing the originals, kindly return any extra file-stamped copies to me in the enclosed self-addressed envelope provided for your convenience. Should you have any questions or concerns, please do not hesitate to contact us.

With best regards, I am

Very truly yours,

THURMOND KIRCHNER & TIMBES, PA

Moira McIntire
Paralegal to Thomas J. Rode

cc: All counsel of record.

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