

Attachment 3

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is made as of the _____ day of _____, 2014, between the State of Minnesota, by and through the Board of Trustees of the Minnesota State Colleges and Universities, on behalf of Minnesota West Community and Technical College, ("Minnesota State"), _____ ("Developer") and the _____ (the "_____").

RECITALS

WHEREAS, Minnesota State Colleges and Universities on behalf of Minnesota West Community and Technical College at its Worthington location wish to add new student residential facilities of approximately 100-102 beds on the campus located in Worthington, Minnesota, and

WHEREAS, MnSCU has statutory authority under Minn. Stat. §136F.60, Subd. 2(c)-(e) to enter into an agreement to engage a developer to provide student housing, and

WHEREAS, MnSCU's Board of Trustee's authorized the action to enter into agreements related to student housing at this location at its January meeting, and

WHEREAS, MnSCU is the owner of certain real estate on the campus of, Worthington campus of Minnesota West illustrated on **Exhibit A** attached hereto; and

WHEREAS, MnSCU and Developer are negotiating the ground lease of an approximately _____ acre parcel of land for the purposes of student housing in support of the college, the site illustrated on **Exhibit B**, attached hereto; and

WHEREAS, MnSCU and Developer want to enter into an agreement that will result in the development of a student housing and parking on MnSCU property,

NOW, THEREFORE, the Parties agree to the following terms and conditions:

AGREEMENT

- A. Project Description.** The project is a student housing facility with approximately 100-125 beds on the Worthington campus of Minnesota West Community and Technical College and located on the site identified in **Exhibit B**. The initial plans and specifications of the Project are described and defined in **Exhibit C**. Final plans approved by MnSCU shall be incorporated by reference.
- B. Project – Basic Features.** The project is intended to be a turn-key project and shall contain the following basic features:

- a. For the primary benefit of students enrolled at Minnesota West Community and Technical College
- b. Apartments in configurations of efficiency, 1, 2, 3 and/or 4 bedrooms, including adequate units made accessible for disabled students
- c. Fully furnished units to include living room, kitchen and bedroom furnishings and equipment, such as beds, desks, sofas, chairs, tables, and kitchen appliances (oven, refrigerator, dishwasher)
- d. Cable and data outlets in each bedroom and living room
- e. Central heating and air conditioning and controls available to occupants
- f. Keyed individual bedrooms
- g. Impact resistant drywall
- h. Common / gathering room
- i. Where feasible, in unit washer/dryers

C. Term. This agreement shall commence on the date the last required party has signed the agreement and shall continue until the obligations in this agreement have been fulfilled to the satisfaction of the parties or the termination of the agreement.

D. Planned Completion Date: August 1, 2018

E. Developer's Services

- a. Project Development. Subject to the terms and conditions set forth in this Agreement, Developer shall act as the primary developer in connection with the development and construction of the Project, and shall deliver a Final Project at its sole cost and expense. Developer shall supervise the development and construction process with the objective of causing the Student Housing Facilities to be developed and completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's and similar liens, all in accordance with the terms of this Agreement and the Ground Lease. Developer shall develop the Project in accordance with the Construction Contract and the Architect's Contract.
- b. Consultants. Developer may contract with any qualified Consultant to perform services for the Project, subject to the terms and conditions of this Agreement.
- c. For purposes of this development, the Developer has selected the following:
 - i. Architect:
 - ii. General Contractor:
 - iii. Civil Engineer:

- iv. Mechanical/Electrical and Plumbing engineer:
- v. Structural engineer:
- vi. Underwriter:
- vii. Property Manager:

F. Developer's Budget and Financing.

- a. The developer estimates the Development Budget to be \$ _____
_____ for the project.
- b. Developer shall provide to the campus a full accounting of the project costs and proposed operating costs for the project.
- c. Developer shall be responsible for obtaining construction and permanent financing needed to complete the project.
- d. Upon notification by Developer, MnSCU shall update the market study in support of the financing efforts.
- e. MnSCU shall cooperate to the extent practical in assisting Developer in obtaining financing for this project. For purposes of financing, MnSCU shall provide enrollment and financial data needed for evaluating the viability of this project. For financing purposes, MnSCU cannot provide financial, occupancy or other guarantees.

G. Zoning and Site Plan.

- a. Campus shall have final decision on the location of the project on campus.
- b. Developer shall investigate and obtain any and all necessary zoning, site plan, permitting or related governmental entitlements and approvals required to proceed and operate a student housing complex on the campus.
- c. MnSCU shall cooperate with Developer in filing any necessary applications, attendance of public hearings, and any other obligation for obtaining the necessary zoning classification.
- d. Without limiting the generality of the foregoing, the work outlined in subpart C shall include entering into all necessary agreements with the City and fulfilling all obligations contained within such agreements.

H. Site and Location.

- a. For documents not otherwise obtained or provided by the campus, Developer shall be responsible for obtaining all necessary surveys, such as ALTA, utilities, and topographic surveys, describing the parcel that will be the subject of legal documents to include the ground lease and easements and infrastructure documents, including storm water, site plans, and platting.

- b. Developer shall plat the parcel for the construction of student housing, which may include parking or a reciprocal easement for access and parking.

I. Design Process

- a. Under Minnesota Statute §136F.60, the project must comply with MnSCU design standards.
- b. Developer shall provide MnSCU a full set of design documents for review.
- c. MnSCU shall have 14 days from receipt of a full and complete set of documents to provide comments regarding the design.
- d. Developer shall make best efforts to address such comments and revise its design documents accordingly and shall submit a final revised set to MnSCU.
- e. At such time that a revised set of design documents have been accepted by MnSCU, MnSCU shall arrange a mutually agreeable time for Developer and the campus to present the project to the Associate Vice Chancellor for Facilities or his assignee for final approval.
- f. Upon approval by the Associate Vice Chancellor for Facilities or his assignee, Developer may proceed with design development and commence preparations of construction documents and bidding of the project.

J. Construction

- a. Developer shall be solely responsible for the permitting, design, engineering, construction and operation of the student housing project.
- b. Developer shall provide notification to the college within ten (10) days of work that is scheduled to commence.
- c. Developer shall maintain at least weekly construction meetings that includes at least one representative from the college.
- d. Developer will have full and exclusive responsibility for Project Site safety during the course of performance of this Agreement.
- e. Design shall be subject to the Minnesota State Colleges and Universities design standards, subject to variances granted and contained in **Exhibit C**.
- f. The Developer's mobilization plan for the Project, including without limitation proposed fence lines, gates and traffic flow is attached hereto as **Exhibit D**, and shall operate to minimize the impact to college's regular operations.
- g. Developer may handle, store, use, or dispose of Hazardous Materials to the extent customary and necessary for the performance of Developer's duties under this Agreement, provided all disposal occurs offsite. Developer shall always handle, store, use, and dispose of those Hazardous

Materials in a safe and lawful manner and shall ensure that all disposal of Hazardous Materials and any other waste occurs offsite and in conformity with college policies and all regulations relating to safety matters. Developer shall also take reasonable precautions to prevent those Hazardous Materials from contaminating the land or the environment, harming human health, harming natural resources or violating any applicable laws, regulations, or ordinances of any federal, state, or local governmental authority.

- K. **Notices.** Any notice or other communication to be given under this Agreement shall be given in writing. The address of each party for notice is as follows:

- a. To Owner:

Minnesota State Colleges & Universities
Attn: Director, Capital Development
30 7th Street East
Suite 350
St. Paul, 55101-7804

With copy to:

Minnesota West Community and Technical College
attn: Lori Voss, CFO
1011 1st Street West
Canby, MN 56220

To Developer:

- L. **Insurance.** Each party shall, at its own expense, obtain, carry and keep in full force commercial general liability insurance or self-insurance against any liability or claim for personal injury, wrongful death or property damage for which the party is responsible to the other under this Agreement or by law, with financially responsible insurers authorized to transact insurance business in the State of Minnesota, with a combined single limit of not less than Two Million (\$2,000,000) per occurrence. Such insurance may be written by additional premises endorsement on any master policy of insurance which may cover other property; provided that the insurer shall provide a schedule to each party showing that the coverage provided by such policy shall (a) meet the requirements of this Agreement; (b) not be reduced by any claims made with respect to other

properties; and (c) be in such amount as will preclude the insureds from being held to be co-insurers. Each party shall provide to the other a certificate of insurance evidencing such coverage.

i. Payment and performance bonds. A Performance Bond and a Payment Bond will be required for this project. The Performance Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Capital Investment as security for the faithful performance of the Project, and the Labor and Material Payment Bond shall be in an amount equal to One Hundred Percent (100%) of the full amount of the Capital Investment as security for the payment of all persons performing labor and furnishing materials in connection with the Project. Such Bonds shall be on forms approved by the Licensor, and shall name the Licensor as primary obligee.

ii. Prevailing Wage. Prevailing labor wages shall be paid on this project. All Contractors and Subcontractors shall conform to the labor laws of the State of Minnesota and all other laws, ordinances, and legal requirements affecting their work in Minnesota. Pursuant to Minnesota Statutes 177.43, "(1) no laborer or mechanic employed directly on the project site by the contractor or any subcontractor, agent, or other person doing or contracting to do all or part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor unless paid for all hours, in excess of the prevailing hours at a rate of at least 1-1/2 times the hourly basic rate of pay; and (2) a laborer or mechanic may not be paid a lesser rate of wages than the prevailing wage rate in the same or most similar trade or occupation in the area,"

M. **Liability.** MnSCU's liability shall be governed by provisions of the Minnesota Torts Claims Act, Minnesota Statutes Section 3.732 and 3.736, et seq. and other applicable law.

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

- a. Developer files a voluntary proceeding under any bankruptcy or insolvency laws, or is the subject of an order of relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors;
- b. Developer seeks, consents to, or acquiesces in the issuance of an order of relief, appointment of any trustee, receiver, custodian, conservator, or liquidator of Developer, for all or any substantial part of its properties ("acquiesce" includes the failure to file a petition or motion to vacate or

discharge any order of relief, judgment, or decree providing for that appointment within the time specified bylaw);

- c. A court of competent jurisdiction enters an order of relief, judgment, or decree approving an involuntary bankruptcy proceeding filed against Developer;
- d. Developer seeks any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future law relating to bankruptcy, insolvency, or other relief for debtors, or Developer consents to or acquiesces (as defined above) in the entry of an order of relief, judgment, or decree, or it is not vacated and not stayed for an aggregate of sixty (60) days
- e. Any trustee, receiver, custodian, conservator, or liquidator of Developer or of all or any substantial part of its properties is appointed without the consent or acquiescence of Developer and that appointment is not vacated and not stayed for an aggregate of sixty (60) days;
- f. Developer materially fails or refuses to perform any obligation under this Agreement in the manner and within the time required by this Agreement;
- g. Developer or a Consultant commits or permits a material breach of any of Developer's duties, liabilities, or obligations under this Agreement without full and timely cure or remedy; or
- h. Any act by Developer or any Consultant or other third party employed by or claiming through Developer that causes, or with the passage of time or the giving of notice would cause, an Event of Default under the Ground Lease or the Lease.
- i. Substantial Completion has not occurred by July 1, 2016 or a mutually agreed upon completion date in writing between Developer and MnSCU.

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

- a. the college materially fails or refuses to perform any obligation under this Agreement in a manner and within the time required by this Agreement;
- b. The Owner, the college, an Owner Representative or a college representative commits or permits a material breach of any of the Owner's

or the college's duties, liabilities or obligations under this Agreement without full and timely cure or remedy;

- c. The Board of Trustee's takes action to terminate the relationship with the Developer.
- P. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
- Q. **Remedies Cumulative.** All rights and remedies of the parties hereto enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised and enforced concurrently. No waiver by any party of any covenant or condition of this Agreement, to be kept or performed by any other party to this Agreement, shall constitute a waiver by the waiving party of any subsequent breach of such covenant or condition, or authorize the breach or non-observance on any other occasion of the same or any other covenant or condition of this Agreement.
- R. **Duplicate Originals.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.
- S. **Captions.** The captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.
- T. **Severability.** If any provision of this Agreement or the application of any provision to any Person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of said provision to any other Person or circumstance, all of which other provisions shall remain in full force and effect.
- U. **Amendments in Writing.** No change, amendment, termination or attempted waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by all the parties.
- V. **Agreement for Exclusive Benefit of Parties.** Except as otherwise expressly provided herein, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other Person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third Person.

Signature pages begin on next page

MnSCU:

STATE OF MINNESOTA, BY AND
THROUGH THE BOARD OF TRUSTEES
OF MINNESOTA STATE COLLEGES AND
UNIVERSITIES, ON BEHALF OF
Minnesota West Community and Technical College

By: _____
Laura M. King

Its: Vice Chancellor-Chief Financial Officer

Date: _____

RECOMMENDED BY:

Minnesota West Community and Technical College

By: _____

Its: President

Date: _____

Developer

By: _____

Its: _____

DATE: _____

Exhibit List

- Exhibit A – Real Property owned by MnSCU
- Exhibit B – Proposed Student Housing Parcel
- Exhibit C – Plans and specifications