



**FLORIDA INTERNATIONAL UNIVERSITY  
BOARD OF TRUSTEES  
FULL BOARD MEETING**

Tuesday, July 24, 2018  
1:00 pm Eastern Time  
Via Conference Call  
Listen-only Dial-in Number: 1-877-242-2259

**AGENDA**

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| 1. Call to Order and Chair's Remarks   | Chair Claudia Puig                       |
| 2. Public Appearances  | Claudia Puig                             |
| 3. Action Item   |  |
| BT1. Approval of a Student Housing Agreement between the Florida International University Board of Trustees and University Bridge, LLC | Kenneth A. Jessell<br>Carlos B. Castillo |
| 4. New Business <i>(If any)</i>  | Claudia Puig                             |
| 5. Concluding Remarks and Adjournment  | Claudia Puig                             |

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**THE FLORIDA INTERNATIONAL UNIVERSITY  
BOARD OF TRUSTEES**

July 24, 2018

**Subject: Approval of a Student Housing Agreement (“Agreement”) between the Florida International University Board of Trustees (“BOT”) and University Bridge, LLC (“Owner”).**

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**Proposed Board Action:**

Approve (1) a Student Housing Agreement (“Agreement”) with University Bridge, LLC (“Owner”); and (2) delegate authority to the University President, or designee, to execute the Agreement on behalf of the Florida International University Board of Trustees (“BOT”).

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**Background Information:**

On May 19, 2018, representatives from University Bridge, LLC (“Owner”), a Florida limited liability company, first approached the University with a request to enter into a Student Housing Agreement (“Agreement”) with the Florida International University Board of Trustees (“BOT”). The Agreement defines structures and roles that allow the Owner to receive a property tax exemption and to qualify as a 501(c)(3) organization to enable the Owner to borrow tax-exempt debt proceeds for the design and construction of a residential housing facility (“Project”).

Under the terms of the Agreement, the Owner, at Owner’s sole cost and expense, will construct a 20 story, 886-unit, 1244-bed residential rental housing facility that will house FIU students, faculty and staff. The facility will be located at 740 S.W. 109<sup>th</sup> Avenue, Sweetwater, Florida 33174, just north of S.W. 8<sup>th</sup> Street and west of S.W. 109<sup>th</sup> Avenue and across the street from the MMC campus. The Project will cost approximately \$220 million financed via tax-exempt and taxable housing revenue bonds issued by the Capital Trust Agency.

FIU will not have any obligations or responsibilities related to the financing, design, development, construction, maintenance and operation of the Project, but the University will have certain rights in connection with such matters, which rights FIU may exercise in its sole discretion. For instance, FIU, in its discretion, will have the right to have a representative present at construction meetings and to receive copies of all monthly progress reports. Since the Project will serve FIU students, faculty, and staff, the Owner will have access to advertise to FIU students on FIU’s off-campus housing website, administered by a third-party vendor, similar to other off-campus housing projects. FIU may display materials for the Project and make student referrals to the Project once FIU’s on-campus housing is full. Additionally, the Owner may advertise the Project to FIU students, faculty and staff. The Owner will not lease, advertise or market the Project to FIU undergraduate first-year freshmen students.

The Owner, whose sole member is an entity organized under Section 501(c)(3) of the Federal Tax Code, will use net cash flows from the Project to further charitable activities. FIU will receive housing scholarships to support a minimum of 20 beds, and may receive additional funds

and housing scholarships, all subject to the availability of net cash flows. Additionally, FIU will have the option to receive, at FIU's sole discretion, title to the Project, including land and all improvements, at the end of the 40-year financing period or upon repayment of all indebtedness, whichever is sooner. FIU also has the option to require the Owner to remove or demolish the Project and restore the land to its original condition, at Owner's sole expense.

FIU has held discussions with the Florida Division of Bond Finance (DBF) about the proposed Agreement since FIU has outstanding revenue bonds on university housing. Based upon DBF review of the proposed agreement, they do not believe the Agreement will have any ratings implications for FIU housing bonds.

The City of Sweetwater is supportive of the Agreement as the Project is important to the economic development of the City. The City of Sweetwater Commission approved a Payment in Lieu of Taxes Agreement ("PILOT Agreement") Resolution (Resolution No. 4434) with the Owner on June 13, 2018. The PILOT Agreement, approved pursuant to Resolution No. 4434, contained provisions that were problematic for FIU. At the request of FIU, the City Commission agreed to modify the PILOT Agreement to incorporate several provisions protective of FIU's rights and status as a state instrumentality. This Resolution was approved by the City Commission on July 16, 2018.

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<b>Supporting Documentation:</b>	Student Housing Agreement Project Summary Pilot Agreement between University Bridge, LLC, a Florida limited liability company, and the City of Sweetwater, Florida, a Florida municipal corporation
<b>Facilitator/Presenter:</b>	Kenneth A. Jessell Carlos B. Castillo

## STUDENT HOUSING AGREEMENT

THIS STUDENT HOUSING AGREEMENT (this “**Agreement**”) is dated July \_\_, 2018, by and between UNIVERSITY BRIDGE, LLC, a Florida limited liability company having its principal address at c/o Atlantic Housing Foundation, Inc., 5910 N. Central Expressway, Suite 1310, Dallas, Texas 75206 (“**UB**”), and THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES (the “**University**”), acting by and through the undersigned duly authorized representatives. UB and the University are referred to herein collectively as the Parties and individually as a Party.

**WHEREAS**, the University is the largest university in South Florida, the second largest in Florida, and the fourth largest in the United States by enrollment. Total enrollment in Fall 2017 was 56,886 students, including 8,700 graduate students;

**WHEREAS**, the University belongs to the 12-university State University System of Florida and is one of Florida’s primary graduate research universities; and

**WHEREAS**, the University offers 191 programs of study with more than 280 majors in 23 colleges and schools with a wide range graduate programs, including architecture, business administration, engineering, law, and medicine; and

**WHEREAS**, despite offering no financial commitments to the Property (as defined below), the University recognizes that at present it lacks adequate on-campus housing for its large student population. The need for quality student housing on or proximate to the University’s main campus is projected to rise in future years, as the University’s enrollment grows. Currently, the University has the ability to house approximately 8% of its total enrollment on campus; and

**WHEREAS**, the sole member of UB is Atlantic Housing Foundation, Inc. (“**AHF**”), an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (as amended, the “**Code**”) as an organization described in Section 501(c)(3) of the Code, and which has as among its stated charitable purposes the acquisition, construction, rehabilitation and operation of student housing on a nonprofit basis; and

**WHEREAS**, UB is organized exclusively to further the stated charitable purposes of AHF and specifically for the purpose of planning, developing, financing, equipping, operating and maintaining a student housing facility and certain ancillary facilities as well as providing scholarships exclusively for the benefit of the University in accordance with this Agreement (collectively, the “**Charitable Activities**”); and

**WHEREAS**, UB desires to assist the University in meeting the need for additional housing for University Students (as defined in Section 2(A)) by developing, financing, constructing, furnishing, equipping and operating a residential facility consisting of a 20-story, 886-unit, 1,244-bed residential tower to house students, faculty, and staff of the University (the “**Facility**”), which Facility will be located on a parcel of real property at 740 SW 109th Avenue in Sweetwater, Florida 33174 and which parcel is more particularly described on the attached **Exhibit A** (the “**Land**,” and together with the Facility, the “**Property**”); and

**WHEREAS**, UB, with assistance and input from the University, as provided herein, will implement housing educational programs and policies designed to serve the needs of the University Students; and

**WHEREAS**, UB expects to permanently finance the acquisition of the Land and the development, construction, furnishing and equipping of the Facility through the issuance by the Capital Trust Agency of its Student Housing Revenue Bonds (University Bridge, LLC – Student Housing Project) Series 2018, in the aggregate principal amount not to exceed \$225,000,000, fully amortizing and payable over forty (40) years (on a taxable and/or tax-exempt basis) (collectively, the “**UB Financing**”), pursuant to documents, agreements and instruments executed by UB in connection with the UB Financing (the “**Financing Documents**”); and

**WHEREAS**, the University will not be responsible for the payment of any amounts related to the development, construction, operation, maintenance or financing associated with the Property, including any agreement to lease or assign students to the Property; and

**WHEREAS**, the UB Financing will be designed so that it will have no impact on the balance sheet or credit capacity of the University; and

**WHEREAS**, UB will undertake the development, financing and operation of the Facility for the benefit of the University, and the University is willing to support the Facility under the terms and as expressly set forth in this Agreement; and

**WHEREAS**, UB is willing to make certain covenants and grant certain rights and privileges to the University in consideration for the University’s support of the development and operation of the Facility; and

**WHEREAS**, UB and the University desire to set forth herein their respective obligations to each other with regard to the development, operation and management of the Facility;

**NOW, THEREFORE**, in furtherance of the above, UB and the University agree as follows:

**1. Development and Construction of the Facility.**

The Facility will be constructed on approximately 1.7 acres and will be a 20-story, 886-unit, 1,244-bed residential tower to house University Students, faculty, and staff of the University located on the Land. UB will engage the services of University Bridge GP, LLC (the “**Developer**”) pursuant to a Development Agreement (the “**Development Agreement**”) to oversee and supervise the design, development, construction and completion of the Facility in accordance with detailed building plans and specifications as approved by UB (“**Plans and Specifications**”). UB will engage the services of Coastal Construction as General Contractor (the “**General Contractor**”), which shall work in collaboration with the Developer to construct, furnish and equip the Facility in accordance with the Plans and Specifications pursuant to a Construction Contract (the “**Construction Contract**”). The University shall have the right to have a University representative present at weekly, or other periodic progress meetings of the

Developer and General Contractor. Upon request, UB shall inform the University of any modifications to the Plans and Specifications that will materially affect the design of the Facility or any major building components of the Facility, and to the extent required by the University in writing, any such modifications shall be subject to the University's prior written consent, not to be unreasonably withheld, conditioned, or delayed. UB shall cause the Developer to use commercially reasonable efforts to commence construction of the Facility as soon as reasonably practicable in anticipation of or following the closing of the UB Financing, and to achieve substantial completion of the Facility by the target date of August 1, 2020, but by no later than August 15, 2020. Upon request, UB shall provide copies to the University of all monthly progress reports submitted to it by the Developer. To the extent reasonably possible, all construction activities shall be conducted in a manner so as to minimize any adverse impact to the immediately surrounding areas. As soon as reasonably practicable following substantial completion of the Facility, upon request, UB shall furnish, or cause to be furnished, to the University the following: (i) one complete set of final "as-built" plans and specifications of the completed improvements; and (ii) a certified "as-built" plat or survey prepared by a Florida registered land surveyor or professional engineer depicting to scale the location of the completed improvements, as the same shall have been constructed. If required in writing by the University, UB shall not enter into any (i) easements or other agreements encumbering title to the Property; or (ii) any other licenses or other agreements regarding the operation of the Facility; or (iii) any other agreements affecting the Property which are not terminable on thirty (30) days prior written notice or which require the payment of a fee or penalty upon termination, or the term of which agreement extends past the term of the UB Financing, without the prior written consent of the University.

## **2. Operation and Management of the Facility.**

(A) Student Housing Facility. The Facility shall be operated exclusively as a residential living-learning community for (i) lease to (A) full-time undergraduate sophomores, juniors and seniors and graduate students enrolled in the University's schools and programs (collectively, "University Students"), and (B) members of the faculty or staff of the University (together with the University Students, the "Facility Residents"), and (ii) customary ancillary supporting uses necessary to fulfilling the charitable purposes and objectives and the administration and maintenance of the Facility in accordance with the standards generally applicable to management and leasing of comparable first-class residential facilities in the Miami-Dade County, Florida area. UB shall lease the units in the Facility, or cause the units in the Facility to be leased by the Manager (as defined below) only to Facility Residents, it being understood that units in the Facility shall not be leased at any time to undergraduate first-year freshmen students, except as may be approved by the University in connection with housing scholarships for veterans or as otherwise approved by University, in either case, in the University's sole and absolute discretion. To the extent necessary to comply with applicable law, UB shall execute and record a declaration of covenants and restrictions (the "Declaration") at the closing of the UB Financing (as defined below) restricting the use of the Property to the uses expressly permitted in this Agreement at the closing of the UB Financing (as defined below), which declaration shall run with the land and, to the extent so required by the University in writing, shall not be amended, modified or revoked without the express written consent and approval of the University. The Declaration shall survive the payment of the UB Financing but shall expressly state therein that it is subject to modification or termination

by the University or by a Designated Transferee (as defined herein) who has taken title to the Property.

(B) Prohibited Uses. The Declaration, to the extent necessary, shall expressly prohibit the uses that would adversely affect the tax-exempt status of AHF and the UB Financing.

(C) Facility Manager. UB will engage Landmark Properties as the initial property manager (the “**Manager**”) to undertake, and be responsible for the management and operational activities of the Facility pursuant to the terms and conditions of a written management agreement (the “**Management Agreement**”), which Management Agreement shall require the Manager to operate and maintain the Facility in accordance with the terms of this Agreement and in accordance with the standards generally applicable to management and leasing of comparable first-class residential facilities in the Miami-Dade County, Florida area. Management fees shall be comparable to management fees paid to managers of similar properties in South Florida, and the terms of the Management Agreement shall not adversely affect the tax-exempt status of AHF or the UB Financing.

(D) Protocol for Leasing and Operations. UB and Manager shall at all times during the Term of this Agreement manage and operate the Facility in accordance with terms of the Leasing and Operations Protocol attached as **Exhibit B**.

(E) Leasing Priority. UB and Manager shall provide University Students with first priority for the rental of units at the Facility according to the following terms: for each Contract Year (as defined on **Exhibit B** hereto) during the Term of this Agreement, UB and the Manager shall provide University Students with the exclusive right to rent units at Facility until the April 30th immediately preceding such Contract Year. From and after the May 1st immediately preceding such Contract Year, UB may lease any rental units not previously rented by University Students to any member of the faculty or staff of the University, provided such use does not adversely impact the tax-exempt status of the UB Financing or AHF.

(F) Security. Owner is solely responsible for the cost of procuring, installing, maintaining, and monitoring the Facility’s security systems. At the request of UB, University is willing to provide recommendations regarding emergency management and related protocols. Upon University’s request to UB, representatives of FIU Housing and FIUPD shall be permitted access to all security cameras for purposes of inspection and retrieval of relevant surveillance footage as required for the performance of their investigative duties, which inspection and retrieval shall be conducted in accordance with all applicable laws.

(G) Marketing and Promotion. The University agrees that, subject to applicable regulations, policies and procedures of the University that are in effect from time to time (“**University Policies**”), the Facility will have access to advertise to University Students on the University’s off-campus housing website after payment of all applicable fees in effect at any such time. FIU Housing may display materials for the Facility once all on-campus housing is full. The University will, subject to University Policies, permit UB to advertise the Facility to University Students on University property, subject to the prior review and with prior written approval by the University of the location, form, quantity, and content of such advertising, and provided that UB shall not advertise or market the Facility to undergraduate first-year freshmen students.



(H) Information Technology. The University's information technology department has been participating in the design of the cable and internet services for the Property and intends to enter into an agreement for the provision of such services on an ongoing basis for the Property. The design has been conducted in a manner that will allow Facility Residents to connect directly to FIU's on-campus information technology network. Any agreement between the University and UB shall provide that all wiring for such services shall be a part of the Property and shall be owned wholly and exclusively by the owner of the Property.

### **3. Net Cash Flow of Facility.**

Notwithstanding anything in this Agreement to the contrary, and consistent with UB's agreement and commitment to operate and manage the Facility for the benefit of the University, UB hereby agrees that all "net cash flow" from operations of the Facility shall be used solely for the purpose of furthering the Charitable Activities, including funding a wide range of University scholarship programs, with such programs including, but not being limited to, housing scholarships for veterans, and helping AHF further its charitable purpose. Consistent with the foregoing, UB agrees that, for each year during which the Facility is in operation, UB will provide housing scholarships to support a minimum of 20 beds subject to the available "net cash flow." "Net cash flow" means all revenues received by UB from the operation of the Facility on an annual basis, after payment of all operating expenses, management, asset management and administrative fees, including an AHF 501(c)(3) asset management and administrative fee (each of which must be reasonable and not adversely affect the tax-exempt status of AHF or the UB Financing), debt service for any outstanding debt obligations, and required reserves for the Facility due and payable on an annual basis and other obligations due and payable under the UB Financing Documents. UB also may, from time to time, transfer any such "net cash flow" to the University (to the extent acceptable by the University) to support the University's student housing acquisition, development, and operational activities. The parties acknowledge and agree that the early repayment and retirement of the UB Financing would further the Charitable Activities by expediting the conveyance of title to the University pursuant to Section 7 below.

### **4. Covenants of the University.**

(A) Acknowledgment. The University acknowledges that the University shall directly and substantially benefit from the development, operation and management of the Facility by UB and that the Facility will provide a welcomed addition to the housing supply available to the University Students, as well as further the University's educational purposes and objectives. The University further acknowledges that the cooperation of the University as set forth herein is essential for the cost-effective and efficient management and operation of the Facility by UB and that such cooperation is an important consideration and incentive in the decision by UB to undertake the financing and development of the Facility and the other obligations of UB in this Agreement. As a result, the University agrees that it shall exercise all reasonable efforts to uphold and preserve its cooperation with UB and association with the Facility as described herein, subject to the terms and conditions of this Agreement.

(B) Reserved.

5. **Covenants of UB.**

(A) **Board of Managers.** The management of the business and affairs of UB shall be vested in a Board of Managers (“**Board of Managers**”) which shall consist of three (3) individuals (“**Managers**”) to be appointed by the Governing Board of AHF. The Board of Managers shall include at least one (1) Manager selected from a list of candidates submitted by the University (in collaboration with Global City Development), each of whom has demonstrated a high level of experience and competence in the area of university housing and governance, higher education, and may be either an alumnus or have served on a University or a University-controlled affiliate board (“**Community Representatives**”), it being understood, however, that (i) no current member of the University’s Board of Trustees shall be a Manager, and (ii) no person employed by the University at any such time shall be a Manager, unless approved in advance by the University in its sole and absolute discretion. In addition, one (1) Manager shall be from the Miami-Dade County, Florida community with some relation to the University if deemed necessary. The University, in collaboration with Global City Development, agree to submit a list of candidates for this position upon request of the Governing Board of AHF. The Governing Board of AHF shall not unreasonably withhold, delay or condition the appointment of a Community Representative recommended by the University. Specific provisions relating to the terms, duties, responsibilities, meetings and actions of the Board of Managers shall be addressed in the Operating Agreement of UB, a copy of which shall be provided to the University. Included in the responsibilities and duties of the Board of Managers will be deciding on the allocation of UB’s “net cash flow” from the Property for the University’s programs. UB hereby acknowledges and agrees, and agrees to provide in the Operating Agreement of UB, that the Community Representatives shall stand in a fiduciary relationship to the University, and therefore each Community Manager shall act in good faith, with due regard to the interests of the University and shall comply with the fiduciary principles and law set forth in the Code of Ethics for Public Officers and Employees, Chapter 112, Part III, Florida Statutes, including, without limitation, with respect to conflicts of interests.

(B) **Financing of the Facility: No University Liability for UB Financing.** UB intends to obtain financing for the acquisition of the Land and paying the costs associated with the design, acquisition, development, construction, furnishing and equipping of the Facility, including the costs of obtaining UB Financing. UB will provide the University with copies of all the Financing Documents. To the extent so required by the University in writing, the University shall have the right to approve and/or comment on the Financing Documents.

Any modification, extension, refinancing, assignment or substitution for the UB Financing shall not be adverse to the rights and interests of the University as set forth herein, and, to the extent required by the University in writing, shall be subject to the approval of the University, in its sole and absolute discretion. The documents evidencing the UB Financing shall contain provisions for reserve accounts to be set up to fund capital improvements, repairs and maintenance of the Facility and the replacement of furniture and furnishings used in the operation of the Facility, for the purpose of operating and maintaining the Facility in accordance with the standards generally applicable to management and leasing of comparable residential facilities in the Miami-Dade County, Florida area. Neither the University, nor any Direct Support Organization of the University (“**DSO**”), or affiliated entities (individually, a “**University Party**” and collectively, “**University Parties**”) shall have any obligation at any time with respect to the payment of the UB Financing or any other financing for or related to the Property. The Trust

Indenture and other Financing Documents shall provide for no recourse for the payment of the principal of, or premium, if any, or the interest on, or any other cost, expense or fee for or related to, the UB Financing, or for any claim based thereon or any agreement supplemental or collateral thereto, against the University, any University Party, or any trustee, member, director, officer or employee, past, present or future, of the University or of any University Party, or of any predecessor or successor corporation, as such, either directly, or through the University. Notwithstanding the foregoing, UB covenants and agrees that the University shall have the right, but the University shall not be obligated, in the event UB defaults under the UB Financing and has not cured the default, to cure such default within a reasonable time period and/or to acquire the Property and assume payment of the indebtedness represented by the UB Financing all on terms reasonably acceptable to the University; such decision to be made or not made in the University's sole and uncontrolled discretion. UB has no expectation or hope that the University would take ownership of the Land, Facility or Property for any purpose prior to the repayment in full of the UB Financing. None of the University Parties is a "sponsor" or a "promoter" of the Property, UB shall not treat any of the University Parties as a "sponsor" or a "promoter" of the Property, and UB shall use its best efforts to prevent such description from being included in any materials produced by AHF, UB, the Developer, the Manager, or any other party related to the Property.

(C) Reports to University. UB shall submit to the University for its review, the Annual Management Plan as approved by the Board of Managers. The Annual Management Plan shall include and set forth the following to the extent requested in writing by the University: (i) Annual Residence Life Program Plan; (ii) Annual Marketing and Leasing Plan; (iii) Annual Operating Budget; and (iv) Annual Capital Improvements Plan. In addition to the foregoing, UB shall provide to the University a copy of each year's annual financial audit of the Facility, as prepared and submitted by an independent accounting firm selected by UB.

(D) Insurance. UB shall deliver to the University certificates evidencing UB's insurance, or those providing insurance on behalf of UB, each with limits of liability as currently maintained by UB in accordance with the requirements of the Financing Documents and naming the University as an additional named insured.

(E) Amendments to Articles of Organization. Without the prior written consent of the University, UB shall not amend, alter or repeal any provision of its Articles of Organization in a manner that would jeopardize the UB Financing or the charitable purposes of the Property.

(F) Form of Ownership. UB will not re-subdivide the Property or convert the Property to any form of condominium or co-operative or other fractured form of ownership without the University's prior written consent, which may be granted or withheld in its sole discretion.

**6. Representations and Warranties of UB:** UB hereby represents and warrants that:

(A) UB is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Florida. UB has full power, right and authority to enter into and perform its obligations under this Agreement.

(B) The execution, delivery and performance of this Agreement by UB has been duly and properly authorized by all requisite action in accordance with applicable law and with the organizational documents of UB, and each person executing this Agreement on behalf of UB has the authority to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to cause UB to perform its obligations hereunder.

(C) The execution and delivery of this Agreement and the performance of UB's obligations constitutes the legal, valid and binding obligation of UB, enforceable against it in accordance with its terms.

(D) UB is an entity that is disregarded for federal income tax purposes as a separate entity from its owner, AHF, which is an entity that is exempt from the payment of federal income tax under Section 501(a) of the Code, as an entity organized under Section 501(c)(3) of the Code, organized and operated exclusively for charitable purposes, and the execution and performance of this Agreement by UB is in furtherance of AHF's charitable purposes.

7. **Transfer of Legal Ownership of the Property.** Upon the repayment in full of the UB Financing (including any refinancing of same by UB, if any, such refinancing being subject to the University's prior written consent, in its sole and uncontrolled discretion, and in any event any such refinancing shall comply with the terms set forth in Section 5(B) hereof), all right, title, and interest in and to the Property shall be conveyed from UB to a University Party (subject to the University's approval) or to another similarly situated charitable organization or entity exempt from the payment of federal income tax under Section 501(a) of the Code, as an entity organized under Section 501(c)(3) of the Code, organized and operated exclusively for charitable, educational, or scientific purposes, selected or designated by the University (a "**Designated Transferee**") and vest in the University Party or a Designated Transferee, as applicable, and the University Party or a Designated Transferee, as applicable, shall be the sole and absolute owner of the Property, free of any right, title, interest or estate of UB (and University may, upon written demand, require UB to promptly remove or demolish the Facility and all improvements made to the Facility and restore the Land to its original condition, at UB's sole expense). The right, title and interest in and to the Property transferred to the University Party or its Designated Transferee shall be conveyed free and clear of any liens and encumbrances (other than the PILOT Agreement and any other permitted encumbrances, provided, however, that liens, monetary judgments, notices of violation, and any title matters which can be cured and/or removed by the payment of a liquidated sum of money shall not be permitted encumbrances), and subject to no material and adverse title, survey or environmental matters. UB shall execute such documents, including, without limitation, general warranty deed, bill of sale, assignment of leases and rents, and other agreements as may be reasonably requested by the University Party to effectuate the conveyance, and to transfer all of UB's right, title and interest in and to the Property to the University Party or its Designated Transferee, or as would be required by a purchaser of a mixed-use project under commercially reasonable terms for no additional monetary or other consideration by the University. At the University Party's request, UB will provide an owner's policy of title insurance to the University Party, the premium for which shall be paid from the revenues of the Facility. For the purposes of this Section 7, the term "**Property**" shall include the Land, the Facility, and all furniture, fixtures, equipment, machinery, and furnishings used in connection with and located at the Facility; it being the intent that UB shall convey to the University Party or its Designated Transferee, all of UB's right, title and interest in and to all the Property. The foregoing provisions will be included in the Declaration to be recorded in the real estate records of Miami-Dade County,

Florida, or at the request of the University, either this Agreement, or a separate agreement incorporating the foregoing provisions of this paragraph shall be executed and recorded in the real estate records of Miami-Dade County, Florida. Upon transfer of the deed to the Property to the University Party or its Designated Transferee, UB agrees to pay any applicable documentary stamp taxes that may be due, as well as the recording fees and any other costs that may be incurred by the University Party in connection with the transfer of the ownership of the Property to the University Party or its Designated Transferee.

The University acknowledges that UB anticipates entering into a payment in lieu of taxes/payment for services agreement (the “**PILOT Agreement**”) pursuant to which UB will make annual payments of an amount specified therein to the City of Sweetwater, Florida (the “**City**”) beginning in the first operating year of the Facility, to offset additional costs to be incurred by the City in providing police, emergency and other essential services for the benefit of the Facility, and which PILOT Agreement shall provide that after a University Party takes title to the Property, University shall have the right to terminate the PILOT Agreement at any time thereafter regardless of whether it is operating the Facility as a residential community or for any other use. The University agrees that in the event title to the Property is conveyed to a University Party or a Designated Transferee pursuant to this Section 7, the University Party or Designated Transferee, as applicable, will take title to the Facility subject to such PILOT Agreement (without limiting the University Party’s ability, however, to terminate the PILOT Agreement immediately thereafter in accordance with the terms of the PILOT Agreement). A Designated Transferee will not challenge or otherwise contest the enforceability of such PILOT Agreement. Notwithstanding anything to the contrary set forth in this Agreement, (i) in no event shall the Designated Transferee be responsible for any liabilities under the PILOT Agreement existing as of the date of the transfer, or which accrue post-transfer but which relate to periods prior to the transfer, and (ii) in no event shall a University Party be responsible for any payments due under the PILOT Agreement or for any other obligations of UB thereunder unless expressly assumed by the University Party in writing in its sole and absolute discretion, nor shall this Agreement create, or be construed as, an obligation by the University Parties to pay ad valorem taxes to the City or any other governmental entity if the University Parties are not required to do so under Florida law.

**8. Term.** The term of this Agreement (the “**Term**”) shall commence from the date hereof and shall terminate upon the earliest of (a) 90 days following the execution of this Agreement if the UB Financing has not been closed and funded, (b) the date the Property has been conveyed to a University Party or a Designated Transferee pursuant to Section 7 above, or (c) the earliest date on which all of the following events have occurred: (i) the UB Financing has been repaid, (ii) UB has made at least one attempt in writing to convey the Property to the University in accordance with Section 7 above, and (iii) (A) the University either (1) informs UB in writing that the University will not accept the Property and does not designate a Designated Transferee at the time of such written notice or (2) neither the University nor a Designated Transferee accepts the Property within 30 days of the University’s receipt of UB’s attempt in writing to convey the Property, or (B) UB reasonably determines, based on all the facts and circumstances, that the University does not want to accept the Property and has not provided UB with notice of the Designated Transferee within 30 days of the University’s receipt of UB’s attempt to convey the Property to the University. If the UB Financing is not obtained within 90 days from the date hereof, this Agreement shall be of no further force and effect as between the University and UB and neither of them shall have any obligation to the other under this Agreement.

## 9. **Default; Remedies Upon Default.**

Default by UB. UB shall be deemed to be in default under this Agreement should it fail to keep, observe or perform any material covenant, agreement, term or provision of this Agreement to be kept, observed or performed by UB and such failure continues for a period of thirty (30) days after receipt by UB of written notice thereof by the University to UB, provided that UB shall not be deemed to be in default if the breach is not reasonably curable within thirty (30) days and UB has proceeded within such period to actively, diligently and in good faith begin to cure such breach and continues thereafter to do so, and provided further that such breach is cured no more than ninety (90) days after UB's receipt of the written notice described above. In the event of a default by UB as described above (which is not cured within any applicable cure period), the University shall be entitled to (i) bring an action for specific performance against UB and/or (ii) cure UB's default; and/or (iii) direct UB to transfer the Property to a Designated Transferee of the University. In either case, UB shall reimburse the University for all reasonable costs and expenses incurred by the University in bringing such action for specific performance or curing such default within ten (10) days after written demand from the University. Notwithstanding anything in this Agreement to the contrary, the University shall have no right to terminate this Agreement while the UB Financing is outstanding, except as expressly provided in Section 8 above or in this Section 9. Notwithstanding the foregoing provisions of this Section 9, in the event UB is in default under the Financing Documents, which is not cured within any applicable grace or cure period, and the lender/trustee under UB Financing undertakes to institute proceedings to foreclose or to otherwise obtain ownership of the Facility, in addition to any other rights and remedies the University may have hereunder, the University shall have the right to terminate this Agreement in such event upon written notice to UB. Notwithstanding the foregoing provisions of this Section 9, if a lender or any other party takes title to the Property or any portion thereof, in addition to any other rights and remedies the University may have hereunder, the University shall have the right to terminate this Agreement by providing written notice to UB and the party that takes title to the Facility or any portion thereof.

**10. Eminent Domain.** If all or a portion of the Property shall be taken by condemnation or other eminent domain proceedings pursuant to any law, general or special, by an authority having the power of eminent domain (a "**Condemning Authority**"), or is sold to a Condemning Authority under threat of the exercise of such power (in any such event, a "**Taking**"), any award or compensation payable in connection with such Taking shall be paid in the following priority: (i) first, to satisfy any remaining repayment obligations under the UB Financing, up to the amount of any remaining indebtedness due to the holders of the UB Financing, and (ii) second, to the University. UB shall not have, and hereby waives, any right to any portion of any Taking award or compensation after repayment of the outstanding amounts due under the UB Financing; provided, the University, in its sole discretion, may direct that any such award or compensation be paid to UB for purposes of restoring the Facility or to otherwise further the purposes described in Section 3 above. All negotiations with the Condemning Authority and any settlements resulting from such Taking, and all major decisions by UB regarding the Taking shall require the prior written approval of the University.

## 11. **Notices.**

(A) All notices and other communications required hereunder shall be in writing. Each such written communication shall be deemed to have been received: (i) upon personal delivery; (ii) on the second business day after its deposit for overnight delivery with a recognized overnight delivery service; (iii) if mailed, on actual receipt (but only if sent by registered or certified or U.S. Express mail, with return receipt requested, addressed to the other Party's address below:

(i) If to UB to:

University Bridge, LLC  
c/o Atlantic Housing Foundation, Inc.  
5910 N. Central Expressway, Suite 1310  
Dallas, Texas 75206  
Attn: President and CEO  
Tel: (469) 209-8903

With copies to:

Coats Rose, P.C.  
201 E. Fifth Street, Suite 1810  
Cincinnati, OH 45202  
Attn: Ronald A. Bell, Esq.  
Tel: (513) 830-0266

(ii) If to the University to:

Office of Finance and Administration  
The Florida International University Board of Trustees  
Modesto Maidique Campus  
11200 SW 8th Street, PC 523  
Miami, Florida 33191  
Attn: Chief Financial Officer

With copies to:

Office of the General Counsel  
The Florida International University Board of Trustees  
Modesto Maidique Campus  
11200 SW 8th Street, PC 523  
Miami, Florida 33191  
Attn: General Counsel  
Fax: 305-348-3272  
E-mail: [generalcounsel@fiu.edu](mailto:generalcounsel@fiu.edu)

**12. Relationship of Parties.** Nothing herein shall be construed to characterize either Party as a partner, agent, or joint venturer of the other.

**13. Assignment.** UB shall not transfer, assign, pledge or hypothecate this Agreement or its rights, duties and obligations under this Agreement without the prior written approval of the University, in its sole and absolute discretion. The University shall not transfer, assign, pledge or hypothecate this Agreement or its rights, duties or obligations under this Agreement without the

prior written approval of UB, in its sole and absolute discretion. Any such transfer, assignment, or pledge made in violation of the forgoing shall be null and void. Subject to the foregoing, this Agreement shall be binding upon the parties hereto and their permitted successors and assigns. By execution hereof, the Parties consent to the collateral assignment of this Agreement in favor of the UB Financing.

**14. Approvals.** Any approvals required under this Agreement of the University shall be in writing and must be specifically approved by an Authorized University Representative. Any approvals required under this Agreement of UB shall be in writing and must be specifically approved by the Board of Managers or its designated representative. For purposes of this Agreement, “**Authorized University Representative**” shall mean such individual communicated to UB by the University to serve as such Authorized University Representative. Notwithstanding anything contained in this Agreement to the contrary, UB acknowledges and agrees that the University’s obligations under this Agreement shall be subject to the University obtaining any and all approvals required by the State of Florida, including, without limitation, from the University Board of Trustees.

**15. Headings.** The headings used in this Agreement are for convenience only, and are not to be considered in connection with the interpretation or construction of this Agreement.

**16. Severability.** If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstance other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**17. Governing Law and Venue.** This Agreement shall be governed by and construed, enforced and interpreted in accordance with the laws of the State of Florida. Venue for any legal proceedings hereunder shall be limited solely to Miami-Dade County, Florida.

**18. Exculpation.** The officers, directors, members, managers, shareholders, governors, trustees and employees of each of UB and the University, as applicable, shall have no personal liability for the performance of any of UB’s or the University’s obligations contained in this Agreement.

**19. Counterparts.** This Agreement may be executed on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

**20. Indemnification.** UB shall, upon demand, indemnify, defend, hold harmless, and reimburse the University, and its officers, employees, contractors, and agents (the “**Indemnitees**”) from and against and for any and all losses, damages, claims, actions, investigations, liabilities, obligations, penalties, fines, suits, claims, demands, actions, costs, and expenses of any kind or nature (including reasonable architects', engineers', and attorneys' fees), that may arise out of, relate to, result from or are imposed upon or asserted against Indemnitees by reason of the UB’s planning, developing, financing, occupancy, operation, maintenance, repair, replacement, alteration, and/or use of the Property. If University shall be required to defend any action or proceeding pursuant to this Section, University shall also be entitled to appear, defend, or



otherwise take part in the matter involved, at its election, by counsel of its own choosing, and UB shall bear the cost of University's defense, including attorneys' fees. This Section shall survive the expiration or earlier termination of this Agreement.

**21. Sovereign Immunity.** This Agreement does not affect the immunities, exemptions and limitations of liability of the University under Florida Statute 768.28 and other applicable laws of the State of Florida. Nothing in this Agreement shall be deemed to affect the rights, privileges and immunities afforded University, the Florida Board of Governors and the State of Florida by law. Nothing herein shall be construed as consent by University to be sued by third parties in any manner arising out of this Agreement.

**22. FIU Logo/Marks.** This Agreement does not confer upon UB any rights to use the name, logos, marks and/or likeness of the University. UB must obtain University's written permission prior to using the name, logos, marks and/or likeness of the University.

**23. Waiver of Jury Trial.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE PROPERTY. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties have each caused this Student Housing Agreement to be duly executed on its behalf as of the date first above written and delivered to the other party.

**University Bridge, LLC**, a Florida limited liability company

By: Atlantic Housing Foundation, Inc., a South Carolina nonprofit corporation and its Sole Member

By: \_\_\_\_\_  
Michael N. Nguyen  
President & CEO

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES**

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

APPROVED AS TO FORM AND LEGALITY:

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

**LIST OF EXHIBITS**

**EXHIBIT A - DESCRIPTION OF THE LAND**

**EXHIBIT B - LEASING/OPERATIONS PROTOCOL**

**EXHIBIT A**  
**DESCRIPTION OF THE LAND**

**EXHIBIT B**  
**LEASING/OPERATIONS PROTOCOL**

At all times during the term of this Agreement, the Facility shall be operated under the following terms:

1. Leasing. The Manager will have full responsibility for leasing the residential units, as agent for and on behalf of UB. The Manager will execute all student housing leases with the Facility Residents on the then current form of rental contract approved by UB (“**Housing Rental Contract**”). UB and the Manager shall have sole responsibility with respect to the Housing Rental Contracts, including, without limitation, billing or collection of rent thereunder or enforcement of the provisions of such Housing Rental Contracts against any party thereto. If requested by the University in writing, UB will provide the copies of all Housing Rental Contracts to the University.
2. Staffing Requirements. UB shall cause the Manager to arrange for a sufficient number of capable employees to enable Manager to carry out its obligations and duties under the Management Agreement. All matters pertaining to the employment, supervision, promotion and discharge of such employees shall be the responsibility of Manager. At a minimum, the Manager shall employ the following personnel: (i) One general manager who is a full-time professional staff member, having experience in student personnel or a related field; (ii) one or more assistant managers whose responsibilities will assist the general manager in the overall operation of the Facility; and (iii) one or more maintenance personnel whose responsibilities will include daily grounds-keeping and common area cleaning, including interior and exterior common areas.
3. Emergency Procedures. UB shall cause Manager to establish emergency procedures for all residents of the Facility, including those residents with disabilities, in accordance with industry standards and applicable local and state ordinances, codes, rules, regulations and laws. Such emergency procedures shall be reviewed and updated as necessary.
4. Repairs and Maintenance; Inspections. UB shall cause the Facility to be maintained as a facility exclusively for University Students and faculty and staff of the University, in accordance with the standards generally applicable to management and leasing of comparable residential facilities in the Miami-Dade County, Florida area, and a decent, safe and sanitary condition and in a rentable and tenantable state of repair, and shall ensure that the Facility is compliant with all federal, state and local codes, ordinances, rules, regulations and laws. UB will cause all health, safety and code compliance inspection reports to be delivered to the Board of Managers for review and comment. The University shall be allowed to inspect the Facility annually, at its sole cost and expense, to confirm that the Facility is being properly maintained for its intended use.
5. Community Standards. The Facility shall be operated in not inconsistent with the purposes of the applicable Housing Community Standards, if any, as adopted and published from time to time by the University (the “**Community Standards**”). Each Housing Rental Contract shall require the resident to acknowledge and agree to follow the Community Standards.
6. Resident Complaints. UB and the Manager shall maintain and exercise businesslike relationships with the Facility Residents. UB will cause the Manager to receive, log in and respond

timely to all complaints from the Facility Residents. The Manager shall keep systematic records showing the complaints and the actions taken with respect to each complaint. Complaints of a material nature by Facility Residents shall be promptly reported to the Board of Managers, with an appropriate recommendation or an itemization of alternatives for review by the Board of Managers. The Manager will keep the Board of Managers apprised of the status of any investigation. The Manager shall be required to respond to such complaints as directed by the Board of Managers.

# PROJECT SUMMARY

## UNIVERSITY BRIDGE APARTMENTS

### PARTIES

- University Bridge, LLC: owner
- Atlantic Housing Foundation, Inc.: sole member of owner; 501(c)(3) organization
- Global City Development: developer
- Brian Pearl: principal of Global City Development
- Diego Procel: principal of Global City Development
- Capital Trust Agency: bond issuer
- City of Sweetwater
- Florida International University

### PROJECT

Residential facility consisting of a 20-story, 886-unit, 1,244-bed residential tower to house students, faculty, and staff of FIU (the “Facility”), which Facility will be located at 740 SW 109th Avenue, Sweetwater, Florida 33174

### FINANCING

The Capital Trust Agency will issue and lend to the owner the net proceeds of approximately \$300,000,000 of Student Housing Revenue Bonds (University Bridge, LLC Student Housing Project) Series A & B, payable over 40 years, and is authorized to finance the design, acquisition, construction, furnishing and equipping, and operation for charitable purposes, of the Facility

- Per bond counsel, “the \$300 million was a number used for the governmental approval and public hearing process - an outside maximum to assure that no step would have to be repeated because the actual number might be higher than the original number. If the bonds are sold with original issue premium, the total issue size might be around \$210 million. If sold at par, then \$225 million is a comfortable number. There are no other projects. Proceeds get used not only for construction, but for capitalized interest, funding a debt service reserve, paying costs of issuance, etc.”

### STRUCTURE & FIU’S ROLE

- Owner and FIU to execute a Student Housing Agreement
  - Owner will construct the Facility at its sole cost and expense with a target substantial completion date of August 1, 2020
  - Owner will operate the Facility, at its sole cost and expense, exclusively as a residential living-learning community for lease to full-time undergraduate sophomores, juniors and seniors and graduate students enrolled in FIU’s schools and programs (“University Students”) and members of the faculty or staff of FIU; units will not be leased at any time to undergraduate first-year freshmen students, except as may be approved by FIU
  - Owner will have access to advertise to University Students on FIU’s off-campus housing website after payment of all applicable fees; FIU Housing may display materials for the Facility once all

on-campus housing is full; FIU will permit Owner to advertise the Facility to University Students on FIU property, provided that Owner shall not advertise or market the Facility to undergraduate first-year freshmen students

- Owner will implement housing educational programs and policies designed to serve the needs of the University Students
- All “net cash flow” from operations of the Facility will be used solely for the purpose of furthering the “charitable activities” (i.e. planning, developing, financing, equipping, operating and maintaining a student housing facility), including funding a range of FIU scholarship programs
- Neither FIU, nor any DSO or affiliated entities of FIU (an “FIU Party”), shall be responsible for the payment of any amounts related to the development, construction, operation, maintenance or financing associated with the property, including any agreement to lease or assign students to the property
- Owner designed its financing so that it will have no impact on the balance sheet or credit capacity of FIU
- For each year during which the Facility is in operation, Owner will provide housing scholarships to support a minimum of 20 beds subject to the available “net cash flow”
- Upon the repayment of the financing, Owner shall convey the property to an FIU Party (subject to FIU’s approval) or to another similarly situated charitable organization or entity exempt from the payment of federal income tax under Section 501(a) of the Code, as an entity organized under Section 501(c)(3) of the Code, organized and operated exclusively for charitable, educational, or scientific purposes, selected or designated by FIU
- FIU may require Owner to remove or demolish the Facility and restore the land to its original condition, at Owner’s sole expense
- Owner will be managed by a Board of Managers
  - Board will include at least 1 Manager selected from a list of candidates submitted by FIU in collaboration with Global City Development, provided that (i) no current member of FIU’s Board of Trustees shall be a Manager, and (ii) no person employed by FIU at any such time shall be a Manager, unless approved in advance by FIU in its sole and absolute discretion
- Owner anticipates entering into a payment in lieu of taxes agreement (the “PILOT Agreement”) with the City of Sweetwater pursuant to which Owner will make annual payments of an amount specified therein to the City of Sweetwater to offset additional costs to be incurred by the City in providing police, emergency and other essential services for the benefit of the Facility
  - The in lieu payments will be secured by a mortgage lien on the property in favor of the City
  - If title to the property is transferred to a University Party or a University Party otherwise acquires title to the property, it shall have the option to terminate the PILOT Agreement immediately and the City shall release the mortgage
  - In no event shall a University Party be responsible for any payments due under the PILOT Agreement or for any obligations of the owner thereunder unless expressly assumed by the University Party in writing in its sole and absolute discretion



## **PILOT AGREEMENT**

**THIS PAYMENT IN LIEU OF TAXES AGREEMENT** (“PILOT Agreement”) is made effective as of the \_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”), by and between the CITY OF SWEETWATER, FLORIDA, a Florida municipal corporation (“City”), and UNIVERSITY BRIDGE, LLC, a Florida limited liability company, and its successors and assigns (“Owner”).

### **BACKGROUND/RECITALS**

WHEREAS, Owner desires to design, acquire, construct, furnish, equip and operate for charitable purposes, a student housing facility and certain ancillary facilities for certain students and members of the faculty or staff of The Florida International University (the “University”), in an approximately 886-unit rental housing facility, containing approximately 1,244 beds, parking, commercial space and ancillary facilities, to be known as University Bridge, including all buildings, structures and improvements now or hereafter constructed thereon, and all fixtures, machinery, equipment, furniture, furnishings and other personal property hereafter attached to, located in, or used in connection with any such structures, buildings or improvements, and all additions, substitutions and replacements thereto, whether now owned or hereafter acquired (the “Student Housing Facility”), which site is located at 740 SW 109<sup>th</sup> Avenue, Sweetwater, Florida 33174 (the “Real Estate”), and described on **Exhibit “A”** attached hereto and incorporated in this PILOT Agreement (the “Real Estate”, together with the “Student Housing Facility”, the “Property”); and

WHEREAS, Owner’s sole member is Atlantic Housing Foundation, Inc., a South Carolina nonprofit corporation (“Sole Member”) as described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”), as amended, and exempt from federal income taxation under Section 501(a) of the Code, whose address is 5910 North Central Expressway, Suite 1310, Dallas Texas 75206; and

WHEREAS, Owner is an exempt entity for federal tax purposes because its Sole Member is an Exempt Organization and shall petition the Miami-Dade County Property Appraiser, or other proper authority, for an exemption of the requirement to pay ad valorem property taxes on the Property; and

WHEREAS, The Capital Trust Agency (the “Issuer”) will issue its not to exceed \$300,000,000 aggregate principal amount of Student Housing Revenue Bonds (University Bridge, LLC Student Housing Project), Series 2018A, and Student Housing Revenue Bonds (University Bridge, LLC Student Housing Project), Taxable Series 2018B (collectively, and together with any refunding bonds or additional bonds issued on a parity therewith, the “Bonds”) and is authorized to finance the design, acquisition, construction, furnishing and equipping, and operation for charitable purposes, of the Student Housing Facility by issuing revenue bonds and lending the proceeds thereof to Owner; and

WHEREAS, Owner has requested Issuer to provide funds to finance the cost of the Student Housing Facility through the issuance of the Bonds and has requested the City to approve the issuance of the Bonds after a public hearing held by the Mayor pursuant to the requirements of Section 147(f) of the Code; and

WHEREAS, Owner, in its request for such financing, has agreed to make payments in lieu of taxes (“PILOT”) to the City to assist in offsetting the loss of ad valorem property tax revenues; and

WHEREAS, on \_\_\_\_\_, 2018, the City Commission authorized the City to enter into this PILOT Agreement and to include conditions that Owner (i) satisfactorily complete the construction of the Student Housing Facility, and (ii) provide the services to its tenants and to the University described in the Student Housing Agreement to be entered into prior to the issuance of the Bonds by and between the University and Owner (the “Student Housing Agreement”); and

WHEREAS, City and Owner have agreed that Owner will make payments to the City in lieu of the ad valorem real estate taxes pursuant to the terms of this PILOT Agreement; and

WHEREAS, the parties wish to set forth the terms and conditions for the PILOT Agreement; and

WHEREAS, the parties hereby agree pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing premises, mutual covenants and the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

## **AGREEMENT**

### **Section 1.     Payments in Lieu of Taxes.**

**Section 1.1**     Owner represents and warrants that its Sole Member is an organization described in Section 501(c)(3) of the Code and that it will use the Property for charitable purposes under the laws of the State of Florida. Owner shall petition the Miami-Dade County Property Appraiser, or other proper authority, for an exemption from the requirement to pay ad valorem property taxes on the Property, pursuant to such exemptions allowed by law.

**Section 1.2**     Commencing January 1 of the year after which a temporary certificate of occupancy or a permanent certificate of occupancy is issued to the Owner for the Student Housing Facility and Owner is granted the exemption described in Section 1.1 above, Owner shall pay to the City of Sweetwater an annual amount equal to 150% of the amount of municipal ad valorem real estate taxes that would have been payable by Owner on the Property if Owner were not an Exempt Organization, in lieu of ad valorem real estate taxes for the tax year in question for the first two years; provided, however, that said amount shall increase to 200% for years three through five and shall further increase to 300% for year six and thereafter; provided further, however, that the amount payable hereunder shall be reduced by the amount of any general municipal real estate taxes for the tax year in question that are otherwise payable by Owner as a result of Owner’s ownership of the Property (the aforesaid annual amount, as reduced by any such general municipal real estate taxes, is referred to hereinafter as the “Annual Amount”).

**Section 1.3**     The Annual Amount payable by Owner with respect to the Property shall be determined with respect to the levy date of October 1, 2021 and each October 1 thereafter during the term of this PILOT Agreement and shall be payable on or before December 1 of each such calendar year, commencing with the first annual installment due and payable on or before

December 1, 2021 (the “In Lieu of Payments”). The obligation of the Owner to pay the Annual Amount shall be subordinate to the obligations of the Owner with respect to the Bonds or any mortgage securing the Bonds.

**Section 1.4** If the In Lieu of Payment is not received by the City within thirty (30) days of the due date referenced in Section 1.3 herein, Owner shall pay to the City a late charge of one percent (1%) of the Annual Amount for each month the In Lieu of Payment is delinquent.

**Section 1.5** This PILOT Agreement shall remain in full force and effect, regardless of the Bond’s payment status, unless terminated pursuant to the provisions of Sections 3 or 4.4 herein.

**Section 1.6** Owner shall be liable for prompt payment of all In Lieu of Payments when due.

**Section 1.7** The parties agree that the payments pursuant to this PILOT Agreement shall be made in lieu of municipal ad valorem taxes and constitute partial consideration for the provision of municipal services and the approval by the City of the issuance the Bonds pursuant to the provisions of Section 147(f) of the Code.

**Section 2. Security for In Lieu of Payments - Grant of Mortgage Lien.**

**Section 2.1** The In Lieu of Payments and all subsequent penalties, interest and costs resulting from any delinquency shall be secured solely by (i) amounts deposited in the Surplus Fund created by, defined in and administered pursuant to the Trust Indenture for the Bonds for the purpose of paying the In Lieu of Payments, or such other available sources of Owner, which shall be subordinate to any payments required for the Bonds pursuant to the Trust Indenture for the Bonds and/or any mortgage securing the Bonds and (ii) a recordable mortgage lien on the Property in favor of the City, which mortgage lien shall be subordinate in all respects to the mortgage securing the Bonds (and any and all subsequent mortgages and other security documents securing the Bonds or any replacement financing thereof) and shall be evidenced by a mortgage to be recorded in the appropriate records of Miami-Dade County, Florida (the “PILOT Mortgage”). This PILOT Agreement and the obligations of Owner herein constitute a covenant running with the land, and shall be recorded in the appropriate records of Miami-Dade County, Florida as well. Upon the transfer of title of the Property to the University, a direct support organization thereof or affiliated entity (a “University Party”) in accordance with the terms of the Student Housing Agreement or if a University Party otherwise acquires title to the Property, and exercises its election to terminate this PILOT Agreement pursuant to Section 4.4 hereof, the PILOT Mortgage shall be discharged of record by the City at the Owner’s sole cost and expense.

**Section 2.2** The payment of the In Lieu of Payments is not subject to the Bonds (including any refunding bonds) being outstanding. Further, such payments shall be cumulative and shall continue until all payments due hereunder are paid.

**Section 3. Abatement; Termination.**

**Section 3.1** Upon conveyance of fee title to the Property to an entity that does not qualify under Section 501(c)(3) of the Code, the In Lieu of Payments referenced in Section 1 herein shall abate; however, the Special Conditions contained in Section 5 herein shall remain in full force and effect. The obligation to make the In Lieu of Payments shall remain in abeyance until

such time as the Property is again owned by an entity that does qualify under Section 501(c)(3) of the Code assuming all other conditions for ad valorem real estate tax exemption under applicable Florida law have also been met. Owner shall remain obligated for payment of the applicable pro rata amount of the In Lieu of Payments with respect to the Property up to the date when a purchaser either assumes the obligations hereunder or the payments referenced in Section 1 herein are terminated and the successor owner of the Property is obligated to pay real estate taxes.

**Section 3.2** The parties hereto mutually agree that this PILOT Agreement shall be permanent and irrevocable unless modified or terminated as provided in section 4.4. Notwithstanding the foregoing, upon termination by court order or otherwise by operation of law, the payments referenced in Section 1 herein shall terminate; however, the Special Conditions in Section 5 herein shall remain in full force and effect so long as the Property constitutes a Student Housing Facility. Owner shall pay the applicable pro rata amount of the In Lieu of Payments to City up to the date of termination with respect to the Property.

**Section 3.3** In the event that the Miami-Dade County Property Appraiser, or other proper governmental authority, determines the Property is ineligible for an ad valorem real estate tax exemption under applicable Florida law, the In Lieu of Payment, as stated in Section 1 herein, shall abate and Owner will be obligated to pay ad valorem taxes on the Property to the Miami-Dade County Tax Collector. The In Lieu of Payment shall remain in abeyance until such time as the Property is granted an exemption from ad valorem real estate taxes by the Miami-Dade County Property Appraiser, or other proper governmental authority, under applicable Florida law. Notwithstanding the Property's tax-exempt status, the Special Conditions contained in Section 5 herein shall remain in full force and effect so long as the Property constitutes a Student Housing Facility.

#### **Section 4. General Provisions.**

**Section 4.1 Captions; Incorporation and Exhibit.** The captions and headings of various Articles, Sections and Exhibit referenced herein are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof. Notwithstanding the foregoing, each of the Recitals and the Exhibit referenced herein are incorporated and expressly made a part hereof.

**Section 4.2 Entire PILOT Agreement.** This PILOT Agreement constitutes the entire agreement of the parties, and all prior discussions, negotiations and document drafts are merged herein.

**Section 4.3 Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered (effective upon delivery), if sent by reputable overnight courier, charges prepaid (effective the business day following delivery to such courier), or if mailed by United States registered or certified mail, postage prepaid, return receipt requested (effective three business days after mailing), and shall also be delivered by electronic correspondence:

If to Owner: University Bridge, LLC  
c/o Atlantic Housing Foundation, Inc.  
5910 North Central Expressway, Suite 1310,  
Dallas Texas 75206  
Attn: Michael N. Nguyen

If to City: City of Sweetwater  
500 SW 109<sup>th</sup> Avenue  
Sweetwater FL 33174  
Attn: Office of the Mayor

With a copy to: City Clerk  
City Attorney

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other manner shall be deemed effective only upon receipt.

**Section 4.4 Modification; Amendment; Waiver; Termination.** No modification, amendment, waiver or termination of this PILOT Agreement shall be valid unless the same has been authorized by an affirmative vote of sixty percent of voters participating in a duly noticed referendum forty (40) years after the commencement of In Lieu of Payments. However and notwithstanding any other provision to the contrary, if title to the Property is transferred to a University Party in accordance with the terms of the Student Housing Agreement or a University Party otherwise acquires title to the Property, it shall have the option to terminate this PILOT Agreement immediately and the parties hereto shall promptly sign a document evidencing said termination (to be recorded in the public records) as reasonably requested by the University Party.

**Section 4.5 Governing Law.** This PILOT Agreement shall be governed by and construed under the laws of the State of Florida and Miami-Dade County, Florida shall be the venue.

**Section 4.6 Time is of the Essence.** Time is hereby declared to be of the essence of this PILOT Agreement and of every part hereof.

**Section 4.7 Execution in Counterparts.** This PILOT Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**Section 4.8 Severability.** If any provision of this PILOT Agreement is determined by a court having jurisdiction to be illegal, invalid or unenforceable under any present or future law, the remainder of this PILOT Agreement will not be affected thereby. It is the intention of the parties that if any provision is so held to be illegal, invalid or unenforceable, there will be added in lieu thereof a provision as similar in terms to such provision as is possible that is legal, valid and enforceable.

**Section 4.9 No Joint Venture.** Nothing contained in this PILOT Agreement will be construed to constitute Owner as a joint venturer with City or to constitute a partnership between Owner and City.

**Section 4.10 Authorization.** The persons executing and delivering this PILOT Agreement on behalf of the parties hereto represent and warrant to the other party that such person is duly authorized to act for and on behalf of said party, and execute and deliver this PILOT Agreement in such capacity as is indicated below.

**Section 4.11 Assignment/Successor.** This PILOT Agreement shall be binding upon City and Owner, and all successor, grantees or assignees of Owner with respect to the Property (or any portion thereof) which would otherwise be entitled to claim an exemption for ad valorem property taxes imposed on the Property provided, however, that the parties acknowledge and agree that in no event shall a University Party be responsible for any payments due hereunder or for any obligations of Owner hereunder unless expressly assumed by the University Party in writing in its sole and absolute discretion. Owner may assign this PILOT Agreement with City's approval, whose approval will not be unreasonably withheld.

**Section 4.12 Recording.** The Owner will cause, at its expense, this PILOT Agreement and any other instruments of further assurance to be promptly recorded, filed and registered.

**Section 4.13 Third Party Beneficiaries.** The University Parties shall be deemed to be third party beneficiaries of this Agreement solely with respect to the provisions of Sections 2.1, 4.4 and 4.11 in connection with a transfer of the Property to a University Party.

**Section 5. Special Conditions: Student Housing Facility Construction and Student Housing Agreement Services.**

**Section 5.1 Student Housing Facility Construction**

. Notwithstanding Owner's tax-exempt status, Owner hereby agrees to satisfactorily complete construction and equipping of the Student Housing Facility on the Property. Within 30 days of the Effective Date, Owner and the City will develop a schedule for completion of the Construction. The Construction shall be completed within two (2) years of the Effective Date ("Completion Date"). Owner shall submit an annual report to the City on each anniversary of the Effective Date ((or within thirty (30) days of termination of this PILOT Agreement) that documents the progress of completing the Construction. Owner shall notify the City in writing when all Construction has been completed. If Owner fails to complete the Construction on or before the Completion Date, the Annual Amount in Section 1.2 herein shall automatically be increased by ten percent (10%).

**Section 5.2 Student Housing Agreement Services**

. Notwithstanding Owner's tax-exempt status, Owner hereby agrees to provide student, faculty and staff housing services and services to the University, as particularly described in the Student Housing Agreement. If Owner fails to provide said services, the Annual Amount in Section 1.2 herein shall automatically be increased by fifty percent (50%). Owner shall submit an annual report to the City that documents the specific student, faculty and staff housing services and University services that have been implemented. The student, faculty and staff housing

services and University services annual report shall be due with the PILOT payment or within thirty (30) days of termination of this PILOT Agreement.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the undersigned parties have caused the execution of this PILOT Agreement by their duly authorized officers as of the day, month and year first above written.

**CITY:**

CITY OF SWEETWATER, FLORIDA

Attest:

\_\_\_\_\_  
Carmen Garcia  
City Clerk

By: \_\_\_\_\_  
Orlando Lopez  
Mayor

Approved as to form:

\_\_\_\_\_  
Lynn M. Dannheisser  
Interim City Attorney

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

**THE FOREGOING INSTRUMENT** was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2018 by Orlando Lopez and Carmen Garcia as the Mayor and City Clerk, respectively, of the City of Sweetwater, who are personally known to me and who did not take an oath.

\_\_\_\_\_  
NOTARY PUBLIC State of Florida

\_\_\_\_\_  
Print Notary Name  
My Commission Expires:

\_\_\_\_\_  
Notary Public



**OWNER:**

**UNIVERSITY BRIDGE, LLC**, a Florida limited liability company

Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: Atlantic Housing Foundation, Inc., a South Carolina nonprofit corporation and its Sole Member

By:

\_\_\_\_\_  
Michael N. Nguyen  
President and CEO

STATE OF TEXAS  
COUNTY OF DALLAS

Before me, a Notary Public within and for said State and County, duly commissioned and qualified, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved on the basis of satisfactory evidence), and who upon oath acknowledged himself to be the President of Atlantic Housing Foundation, Inc., in its capacity as the sole member of University Bridge, LLC, a Florida limited liability company, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company President.

WITNESS my hand and Notarial Seal at office this \_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

DESCRIPTION OF PROPERTY