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May 1,1985 Meeting Minutes

Shawnee State University

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M I N U T E S
SHAWNEE STATE COMMUNITY COLLEGE
Board of Trustees Meeting
May 1, 1985

The meeting was called to order by Chairman Morgan.

ROLL CALL

Members Present: Dr. Carson, Mr. Ferguson, Mr. Hyland, Mr. Jenkins, Mr. Rittenour, Dr. White, Mr. Morgan.

Members Absent: Mrs. Andrews, Mr. Brown

Mr. Morgan stated that the meeting had been called for the purpose of reviewing the final draft of the Housing Contract. Copies of this contract had been distributed to Board members prior to the meeting.

Mr. McCurdy, College attorney, was present to review this contract with the Board. Mr. McCurdy stated that this meeting was a continuation of the regular meeting of April 15, 1985. Mr. McCurdy and Mr. Hawk met on April 22, 1985 with Clay Johnson, University Housing Attorney, to share the concerns of the Board as expressed at the meeting of April 15, 1985. The document before you tonight is the final draft and thus incorporates all changes being proposed with said changes underlined for easy reference.

Mr. McCurdy proceeded to review each area of concern. The items of discussion were:

- (1) The premises to be leased and identified via Exhibit A was not available for review and is to be attached as a part of the contract prior to signing said contract.
- (2) Mr. Rittenour raised a question applicable to use of the buildings to be constructed and specifically if they could be used for business purposes. Mr. McCurdy's response was that the contract was written specifically for student housing and feels that implication of the current language would prohibit commercial use. He pointed out that both paragraph 5 and 21 speak to the fact that the leased premises are to be used only for living quarters. However, if it pleased the Board the word "solely" could be inserted in paragraph 5, line 2. The Board accepted this as amended.
- (3) Mr. Jenkins expressed his concern as to what would keep the developers from making the rent too high for students and renting to persons outside the college. Mr. McCurdy stated that nothing really could be done to prevent this, but that the College will talk to the developers once a year to speak about market adjustments. However, the developers will have the discretion to rent due to lending concerns. The assignment clause will help the college to keep control on the rental of apartments. Mr. Morgan stated that he felt the market was pretty well saturated for rental properties. The consensus was that the rent from 8 students per apartment would be far more than the developers could expect from a couple renting the apartment.

- (4) A discussion regarding the completed plans developed. However, no one knew if the plans have been completed and dated. Therefore, it was the Board's desire that completed and dated plans become a part of said contract prior to signing that contract.
- (5) Paragraph 21, page 16 of the contract regarding assignment and subletting was reviewed in detail. The conclusion was to add the words "bone fide" to line 16 of said paragraph. Mr. McCurdy concluded the discussion by stating that there could be no "air tight" contract, and that good faith between parties must be a part of any contract.
- (6) Mr. Jenkins pointed out that the current language of paragraph 26 may prohibit the College from housing student athletes at 1004 Second Street. Mr. McCurdy suggested the addition of the following statement to speak to Mr. Jenkins' concern. "except the continuation of current student housing facilities at 1004 Second Street." The Board accepted the amendment and requested it be added to paragraph 26 at the end of line 8.
- (7) The final draft called for a completion date of September 12, 1985. It was pointed out that classes for the Fall Quarter 85 begin September 9, 1985 and therefore the contract should be modified to reflect September 9, not September 12.

Dr. White and Mr. Morgan concluded the discussion of the final draft by asking Mr. McCurdy if he was satisfied with the contract. Mr. McCurdy replied that he felt that they had prepared the best possible contract via the negotiations process. The lessee had to negotiate the lease terms as presented in order to obtain bank financing.

Mr. McCurdy asked if there were other questions or concerns. Mr. Howard, Vice President of Student Services had a concern with the withholding of grades for default in leasehold obligations with the lessee. Would this be setting a precedent, since the developers are a corporation apart from the college. Mr. McCurdy indicated that the college would be involved since they will still hold the land and the housing is being provided for the benefit of Shawnee State College. The consensus among the Board was that each problem would have to be dealt with on an individual basis.

Mr. McCurdy summarized the changes discussed to be as follows:

1. Page 3, paragraph 5, the word "solely" be inserted as indicated.
2. Page 10, paragraph 10, change date to September 9, 1985 - completion date.
3. Page 16, paragraph 21, the words "bone fide" be inserted as indicated.
4. Page 20, paragraph 26, language inserted to indicate that property at 1004 Second Street, already used for student housing, can still be used for this purpose.
5. A copy of the survey must be attached to the contract.
6. A copy of the Plans dated by the architect must be attached to contract.

Mr. Jenkins moved that the contract with University Housing; as amended, be approved. Dr. White seconded the motion.

Ayes: Dr. Carson, Mr. Ferguson, Mr. Hyland, Mr. Jenkins, Mr. Rittenour, Dr. White,
Mr. Morgan

Nays: None

In closing, Dr. White commented on his pleasure with the use of the new natatorium facility. He also commented that with the possibility of a four year institution in the near future, that the Board and Administration should look into the sponsoring of chairs for support of endowed chairs, so that the college can enlist help of talented educators.

Mr. Morgan stated that he and Mr. Taylor had just returned from a meeting and would have input into this matter very soon.

Mr. Ferguson moved and Mr. Rittenour seconded a motion to adjourn.

Ayes: Dr. Carson, Mr. Ferguson, Mr. Hyland, Mr. Jenkins, Mr. Rittenour, Dr. White,
Mr. Morgan

Nays: None

GROUND LEASE AGREEMENT

This Agreement of Lease made and concluded at Portsmouth, Ohio, this day of April, 1985, by and between Shawnee State Community College (hereinafter called Lessor) and University Housing Company, an Ohio Corporation, (hereinafter referred to as Lessee).

W I T N E S S E T H:

1. Premises. That Lessor, for and in consideration of the covenants hereinafter contained and made on the part of Lessee, does hereby demise and lease to Lessee the real property situated in the State of Ohio, County of Scioto and City of Portsmouth, being more particularly described on an attachment hereto marked Exhibit "A" and made by reference a part hereof, consisting of ^{1.125}~~1.32~~ acres, (hereinafter referred to as the "premises"), together with all of Lessor's rights, easements and appurtenances in adjoining and adjacent land, highways, roads, streets and lanes whether public or private, reasonably required for installation, maintenance, operation and service of sewer, water, gas, power and other utility lines or driveways to the premises.

2. Term. To have and to hold the same for a term of 45 years commencing April 15, 1985, and concluding April 14, 2030.

3. Rent. Lessee shall pay to Lessor annual rent for the premises in the sum of \$1.00 per annum, payable in advance upon the first day of each year during the term hereof.

4. Options to Renew. Lessee shall have the option to renew this Lease for five (5) successive terms of five (5) years each upon the same terms and conditions as herein provided for during the original term of this Lease, provided however that, in the event Lessee elects to exercise any option to renew hereunder, the rental for each renewal period shall be increased to an amount equal to the then "fair market value" of comparable parcels of ground in Portsmouth, Ohio. In the event Lessor and Lessee are unable to agree on such "fair market value" of ground rental for any renewal option period, such fair market value shall be determined by appraisal according to the following procedure: Lessor shall select one appraiser; Lessee shall select one appraiser; the two appraisers so selected shall select a third appraiser; the committee of three appraisers so selected shall determine the fair market value of rental for the applicable renewal period, based upon market conditions then pertaining in Portsmouth, Ohio, and ground rental for comparable locations, which determination shall be binding and conclusive upon all parties hereunder for the applicable renewal period. Exercise of any renewal option hereunder, to be effective,

must be exercised by Lessee by written notice of such exercise mailed to Lessor no less than three (3) months prior to the commencement date of such renewal term. Any such notice shall be mailed pursuant to the notice provisions of Paragraph 27 hereof.

5. Use of Premises. Lessor and Lessee understand that Lessee shall use the premises ^{Solely} for construction and operation of living units containing sleeping and study accommodations for up to 120 students, it being the intention of the parties that Lessor's students shall have the first priority to occupy such premises and that Lessee shall afford priority of occupancy to Lessor's students who are non-residents of Scioto County, Ohio. Lessee agrees to construct and operate such facility in accord with the provisions herein set forth. Lessor agrees that establishment and maintenance of all policies and procedures pertaining to management and operation of the student housing facilities to be constructed by Lessee upon the premises shall be within the sole and complete discretion of Lessee, including, but without limitation of the generality of the foregoing, all matters regarding rental to be charged to students, all matters regarding housing assignments of student tenants, and all specific terms and conditions of lease terms between Lessee and student residents. Notwithstanding the generality of the foregoing, not less frequently than annually and before June of each year, Lessee agrees to confer with Lessor regarding the above

policies and procedures, giving particular consideration to the determination of rentals. In order to induce Lessee to enter into this agreement and to construct such student housing facilities, and in order further to preserve and protect Lessor's reversionary interest in the premises and the improvements to be constructed thereon, Lessor agrees that it shall assist Lessee in solicitation of student tenants to occupy the facility to be constructed by Lessee, that Lessor shall assist in distribution of appropriate promotional material to students and prospective students, shall include descriptive information regarding the improvements constructed and operated by Lessee in general promotional material describing Lessor's educational institution. The parties understand and agree that Lessor's "assistance" as defined above shall be limited to the furnishing of lists of student enrollment and making promotional housing materials available to enrolled and prospective students through bulletin board displays, pass outs at registration, reference and college publications, mailings in response to inquiries, and like dissemination; however, the cost of preparation, printing, and mailing of such promotional materials, unless otherwise agreed by Lessor, shall be at the sole cost and expense of Lessee.

> Lessor shall assist Lessee in enforcing its leasehold arrangement with student residents by implementing appropriate disciplinary proceedings against students who default under their leasehold obligations with Lessee,

including but not limited to withholding of course credits and transcripts from such defaulting students, and other like disciplinary actions, to the full extent that such disciplinary actions and proceedings are not precluded by then applicable law.

6. Title. Lessor covenants that Lessor is seized of good and marketable fee simple title to the premises, and Lessor does warrant and will defend the title thereto and will indemnify Lessee against any damage or expense which Lessee may suffer by reason of any lien, encumbrance, restriction or defect in the title or the description herein of the premises. If at any time Lessor's right or title hereunder is disputed or there is a change of ownership of Lessor's estate, by act of the parties or by operation of law, Lessee may withhold rent thereafter accruing until Lessee has been furnished proof satisfactory to it as to the party entitled to receive same. Upon execution hereof, at Lessee's request, Lessor shall provide to Lessee at Lessor's expense an opinion of Lessor's counsel to the effect that Lessor is vested with fee simple title to the premises free and clear of all liens and encumbrances and of any defects which would affect the peaceful enjoyment of the premises by Lessee for and during the full term of the lease and any extension thereof, and that Lessor has good right and legal authority to enter into and perform this Lease Agreement without competitive bids or advertising; that the making and performance of this Lease does not violate any applicable

law, Lessor's charter, and that the same has been duly and properly authorized by Lessor's Board of Trustees.

7. Survey. Lessee shall obtain at Lessor's sole cost and expense a survey satisfactory to Lessee bearing a legal description made by a reputable and competent licensed surveyor showing the area, dimensions and locations of the premises to the nearest monuments, streets and alleys on all sides. Said survey shall not disclose any condition which would in Lessee's sole judgment render the premises unusable by Lessee for the purposes contemplated hereby.

8. Subordination. Lessee, its successors or assigns, shall have the right, at any time during the term of this Lease and any renewal thereof, to subject the fee interest of Lessor and any interest of Lessee hereunder, or any part thereof, together with any interest any mortgagee of Lessor shall have at any time, including all rights and easements appurtenant thereto, and all buildings and other improvements thereon, to "permitted mortgages" as hereinafter defined. If Lessee desires and obtains a commitment for such a permitted mortgage, Lessee shall give Lessor written notice thereof as to the closing date thereof at least fifteen (15) days prior thereto, which written notice shall be given pursuant to the provisions of Paragraph 27 hereof, and Lessor agrees that Lessor shall, at or prior to the closing of such permitted mortgage, execute, acknowledge, and deliver the mortgage and such

other instruments and documents as shall be required and desired by, and in form satisfactory to, the applicable lending institution, in order to effect such subordination. Lessee, at the time of any such mortgage or note secured thereby, shall as a condition precedent to the mortgage transaction, covenant and agree to make all payments of principal and interest required under such permitted mortgage and to pay the costs and expenses incurred in connection therewith, all of which shall be paid directly by Lessee to the lending institution under such permitted mortgage as and when the same shall become due and payable. Lessor covenants and agrees that Lessee alone shall be entitled to all of the proceeds of such permitted mortgage at any time and from time to time affected pursuant to the provisions of this Lease, and Lessor shall not be entitled to, and shall not receive, and shall have no interest in such proceeds or any part thereof, and Lessor hereby directs the aforesaid lending institution granting such permitted mortgage to pay the aforesaid proceeds directly to Lessee. Lessor hereby covenants to execute any further documents which may be required by any applicable lending institution for the purpose of confirming and enforcing the subordination agreement contained in this Paragraph. The parties mutually understand and agree that Lessee shall be entitled to enforce the covenants and conditions of this Paragraph by injunctive relief and specific performance, and Lessor specifically agrees that damages shall be an

inadequate remedy for any breach of this covenant and that any breach shall render Lessee without adequate remedy at law thereby entitling Lessee to injunctive relief. The term "permitted mortgage" as used herein, shall include not only permanent financing but also interim building and/or construction loan financing and all advances thereunder or any refinancings thereof. Any permitted mortgage may also contain, at Lessee's option, an "open-end" provision for further advances thereunder. All of the provisions of this Paragraph shall apply to such subsequent advances as fully and with the same force and effect as in respect to the original advance and loan.

9. Zoning and Building Laws. Lessor hereby represents and warrants that the use by Lessee of the premises for construction and operation of a facility for student housing is and will be a permitted use under the present zoning classification and local and state laws and ordinances applicable to the demised premises, and that no special use permits, variances, or architectural approvals are required. Lessor further hereby represents and warrants that public water, sanitary sewer and storm sewer service, electric current, natural gas and telephone facilities adequate for Lessee's purposes are either located at the boundary line of the premises and are available for connection to Lessee's improvements to be constructed upon the premises or that Lessee will have the unrestricted right to obtain all such services without incurring such expense as shall, in the

sole judgment of Lessee, render construction and operation of the improvements contemplated hereby infeasible. Lessor hereby grants to Lessee all easements necessary in order to extend such utilities, including water, sewer, natural gas, telephone, and other utilities, to and across the property line of the demised premises, to the full extent reasonably deemed necessary by Lessee in order to permit it to construct and operate the improvements contemplated hereby. Lessor acknowledges that Lessee is relying upon the representations, warranties and grants of easement contained herein, in executing this Lease, and that the matters so represented and warranted are material ones, and Lessor further agrees to execute such additional easements over and across adjoining lands of Lessor as reasonably may be requested at any time by Lessee in order to permit the provisions of this Paragraph fully to be implemented.

10. Construction of Improvements. Lessee agrees to construct, at its sole cost and expense, improvements upon the premises (sometime hereinafter referred to as the "Improvements") to include but not be limited to buildings suitable for housing up to 120 students, walkways and landscaping, all in accord with plans and specifications prepared by Hayes, Wittenmyer, Tanner & Partners, and dated the day of , 1985, which said plans and specifications are hereby incorporated by reference herein and made a part hereof (hereinafter from time to time called the "Plans"). Lessor acknowledges that it has fully

examined the plans and specifications, and further acknowledges that Lessor has approved the plans in all respects, and does hereby authorize Lessee to construct the improvements substantially in accord with the plans and specifications, excepting however such reasonable change orders as Lessee may determine to be in its best interest during the construction process. Lessee agrees to procure all necessary licenses and permits for the erection of the improvements at its cost and expense. Lessee expressly agrees to commence construction of the improvements as soon as possible after the execution of this Lease, provided that all necessary governmental permits and approvals for the construction of the improvements have been obtained. Lessee further agrees to proceed diligently with the construction of the improvements, acknowledging always that time is of the essence hereunder, and further agrees to complete the same on or before September ⁹~~12~~, 1985, provided however that if completion of construction shall be delayed by strikes, lock-outs, casualties, acts of God, flood, inclement weather, nonavailability of materials, or other similar matters beyond Lessee's control, the time for such completion shall be extended to accommodate reasonable delays so caused.

11. Mechanics Liens. Lessee agrees to pay when due all sums of money that may become due for any labor, services, materials, supplies or Lessee's equipment as

required by the plans, and which may be secured by any mechanics, materialmen or other lien against the demised premises. Lessee will cause any such lien to be fully discharged and released, provided however, that if Lessee desires to contest any such lien, it may do so, but notwithstanding any such contest, if such lien shall be reduced to final judgment and such judgment or such process may be issued for the enforcement thereof and is not promptly stayed or if so stayed and such stay thereafter expires, Lessee shall forth with pay and discharge such judgment, or in the alternative, shall at Lessee's cost and expense, purchase such bonds as shall be necessary under the provisions of Chapter 1311 of the Ohio Revised Code in order to substitute the surety of such bond for the premises, and to cause release of any claim of mechanics or materialmen lien thereby.

12. Parking. Lessor hereby grants to Lessee the right to permit all student residents of the improvements to be constructed on the premises to park, free of charge, on the asphalt parking lot of Lessor situated immediately west of Waller Street in Portsmouth, Ohio. Lessor agrees that, if at any time during the term hereof, Lessor can no longer provide adequate parking to Lessee and Lessee's tenants at the above described location, then Lessor shall execute such documents as Lessee reasonably may request leasing unto Lessee the ground designated as "alternative parking" on the plans making the same available to Lessee and Lessee's

tenants for parking purposes, for a rental at \$1.00 per annum for the full duration of the term of this Lease, and any extension thereof, provided however that all cost and expense of paving and preparation of such "additional parking" space shall be for Lessee's account.

13. Title To And Removal Of Improvements. Lessee may make or permit to be made any alterations, additions and improvements on the demised premises from time to time provided, however, that all improvements to the building, landscaping, and paving to be constructed upon the premises shall at all times be deemed and construed to be real property. ✓ Except as specifically stated herein, it is understood and agreed that, at conclusion of the operation of this Lease Agreement, inclusive of any extensions, all improvements constructed upon the premises including buildings, landscaping and paving shall be the sole property of Lessor.

14. Repairs. Lessee shall, at all times during the term of this Lease, at its own cost and expense, keep and maintain, or cause to be kept and maintained in good condition and repair, ordinary wear and tear excepted, all improvements ✓ at any time constructed on the premises, and shall use all reasonable precautions to prevent waste, damage or injury thereto.

15. Taxes. In addition to the rent provided for herein, Lessee shall pay and discharge punctually all taxes, special and general assessments, attributable to the

premises, including real estate taxes, water rents, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever which shall or may during the term of this Lease be levied or assessed upon, for, or with respect to the premises or any part thereof.

Notwithstanding the foregoing, Lessee, its successors and assigns, shall have the right to contest or review all such taxes by legal proceedings, or in such other manners as Lessee shall deem suitable and Lessor agrees to cooperate with Lessee in the event of any such contest or proceeding, provided however that, Lessee shall at all times pay such taxes if nonpayment would render the premises or any part thereof immediately subject to forfeiture. Nothing herein may be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, income, rental or profit taxes, that are or may be imposed upon Lessor, its successors or assigns.

16. Utilities. Lessee agrees that it will pay all costs of water, sewer, gas and electric current, and other utilities used or consumed upon or in connection with the premises during the term hereof and any renewals thereof, as and when the charges for the same shall become due and payable.

17. Insurance. Lessee agrees that it will, at its cost and expense, obtain and keep in force and effect, in the names of Lessor and Lessee, as their respective interests may appear, general liability insurance against

any and all claims for personal injury or property damage occurring in or upon the premises during the term of this Lease or any renewals. Such insurance shall be maintained with limits of liability at a combined single limit of \$1,000,000.00 for each occurrence and an aggregate limit of \$1,000,000.00. Lessee further agrees that it will, at its cost and expense, obtain and keep in force and effect in the names of Lessor and Lessee as their interests may appear, a fire and extended coverage policy or policies protecting the improvements on the premises from loss or damage within coverage of such insurance policy for a sum not less than 90% of replacement value of such improvements, excluding foundation and site work. Lessee will furnish to Lessor reasonable evidence of its compliance with the provisions of this Paragraph, such as certificates of insurance.

18. Fire and Casualty. In the event the improvements on the premises are damaged or rendered totally or partially untenable by fire or other casualty, Lessee shall have the right and option to declare this Lease terminated or to repair and restore said premises to the condition of said premises prior to such fire or casualty, in which event the term hereof will not terminate. Lessee shall make known its intention with respect to exercise of said option by delivering written notice to Lessor within thirty (30) days

after the date of such damage or destruction, by notice given in accord with Paragraph 27 hereof. In the event Lessee elects to repair or restore the premises, such work shall be accomplished within a reasonable time after the date of such fire or casualty, and the term hereof will not terminate, provided that proceeds of the pertinent insurance policy or policies hereinabove mentioned shall be applied to the cost of repairing or restoring said premises, and Lessee shall pay the balance, if any, of the cost of repairing or restoring the same. If the Lessee exercises its termination privilege as above set forth, this Lease shall terminate immediately upon Lessee giving notice of such exercise, and in the event of such exercise by Lessee, Lessor shall be entitled to the proceeds of all such insurance.

19. Condemnation. If the whole or any part of the premises shall be taken for public or quasi public use under any statute or by right or eminent domain, or by private purchase in lieu thereof, Lessee reserves unto itself the right to prosecute its claim for an award based upon injury caused to its leasehold interest by such taking, without impairing any rights of Lessor for the taking of or injury to Lessor's reversion.

20. Waiver of Subrogation. Lessor and Lessee hereby waive in writing, prior to loss, all of their rights of recovery from the other party, their respective successors or assigns, and their respective rights to sue for loss or damage to the premises or any other property of Lessor,

provided such loss or damage is within the coverage of the insurance provided for herein or insurance held by Lessor, or any one holding title through Lessor. The provisions of this Paragraph shall be effective during the primary term or any extended term of this Lease, for so long as such provisions do not prohibit securing insurance coverage from responsible insurance Companies by either party after a good faith effort. All insurance policies carried by Lessee on the premises shall, if reasonably possible, contain an express waiver of subrogation.

21. Assignment and Subletting. Lessee may, without the consent of Lessor, assign or encumber this Lease or its rights hereunder to any Limited Partnership of which Paul Goldberg or University Housing, Co., shall be a general partner, and further may, without consent of Lessor, assign or encumber this Lease by collateral assignment to any *bona fide* lender of Lessee. Except as provided above, Lessee shall not assign or encumber this Lease without the prior written consent of Lessor, which consent however Lessor shall not unreasonably withhold. It is further agreed that Lessee shall not sublet the premises without the prior written consent of Lessor, which consent shall not unreasonably be withheld, provided however that the parties understand and agree that the renting of housing units by Lessee shall not be construed a "subletting" for purposes of this Paragraph, nor derogate from the delegation of discretion with respect

to establishment of policies and practices regarding rental occupancy of the improvements to be constructed on the premises by Lessee.

22. Default. In the event Lessee fails to pay when due any of the rental provided for herein or fails promptly to keep and perform any other covenant of this Lease, Lessor, prior to taking any other action, shall give Lessee notice, in accord with the provisions of Paragraph 27 hereof, specifying the default. Lessee shall have fifteen (15) days after receipt of said notice to correct any rental default and thirty (30) days to correct any other defaults. If Lessee fails to correct such default within the specified time period, Lessor may terminate this Lease and reenter the premises with or without process of law, and retake possession thereof by reasonable force. In the event this Lease Agreement is assigned or sublet by Lessee, and should any default occur requiring notice as hereinabove provided, Lessor agrees that it will furnish Lessee with a copy of such notice at the same time that it is sent to any such assignee or sublessee, and in the event such default is not corrected by such assignee or sublessee during the specified time periods, Lessee shall have an additional period of ten (10) days to correct such default. Should there be any default or breach of this Lease on the part of Lessor, Lessee shall give Lessor notice thereof, and should Lessor fail to correct such breach or default within thirty (30) days after such notice, Lessee may remedy such breach or

default and receive reasonable reimbursement for its cost in remedying such breach or default from Lessor. If any default occurs, other than in the payment of money, which cannot with due diligence be cured within a period of thirty (30) days, and if the defaulting party commences to eliminate the cause of such default within such thirty (30) day period, and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default, and does so cure the default, then the non-defaulting party shall not have the right to declare this Lease terminated by reason of such default.

23. Bankruptcy or Insolvency. If at any time during the term hereof or any extension, proceedings in bankruptcy shall be instituted by or against Lessee which result in an adjudication of bankruptcy, or if Lessee shall file any petition under the Bankruptcy Act of the United State of America as the same is now in force or may hereafter be amended, and Lessee be adjudicated bankrupt, or if a receiver of the business or assets of Lessee be appointed and such appointment not be vacated within sixty (60) days after notice thereof to Lessee, or if Lessee makes an assignment for the benefit of creditors, then Lessor may, at its option, in either or any of such events, immediately take possession of the premises and terminate this Lease. Upon such termination, all installments of rent earned to date of termination shall at once become due and payable,

and in addition Lessor shall have all rights provided by the bankruptcy laws relative to proof of claims.

24. Right of First Refusal. In the event Lessor receives a bona fide offer to purchase the premises or Lessor's interest therein during the term of this Lease or any extension, and Lessor desires to accept said offer, Lessee shall have a right of first refusal to purchase the same at the same price and upon the same terms and conditions as offered by such prospective buyer. Before acceptance of any such offer to purchase, Lessor shall notify Lessee in writing, pursuant to the provisions of Paragraph 27 hereof, setting forth in such notice the name and address of the prospective purchaser of the premises and the full details of such offer. Lessee shall have a period of thirty (30) days after receipt of such notice in which to notify Lessor of its election to purchase under the terms and conditions of said offer, as set forth in said notice. In the event of the exercise of the aforementioned right of first refusal by Lessee, the transaction of purchase of the premises by Lessee shall close in accord with the provisions of said offer.

25. Surrender of Premises. Lessee shall, after the last day of the term or any extension thereof, surrender and yield up to Lessor all of Lessor's improvements upon such premises in good condition and state of repair, reasonable wear and tear excepted.

26. Exclusivity Covenant and Covenant Not to Compete.

Except as provided for herein, Lessor agrees that it shall not, at any time during the term of this Lease or any extension thereof, within the geographical boundaries of Scioto County, Ohio, directly or indirectly, finance, construct, own, lease, or participate as Lessor, Lessee, financial participant, or otherwise, in any project directly or indirectly related to construction, operation, or

maintenance of facilities suitable for housing of students,
EXCEPT the cont. of CURRENT facilities located at 1004 2nd ST. PORTS OH.

In the event, during the term of this Lease or any extension thereof, Lessor shall determine that it is in Lessor's best interest to provide or cause to be provided for the benefit of its students additional student housing facilities,

Lessor shall first give to Lessee written notice of such decision specifying the proposed location of such student housing facilities, and general information regarding the specifications therefore including but not limited to the number of living units planned to be constructed. For a

period of ninety (90) days next following receipt of said notice by Lessee, Lessee, its successors and assigns, shall have the exclusive right and privilege to notify Lessor of

Lessee's intent to develop, construct and own such additional student housing facilities, and so long as notice of Lessee's intent is provided to Lessor within such ninety

(90) day period, Lessor covenants and agrees, that Lessor shall not cause or permit to be constructed such additional student housing facilities by any person, firm or

corporation other than Lessee. In the event Lessee fails to notify Lessor of its intent to develop, construct and own such additional student housing facilities within the above referenced ninety (90) day period, the exclusivity obligation of Lessor hereunder shall automatically terminate. All notices permitted or required hereunder shall be given in accord with the provisions of Paragraph 27.

27. Service of Notice. Every notice, approval, consent, or other communication authorized or required by this Lease shall not be effected unless the same shall be in writing and mailed, postage prepaid, by United States Certified Mail, return receipt requested, and, if addressed to Lessee, shall be addressed to:

(a) Four Commerce Park Square, 23200 Chagrin Blvd., Cleveland, Ohio 44122,
Attention: Paul M. Goldberg;

(b) If intended for Lessor to be addressed to:
940 2nd Street, Portsmouth, Ohio 45662

or to such other address as either party may designate by notice given from time to time in accordance with this Article. Any notice given in accordance with the provisions of this Article shall be deemed to have been given as of the date such notice shall have been placed in the United States Postal Service. Rent payable by Lessee hereunder shall be paid to Lessor at the same place where a notice to Lessor is required herein.

28. Benefit. The terms, conditions, covenants and obligations of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their respective successors and assigns.

29. Recording. This Lease shall not be recorded. However, if either of the parties hereto desires to record a Memorandum of this Lease, Lessor and Lessee agree to execute and deliver to the other a Memorandum of this Lease containing only minimum statutory requirements, which Memorandum of Lease may then be recorded in the Office of the Scioto County, Ohio, Recorder.

30. Amendments. No waivers, alterations, or modifications of this Lease or any agreements in connection herewith shall be valid, unless in writing duly executed by both Lessor and Lessee.

31. Estoppel Certificate. Either party to this Lease shall from time to time during the term of this Lease, immediately upon request of the other party, execute and deliver to the other party a statement certifying that this Lease is in full force and effect, the date through which the rent and other charges hereunder have been paid, and any other factual matters reasonably requested by the other party.

32. Contingencies. It is contemplated that Lessee is to construct improvements on the demised premises suitable for student housing facilities. In the event Lessee determines during a period of sixty (60) days next following

the date of this Lease, that the premises may not be developed by the construction of such improvements by reason of inappropriate zoning, inability to obtain necessary governmental approvals, such as use or building permits, or by reason of unavailability of public utilities service to the premises, or by reason of unsatisfactory drainage or bearing characteristics of the soil, or any other like reason, Lessee may terminate this Lease Agreement by giving written notice of such termination within such sixty (60) day period pursuant to the provisions of Paragraph hereof.

33. Lessor's Right to Purchase. At any time during the term hereof or any extension, Lessor shall have the right and option to purchase all additions and improvements constructed on the premises by Lessee hereunder for a sum equal to then fair market value of the same times 120%. In the event Lessor and Lessee are unable to agree on the fair market value of such additions and improvements for purposes of this Paragraph, fair market value shall be determined according to the following procedure: Lessor shall appoint one appraiser; Lessee shall appoint one appraiser, the two appraisers so selected shall appoint a third appraiser; the committee of three appraisers so selected shall determine fair market value of the improvements to be sold upon physical inspection of the same and by comparison with comparable properties, and fair market value as so

determined shall be binding and conclusive upon all parties in interest hereunder.

34. Sale and Management. Paul M. Goldberg shall continue to serve as President of University Housing Company. In the event a change in management of Lessee shall occur, or in the further event that Lessee shall at any time desire to sell its interest in this Lease and the improvements to an unrelated third party, Lessee shall give Lessor thirty (30) days notice of such proposed change, and Lessee shall have a right of prior approval of the identity of such manager or purchaser, provided however that approval by Lessor shall not unreasonably be withheld.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement the day and year first above written.

Signed in the Presence of:

SHAWNEE STATE COMMUNITY
COLLEGE

By _____
Its Authorized Representative

UNIVERSITY HOUSING COMPANY

By _____
Its Authorized Representative

STATE OF OHIO, SCIOTO COUNTY, SS:

Before me, a Notary Public, in and for said county and state, personally appeared the above named Shawnee State Community College by its authorized representative who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed of him personally and as such authorized representative.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Portsmouth, Ohio, this day of April, 1985.

STATE OF OHIO, SCIOTO COUNTY, SS:

Before me, a Notary Public, in and for said county and state, personally appeared the above named University Housing Company by its authorized representative who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed of him personally and as such authorized representative.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Portsmouth, Ohio, this day of April, 1985.

This Instrument Prepared By:

BURTON, JOHNSON & MCKENZIE,
CO., L.P.A.

By: C. Clayton Johnson
200 Bank One Plaza
P. O. Box 1505
Portsmouth, Ohio 45662