



FOR CONCURRENCE WITH PROSPECTIVE RECOMMENDATION OF THE ACADEMIC BOARD

TO: University Affairs Board

SPONSOR: Cheryl Misak, Vice-President & Provost

CONTACT INFO: provost@utoronto.ca

DATE: May 1, 2013 for May 15, 2013

AGENDA ITEM: 5

ITEM IDENTIFICATION: Student Commons Operating Agreement

JURISDICTIONAL INFORMATION:

Section 4 of the UAB terms of reference states that the UAB “is responsible for... matters that directly concern the quality of student and campus life,” and section 5.7 states that the UAB “considers capital projects within its areas of responsibility, advises Governing Council on their implications, and concurs with the recommendations for approval of the Academic Board.”

HIGHLIGHTS:

The St. George campus at the University of Toronto is one of the few Canadian university campuses without a large, student-operated community facility. Although both the Mississauga (UTM) and Scarborough (UTSC) campuses have recently built student-run centres, the St. George Campus has relied on its numerous excellent nodes of student activity space, such as Hart House, to provide students with facilities for their activities.

In 2007, working with the students, a University Project Planning Committee submitted an interim report to Governing Council, identifying a proposed site, and space for a “Student Commons” that would accommodate a broader range of student activities. This interim Project Planning Report was approved by Governing Council in June 2007.

Accordingly, on October 25, 2007, the University entered into a Letter of Intent with the Students’ Administrative Council/UTSU (“SAC”) that established the basic framework of the principles that would govern the creation of an Operating Agreement pertaining to the Student Commons, and committed the parties to negotiate in accordance with the Letter of Intent with a view to reaching a final Agreement, covering operational details, funding, and many other items. The Agreement being submitted herewith is the successful end product of those negotiations.

SAC conducted a referendum in which the students voted in favour of the establishment of a levy for the Student Commons, to be paid by all full-time undergraduate students registered at the St. George campus. The levy was approved by the University Affairs Board in April 2008. The levy, consisting of \$5.00 per session increasing to \$20.75 per session in the session in which the Student Commons opens (at which time it will also include an Operating Cost component), has been collected on a provisional basis since the Fall of 2008, and those funds have been allocated specifically to the Student Commons project. The Operating Cost component will not commence until occupancy of the 230 College Street premises (“the Building”).

Both SAC and the University agreed in 2011 that the site currently occupied by the Daniels Faculty of Architecture & Landscape Design (FALD) was a better site than the one originally proposed and discussions proceeded around the new College Street site.

FINANCIAL AND/OR PLANNING IMPLICATIONS:

The University and SAC have worked diligently, assisted by legal counsel, to negotiate the Agreement that would govern the operations of the Student Commons and its funding. Among the important elements of the Agreement are the following, many of which are also reflected in the Project Planning Committee Report for the Student Commons at 230 College Street:

- The Student Commons space is student-managed and operated, through SAC.
- It provides an expanded range of high-quality spaces for student-led activities.
- It will be modern, accessible, and will endeavor to achieve LEED Gold certification.
- The Agreement is for a 25-year initial term, with the possibility of up to three renewals, for a total of 50 years.
- The University retains the right to re-occupy the Building at the end of 25 years, but if it does so, it is required to allocate reasonably comparable premises for use as a student commons on the campus.
- The University retains ownership of the Building. The occupancy by the students and by SAC is subject to a License, which is an appendix to the Agreement. Sub-licensees are subject to strict requirements set out in the Agreement.
- Renovations of the Building are described in the Project Planning Committee Report. The total project cost of the renovations will be borne by the students as financed through the levy. The University will have made a contribution of up to \$10 million by means of its contribution of the Building itself (including the relocation of FALD) and the License to use the Building.
- Operating costs will be funded by an Operating Cost levy borne by full-time undergraduate students at St. George, commencing effective upon the occupancy of the Building by the students pursuant to the License. The Operating Cost levy is subject to an inflation escalator, established annually by the SAC Board and subject to approval by the University Affairs Board.
- The University has preserved an ongoing “Green Roof” experiment being conducted by FALD faculty. Roof access by the students after the experiment concludes is solely for purposes of green roof gardening activities and is subject to an Operational Policy, a Schedule to the Agreement, which strictly limits access for safety reasons.
- The Agreement contains provisions for financial accountability and for transitional measures in the event of default under various scenarios.

In summary, the Agreement is a comprehensive agreement that outlines in detail the operational arrangements between the University and SAC in a way that allows student independence, but with sufficient financial and other oversight to ensure that the University’s long-term interests both in the Building and in the availability of this important resource to its students are protected.

RECOMMENDATION:

BE IT RECOMMENDED,

THAT the University Affairs Board concur with the prospective recommendation of the Academic Board, THAT the proposed Student Commons Agreement, as outlined in the memorandum dated April 30, 2013, from the Vice-President and Provost, be approved.

STUDENT COMMONS AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 2013 is between:

STUDENTS' ADMINISTRATIVE COUNCIL OF THE UNIVERSITY OF TORONTO, a corporation created pursuant to the *Canada Corporations Act*, as agent for the full time undergraduate students of the St. George Campus of the University of Toronto, as recognized by the Governing Council of the University of Toronto pursuant to the powers granted to it in the *University of Toronto Act* (Ontario)

(“SAC”)

- and -

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO, a corporation created pursuant to the *University of Toronto Act* (Ontario)

(the “University”)

BACKGROUND

- A. A large node of student-run common space dedicated to providing students at the St. George Campus with various services and amenities has been regarded by SAC for many years as an important and highly desirable facility for the campus and its community.
- B. In 2006-2008, student proponents of such a facility, with the support of the University, developed, planned and implemented an initiative to realise the long-standing student objective of establishing a student commons within the St. George Campus.
- C. The initiatives to establish a student commons have enjoyed the endorsement and priority support of the University.
- D. SAC and the University negotiated the terms of the LOI (as defined below), a copy of which was not signed based on the University's assurance that it would act in accordance with it.
- E. Based on the University's assurance that it would act in accordance with the LOI, SAC held a referendum on October 31, November 1 and 2, 2007 (the “**Referendum**”) in which SAC's St. George membership of full-time undergraduate students voted to support a student commons (the “**Student Commons**”) and to contribute to the costs thereof through a special levy (the “**Student Commons Levy**”) on student fees.
- F. The Parties initially considered locating the Student Commons at Site 12 (defined below) as set out in the Project Planning Report. A Student Commons provisionally located at Site

12 was also approved in the Referendum. After a series of internal and external stakeholder consultations, the Parties agreed to change the location of the Student Commons to 230 College St. The Parties agreed, furthermore, that the Referendum Question (as defined below) does not prohibit the proposed change in the location of the Student Commons from Site 12 to 230 College St.

- G. The purpose of this Agreement is to enable the occupancy, management and operation of the Student Commons by SAC with a view to serving the cultural, educational, recreational, social and organizational interests of the student body of the campus on a non-profit basis.

AGREEMENTS

This Agreement and the Student Commons project are subject to the approval of the University and come into effect as of the date of this approval.

For good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 **Definitions.** In this Agreement, the following terms have the following meanings:

- (a) “**Building**” means the building located at 230 College Street in Toronto, Ontario, formerly the home of the Faculty of Architecture, with an approximate size in its current configuration of 6735 GSM;
- (b) “**Building Code**” means the Ontario *Building Code Act, 1992*, including all of its regulations and/or any successor legislation;
- (c) “**Business Board**” means the Business Board of the University;
- (d) “**Business Day**” means a day which is not a Saturday nor defined as a “holiday” under the *Legislation Act, 2006* (Ontario), as amended or replaced from time to time;
- (e) “**Capital Cost Levy**” means that portion of the Student Commons Levy intended to fund the capital cost associated with the Renovations;
- (f) “**Capital Cost Levy Escalator**” has the meaning given to it in Section 7.6(i);
- (g) “**Chair**” has the meaning given to it in Section 9.3(c);
- (h) “**Claims**” means liabilities, debts, actions, causes of action, suits, damages, costs, expenses or other claims;
- (i) “**Dispute**” means a difference of interpretation of this Agreement between the Parties, such disagreement being of a nature that it is not resolvable within a

reasonable time, and serves to impact on the implementation or execution of any part of this Agreement;

- (j) “**Effective Date**” means the date the Agreement is approved by the University;
- (k) “**Emergency**” means any situation, event, occurrence, multiple occurrences or circumstances that:
 - (i) constitutes or is likely to constitute a hazard to or pose a threat to the health and safety of any persons in any part of or the whole of the Building;
 - (ii) causes or is likely to cause material damage to the Building; or
 - (iii) may, if unremedied, result in material liability either to the University or to SAC;
- (l) “**Excess Surplus**” means any amount on hand in excess of the amounts set aside to fund the reserves to the target levels identified in the long-range budget plan;
- (m) “**Facility Manager**” has the meaning given to it in Section 4.7;
- (n) “**Final Renewal Term**” has the meaning given to it in Section 3.3(a);
- (o) “**First Renewal Term**” has the meaning given to it in Section 3.3(a);
- (p) “**Force Majeure Event**” means any act of God, civil commotion, strike, work stoppage, failure of any service or utility whether or not under a Party’s control, or by reason of any statute, law or regulation preventing, delaying or restricting such fulfilment, or the inability to obtain any permission from any government or other body having jurisdiction, or any other cause of any kind beyond the Party’s reasonable ability to control, except inability to obtain finances;
- (q) “**GSM**” means gross square metres;
- (r) “**License**” has the meaning given to it in Section 5.4(a);
- (s) “**License Commencement Date**” means the date on which the contract(s) for the Renovations have been “substantially performed” (as that concept is used in the *Construction Lien Act* (Ontario)) and the University turns over possession of the Building to SAC;
- (t) “**License Fee**” has the meaning given to it in Section 7.3;
- (u) “**LOI**” means the non-binding letter of intent between SAC and the University dated October 14, 2007, a copy of which is attached hereto as Schedule “A”;
- (v) “**Management Committee**” has the meaning given to it in Section 4.6;
- (w) “**Members**” has the meaning given to it in Section 4.6(b);

- (x) “**Notice of Dispute**” has the meaning given to it in Section 9.3(a);
- (y) “**Operating Costs**” has the meaning given to it in Section 6.1(a);
- (z) “**Operating Cost Levy**” means that portion of the Student Commons Levy intended to fund the costs associated with operating and maintaining the Student Commons;
- (aa) “**Operating Cost Levy Escalator**” has the meaning given to it in Section 7.7(d);
- (bb) “**Panel**” has the meaning given to it in Section 9.3(c);
- (cc) “**Parties**” means the parties to this Agreement, namely the University and SAC, as agent for the full-time undergraduate students of the St. George Campus of the University of Toronto as recognized by the University pursuant to the powers granted to it in the *University of Toronto Act* (Ontario), and “**Party**” means either one of them;
- (dd) “**Project Planning Report**” means the final Project Planning Report approved by the University, a copy of which is attached hereto as Schedule “B”;
- (ee) “**Reasonably Comparable Premises**” means premises other than the Building that have, at a minimum and without limitation, the following features at the time that the University exercises its right to relocate the Student Commons in accordance with Section 3.3 of this Agreement:
 - (i) a size that consists of at least the same GSMs as the Building;
 - (ii) the ability to accommodate a variety of uses similar to those set out in Section 2.3(a) and the Room Data Sheets (attached hereto as Schedule “C”);
 - (iii) reasonable access to public transit and a central location on or near the St. George Campus that provides good opportunities for use by St. George students;
 - (iv) a LEED rating (or comparable, if a different standard has been adopted) that is, at a minimum, comparable to the LEED rating (or comparable, if a different standard has been adopted) of the Building at the time that the University exercises its entitlement to move the Student Commons; and
 - (v) meets or exceeds the accessibility standards that the Building has achieved, and complies with the Building Code, the *Accessibility for Ontarians with Disabilities Act, 2005*, or any other like statutes then in force.
- (ff) “**Referendum**” has the meaning given to it in Recital E;
- (gg) “**Referendum Question**” means the referendum question approved by the Students in the Referendum, a copy of which is attached hereto as Schedule “D”;

- (hh) “**Renewal Terms**” means, collectively, the First Renewal Term, the Second Renewal Term and the Final Renewal Term;
- (ii) “**Renovations**” means the:
 - (i) works required to bring the Building up to the standards set out in the Building Code;
 - (ii) other works required to upgrade the Building to meet the needs described in the Project Planning Report;
- (jj) “**Reserve Fund**” has the meaning given to it in Section 7.7(c);
- (kk) “**SAC**” means Students’ Administrative Council of the University of Toronto;
- (ll) “**SAC Board**” means the Board of Directors of SAC;
- (mm) “**SAC License**” has the meaning given to it in Section 3.5(b)(iv);
- (nn) “**Second Renewal Term**” has the meaning given to it in Section 3.3(a);
- (oo) “**St. George Student Commons Capital Project Account**” has the meaning given to it in Section 7.6(a);
- (pp) “**Student Commons**” has the meaning given to it in Recital E, the goals and purposes of which are contemplated in Article 2 of this Agreement and as more generally described and contemplated throughout this Agreement;
- (qq) “**Student Commons Levy**” has the meaning given to it in Recital E as adjusted in accordance with this Agreement for inflation and other permitted increases;
- (rr) “**Students**” means all full-time undergraduate students, as defined by the division of registration, registered in a faculty on the St. George Campus in a program leading to a degree, diploma or certificate of the University and affiliated with the St. George Campus;
- (ss) “**Term**” has the meaning given to it in Section 3.1 and, for greater certainty, includes where the context requires any Renewal Term;
- (tt) “**University**” means The Governing Council of the University of Toronto; and
- (uu) “**University Policies and Procedures**” means all of the formally-adopted and published policies and procedures of the University (including those approved and issued at the level of the Provost’s office) that are, at any given time, then in force, including as current examples (but not limited to) the *Memorandum of Agreement Between the University of Toronto, the Students’ Administrative Council, The Graduate Students’ Union and the Association of Part-time*

Undergraduate Students for a Long Term Protocol on the Increase or Introduction of Compulsory Non-tuition Related Fees (1996).

1.2 **Schedules.** The following Schedules are attached to and incorporated into this Agreement:

Schedule A	-	LOI
Schedule B	-	Project Planning Report
Schedule C	-	Room Data Sheets
Schedule D	-	Referendum Question
Schedule E	-	License Terms
Schedule F		Green Roof Garden Operational Policy

ARTICLE 2 - GOALS AND NATURE OF THE STUDENT COMMONS

2.1 **Recitals.** The recitals to this Agreement are accurate and incorporated into the body of this Agreement.

2.2 **General Goals of the Student Commons.** The Parties acknowledge the need for a student commons for the benefit of the University community at the St. George Campus of the University, and the significant financial contribution which the Students and the University have made to the Building and to the Student Commons. The Student Commons is intended to fulfil this need and to complement the activities of the University by, without limitation:

- (a) assisting in making the Students' experience at the University worthwhile and enjoyable from a social and personal perspective;
- (b) fostering social and cultural interaction by creating an environment and opportunities for groups of people with varied backgrounds and viewpoints to gather;
- (c) affording an opportunity for students to meet and interact in a relaxed setting; and
- (d) acting as a Student-operated community facility that is convenient, accessible and functional.

2.3 **Nature of the Building.**

- (a) The Building shall be a multi-purpose and flexible facility incorporating space for SAC, student clubs and associations, SAC levy-receiving groups, large event and social space, various student services and food outlets as well as a variety of accessible meeting rooms.

- (b) SAC and the University shall be equal participants with respect to the carrying out of the Renovations. For greater certainty, SAC shall have direct and regular consultation with the Building's architect and other parties carrying out the Renovations during all material times that the Renovations are being carried out in accordance with the Project Planning Report with full and regular input from SAC to discuss all aspects of the Renovations. The University and SAC shall approve the final drawings, and the University shall allocate financial and capital planning expertise during the Renovations.
- 2.4 **Current Building volume.** The Building as currently configured is 6735 GSM.
- 2.5 **SAC Primary Steward.** Commencing on the License Commencement Date, SAC shall be the primary steward with respect to space in the Building.
- 2.6 **Future expansion.** Provided that the fundamental purpose of the Student Commons is not altered, either SAC or the University may at some subsequent date propose a physical expansion of the Student Commons. The approval of both Parties is required for such expansion.

ARTICLE 3 - TERM AND TERMINATION

- 3.1 **Term.** The term of this Agreement is twenty-five (25) years (the "**Term**") commencing on the Effective Date.
- 3.2 **Termination of Certain Rights During Term.** The termination of SAC's entitlement to manage and operate the Student Commons during the Term or a Renewal Term pursuant to Section 3.5 shall not terminate the right of the Students to occupy and use the Building which shall continue in accordance with the grant of License in Section 5.4 of this Agreement in accordance with the license terms appended as Schedule "E".
- 3.3 **Renewal Terms.**
 - (a) This Agreement shall be automatically renewed for a period of ten years upon the expiry of the Term (called the "**First Renewal Term**") unless either Party notifies the other Party in writing, at least three years prior to the expiry of the Term, of an intention not to renew automatically. Upon the expiry of the First Renewal Term, this Agreement shall be automatically renewed for a period of ten years (called the "**Second Renewal Term**") unless either Party notifies the other Party in writing, at least three years prior to the expiry of the First Renewal Term, of an intention not to renew automatically. Upon the expiry of the Second Renewal Term, this Agreement shall be automatically renewed for a period of 5 years (called the "**Final Renewal Term**") unless either Party notifies the other Party in writing, at least three years prior to the expiry of the Second Renewal Term, of an intention not to renew automatically. The Agreement automatically terminates upon the expiry of the Final Renewal Term unless, pursuant to Section 3.3(d) below, the Parties otherwise expressly agree to extend the arrangements set out in this Agreement beyond the Final Renewal Term. Without limiting the circumstances in which a Party may elect not to have the Agreement renew

automatically, the Parties acknowledge that such circumstances may include a requirement by the University to relocate the Student Commons (in which case the University shall provide Reasonably Comparable Premises) or a desire by SAC to change the terms under which the Student Commons are managed and operated. For greater certainty, if the University exercises its right to relocate the Student Commons to other Reasonably Comparable Premises, the University shall be solely responsible for paying all of the costs associated with such relocation, including but not limited to any renovations required to ensure that the new premises are in compliance with all applicable laws and regulations including municipal zoning and Building Code requirements.

- (b) If either Party gives notice to the other Party of its intention to not have the Agreement renew automatically in accordance with Section 3.3(a), the parties, negotiating in good faith, shall endeavour to agree upon a new Agreement to govern the occupancy, management and operation of the Student Commons before the expiration of the Term or any Renewal Term, as the case may be.
- (c) If the Parties cannot reach a new agreement, the terms under which the Building, or alternate premises if the University has elected to relocate the Student Commons in accordance with Section 3.3(a), is occupied and used by the Students shall be substantially similar to those of this Agreement, modified as appropriate in the circumstances. Such occupancy and use arrangements shall be in force for an additional twenty-five (25) years (if only the Term has expired) or such lesser time in the case of a First or Second Renewal Term, to bring the arrangements to an end 50 years after the commencement of the Term, unless the parties expressly agree to extend the arrangements set out in this Agreement beyond 50 years pursuant to Section 3.3(d) below.
- (d) Beginning three (3) years prior to the expiry of the Final Renewal Term the Parties hereby agree to meet from time to time to discuss the need for student common space (which may be student run) and to consider options for such space to replace the Building as soon as practicable following the expiry of the Final Renewal Term.

3.4 **Periodic Reviews.** One year after the License Commencement Date and every second year thereafter, the Parties shall, if requested by one of them, review this Agreement and consider whether any modifications are required based on the experience gained through the operation of the Student Commons to that point.

3.5 **Effect of Material Breach or Insolvency.**

- (a) Upon the occurrence of either of the events set out in subsections (i) and (ii) below:
 - (i) SAC ceases operation, in the ordinary course; makes an assignment for the benefit of creditors; becomes bankrupt under applicable legislation; is the subject of the appointment of a receiver or manager in respect of any

substantial part of its assets and undertaking that is not removed or for which no stay is entered within sixty (60) days thereafter; takes proceedings for winding up, liquidation, or dissolution of its assets, or for the compromise or composition of debt pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended, or similar legislation; or if a writ of execution shall issue against the assets, or part thereof, owned by SAC that remains unsatisfied for sixty (60) days; or

- (ii) SAC ceases to be the representative of full-time undergraduate students at the St. George Campus as determined by SAC's members and as recognized by the University in accordance with formal University Policy and Procedures,

the following shall occur:

- (iii) SAC's entitlement to manage and operate the Student Commons shall terminate;
 - (iv) SAC shall, within one hundred and eighty (180) days, vacate the Building;
 - (v) the University will temporarily assume the management and operation of the Student Commons for the benefit of the Students consistent with the goals as set out in Section 2.2 and the principles set out in Section 2.3, and with a view to providing continuity of facilities and services at the Student Commons to the Students; and
 - (vi) The University shall promptly consult with the St. George Campus undergraduate student body regarding new arrangements for management of the Student Commons on behalf of the Students guided by the goals for the Student Commons as set out in Section 2.2 of this Agreement.
- (b) If SAC is in breach of any of its material obligations in this Agreement and such breach is not cured within ninety (90) days following written notice of such breach, or a shorter period if the breach gives rise to an Emergency, such shorter period to be determined on a case-by-case basis taking into account the nature of the relevant Emergency, the following shall occur:
- (i) SAC's entitlement to manage and operate the Student Commons shall terminate.
 - (ii) SAC shall, within one hundred and eighty (180) days, vacate those premises which it occupies in the Building for the purposes related to its management and operation of the Student Commons.
 - (iii) The University and SAC will enter into a license agreement in respect of office space occupied by SAC not related to the management and operation of the Student Commons, which, for clarity, shall extend for the duration of the Term and any renewal terms, as applicable (the "**SAC License**"). In the

event that the right to manage and operate the Student Commons is subsequently granted to a third party, the University undertakes to have said third party assume the obligations of the University under the SAC License.

- (iv) The University will temporarily assume the management and operation of the Student Commons for the benefit of the Students consistent with the goals as set out in Section 2.2 and the principles set out in Section 2.3, and with a view to providing continuity of facilities and services at the Student Commons to the Students, to the extent reasonably possible.
- (v) As soon as reasonably practicable, the Parties shall enter into negotiations to negotiate a new management structure and agreement relating to the management of the Student Commons guided by the goals for the Student Commons as set out in Section 2. of this Agreement.

3.6 **Clarification.** For greater certainty, the Parties agree that the License granted to the Students in this Agreement to occupy and use the Building shall continue on the license terms attached as Schedule “E” throughout the Term and the Renewal Terms notwithstanding the termination of SAC’s entitlement to manage and operate the Student Commons pursuant to Section 3.5.

3.7 **Surrender on Termination.** SAC will, upon the expiration or lawful termination of this Agreement, peaceably surrender and yield up to the University SAC’s offices and any other space relating to management in the Building directly controlled by SAC in as good a state of repair and condition, as was the case at the beginning of the Term, reasonable wear and tear excepted.

3.8 **University to Act in Good Faith.** In exercising its termination rights under this Article, the University shall act in good faith, and without limiting the foregoing, in a manner that takes into account the goals of the Student Commons described in Section 2.2.

ARTICLE 4- AUTHORITY AND RECOGNITION

4.1 Representatives.

- (a) The President of the University or designate as notified to SAC in writing from time to time, is the primary representative of (and is authorized to act on behalf of) the University for all purposes of this Agreement subject to the authority of the University.
- (b) The SAC President, or such office’s successor, replacement or designate as notified to the University in writing from time to time, is the primary representative acting on behalf of SAC, subject to the authority of the SAC Board and the provisions of SAC’s by-laws.

4.2 **Agent of Full-Time Students.** The University pursuant to its statutory authority recognizes SAC as the sole agent representing the Students (being the primary donors

supporting the Student Commons) in respect of this Agreement and the Student Commons at the time of the signing of this Agreement.

4.3 **Enforceability.** Notwithstanding that SAC is described herein and is entering into this Agreement as agent for the Students, all obligations of SAC in this Agreement shall be enforceable against SAC in its personal capacity and all rights and benefits granted to SAC in this Agreement, including without limitation the rights with respect to the SAC License, shall be enforceable by SAC in its personal capacity. Nothing herein alters the obligation of all Students to support the Student Commons through the Capital Cost Levy and the Operating Cost Levy, in accordance with the Referendum.

4.4 **Sole Control and Discretion.** From the License Commencement Date and for the duration of the Term, SAC shall have, subject to the terms of this Agreement, sole control and discretion with respect to the management and operation of the Student Commons. For greater certainty and without limiting the generality of the foregoing, subject to the terms and conditions of this Agreement, the University shall not interfere with the day-to-day operation of the Student Commons and SAC will use its best efforts to manage and control the Student Commons in an efficient manner. In this context, SAC shall manage and operate the Student Commons in accordance with:

- (a) all applicable laws, regulations and municipal by-laws;
- (b) University collective agreements and other general contractual commitments, of which SAC is made aware by the University; and
- (c) unless otherwise set out in this Agreement, University policies of general application,

provided that the University shall not enter into agreements or contracts or implement policy after the date hereof that materially limits SAC's right to control the management and operation of the Student Commons.

4.5 **Notice to the University.** The University shall be notified immediately by SAC of all evictions, lawsuits, or charges laid under municipal, provincial or federal statutes and regulatory complaints made under municipal, provincial or federal statutes and/ or personal injury accidents related to the Student Commons, about which SAC has received notice. For clarity, SAC's obligations in respect of this Section 4.5 shall commence on the License Commencement Date.

4.6 **Management Committee.**

- (a) On or before the License Commencement Date, a management committee (the "**Management Committee**") shall be formed by SAC, which committee shall generally supervise and direct the development and operations of the Student Commons in accordance with the terms of this Agreement. Without limiting the generality of the foregoing, with respect to the Student Commons, the Management Committee shall:

- (i) negotiate and implement the terms of contracts between SAC and sub-licensees and any other third party;
 - (ii) consider and approve policy matters;
 - (iii) review staffing and provide direction and advice to the Facility Manager on staffing related issues;
 - (iv) make recommendations on budgets to the SAC Board and subsequently monitor financial statements with respect to the Student Commons with regular reporting to the SAC Board;
 - (v) generally protect assets in the Building and take measures to reduce liability risks, including making provisions for capital renewal pursuant to Section 7.7(c);
 - (vi) allocate space within the Building, in accordance with this Agreement, and administer license agreements between sub-licensees and SAC;
 - (vii) set and enforce standards concerning the use of the common facilities of the Student Commons;
 - (viii) take all reasonable measures to ensure that the Student Commons is operated in an environmentally responsible manner that furthers the sustainability and environmental goals of SAC;
 - (ix) implement the operating principles of the Student Commons developed by the SAC Board;
 - (x) take all reasonable measures to maintain true and accurate books and records of the business and transactions of the Student Commons; and
 - (xi) advise the Facility Manager on human resource matters such as: selecting, employing, terminating, supervising, directing, training and assigning duties to all employees engaged in the operation of the Student Commons.
- (b) The Management Committee shall consist of fourteen (14) members (“**Members**”), thirteen (13) of whom shall be voting members, comprised of:
- (i) seven (7) persons named by SAC;
 - (ii) three (3) persons named by campus clubs through the SAC clubs committee;
 - (iii) three (3) persons named by SAC designated levy groups through the SAC organisational development and services committee; and

- (iv) the Facility Manager, who shall:
 - A. be an ex-officio and non-voting Member;
 - B. act as the chair of the Management Committee;
 - C. be entitled to all of the rights and privileges as a Member, including but not limited to speaking rights, but excluding the right to move, second or vote on any motion of the Management Committee; and
 - D. for greater certainty, be bound by the same restrictions and responsibilities as the Members and, accordingly, shall be a fiduciary of the Management Committee.
- (c) A quorum for a meeting of the Management Committee shall be a majority of the Members, represented in person or by proxy.
- (d) All decisions of the Management Committee shall be decided by a majority of the votes cast at such meeting.
- (e) Each body entitled to appoint Members to the Management Committee:
 - (i) shall ensure it maintains representatives on the Management Committee in accordance with the number of seats specified herein;
 - (ii) shall provide for an annual appointment process resulting in representatives being designated on or prior to May 31 in each year;
 - (iii) shall, in the event of a vacancy in one or several of the Member positions to which is entitled to appoint a nominee, take such steps as are necessary to designate a new Member or new Members, as the case may be, within fifteen (15) Business Days of such vacancy; and
 - (iv) may from time to time replace its nominee Member or Members.

4.7 **Facility Manager.** On or before the License Commencement Date, the SAC Board shall hire a facility manager (the “**Facility Manager**”) of the Student Commons who shall be responsible for those day-to-day operations of the Student Commons delegated to her/him by the Management Committee. The Facility Manager shall also be responsible for implementing policies passed by the Management Committee and for implementing the hiring, supervising and disciplining staff, including dismissal and termination, except decisions on the general structure of the senior staff positions, which must be approved by the Management Committee.

4.8 **Application of University Laws and Policies.** Subject to Sections 4.9, 4.10 and 7.8, all applicable laws, regulations and by-laws and all University published policies, procedures and legal obligations must be complied with in the conduct of the activities taking place within the Student Commons including with respect to sub-licenses. These include but are

not limited to University Policies and Procedures and legal obligations of the University relating to:

- (a) use of the University's names, name abbreviations, logos, crests, trade-marks, official marks, trade names, and other intellectual property;
- (b) alcohol consumption, sale and service;
- (c) sale and use of tobacco products;
- (d) copyright;
- (e) licenses of general application relating to intellectual property;
- (f) health and safety;
- (g) food service regulations;
- (h) posted fire legal room capacities;
- (i) advertising, publicity and signage;
- (j) non-affinity exclusivity agreements in place at the time of signing;
- (k) fundraising, sponsorship, and affinity exclusivity agreements;
- (l) union and other labour agreements;
- (m) human rights;
- (n) academic freedom; and
- (o) environmental protection.

4.9 **Qualifications.**

- (a) Notwithstanding subsections 4.8(j) and (k), above, the University:
 - (i) confirms that there are no fundraising or sponsorship agreements nor non-affinity exclusivity agreements that would restrict the operation of the Student Commons;
 - (ii) agrees that, throughout the Term, SAC may continue to offer insurance to its members and to student clubs at its discretion despite any conflict or perceived conflict with the obligations of the University pursuant to affinity agreements between the University and its insurance providers, including but not limited to TD Meloche-Monnex and Manulife or any subsequent provider during the Term;
 - (iii) confirms that the exclusive affinity agreement in place between the University and Zoom Media does not require SAC to retain Zoom Media if it wishes to advertise in any area of the Student Commons; and
 - (iv) shall not enter into agreements or contracts, including any sponsorship agreements or non-affinity exclusivity agreements, or implement policy after the date hereof that are contrary to this Agreement.
- (b) SAC's obligations in respect of Section 4.8, above, shall commence on the License Commencement Date.

4.10 **No Exclusivity Agreements.** No exclusivity agreements with respect to the supply of goods or products, including, without limitation, with respect to the supply of food, that either:

- (a) the University has not disclosed to SAC at the time that this Agreement has been entered into; or
- (b) have been entered into by the University after the date of this Agreement,

will be imposed on or apply to the Student Commons unless SAC provides its prior written consent. This does not apply to utilities, or affinity exclusivity agreements other than those described in Section 4.9(a)(ii) and (iii). Notwithstanding the foregoing, the University shall not enter into agreements or contracts or implement policy after the date hereof that materially limits SAC's right to control the management and operation of the Student Commons.

ARTICLE 5 - OWNERSHIP, LICENSE AND ACCESS

5.1 **Obligation to Provide the Building.** The University shall provide the Building, which will contain the Student Commons.

5.2 **Title to Real Property.** Legal and beneficial title to the Building and the real property on which it is located rests with the University.

5.3 **Title to Personal Property, Furnishing and Equipment.** As between the Parties, legal and beneficial title to the personal property in the Student Commons, including without limitation furnishings and equipment, will rest with SAC.

5.4 **License.**

- (a) The University agrees and acknowledges that the Student Commons shall be set aside for the exclusive use of the Students, and the University hereby grants to the Students, represented in this Agreement by SAC as their agent, the exclusive, irrevocable, non-assignable license to occupy and use the Building, from the License Commencement Date to the expiry of the Term and Renewal Terms, as applicable, for the purposes herein set out (the "**License**"). In the event that SAC's entitlement to manage and operate the Student Commons in accordance with this Agreement is terminated, such termination shall in no way impair or affect the rights of the Students pursuant to the License, which shall continue on the terms set out in Schedule "E". For clarity, in addition to the terms of the License the Parties agree that access to the roof by SAC shall be subject to the "Green Roof Garden Operational Policy", attached as Schedule "F" hereto. Such access may commence only at the conclusion (including any funded extensions) of the Green Roof experiment currently being conducted there by the Faculty of Architecture, Landscape, and Design, and not earlier than January 1, 2018. For further clarity, rooms 502 and 502A, which are required for ongoing use of the Daniels Faculty of Architecture, are also excluded from the License.

- (b) This Agreement and the aforesaid grant of license do not create the relationship of landlord and tenant or principal and agent or joint or co-venturers between the Parties. For greater certainty, and subject to subsection (a) above, SAC's occupancy of the Building is undertaken as a licensee of the University. Therefore, any rights and privileges which are available to a tenant or subtenant, whether expressly under the *Commercial Tenancies Act* (Ontario) or otherwise, are expressly waived by SAC. Nothing contained in this Agreement or in any acts of the Parties hereto shall be construed to create any relationship between the parties other than that of licensor and licensee. Neither Party shall exercise supervision over the other Party's mode and manner of performance and neither Party's employees or agents shall be deemed to be employees or agents of the other Party. SAC shall be solely responsible for the wages, benefits, taxes, and any other similar obligation, in connection with its employees, agents and servants.

5.5 Sub-Licenses.

- (a) SAC shall be entitled to grant sub-licenses of portions of the Building in accordance with the terms of this Agreement to any party (including, for greater certainty, retailers) with the consent of the University, which may not be unreasonably withheld or delayed, as long as such parties are conducting business or activities that are compatible with the goals of the Student Commons and of the University. For clarity, if SAC's entitlement to manage and operate the Student Commons terminates, the University shall be deemed to have granted its consent to the SAC License. Sub-licensees of SAC, such as University departments, will be subject to a license agreement, containing various terms including those enumerated in Section 5.5(b) as well as applicable monthly rent, to be negotiated on an individual basis between the Management Committee and the individual sub-licensee.
- (b) All sub-license agreements negotiated by the Management Committee with third parties shall contain the following provisions:
 - (i) all third-party commercial operations shall pay market rent or better which should cover the pro rata portion of the Operating Costs and capital expenditures related to those commercial operations;
 - (ii) all third-party commercial operations shall be responsible for any and all taxes and other associated levies or fees assessed against the Student Commons, the Building or SAC due to such third-party's occupation;
 - (iii) sub-licensees shall either clean within their respective facilities or arrange through the Management Committee for cleaning at the sub-licensee's expense;

- (iv) sub-licensees shall be responsible for cost and expense of improvements which must be approved by the University, such approval not to be unreasonably withheld or delayed;
- (v) sub-licensees shall leave the premises occupied by them in good repair and pay any costs of restoration for the premises;
- (vi) no sub-licensee shall be provided with any guarantees related to the use of reserved parking spaces, or use of other facilities beyond the Student Commons; and
- (vii) sub-licensees shall be required to comply with all applicable laws, University collective agreements and other general contractual commitments, and University policies of general application.

5.6 **University Access to the Student Commons.**

- (a) The University, by its employees, agents and contractors, including without limitation, University of Toronto police, caretaking staff and the staff of the Facilities and Services Department of the University, shall have access to all parts of the Student Commons for purposes of routine maintenance, safety and fire prevention and hazard control whenever necessary to carry out the responsibilities of their jobs. Notwithstanding the foregoing, advance written notice shall be given to SAC stating the reason for access to SAC offices and levy groups stating the reason for the requested access, unless it is required in the case of an Emergency, in which case the said prior notice is not required (but the reason for the access in the case of an Emergency shall be provided to SAC in writing as soon as practicable after such emergency access).
- (b) The University shall retain a key or keys thereto accordingly, but this stipulation does not impose and shall not be deemed to impose any additional liability on the University for the safety or security of the Student Commons.
- (c) SAC will not, without the consent of the University, install or modify or permit to be installed or modified any lock or other security device on the external or internal doors or windows or any perimeter openings of or affecting ingress to or egress from the Building.

5.7 **Approvals.** SAC will obtain all necessary approvals from the appropriate University authorities before making commitments that involve or impact on the areas outside of the boundaries of the Building.

5.8 **Formal Name.** The formal name of the Student Commons as well as the name of any space, area or equipment in the Student Commons shall be determined mutually by the President of the University (or his or her designate) and the President of SAC (or his or her designate) in a manner that is consistent with the policies of the University. For greater certainty, the formal name of the Student Commons, or any part thereof, shall not be established or thereafter changed without the express agreement of the President of SAC

(or his or her designate), despite any provision to the contrary in any policy of the University.

ARTICLE 6 - OPERATIONS

6.1 Operating Costs.

- (a) Operating costs shall be costs, in relation to the Building and the Student Commons, associated with:
 - (i) building services, including caretaking, maintenance and day-to-day repairs but excluding repairs that are structural or capital in nature;
 - (ii) maintenance of exterior land and amenities (waste, recycling and grounds maintenance);
 - (iii) police services; and
 - (iv) utilities, in accordance with Section 6.4 (collectively, “**Operating Costs**”).
- (b) SAC shall not be assessed Operating Costs on terms less favourable than those assessed to any other faculty or tenant on the St. George Campus that uses space in a manner similar to that of the Student Commons.
- (c) The Parties will agree from time to time on a schedule and mechanism for the remittance of Operating Costs by SAC. A principle to be applied to any such schedule will be to link the timing of the Student Commons Levy remittances to SAC to the timing of the remittances of Operating Costs by SAC.
- (d) Space currently occupied by some student groups or student-related activities (e.g. SAC, bike chain, women's centre) will be vacated if those groups or activities move into the Building. The occupancy costs for these groups and activities are now paid by student fees collected for the Student Life Portfolio. If any of these groups or activities move into the Building, and if the space they now occupy is not occupied by student groups or student-related activities, the funds now being paid for their occupancy will be subtracted from the Student Life Portfolio budget. In other words, if the occupancy costs are no longer being paid by the Student Life Portfolio, those costs will no longer be collected from student fees.
- (e) The Operating Cost Levy will be adjusted pursuant to Section 7.7(d).

6.2 Building Repairs, Etc.

- (a) During the Term and any Renewal Term, the University shall be financially responsible for and carry out all Building and Building systems facility operations and maintenance, including without limitation major structural or capital repairs and replacements in accordance with the University's general standards of keeping its buildings on the St. George Campus in good operating

condition and in compliance with all applicable laws and regulations including municipal zoning and Building Code requirements, subject to Section 6.2(c).

- (b) The University shall be responsible for and carry out all further renovations to the Building requested by SAC, provided that they are approved by the University and paid for by SAC and are in compliance with all applicable laws and regulations including municipal zoning and Building Code requirements.
- (c) Notwithstanding any other provisions hereof, save for normal wear and tear and the University's obligations to keep the Building in good operating condition pursuant to Section 6.2(a), if the Building or any part thereof is damaged or destroyed or requires repair, replacement or alteration as a result of any negligent act or omission of SAC or any sub-licensee of SAC or of any other occupant or person who is at the Building as an invitee of SAC or of a sub-licensee, the resulting repairs shall be performed by the University and shall be paid for by SAC. For clarity, SAC's obligations in respect of this Section 6.2(c) shall commence on the License Commencement Date.
- (d) The Parties acknowledge and agree that the obligations of the University pursuant to Section 6.2(a) shall not require the University to subsidize the costs of major renovations, retrofitting or upgrades to the Building or Building systems so long as the Building is in good operating condition in accordance with Section 6.2(a). In the twelfth year of the Term and two years prior to each Renewal Term, the University shall carry out an assessment or assessments of the Building or components thereof with a view to determining whether, in the reasonable judgement of the University, any such major renovations, retrofitting, or upgrades are required. Such assessments shall be provided to SAC. The Parties acknowledge and agree that, provided that the University has discharged its obligations under Section 6.2(a) during the Term, the costs of any such required major renovations, retrofitting or upgrades are to be borne by SAC in the Renewal Terms and, accordingly, the Parties will conduct good faith negotiations with a view to having SAC assume costs related to such required major renovations, retrofitting and upgrades of the Building and Building systems in the Renewal Terms based on such assessment(s).

6.3 Minor Changes to the Building.

- (a) Notwithstanding the preceding Section, SAC may at any time, at its own expense, decorate the interior of the Building and make minor changes, alterations, or improvements in and to the Building as is deemed appropriate by SAC, provided that such improvements have no engineering, health or safety implications and are in accordance with this Agreement and are in compliance with all applicable laws and regulations including municipal zoning and Building Code requirements. In carrying out any work at the Building, SAC shall only use contractors and subcontractors who are on the University's approved list.

- (b) SAC shall promptly pay for all materials supplied and work carried out by it in respect of the Building so as to ensure that no lien is registered against the Building. If a lien is registered or filed, SAC shall discharge it at its expense forthwith.
- 6.4 **Utilities Separately Metered.** The Building will be separately metered for utilities, including heat, light, electrical and HVAC. SAC will be responsible for the utility bills, but the University will make actual payment for utility bills and the cost will form a portion of the Operating Costs.
- 6.5 **Information Technology Services.** As elaborated upon in, and in accordance with, the Project Planning Report, the University shall connect the Student Commons to the St. George Campus network backbone, and the wireless network infrastructure will continue to be managed through the University's Information Technology Services. The 'within the Building' infrastructure shall be part of the initial capital cost of the Student Commons renovations, and the ongoing operating costs shall be a component of the Operating Costs borne by SAC.
- 6.6 **Due and Reasonable Care.** SAC will exercise all due and reasonable care in its use of the Student Commons and will control access thereto and endeavour to ensure that all persons having access, including students and the staff of SAC, do the same. SAC will keep the Student Commons and all contents thereof at all times in a clean and tidy condition and will observe and comply and cause its employees, agents and sub-licensees to observe and comply with all occupational, environmental, health, fire and safety laws, by-laws and regulations that apply to or affect SAC's occupancy of the Student Commons or its operation and activities therein, and all University Policies and Procedures. For clarity, SAC's obligations in respect of this Section 6.6 shall commence on the License Commencement Date
- 6.7 **Building Insurance.** The University will act in a commercially reasonable manner in procuring and maintaining insurance pertaining to the Building in the form, term and limits and with insurers as it deems suitable, acting reasonably, and SAC understands and agrees that it shall not enjoy any benefit whatsoever under any such insurance.
- 6.8 **Police Services.** For clarity, the University shall provide the police services referred to in Section 6.1(a)(iii) at the same level that it provides to other buildings on the St. George Campus, but shall not include police services for special events in the Operating Costs assessed to SAC.

ARTICLE 7 - FINANCIAL MATTERS

- 7.1 **Student Commons Levy.** The Student Commons Levy has been established by referendum to include two components: the Capital Cost Levy in respect of the Student Commons capital project to create the physical space that the Student Commons will occupy, the collection of which began on or about September 2008 and which will continue until 25 years after the space has been completed and occupied, and the Operating Cost

Levy in respect of the operations of the Student Commons, which will commence on the License Commencement Date.

7.2 **The University's Support of the Student Commons.** To support the Student Commons, at minimum the University shall:

- (a) contribute fifty cents (\$0.50) for each dollar contributed by the students by way of Capital Cost Levy, as and when each such dollar is collected, such contribution not to exceed the equivalent of a contribution of \$10 million and such contribution to be adjusted for its share of any donations for the Student Commons, in accordance with Section 7.2. The Parties agree that the University will have complied with its obligation to contribute pursuant to this Section 7.2(a) by contributing the Building and the rights under the License; and
- (b) if the University receives donations directed towards the Student Commons, which SAC accepts, the funds raised will be allocated as follows: (i) two-thirds shall be counted towards SAC's obligation to the Student Commons Levy; and (ii) one-third shall be retained by the University to assist in defraying its expenditures described in Section 7.2(a).

7.3 **License Fee.** SAC will pay to the University for the License an annual license fee of \$200,000, payable in arrears, with the first payment to be made on the first anniversary of the License Commencement Date and the final payment to be made on the last day of the initial 25 year Term (the "**License Fee**"). For greater certainty, the License Fee shall be funded as a component of the Capital Cost Levy.

7.4 **Collection of Student Commons Levy:**

- (a) The Student Commons Levy shall be collected by the University, in trust on behalf of SAC for use in accordance with the terms of the Referendum Question attached hereto as Schedule "D", at a minimum of three (3) times per year.
- (b) SAC acknowledges and accepts the University's right to impose and collect the Student Commons Levy at regular intervals subject to the University's obligations with respect to its University Policies and any applicable government directives and laws. SAC further agrees that during the Term of this Agreement, the Student Commons Levy at the amounts agreed in the Referendum, as adjusted in accordance with Sections 7.6(i) and 7.7(d), shall remain in full force and effect and that SAC and its employees, agents or successors will take no action to prohibit, restrict, limit, impair or in any way interfere with the imposition and collection of the Student Commons Levy by the University, so long as the University continues to collect the Student Commons Levy, in accordance with its University Policies and Procedures and any applicable government directives and laws.
- (c) If, at the conclusion of the Term and any applicable Renewal Term, the University elects not to renew this Agreement pursuant to Section 3.3, the University shall continue to collect the Student Commons Levy, which will be held in trust by the

University and returned to SAC to be used for another project or use which is consistent with the objectives of the Referendum.

7.5 **University Literature and Forms.** The University agrees that in all its materials literature and forms pertaining to student fees and their payment, it will display the “Student Commons Levy” separately.

7.6 **Student Commons Capital Project**

(a) The University will establish an account (the “**St. George Student Commons Capital Project Account**”) within the University’s financial information system, to record the following:

- (i) the costs incurred in respect of the Student Commons capital project including any construction financing costs that may be incurred by this project and including any principal and interest payments to be made on loans issued in respect of this project; and
- (ii) the receipts of funds in respect of this project, including the Capital Cost Levy as adjusted by Section 7.6(i), the University’s contribution to this project as described in Section 7.2 above, and any other receipts such as donations in respect of the Student Commons capital project as described in Section 7.6(g).

(b) The Parties acknowledge and agree that the Capital Cost Levy portion of the Student Commons Levy, plus the University’s contribution and any other receipts such as additional donations, are intended to be sufficient to fund the costs incurred in respect of the capital project, including the principal repayment and the interest payments.

(c) Subject to the paragraph below in this subsection, in the event that the Student Commons project does not proceed to be approved, for any reason, the Capital Cost Levy funds together with any interest thereon which are held in trust by the University as described in subsection (b) above will be returned to SAC to be used for another project or use which is consistent with the objectives of the Referendum.

In the event that the Student Commons project proceeds to be approved and the Renovations have started but, for whatever reason, have been abandoned and the Parties have agreed that the Students Commons project is terminated, this Agreement will be at an end, and:

- (i) any remaining portion of the Capital Cost Levy funds together with any interest thereon which are held in trust by the University as described above will be returned to SAC to be used for another project or use which is consistent with the objectives of the Referendum; and

- (ii) the Parties will appoint an appropriately qualified valuator to assess the value of any improvements to the Building that SAC thereto funded, and SAC shall be reimbursed by the University for that value.
- (d) The Capital Cost Levy funds collected by the University will be placed in the St. George Student Commons Capital Project Account. The University will hold the Capital Cost Levy funds in trust to be disbursed, in accordance with the requirements of the Student Commons capital project as approved by the Referendum Question establishing same, by the Business Board as described in subsection (f) below. Interest will be attributed to the St. George Student Commons Capital Project Account in accordance with the University's standard policies and procedures for applying interest to or charging interest against capital project accounts (prior to and during the construction period) and applying interest after construction is completed, in all cases, on terms not less favourable than those available to other internal University borrowers for similar projects. Such funds on hand at any given moment will be invested by the University in accordance with the University's standard investment policies and procedures as amended from time to time.
- (e) In the event that the Student Commons capital project has not been fully funded by the time it has been completed, the University will issue a long-term loan on the outstanding unfunded balance at a rate and for a term to be determined by the University in accordance with the University's internal borrowing programme, as amended from time to time. This loan will not be issued to SAC but rather will be held by the University. As described above, the principal repayment and the interest costs associated with this loan will be charged to the St. George Student Commons Capital Project Account. The Capital Cost Levy and the University contribution along with any donations received for this purpose after the long-term loan is issued will be sources of funding to pay the principal repayment and the interest payments.
- (f) Capital Cost Levy monies held by the University in trust shall be used in the first instance to pay the costs incurred by the University relating to the capital project, including construction costs, construction financing and principal and interest payments on loans issued in respect of this capital project. In the event that there is any money remaining after the obligations described have been discharged, the University will deposit the surplus funds in an interest-bearing account in trust within the University's financial information system and on behalf of SAC, for the operating costs of the Student Commons.
- (g) Any donations received in respect of the Student Commons capital project will be deposited in the St. George Student Commons Capital Project Account and credited to SAC or the University contribution as provided in Section 7.2(b) of this Agreement. Such donations will normally be treated as contributions towards the capital cost of the project (i.e. principal payments).

- (h) The University will provide annually to SAC a University Accountability Report on the status of any and all funds including directed gifts and levies received or held in trust on behalf of SAC for the Student Commons. The University shall provide responses to SAC's reasonable requests for interim financial information related to the funds, directed gifts and levies from time to time. The University will also provide a report to SAC about the quantum of the Student Commons Levy together with the distribution to SAC of its other student levies in accordance with the University's annual student society levy remittance schedule.
- (i) The rate of increase to be applied to the Capital Cost Levy (the "**Capital Cost Levy Escalator**") for the 25 year period beginning with the opening of the Student Commons Building, currently estimated to be September 1, 2014, will be established at the date of opening by the Parties, at a level not to exceed 10% per annum and fixed at that rate for the entire 25 year term. The Capital Cost Levy Escalator is subject to approval annually by the University Affairs Board.

The Capital Cost Levy Escalator, which shall provide for an increase of up to 10% per annum shall take into account the additional costs arising from inflation and the repayment (over a 25 year period) of principal and borrowing costs of the Student Commons loan, and all other costs referred to in Section 7.6(a) above.

7.7 **Student Commons Operation**

- (a) **Operating Cost Levy.** The Operating Cost Levy shall be collected by the University upon the opening of the Student Commons and remitted to SAC in instalments, in accordance with the University's annual student society fee remittance schedule or as otherwise agreed pursuant to Section 6.1(c).
- (b) **Financial Solvency Requirement.** It is the Parties' intention that the Operating Cost Levy, as adjusted over time in accordance with 7.7(d), plus other revenues earned by SAC in operating the Student Commons will be sufficient to:
 - (i) cover all costs of operating the Student Commons, including, without limitation, the Operating Costs as defined in 6.1(a); and
 - (ii) maintain appropriate and prudent reserves, the quantum of which shall be determined by the Management Committee in its sole discretion, in a Reserve Fund, in accordance with Section 7.7(c).
- (c) **Reserve Funds.** As soon as the quantum of any surplus or deficit from the operations of the Student Commons is calculated for each year of the Term, such amount will be transferred to or from, as the case may be, a Student Commons reserve fund (the "**Reserve Fund**") to be established at the end of the first fiscal year of the Student Commons. Any accumulated surplus in such fund will be utilized as follows:

- (i) To provide appropriate and prudent reserve levels in accordance with reasonable business practice to allow for fluctuations in business operations, such as future deficits, and to provide for unexpected events, including without limitation, major renovations, such reserves to have target levels identified and budgeted in the long-range budget plan.
 - (ii) Once the prudent and appropriate reserve levels targeted in the long-range budget plan have been achieved, the Management Committee may, by a two-thirds majority, vote to apply any Excess Surplus (or a portion thereof) towards a special project.
- (d) **Operating Cost Levy Escalation.** The rate of increase to be applied to the Operating Cost Levy (the “**Operating Cost Levy Escalator**”) for the 25 year period beginning with the opening of the Student Commons building, currently estimated to be September 1, 2014, will be established annually by the SAC Board, at a level not to exceed 10% per annum and shall take into account additional costs arising from inflation. The Operating Cost Levy Escalator is subject to approval annually by the University Affairs Board.
- (e) **Budget for Student Commons.** SAC will use its best efforts to achieve a balanced operating budget in the operations of the Student Commons
- (f) **Dealing with Deficits.** In the event that following the third anniversary of the opening of the Student Commons, the Student Commons runs a deficit that persists for two (2) consecutive fiscal years in any 2-year period following the third anniversary of the opening that has not been caused by the University wrongfully withholding all or any portion of the Student Commons Levy, a plan shall be developed and implemented by the Management Committee, subject to the approval of the University, acting reasonably, to retire any such deficit within two years. If in the opinion of the University, the plan is considered inadequate to resolve the financial difficulties, the President of the University or designate will be asked to work with both Parties to determine a satisfactory solution. If no satisfactory solution is arrived at which resolves the financial difficulties within two years, the University may proceed to terminate SAC’s management of the Building in accordance with Section 3.5(b).
- (g) **Financial Accountability for SAC.** SAC will provide the University with the following accountability reporting:
 - (i) a long-term budget plan for the Student Commons for the next five years done on a rolling five-year basis, together with appropriate text explanation and commentary; and
 - (ii) unaudited financial statements for the Student Commons prepared on the same accounting basis and following the same format as utilized by the annual audited financial statements of SAC together with appropriate text

explanation and commentary, and that the total revenues, total expenses and net income or loss for the Student Commons be disclosed each year in the notes to the audited financial statements for SAC;

within 120 Business Days of SAC's fiscal year end.

- (h) **Access to records:** Commencing on the License Commencement Date and solely for purposes of verifying the financial solvency of the Student Commons, policy compliance as outlined elsewhere in this Agreement and SAC financial commitments referred to Article 7, the University, by its employees, agents and auditors, and exercisable by at least ten (10) Business Days' prior written notice provided to SAC, shall, solely at its own cost and expense and acting reasonably, have access to and may make copies of and extracts from and SAC shall provide full disclosure of, all material and relevant budgets, contracts, books, records, accounts and pertinent documentation relating to any contractual or financial activities relevant to the operation of the Student Commons. For greater certainty, the audit right described in this Section 7.7(h) shall not extend to any of SAC's employment agreements or any sponsorship agreements between SAC and third-parties or an audit of SAC's health and dental plan or related information. Any information and/or documentation procured by the University pursuant to this Section 7.7(h) shall at all times be kept confidential by the University and shall be either returned to SAC or destroyed, at SAC's discretion, within five (5) Business Days following the conclusion of the audit herein described.

7.8 Non-Competition

- (a) It is in the interest of the Parties to support the ongoing viability of the Student Commons and the University and SAC agree to regularly share and communicate new business initiatives, prior to implementation, in order to promote complementary services and minimize prejudicial competition in buildings adjacent to the Building. The University hereby acknowledges and agrees that SAC will be offering for sale in the Student Commons certain goods and services including vending machines, a food court and other food services, used book sales and photocopying services.
- (b) The University acknowledges that SAC intends to offer commercial printing and photocopying services in the Student Commons (which include, without limitation, specialized printing services for producing posters, signs and banners). The University agrees, furthermore that during the Term, the University will not offer or permit by lease, license or otherwise any third-party to offer in any of the buildings that it controls that are adjacent to the Building any commercial photocopying and/or printing business that are similar to FedEx Kinkos or The UPS Store (or any similar business or operation) as of the date hereof. The University acknowledges and agrees that should it wish to establish services in buildings that it controls that are adjacent to the Building that are not permitted by this subsection, it will discuss such wishes with SAC in advance and obtain SAC's prior written consent.

7.9 SAC Insurance.

- (a) SAC and all sub-licensees of the Student Commons will at all times maintain ‘all risks’ insurance coverage on replacement value basis pertaining to their equipment and personal property and a policy of comprehensive general liability insurance with at least \$5 million limit, per occurrence and including occupier’s or tenant’s legal liability, a cross-liability clause and with the University as an additional named insured and covering all operations and activities of SAC, including all operations and activities involving the sale and service of alcohol, and persons for whom it is responsible in law.
- (b) SAC’s insurance shall not be cancellable upon less than thirty (30) days’ notice from the insurer to the University. The limit for comprehensive general liability insurance shall be adjusted from time to time during the Term to maintain adequacy of coverage limit as required by the University, acting prudently.
- (c) SAC shall provide on the License Commencement Date and thereafter on the anniversary of the License Commencement Date, a certificate of insurance to the University’s insurance office confirming that insurance as described in this paragraph is in place at all times.

ARTICLE 8 - LIMITS OF LIABILITY AND INDEMNIFICATION

- 8.1 **Liability for Safety and Security.** Any liability associated with the safety and security of the Student Commons rests with SAC notwithstanding any sub-licensing or parting with the possession thereof, unless caused or contributed to by the University or any employee or agent thereof (and then only to the extent of such cause and contribution).
- 8.2 **Limitation on the University’s Liability.** The University shall make all reasonable attempts to meet its obligations to the Building as it would for any other University building. However, the University shall not be liable to SAC for any direct, indirect or consequential damage or damages which may arise by reason of the temporary interruption, suspension, discontinuance or failure of heating, electrical power or water supply (including, without limitation, power surges in the delivery of electricity) or any other utility or service supplied by the University to the Building pursuant to this Agreement, provided always that the University shall take reasonable steps to restore the supply of such utilities or services. However, where there is the opportunity to recover any such damages from insurance, the University shall make every commercially reasonable effort to do so and return any collected benefit to SAC. This limitation on the University’s liability shall not apply to the extent that the damages arise, directly or indirectly, from the negligence or wilful act of omission of the University or its officers, employees or agents acting in the course of their employment and within the scope of their duties.
- 8.3 **Indemnification of the University.** Except as herein otherwise expressly contemplated, SAC will indemnify and save harmless the University, its officers, employees and agents, from and against any and all Claims which it or they may suffer or incur, directly or indirectly, arising from:

- (a) the use and occupation by SAC, its employees, agents and sub-licensees, of the Student Commons and in particular, without restricting the generality of the foregoing, arising from the operation of any business, activity, event or service carried on through SAC therein or in respect thereto; and
- (b) any default or breach by SAC of any of the provisions of this Agreement,

provided that such indemnification shall not extend to any Claims to the extent that they arise, directly or indirectly, from the negligence or wilful act or omission of the University or its officers, employees or agents acting in the course of their employment and within the scope of their duties.

8.4 **Indemnification of SAC.** Except as herein otherwise expressly contemplated, the University will indemnify and save harmless SAC, its officers, employees and agents, from and against any and all Claims which it or they may suffer or incur, directly or indirectly, arising from:

- (a) the use and occupation by the University, its employees, contractors, agents and sub-licensees, of the Student Commons and in particular, without restricting the generality of the foregoing, arising from the operation of any business, activity, event or service carried on through the University therein or in respect thereto; and
- (b) any default or breach by the University of any of the provisions of this Agreement,

provided that such indemnification shall not extend to any Claims to the extent that they arise, directly or indirectly, from the negligence or wilful act or omission of SAC or its officers, employees or agents acting in the course of their employment and within the scope of their duties.

8.5 **Sub-License Indemnity.** All sub-licenses shall include a clause that indemnifies and saves harmless both the University and SAC from any and all claims, damages, actions, suits and costs whatsoever brought by any person against SAC or the University by reason of any act or omission relating to the occupancy or management of the Student Commons by the sub-licensee.

8.6 **Failure to Perform Due to the Occurrence of a Force Majeure Event.** If and whenever and to the extent that either Party is prevented, delayed or restricted in whole or in part in the fulfilment of any of its obligations hereunder due to the occurrence of a Force Majeure Event, the affected Party shall communicate to the other Party as soon as possible that said Force Majeure Event has occurred and continues and shall have no responsibility or liability for any interruption, delay, cancellation, loss, damages, costs or expenses sustained by the other Party by reason thereof, provided always that a Party shall not be relieved from performance if it could reasonably be expected to have taken the Force Majeure Event into account at the time of the signing of this Agreement or to have avoided or overcome the Force Majeure Event or its consequences. The exemption provided by this Section 8.6 has effect only for the period during which the impediment exists, and a Party,

which suffers due to the occurrence of a Force Majeure Event, shall take all reasonable steps and make all reasonable efforts to mitigate against and remove the same. If a Party claims relief under this Section 8.6, the other Party shall be relieved from any obligations that it has under this Agreement insofar as those obligations are contingent on the affected Party's resolution of the Force Majeure Event.

ARTICLE 9- MISCELLANEOUS

- 9.1 **Good Faith and Granting of Consent.** SAC and the University shall work together in good faith, on the basis of being transparent and accountable to one another, with respect to the implementation of the terms of this Agreement. In this regard, whenever a consent or approval of the University or SAC is required under the terms of this Agreement, such consent or approval will not be unreasonably withheld or delayed (provided that any other consideration in granting such consent or approval contemplated in this Agreement with respect to any specific matter shall be taken into account). If either Party withholds any consent or approval, that Party will, on request by the other Party, deliver to the other Party a written statement giving the reasons for doing so. Discussions between the University and SAC should be executed in good faith, on the basis of openness and transparency. Further, notwithstanding anything contained herein to the contrary, SAC shall be kept apprised of significant design plans for the Renovations.
- 9.2 **Amendments.** No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties.
- 9.3 **Dispute Resolution.** Any Dispute shall be resolved in the following manner:
- (a) The Party alleging the Dispute shall provide written notice of Dispute giving particulars of the Dispute to the other Party (a "**Notice of Dispute**"). Each Party shall appoint a representative and cause its respective representative to meet as soon as possible in an effort to resolve the Dispute.
 - (b) If the representatives are unable to resolve the Dispute within one (1) month of the Notice of Dispute, either Party may refer the Dispute to a mediator, chosen by agreement, who will be appointed to facilitate a resolution. The costs of the mediator, if any, shall be borne equally by both Parties. Each Party shall bear its own costs for the mediation. The mediation process shall be confidential and without prejudice to the position of the Parties in future proceedings, and the content of mediation discussions shall not be referred to in any way in any subsequent consideration of the Dispute.
 - (c) If the Dispute is not resolved with the assistance of the mediator within whatever time frame the mediator sets, either Party may refer the Dispute to a dispute resolution panel (a "**Panel**") to finally determine the Dispute. The Panel will be composed of three persons, one of whom will be appointed by each Party with the third person (the "**Chair**") appointed by the members appointed by each Party. Each Party shall bear its own costs associated with appointing its respective appointee. The costs of the Chair, if any, shall be borne equally by both Parties.

The determination of the Panel (either unanimously or by a majority decision) shall be final and binding, and no further recourse will be available.

- (d) If the Parties are unable to agree upon either a mediator or the Chair of a Dispute Resolution Panel, they shall request the appointment of a suitable Mediator or Chair by the Ontario Superior Court of Justice.

9.4 **Further Assurances.** Each Party will take all other actions and will execute and deliver all other instruments and documents as may be necessary or desirable in the reasonable opinion of the other Party hereto to evidence or carry out the terms or intent of this Agreement. In addition, the University shall provide SAC with such assistance as SAC may reasonably require in connection with the carrying out or the funding of the Renovations.

9.5 **Notices.** In this Agreement:

- (a) any notice or communication required or permitted to be given under this Agreement will be in writing and will be considered to have been given if delivered by hand, transmitted by facsimile or electronic transmission or mailed by prepaid registered post in Canada, to the address or facsimile transmission number or email address of each Party set out below:

- (i) if to SAC:

Office of the President – University of Toronto Students’ Union

Attention: President
Fax No: 416-978-2018
Email address: president@utsu.ca

- (ii) if to the University:

Office of the Vice-President and Provost

Attention: Vice-Provost, Students & First-Entry Divisions
Fax No: 416-946-0678
Email address: vp.students@utoronto.ca

or to such other address, facsimile transmission number or email address as any Party may designate in the manner set out above;

- (b) notice or communication will be considered to have been received:

- (i) if delivered by hand during business hours on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business on the next Business Day;

- (ii) if sent by facsimile transmission during business hours on a Business Day, upon the sender receiving confirmation of the transmission, and if not transmitted during business hours, upon the commencement of business on the next Business Day;
- (iii) if emailed during business hours on a Business Day, one hour after it is sent, provided that the sender does not receive notice that the email could not reach its intended destination, and if not sent during business hours, upon the commencement of business on the next Business Day; and
- (iv) if mailed by prepaid registered post in Canada, upon the fifth Business Day following posting; except that, in the case of a disruption or an impending or threatened disruption in postal services every notice or communication will be delivered by hand or sent by facsimile transmission-

- 9.6 **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with Ontario law and applicable Canadian law and will be treated in all respects as an Ontario contract.
- 9.7 **Number and Gender.** Words in the masculine gender include the feminine and neutral genders and words in the singular include the plural, and vice versa.
- 9.8 **Entire Agreement.** This Agreement, together with the Schedules and exhibits attached hereto, and the documents and instruments to be executed and delivered under it constitute the entire agreement between the Parties and supersedes any previous agreement or arrangement, oral or written, between the Parties, including the LOI. This Agreement and the documents and instruments to be executed and delivered under it, contain all the covenants, representations, and warranties of the respective Parties. There are no oral representations or warranties between the Parties of any kind.
- 9.9 **Enurement and Assignment.** This Agreement will enure to the benefit of and be binding on the respective successors of the Parties. Neither Party may assign, directly or indirectly, all or part of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 9.10 **No Waiver.** No waiver of any term or provision of this Agreement shall be effective or made binding unless made in writing and signed by the Party whose waiver is being requested, and, unless otherwise provided in written waiver, shall be limited to the specific term or provision waived. No failure or delay on the part of either Party in exercising any right or power under this Agreement will operate as a waiver, nor will any single or partial exercise of any right of power preclude any further exercise. Except as may be limited in this Agreement, either Party may exercise any right or power concurrently or individually without the necessity of making any election.

9.11 **Third Party Beneficiary.** For clarity, the provisions of Sections 4.2, 5.4 and 3.5(b)(iv) of this Agreement, if applicable, and each other provision of this Agreement which are to the benefit of SAC in SAC's own capacity and not in its capacity as agent for the full time undergraduate students of the St. George Campus, are intended for the benefit of SAC in its own capacity.

9.12 **Survival.** Except as otherwise provided in this Agreement, termination of this Agreement shall be without prejudice to, and shall not affect:

- (a) any representations, warranties and indemnities under this Agreement;
- (b) Section 3.5 of this Agreement;
- (c) Section 3.6 of this Agreement;
- (d) Section 4.3 of this Agreement;
- (e) Section 5.4 of this Agreement;
- (f) Section 7.6(c) of this Agreement; and
- (g) Article 8 of this Agreement,

each of which shall survive the termination of this Agreement.

9.13 **Fax and Counterparts.** This Agreement may be signed in any number of counterparts and such counterparts may be delivered by facsimile or other electronic means. Such counterparts, taken together, shall constitute one and the same instrument.

TO EVIDENCE THEIR AGREEMENT each of the Parties has executed this Agreement on the date appearing above.

[Signature page to follow]

**STUDENTS' ADMINISTRATIVE
COUNCIL OF THE UNIVERSITY OF
TORONTO**

Per:

Name:

Office:

And per:

Name:

Office:

We/I have authority to bind the organization.

**THE GOVERNING COUNCIL OF THE
UNIVERSITY OF TORONTO**

Per:

Name:

Office:

And per:

Name:

Office:

We/I have authority to bind the University.

SCHEDULE “E”

License Terms

1. Purpose of this Schedule

This Schedule sets out the terms of the License to occupy and use the Building for the Term and the Renewal Terms which has been granted to the Students pursuant to Section 5.4(a) of the Agreement of which this Schedule forms a part, in the event of termination of SAC’s entitlement to manage and operate the Student Commons.

2. Defined Terms

All capitalized terms used in this Schedule and not otherwise defined in this Schedule shall have the meaning given to them in the Agreement.

3. Use of Building

- (a) The Students shall be permitted to occupy and use the Building for purposes consistent with the general goals of the Student Commons as specified in Section 2.2 of the Agreement. The Students will exercise all due and reasonable care in their use of the Building.
- (b) Subject to Sections 4.9, 4.10 and 7.8, all applicable laws, regulations and by-laws and all University published policies, procedures and legal obligations must be complied with in the conduct of the activities taking place within the student allocated space in the Student Commons including with respect to sub-licenses. These include but are not limited to policies, procedures and obligations of the University relating to:
 - (i) use of the University’s names, name abbreviations, logos, crests, trade-marks, official marks, trade names, and other intellectual property;
 - (ii) alcohol consumption, sale and service;
 - (iii) sale and use of tobacco products;
 - (iv) copyright;
 - (v) licenses of general application relating to intellectual property;
 - (vi) health and safety;
 - (vii) food service regulations;
 - (viii) posted fire legal room capacities;
 - (ix) advertising, publicity and signage;
 - (x) non-affinity exclusivity agreements in place at the time of signing;
 - (xi) fundraising, sponsorship, and affinity exclusivity agreements;
 - (xii) union and other labour agreements;
 - (xiii) human rights;
 - (xiv) academic freedom; and

- (xv) environmental protection.

4. University Access to the Building

- (a) The University, by its employees, agents and contractors, including without limitation, University of Toronto police, caretaking staff and the staff of the Facilities and Services Department of the University, shall have access to all parts of the Student Commons for purposes of routine maintenance, safety and fire prevention and hazard control whenever necessary to carry out the responsibilities of their jobs. Notwithstanding the foregoing, the University shall use reasonable efforts to provide advance written notice, stating the reason for access, where access is required to offices of levy groups stating the reason for the requested access, unless it is required in the case of an Emergency, in which case the said prior notice is not required (but the reason for the access in the case of an Emergency shall be provided to the Students in writing as soon as practicable after such emergency access).
- (b) The University shall retain a key or keys thereto accordingly, but this stipulation does not impose and shall not be deemed to impose any additional liability on the University for the safety or security of the Student Commons.
- (c) The Students will not, without the written consent of the University, install or modify or permit to be installed or modified any lock or other security device on the external or internal doors or windows or any perimeter openings of or affecting ingress to or egress from the Building.

5. Building Services, Repairs and Maintenance

- (a) The University shall be financially responsible for and carry out all Building and Building systems facility operations and maintenance, including without limitation major structural or capital repairs and replacements, in accordance with the University's general standards of keeping buildings on the St. George Campus in good operating condition and in compliance with all applicable laws and regulations including municipal zoning and Building Code requirements, subject to Section 6.2(c) and 6.2(d) of the Agreement.

6. Limitation on University's Liability

- (a) The University shall make all reasonable attempts to meet its obligations to the Building as it would for any other University building. However, the University shall not be liable to the Students for any direct, indirect or consequential damage or damages which may arise by reason of the temporary interruption, suspension, discontinuance or failure of heating, electrical power or water supply (including, without limitation, power surges in the delivery of electricity) or any other utility or service supplied by the University to the Building, provided always that the University shall take reasonable steps to restore the supply of such utilities or services. This limitation on the University's liability shall not apply to the extent that the damages arise, directly or indirectly, from the negligence or wilful

act of omission of the University or its officers, employees or agents acting in the course of their employment and within the scope of their duties.

- (b) The University shall not be liable or responsible in any way for any loss of or damage or injury to any property of the Students or any other person while such property is on or about the Building unless such loss, damage or injury shall have been caused by the negligence or wilfull act or omission of the University or its officers, employees or agents acting in the course of their employment and within the scope of their duties. Notwithstanding the foregoing, in no event shall the University be liable for any damage to any such property caused by anything done or omitted to be done by any other person, including any other licensee or occupant of the Building.

7. **Rules and Regulations**

- (a) The University may impose and enforce reasonable rules and regulations relating to access to the Building or parts of the Building, security, compliance with University policies, procedures and regulations and compliance with occupational, environmental, health, fire and safety laws, by-laws and regulations that apply to or affect the Students' use and occupancy of the Building.

[NTD: Schedules A, B, C, D and F will be included in the final version of this Agreement, and will appear in the form agreed between the parties.]