



FOR APPROVAL

CONFIDENTIAL

***IN CAMERA* SESSION**

TO: Governing Council

SPONSOR: Professor Scott Mabury, Vice President, University Operations

CONTACT INFO: 416-978-7116 , scott.mabury@utoronto.ca

PRESENTER: see above

CONTACT INFO:

DATE: April 27, 2017 for May 18, 2017

AGENDA ITEM: 12

ITEM IDENTIFICATION:

Capital Project: University of Toronto Scarborough New Student Residence – Report of the Project Planning Committee, Total Project Cost, and Sources of Funding

JURISDICTIONAL INFORMATION:

The *Policy on Capital Planning and Capital Projects* provides that capital projects exceeding \$10 million (Approval Level 3) at UTM will first be considered by the UTM Campus Affairs Committee and the UTM Campus Council, which shall recommend approval to Academic Board. The *Policy* further states that “If a project will require financing as part of the funding, the project proposal must be considered by the Business Board.” Following consideration and approval by the Academic Board, such proposals are then brought forward to the Executive Committee for endorsement and forwarding, before being considered by the Governing Council for approval.

Separate from the approval of the Project Planning Report, the *Policy* also requires that “Execution of such projects is approved by the Business Board.”

GOVERNANCE PATH:

A. Project Planning Report: Project Planning Report, Total Project Cost, and Sources of Funding

1. UTSC Campus Affairs Committee [for recommendation] (March 22, 2017)
2. UTSC Campus Council [for recommendation] (April 18, 2017)
3. Academic Board [for recommendation] (April 20, 2017)
4. Business Board [financing, for recommendation] (April 6, 2017)
5. Executive Committee [for endorsement and forwarding] (May 4, 2017)
6. **Governing Council [for approval] (May 18, 2017)**

B. Execution of the Project

1. Business Board [for approval] (April 6, 2017)

PREVIOUS ACTION TAKEN:

At the May 25, 2015 Capital Project and Space Allocation Committee (CaPS) Executive Committee, the request to proceed with a Request for Expression of Interest (RFEI) to select a development partner and for the expenditure of funds to engage consultants to a maximum of \$2 million to proceed with design of the new student residence were approved.

A presentation was given to the Campus Affairs Committee on the Student residence model on March 23, 2016. At the Campus Council meeting on April 19, 2016, the Chair reported to the members that she would work with the Chair of Business Board to conduct ongoing consultation with key Business Board members to provide input on the proposed model leading up to the Business Board approval meeting for November. These consultation meetings occurred on June 7, 2016 and October 27, 2016.

At the November 17, 2016 Business Board meeting, Professor Scott Mabury, Vice-President, University Operations was given authority to execute the Letter of Intent – UTSC Residence (Capital Project) (and accompanying Schedules) and move to the development of definitive agreements between the University of Toronto and the preferred development partner. The Letter of Intent was executed on November 30, 2016. The Letter of Intent outlined the principal terms and conditions relating to the development and construction of a 750 bed residence for first year students on the University's Scarborough campus at a total estimated cost of approximately \$90 million with an addition of \$5 million by the investor as a buffer, outlays in excess of approximately \$95 million would be the sole responsibility of the University.

On December 20, 2016 a Request for Proposal was issued for the “Development of Performance Output Specifications and Architectural Compliance Services” for the student residence project and the evaluation of the preferred consultant team is currently under review by the evaluation selection committee. The intent is that the requirements developed by the consultant team will be utilized in a request for proposal for design-build contracting teams and will form the basis for the contract with the successful Design-Build contractor.

HIGHLIGHTS:

Discussion of the site, space plan and schedule can be found in the open session document for this project “Capital Project: Report of the Project Planning Committee for a New Student Residence at the University of Toronto Scarborough”, item 4, for this meeting.

FINANCIAL AND PLANNING IMPLICATIONS:

a) Total Project Cost

The total estimated project cost for the New Student Residence project at the University of Toronto Scarborough is \$ 92.6 million with a buffer of \$5 million totalling \$97.6 million. At the May 25, 2015 CaPS Executive meeting, the expenditure of up to \$2 million in consulting fees, included in the Total Project Cost, was approved.

b) Funding Sources

In summary:

- There is no long term University investment or long term debt in the project.
- The University provides construction contribution amount up to approximately 70% of project costs that are deemed financeable; construction financing will be fully reimbursed post occupancy
- A new subsidiary of the University will be the general partner and will not be providing any capital investment.
- A subsidiary of the investor will be the limited partner and will provide up to 40% equity investment
- Total project cost including buffer is \$97.6 Million-the University would be responsible for any excess
- All long-term financing will be outside of the University.

Funding Source and Financing Sources	Amount	Notes
University of Toronto Working Capital Funds (Construction Financing or “Construction Contribution Amount”) covering hard and soft costs and contingencies *	Up to 61 million	To be reimbursed to the University post occupancy*
Investor Equity Contribution (Construction financing may be required depending on timing of receipts)*	Up to 37.5 million	
Project Costs		
Project Cost before Contingency and Finance charges	90.6 million	
Capital Project Construction Financing Charges	Up to 2 million	
Project buffer from Investor to cover additional hard and soft costs and contingencies	5 million	
Total Project Cost before Other Transactions Costs (1)	97.6 million	

(1) Other Transaction Costs such as Investor development and commitment fees and land transfer taxes will be due by the LP at the time of transfer of asset.

** For clarity, partial funding is to be provided through an investor equity contribution, and construction financing is to be provided by the University of Toronto, to be repaid with accrued interest from term financing to be obtained by UTSC Residence LP from an arm's length lender*

c) Secondary Effects

The primary secondary effect of the new residence in the proposed site is the loss of parking space in parking lot F. It currently contains 358 parking spaces. Based on the current massing model it is expected that the total will be reduced to 198 spaces. As identified in *Schedule "E" Key Financial Assumptions* of the LOI, a 2 million dollar contribution to UTSC Ancillary Services will be made to compensate for "Parking Displacement" by this project, and is intended to support a future initiative to replace this parking. The Investor will contribute \$2 million to deal with this issue, as part of the \$37.5 million investor equity contribution, and that this \$2 million is part of the total project cost of \$97.6 million as outlined below in the recommendations section.

This loss of parking may be offset for example by the new parking structure currently in planning stages, which will provide a proposed 500 new spots in accordance with the campus increase required by city by-law.

Changes to existing traffic patterns are not expected as the existing entrance and driveway to parking lot F is located adjacent to the proposed location. Given the proximity to the intersection, the addition of a 750 bed residence and the traffic expected from visitors from campus to the residence each day, pedestrian safety will need to be addressed. Construction staging can be provided in the remaining portion of parking lot F or to the East on undeveloped land if required.

Other effects include:

- Impact on other University units such as the Residence Administration staff moving costs.

d) Operating Costs

Operating expenses of \$126.48/GSM (\$3.0 million in year 1) are in line with the average operating costs of existing student residences at UTSC; except utility costs are anticipated to be reduced due to an energy efficient building design. The University will charge annual ground rent (\$0.4 million in year 1) to the partnership for use of the project lands. The University will also charge an annual student life fee to the project (\$0.6 million in year 1) to recover the cost of providing student life programming services. The operating budget will also include an annual reserve for major maintenance and lifecycle costs calculated at 4% of total annual revenues.

Governing Council – May 18, 2017; Capital Project: University of Toronto Scarborough New Student Residence – Report of the Project Planning Committee, Total Project Cost, and Sources of Funding

Pre-liminary Operating Expenses (Year 1)	(\$ m)
Operating Expenses ^{1,2}	\$3.0
Annual Lifecycle Maintenance Reserve ³	0.4
Residence Life Costs ⁴	0.6
Total Operating Expenses	\$4.0
Annual Growth Rate for Operating Expenses	1.5 %*

*Note: Operating expenses are assumed to grow at CPI, which is estimated to be 1.5% annually.

RECOMMENDATIONS:

Be It Resolved

THAT the proposed project for the New Student Residence at the University of Toronto Scarborough (UTSC), as outlined in the Report of the Project Planning Committee dated February 21, 2017, be approved in principle with a total project cost of up to \$97.6 million, to be funded as follows:

Funding Source and Financing Sources	Amount	Notes
University of Toronto Working Capital Funds (Construction Financing or “Construction Contribution Amount”) covering hard and soft costs and contingencies *	Up to 61 million	To be reimbursed to the University post occupancy*
Investor Equity Contribution (Construction financing may be required depending on timing of receipts)*	Up to 37.5 million	
Project Costs		
Project Cost before Contingency and Finance charges	90.6 million	
Capital Project Construction Financing Charges	Up to 2 million	
Project buffer from Investor to cover additional hard and soft costs and contingencies	5 million	
Total Project Cost before Other Transactions Costs (1)	97.6 million	

(1) Other Transaction Costs such as Investor development and commitment fees and land transfer taxes will be due by the LP at the time of transfer of asset.

¹ Operating Expenses are calculated at \$126.48/gsm and include Property Management Fees, Insurance, Utilities, Salaries & Benefits, General & Administrative, Repairs & Maintenance, and Contract Services costs

² Ground rent is not included in the Operating Expenses figures presented above

³ Annual Maintenance Reserve is calculated as 4% of Total Revenue

⁴ Costs incurred by the University to deliver Residence Life Program which will be reimbursed by the Limited Partnership

Governing Council – May 18, 2017; Capital Project: University of Toronto Scarborough New Student Residence – Report of the Project Planning Committee, Total Project Cost, and Sources of Funding

** For clarity, partial funding is to be provided through an investor equity contribution, and construction financing is to be provided by the University of Toronto, to be repaid with accrued interest from term financing to be obtained by UTSC Residence LP from an arm's length lender.*

DOCUMENTATION PROVIDED:

Business Board – November 17, 2016 Item 11. In camera closed session: Letter of Intent: University of Toronto + Preferred Investor (Capital Project – UTSC Student Residence)



OFFICE OF THE GOVERNING COUNCIL

FOR APPROVAL

CONFIDENTIAL

IN CAMERA SESSION

TO: Business Board

SPONSOR: Scott Mabury, Vice President, University Operations
CONTACT INFO: 416-978-7116, scott.mabury@utoronto.ca

PRESENTER: Andrew Arifuzzaman, Chief Administrative Officer, UTSC
CONTACT INFO: 416-287-7108, Andrew.arifuzzaman@utoronto.ca

DATE: November 3, 2016 for November 17, 2016

AGENDA ITEM: 11

ITEM IDENTIFICATION:

Letter of Intent (LOI) - University of Toronto and Fengate Capital Management Ltd. ("Fengate") (UTSC Student Residence project)

JURISDICTIONAL INFORMATION:

Section 5.1(b) of the Business Board Terms of Reference specifies that the Board is responsible for concurrence with respect to major projects, plans or programs outside the normal course of business that require the balancing of expense and revenue (including but not limited to new residences or parking structures).

GOVERNANCE PATH:

1. **Business Board [for approval] (November 17, 2016)**

PREVIOUS ACTION TAKEN:

A presentation was given to the Campus Affairs Committee on the Student residence model on March 23, 2016. At the Campus Council meeting on April 19, 2016, the Chair reported to the members that she would work with the Chair of Business Board to conduct ongoing consultation with key Business Board members to provide input on the proposed model leading up to the Business Board approval meeting for November. These consultation meetings occurred on June 7, 2016 and October 27, 2016.

Business Board – Letter of Intent (LOI) University of Toronto and Preferred Investor (Capital Project-UTSC Student Residence)

HIGHLIGHTS:

The University proposes to enter into a letter of intent (“LOI”) with Fengate Capital Management Ltd. (“Fengate”) outlining the principal terms and conditions relating to the development and construction of a 750 bed residence for first year students (the “Residence”) on the University's Scarborough campus (“UTSC”) at a total estimated cost of approximately \$90 million with an addition of \$5 million by the investor as a buffer, outlays in excess of approximately \$95 million will be the sole responsibility of the University. These amounts are subject to adjustments for certain taxes.

Background

A new residence UTSC is necessary to expand and diversify our housing inventory to meet current demand from undergraduate students as well as increased needs arising from projected growth in both domestic and international enrolment to 2019-20 as well as our longer-term enrolment goals to 2034-35. The development of a new residence will replace some of the aging housing stock, introduce standard features of student housing facilities on campus, create innovative living-learning opportunities, attract students, increase the profile of UTSC, and enhance the campus experience.

The residence will provide a first year undergraduate experience, that links academic growth and academic success. The space and amenities in the residence will be designed to support residents in their daily needs, and interests and in their academic and personal development

The new 750 bed modern dormitory style residence features single and double occupancy bedrooms with semi-private washrooms, a campus dining hall, flexible spaces for workshop style learning to house academic, student support and conference activities delivered by various campus partners, retail space, a new home for Student Housing & Residence Life offices, hoteling offices for campus partners, and two Visiting Scholars suites for rental. Integrating academic and traditional dorm style accommodation with meal plan programs gives a competitive advantage over other housing options in the community such as the rooming house style.

The current preferred massing and floor plate scenario for the project is one 8-10 Storey building, all subject to zoning requirements and approvals and will be located on the North campus.

The University will provide the construction financing at market rates and conditions and Fengate will provide equity contribution. The construction financing will be taken out by a term loan at occupancy, which will be arranged by the partnership. The University will be the general partner and will act as the operator of the residence and residence life programming.

Business Board – Letter of Intent (LOI) University of Toronto and Preferred Investor (Capital Project-UTSC Student Residence)

Letter of Intent (LOI) Summary:

The key features of the LOI are as follows:

- The University will own the land
- the University and Fengate will form a limited partnership (“UTSC Residence LP”), with University as the general partner and Fengate as the limited partner.
- Fengate will provide all cash equity required for the development of the Residence (estimated to be approximately \$40 million) and will receive a commitment fee of 1.15 % of the capital contributed.
- the University will undertake the development of the Residence under a project agreement and provide the construction financing at a market interest rate;
- the University will be responsible for cost overruns above a stipulated sum (approximately \$95 million) and will share in savings equally with Fengate if the project cost comes in at less than a stipulated sum (approximately \$90 million); these amounts are subject to adjustments for certain taxes.
- the University will receive a development fee of 3% of hard costs and Fengate will receive a development advisory fee of 1.25% of hard costs.
- the University will lease the Residence lands to UTSC Residence LP for a term of 99 years at initial rental rate of approximately \$400,000 per year subject to periodic inflation adjustments and revaluations; the lease will be net and care free to the University.
- as general partner, the University will have control over the management of UTSC Residence LP subject to Fengate's right to approve certain decisions.
- cash available after payment of annual operating expenses and other committed outlays will be distributed to the partners according to a waterfall under which Fengate will receive its capital back plus an 8% return, the University will receive a 20% “catch up”, and thereafter distributions will be shared by Fengate as to 80% and the University as to 20%.
- the University will agree not to build a new residence at UTSC that primarily serves first year students for a period of 5 years from occupancy.
- the University and Fengate will provide asset oversight services to UTSC Residence LP in return for an annual fee of 2% of the Residence’s annual gross revenues (the University retains 75% of this fee).

Business Board – Letter of Intent (LOI) University of Toronto and Preferred Investor (Capital Project-UTSC Student Residence)

- a third party operator will be engaged to perform all property management functions at the Residence.
- the University will provide all residence life services to student residents in return for an annual fee of \$558,000 subject to inflation adjustments.
- the transaction is subject to Governing Council approval of the definitive agreements relating to the formation and capitalization of UTSC Residence LP and, subject to this approval, closing is expected to occur in April 2017.

The provisions of the LOI are non-binding with the exception of the commitment of the University to negotiate exclusively with Fengate until the anticipated closing date. In return for this exclusivity period, Fengate will provide a \$1 million refundable deposit to the University which can be used pending closing to pay project-related costs and would be reimbursed to Fengate with interest at prime plus 1% if the transaction is not completed.

Partner Details:

Fengate is an asset management firm that specializes in customized investment funds and asset management services, with a strategic focus on infrastructure, real estate and private equity investments. Fengate's limited partners are institutional investors (multi-employer pension plans, corporate pension plans, life insurance companies and university pension plans) which have long-term investment horizons in excess of 20 years. To date, Fengate has participated in over 100 investment transactions across its investment platforms from real estate development projects to infrastructure public-private partnership ("PPP") projects, including projects for Canadian universities.

PRELIMINARY FINANCIAL IMPLICATIONS:

The total project cost is estimated up to \$95million, subject to adjustments for certain taxes. The University will provide the construction financing at market rates and conditions. The construction financing will be taken out by a term loan post occupancy, which will be arranged by the partnership. In totality the project will be financed by a combination of equity provided by the investor 40%, and long term debt financing of approximately 60%.

The initial student residence monthly rent is on average \$1,401 and was supported by a market demand study undertaken by the Scion Group in May, 2016. The rents will increase at 3% per year during the first five years of operations and at the greater of CPI or the recommended increase approved by University Governing Council thereafter. Occupancy assumptions are based on current experience, with 99% occupancy expected during the academic term and 45% occupancy expected during the summer term. The University will not provide a guarantee for occupancy levels. Dining Hall revenues will be based on a monthly meal plan cost of \$600 / participant and a 15% net contribution margin. Assumptions regarding commercial retail and office rent levels are consistent with market rents in the area and have been validated by Fengate through their own due

Business Board – Letter of Intent (LOI) University of Toronto and Preferred Investor (Capital Project-UTSC Student Residence)

diligence process. Retail rents are based on an assumption of \$30 / SF and office rents are based on an assumption of \$20 / SF. All retail and office rents are triple net.

Operating expenses of \$11.75 / SF (\$3.0 million in year 1) are in line with the average operating costs of existing student residences at UTSC. The University will charge annual ground rent (\$0.4 million in year 1) to the partnership for use of the project lands. The University will also charge an annual student life fee to the project (\$0.6 million in year 1) to recover the cost of providing student life programming services. The operating budget will also include an annual reserve for major maintenance and lifecycle costs calculated at 4% of total annual revenues.

The Year 1 cash flow to the University is estimated to be \$1.2M. In addition, the project will include the contribution of 31 RA rooms, representing a Year 1 value of approximately \$0.5 million. The University will also earn a project management fee of approximately \$2.3 million (3% of hard costs) during the construction phase for developing the project.

The project generates an unlevered IRR of approximately 7%. Fengate will earn a preferred return of 8% and an IRR of approximately 11% over the life of the project, with an estimated Total Project Cost (TPC) of \$93.2M.

RECOMMENDATION

Be It Resolved:

THAT the Vice-President, University Operations be given authority to execute the Letter of Intent - UTSC Residence (Capital Project) (and accompanying Schedules) and move to the development of definitive agreements between the University of Toronto and Fengate Capital Management Ltd. dated November 2, 2016.

DOCUMENTATION PROVIDED:

Letter of Intent (LOI), dated November 2, 2016

UTSC Residence LP LOI November 2, 2016

LETTER OF INTENT

This letter of intent ("**LOI**") outlines certain principal terms and conditions concerning the design, development, construction, financing and operation of the Project (as defined below) to be built at UTSC (as defined below). This LOI is not an exhaustive list of all the terms and conditions, but will form the basis for the preparation of satisfactory Definitive Agreements (as defined below) among the parties described below.

1. Definitions

- (a) "**Actual Total Construction Cost**" means all actual third party "Hard Costs", "Soft Costs" and "Contingencies" of the type referred to in Table 1 of Schedule "E" incurred in connection with the design, development and construction of the Project (net of rebates), excluding, for greater certainty, the Other Project Costs.
- (b) "**Affiliate**" means, in respect of any Person, any other Person controlling, controlled by or under common control with such Person.
- (c) "**Ancillary Facilities**" means, collectively, the Parking Facility and the Co-Generation Facility.
- (d) "**Asset Oversight Agreement**" has the meaning ascribed to that term in Section 2.2(g).
- (e) "**Available Cash**" has the meaning ascribed to that term in Section 3.4(f).
- (f) "**Co-Generation Facility**" means the proposed central utilities plant to be built at a location on the UTSC campus to be determined, as more particularly described in Schedule "C".
- (g) "**Competing Residence**" has the meaning ascribed to that term in Section 3.3(j).
- (h) "**Construction Financing**" has the meaning ascribed to that term in Section 2.2(d).
- (i) "**Definitive Agreements**" means the Asset Oversight Agreement, the LP Agreement, the Ground Lease, the Project Agreement, any Operating Agreement and any other material agreements required to complete and give effect to the Transactions.
- (j) "**Deposit**" has the meaning ascribed to that term in Section 9.3.
- (k) "**Development Costs**" means the third party costs to be incurred by the University pursuant to the Project Agreement to develop the Residence, as more particularly set out in the Key Financial Assumptions.

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- (l) “**Equity Option**” has the meaning ascribed to that term in Section 4.2(f).
- (m) “**Estimated Total Construction Cost**” means the estimated third party “Hard Costs” “Soft Costs” and “Contingencies” referred to in Table 1 of Schedule “E” to be incurred in connection with the design, development and construction of the Project (net of rebates), excluding, for greater certainty, the Other Project Costs.
- (n) “**Financial Closing**” means the completion of the formation and initial capitalization of UTSC Residence LP as contemplated in this LOI.
- (o) “**Financial Closing Date**” means the date of the Financial Closing.
- (p) “**General Partner**” means the General Partner of UTSC Residence LP which, as determined in the University’s sole discretion, shall be the University or an Affiliate that is wholly-owned by the University.
- (q) “**GFA**” means the gross floor area of the Residence, calculated by taking the sum of the total area of each floor level, above and below the ground, measured from the exterior wall of each floor level and which is currently expected to be 23,707 square meters.
- (r) “**Ground Lease**” has the meaning ascribed to that term in Section 2.2(e).
- (s) “**Initial Investor Capital Contribution**” has the meaning ascribed to that term in Section 3.3(b).
- (t) “**Investor**” means Fengate Capital Management Ltd., an Affiliate thereof or a fund advised, managed or controlled by Fengate Capital Management Ltd. or an Affiliate thereof.
- (u) “**Investor Capital Contribution**” has the meaning ascribed to that term in Section 2.2(b).
- (v) “**Key Financial Assumptions**” has the meaning ascribed to that term in Section 4.1.
- (w) “**Lands**” means the lands shown in red on Schedule “A” comprising approximately 1.44 acres of land located at UTSC (subject to minor modification as required during site planning).
- (x) “**Lifecycle Maintenance Cost Schedule**” means the cost and scheduled timing to replace or refurbish the major building components of the Residence over the [30] year period following the Occupancy Date.
- (y) “**Limited Partner**” means the limited partner of UTSC Residence LP, which shall be a limited partnership, the sole general partner of which is a corporation wholly-owned by the Investor or its Affiliates and the limited

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partners of which are one or more investment funds, private equity funds, infrastructure funds or investment programs managed, directly or indirectly, solely by the Investor.

- (z) “**Losses**” has the meaning ascribed to that term in Section 3.3(c).
- (aa) “**LP Agreement**” has the meaning ascribed to that term in Section 2.2(a).
- (bb) “**Occupancy Date**” means the date an occupancy permit for all or part of the Residence is issued by the City of Toronto.
- (cc) “**Operating Agreement**” has the meaning ascribed to that term in Section 2.2(f).
- (dd) “**Operator**” has the meaning ascribed to that term in Section 2.2(f).
- (ee) “**Other Project Costs**” means the other Project costs of the type referred to under the heading “Other Project Costs” in Table 1 of Schedule “E”.
- (ff) “**Parking Facility**” means the proposed above-ground parking structure to be built on the north campus of UTSC, as more particularly described in Schedule “D”.
- (gg) “**Partners**” means, collectively, the Limited Partner and the General Partner.
- (hh) “**Person**” means an individual, corporation (with or without share capital), body corporate, partnership, joint venture, association, trust, unincorporated organization or governmental authority, and includes a trustee, executor, liquidator, administrator or other legal representative.
- (ii) “**Project**” means the design, development, construction, financing and operation of the Residence.
- (jj) “**Project Agreement**” has the meaning ascribed to that term in Section 2.2(c).
- (kk) “**Project Budget**” has the meaning ascribed to that term in Section 5.1(f)(i).
- (ll) “**Project Design Works**” means the design of the Project in accordance with the Project requirements established by the University and UTSC Residence LP based on the Project Reports, the University’s design standards and applicable law.
- (mm) “**Project Reports**” means the most recent reports relating to the Project prepared by the University (including the Project planning report subject to approval thereof by the University’s Governing Council) and by third party consultants and which are currently posted on the data site established by

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the University for due diligence purposes in connection with the Transactions, as the same may be updated or supplemented from time to time after the date hereof.

- (nn) “**Residence**” means the 750 bed student residence to be built on the Lands as more particularly described in the Project Reports.
- (oo) “**Shareholders Agreement**” has the meaning ascribed to that term in Section 2.2(a).
- (pp) “**Special Approval**” means the approval of the General Partner and the Limited Partner.
- (qq) “**Term Financing**” has the meaning ascribed to that term in Section 2.2(d).
- (rr) “**Transactions**” has the meaning ascribed to that term in Section 2.2.
- (ss) “**Total Project Cost**” means the Actual Total Construction Cost and the Other Project Costs.
- (tt) “**University**” means the Governing Council of the University of Toronto.
- (uu) “**University Capital Contribution**” has the meaning ascribed to that term in Section 4.2(f).
- (vv) “**UT Additional Partnership Interest**” has the meaning ascribed to that term in Section 4.2(f).
- (ww) “**UTSC**” means the University of Toronto Scarborough campus.
- (xx) “**UTSC Residence LP**” means UTSC Residence Limited Partnership, a limited partnership to be formed under the laws of the Province of Ontario.

2. Overview of Transactions

- 2.1 **Description of Project.** Reference is made to the Project Reports which describe the Project, including all key programmatic requirements and amenities and the Project planning and procurement process. This LOI presumes that the Residence will be designed, developed and constructed having regard to the requirements set forth in the Project Reports and, without limiting the foregoing, the University and the Investor confirm their mutual intention (having regard to the Project Budget) to construct a high quality sustainable building that is recognized as a leader in energy efficiency.
- 2.2 **Overview of Transaction Components and Structure.** The principal components and structure of the transactions related to the Project (the “**Transactions**”) shall be as follows:

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- (a) **Formation of UTSC Residence LP.** The University will cause the General Partner, as sole general partner, and the Investor will cause the Limited Partner, as sole limited partner, to form UTSC Residence LP and to enter into a limited partnership agreement relating to the ownership, operation and governance of UTSC Residence LP (the "**LP Agreement**"). The University may, directly or indirectly, acquire an additional interest in the Partnership on the terms and conditions hereinafter set forth.
- (b) **Capitalization of UTSC Residence LP.** Subject to the provisions of Section 4.2(f), the Limited Partner will provide the cash equity required for the design, development and construction of the Project by way of capital contributions to UTSC Residence LP in the approximate amount of up to \$37,535,586 (the "**Investor Capital Contribution**").
- (c) **Design, Development and Construction.** UTSC Residence LP will enter into a project agreement (the "**Project Agreement**") with the University pursuant to which the University will undertake the design, development and construction of the Project, will obtain all applicable planning, regulatory and environmental approvals as contemplated in Section 5 hereof and will undertake to arrange or provide the Construction Financing. Subject to Section 4.2, UTSC Residence LP will pay the Total Project Cost pursuant to the agreed construction payment schedule set out in the Project Agreement.
- (d) **Financing.** The University shall arrange or provide the construction financing (the "**Construction Financing**"), which, together with the Investor Capital Contribution, will be required to complete the design, development and construction of the Project in accordance with the Project Budget and to pay the Actual Total Project Cost. UTSC Residence LP shall arrange term financing to take out the Construction Financing (the "**Term Financing**").
- (e) **Ground Lease.** The University, as landlord, and UTSC Residence LP, as tenant, will enter into a long term ground lease of the Lands (the "**Ground Lease**").
- (f) **Operation of the Residence.** UTSC Residence LP will engage one or more third party operators (each, an "**Operator**") to undertake facility management functions related to the operation of the Residence pursuant to one or more operating agreements (each, an "**Operating Agreement**").
- (g) **Asset Oversight Agreement.** The University and the Investor will enter into an asset oversight agreement with the General Partner pursuant to which they will provide asset oversight service to UTSC

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Residence LP in return for an annual fee (the “**Asset Oversight Agreement**”).

The Transactions are more fully described in the following provisions of this LOI. The University and the Investor will work cooperatively to structure the Transactions in an efficient manner having regard to taxes, fees, levies and other charges and having regard to the circumstances of each party, including, without limitation, the requirements imposed on the Investor by the *Pension Benefits Act* (Ontario).

- 2.3 **Ancillary Facilities.** While this LOI sets out the principal terms and conditions concerning the Project, the University’s intention and expectation is to also involve the Investor in the design, development, construction, financing and operation of one or both of the Ancillary Facilities. To that end, the University and the Investor confirm their mutual intention to work actively and co-operatively to develop a legal and commercial framework for their potential co-investment in one or both of the Ancillary Facilities according to the parameters set out in Schedule “B”. For the avoidance of doubt, the completion of the Transactions is not conditional upon the parties coming to terms on the legal and commercial framework that may be applicable to any transaction involving one or both of the Ancillary Facilities.

3. Formation of UTSC Residence LP and Related Matters

- 3.1 **Incorporation of the General Partner.** If the University elects not to act as the direct General Partner, the University will incorporate the General Partner by filing articles of incorporation under the *Business Corporations Act* (Ontario). The General Partner (if not the University) shall be a wholly-owned subsidiary of the University and the University shall nominate and elect all of its directors. As used in this LOI, the term “General Partner” means, as applicable, either the University or its wholly-owned subsidiary. The University shall not transfer or encumber its share of the General Partner or permit the General Partner to issue shares to any Person other than the University, in each case without the prior written consent of the Investor. The Limited Partner shall be entitled to have an observer present at any meetings of the board of directors of the General Partner and shall be provided with all materials prepared for the directors in advance of each such meeting and copies of all resolutions passed by the directors from time to time and minutes of meetings prepared in respect of each such meeting.
- 3.2 **Formation of UTSC Residence LP.** The General Partner, as sole general partner, and the Limited Partner, as sole limited partner, shall form UTSC Residence LP by filing a declaration under the *Limited Partnerships Act* (Ontario) and entering into the LP Agreement.

3.3 **LP Agreement.** The LP Agreement shall include the following principal terms:

(a) **Interests in UTSC Residence LP.** The interests of the General Partner and the Limited Partner in and to UTSC Residence LP shall be divided as follows:

<u>Partner</u>	<u>Percentage Interest</u>
Limited Partner	99.999%
General Partner	0.001%

In addition, the University may acquire, or cause the General Partner to acquire a UT Additional Partnership Interest pursuant to the exercise of the Equity Option as contemplated in Section 4.2(f).

(b) **Funding of Investor Capital Contributions, etc.** The Investor Capital Contribution (inclusive of the Deposit) will be used to fund costs, expenses and fees in accordance with the Project Budget. \$5,000,000 of the Investor Capital Contribution (inclusive of the Deposit) (the “**Initial Investor Capital Contribution**”) shall be contributed by the Limited Partner to UTSC Residence LP on the Financial Closing. The Initial Investor Capital Contribution will be used to fund the Development Costs, including reimbursement of any Development Costs contemplated by the Project Budget which are incurred by the University prior to the Financial Closing. As directed by the University pursuant to the Project Agreement, the balance of the Investor Capital Contribution will be advanced at or prior to the completion of the Construction Financing and all such funds shall be used to pay project costs in accordance with the Project Budget. On the Financial Closing, the Investor will receive a one time commitment fee in the amount of 1.15% of the Investor Capital Contribution. The General Partner shall make a capital contribution of \$1.00 to UTSC Residence LP. Except as provided in Section 4.2, unless otherwise agreed by the Partners, the Partners shall not be responsible to contribute any capital to UTSC Residence LP in excess of the Investor Capital Contribution and the General Partner’s capital contribution as provided in the previous sentence. In the event that the General Partner, acting reasonably and in compliance with its duties, determines that additional capital is required by UTSC Residence LP to fund lifecycle and capital expenditures contemplated, to increase or replenish capital, lifecycle, and/or operating reserves, to fund additional capital required by a lender, or for any other bona fide business purpose,

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the General Partner and the Investor shall negotiate in good faith for an agreed period to agree as to the amount and source of such additional capital, including considering debt financing sources. If the General Partner and the Investor are unable to agree, or agree that the source of such additional capital shall be capital contributions from Partners, the General Partner may obtain such additional capital as capital contributions to UTSC Residence LP, provided that the Limited Partner shall have the first right and option to provide such additional capital on terms and conditions agreed by the General Partner and the Investor acting reasonably or, failing agreement, which are no more favourable than the terms and conditions applicable to the Investor Capital Contribution as provided herein (including, for greater certainty, in respect of distributions as provided in Section 3.3(f)). If the Limited Partner elects not to contribute such additional capital, the General Partner shall have the right to obtain such additional capital from the University and/or any third parties on the same terms and conditions as are offered to the Limited Partner. The LP Agreement shall set forth detailed procedures relating to the contribution of additional capital to UTSC Residence LP contemplated by the foregoing.

- (c) **Roles/Liabilities of Partners.** The General Partner shall have control over the management of the business of UTSC Residence LP and shall have unlimited liability for its debts, liabilities, losses and obligations. In exercising its power and discharging its duties, the General Partner shall act honestly, in good faith and in the best interests of UTSC Residence LP, as a fiduciary, and shall exercise the same degree of care, skill or diligence that a director of a corporation would exercise in similar circumstances in respect of the conduct of an operation comparable to the Residence. The General Partner shall be indemnified out of the assets of UTSC Residence LP only against any loss, damage, liability, deficiency, cost or expense ("**Losses**") for or by reason of its activities on behalf of UTSC Residence LP, except to the extent that any Losses arise (i) as a result of the General Partner's breach of fiduciary duty, fraud, gross negligence, violation of law or breach of its contractual obligations, (ii) in respect of any reduction in distributions or other amounts otherwise payable to the University and/or the General Partner or the devaluation of the interest of the University and/or the General Partner and (iii) in respect of any costs and expenses the General Partner has agreed to bear for its own account. The Limited Partner shall not take part in the day-to-day control or management of the business of UTSC Residence LP and shall not be liable for any of its debts, liabilities, losses or obligations.

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- (d) **Decisions requiring approval of all Partners.** The following actions or decisions of UTSC Residence LP shall require Special Approval:
- (i) a sale of all or substantially all of the assets of UTSC Residence LP;
 - (ii) the admission of any Person as a limited partner or general partner of UTSC Residence LP; and
 - (iii) any other matter requiring Special Approval as set forth herein or in the LP Agreement.
- (e) **Advisory Council.** UTSC Residence LP shall have an advisory council composed of a minimum of six members, three of whom shall be selected by the Limited Partner and three of whom shall be selected by the General Partner (the "**Advisory Council**"). The Advisory Council may also have independent members jointly selected by the General Partner and the Limited Partner. The Advisory Council shall meet at least monthly during the design, development and construction phase of the Project and at least quarterly thereafter. The Advisory Council shall consult with the General Partner in relation to matters affecting the Project and the operation of the Residence. The Advisory Council will be consultative body and will have no decision-making authority.
- (f) **Distributions.** Distributions of Available Cash shall be made by UTSC Residence LP to the Partners no less frequently than quarterly. Subject to the exercise of the Equity Option, Available Cash will be distributed in the following order and priority:
- (i) first, 100% to the Limited Partner until the Limited Partner has received the Investor Capital Contribution and further capital contributions, if any;
 - (ii) then, 100% to the Limited Partner until a preferred return equal to 8% per annum compounded annually has been received by the Limited Partner on the Investor Capital Contribution and further capital contributions, if any, calculated daily from the date of each contribution or deemed contribution as contemplated in Section 3.3(b);
 - (iii) then, 50% to the General Partner until such time as the General Partner has received a cumulative amount equal to 20% of the sum of the distributions made to the Limited Partner under Section 3.3(f)(ii) and this Section 3.3(f)(iii) and made to the General Partner under this Section 3.3(f)(iii); and

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- (iv) thereafter, 80% to the Limited Partner and 20% to the General Partner.

The distribution waterfall set forth above shall be modified if the University exercises the Equity Option and, for the avoidance of doubt, the Investor Capital Contribution and the University Capital Contribution shall rank *pari passu* without preference of one over the other for the purposes of all distributions provided above.

- (g) **Allocation of Income, Expenses, Gains and Losses.** The income, expenses, gains and losses of UTSC Residence LP for each fiscal period will be allocated in the manner generally consistent with the distributions of cash from UTSC Residence LP as outlined in Section 3.3(f).
- (h) **Reporting, etc.** The General Partner will regularly report to the Limited Partner with respect to the progress of the Project and the operations of the Residence after the Occupancy Date and, without limitation:
 - (i) Within five (5) years following the Occupancy Date, and on or before every fifth (5th) anniversary thereafter, the General Partner will meet with the Limited Partner to review and, as necessary, update or supplement the Lifecycle Maintenance Cost Schedule including obtaining the Limited Partner's input on the need to accelerate any material expenditures contemplated by the Lifecycle Maintenance Cost Schedule. Unless the General Partner and the Limited Partner otherwise agree, prior to each such five (5) year review the General Partner will arrange for an independent engineer to review the Lifecycle Maintenance Cost Schedule and to make recommendations with respect to any necessary changes or supplements thereto and the independent engineer's report shall be provided to the Limited Partner at least thirty (30) days prior to the meeting.
 - (ii) The General Partner will furnish audited annual financial statements and internally prepared quarterly reports to the Limited Partner. In addition, the Limited Partner will be provided with the annual tax information necessary for the completion of its tax returns.
 - (iii) The Limited Partner will have the right, at its own expense, to review the books and records of UTSC Residence LP from time to time.

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- (i) **Transfer of Interests.** The Limited Partner may only sell, assign or transfer any interest in UTSC Residence LP:
 - (i) to an Affiliate of the Limited Partner controlled by the Investor, provided that any non-Investor controlled equity owners of the Affiliate are not “Restricted Persons” (to be defined in the LP Agreement with regard to the principle that this provision is not intended to restrict the ability of the Investor to carry on its business in the ordinary course);
 - (ii) to a fund advised or managed solely by the Limited Partner or the Investor or controlled by the Investor, provided that any non-Investor controlled equity owners of the fund are not “Restricted Persons” (to be defined in the LP Agreement with regard to the principle that this provision is not intended to restrict the ability of the Investor to carry on its business in the ordinary course); or
 - (iii) with the prior approval of the General Partner, which approval may be granted or withheld in the General Partner’s sole discretion, and otherwise in accordance with the requirements set out in the LP Agreement and in compliance with applicable law.

The LP Agreement will include provisions permitting the Limited Partner to sell, assign or transfer its interest to eligible parties without the approval contemplated in Section 3.3(i)(iii) following the tenth (10th) anniversary of the Occupancy Date. The Investor, working in conjunction with the University, may initiate a process at least 18 months prior to the tenth anniversary of the Occupancy Date to review and consider liquidity alternatives for the Investor and, if applicable, the University, and such review shall, at the request of the University, include consideration of the University acquiring the Limited Partner’s interest in UTSC Residence LP in whole or in part.

- (j) **Competing Residence.** The University will agree not to permit the construction of any new on-campus student residences at UTSC which primarily serve first year students (each, a “**Competing Residence**”) for a period commencing on the date hereof and ending on the fifth (5th) anniversary of the Occupancy Date.

3.4 **Capital and Operating Budgets, Waterfall.**

- (a) Prior to the first year of the Residence’s operation, based on the Key Financial Assumptions, the University and the Investor will approve the operating and capital budget for the first year of the Residence’s operations, which approval shall not be unreasonably withheld (the

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“Base Year Budget”). For each year of the Residence’s operations thereafter, the annual operating and capital budget for the Residence will be the Base Year Budget updated only for inflation and other market factors beyond the control of the General Partner (for example, the cost of electricity as set by governmental authorities, but not the consumption of electricity) in accordance with the methodology agreed in the Base Year Budget. At least 60 days prior to the end of each year, the General Partner shall deliver to the Limited Partner the annual capital and operating budget for the ensuing year determined in accordance with the foregoing. In addition, on an annual basis, the Parties will consider whether any changes are required to the methodology set forth in the Base Year Budget, which changes shall require the prior approval of the Investor, acting reasonably.

- (b) Subject to Section 3.4(a), in any year, the General Partner will not require separate approval from the Investor for the annual operating and capital budget determined pursuant to Section 3.4(a) or for any expenditure within such budget or any expenditure outside such budget to the extent the expenditures outside the budget are in the aggregate less than 5% of such budget. Any budgets or expenditures that do not meet the foregoing requirements will require the separate approval of the Investor.
- (c) If expenditures exceed the approved budgets by more than 5% in more than three consecutive years, the matter will be referred to the Advisory Council who will cooperate in good faith to recommend measures to stay within budget. The General Partner, in good faith, will consider and adopt such recommendations, as appropriate.
- (d) If expenditures are consistently below the approved budget, the General Partner and the Investor will review initiatives proposed by the General Partner to deploy savings to enhance the economic viability and performance of the Residence.
- (e) All revenue received by or on behalf of UTSC Residence LP will be allocated in accordance with the approved budgets for the applicable year and a cash allocation waterfall for payment of expenses and costs and distributions to the Partners.
- (f) All cash available after the allocations to the budgets for the applicable year will be **“Available Cash”** and will be defined in the LP Agreement and distributed to the Partners no less than quarterly in accordance with the LP Agreement.

3.5 Consummating the Transactions. The University and the Investor shall join as parties to the LP Agreement to evidence their various obligations

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and their commitment to use commercially reasonable efforts to consummate the Transactions, including, without limitation, negotiating, and causing the General Partner and the Limited Partner, respectively, to negotiate, the terms of and enter into, as applicable, the Project Agreement and the Ground Lease in accordance with the summary of material terms of each such document included as a schedule to the LP Agreement.

3.6 **Asset Oversight Agreement.** At the Financial Closing, the University and the Investor will enter into the Asset Oversight Agreement with the General Partner pursuant to which the University and the Investor will provide advisory and oversight services in respect of the development, construction and financing of the Residence and the operation of the Residence after the Occupancy Date. In consideration of such services, UTSC Residence LP shall pay the University and the Investor an aggregate annual fee equal to 2% of the gross revenues generated from the Residence in each year inclusive of taxes, if applicable, of which 1.5% shall be paid to the University and 0.5% shall be paid to the Investor. In addition, the Asset Oversight Agreement shall operate as a unanimous shareholders agreement relating to the ownership, operation and governance of the General Partner, UTSC Residence LP and the Project and the following actions or decisions which the General Partner proposes to take or which the University proposes to cause the General Partner to take (in respect of the General Partner, UTSC Residence LP or the Project) shall require the prior written approval of the Investor:

- (a) any decisions of the University requiring the approval of UTSC Residence LP pursuant to the Project Agreement, including the matters contemplated by Section 5.1(f) hereof, or pursuant to the Ground Lease;
- (b) any change in the rental rates for the Residence, other than in accordance with the provisions of Section 8.2;
- (c) approval of the terms and conditions of the Construction Financing, the Term Financing, any refinancing of either of them, and any other indebtedness for borrowed funds;
- (d) any material alteration, demolition, expansion or re-purposing of the Residence;
- (e) carrying on any business other than the Project and the design, development, construction, financing and operation of the Ancillary Facilities;
- (f) approval of any material Contract which is not entered into in the ordinary course of the business of UTSC Residence LP;

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- (g) amending its articles or other constating documents, or making, amending or repealing any by-law;
- (h) taking or instituting proceedings for its winding-up, reorganization or dissolution;
- (i) approval of the Ground Lease, the Project Agreement, any Operating Agreement and any amendments thereto or termination thereof or any waiver or consent thereunder;
- (j) any assignment of the Ground Lease, Project Agreement or any Operating Agreement by UTSC Residence LP;
- (k) subject to Section 3.6(p), any decision to enter into, amend, terminate, waive any right under or provide any consent under any contract or transaction with a party not dealing at arm's length with the University or the Investor;
- (l) any sale, assignment, transfer of any interest in UTSC Residence LP by the General Partner or the resignation or removal of the General Partner as the general partner of UTSC Residence LP;
- (m) any sale, assignment, transfer or encumbrance of any shares in the capital of the General Partner, if applicable;
- (n) any issuance of any shares or other securities of the General Partner; and
- (o) any other matter requiring the approval of the Investor in the Asset Oversight Agreement.

In addition to the above items requiring the approval of the Investor, any decision in respect of the following matters shall be made solely by the Investor, acting reasonably (and if the Investor makes a decision in respect of any such matter, the General Partner shall implement such decision):

- (p) any action, including without limitation any waiver or consent, any exercise of remedies, any action to remedy a breach, and initiating and controlling any dispute resolution procedure, in respect of or in connection with any breach by or dispute with the University or any party not acting at arm's length with the University under or in respect of the Project Agreement, the Ground Lease or any other agreement between UTSC Residence LP and the University entered into in any capacity other than as the General Partner or any party not acting at arm's length with the University; the Definitive Agreements shall include a dispute resolution mechanism whereby the applicable parties will endeavour, through reasonable commercial efforts, including escalation to decision makers, to resolve disputed matters

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or rectify University breaches to the Investor's reasonable satisfaction.

Neither the University nor the General Partner shall assign the Asset Oversight Agreement without the prior written consent of the Investor, which may be withheld in its sole discretion. Any assignment of the Asset Oversight Agreement by the Investor shall comply with Section 3.3(i), mutatis mutandis. No Person shall be admitted as the General Partner of UTSC Residence LP unless such Person has agreed to be bound by the Asset Oversight Agreement. The Asset Oversight Agreement shall remain in full force and effect until the dissolution of UTSC Residence LP. The foregoing approval rights of the Investor shall remain operative notwithstanding any breach or default by the Investor under or in respect of the Asset Oversight Agreement, without prejudice (except as provided by the foregoing) to the rights of the University and UTSC Residence LP to enforce their rights and remedies under the Asset Oversight Agreement or at law in respect of any such breach or default. The parties acknowledge that the Asset Oversight Agreement and the arrangements thereunder will be structured so as not to expose the Investor to any liability in respect of the obligations of UTSC Residence LP. At the option of the Investor, any approval right contemplated above may be included as an approval right of the Limited Partner in the LP Agreement rather than an approval right of the Investor in the Asset Oversight Agreement.

The University and the Investor understand and acknowledge that the process for making decisions and providing approvals during the design, development and construction phase of the Project must be efficient and definitive so as to enable the University to: (i) obtain necessary approvals from its Governing Council; (ii) adhere to and comply with all of the requirements of the Broader Public Sector Procurement Directive and the University's procurement policies; (iii) comply with applicable law; and (iv) meet its obligations under the Project Agreement.

- 3.7 **Steering Committee.** Pending the formation of UTSC Residence LP, the University and the Investor will constitute a steering committee composed of a minimum of six members, three of whom shall be selected by each party, to consult in relation to the Project Reports, the Project Design Works, the development and construction of the Project including the components of the Project, the Project Budget, the material terms of the Project Agreement and other matters contemplated by Section 3.6. This steering committee will be disbanded on the Financial Closing Date and will be replaced by the governance bodies contemplated herein.

4. Financial Assumptions for the Project

- 4.1 **Key Financial Assumptions.** Attached hereto as Schedule "E" is a draft of the Project Budget and the key underlying financial assumptions, including

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those related to projected hard and soft costs, revenues, operating income and operating expenses (the “**Key Financial Assumptions**”). The Investor and the University shall review the Key Financial Assumptions in consultation with their professional advisors with a view to reaching agreement on the Project Budget and the amount of the Initial Investor Capital Contribution and the Investor Capital Contribution.

4.2 **Allocation of Construction Cost Overruns and Savings.**

- (a) The Limited Partner will be responsible to fund, or arrange funding for, any amount by which the Actual Total Construction Cost exceeds the Estimated Total Construction Cost, up to a maximum of \$5,000,000. These amounts may, at the Investor’s discretion, acting reasonably, be subject to adjustment for any taxes, development charges, fees and levies which are not provided for in the Approved Budget but become payable in connection with the Project, provided that no such adjustment shall be made unless corresponding increases are made to the rental rates contemplated by Section 8.2, or other adjustments as mutually agreed, the extent of such increase or other adjustments to be determined primarily with the requirement of maintaining the economic viability of the Project and the Investor’s anticipated returns. However such increases or other adjustments will only be made, at the Investor’s discretion, acting reasonably, after taking into consideration a comprehensive set of factors including, but not limited to: student rental rates relative to both student affordability and market rentals rates, overall Residence occupancy levels, and the competitiveness of other student housing options. Any additional cash contribution made by the Limited Partner shall be added to and form part of the Investor Capital Contribution.
- (b) The University will be responsible to fund any amount by which the Actual Total Construction Cost exceeds \$95,560,000 as the same may be adjusted as contemplated in Section 4.2(a). At the University’s request, the Investor will work with the University to identify funding or financing sources for such cost overruns. For greater certainty, such amount shall not constitute a loan to UTSC Residence LP and the University will not be entitled to any interest in UTSC Residence LP as a result of funding such amount.
- (c) Each of the parties will be entitled to 50% of any amount by which the Actual Total Construction Cost is less than the Estimated Total Construction Cost as the same may be adjusted as contemplated in Section 4.2(a).
- (d) For the avoidance of doubt, the Actual Total Construction Cost does not include any Other Project Costs. The Other Project Costs shall

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be payable by UTSC Residence LP pursuant to the Project Agreement.

- (e) By mutual agreement of the University and the Investor, acting reasonably, the thresholds specified in Sections 4.2(a), 4.2(b) and 4.2(c) will be increased by the cost of any innovations, variations and/or improvements to the Project which would reasonably be expected to result in future cost savings and/or higher financial returns for the Partners.
- (f) At the sole option of the University, any amounts payable by the University pursuant to Section 4.2(b) can be set off against the project management fee payable to the University pursuant to Section 5.1(i). Any amounts payable to the University pursuant to Section 4.2(c) will be paid as part of the project management fee payable to the University pursuant to Section 5.1(i). Further, the University will have the option (the "**Equity Option**") to convert any amounts payable to it pursuant to Section 4.2(c) into an additional partnership interest in UTSC Residence LP (the "**UT Additional Partnership Interest**"). The portion of the amount payable to the University pursuant to Section 4.2(c) which is converted into a UT Additional Partnership Interest shall be treated for all purposes as a capital contribution by the University or the General Partner, as applicable, to UTSC Residence LP (the "**University Capital Contribution**") ranking on a parity with the Investor Capital Contribution. The General Partner and the Limited Partner will, through good faith negotiations, amend and restate the LP Agreement to the extent necessary to give effect to the exercise of the Equity Option and the issuance of the UT Additional Partnership Interest. The University and the Investor acknowledge that certain additional amounts payable to the University in connection with the Project may also be convertible into a UT Additional Partnership Interest in accordance with the foregoing provisions of this Section 4.2(f), *mutatis mutandis*.

5. Design, Development and Construction of the Project.

- 5.1 The Project will be designed, developed and constructed pursuant to the Project Agreement which shall be executed by the University and UTSC Residence LP on or before the date specified in the planning and procurement timeline for the Project approved by the University and the Investor on or prior to the Financial Closing. The material terms of the Project Agreement shall include the following:
 - (a) **University as Project Manager.** The University will have overall responsibility for the delivery of the Project until the Occupancy Date in accordance with the terms of the Project Agreement, which shall

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include procurement, management of the development and construction of the Project and arranging or providing the Construction Financing as contemplated in Section 7.1. The University may subcontract any project management functions to reputable third parties, provided that the University shall retain responsibility to deliver all subcontracted functions.

- (b) **Procurement.** The University shall lead all procurement required for the Project through any required request for qualifications and/or request for proposals processes in accordance with the Broader Public Sector Procurement Directive and the University's procurement policies.
- (c) **Project Delivery.** The University shall lead project management and contract management in the delivery of the Project until the Occupancy Date.
- (d) **Approvals.** The University shall obtain all applicable permits, licenses, agreements and approvals (including environmental approvals and severances, zoning by-law amendments and site plan approval) from provincial and municipal governmental and regulatory agencies which are required for the design, development and construction of the Project in accordance with the Project Design Works and all required building permits for the design, development and construction of the Project.
- (e) **UTSC Residence LP to be Kept Informed.** The University shall keep UTSC Residence LP informed at regular Project update meetings with respect to the status of the procurement, approval, design, development and construction of the Project.
- (f) **Decisions requiring approval of UTSC Residence LP.** The University shall require the prior approval of UTSC Residence LP with respect to certain actions or decisions, including the following:
 - (i) approval of the budget for the Estimated Total Construction Cost and Other Project Costs (the "**Project Budget**") and material modifications thereto;
 - (ii) approval of the Project Design Works (having regard to the requirements set forth in the Project Reports, as applicable) and material modifications thereto;
 - (iii) approval of the Project delivery schedule and material modifications thereto;
 - (iv) approval of the material aspects of the contracting methodology selected to undertake the design and

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construction of the Residence (i.e.. stipulated sum versus design build);

- (v) approval of the design firm selected to undertake the design of the Residence and the contract entered into therewith; provided that a project design consultant will be engaged by the University as soon as possible after the date hereof to provide assistance to the parties and their steering committee and other governing bodies during the design phase of the Project prior to the selection of permanent consultants;
 - (vi) approval of the construction contractor or constructor selected to undertake the construction of the Residence and the contract entered into therewith; and
 - (vii) any assignment of the Project Agreement by the University.
- (g) **Access License.** The University will grant UTSC Residence LP a license to access the Lands for the Project, which shall run until execution of the Ground Lease and shall not be amended or terminated without the prior written consent of the Investor.
- (h) **Payment of Total Project Cost.** The Project Agreement shall set forth the timetable and milestones for payment of the Total Project Cost having regard to the requirements of the Construction Financing and the payment requirements under the construction contract.
- (i) **Project Management Fees.** At the end of the development period, the University will receive a one-time project management fee in the amount of 3% of the budgeted hard costs of the Project inclusive of taxes, if applicable. In addition, the Investor (or its affiliates) will receive a one-time project management advisory fee in the amount of 1.25% of the budgeted hard costs of the Project inclusive of taxes, if applicable.

The Project Agreement shall include such other provisions as are customary for development projects of similar properties in the Province of Ontario.

A detailed summary of the material terms of the Project Agreement will be included as a schedule to the LP Agreement.

6. Ground Lease and Related Matters

- 6.1 **Ground Lease Material Terms.** The Ground Lease shall be entered into by the University and UTSC Residence LP within 60 days following the

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Occupancy Date. The material terms of the Ground Lease shall include the following:

- (a) **Term.** The term of the Ground Lease shall be a minimum of 99 years from the Occupancy Date (the "**Term**").
- (b) **Rent.** Rent shall be payable by UTSC Residence LP monthly or at other agreed intervals in advance to the University at the rate of \$1.57 per square foot of GFA per annum plus applicable taxes, subject to a CPI adjustment every 5 years. In addition, the Lands shall be re-appraised at 30 years and 60 years during the Term based on the highest and best use to re-establish the rent in effect for years 31 and 61, respectively.
- (c) **Net Lease.** Subject to Section 6.2, rent shall in all respects be absolutely net to the University and UTSC Residence LP shall pay, or cause to be paid, all costs and expenses of any nature or kind whatsoever relating to or affecting the Project as though it was the owner of the Project in fee simple, including, without limitation, all outlays for maintenance and repairs and property and other applicable taxes.
- (d) **Permitted Uses.** The Residence shall be operated as a residence for students of UTSC and Residence support staff. The Residence will include an office component, a retail component and other uses that are ancillary to the operation of a residence, all as determined by UTSC Residence LP.
- (e) **Insurance.** UTSC Residence LP shall maintain such property, liability and other types of insurance in such amounts and to such extent as it or its lenders determine to be appropriate and as may be usual and prudent for owners of similar properties and similar locations. The University, the General Partner and the Limited Partner shall be named as an additional insured under all policies as appropriate in the reasonable judgment of UTSC Residence LP.
- (f) **Assignment, etc.** Subject to Section 7.3, during the Term, UTSC Residence LP shall not, without the prior consent of the University, assign, sublease or license its interest in the Ground Lease, the Residence or any part thereof, directly or indirectly (including by way of a change of control), with the exception only of subleases, licenses and other occupancy agreements with the University, students and other occupants of the Project in the ordinary course of business or as otherwise permitted pursuant to Section 3.3(i).
- (g) **Project Development/Alteration/Redevelopment.** UTSC Residence LP shall have the right to undertake alterations and

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replacements of the Residence or components thereof with the University's prior approval based on customary provisions for land leases of similar properties in the Province of Ontario.

- (h) **Land Transfer Tax.** UTSC Residence LP shall be responsible for all land transfer tax exigible in connection with the granting of the leasehold interest under the Ground Lease.

The Ground Lease shall include such other provisions as are customary for land leases of similar properties in the Province of Ontario.

A summary of the material terms of the Ground Lease will be included as a schedule to the LP Agreement.

- 6.2 **Site Conditions.** UTSC Residence LP shall indemnify and hold the University harmless from and against any and all claims, liabilities, penalties, fines and expenses arising out of or resulting from exposure to, or the presence of hazardous substances which are released on to the Lands following the Occupancy Date, except and to the extent that such hazardous substances are released on to the Lands from the University's adjacent lands. UTSC Residence LP shall not be responsible for any pre-existing contamination which is in, on, under or upon the Lands on the Occupancy Date or the geotechnical condition of the Lands (including any changes thereto), and the University shall indemnify and hold UTSC Residence LP harmless from and against any and all claims, liabilities, penalties, fines and expenses arising out of or resulting from any such pre-existing contamination or the geotechnical condition of the Lands (including any changes thereto). The environmental and geotechnical provisions contained in the Ground Lease shall include additional customary environmental and geotechnical provisions for land leases of similar properties in the Province of Ontario.

7. Financing

- 7.1 **Construction and Term Financing.** In addition to the Investor Capital Contribution to be provided by the Limited Partner, the financing required for the Project shall be provided or arranged as follows:

- (a) **Construction Financing.** As part of the University's commitment to undertake the design, development and construction of the Project, the University shall arrange or provide the Construction Financing on commercially reasonable market terms. UTSC Residence LP shall be responsible for all applicable financing and carrying charges payable to the University and/or any third party construction lender as set forth in the Project Budget. It is currently anticipated that the University will provide the Construction Financing from its own resources. For the avoidance of doubt, the Construction Financing

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provided by the University must be repaid in full from the proceeds of the Term Financing, which the parties will endeavor to obtain as soon as possible following completion of construction.

(b) **Term Financing.** The Term Financing for the Project shall be obtained by UTSC Residence LP from external institutional sources on commercially reasonable terms. In the event that the proceeds of the Term Financing exceed the aggregate amount required to repay the Construction Financing and any other outstanding liabilities provided for in the Project Budget, the General Partner may, in its discretion, set aside all or any portion of the excess proceeds as capital and/or operating reserves in lieu of distributing such funds to the Investor as a return of capital, provided that any such reserved funds shall continue to earn the returns set forth in Section 3.3(f) hereof.

7.2 **No Guarantees, etc.** Except as provided herein, neither the University nor the Investor shall be required to provide guarantees or other assurances with respect to the Construction Financing or the Term Financing, other than customary limited recourse guarantees and pledges providing that recourse is limited to the interests of the Partners in the Residence.

7.3 **Leasehold Mortgage Financing.** The University shall not be required to subordinate its interest in the Lands to any mortgagee of the leasehold estate or to other creditors of UTSC Residence LP. UTSC Residence LP shall have the right, at any time and from time to time, to mortgage its leasehold estate and to make collateral assignments of or create security interests in subleases, licenses, rents and other personal property pertaining to the Project and to extend, modify, renew or replace any such mortgage, assignments and security interests. The University shall provide to third party lenders holding leasehold mortgages those protections which are reasonably required by such leasehold mortgagees as are customary for land leases of similar properties in the Province of Ontario.

8. Operation of the Residence

8.1 **Structure of Residence Operations.** The operation of the Residence from and after the Occupancy Date, including the entering into of leases, licenses and other occupancy agreements, shall be structured so as to ensure compliance with all applicable laws and maximum efficiency for tax purposes. In furtherance of this objective, the University will be the "occupant" of the Residence and will provide all Residence life programming including, without limitation, room assignment, managing student relations and collecting of rents and fees. All student occupancy agreements will be entered into by the University and structured so as to ensure compliance with all applicable laws and maximum efficiency having regard to taxes, fees, levies and other charges. In consideration of the residence life

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services, the University will be paid an annual fee by UTSC Residence LP at the initial rate of \$558,000 per year inclusive of taxes, if applicable, subject to an annual inflation adjustment which in the case of employees' salaries shall be based on mandated increases for the University's unionized labour.

- 8.2 **Rental Rate per Unit.** The parties agree that the starting rental rate will be an average of \$1,401 per Residence unit per month – this is the average rate across various room types. During the first 5 years following the Occupancy Date, the rental rate per Residence unit per annum will increase by not less than 3%. From and after the fifth anniversary of the Occupancy Date, the rental rate per Residence unit per annum will increase by at least the greater of: (a) CPI; and (b) the increase recommended by the Governing Council of the University of Toronto.
- 8.3 **Operations.** Based on the approved structure of the Residence operations as contemplated in Section 8.1 hereof, UTSC Residence LP shall engage one or more reputable experienced Operators to provide facilities management functions related to the operation of the Residence, including maintenance and repairs, pursuant to the terms of one or more Operating Agreements. UTSC Residence LP shall comply with the University's procurement policies and requirements and, as applicable, the Broader Public Procurement Directive will be followed in connection with the selection or replacement of any Operator.
- 8.4 **Operating Agreements.** The material terms of any Operating Agreement will be as negotiated by UTSC Residence LP.

9. Closing and Exclusivity

- 9.1 **Closing.** The parties shall use commercially reasonable efforts to ensure that the Financial Closing occurs as soon as possible and, in any event, no later than April 15, 2017. The obligation of the Investor to complete the Transactions shall be subject to certain conditions, including:
- (a) the entering into of the LP Agreement and all ancillary agreements and documents required to be delivered pursuant thereto, each in a form acceptable to the Investor and the University;
 - (b) the receipt of all required approvals from the Governing Council of the University;
 - (c) the receipt of all governmental, regulatory and third party consents, licenses, registrations and approvals to the extent required at or prior to the Financial Closing, each in form and substance reasonably acceptable to the Investor and the University; and

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- (d) such other customary conditions to closing that the Investor may reasonably require.

9.2 **Exclusivity and Termination.** In consideration of the substantial expenditure of time, effort and expense to be undertaken by the Investor and its representatives, the University hereby undertakes and agrees that, from the date of this LOI and continuing until the earliest of:

- (a) April 15, 2017;
- (b) the date on which the Investor gives written notice to the University that it does not wish to proceed with the Transactions; or
- (c) if the University has determined, acting reasonably, that: (i) based upon requests or confirmations in writing by the Investor to modify material terms or provisions of the LOI, the Transactions cannot be completed except upon terms that are materially inconsistent with any of the material terms set out in this LOI or (ii) the University and the Investor will not be able to resolve any material issues relating to the Project or the terms of any of the Definitive Agreements, the date on which the University gives written notice to the Investor that it does not wish to proceed with the Transactions,

the University will not solicit, directly or indirectly, or have any communication with any Person in connection with any material transaction or matter related to the Project, including with any prospective investor, partner or purchaser (outside of the ordinary course), or anyone purporting to represent a prospective investor, partner or purchaser without the express written permission of the Investor which will require that any such parties enter into a confidentiality agreement in form and substance acceptable to the Investor.

This LOI shall terminate on the earliest of (i) April 15, 2017, (ii) the date contemplated by Section 9.2(b) and (iii) the date contemplated by Section 9.2(c).

9.3 **Refundable Good Faith Deposit.** Within 3 business days following the execution of this LOI, the Investor will deposit the sum of \$1,000,000 (the "**Deposit**") with the University. The Deposit shall be applied to the Initial Investor Capital Contribution upon the completion of the Financial Closing. Pending the Financial Closing, the University shall be entitled to use the Deposit to pay or reimburse itself for Pre-Development Costs set forth in the Project Budget reviewed with the Investor, provided that, if this LOI is terminated pursuant to Section 9.2, the University will refund the full amount of the Deposit to the Investor, together with interest at the rate of CIBC prime plus 1% per annum calculated from the date of advance to the date of termination.

10. General Provisions

10.1 **Currency.** All amounts referred to in this LOI will be in Canadian dollars.

10.2 **Responsibility for Fees and Costs.**

- (a) Except as specified in Section 10.2(b), the University and the Investor will each be responsible for their own respective internal costs and legal, accounting and other professional fees incurred in connection herewith, the negotiation, preparation and execution of the Definitive Agreements, or otherwise relating to the Transactions. For clarity, in no event will the Investor be responsible for any broker fees, commissions, success fees or other similar fees or payments owing by the University.
- (b) All expenses relating to the formation and organization of UTSC Residence LP, including the fees and expenses of legal, accounting, tax and other consultants as set forth in the Project Budget, shall be for the account of and paid by UTSC Residence LP.

11. Miscellaneous

- 11.1 **Binding Nature.** Other than Sections 3.3(j), 9.2, 9.3, 10 and 11 (which will be legally binding), this LOI will not be legally binding on either of the parties and is intended to serve as a non-binding indication of interest in pursuing the Transactions along the lines described herein.
- 11.2 **Governing Law.** This LOI will be interpreted and enforced in accordance with the law of the Province of Ontario and the federal law of Canada applicable therein.
- 11.3 **Counterparts.** This LOI may be executed by the parties hereto in separate counterparts each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. This LOI may be executed by any party by facsimile signature.

[SIGNATURE PAGE FOLLOWS]

To confirm the foregoing, please sign the enclosed duplicate copy of this LOI where indicated below and return the same to the Investor.

Yours very truly,

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

By:

Name: Scott Mabury

Title: Vice-President, University
Operations

Date: _____, 2016.

This LOI reflects accurately the parties' indication of interest with respect to the matters set out above.

Confirmed this ■ day of ■, 2016.

**FENGATE CAPITAL MANAGEMENT
LTD.**

By:

Name:

Title:

SCHEDULE "A"
DESCRIPTION OF LANDS

The identified site area, as shown in the secondary plan drawing (CAD provided) is roughly 62m x 86m before site servicing, driveway and landscape allowances. All servicing, driveway and landscape requirements to service the Project and required for site plan approval shall be included in the total site area. The total site area is anticipated to be 65.3m x 89.3m or a total of 1.44 acres of land. It is acknowledged and agreed that the total site area may be reduced in the future as a result of the development and conveyance of land to the City for a new realigned Military Trail.

SCHEDULE “B”
PARAMETERS FOR POTENTIAL
CO-INVESTMENT IN ANCILLARY FACILITIES

The Ancillary Facilities will be built on lands leased from the University under one or more long term ground leases.

The tenant/operator of the Ancillary Facilities may be UTSC Residence LP or one or more new limited partnerships, trusts or other entities formed, directly or indirectly, by the University and the Investor (the “**Ancillary Entities**”).

The University and the Investor will, directly or indirectly, hold the equity interests in the Ancillary Entities in agreed upon proportions.

In the event that UTSC Residence LP undertakes the development of one or both of the Ancillary Facilities, the financial terms governing the investment in such Ancillary Facilities shall not affect the financial terms relating to the Residence as set forth herein and, without limitation, the capital contributions, returns and allocation and priority of distributions shall be established separately.

The governance structure for the Ancillary Facilities may be similar to the governance structure relating to the Residence.

The transactions relating to the Ancillary Facilities will be structured in a tax efficient manner and having regard to the circumstances of each party, including, without limitation, the requirements imposed on the Investor by the *Pension Benefits Act* (Ontario).

The University and the Investor may elect to jointly undertake the development of one of the Ancillary Facilities but not the other, in which event the above provisions shall be read and interpreted accordingly.

The University and the Investor will establish a steering committee to further study the commercial, legal and regulatory requirements associated with the Ancillary Facilities and to develop the terms and conditions upon which they may invest in such Ancillary Facilities. The steering committee will report and make recommendations to the University and the Investor as soon as is reasonably practicable.

In the event that the steering committee recommends any actions related to the Ancillary Facilities which impact the Project (such as the development of such Ancillary Facilities as “early works” and/or the combining of such Ancillary Facilities, in whole or in part, into the Residence), the University and the Investor may, in good faith, negotiate and settle the consequential amendments to the Transactions and reflect such amendments in the Definitive Agreements.

For clarity, each party will determine, in its sole discretion, whether to invest in the development of one or both of the Ancillary Facilities.

SCHEDULE "C"
CO-GENERATION FACILITY

The University intends to develop a central utilities plant that will serve the Residence and augment the "passivehouse" technology planned for the Residence. The central utilities plant would also provide robust heating, cooling, normal and standby power for the planned developments on the UTSC north campus.

The planning process would be mindful of economic utility cost optimization as well as greenhouse gas emissions, reliability and cost optimization for future UTSC development and synergize effectively with University utility commodity purchase practices and operational concerns.

SCHEDULE “D”
PARKING FACILITIES

The University intends to develop a new five-storey parking structure to serve staff and faculty on the campus with permit parking on upper levels, and short-term parking for visitors and for students who choose to pay for short-term parking instead of buying term or annual permits. The location of the parking structure is to be confirmed and the space program set forth below will be dependent on where the structure is located. The total project area of the parking structure is 21,000 gsm. The 4,200 gsm footprint per floor will allow for a total of 494 spaces. 183 nasm of assignable space, predominantly retail, will be located on the first level.

Space Program:

<i>Assignable Space</i>	Area (nasm)
Tenant space # 1 - Dry Cleaner	18
Tenant space # 2 - Food Outlet	47
Tenant space # 3 - Courier/postal outlet	75
ATM	2
Presto	2
Pay-on-Foot Machine	1
Event Storage	13
Facilities Management (Grounds) Storage	25
	183 nasm

Parking – visitor and specialty spaces

Level 1

82 spaces, which includes 10 free retail/short-term parking

+ 2 ZipCar + 2 Electrical Vehicle + 68 visitor

4,200 gsm

Level 2	103 visitor spaces	4,200 gsm
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Parking – student and employee permit spaces

103 spaces per level

Level 3	4,200 gsm
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Level 4	4,200 gsm
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Level 5	4,200 gsm
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**Room Data Sheets have been prepared for the 183 nasm area.*

Key factors under consideration to design the layout and massing of the parking structure include:

- retail space at grade (140 nasm)
- vehicular access off main arteries
- connectivity with existing and proposed pedestrian paths
- desire for high visibility in stairwell and elevator (security)
- covered bicycle storage location should be near the elevator/stairwell

SCHEDULE "E"
KEY FINANCIAL ASSUMPTIONS

Table 1 – Detailed Preliminary Total Project Costs

(\$ m)	
Hard Costs	
Construction	\$71,812,724
Computer Wiring and Telephones	361,935
Furnishings and Equipment	1,991,160
Parking Displacement	2,000,000
Sub-Total Hard Costs	76,165,819
Soft Costs	
Permits, Insurance	967,557
Professional Fees	9,087,695
Others	227,711
Sub-Total Soft Costs	10,282,963
Contingencies	
Project Contingency	2,111,220
Environmental Contingency	2,000,000
Sub-Total Contingencies	4,111,220
Estimated Total Construction Cost (Hard Costs, Soft Costs and Contingencies)	
	\$90,560,002
Other Project Costs	
Upfront Costs (incl. Development Fees and LTT)	5,333,290
Senior Debt Interest during Construction	2,062,049
Senior Debt Standby fees during Construction	317,664
Agency fees during Construction	141,583

Table 2 – Preliminary Revenue and Occupancy Assumptions

Student Residence Revenues	
Number of Revenue Generating Beds	719
Average Monthly Rent per Bed (Year 1)	\$1,401
Average Vacancy Allowance	19%
Net Rentable Area	131,223 sf
Retail Revenues	
Revenue / sf	\$30
Vacancy Allowance	5%

Net Rentable Area	2,153 sf
Office Revenues	
Revenue / sf	\$20
Vacancy Allowance	5%
Net Rentable Area	2,164 sf
Dining Hall Contribution	
Contribution Margin	15%
Meal Plan Cost (Monthly per Participant)	\$600
Number of Participants (before vacancy adjustment)	719
Net Rentable Area	10,280 sf
Total Revenues (Year 1)	(\$ m)
Net Student Residence Revenues	\$9,791,141
Net Retail Revenues	61,361
Net Office Revenues	41,116
Dining Hall Net Contribution	628,981
Recovery of Operating Expenses for Retail and Office Space	106,804
Total Revenues	\$10,629,403
Annual Growth Rate for Student Residence Revenues (Years 1 - 5)	3.0%
Annual Growth Rate for Student Residence Revenues (Year 6+)	Greater of CPI and increase recommended by U of T Governing Council

Table 3 – Preliminary Operating Expenses Assumptions

Operating Expenses (Year 1)	(\$ m)
Operating Expenses	\$2,998,362
Annual Lifecycle Maintenance Reserve	420,904
Residence Life Costs	558,000
Total Operating Expenses	\$3,977,266
Annual Growth Rate for Operating Expenses	1.5%