

Southeast Tech

Southeast Technical Institute Housing Foundation Ground Lease Amendment

EXECUTIVE SUMMARY

Purpose:

To present a report on the Southeast Technical Institute Housing Foundation’s bond refinancing and to request amendments to the ground leases necessary to complete the refinancing.

The Southeast Technical Institute Housing Foundation was incorporated in 2001 as the organizational mechanism to provide housing for students attending Southeast Technical Institute.

Financing in the form of bonds was secured through the South Dakota Housing Development Authority in 2002 to construct a 27 unit apartment complex on the western edge of the Southeast Tech campus to house approximately 100 students. Additional bonds were issued in 2004 to construct a second 27 unit apartment complex and connecting commons area between the two facilities.

The facilities are owned by the Foundation on ground leased to the Foundation by the Sioux Falls School District. The facilities are managed by Southeast Tech. References to the management agreement and ground leases are as follow:

Contract	Board Action	Date	Purpose
02-069	33286.A3p	07/08/2002	Ground Lease – Phase 1
02-123	33316	08/26/2002	Management Agreement
04-110	33892	08/09/2004	Ground Lease – Phase 2

The Southeast Technical Institute Housing Foundation Board of Directors authorized the refinancing of the Series 2002A and Series 2004A bonds to obtain more favorable interest rates and to consolidate the outstanding debt of the Foundation into a single issuance.

In order to refinance the debt, the Housing Foundation must secure written consent of the Sioux Falls School District to assign the Lease and to sublet the Leased Premises in whole or in part and to pledge the Lease. Under the terms of the original ground lease(s) such consent shall not be unreasonably withheld.

Counsel at Davenport Evans Hurwitz Smith, LLP, have drafted the amendments to the ground leases necessary for the Foundation to assign/mortgage its interests in said leases in favor of

any lender providing refinancing of the debt incurred in the construction of the student housing project. The Housing Foundation has obtained a commercial mortgage from Home Federal Saving Bank.

Administrative Recommendation to School Board:

Approve the amendments to the Ground Lease(s) between the Sioux Falls School District and the Southeast Technical Institute Housing Foundation.

AMENDMENT TO GROUND LEASE

THIS AMENDMENT is made and entered into this ____ day of _____, 2016, by and between SIOUX FALLS SCHOOL DISTRICT, hereinafter called “Landlord” and SOUTHEAST TECHNICAL INSTITUTE HOUSING FOUNDATION, a South Dakota corporation, hereinafter called “Tenant”.

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have previously entered into that certain Ground Lease dated August 9, 2004 (the “Ground Lease”), pursuant to which Landlord demised and leased unto Tenant that certain tract or parcel of land (hereinafter called the “Leased Premises”) situated in the County of Minnehaha, State of South Dakota, and more particularly identified in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, in accordance with and pursuant to the terms of the Ground Lease, Tenant financed the construction of student housing on the Leased Premises with the proceeds of a bond issued by the South Dakota Housing Development Authority; and

WHEREAS, in accordance with and pursuant to the terms of the Ground Lease, Tenant granted a mortgage on its leasehold interest in the Leased Premises and certain leased parking spots described in Section 6 of the Ground Lease and as shown on Exhibit B attached thereto; and

WHEREAS, it will be beneficial to Tenant, and Tenant desires to refinance the balance of the indebtedness due pursuant to the bond issue referred to above;

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Amendment of Section 5. Section 5 of the Ground Lease shall be and it is hereby amended to read as follows:

5. Mortgage and Assignment – Project Financing and Refinancing. Tenant maintains the right to mortgage its leasehold interest in the Leased Premises and the leased parking spots described in Section 6. of said Ground Lease, and to assign or mortgage (or both), its interest in this Lease in favor of any lender providing financing for the construction of a student housing project on the Leased Premises, or any lender providing refinancing of the debt incurred in construction of a student housing project on the Leased Premises.

2. Landlord’s Consent to Refinancing. Landlord hereby consents to Tenant’s refinancing of the indebtedness created by the bond issue, the proceeds of which were utilized in financing of the student housing project on the Leased Premises. This consent is given pursuant to Section 14 of the Ground Lease.

3. Remaining Provisions Unaltered. Save and except as specifically set forth herein, all of the other terms of the Ground Lease shall continue in full force and effect, unaltered and amended.

Dated this ____ day of _____, 2016.

SIOUX FALLS SCHOOL DISTRICT

By _____
Its President

By _____
Its Business Manager

SOUTHEAST TECHNICAL INSTITUTE
HOUSING FOUNDATION

By _____
Its _____

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

On this, the ____ day of _____, 2016, before me, the undersigned officer, personally appeared Kent Alberty, who acknowledged himself to be the President of the Sioux Falls School District, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

On this, the ____ day of _____, 2016, before me, the undersigned officer, personally appeared Todd Vik, who acknowledged himself to be the Business Manager of the Sioux Falls School District, and that he, as such Business Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as Business Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

SECOND AMENDMENT TO GROUND LEASE

THIS SECOND AMENDMENT is made and entered into this ____ day of _____, 2016, by and between SIOUX FALLS SCHOOL DISTRICT, hereinafter called "Landlord" and SOUTHEAST TECHNICAL INSTITUTE HOUSING FOUNDATION, a South Dakota corporation, hereinafter called "Tenant".

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have previously entered into that certain Ground Lease dated July 8, 2002 as amended by that certain First Amendment to Ground Lease dated August 29, 2002 (the "Ground Lease"), pursuant to which Landlord demised and leased unto Tenant that certain tract or parcel of land (hereinafter called the "Leased Premises") situated in the County of Minnehaha, State of South Dakota, and more particularly identified in Exhibit A attached hereto and incorporated herein by this reference; and

WHEREAS, in accordance with and pursuant to the terms of the Ground Lease, Tenant financed the construction of student housing on the Leased Premises with the proceeds of a bond issued by the South Dakota Housing Development Authority; and

WHEREAS, in accordance with and pursuant to the terms of the Ground Lease, Tenant granted a mortgage on its leasehold interest in the Leased Premises and certain leased parking spots described in Section 6 of the Ground Lease and as shown on Exhibit B attached thereto; and

WHEREAS, it will be beneficial to Tenant, and Tenant desires to refinance the balance of the indebtedness due pursuant to the bond issue referred to above;

NOW, THEREFORE, in consideration of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged, Landlord and Tenant agree as follows:

1. Amendment of Section 5. Section 5 of the Ground Lease shall be and it is hereby amended to read as follows:

5. Mortgage and Assignment – Project Financing and Refinancing. Tenant maintains the right to mortgage its leasehold interest in the Leased Premises and the leased parking spots described in Section 6. of said Ground Lease, and to assign or mortgage (or both), its interest in this Lease in favor of any lender providing financing for the construction of a student housing project on the Leased Premises, or any lender providing refinancing of the debt incurred in construction of a student housing project on the Leased Premises.

2. Landlord’s Consent to Refinancing. Landlord hereby consents to Tenant’s refinancing of the indebtedness created by the bond issue, the proceeds of which were utilized in financing of the student housing project on the Leased Premises. This consent is given pursuant to Section 14 of the Ground Lease.

3. Remaining Provisions Unaltered. Save and except as specifically set forth herein, all of the other terms of the Ground Lease shall continue in full force and effect, unaltered and amended.

Dated this ____ day of _____, 2016.

SIOUX FALLS SCHOOL DISTRICT

By _____
Its President

By _____
Its Business Manager

SOUTHEAST TECHNICAL INSTITUTE
HOUSING FOUNDATION

By _____
Its _____

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

On this, the _____ day of _____, 2016, before me, the undersigned officer, personally appeared Kent Albery, who acknowledged himself to be the President of the Sioux Falls School District, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF MINNEHAHA)

On this, the _____ day of _____, 2016, before me, the undersigned officer, personally appeared Todd Vik, who acknowledged himself to be the Business Manager of the Sioux Falls School District, and that he, as such Business Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as Business Manager.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota
My Commission Expires: _____

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF MINNEHAHA)

On this, the ____ day of _____, 2016, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of Southeast Technical Institute Housing Foundation, and that he, as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company by himself as _____.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public, South Dakota

My Commission Expires: _____