

**CONTRACT TO PROVIDE OFF-CAMPUS BYU HOUSING**

This Contract to Provide Off-Campus BYU Housing is made this first day of September, 2005 by and between Brigham Young University (hereinafter "BYU" and/or "University") and Alpine Village, LLC and Alpine Village Property Management, LLC, (hereinafter collectively "Owner").

**RECITALS**

WHEREAS, BYU seeks to provide BYU students unique off-campus housing which mirrors, to the extent possible, the environment and resources found in its On-Campus Housing;

WHEREAS, BYU anticipates that this unique Off-Campus BYU Housing will be different from other off-campus housing which is otherwise approved and provided through its existing jointly administered Title IX housing program which includes other Title IX housing providers, and further anticipates that it will provide such housing exclusively for BYU students, and that it will have greater oversight by BYU's housing officials;

WHEREAS, Alpine Village LLC owns or is developing residential student housing and wishes to provide such housing to BYU students upon the terms and conditions found herein;

NOW, THEREFORE, in consideration for the terms and conditions provided herein, the parties hereto agree as follows:

**A. OWNER RESPONSIBILITIES.**

As specific terms and conditions of this Contract, Owner shall be responsible for and provide the following:

1. PHYSICAL FACILITIES. Owner will provide all of the physical facilities for residential use by BYU students as further described in the detailed layout attached as Exhibit "A". Such physical facilities shall be appropriate for residential housing for sex segregated, single students and shall comply with the minimum specifications for housing as provided in the BYU Off-Campus Housing Handbook (hereinafter "Handbook"), which is incorporated herein by reference. Such specifications include, but are not limited to, the following:
- (a) Separation of single male students and single female students shall be in accordance with the University Policy and Procedure set forth in Requirement #3 of the Handbook. No modification of the facilities' pattern of separating single men and single women shall be made without prior written consent from the BYU Off-Campus Housing Office.
  - (b) Owner shall be responsible for all reasonable maintenance, upkeep, and replacement of the physical facilities and all furniture, appliances, and such other fixtures as are provided as part of the physical facilities.
  - (c) Owner shall carry insurance on the physical facilities for replacement of the facilities and shall provide general liability insurance including coverage for personal injuries in such amounts and with such limitations as BYU's Risk Management Office shall direct and approve. BYU shall be listed as an additional insured on all liability insurance policies. Certificates of insurance shall be delivered to BYU as directed.
  - (d) Ownership of all of the physical facilities shall be held directly by Alpine Village LLC, or if ownership is held in any other fashion, the whole of the

physical facilities shall be operated as one complex. If any part of the physical facilities is sold or assigned to any other person or entity, the terms of such sale or assignment shall provide that no such person or entity may make claim to any individual housing unit for either purposes of control of any particular unit or for the purposes of asserting any right of occupancy other than what is allowed and acceptable in the written covenants and governance structure of the facility. BYU must approve of the covenants and governance structure of the complex as a whole.

2. RENTAL. Owner shall be responsible for all aspects of contracting with all residents, and must rent to BYU students using the pre-printed Owner/Tenant contract as provided herein. In addition, Owner shall:

- (a) Rent only to BYU students as hereafter defined:
  - (i) Students who are accepted and enrolled at BYU;
  - (ii) Students who have been accepted and are waiting to enroll at BYU (if they enroll within 4 months of renting a unit within the facility);
  - (iii) Students who have been enrolled and plan to be enrolled at BYU but who are taking a break of no more than 4 months from classes;
  - (iv) Students who have graduated from BYU but would like to remain in their apartments for no more than 4 months after graduation; or
  - (v) Students who have been recently enrolled at BYU, who are leaving the University for a mission and would like to stay in their unit for up to 4 months until they report to the mission field.

It is recognized by BYU that this is a pilot project and that it is not known whether the market will bear housing which is exclusively for BYU students as defined herein. Therefore, should the Owner fail to maintain 90% occupancy during its first Fall/Winter/Spring/Summer rental period, after exercising all due diligence in advertising and competitively pricing the housing, it is agreed that a wing of a building or one or more buildings may be opened to other qualified students who are not BYU students as defined in this agreement, but who are students qualified to live in housing otherwise governed by the BYU Approved Housing Program, which program is governed by BYU's Off-Campus Housing Office. Which wing, building, or buildings are moved to this broader housing market will have to be approved by BYU, after a showing by Owner that a 90% occupancy rate cannot be maintained. If occupancy rates subsequently increase, Owner will move such wing, building, or buildings back to exclusive BYU student housing as soon as practicable.

- (b) Practice no discrimination in the rental of the facility on the basis of race, religion, color, national origin, or disability. (Discrimination on the basis of student's status, e.g., a BYU student as defined herein, shall not be considered to be discrimination under this agreement.)
- (c) Use only the latest BYU approved Student-Landlord Rental Agreement. Any pre-contract application form, addenda, or additional rules used by the Owner must be approved by and filed in the Residence Life Office prior to its use. Owner shall provide tenants with a copy of all rental agreements, addenda,

rules, bills, and receipts from monies paid in cash at the time of any agreement or payment.

3. RESIDENTIAL LIVING STANDARDS. Owner shall maintain BYU Residential Living Standards as set forth in Requirement #1 of the Handbook, and shall inform residents of these standards, pursue compliance, and make a report to the University when notice is given, or when there is knowledge or suspicion of a violation.
4. MANAGEMENT. Owner shall comply with the management requirements and carry out the management duties as outlined in Requirement #12 of the Handbook. In addition, Owner shall retain and employ (i) an on-site manager, (ii) an alternative designated manager, and (iii) certain part-time resident staff persons who will interact with the students to provide counsel to and help students with issues concerning housing (collectively, "Management.") While it is understood that the Management are all employees of Owner, it is also agreed that the Management shall receive mandatory training from BYU and Owner agrees that Management shall take direction from BYU's Residence Life Office. If any directions given to Management by the Owner conflict with directions given by BYU, no action will be taken until such directions are discussed between the Owner and BYU, and appropriate directions are given to the Management as to how to respond to such issues. It is understood and agreed that the Management are not the agents of, nor employees of BYU.
  - (a) Management shall interact on a regular basis with BYU's Residence Life Office as directed by that office. Management will meet with that office as directed but no less than monthly starting 3 months prior to opening the

facility. Management and Residence Life will work in good faith to resolve issues and problems that arise.

- (b) Owner will move expeditiously in evicting or removing any tenant who does not comply with the Residential Living Standards, or other requirements of the Student-Owner Rental Agreement. However, Owner will not unjustly evict any student or harass or retaliate against him or her for the exercise of rights under the Student-Owner Rental Agreement or Utah Law, and shall make a good-faith effort to settle all controversies with the student tenants through BYU-sponsored mediation and/or arbitration when so requested by the student or the BYU Residence Life Office. Owner shall abide by the decision of the BYU Dispute Resolution Counsel when a controversy is presented to it.

5. INSPECTIONS. Owner shall allow representatives of the University and local government agencies to inspect all units of the facilities at reasonable times to determine compliance with this agreement and/or applicable law. In addition, Owner shall:

- (a) Maintain the facility in accordance with all federal, state, county, and city laws and ordinances and with the applicable minimum specifications for BYU Approved Off-Campus Housing, the most recent version of which is incorporated in the Handbook as Requirement #16.
- (b) Maintain the facility in accordance with any reasonable requests of the BYU Residence Life Office relating to the safety or general welfare of tenants.
- (c) Correct any failures to comply with such laws or ordinance specifications within a reasonable time period.

- 6. EXCLUSIVE PURPOSE. Owner agrees to hold the physical facilities which are described herein for student residential or other approved business purposes only. In addition, Owner agrees not to store, keep, or maintain on the premises any firearms, explosive, or dangerous weapons, including knives or other items which in their intended use, are capable of inflicting serious personal injury nor allow tenants to do so unless prior written consent is received from all of the tenants in the rental unit.

**B. BYU'S RESPONSIBILITIES.**

BYU will be responsible for the following:

- 1. APPROVAL. With the submission of the necessary documents concerning approval of the physical facilities, and in particular those dealing with the layout of the buildings, and sex segregation of the students, BYU will approve the housing complex for residential use of BYU students only.
- 2. ADVERTISING. BYU agrees to advertise this housing on its website and in such printed materials as are used by its Residence Life Office and in that advertising to emphasize the fact that this housing is unique and only available for BYU students. This housing shall be referred to as Chartered Housing.
- 3. OVERSIGHT. BYU shall provide such necessary oversight and direction as is necessary to create the unique environment for which this housing is established. Such oversight and direction shall include working with the Management to resolve concerns and problems generated by the housing. In addition, BYU will provide mandatory training for the Management and will certify their completion of that training.
- 4. INSPECTION. BYU will provide periodic inspections of the property to determine

- whether the Owner is providing necessary oversight and maintenance of the facility.
5. INTERACTION. BYU agrees to be responsive to any questions or concerns of Owner or Management concerning issues relating to housing. BYU through its Residence Life Office will act in good faith in providing such interaction.
6. REVIEW OF PROGRAM. BYU agrees to review the housing provided for under this agreement frequently and meet with Owner no less than eight times a year in order to review the program. While it is anticipated that this program be given an initial pilot period of two years, at the end of that two year period of time, BYU will again review the program for the purpose of determining whether the program should be continued.

**C. TERMINATION:**

It is understood that this agreement is to facilitate a pilot program for the unique housing described herein. While it is a pilot program, the parties understand that there may be many different reasons why the program will not continue and it is acknowledged that there is no intent at this time for the program to continue beyond this pilot phase. With that it is agreed that this agreement will terminate at the end of two years unless the program is continued and this agreement is renegotiated. In addition it is agreed that this agreement may be terminated by either party with 90 days written notice for any reason or for no reason. The Owner may not terminate this agreement in the first 12 months and maintain the approved housing status.

With the termination (other than termination for cause) of this agreement the Owner's approved BYU status will be subject to the usual approved off campus housing process. If this agreement is terminated and approval for housing of students is not received within a reasonable period of time, notice will be given to the resident students that their housing is not approved and that they must move out within five days of the notice. Owner agrees to void and release its housing

agreement with any students at that time and permit them to move out without penalty if the complex is not approved.

**D. RIGHT OF FIRST REFUSAL:**

Should Owner offer to sell the premises, or any part thereof, subject to this agreement and receive a good faith offer to buy the premises, or any part thereof, Owner agrees to first offer to sell the premises or any part thereof, to BYU on the same terms and conditions as those of the offer to purchase. BYU shall have thirty days in which to decide whether to purchase the premises, or any part thereof, on those terms and conditions.

**E. MISCELLANEOUS PROVISIONS:**

1. DEFAULT: In the event a default by any party, the non-defaulting party shall notify the defaulting party of such default, and in the event such default is not cured within thirty days, the non-defaulting party may declare the contract terminated, and shall be entitled to all rights and remedies provided by law.
2. WAIVER: No waiver of any default or breach of this agreement of either party shall be deemed a continuing waiver or waiver of any other breach or default, no matter how similar. All remedies and rights contained in this agreement will be cumulative and none of them shall be limited to any other right or remedy.
3. APPLICABLE LAW: This agreement shall be governed by the laws of the state of Utah. Any action brought to enforce the provisions of this agreement shall be brought in the state or federal court of the state of Utah. In any action brought to enforce any provision of this agreement, or to declare the rights of any party, the prevailing party shall be entitled to recovery of its reasonable attorney's fees and court costs.

4. INTEGRATION: This agreement constitutes and contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement whether oral or in writing. This agreement cannot be modified except in writing signed by both parties.
5. HEADINGS: The paragraph headings used in this agreement are used for convenience only and have no legal effect.

IN WITNESS WHEREOF, the parties execute this agreement the day and year first written above.

BRIGHAM YOUNG UNIVERSITY

By: Janet S. Scharman  
Janet S. Scharman  
Student Life Vice President

ALPINE VILLAGE

By: Ray Walker  
Ray Walker  
Authorized to sign on behalf of Alpine Village, LLC and Alpine Village Property Management, LLC.