



APPENDIX B

PRELIMINARY TERM SHEET FOR LONG-TERM CONCESSION AGREEMENT FOR STUDENT HOUSING OF THE UNIVERSITY SYSTEM OF GEORGIA

This Term Sheet is not intended to be a binding contract, a lease, or an offer to lease but is intended only to provide the basis for negotiations for definitive transaction documents.

PREMISES¹:

- (1) Abraham Baldwin Agricultural College, Tifton, Georgia - 1,324 existing beds; no new beds.
- (2) Armstrong Atlantic State University, Savannah, Georgia - 1,239 existing beds; no new beds.
- (3) College of Coastal Georgia, Brunswick, Georgia - 352 existing beds; 200 new beds.
- (4) Columbus State University, Columbus, Georgia - 444 existing beds; 500 new beds.
- (5) Dalton State College, Dalton, Georgia - no existing beds; 350 new beds.
- (6) East Georgia State College, Swainsboro, Georgia - 200 existing beds; 200 new beds.
- (7) Georgia Regents University, Augusta, Georgia – no existing beds; 650 new beds.
- (8) Georgia State University, Atlanta, Georgia - 2,322 existing beds; 700 new beds.
- (9) University of North Georgia, Dahlonega, Georgia - 314 existing beds; 400 new beds.

USE:

Concessionaire may use the Premises to house (i) full-time and part-time undergraduate and graduate students enrolled at the above-named institutions (each an **“Institution”**) on whose campuses the related student housing is located; (ii)

¹ As noted in the RFQC, the BOR reserves the right to add or remove campuses from the portfolio.



faculty and staff of the Institutions on whose campuses the related student housing is located; and (iii) individuals participating in or attending events at, sponsored by, sanctioned by, or otherwise related to the Institutions on whose campuses the related student housing is located (collectively **“Permitted Residents”**), including related uses that are incidental to and support such uses, but for no other use whatsoever.

TERM:

Up to sixty-five (65) years commencing on the date on which the Operative Agreements (defined below) are executed and delivered (the **“Term”**).

CONCESSION AGREEMENT:

The concession agreement will be structured as a master agreement that covers all of the Premises (the **“Concession Agreement”**), a separate project operating agreement containing detailed provisions for each Institution (the **“Project Operating Agreement”**) and a separate lease for each Institution (each a **“Lease”** and, together, the **“Leases”**), whereby the Board of Regents of the University System of Georgia (the **“BOR”**), as lessor, will lease the existing student housing and the sites on which the new student housing will be constructed to the Concessionaire, as lessee, for the Term. The BOR and the Concessionaire will also enter into a separate development agreement for each Institution on which new housing is being developed (each a **“Development Agreement”** and, together, the **“Development Agreements”**).

NEW STUDENT HOUSING:

The Concessionaire will be responsible for constructing the new student housing described above as more particularly shown on the preliminary site plans to be furnished to the Concessionaire by each Institution (the **“Site Plans”**). The construction of the new student housing will be funded solely by the Concessionaire.

NEW STUDENT HOUSING DESIGN AND CONSTRUCTION:

The Concessionaire shall provide and/or engage sub-contractors to provide development, design, engineering, and construction services for the new building projects. The turn-key developer, design-builder, architect, general



contractor, and construction manager shall be subject to the prior written approval of the BOR, such approval not to be unreasonably withheld, conditioned, or delayed. The Concessionaire shall supervise the design, preconstruction, and construction process, and will meet with the BOR and each Institution on a periodic basis during such processes to provide updates to the BOR, its consultants, and each Institution. The BOR shall engage a Program Manager at the expense of the Concessionaire to manage the BOR/Institution obligations in working with the Concessionaire during the design process and to monitor the construction of the new student housing and compliance with the construction covenants contained in the Development Agreements. The BOR and the BOR's construction consultant shall have access to the Premises for purposes of inspecting the construction of the new student housing. The Concessionaire shall provide with its own resources or enter into one or more contracts for the provision of all of the services required to develop the new student housing ("**Contracts**"). The Contracts and final construction documents (including architect's contract) ("**CDs**") shall be subject to the prior written approval of the BOR, such approval not to be unreasonably withheld, conditioned, or delayed, and shall be freely assignable by the Concessionaire to the BOR without fee or penalty.

The Concessionaire will be responsible for obtaining all necessary governmental approvals and permits for the construction of the new student housing. All approvals and permits will be obtained in accordance with the dates shown in schedules to be furnished to the Concessionaire by each Institution (the "**Development Schedules**").



**DESIGN AND
CONSTRUCTION
APPROVALS BY
BOR:**

The new student housing shall be designed consistent with the BOR's Design Guidelines and Institution standards for student housing. Subject to applicable governmental approvals, the following construction and design items are subject to the prior written approval of the BOR, not to be unreasonably withheld, conditioned, or delayed:
Programming, Preliminary Design, Schematic Design, Design Development, CDs, and the Furniture, Fixtures, and Equipment Design.

**NEW STUDENT
HOUSING COSTS
AND BUDGETS:**

The Development Budget for each new student housing project shall be determined through cost estimates prepared at each stage of design deliverables (Programming, Schematic Design, Design Development, and CDs) for each project. The Development Budget will be submitted to the BOR and applicable Institution as part of the design review and approval process (which, as provided above, shall be subject to the prior written approval of the BOR, such approval not to be unreasonably withheld, conditioned, or delayed). The design, construction, and furniture bids, quotes, estimates, budgets, and allowances will be shared with the BOR and applicable Institution in an "open book" manner summarizing the actual costs of work sub-contracted or self-performed by the Concessionaire. The overhead costs and fees for Architecture and Engineering, Construction Manager, and Developer will be those agreed to in the Concession Agreement. All change orders shall be subject to the prior written approval of the BOR and applicable Institution, not to be unreasonably withheld, conditioned, or delayed.

During the pendency of each project, the Concessionaire shall provide the BOR access to all documentation evidencing and supporting the actual costs of each project and the amounts expended by the Concessionaire on each project to date. All cost overruns in the construction of any project will be the responsibility of the Concessionaire and all cost savings in the construction of any project will be for the benefit of the Concessionaire.



REPORTING

The Concessionaire shall be required to furnish to the BOR periodic financial and operating information, including, at a minimum, annual financial statements audited by a national firm of independent public accountants acceptable to the BOR and quarterly financial statements.

DEVELOPMENT SCHEDULES:

Pursuant to the Development Schedules, but subject to receipt of all jurisdictional approvals, the Concessionaire is required to meet completion milestones set forth in the Development Schedules and to substantially complete each proposed new student housing project no later than July 15, 2016 (the "Outside Completion Date"). In the event the Concessionaire fails to complete any project on or before the Outside Completion Date, the Concessionaire will be liable for liquidated damages calculated pursuant to an agreed upon formula (designed to account for, among other things, the cost of housing for and transportation of the students assigned to the affected project) accruing daily for each day after the Outside Completion Date that any project is not complete.

BASE RENT:

(1) Prepaid Base Rent - At a minimum, an amount sufficient to defease all indebtedness presently secured by the Premises and to pay all transaction costs.

(2) Periodic Base Rent - An annual amount, payable periodically, equal to a certain percentage of the gross revenues generated by the Premises.

CONTINGENT RENT:

In addition to Base Rent, the Concessionaire will pay as periodic Contingent Rent a percentage of the adjusted gross income of the Premises, after specified thresholds are achieved for the Concessionaire.

SERVICE FEES:

Pursuant to the Project Operating Agreement, the Concessionaire shall pay periodically the BOR or an affiliated entity an amount sufficient to pay the cost of providing residence life, security, and rent collection services for the Premises and any other mutually agreed upon services to be provided to the Premises. These Service Fees shall be due in an annually budgeted amount, payable periodically, with a



“true-up” to reflect actual expenses to occur at an agreed upon time following the end of each fiscal year².

CONDITION OF PREMISES:

The existing student housing shall be delivered to the Concessionaire “as is” without any warranty or representation whatsoever.

CONCESSIONAIRE’S REPAIR AND MAINTENANCE OBLIGATIONS:

The Concessionaire shall be responsible for maintaining the Premises in first class condition and repair. Each Lease will include specific maintenance and repair standards and accountability measures designed to ensure that such maintenance and repair standards are monitored and achieved.

STRUCTURAL/ LATENT DEFECTS:

The Concessionaire shall be solely responsible for all costs and expenses of repair of any and all structural defects and damage (including earthquake) relating to the Premises, including the roof and flooring or latent defects in the Premises during the Term.

PROPERTY CONDITION ASSESSMENT:

Not less frequently than every five years, the BOR shall engage an independent engineer, at the expense of the Concessionaire, to provide an assessment of the condition of the Premises, which report shall detail any significant maintenance deficiencies. Any such maintenance deficiencies shall be remedied by the Concessionaire within 90 days or as soon as practicable thereafter.

RETURN OF PREMISES:

Upon the earlier of the expiration or termination of the Concession Agreement or any Lease, the Concessionaire shall return the Premises, or in the event the Concession Agreement and one or more Leases remain in effect after such expiration or termination, the relevant portion of the Premises, to the BOR in a first class condition and repair.

² The Service Fees are anticipated to increase by three percent (3%) per year.



MANAGEMENT:

The Concessionaire shall provide first class management services to the Premises using experienced personnel. The Concessionaire may contract with related Institutions to provide any portion of such management services.

INSURANCE:

The Concessionaire shall, at its own expense, insure the Premises against all risks of casualty or loss and provide liability insurance for its operations at the Premises, naming the BOR as an additional insured.

INDEMNIFICATION:

The Concessionaire shall indemnify and hold harmless the BOR from and against all liability of any kind that may arise in connection with the Premises or any related easement, work done on or about the Premises or any related easement, the management or maintenance of the Premises, any act or omission of the Concessionaire or any of its agents, or any failure by the Concessionaire to comply with or perform under the Concession Agreement, any Lease, the Project Operating Agreement, or any Development Agreement in each case including any liability for personal injury or death, for property damage, or under any environmental law. Without limiting the generality of the foregoing, the Concessionaire shall also indemnify and hold harmless the BOR from and against all liability of any kind (including clean-up costs) that may arise in connection with the use, generation, storage, disposal, or release of any hazardous materials on or about the Premises, regardless of whether such use, generation, storage, disposal, or release occurred during the Term or predated the commencement thereof.

INSTITUTION SERVICES:

Pursuant to the Project Operating Agreements, the BOR or an affiliated entity shall cause each Institution to provide residence life, security, and rent collection services for the portion of the Premises located on its campus, as well as any other services mutually agreed upon; these costs will be funded by payments of the Service Fees and provision of the services will be contingent upon the payment of the Service Fees. The Project Operating Agreement will have an initial term of ten (10) years and provide renewal options of ten (10) years each upon the agreement of the BOR and the Concessionaire. Each Institution will provide residence life programming for its student residents in a manner



determined in the sole and absolute discretion of each Institution. Each Institution will report its portion of the Premises in accordance with the Campus Safety and Security Reporting required by 34 C.F.R. § 668.41(e).

HOUSING FEES:

Except as provided in the following sentence, the housing fees for the Premises are set on a semester basis representing a cumulative ten-month term. The housing fees for graduate housing at Georgia Regents University are on a twelve-month term. The housing agreement will be between the Concessionaire and the student and will reflect this ten-month term. Housing fees for the initial five (5) years of the Term will be as set forth in the Concession Agreement. Thereafter, the housing fees will be set by the Concessionaire with approval of the BOR.

OCCUPANCY:

Enrollment numbers at each Institution and occupancy levels for the Premises will be dictated by Permitted Resident demand alone; the BOR will not guarantee minimum enrollment numbers at any Institution, minimum occupancy levels for the Premises or any portion thereof or minimum levels of gross revenue to be generated by the Premises, nor will the BOR guarantee the continue existence of any Institution.

**ASSIGNMENT/
SUBLETTING:**

The Concessionaire shall not, without the prior written consent of the BOR, assign the Concession Agreement, any Lease, or any interest in the Premises, or otherwise transfer or sublet the Premises or any part thereof or permit the use of the Premises by any party other than the Concessionaire and Permitted Residents.

If the Concessionaire is a partnership, a limited liability company, or a limited liability partnership, a withdrawal or change, whether voluntary, involuntary, or by operation of law, of partners or members owning a controlling interest in the Concessionaire shall be deemed a voluntary assignment of the Concession Agreement and each Lease and subject to the foregoing provisions. If the Concessionaire is a corporation, any dissolution, merger, consolidation, or other reorganization of the Concessionaire, or the sale or transfer of a controlling interest in the capital stock of the Concessionaire, shall be deemed a voluntary assignment of



the Concession Agreement and Leases and subject to the foregoing provisions. No subletting of the Premises (other than to Permitted Residents) shall be effective unless and until (i) the BOR shall have consented in writing and (ii) there shall have been delivered to the BOR an agreement, in form and substance satisfactory to the BOR, signed by the Concessionaire and the proposed sublessee, whereby the sublessee acknowledges the right of the BOR to continue or terminate any sublease, in the BOR's sole discretion, upon termination of the Concession Agreement and the Leases, and such sublessee agrees to recognize and attorn to the BOR in the event that the BOR elects under such circumstances to continue such sublease. Notwithstanding the assignment of the Concession Agreement and/or Leases or subletting of the Premises, the Concessionaire shall remain obligated for all liability to the BOR arising under the Concession Agreement, each Lease, and the Project Operating Agreement during the entire remaining Term.

RETAINED HOUSING:

Certain on-campus housing at Armstrong Atlantic State University, Columbus State University, Georgia Regents University, Georgia State University, and University of North Georgia is not part of the Premises (the "Retained Housing"). The Retained Housing and the Premises will receive similar treatment regarding on-campus residency requirements, residence life services, and marketing pursuant to the Project Operating Agreements. Housing fees at the applicable Institution for the Retained Housing will be comparable to housing fees for similar housing for the applicable Premises taking into consideration all relevant factors.

Should the BOR in the future elect to privatize all or a portion of the Retained Housing, the Concessionaire will have a first right to negotiate to obtain that portion of the Retained Housing subject to the privatization (the "**Retained Housing Negotiation Option**") as hereinafter provided: in the event the BOR desires to privatize all or a portion of the Retained Housing during the first ten (10) years of the Term at any Institution, the BOR shall notify the Concessionaire in writing of such plans ("**Privatization Notice**") and the Concessionaire will have a specified number of business days to either accept or reject the Privatization Notice in writing to the BOR. Subsequent negotiation between the BOR and the



Concessionaire regarding the potential acquisition of the applicable portion of the Retained Housing shall proceed as provided in the “Negotiation and Cooperation” section below.

**FUTURE
DEVELOPMENT
RIGHTS:**

The Concessionaire will have a first right to develop student housing at the Institutions for a term of ten (10) years and to subject such future student housing to the operation of the Concession Agreement (“**First Right to Negotiate**”) as hereinafter provided: in the event the BOR desires to develop additional student housing during the first ten (10) years of the Term at any Institution, the BOR shall notify the Concessionaire in writing of such plans (“**Development Notice**”) and the Concessionaire will have a specified number of business days to either accept or reject the Development Notice in writing to the BOR. Subsequent negotiation between the BOR and the Concessionaire regarding the development of the additional student housing shall proceed as provided in the “Negotiation and Cooperation” section below.

Notwithstanding the foregoing, the Concessionaire’s First Right to Negotiate shall not be triggered, and therefore the BOR shall be in breach of its obligations under the Concession Agreement and applicable Lease, in the event of (1) the development by the BOR of student housing for members of Greek letter organizations, for graduate students, for international students, for married students, or for students and their children; (2) the development by the BOR of student housing that is not financed by debt of any type, whether issued or incurred by the State of Georgia, the BOR, or any state authority, or any private party contracting with any of the foregoing, but only if the occupancy rate for the portion of the Premises that is located on the same campus has been in excess of ninety-five percent (95%) for the past two consecutive years; (3) the receipt by the BOR of student housing by gift or donation; or (4) the renovation of existing student housing owned by the BOR and not subject to the operation of the Concession Agreement and applicable Lease.



NEGOTIATION & COOPERATION:

The following procedures shall govern the negotiations between the BOR and the Concessionaire that are undertaken pursuant to the Concessionaire's exercise of a Retained Housing Negotiation Option or First Right to Negotiate (each a **"Negotiation Right"** for purposes of this section) following the issuance of a Privatization Notice or Development Notice (each a **"Notice"** for purposes of this section):

(a) In the event the Concessionaire rejects a Notice, then the Concessionaire's Negotiation Right shall terminate and be of no further force or effect. In the event the Concessionaire accepts a Notice, the BOR and the Concessionaire shall negotiate in good faith the terms and conditions of amendments to the Concession Agreement and applicable Lease to make the applicable portion of the Retained Housing or additional student housing subject to the terms of the Concession Agreement and applicable Lease. No party shall be obligated to enter into any such amendment unless it is on commercially reasonable, fair market terms. If the amendments to the Concession Agreement and applicable Lease have not been executed by the BOR and the Concessionaire within a specified number of days (unless otherwise extended by mutual agreement of the parties) after the Concessionaire's acceptance of the Notice, then neither the BOR nor the Concessionaire shall have any further right or obligation to negotiate with one another and the Concessionaire shall have no further rights to obtain that portion of the Retained Housing or develop the additional student housing that was the subject of the Notice.

(b) If the Concessionaire accepts a Notice but the Concession Agreement and applicable Lease have not been amended by the BOR and the Concessionaire within the period as noted above, then following the expiration of such period and continuing for a period of one year thereafter, if the BOR elects to seek proposals from concessionaires for the privatization of that portion of the Retained Housing or the development of the student housing that was the subject of the Notice, the BOR shall include the Concessionaire in such proposal process; provided, however, if the Concessionaire's



proposal is not the preferred proposal, then the Concessionaire shall be granted the right to match the terms of the preferred proposal. Notwithstanding the Concessionaire's right to match the preferred proposal, the final selection of the concessionaire for the privatization or development of any such housing shall be in the sole reasonable discretion of the BOR. The Concessionaire shall have a specified number of days following written notice from the BOR to match the preferred proposal ("**Match Notice**"). If the Concessionaire rejects the Match Notice or does not timely respond to the Match Notice, the Concessionaire's right to match the preferred proposal shall terminate and be of no further force or effect. If the Concessionaire timely responds to the Match Notice and matches the preferred proposal, it shall not be reasonable for the BOR to select a proposer other than the Concessionaire if the reason the Concessionaire and the BOR did not execute the amendments to the Concession Agreement and applicable Lease in (a) above was solely due to their collective inability to come to an agreement on the financial terms to be set forth therein.

In connection with the privatization or development of any such student housing, including if for any reason or no reason the Concessionaire does not obtain or develop any such student housing, the Concessionaire (i) shall cooperate with the BOR in connection with the privatization or development of any such student housing provided such cooperation is at no cost to the Concessionaire and (ii) shall not directly or indirectly oppose, impede, restrict, or aid or cooperate with others to oppose, impede, or restrict, in any way, the privatization or development of any such student housing.

PARKING:

Parking for existing student housing will remain as currently provided. For new student housing, surface parking will be required as part of the new development unless sufficient on-campus parking is already available. Columbus State University, Georgia Regents University, and Georgia State University may require structured parking facilities, each of which will have its own user-based parking system with fees collected therefrom accruing to the Concessionaire.



DINING:

The tenants of the Concessionaire who are students will be permitted to use the dining services of each Institution upon the same terms and conditions as other students of each Institution. At the option of any Institution during the Term, such Institution may require tenants of the Concessionaire who are students to use the dining services of such Institution.

**DEFAULTS/
REMEDIES:**

Customary for transactions of this type, including step-in and self-help rights of the BOR. In addition to all other remedies available to the BOR upon a default by the Concessionaire, the Concession Agreement, each Lease, the Project Operating Agreement, and each Development Agreement may be terminated by the BOR for cause upon the occurrence of certain Concessionaire defaults, including, but not limited to, insolvency or bankruptcy of the Concessionaire, nonperformance, and uncured breach of the Concession Agreement, each Lease, the Project Operating Agreement, or each Development Agreement. The Concession Agreement, each Lease, the Project Operating Agreement, and each Development Agreement will be cross-defaulted. Dispute resolution will consist of non-binding mediation and actions filed in the Superior Court of Fulton County, Georgia.

**EARLY
TERMINATION:**

The BOR shall have the option to terminate, for any reason or no reason, the Concession Agreement, each Lease, and the Project Operating Agreement upon (i) advance written notice to the Concessionaire and (ii) the payment of an early termination fee, to be calculated pursuant to an agreed upon formula.