

MASTER CONCESSION AGREEMENT
FOR THE LEASING AND DEVELOPMENT OF STUDENT HOUSING
(PHASE I)

Between
THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA
and
CONCESSIONAIRE
a [State] [entity]

Dated November [___], 2014

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Exhibits and Schedules:

- Exhibit A: Initial Housing Rates
- Exhibit B: Construction Insurance Requirements
- Exhibit C: Form of Performance Guaranty
- Exhibit D: Form of Immigration and Security Affidavit

- Schedule 3.3: Existing Housing Bonds
- Schedule 4.1.1: Existing Housing Projects
- Schedule 4.1.2: New Housing Projects
- Schedule 5.4: Capital Repair and Replacement Account Requirements
- Schedule 8.1.1: Information for Retained Housing
- Schedule 8.1.2: Information for Proposed Future Housing

MASTER CONCESSION AGREEMENT
FOR THE LEASING AND DEVELOPMENT OF STUDENT HOUSING
(PHASE I)

THIS MASTER CONCESSION AGREEMENT (this **“Agreement”**) is made and entered into this November [___], 2014 (the **“Effective Date”**), by and between THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA (the **“BOR”**), and CONCESSIONAIRE, a [State] [entity] (the **“Concessionaire”**). The BOR and the Concessionaire are sometimes herein collectively referred to as the **“Parties”** and individually as a **“Party.”**

WITNESSETH:

WHEREAS, the BOR is the governing body of the University System of Georgia (the **“System”**) and is responsible for the control and management of the System and the colleges and universities that comprise the System; and

WHEREAS, the BOR has determined that it is in the best interest of the System to lease certain student housing resources currently located on, and to develop new student housing resources located on, the campuses of nine institutions: Abraham Baldwin Agricultural College; Armstrong State University; College of Coastal Georgia; Columbus State University; Dalton State College; East Georgia State College; Georgia Regents University; Georgia State University; and the University of North Georgia (together, the **“Institutions”** and each separately, an **“Institution”**) and to contract with the selected lessee to finance, develop, design, engineer, construct, manage, operate, maintain, repair and replace such student housing resources; and

WHEREAS, the BOR issued a Request for Proposals (the **“RFP”**) soliciting proposals for the aforementioned lease and development projects, which involve the financing, development, design, construction, management, operation, maintenance, repair and replacement of certain student housing resources and other buildings, structures, appurtenances and other improvements now or to be located on certain portions of the Institutions (collectively, the **“Phase I Projects”** or simply, the **“Projects”** and each such Project individually, a **“Project”**); and

WHEREAS, pursuant to the RFP, the Concessionaire was selected to lease and develop the Projects; and

WHEREAS, each Project will be leased by BOR to the Concessionaire pursuant to a separate Lease Agreement for such Project (as amended from time to time, a **“Lease”** and, collectively, the **“Leases”**) and each Project will be developed, if applicable, and operated pursuant to the terms of this Agreement, the applicable Lease and the other Operative Agreements (as hereinafter defined) executed by the BOR and the Concessionaire; and

WHEREAS, notwithstanding the separate locations of the Projects and the necessity of executing separate Leases and certain Project-specific documents, the Parties desire to enter into

a master agreement governing certain of the agreements of the Parties relating to all the Phase I Projects and containing certain provisions that are necessary to coordinate provisions contained in the Leases and any Project-specific documents.

NOW, THEREFORE, it is mutually covenanted and agreed as follows:

ARTICLE I.

DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings set forth below:

“Aggregate Gross Revenues” shall have the meaning set forth in Section 6.4.2.

“Agreement” shall have the meaning set forth in the Preamble and shall include any modifications, amendments, supplements or restatements from time to time.

“Applicable Law” means all federal, state and local laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which are applicable to the Concessionaire, the BOR, the Guarantor or any Project (as the case may be) during the Term.

“Approved Mortgagee” shall have the meaning set forth in Section 7.1.2.

“Approved Mortgagee Affiliate” shall have the meaning set forth in Section 7.1.5.

“Attorney General” shall have the meaning set forth in Section 10.1.3.

“Base Rent” shall have the meaning set forth in Section 6.3.

“Base Rent Percentage” means _____.

“Books and Records” shall have the meaning set forth in Section 5.5.4.

“BOR” shall have the meaning set forth in the Preamble.

“Business Day” means any day that is not a Saturday, Sunday, holiday observed by the State of Georgia or other day on which banks in the State of Georgia are authorized or required by law to be closed.

“Claim” shall have the meaning set forth in Section 10.1.1.

“Completion Date” shall mean, with respect to each New Housing Project, July 1, 2016, as such date may be revised pursuant to the Construction Requirements attached to the respective New Housing Lease.

“Concessionaire” shall have the meaning set forth in the Preamble.

“Construction Term” for each New Housing Project shall mean the period beginning on the Effective Date and ending on the respective Completion Date.

“Contingent Rent” shall have the meaning set forth in Section 6.4.

“Contingent Rent Commencement Date” shall have the meaning set forth in Section 6.4.2.

“Construction Requirements” means those certain construction requirements and terms attached to each New Housing Lease as Exhibit C.

“Continued Operation Period” means the period from the Effective Date until the Project Turnover Date.

“Control” (and the co-relative terms “Controlling,” “Controlled by,” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of outstanding securities, equity, or other beneficial ownership interests, by contract or otherwise.

“CPA” shall have the meaning set forth in Section 5.5.3.

“Default Rate” shall have the meaning set forth in Section 6.7.

“Development Negotiation Right” shall have the meaning set forth in Section 8.1.2.

“Development Notice” shall have the meaning set forth in Section 8.1.2.

“Dispute” shall have the meaning set forth in Section 11.4.1.

“Escrow Agent” means [name of title company selected to serve as Escrow Agent].

“Escrow Agreement” means that certain Escrow Agreement dated as of the Effective Date among the Concessionaire, the BOR, each trustee for each series of Existing Housing Bonds and the Escrow Agent.

“Early Termination Amount” shall have the meaning set forth in Section 2.3.2.1.

“Effective Date” shall have the meaning set forth in the Preamble.

“Estimated Annual New Housing Project Gross Revenues” shall have the meaning set forth in Section 6.3.2.1.

“Event of Default” shall have the meaning set forth in Section 11.1.

“Existing Housing Base Rent” shall have the meaning set forth in Section 6.3.1.

“Existing Housing Bonds” shall have the meaning set forth in Section 3.3.

“Existing Housing Lease” means a Lease that grants an interest in an Existing Housing Project.

“Existing Housing Projects” shall have the meaning set forth in Section 4.1.1.

“Existing Housing Rent Term” shall have the meaning set forth in Section 6.3.1.

“Failure to Finance Liquidated Damages” shall have the meaning set forth in Section 3.5.1.

“Failure to Fund Liquidated Damages” shall have the meaning set forth in Section 3.5.2.

“Failure to Finance or Fund LOC” shall have the meaning set forth in Section 3.5.3.

“Fair Market Value” shall have the meaning set forth in Section 2.3.2.3.

“Fiscal Year” means the fiscal year of the BOR, which is the twelve (12) month period ending June 30 of each calendar year.

“Future Housing” shall have the meaning set forth in Section 8.1.2.

“GAAP” shall have the meaning set forth in Section 5.5.3.

“Gross Revenues” shall have the meaning set forth in Section 6.3.3.

“Guarantor” shall mean the guarantor under the Performance Guaranty.

“Indemnified Obligation” shall have the meaning set forth in Section 10.1.1.

“Insolvency Laws” shall have the meaning set forth in Section 11.1.3.

“Institution” and **“Institutions”** shall have the meanings set forth in the Recitals.

“Lease” and **“Leases”** shall have the meanings set forth in the Recitals. Each Existing Housing Lease and each New Housing Lease shall be a **“Lease,”** and the term **“Leases”** shall include both Existing Housing Leases and New Housings Leases.

“Lease Termination Amount” shall have the meaning set forth in Section 2.3.2.2.

“MCA Event of Default” shall have the meaning set forth in Section 11.1.2.

“Memorandum of Existing Housing Leases” means collectively the memorandum of lease for each Existing Housing Lease, in the form attached as an exhibit to such Existing Housing Lease.

“Negotiation Right” and **“Negotiation Rights”** shall have the meanings set forth in Section 8.1.4.

“New Housing Base Rent” shall have the meaning set forth in Section 6.3.2.

“New Housing Lease” means a Lease that grants an interest in a New Housing Project.

“New Housing Projects” shall have the meaning set forth in Section 4.1.2.

“New Housing Rent Commencement Date” shall have the meaning set forth in Section 6.2(b).

“New Housing Rent Term” shall have the meaning set forth in Section 6.3.2.

“New Project Notice” shall have the meaning set forth in Section 8.2.

“Open Government Laws” shall have the meaning set forth in Section 14.22.1.

“Operative Agreements” shall have the meaning set forth in Section 4.2.

“Party” and **“Parties”** shall have the meanings set forth in the Preamble.

“Performance Guaranty” shall have the meaning set forth in Section 9.1.

“Permitted Assignment” shall have the meaning set forth in Section 12.2.1.

“Permitted Residents” means, with respect to a particular Institution, (a) students enrolled full time in degree seeking programs at such Institution, (b) non-degree seeking students visiting the Institution in connection with Institution-sponsored and -approved activities (for example, study abroad programs, internships or fellowships), in all cases as determined by such Institution, (c) students enrolled at another System institution for whom housing is provided on a limited basis pursuant to an agreement between the Institution and such other institution, (d) students or other designated individuals attending special summer conferences or orientation programs at such Institution for which such Institution will provide housing accommodations, (e) full time faculty, staff or employees of such Institution, (f) students participating in such Institution’s continuing education programs, (g) spouses or other family members of any of the foregoing permitted to reside at on-campus housing by the applicable Institution’s housing policy, and (h) any other person with the written consent of the BOR; each individually, a **“Permitted Resident.”** Without limiting the generality of the foregoing, the term **“Permitted Residents”** includes all Residents.

“Person” means any natural person, firm, joint venture, limited liability company, association, trust, partnership, corporation, public body or other legal entity.

“Phase I” means the leasing of the Existing Housing Projects and the development and leasing of the New Housing Projects at the Institutions described herein.

“Premises” shall mean, collectively, all real property described as the “Premises” in the Leases, as modified from time to time.

“Premises Improvements” shall mean all buildings, structures, appurtenances and other improvements, together with the personal property owned by the BOR, located on any of the Premises.

“Pre-Concession Leases” and **“Pre-Concession Lease”** shall have the meanings set forth in Section 3.3.

“Pre-Concession Leases Termination Payments” and **“Pre-Concession Lease Termination Payment”** shall have the meanings set forth in Section 3.3.

“Pre-Concession Lessees” and **“Pre-Concession Lessee”** shall have the meanings set forth in Section 3.3.

“Prepaid Rent” shall have the meaning set forth in Section 6.1.

“Privatization Negotiation Right” shall have the meaning set forth in Section 8.1.1.

“Privatization Notice” shall have the meaning set forth in Section 8.1.1.

“Project” and **“Projects”** shall have the meaning set forth in the Recitals.

“Project Interest” shall have the meaning set forth in Section 2.3.2.2.

“Project Operating Agreement” means the Project Operating Agreement dated as of the Effective Date between the BOR and the Concessionaire, and all exhibits thereto, as amended or modified from time to time.

“Project Turnover Date” means July 1, 2015 or such other date as may be agreed upon by the Parties in writing.

“Project Turnover Date Funding Amount” shall have the meaning set forth in Section 3.2.1.

“Proposal” means the Proposal submitted by the Concessionaire in response to the RFP and any additional information in writing provided by the Concessionaire as such information may be supplemented and amended.

“Qualified Assignee” shall have the meaning set forth in Section 12.2.2(a).

“Qualified Assignee Tangible Net Worth Requirement” shall have the meaning set forth in Section 12.2.2(b).

“Renewal Notice” shall have the meaning set forth in Section 8.1.4.1.

“Rent” means, collectively, the Prepaid Rent, the Base Rent and the Contingent Rent.

“Resident” means any Permitted Resident currently residing at the Project under an executed Resident Housing Agreement.

“Resident Housing Agreement” means a residential housing agreement entered into by a Resident and the Concessionaire, which shall be in the form attached to the Project Operating Agreement, as such form is amended or supplemented from time to time; collectively, the **“Resident Housing Agreements.”**

“Resident Housing Rate” means, with respect to each Project, the amount of housing fees due per semester, payable monthly, from each Resident of such Project to the Concessionaire.

“Retained Housing” shall have the meaning set forth in Section 8.1.1.

“Right of First Refusal Period” shall have the meaning set forth in Section 8.1.4.

“System” shall have the meaning set forth in the Recitals.

“Term” shall have the meaning set forth in Article II.

“Termination Notice” shall have the meaning set forth in Section 11.2.2.

“Third Party Appraisal” shall have the meaning set forth in Section 2.3.3.2.

“Unassisted Negotiations” shall have the meaning set forth in Section 11.4.1.

“Value Report” and **“Value Reports”** shall have the meanings set forth in Section 2.3.3.1.

Section 1.2 General Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.1 hereof, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections,” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Agreement as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Agreement or describe the scope or intent of any provisions hereof.

(d) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

ARTICLE II.

TERM.

Section 2.1 Term. This Agreement shall be effective from the Effective Date through June 30, 2045, or through such earlier date on which this Agreement is terminated in accordance with Section 2.3 or 11.2 (the “**Term**”).

Section 2.2 Return of Premises. At the end of the term of each Lease, Concessionaire will either (a) return the applicable Project or (b) tear down the Premises Improvements and return the applicable portion of the Premises unimproved. The BOR, in its sole and absolute discretion, will have the option to require either (a) or (b), and will be required to give the Concessionaire notice of its choice at least eighteen (18) months prior to the expiration of the term of the applicable Lease. The specific procedures for such notice and for the return of the Premises, and certain other requirements of the BOR in connection therewith, are provided in each Lease.

Section 2.3 Early Termination.

2.3.1 Early Termination Option. The BOR shall have the option to terminate, for any reason or for no reason, in the BOR’s sole and absolute discretion, (a) any Lease or Leases, along with any Operative Agreements that relate only to such Lease or Leases, if applicable, or (b) all the Leases still in effect at the time of such termination, this Agreement and all other Operative Agreements still in effect at the time of such termination upon (x) not less than two (2) years’ prior written notice to the Concessionaire and (y) payment of an Early Termination Amount calculated in accordance with Section 2.3.2. The notice of termination under clause (x) above shall in no event be given prior to the expiration of the first three (3) years of the Term. Upon termination of any Lease or Leases, all interests in the Premises leased thereunder and all interests in the related Project or Projects shall revert to the BOR. In the event of any termination under clause (a), this Agreement and the Project Operating Agreement shall have no further effect with respect to the Project or Projects subject to the Lease or Leases as to which such termination is made (other than with respect to any provisions of this Agreement that survive termination of the Agreement itself).

2.3.2 Termination Amount Definitions.

2.3.2.1 “Early Termination Amount” means the amount necessary to effect any early termination under Section 2.3.1. If the BOR elects to terminate a single Lease under Section 2.3.1(a), the Early Termination Amount shall be equal to the Lease Termination Amount for such Lease. If the BOR elects to terminate more than one Lease (whether pursuant to Section 2.3.1(a) or Section 2.3.1(b)), the Early Termination Amount shall be equal to the sum of the Lease Termination Amounts for each Lease being terminated.

2.3.2.2 “Lease Termination Amount” means, with respect to any Lease, the Fair Market Value, as determined in accordance with Section 2.3.3, of the Concessionaire’s interest in the applicable Project granted pursuant to such Lease (such interest, a “**Project Interest**”).

2.3.2.3 **“Fair Market Value”** means, with respect to each Lease, the market value of the Concessionaire’s Project Interest, calculated using the income capitalization approach.

2.3.3 Determination of Fair Market Value.

2.3.3.1 In the event that the BOR elects to exercise the termination option set forth in Section 2.3.1, the BOR and the Concessionaire shall each hire a commercial real estate appraiser with experience in valuing residential rental projects for student housing and designated as an MAI appraiser by The Appraisal Institute, and cause such appraiser to prepare a comprehensive report (each, a **“Value Report”** and together, the **“Value Reports”**) setting forth the appraiser’s best calculation of the Fair Market Value of the applicable Project Interest, as well as all assumptions, processes, calculations and conclusions made, used or reached in determining such Fair Market Value.

2.3.3.2 If the Fair Market Value of the Project Interest set forth in the Value Report with the greater valuation exceeds the Fair Market Value of the Project Interest set forth in the Value Report with the lesser valuation by less than ten percent (10%), then the Fair Market Value of the Project Interest shall equal the arithmetic average of the two valuations and shall be final and binding on the Parties. If the Fair Market Value of the Project Interest set forth in the Value Report with the greater valuation exceeds the Fair Market Value of the Project Interest set forth in the Value Report with the lesser valuation by ten percent (10%) or more, then the BOR and the Concessionaire shall mutually select, within five (5) Business Days after the delivery of the Value Reports, a third party appraiser who shall perform its own appraisal of the Fair Market Value of the Project Interest (the **“Third Party Appraisal”**). Such third-party appraiser shall deliver its final valuation to the BOR and the Concessionaire within then (10) Business Days. In such instance, the Fair Market Value of Project Interest will equal the arithmetic average of the two valuations of the Fair Market Value of the Project Interest (from among the valuations set forth in the two original Value Reports and the Third Party Appraisal) that are closest to one another, and such determination shall be final and binding on the Parties. Each of the BOR and the Concessionaire will be responsible for the cost of its own valuation, and the BOR and the Concessionaire will each pay one-half of the costs of the third-party appraiser.

2.3.3.3 If multiple Leases are terminated at one time, the appraisers shall determine the Fair Market Value of each Project Interest individually.

ARTICLE III.

CONTINUED OPERATIONS PERIOD; TURNOVER OF THE PROJECTS

Section 3.1 Continued Operations Period. During the Continued Operations Period, the BOR will cause each applicable Institution to continue to operate its applicable Existing Housing Project substantially in accordance with its practice prior to the Effective Date. The Projects will be maintained in accordance with BOR policy and custom in effect on the Effective Date. During the Continued Operations Period, the BOR will receive all revenue from the Existing Housing Projects (including but not limited to all rental payments due under the Pre-

Concession Leases) and will pay all expenses of the Existing Housing Projects, including debt service payments with respect to the Existing Housing Bonds. The BOR will continue to insure or cause to be insured the Existing Housing Projects during the Continued Operations Period at the same level and for the same risks as it did on the Effective Date. The BOR will deliver the Existing Housing Projects to the Concessionaire on the Project Turnover Date in the same condition as the Existing Housing Projects existed on the Effective Date, normal wear and tear excepted.

Section 3.2 Turnover of Operations. Provided that no Event of Default has occurred and is continuing, on the Project Turnover Date:

3.2.1 The Concessionaire shall pay an amount equal to Three Hundred Twenty-Five Million Dollars (\$325,000,000) (the “**Project Turnover Date Funding Amount**”) to the Escrow Agent, in immediately available funds for the credit of the Pre-Concession Lessees and the BOR, to be allocated as follows:

3.2.1.1 For the credit of each Pre-Concession Lessee, an amount equal to such Pre-Concession Lessee’s Pre-Concession Lease Termination Payment.

3.2.1.2 For the credit of BOR, the balance, to be applied by BOR as follows:

(a) First, fifty percent (50%) of such balance shall be retained by the BOR as additional Prepaid Rent; and

(b) Second, the remaining fifty percent (50%) shall be applied by the BOR as a partial prepayment of the first installment of Base Rent.

3.2.2 The BOR shall make or cause to be made provision for payment of the Existing Housing Bonds, and shall provide or cause to be provided evidence of such payment, to the Escrow Agent in accordance with the terms of the Escrow Agreement.

3.2.3 The Escrow Agent shall release and record, to the extent applicable, the release documents for the Existing Housing Bonds, including terminations of the Pre-Concession Leases and satisfactions or releases of the Pre-Concession Security Documents.

3.2.4 The Escrow Agent shall release the Existing Housing Leases from escrow and record the Memorandum of Existing Housing Leases in accordance with the terms of the Escrow Agreement.

3.2.5 The BOR will turn over control of and the operations of the Existing Housing Projects to the Concessionaire, and the Concessionaire will assume control of and the operations of the Existing Housing Projects.

Commencing on the Project Turnover Date, the Concessionaire will operate the Existing Housing Projects in accordance with the provisions of the Project Operating Agreement, this Agreement and each other Operative Agreement.

Section 3.3 Pre-Concession Leases. Certain of the parcels making up the Premises are subject to those Ground Leases identified on Schedule 3.3 hereto between certain third party entities as ground lessees (the “**Pre-Concession Lessees**” and each individually, a “**Pre-Concession Lessee**”) and the BOR as ground lessor (the “**Pre-Concession Leases**” and each individually, a “**Pre-Concession Lease**”) and those Deeds to Secure Debt encumbering such parcels and securing the repayment of the Existing Housing Bonds (the “**Pre-Concession Security Documents**”) identified on Schedule 3.3 hereto. Subject to the other provisions of this Article III, the Pre-Concession Leases will be terminated, and the Pre-Concession Security Documents satisfied or released, on the Project Turnover Date. On the Project Turnover Date, the Concessionaire will make payments (the “**Pre-Concession Leases Termination Payments**”) to or for the credit of each Pre-Concession Lessee of an amount necessary to redeem, defease or otherwise provide for the payment of the existing revenue bond indebtedness associated with the applicable Pre-Concession Lease (the “**Existing Housing Bonds**”) described on Schedule 3.3 hereto or otherwise to obtain the release of the Premises from the lien and encumbrance of the Pre-Concession Security Documents in consideration of such Pre-Concession Lessee’s causing the Pre-Concession Security Documents to be satisfied and released.

Section 3.4 Financing of New Housing Projects. On or prior to May 1, 2015, the Concessionaire shall, with respect to each New Housing Project, both (i) close on the construction financing for such New Housing Project and provide evidence thereof to the BOR, and (ii) provide evidence to the BOR that the Concessionaire has available and on hand sufficient cash and unrestricted investments to pay that portion of the Approved Project Budget (as defined in the New Housing Leases) for such New Housing Project that is not to be paid from the construction financing referred to in (i) above (collectively, the “**New Housing Project Financing Requirements**”).

Section 3.5 Concessionaire’s Failure to Finance or Fund.

3.5.1 Failure to Satisfy New Housing Project Financing Requirements. If the Concessionaire fails to satisfy the New Housing Project Financing Requirements with respect to each New Housing Project by May 1, 2015, the Concessionaire shall (i) be in default under this Agreement and (ii) be liable to the BOR for liquidated damages in the amount of Twenty-Five Million Dollars (\$25,000,000) (the “**Failure to Finance Liquidated Damages**”). In addition, such default shall constitute an MCA Event of Default and shall entitle the BOR to immediately terminate this Agreement and each Lease pursuant to Section 11.2. The Parties acknowledge and agree (i) that the harm to the BOR caused by the Concessionaire’s failure to satisfy the New Housing Project Financing Requirements would be impossible or very difficult to accurately estimate as of the Effective Date and (ii) that the Failure to Finance Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such failure. The Parties intend that the Failure to Finance Liquidated Damages constitute compensation for the harm to the BOR that would arise from Concessionaire’s failure to provide reasonable assurance to the BOR that the Concessionaire will be able to meet the agreed-upon development schedule for the New Housing Projects, and the Failure to Finance Liquidated Damages are not intended to constitute a penalty.

3.5.2 **Failure to Fund Project Turnover Date Funding Amount.** If the Concessionaire fails to pay the Project Turnover Date Funding Amount on the Project Turnover Date, the Concessionaire shall (i) be in default under this Agreement and (ii) be liable to the BOR for liquidated damages in the amount of Twenty Million Dollars (\$20,000,000) (the **“Failure to Fund Liquidated Damages”**). In addition, such default shall constitute an MCA Event of Default and shall entitle the BOR to immediately terminate this Agreement and each Lease pursuant to Section 11.2. The Parties acknowledge and agree (i) that the harm to the BOR caused by the Concessionaire’s failure to pay the Project Turnover Date Funding Amount would be impossible or very difficult to accurately estimate as of the Effective Date and (ii) that the Failure to Fund Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from such failure. The Parties intend that the Failure to Fund Liquidated Damages constitute compensation for the harm to the BOR that would arise from Concessionaire’s failure to fund the Pre-Concession Leases Termination Payments, and the Failure to Fund Liquidated Damages are not intended to constitute a penalty.

3.5.3 **Failure to Finance or Fund LOC.** On or prior to the Effective Date, the Concessionaire shall cause to be issued a letter of credit that meets all requirements set forth in Section 14.3 in the face amount of \$25,000,000 (the **“Failure to Finance or Fund LOC”**) to secure the payment of the Failure to Finance Liquidated Damages and the Failure to Fund Liquidated Damages. In the event that the Concessionaire fails to satisfy the New Housing Project Financing Requirements with respect to each New Housing Project by May 1, 2015, the BOR shall have the right to draw upon the Failure to Finance or Fund LOC for the purpose of providing for the payment in full of the Failure to Finance Liquidated Damages. In the event that the Concessionaire fails to pay the Project Turnover Date Funding Amount or any portion thereof on the Project Turnover Date, the BOR shall have the right to draw upon the Failure to Finance or Fund LOC for the purpose of providing for the payment in full of the Failure to Fund Liquidated Damages. Upon satisfaction of the New Housing Project Financing Requirements with respect to each New Housing Project, the Concessionaire shall be entitled to cause the issuing bank to reduce the amount of the Failure to Finance or Fund LOC to a face amount of \$20,000,000.

Section 3.6 Failure of BOR to Defeas Existing Housing Bonds. In the event that the Concessionaire delivers to the Escrow Agent the Project Turnover Date Funding Amount but the BOR is prevented, for reasons not reasonably within its control, from causing the defeasance of all or any portion of the Existing Housing Bonds and the release by the trustee or trustees thereunder of the termination or terminations of any Pre-Concession Lease or any combination of Pre-Concession Leases and the satisfaction or release of the related Pre-Concession Security Document or Pre-Concession Security Documents, then the BOR may, at its option exercised by written notice to the Concessionaire, (i) proceed to turnover operations of those Projects for which the BOR is able to cause defeasance of the Existing Housing Bonds and obtain the termination of the applicable Pre-Concession Leases and satisfaction or release of related Pre-Concession Security Documents and (ii) extend the Project Turnover Date by a period of time not to exceed sixty (60) days (the **“Extension Period”**) for the remaining Projects. If at the end of the extension period the BOR remains prevented, for reasons not reasonably within its control, from causing the defeasance of all or any portion of the Existing Housing Bonds and the release by the trustee or trustees thereunder of the termination or terminations of any Pre-Concession Lease or any combination of Pre-Concession Leases and the satisfaction or release of the related

Pre-Concession Security Document or Pre-Concession Security Documents, then (x) the applicable Pre-Concession Lease Termination Payment or Pre-Concession Leases Termination Payments shall be returned to the Concessionaire, (y) the signatures of the Concessionaire and the BOR to the applicable Existing Housing Lease or Existing Housing Leases shall be returned to the Concessionaire and the BOR, respectively, and (z) the satisfactions and releases of the applicable Pre-Concession Security Document or Pre-Concession Security Documents shall be returned to the respective trustee or trustees for the applicable Existing Housing Bonds. The BOR's sole obligation to the Concessionaire in such event is to cause the Escrow Agent to return to the Concessionaire the applicable Pre-Concession Lease Termination Payment or Pre-Concession Leases Termination Payments and the Concessionaire's signature to the applicable Existing Housing Lease or Existing Housing Leases. In no event will the BOR be liable for any Early Termination Amount or have any other financial obligation to the Concessionaire in such event, nor will the occurrence of such event constitute a breach of or default under this Agreement or any other Operative Agreement. Notwithstanding anything in this Agreement or any other Operative Agreement to the contrary, the payment of the Project Turnover Date Funding Amount shall not be refundable to the Concessionaire under any circumstances whatsoever (other than to the extent necessary to refund to the Concessionaire any Pre-Concession Lease Termination Payment required to be refunded pursuant to this Section 3.6), including without limitation dispossession of the Concessionaire or any termination of this Agreement and/or one or more Leases, including upon an Event of Default as provided in Section 11.2.

ARTICLE IV.

DESCRIPTION OF THE PHASE I PROJECTS

Section 4.1 The Structure and Purpose of the Phase I Projects.

4.1.1 **Existing Housing.** The Concessionaire shall manage, operate, maintain and repair each of the Existing Housing Projects in accordance with the provisions of this Agreement, the Project Operating Agreement and the applicable Existing Housing Lease. The “**Existing Housing Projects**” shall mean the existing student housing resources that are to be leased to Concessionaire in this Phase I as described on Schedule 4.1.1 hereto, in each case as further described in the applicable Existing Housing Lease.

4.1.2 **New Housing.** The Concessionaire shall design, construct, manage, operate, maintain and repair the New Housing Projects in accordance with the provisions of this Agreement, the Project Operating Agreement and the applicable New Housing Lease, including the Construction Requirements. The “**New Housing Projects**” shall mean the new student housing resources to be developed by and leased to Concessionaire in this Phase I as described on Schedule 4.1.2 hereto, in each case as further described in the applicable New Housing Lease. As set forth in each New Housing Lease, the development and construction of the New Housing Projects shall be funded by and at the sole cost and expense of the Concessionaire, in accordance with the provisions of the New Housing Leases and this Agreement.

4.1.3 **Phase I Projects Generally.** The Phase I Projects consist of the financing, development, design, engineering, construction, management, operation, maintenance

and repair of certain student housing facilities now or to be located on the Premises and consist of both the Existing Housing Projects and the New Housing Projects. The BOR and the Concessionaire acknowledge that certain provisions, agreements and plans are specific only to specified Projects or Institutions. This Agreement includes certain of the agreements of the Parties relating to all Phase I Projects and certain provisions that are necessary to coordinate Project- or Institution-specific provisions contained in certain of the Operative Agreements.

Section 4.2 Operative Agreements. This Agreement, the Leases, the Project Operating Agreement, the Performance Guaranty, any other documents executed on or subsequent to the Effective Date by both the BOR and Concessionaire (and other Persons, if applicable) in connection with the Projects and any exhibits to such documents, as the same may be amended or modified from time to time, collectively are referred to in this Agreement as the “Operative Agreements.”

4.2.1 **Interpretation of Operative Agreements.** Provisions of the Operative Agreements may affect or describe only one of the Projects. Such provisions shall not be deemed to limit the scope of this Phase I to a single Project, and all such comparable provisions shall be read together along with the terms of and attachments to other Operative Agreements to set forth in full the description and requirements of the Project. The provisions of the Operative Agreements shall be deemed to refer to this Phase I as fully described and involving all Projects comprising, and all Institutions involved in, this Phase I unless the specific context indicates that the provision applies only to a single Project or Institution.

4.2.2 **Inconsistent Provisions.** In the event of any inconsistency between this Agreement and any Lease or the Project Operating Agreement, this Agreement shall prevail over the Leases and the Project Operating Agreement. In the event of an inconsistency between a Lease and the Project Operating Agreement, such Lease shall prevail over the Project Operating Agreement.

Section 4.3 Related Facilities.

4.3.1 **Parking.** Residents of each Project will have the same rights as residents of Retained Housing to use on-campus parking facilities, except for any parking facilities that are specifically assigned to residents of Retained Housing, if any, at the applicable Institution, as identified in the Project Operating Agreement. The BOR shall retain all rights to and interests in all on-campus parking facilities and all fees collected in connection with the use thereof, unless specifically provided otherwise in a particular Lease.

4.3.2 **Residence Life.** Pursuant to the Project Operating Agreement, the BOR has reserved for itself the right to provide residence life services to the students of the Institutions for the period set forth in the Project Operating Agreement. In furtherance of that allocation of responsibility, the BOR in the Leases has reserved for itself the right to use certain space within each Project (with the specific space for each Project and the charge, if any, to the BOR for such use set forth in the applicable Lease) for such residence life activities and services as the BOR in its sole discretion determines that the BOR will provide.

4.3.3 **Administrative and Auxiliary Services.** In certain Leases, the BOR has reserved for itself the right to use certain space at the applicable Projects (with the specific space for each Project and the charge, if any, to the BOR for such use as set forth in the applicable Lease) for administrative and auxiliary services of the applicable Institution.

4.3.4 **Commercial Space.** To the extent provided in a New Housing Lease, a New Housing Project may include designated commercial and/or retail space. The subleasing of such commercial and/or retail space will be the responsibility of the Concessionaire and will be conducted solely in accordance with the applicable Lease and the Project Operating Agreement and any restrictions on use contained therein.

ARTICLE V.

PROJECT OPERATION AND MANAGEMENT

Section 5.1 Management of the Projects. The Concessionaire will be responsible for comprehensive Project management. The Concessionaire's management of the Projects will be governed by the Project Operating Agreement, the Leases and this Agreement, including without limitation the following general provisions:

5.1.1 **Use of Projects.** The Concessionaire shall use each Project solely for (a) the housing of Permitted Residents, (b) the provision of certain amenities and services to Residents and (c) the sublease of certain space to specified commercial tenants, if applicable, in each case as provided in the Project Operating Agreement and applicable Lease.

5.1.2 **Performance Standard.** Concessionaire shall maintain the Premises Improvements in a condition as set forth in the Project Operating Agreement, which shall meet or exceed APPA Level 2 standards (as defined in and determined in accordance with the Project Operating Agreement).

5.1.3 **Separate Management Agents and Local Administration.** To the extent approved by the BOR and reflected in the Operative Agreements, the Concessionaire may use management agents for the operation of the Projects, including BOR staff, but all management agents must be approved in writing by the BOR in its sole and absolute discretion. The Concessionaire agrees to operate and manage the Projects, whether directly or indirectly, in accordance with the requirements of this Agreement and the other Operative Agreements. In the event the Concessionaire elects to engage BOR staff at any Institution to perform day-to-day maintenance and repair services, compensation for these services shall be paid separately pursuant to an agreement between the Concessionaire and such Institution. In the event that (a) any failure of any management agent to comply with its contract with the Concessionaire or (b) any other action or inaction by any management agent causes a failure by the Concessionaire to comply with the terms of this Agreement or any Operative Agreement, the Concessionaire will not be excused from liability for such failure because of its use of a management agent but shall remain liable under this Agreement and the Operative Agreements to the same extent as if the Concessionaire had performed or undertaken to perform all management activities directly. The Concessionaire shall not replace any management agent without the prior written approval of the BOR. The BOR shall have the right to require, for any reason or for no reason, the

Concessionaire to remove and replace any management agent upon not less than ninety (90) days prior written notice to the Concessionaire.

5.1.4 **BOR Retained Responsibilities.**

5.1.4.1 To preserve and maintain the educational experience of students at the Institutions, the BOR retains the right to provide, and shall remain responsible for the provision of, certain services for Residents as described in the Project Operating Agreement for the period of time as provided in the Project Operating Agreement.

5.1.4.2 In the event that the BOR elects to change the level or nature of the responsibilities retained by the BOR over the course of the Term, the BOR and the Concessionaire will review the Base Rent Percentage and agree upon any adjustments necessary to reflect the change in the relative responsibilities of the BOR and Concessionaire as they relate to such retained responsibilities.

5.1.5 **Resident Housing Agreements.**

5.1.5.1 **General Allocation of Rights and Responsibilities.**

(a) The Resident Housing Agreements will be between the Concessionaire and the Residents and shall be in the form attached to the Project Operating Agreement or otherwise approved in writing by the BOR.

(b) Each Institution shall determine the placement of the Residents for the Projects at such Institution in a manner that is appropriately responsive to student demand and housing availability. Specific procedures and policies for the placement of Residents are set forth in the Project Operating Agreement.

(c) The BOR may act as an agent of the Concessionaire to collect housing fees and other fees and deposits from Residents on the terms set forth in the Project Operating Agreement.

5.1.5.2 **Resident Housing Rates.** Resident Housing Rates for each Project for all semesters in the first (1st) academic year of the Term shall be set at the amounts set forth on Exhibit A hereto. For the remainder of the Term, Resident Housing Rates shall be set by the Concessionaire, subject to the prior written approval of the BOR, as provided in the Project Operating Agreement and the plans attached as appendices thereto, and any caps on annual Resident Housing Rate increases set by the Project Operating Agreement and the plans attached as appendices thereto.

5.1.5.3 **Summer Periods.** Housing terms and conditions for summer periods, if any, and for other activities (such as academic or sports camps) conducted by the Institutions on campus during the summer months will be determined by the Parties on a mutually agreeable basis in accordance with the procedures set forth in the Project Operating Agreement.

Section 5.2 Insurance Requirements. The Concessionaire shall carry and maintain in force, at its own expense, each type of insurance coverage set forth below in this Section 5.2 pursuant to a policy or policies that meet or exceed the standards set forth below in this Section 5.2 and are effective at all times, (a) for each New Housing Lease, from and including the Completion Date through the end of the Term and, (b) for each Existing Housing Lease, from and including the Project Turnover Date through the end of the Term.

5.2.1 All-risk property insurance, including twenty-four (24) months' business interruption insurance and loss of rents for actual loss sustained with an extended period of indemnity of one hundred eighty (180) days, on a replacement cost basis, with no coinsurance, for full replacement value of the Premises Improvements. The replacement value of the Premises Improvements shall be (a) determined by the Concessionaire after consultation with its insurance advisors and (b) approved by the BOR. Promptly after the fifth (5th) anniversary of the Existing Housing Rent Commencement Date (related to the Existing Housing) and the New Housing Rent Commencement Date (related to the New Housing) and each fifth (5th) anniversary of these dates, the replacement value of the Premises Improvements shall be re-determined by an appraisal performed by an independent insurance appraiser selected by the Concessionaire and approved by the BOR. The cost of such appraisal shall be paid by the Concessionaire. Such insurance shall have: (i) an all risk and other non-catastrophic perils deductible no greater than \$50,000, unless otherwise approved in writing by the BOR; (ii) earthquake (including sinkhole), sprinkler leakage, flood, windstorm and Named Windstorm, sewer backup, boiler, and machinery coverage with commercially reasonable limits and deductibles in the current market for similarly situated student housing developments as approved by the BOR; (iii) terrorism insurance if commercially available at reasonable rates; and (iv) ordinance or law coverage to include portions of the Projects' undamaged buildings and demolition of buildings.

5.2.2 Crime Insurance in an amount not less than \$1,000,000 per claim to include loss of third party property.

5.2.3 Commercial general liability insurance, on an occurrence basis, insuring against claims for bodily injury, death and property damage, occurring upon, in or about any of the Premises including the Premises Improvements or any other building thereon and adjoining sidewalks, streets and passageways. Such insurance shall have a deductible no greater than \$100,000, unless otherwise approved in writing by the BOR, with limits of not less than \$20,000,000 per occurrence, general aggregate and products and completed operations aggregate and shall include coverage for fire, legal liability and medical payments. Any general aggregate shall apply on a per location basis. The BOR shall be named as an additional insured. This coverage may be provided under primary liability and umbrella excess liability policies and shall include: (i) business auto liability insurance which insures against claims for bodily injury and property damage arising from the use of "any auto" with a combined single limit of \$1,000,000 per accident; (ii) environmental liability or pollution legal liability insurance, which includes coverage for mold, to the extent available at commercially reasonable rates; and (iii) directors and officers liability insurance (claims-made policy form). Limits of environmental policies, if available, shall be determined and approved by the BOR. All liability policies shall be primary and non-contributory to any insurance maintained by the BOR. The insurance carried and maintained by the Concessionaire pursuant to this section shall provide coverage to protect the BOR from any damage and liability for which the Concessionaire is liable or responsible or

agrees to hold harmless and indemnify the BOR under this Agreement or any other Operative Agreement, as applicable.

5.2.4 Professional liability insurance in the amount of no less than \$5,000,000 per claim and annual aggregate. Such insurance is to be effective at the times provided in this Section 5.2 above and for three (3) years following the conclusion of the Term, with respect to all aspects of this Phase I.

5.2.5 Workers' compensation insurance, on an occurrence basis, in the amounts of the statutory limits as established by the General Assembly of the State of Georgia. A group-insurer must submit a certificate of authority from the Insurance Commissioner of the State of Georgia approving the group insurance plan. The Concessionaire shall require all subcontractors performing work or occupying any part of the Projects to obtain an insurance certificate showing proof of workers' compensation coverage.

5.2.6 Employers' liability insurance, on an occurrence basis, with limits of at least (i) bodily injury by accident - \$1,000,000 each accident; and (ii) bodily injury by disease - \$1,000,000 each employee.

5.2.7 Commercial business automobile liability insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile with not less than \$1,000,000 combined single limits for each accident.

5.2.8 Each of the insurance coverages required in this Agreement shall be issued by a company licensed by the Insurance Commissioner of the State of Georgia to transact business in the State of Georgia for the applicable line of insurance and shall be an insurer with a Best Policyholders Rating of "A-" or better with a financial size rating of Class V or larger. Each policy shall contain the following provisions

5.2.8.1 The insurance company must agree that the policy will not be changed, allowed to lapse or allowed to expire until forty-five (45) days after the certificate holders have received written notice thereof.

5.2.8.2 The policy must not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives.

5.2.9 Promptly after the fifth (5th) anniversary of the Existing Housing Rent Commencement Date (related to the Existing Housing) and the New Housing Rent Commencement Date (related to the New Housing) and each fifth (5th) anniversary of these dates, the BOR and the Concessionaire will review the insurance coverage required to be maintained by the Concessionaire under this Agreement and agree upon any changes to such coverage necessary to maintain commercially reasonable levels of insurance coverage.

5.2.10 The Concessionaire shall furnish to the BOR appropriate certificates evidencing the insurance required to be maintained by the Concessionaire under this Section 5.2.

Section 5.3 Additional Construction Insurance Requirements. In addition to the insurance required by Section 5.2, during the Construction Term, the Concessionaire shall carry and maintain in force for each New Housing Project, at its own expense, the insurance described in Exhibit B, which is hereby incorporated into and made a part of this Agreement. Without limiting any of the provisions of Article X, if the Concessionaire for any reason fails to obtain and/or maintain in force, or cause to be obtained and/or maintained in force, any of the insurance required under Exhibit B, then the Concessionaire shall, and the Concessionaire does hereby agree to, indemnify the BOR against, and hold, save, and defend the BOR harmless from, any and all claims, demands, actions, causes of action, suits, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees and court costs incurred in enforcing this indemnity and otherwise) which the BOR may suffer or incur, or which may be asserted against the BOR whether meritorious or not, against which the BOR would or should have been insured under any required insurance which the Concessionaire does not for any reason obtain and/or maintain in force, or cause to be obtained and/or maintained in force. The Concessionaire shall furnish to the BOR appropriate certificates evidencing the insurance required to be maintained by the Concessionaire under this Section 5.3.

Section 5.4 Capital Repair and Replacement. During the Term, the Concessionaire, at its sole expense, shall maintain a capital repair and replacement account (the "**Capital Repair and Replacement Account**") to be used and applied to capital repairs and maintenance with respect to each Project as set forth in the Project Operating Agreement. The Concessionaire shall make deposits to the Capital Repair and Replacement Account annually, in accordance with the Project Operating Agreement and this Section 5.4. The initial annual deposits shall be made at the times and in the amounts per bed set forth on Schedule 5.4 for each Existing Housing Project and each New Housing Project (the "**Capital Repair and Replacement Funds**"). The amount of Capital Repair and Replacement Funds to be deposited will be increased each year during the Term by three percent (3%) or such greater or lesser amount as the BOR and Concessionaire may mutually agree. The Capital Repair and Replacement Account shall be maintained in a separate, segregated bank account into which only the Capital Repair and Replacement Funds are deposited. The Concessionaire shall provide the BOR with quarterly statements of account with respect to such account together with a computation demonstrating that such account is funded at the level required by this Section 5.4. The Concessionaire hereby grants to the BOR a security interest in the bank account where the Capital Repair and Replacement Funds are (or will be) deposited. Prior to the first date that any amounts are required to be maintained in the Capital Repair and Replacement Account, the Concessionaire shall cause the financial institution holding such account to execute and deliver in favor of the BOR a deposit account control agreement in form and substance reasonably acceptable to the BOR.

Section 5.5 Reporting Provisions.

5.5.1 Record Keeping. At all times during the Term, the Concessionaire shall maintain at its principal place of business in Georgia or such other place as agreed by the Parties, a complete and accurate set of files, books and records of all business activities and operations conducted in connection with performance under the Operative Agreements. The Concessionaire's records and accounts shall reflect, with respect to each Project, all items of revenue and expense allocable to the management and operation of such Project, balance sheet data with respect to each Project, operating information with respect to the status of each such

Project, as required by the Project Operating Agreement, and other information as may be reasonably required by the BOR. These records shall also include all information, records and reports required to be maintained by the Project Operating Agreement. The BOR may, at all reasonable times during the Term, inspect and request copies of any of the Concessionaire's records, files, reports, and related material pertaining to each Project and to the performance by the Concessionaire under the Operative Agreements.

5.5.2 Financial Reports. Within thirty (30) days after the end of each calendar quarter, the Concessionaire shall prepare and deliver to the BOR a quarterly financial report for each Project individually and for all Phase I Projects collectively that includes: (i) an income statement, (ii) a balance sheet and (iii) proposed modifications to the approved Project Budget. The principal financial officer of the Concessionaire shall certify to his or her knowledge after reasonable investigation the truth and accuracy of all financial statements and other information delivered to the BOR pursuant to this Section 5.5.2.

5.5.3 Annual Financial Information. Annual financial information shall include the auditor's report, financial statements with notes thereto, financial statement supplementary information, the auditor's management letter, the auditor's engagement letter, the client's letter to the auditor concerning related parties and related party transactions, the local property tax returns for each of the Phase I Projects, if any, the federal income tax return for the Concessionaire and such other information as the BOR may reasonably require, including without limitation information required by the BOR to respond to information requests from its auditors or from credit rating agencies. The auditor's management letter, the auditor's report or the financial statements must disclose any illegal act noted by the auditor regardless of materiality. Financial statements shall be prepared on an accrual basis in accordance with generally accepted accounting principles ("**GAAP**"). The supplemental schedules must include the beginning and ending balances and activity within each cash and reserve account, and the amount of local property taxes paid or due or a statement that the identified Project is not subject to such taxes. The supplemental schedule that includes property taxes must disclose the amount of property taxes that the Concessionaire budgeted in its final pro forma submittal to the BOR and the amount of actual property taxes paid. A supplemental schedule shall identify all owners of any interest in the Concessionaire and the interest held by each. If the Concessionaire or any owner of the Concessionaire is a corporation, all officers and directors of such corporation should be disclosed in the schedule, and if the Concessionaire or any owner is a limited liability company or partnership, all members and partners should be disclosed in the schedule. A supplemental schedule shall list the number of Residents by semester, the number of vacant housing units by semester, the percentage of housing units rented to Residents by semester and the percentage of housing units available for occupancy but vacant by semester. The auditor must be a certified public accounting firm ("**CPA**") that participates in the peer review program of the American Institute of Certified Public Accountants and that is authorized to perform audit services in the State of Georgia. The audit required by this Section 5.5 shall be performed in accordance with the auditing standards of the Governmental Accounting Standards Board ("**GASB**"). The principal financial officer of the Concessionaire shall certify to his or her knowledge after reasonable investigation the truth and accuracy of all financial statements and other information delivered to the BOR pursuant to this Section 5.5.3. The annual financial information and the auditor's latest peer review report must be furnished directly by the CPA to the BOR no later than three (3) months after the end of the Fiscal Year (or such longer period as

may be agreed to by the BOR in writing); *provided that* tax returns shall be furnished to the BOR within ten (10) days after their filing in accordance with Section 5.5.4.1 below. Financial statements that are not audited, but are “compiled” or “reviewed” or otherwise subjected to a review that does not constitute an audit, shall not meet the requirements of this Section 5.5.

5.5.4 Additional Record Keeping and Delivery. The Concessionaire agrees that the BOR or any of its duly authorized representatives, shall, until the expiration of five (5) years after the expiration or earlier termination of this Agreement, have access to and the right to examine any books, documents, papers, and records of the Concessionaire involving transactions related to the Phase I Projects. The Concessionaire shall keep and maintain accurate, true, and complete books and records that shall fully reflect the financial condition, occupancy, physical condition, maintenance, and operational status of the Projects, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any Applicable Law (collectively, the “**Books and Records**”). All Books and Records shall be kept at the Concessionaire’s principal office in Georgia or at such other place as the BOR and the Concessionaire both agree upon in writing. A back-up set of the Books and Records shall be kept at a separate location. The BOR may photocopy any of the Books and Records, at the sole expense of the Concessionaire. The Concessionaire shall deliver to the BOR, upon such schedule as the BOR may establish from time to time, and in such media, including electronic media as the BOR shall select, all information and supporting documentation which the Concessionaire has maintained, or which the BOR needs to file any report required by Applicable Law or which the BOR needs to assess the financial condition, performance, occupancy, physical condition, maintenance and operational status of the Phase I Projects. Such items shall: (a) be in a form satisfactory to the BOR, (b) be certified to the BOR as true, complete, and accurate in all material respects to his or her knowledge by the Concessionaire representative signing such certification after due inquiry, and (c) be taken from the Books and Records. The Concessionaire shall furnish promptly to the BOR the following documents, statements, reports, and other information in the manner provided below:

5.5.4.1 Within ten (10) days after the Concessionaire makes any tax filing with the required federal, state or local agencies, such tax filing.

5.5.4.2 Within fifteen (15) days following the Concessionaire’s receipt of same, copies of any default or deficiency notice delivered by any management agent, subcontractor, government agency or other party to the Concessionaire relating to the operation or management of the Projects, the construction of the New Housing Projects or the payment of any statement, bill or invoice owing with respect to the Projects, including without limitation those owing for utilities, taxes and ancillary services relating to the Projects.

5.5.4.3 Within ten (10) days after receipt of a request by the BOR (or such longer period of time as may be approved by the BOR), such additional information relating to the Projects or the Concessionaire, as reasonably requested by the BOR.

Section 5.6 Project Occupancy.

5.6.1 Occupancy levels for the Projects will be dictated by Permitted Resident demand alone. The BOR makes no guarantee or agreement as to minimum enrollment numbers

at any Institution, minimum occupancy levels for the Projects or any one of the Projects or any portion of any Project, or minimum levels of Gross Revenue to be generated by the Projects. The Concessionaire has evaluated the demand for, and the financial prospects of, each Existing Housing Project and each New Housing Project, utilizing its resources and expertise. The BOR makes no representations with respect to potential or projected demand for any Project and expressly disclaims responsibility for the conclusions of any demand studies obtained by the Concessionaire, even if procured, commissioned or approved by the BOR.

5.6.2 The BOR will not guarantee the continued operation, or continued separate operation, of any Institution. The Concessionaire shall bear all risk of the closure of any Institution or consolidation of any Institution resulting in a campus closure and the BOR shall not be liable for or obligated to reimburse the Concessionaire for any losses, costs or expenses, whether direct or indirect, that result from or are otherwise associated with such closure or consolidation. The BOR maintains the right to terminate the continued operation, or continued separate operation, of any Institution during the Term, and the BOR shall not be liable to the Concessionaire for any amounts whatsoever upon the closure of an Institution or consolidation of an Institution resulting in a campus closure during the Term. Without limiting the foregoing, neither the closure of an Institution or consolidation of an Institution resulting in a campus closure nor any other action undertaken by the BOR in connection with the closure of an Institution or consolidation of an Institution resulting in a campus closure shall be deemed to be a termination pursuant to Section 2.3 of this Agreement.

5.6.3 If the BOR elects to close any Institution or consolidate any Institution in a manner that results in a campus closure during the Term, the Concessionaire shall have the option to either (a) terminate the applicable Lease or Leases, which shall cause all of the Concessionaire's interest in the Project or Projects on such Institution's campus to revert to the BOR, or (b) continue to lease the Project or Projects on such Institution's campus under the applicable Lease or Leases, with the Base Rent due to the BOR attributable to such Project or Projects equal to \$1 per year per Lease for the duration of such Lease's term. In the event that the Concessionaire exercises its option to continue leasing a Project or Projects pursuant to clause (b) above, Sections 5.1 and 5.8 of this Agreement and Section 1.1 of the applicable Lease shall have no further force or effect with respect to the Project or Projects located at such Institution.

Section 5.7 Intellectual Property.

5.7.1 BOR reserves the exclusive right to sell sponsorship, entitlement and/or naming rights to all or any portion of the Premises or the Premises Improvements, and to retain all revenues related to such sales for such other areas. Following receipt by the Concessionaire of written notice from BOR of the designated name for any Project (each, a "**Project Name**" and collectively, the "**Project Names**"), the Concessionaire and its employees and agents shall exclusively use such Project Name in all correspondence, communications, advertising, websites, social media and promotions the Concessionaire may undertake or utilize with respect to such Project, subject to prior written approval by the BOR in each instance. The Concessionaire is hereby granted a non-exclusive license to use the Project Names solely for the purposes described in this Section 5.7, subject to any applicable BOR approval rights.

5.7.2 The Concessionaire agrees that it will not use the name or intellectual property of the BOR or any Institution, including but not limited to BOR or Institution trademarks, trade names or logos, in any manner, including commercial advertising or as a business reference, without the prior written consent of the BOR.

Section 5.8 BOR Reserved Rights.

5.8.1 The Concessionaire's rights and interests in the Premises are and shall remain specifically limited only to such real and personal property rights and interests as are necessary or required for the Concessionaire to perform its obligations to design, construct, finance, operate and maintain the Projects and to earn and retain housing fees under Resident Housing Agreements as contemplated by this Agreement. The Concessionaire's rights and interests in the Premises specifically exclude any and all airspace and any and all improvements and personal property above, on or below the surface of the Premises which are not necessary and required for such purposes.

5.8.2 The BOR further reserves for itself:

5.8.2.1 All rights to install, use, lease, grant indefeasible rights of use with respect to, sell and derive revenues from electrical and fiber optic conduit, cable, capacity, towers, antennas and associated equipment or other telecommunications equipment, hardware and capacity, existing over, on, under or adjacent to any portion of any Project installed by anyone, whether before or after the Effective Date, and all software which executes such equipment and hardware and related documentation, except as specifically provided in a particular Lease;

5.8.2.2 All rights to market, distribute, sell and derive revenues from any goods, products or merchandise depicting, utilizing or exploiting any name, image, logo, caricature or other representation, in any form or medium, of the BOR, any Institution, or the Premises or the Premises Improvements, or that may be confused with those of the BOR;

5.8.2.3 Any other commercial or noncommercial development or use of the Premises for other than operation of student housing and retail services reasonably related to the operation of student housing; and

5.8.2.4 All ownership, possession and control of, and all rights to develop, use, lease, sell and derive revenues from, carbon credits or other environmental benefits generated by or arising out of development, use, operation or maintenance of the Premises Improvements.

ARTICLE VI.

RENT

Section 6.1 Prepaid Rent. On the Effective Date, the Concessionaire shall pay to the BOR an amount equal to Ten Million Dollars (\$10,000,000) (together with any amounts received by the BOR as additional Prepaid Rent pursuant to Section 3.2.1.2(a), the "**Prepaid Rent**"). Notwithstanding anything in this Agreement or any other Operative Agreement to the contrary,

the payment of the Prepaid Rent shall not be refundable to the Concessionaire under any circumstances whatsoever.

Section 6.2 Base Rent Commencement Dates.

(a) For the Existing Housing Projects, the Resident occupancy term shall commence, and Base Rent shall be due for the period commencing, on the Project Turnover Date (the **“Existing Housing Rent Commencement Date”**).

(b) For each New Housing Project, the Resident occupancy term shall commence on the Actual Substantial Completion Date (as defined in the New Housing Lease for such New Housing Project) and Base Rent shall be due for the period commencing on the earlier of (i) such Actual Substantial Completion Date or (ii) July 1, 2016 (such earlier date, the **“New Housing Rent Commencement Date”**).

Section 6.3 Base Rent. Beginning at the Existing Housing Rent Commencement Date and continuing throughout the Term, the Concessionaire shall pay the BOR base rent (**“Base Rent”**), which shall be the sum of the Existing Housing Base Rent (as defined below) and the New Housing Base Rent (as defined below), if any, for the applicable quarter, in advance on the first Business Day of each quarter of the BOR’s Fiscal Year, pursuant to the terms set forth herein.

6.3.1 Existing Housing Base Rent. Beginning at the Existing Housing Rent Commencement Date and continuing throughout the Term (such period, the **“Existing Housing Rent Term”**), the Concessionaire shall pay the BOR base rent attributable to the Existing Housing Projects (the **“Existing Housing Base Rent”**), in the following amounts:

6.3.1.1 Each Existing Housing Base Rent payment for the first five (5) fiscal quarters of the Existing Housing Rent Term shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) the arithmetic average of the Gross Revenues attributable to the Existing Housing Projects collected by the BOR in the three (3) BOR fiscal years ending June 30, 2012, June 30, 2013, and June 30, 2014, times (iii) twenty-five percent (25%).

6.3.1.2 Each Existing Housing Base Rent payment due after the initial five (5) Existing Housing Base Rent payments that is due in October, January or April shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) twenty-five percent (25%) of the Gross Revenues received by the Concessionaire attributable to the Existing Housing Projects in the immediately preceding Fiscal Year.

6.3.1.3 Each Existing Housing Base Rent payment due after the initial five (5) Existing Housing Base Rent payments that is due in July shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) twenty-five percent (25%) of the Gross Revenues received by the Concessionaire attributable to the Existing Housing Projects in the Fiscal Year ending on June 30 of the immediately preceding calendar year.

6.3.2 New Housing Base Rent. Beginning at the New Housing Rent Commencement Date and continuing throughout the Term (such period, the **“New Housing**

Rent Term”), the Concessionaire shall pay the BOR base rent attributable to the New Housing Projects (the “**New Housing Base Rent**”) in the following amounts:

6.3.2.1 Each New Housing Base Rent payment for the first five (5) fiscal quarters of the New Housing Rent Term shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) the Estimated Annual New Housing Project Gross Revenues for each New Housing Project times (iii) twenty-five percent (25%). The “**Estimated Annual New Housing Project Gross Revenues**” for each New Housing Project shall be equal to the arithmetic product of (a) the number of beds to be in such New Housing Project upon its completion times (b) the sum of the Resident Housing Rates for both academic semesters of the applicable Fiscal Year, as set forth on Exhibit A hereto, plus any Resident Housing Rates for summer term enrollment, if applicable, times (c) a ninety-five percent (95%) estimated occupancy rate.

6.3.2.2 Each New Housing Base Rent payment due after the initial five (5) New Housing Base Rent payments that is due in October, January or April shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) twenty-five percent (25%) of the Gross Revenues received by the Concessionaire attributable to the New Housing Projects in the immediately preceding Fiscal Year.

6.3.2.3 Each New Housing Base Rent payment due after the initial five (5) New Housing Base Rent payments that is due in July shall be equal to the arithmetic product of (i) the Base Rent Percentage times (ii) twenty-five percent (25%) of the Gross Revenues received by the Concessionaire attributable to the New Housing Projects in the Fiscal Year ending on June 30 of the immediately preceding calendar year.

6.3.3 The “**Gross Revenues**” shall consist of and include all revenues and other income received by the Concessionaire from the operation of the Phase I Projects calculated on an accrual basis, which shall include, but not be limited to, Gross Fees (as defined in the Project Operating Agreement), parking fees, vending and laundry income and other retail income.

6.3.4 Within sixty (60) days of the end of each Fiscal Year, the Concessionaire shall provide the BOR a written statement showing the Concessionaire’s Gross Revenue from each Project for the preceding Fiscal Year and shall contain a certification by a responsible official of the statement’s truth, accuracy, and completeness.

Section 6.4 Contingent Rent. Beginning at the Contingent Rent Commencement Date and continuing throughout the duration of the Term, the Concessionaire shall pay the BOR contingent rent (the “**Contingent Rent**”) pursuant to the terms set forth in this Section 6.4. The initial Contingent Rent shall be an amount equal to _____ percent (___%) of the Concessionaire’s total Gross Revenues derived from the Projects.

6.4.1 Contingent Rent shall be due and payable to the BOR within ninety (90) days of the end of each Fiscal Year.

6.4.2 The Concessionaire’s obligation to pay Contingent Rent shall commence on the date that the Aggregate Gross Revenues for the Projects exceed \$_____ (the

“Contingent Rent Commencement Date”). “Aggregate Gross Revenues” shall consist of and include all Gross Revenues collected on or since the Effective Date.

Section 6.5 Aggregate Basis. Base Rent and Contingent Rent shall each be calculated and paid to the BOR on an aggregate basis, which shall include all applicable Phase I Projects.

Section 6.6 BOR’s Right to Audit. The BOR, or any agent of the BOR acting in such capacity, shall have the right, from time to time, to examine and make copies of records pertaining to the Annual Rent Statement (a **“Rent Audit”**). Upon request of the BOR to review such records, Concessionaire shall promptly provide BOR reasonable access to such records electronically if feasible, or otherwise at the offices of the BOR in Atlanta, Georgia. If the Rent Audit discloses any deficiency in the payment of Rent by the Concessionaire (**“Deficient Amount”**), then the Concessionaire shall promptly pay the BOR the Deficient Amount together with interest at the Default Rate upon demand. If the Deficient Amount is greater than five percent (5%) of the actual Rent due, then the Concessionaire shall reimburse the BOR for the cost of the Rent Audit and the Concessionaire shall also pay the BOR interest on the Deficient Amount at the Default Rate accruing from the date the Deficient Amount was originally due to the BOR. If the Rent Audit shall disclose any overpayment of Rent, the BOR shall promptly reimburse the Concessionaire for said overpayment.

Section 6.7 Late Payment. If the Concessionaire shall fail to pay Rent or any other amount due under this Agreement or any other Operative Agreement, when the same is due and payable, such unpaid amount shall bear interest from the due date thereof to the date of payment at the rate of twelve percent (12%) per annum (the **“Default Rate”**). In no event shall the Default Rate be higher than the legal limit, and if the legal limit is lower than twelve percent (12%), the Default Rate shall be deemed to be the highest rate permitted by law. If any installment of Rent is delinquent by more than thirty (30) days from the date when due, the Concessionaire shall also pay to the BOR, to compensate the BOR for, among other things, incurring administrative expenses associated with the processing of such delinquent installment, a late charge in an amount equal to ten percent (10%) of the amount of the delinquent installment, which late charge shall be immediately due and payable without notice or demand from the BOR and which itself shall bear interest at the Default Rate from the date due until paid. The charges under this provision shall be in addition to all of the BOR’s other rights and remedies hereunder or at law and shall not be construed as a penalty.

Section 6.8 Rent Payments. The Concessionaire shall pay the BOR all Rent due hereunder, without offset or abatement and without previous demand, at the office of the BOR, or at such other address as the BOR may designate by notice to the Concessionaire. Rent for any partial Fiscal Years or partial payment periods shall be prorated. If the BOR, the Institutions or any affiliate entity collects housing fees under Resident Housing Agreements or other sums on behalf of the Concessionaire, then, in the event the Concessionaire is in default hereunder for failure to pay Rent or other sums due under any other Operative Agreement, after the expiration of any applicable cure period, the BOR shall have the right to offset any amounts due and payable to the BOR by the Concessionaire under this Agreement or any other Operative Agreement against such housing fees or other sums.

ARTICLE VII.

LIENS AND LEASEHOLD MORTGAGES

Section 7.1 Leasehold Mortgages.

7.1.1 Except as provided in Section 7.1.2 below, the Concessionaire shall not: (i) engage in any financing or other transaction creating any mortgage or security interest upon its leasehold interest in any of the Premises or the Premises Improvements; (ii) place or suffer to be placed any lien or other encumbrance upon its leasehold interest in any of the Premises or any Premises Improvements; (iii) suffer any levy or attachment to be made on its leasehold interest in any of the Premises or any Premises Improvements; or (iv) pledge, mortgage, assign, encumber, or otherwise grant a security interest in its leasehold interest in any of the Premises, any Premises Improvements, or the rents, issues, profits or other income of any of the Premises or any of the Premises Improvements, including, without limitation, any payments pursuant to, and the right to receive payment under, the Resident Housing Agreements. The Concessionaire shall not be in breach of this Section 7.1.1 with respect to any encumbrance permitted by the applicable Lease.

7.1.2 During the Term, the Concessionaire may encumber by mortgage, deed of trust or security agreement to secure one or more loans (in each case, a **“Leasehold Mortgage”**) its leasehold interest in the Premises, the Premises Improvements and/or the Gross Revenues. The proposed holder of any such Leasehold Mortgage must be approved in writing by the BOR prior to the execution of the Leasehold Mortgage on the terms and conditions in this Agreement. Any mortgagee that is approved in writing by the BOR shall be referred to in this Agreement and the other Operative Agreements, as applicable, as an **“Approved Mortgagee.”** The BOR agrees to execute an estoppel certificate and any other similar documentation as reasonably may be required by an Approved Mortgagee to evidence the BOR’s consent to such Leasehold Mortgage. Notwithstanding any foreclosure, the Concessionaire shall remain liable for the performance of all the terms, covenants, and conditions of the Operative Agreements that by the terms thereof are to be carried out and performed by the Concessionaire.

7.1.3 No Leasehold Mortgage shall extend to or affect the fee, the reversionary interest, or the estate of the BOR in the Premises or Premises Improvements. No Leasehold Mortgage shall be binding upon any of the Premises or Premises Improvements until it is approved by the BOR and a copy thereof has been delivered to the BOR.

7.1.4 The Concessionaire shall immediately notify the BOR promptly of any lien or encumbrance on (a) any of the Premises, (b) any of the Premises Improvements or (c) the Concessionaire’s interest in the Premises or Premises Improvements, whether created by act of the Concessionaire or otherwise, of which the Concessionaire has notice.

7.1.5 If an Approved Mortgagee or an Approved Mortgagee Affiliate (as defined below) acquires, by deed-in-lieu, at a foreclosure of its mortgage or deed of trust, or otherwise, the Concessionaire’s leasehold interest in (a) any of the Premises or (b) any Premises Improvements, this Agreement and the other Operative Documents shall continue in full force and effect provided that such Approved Mortgagee or Approved Mortgagee Affiliate provides written notice to the BOR within two (2) Business Days of such acquisition. The acquisition by

anyone other than an Approved Mortgagee or an Approved Mortgagee Affiliate of the Concessionaire's leasehold interest in (a) any of the Premises or (b) any Premises Improvements shall require the prior written approval of the BOR. No agent or nominee shall be appointed to operate and manage any portion of the Premises or the Premises Improvements without obtaining the prior written approval of the BOR. Such approval shall be withheld or granted under the terms and conditions described in this Agreement or the Operating Agreement. Notwithstanding anything to the contrary contained in this Section 7.1.5, the BOR may withhold approval of any purchaser (other than the Approved Mortgagee or an Approved Mortgagee Affiliate) of the Concessionaire's leasehold interest in the Premises or any Premises Improvements if the BOR determines in its sole discretion that such purchaser's acquisition would in any way impair the operations of any Institution. As used in this Article VII, **"Approved Mortgagee Affiliate"** means a corporation, limited liability company, or other entity that Controls, is owned and Controlled by, or is under common ownership and Control with, an Approved Mortgagee.

Section 7.2 Rights of Approved Mortgagees.

7.2.1 For so long as a Leasehold Mortgage with an Approved Mortgagee shall remain unsatisfied of record or until written notice of satisfaction of such Leasehold Mortgage is given by the Approved Mortgagee to the BOR, the provisions of this Section 7.2 shall apply to each such Approved Mortgagee. In the event of any assignment of a Leasehold Mortgage or in the event of a change of address of an Approved Mortgagee or of an assignee of such Approved Mortgagee, written notice of such new name and/or address shall be promptly provided to BOR.

7.2.2 No termination, cancellation, rejection, surrender, amendment or modification (other than by expiration of the Term or in accordance with Section 2.3) of any Lease or release of the Concessionaire thereunder shall be effective as to any Approved Mortgagee unless consented to in writing by such Approved Mortgagee. Without limiting the generality of the foregoing, no rejection of any Lease by Concessionaire or by a trustee in bankruptcy for Concessionaire shall be effective as to any Approved Mortgagee unless consented to in writing by such Approved Mortgagee.

7.2.3 The BOR shall, on serving the Concessionaire with any notice of any default under this Agreement or any Lease, simultaneously serve a copy of such notice upon any Approved Mortgagee. No such notice by the BOR to the Concessionaire shall be deemed to have been duly given unless and until a copy thereof has been so provided to any Approved Mortgagee in the manner specified herein. From and after the date such notice has been given to an Approved Mortgagee, such Approved Mortgagee shall have the same period, after its receipt of such notice, for remedying any default specified in such notice or causing the same to be remedied as is given to the Concessionaire after the giving of such notice to the Concessionaire to remedy, commence remedying or cause to be remedied the defaults specified in any such notice, but such Approved Mortgagee shall in no manner be obligated to do so. The BOR shall accept such cure by or at the instigation of the Approved Mortgagee as if the same had been performed by Concessionaire. The Concessionaire hereby authorizes any Approved Mortgagee to take any such action as such Approved Mortgagee deems necessary to cure any such default and does hereby authorize entry upon the Premises by such Approved Mortgagee for the purpose of curing such defaults.

Section 7.3 Rights upon Termination.

7.3.1 In the event that the BOR shall elect to terminate any Lease by reason of any default of the Concessionaire under Article XI, such Approved Mortgagee shall have the right, which right shall be exercised, if at all, within fifteen (15) days after such Approved Mortgagee receives notice of the BOR's election to terminate such Lease, to postpone and extend the specified date for the termination of such Lease as fixed by the BOR in its notice of termination for a period of not more than six (6) months, provided that such Approved Mortgagee shall, during such six (6) month period, (a) pay or cause to be paid any Rent and other payments and charges as the same become due and perform all of the Concessionaire's other obligations under this Agreement and such Lease, excepting (i) obligations of the Concessionaire to satisfy or otherwise discharge any lien, charge or encumbrance against Concessionaire's interest in such Lease or the related Premises provided that such lien, charge or encumbrance is junior in priority to the lien of the mortgage held by such Approved Mortgagee and does not affect the BOR's fee simple interest in the Premises, and (ii) past non-monetary obligations then in default and not reasonably susceptible of being cured by such Approved Mortgagee, and (b) if not enjoined or stayed, take steps to acquire or sell (but only to a Qualified Assignee) the Concessionaire's interest in such Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

7.3.2 If at the end of such six (6) month period such Approved Mortgagee is complying with the immediately preceding paragraph and such Approved Mortgagee is prohibited by any process or injunction issued by any court of competent jurisdiction or by reason of any action in any court of competent jurisdiction from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, such Lease shall not then terminate, and the time for completion by such Approved Mortgagee of its proceedings shall continue so long as such Approved Mortgagee is enjoined or stayed and thereafter for so long as such Approved Mortgagee proceeds in good faith and with due diligence to complete steps to acquire or sell (but only to a Qualified Assignee) the Concessionaire's interest in such Lease by foreclosure of the Leasehold Mortgage or by other appropriate means. Nothing in this paragraph, however, shall be construed to extend any Lease beyond the original Term or to require an Approved Mortgagee to continue foreclosure proceedings after a default has been cured. In the event that such default shall be cured and the Approved Mortgagee shall discontinue such foreclosure proceedings, this Agreement and such Lease shall continue in full force and effect as if the Concessionaire had not defaulted.

7.3.3 In the event that an Approved Mortgagee complies with this Section 7.3 and such Approved Mortgagee acquires the Concessionaire's right title and interest in any Lease by foreclosure or otherwise, then, upon the acquisition of the Concessionaire's right, title and interest in such Lease by such Approved Mortgagee or an Approved Mortgagee Affiliate, or any other purchaser or assignee at a foreclosure sale or otherwise (but only if such other purchaser or assignee is a Qualified Assignee), this Agreement and such Lease shall continue in full force and effect as if the Concessionaire had not defaulted.

7.3.4 While the BOR may from time to time approve more than one leasehold mortgagee, the BOR will not approve more than one such leasehold mortgagee to be the "Approved Mortgagee" to exercise the rights of an Approved Mortgagee under this Article VII.

In the event that an Approved Mortgagee intends to assign this Agreement and the Operative Documents to an Approved Mortgagee Affiliate or to a Qualified Assignee pursuant to the exercise of a right conferred by this Article VII, such Approved Mortgagee must assign all Leases and other Operative Documents, if any are assigned.

ARTICLE VIII.

ADDITIONAL PROJECTS

Section 8.1 Rights of First Refusal.

8.1.1 **Retained Housing.** In the event that the BOR determines that it is in the best interest of the System to lease to an unrelated entity any of the existing student housing at the Institutions not included in this Phase I (the “**Retained Housing**”) during the Right of First Refusal Period (as defined in Section 8.1.4 below), the Concessionaire shall have a right of first refusal to negotiate to lease that portion of the Retained Housing (the “**Privatization Negotiation Right**”), *provided, however*, that a Privatization Negotiation Right may be revoked by the BOR upon the occurrence of any Event of Nonperformance (as defined in the Project Operating Agreement). If the BOR elects to lease any portion of the Retained Housing, and if no Event of Nonperformance exists at the time of such election, the BOR shall provide written notice to the Concessionaire of its plans to lease the Retained Housing (a “**Privatization Notice**”), along with the information outlined on Schedule 8.1.1 hereto regarding the Retained Housing to be leased, at least sixty (60) days prior to the anticipated date of such leasing transaction. The Concessionaire shall elect to either exercise or waive a Privatization Negotiation Right in a written response to the BOR within thirty (30) days of any Privatization Notice’s delivery. In the event that the Concessionaire elects to waive a Privatization Negotiation Right, such Privatization Negotiation Right shall terminate and be of no further force or effect, *provided, however*, that the waiver of a Privatization Negotiation Right shall not prevent the Concessionaire from submitting proposals for the leasing transaction along with other respondents. In the event that the Concessionaire elects to exercise a Privatization Negotiation Right, subsequent negotiations shall proceed as provided in Section 8.2 below.

8.1.2 **Future Housing.** In the event that the BOR determines that it is in the best interest of the System to develop additional student housing at any of the Institutions in addition to and not including the New Housing Projects (the “**Future Housing**”) during the Right of First Refusal Period (as defined in Section 8.1.4 below), the BOR shall notify the Concessionaire of its interest and request the Concessionaire to engage, at the Concessionaire’s expense, a professional third party to conduct a housing demand market study to evidence the strength and nature of the demand for new on-campus housing. In addition, the BOR shall provide Concessionaire for its review information with respect to the proposed Future Housing of the type described on Schedule 8.1.2. Upon completion of the demand study and review by the Concessionaire and the BOR of such demand study and of the information provided by BOR, the Concessionaire shall have a right of first refusal to negotiate to develop such Future Housing (the “**Development Negotiation Right**”), *provided, however*, that a Development Negotiation Right may be revoked by the BOR upon the occurrence of any Event of Nonperformance (as defined in the Project Operating Agreement). If no Event of Nonperformance exists at the time, the BOR shall provide written notice to the Concessionaire of its plans to develop the Future

Housing (a “**Development Notice**”), along with the information outlined on Schedule 8.1.2 regarding the Future Housing proposed to be developed, at least eighteen (18) months prior to the anticipated student occupancy date. The Concessionaire shall elect to either exercise or waive a Development Negotiation Right in a written response to the BOR within sixty (60) days of delivery of any Development Notice. In the event that the Concessionaire elects to waive a Development Negotiation Right, such Development Negotiation Right shall terminate and be of no further force or effect, *provided, however*, that the waiver of a Development Negotiation Right shall not prevent the Concessionaire from submitting proposals for the development along with other respondents. In the event that the Concessionaire elects to exercise a Development Negotiation Right, subsequent negotiations shall proceed as provided in Section 8.2 below. For the avoidance of doubt, this right shall only apply to Future Housing at any of the Institutions and shall not apply to any housing resources at any other college or university within the System.

8.1.3 **Right of First Refusal Inapplicable.** Notwithstanding the foregoing, the Concessionaire shall not be granted any Privatization Negotiation Right or Development Negotiation Right, and therefore the BOR shall not be obligated to deliver a Privatization Notice or Development Notice offering the Concessionaire the opportunity to exercise or waive any right, in the event of any of the following:

(a) the leasing or development by the BOR of student housing for Greek letter organizations, for graduate students, for international students, for married students or for students and their children;

(b) the leasing or development by the BOR of student housing that is financed by gift or donation from any party, including an affiliated entity of an Institution; or

(c) the renovation, reconfiguration and/or expansion by not more than ten percent (10%) of existing student housing owned by the BOR and not subject to this Agreement or any Lease.

8.1.4 **Right of First Refusal Period; Renewals.** The “**Right of First Refusal Period**” shall mean the period commencing on the Effective Date and continuing through June 30, 2025, together with any subsequent ten (10) year period or periods, if any, for which the Privatization Negotiation Right and the Development Negotiation Right (each, a “**Negotiation Right**” and together, the “**Negotiation Rights**”) are renewed in accordance with the following procedures:

8.1.4.1 In the event that the Concessionaire desires to renew the Negotiation Rights, the Concessionaire shall deliver to the BOR a written notice setting forth its desire to renew the Negotiation Rights (a “**Renewal Notice**”) at least one hundred eighty (180) days before June 30, 2025 (or, if such Negotiation Rights have been previously renewed, at least one hundred eighty (180) days before any later ten (10) year anniversary of June 30, 2025 on which the Right of First Refusal Period would be set to expire but for the effectiveness of the desired renewal).

8.1.4.2 Following its receipt of any Renewal Notice, the BOR shall deliver a written response to the Concessionaire at least thirty (30) days prior to the end of the

then-applicable ten (10) year period either approving or denying the renewal of the Negotiation Rights. The BOR's decision to approve or deny any such renewal shall be made in its sole and absolute discretion. If the BOR denies any such renewal, the Negotiation Rights shall expire and be of no further force or effect.

8.1.4.3 In the event that the BOR approves a renewal, such renewal shall become effective only if the Concessionaire has paid a renewal fee in an amount to be agreed upon by the Parties. Such renewal fee shall be paid not later than five (5) Business Days prior to the date on which the Concessionaire's then-effective Negotiation Right would otherwise be set to expire, or such later date to which the BOR has agreed in writing.

Section 8.2 Negotiation. Following the delivery of a Privatization Notice or Development Notice (each, a "**New Project Notice**"), the BOR and the Concessionaire shall negotiate in good faith the terms and conditions of any necessary lease and any amendments to this Agreement or any other Operative Agreement necessary to make the applicable Retained Housing or Future Housing subject to the terms of this Agreement and the other applicable Operative Agreements. No Party shall be obligated to enter into any such lease or amendment unless it is on commercially reasonable, fair market terms. If the necessary lease and amendments to this Agreement and the other Operative Agreements have not been executed by the BOR and the Concessionaire within ninety (90) days after the Concessionaire's delivery of its response to the New Project Notice electing to exercise its Negotiation Right (or within such longer period as agreed upon by the Parties), such Negotiation Right will expire, neither the BOR nor the Concessionaire shall have any further obligation to negotiate with one another, and the Concessionaire shall have no rights to enter into the lease or undertake the development that was the subject of the New Project Notice.

Section 8.3 Cooperation. In connection with the leasing of any Retained Housing or the development of any Future Housing, regardless of whether the Concessionaire is the lessee under such leasing transaction or undertaking such development, the Concessionaire (a) shall cooperate with the BOR in connection with such leasing or development, provided that such cooperation does not impose unreasonable costs on the Concessionaire and (b) shall not, direct or indirectly, oppose, impede or restrict, or aid or cooperate with others to oppose, impede or restrict, the leasing of any Retained Housing or the development of any Future Housing in any way.

Section 8.4 Expansion of Phase I. The BOR reserves the right to negotiate with the Concessionaire subsequent to the Effective Date to add additional projects or to add new Institutions to this Concession Agreement upon terms mutually acceptable to the BOR and the Concessionaire. In such event, the Concessionaire and the BOR will enter into a separate Lease with respect to such project and will amend this Agreement to specifically include and refer to such new project and/or Institution.

ARTICLE IX.

GUARANTY

Section 9.1 Performance Guaranty. The performance of the Concessionaire's covenants and obligations under this Agreement and the other Operative Agreements shall be absolutely and unconditionally guaranteed by the Guarantor pursuant to a guaranty agreement in substantially the form of Exhibit C attached hereto (the "**Performance Guaranty**") to be executed on or prior to the Effective Date. In the event that the Guarantor fails to meet any of the financial covenants set forth in Section 9.3 below, the Concessionaire shall, within one hundred eighty (180) days of such failure, secure a substitute performance guaranty, also in substantially the form of Exhibit C, adapted as necessary based on the identity of the substitute guarantor, but without change to its essential terms and conditions, from a substitute guarantor, *provided that* (a) such substitute guarantor must be approved by the BOR in writing, such approval not to be unreasonably withheld, conditioned or delayed, and (b)(i) such substitute guarantor must have met each financial covenant set forth in Section 9.3 below as of the date of its most recent annual financial statements and the date of its most recent quarterly financial statements, if any, that are dated subsequent to its most recent annual financial statements, each of which, if applicable, the Concessionaire shall provide, or cause to be provided, to the BOR as soon as reasonably practicable upon identification of such substitute guarantor to the BOR and in no event later than one hundred twenty (120) days after such substitute guarantor's fiscal year end or sixty (60) days after the end of such substitute guarantor's most recent fiscal quarter and (ii) no event shall have occurred subsequent to the dates of such substitute guarantor's most recent quarterly financial statements that has had, or could reasonably be expected to have, a Material Adverse Effect (as defined in Exhibit C) on such substitute guarantor's financial position. The Concessionaire's failure to secure a substitute performance guaranty as provided in the preceding sentence shall constitute an MCA Event of Default under Section 11.1.2.

Section 9.2 Guarantor Financial Information. The Concessionaire shall cause the Guarantor to provide to the BOR the quarterly and annual financial information required to be provided pursuant to Section 7(a) of the Performance Guaranty, accompanied by a compliance certificate executed by the principal financial officer of the Guarantor (i) to the effect that (A) to his or her knowledge after reasonable investigation, the financial statements and other information being delivered to the BOR along with such certificate are true and accurate and (B) that the Guarantor met each of the financial covenants set forth in Section 9.3 as of the end of its most recent fiscal quarter and (ii) containing calculations demonstrating, based on the financial statements being delivered to the BOR along with such certificate that the Guarantor met each of the financial covenants set forth in Section 9.3 as of the end of its most recent fiscal quarter.

Section 9.3 Guarantor Financial Covenants.

9.3.1 The Guarantor's Unrestricted Cash and Investments as of the end of each fiscal quarter shall equal at least ____ days of Daily Operating Expenses.

9.3.2 The Guarantor's Leverage Ratio as of the end of each fiscal quarter shall be not greater than __:1.

9.3.3 The Guarantor's Total Assets as of the end of each fiscal quarter shall not be less than \$_____.

9.3.4 The Guarantor's Fixed Charge Coverage Ratio as of the end of each fiscal quarter shall not be less than _____:1.

Section 9.4 Definitions.

9.4.1 **"Daily Operating Expenses"** means as of any date the cumulative operating expenses of the Guarantor for the immediately preceding twelve (12) month period, including provision for bad debts but excluding interest, depreciation and amortization expense, divided by the number of calendar days for the applicable period.

9.4.2 **"EBITDA"** means the sum of (a) net income, or deficit, as the case may be (excluding gains or losses from sales of assets, extraordinary and non-recurring gains or losses, interest income (including non-cash interest income), the write up or off of any asset, any investment income or loss (equity earnings or loss) from affiliates or other persons not consolidated with the Guarantor under GAAP), (b) interest expense (including non-cash interest expense), (c) depreciation and amortization expense, (d) all non-cash charges and expenses including equity-based compensation expense and (e) management fees and related expenses and indemnification. EBITDA shall be adjusted to give effect to any acquisition, sale or other disposition of any operation or business (or any portion thereof) during the period of calculation, as if such acquisition, sale or other disposition occurred on the first day of such period of calculation.

9.4.3 **"Fixed Charge Coverage Ratio"** means as of any date the ratio derived by dividing (a) EBITDA calculated for the then most recently completed four fiscal quarters by (b) the sum for the then most recently completed four fiscal quarters of the following: (i) interest expense (including non-cash interest expense, interest during construction and interest paid from restricted funds) plus (ii) principal payments required to be paid on Indebtedness, plus (iii) preferred distributions and preferred dividends.

9.4.4 **"Indebtedness"** means without duplication: (a) all obligations for borrowed money; (b) obligations representing the deferred purchase price of property or services other than accounts payable arising in connection with the purchase of goods or services on terms customary in the trade; (c) obligations, whether or not assumed, secured by liens or a pledge of or an encumbrance on the proceeds or production from property now or hereafter owned or acquired; (d) obligations which are evidenced by notes, acceptances or other instruments; (e) leases of real or personal property which are required to be capitalized under GAAP or which are treated as operating leases under regulations applicable to them but which otherwise would be required to be capitalized under GAAP; (f) fixed payment obligations under guarantees, whether or not due; (g) net termination obligations under hedging agreements, calculated as of any date as if such agreement or arrangement were terminated on such date; and (h) similar obligations.

9.4.5 **“Leverage Ratio”** means the ratio derived by dividing (a) Indebtedness on the date of the calculation by (b) EBITDA calculated for the then most recently completed four fiscal quarters.

9.4.6 **“Total Assets”** means the total assets of the Guarantor computed in accordance with GAAP.

9.4.7 **“Unrestricted Cash and Investments”** means unrestricted and unencumbered cash, cash equivalents, and marketable liquid investments; provided, however, that there shall be excluded (or deducted in the case of clause (b) below) therefrom the following: (a) the amount of or in any trustee-held funds, debt service funds, debt service reserve funds, construction funds, litigation reserve funds, malpractice funds or other self-insurance or captive insurer funds, pension or retirement funds and any other funds set aside or reserved in such a manner so as to restrict the funds so that such funds are not available to the Borrowers to pay debt service on Indebtedness; (b) the principal amount of any borrowed moneys payable in one year or less (other than the current portion of long-term debt); and (c) any amounts pledged or posted, or currently required to be pledged or posted, to secure obligations under a swap agreement or in connection with any derivative transaction. For purposes of this definition, if marketable securities are loaned pursuant to a security lending program, either the market value of such securities that are loaned or any cash held as collateral under such lending program shall be included as Unrestricted Cash and Investments, but not both such amounts.

ARTICLE X.

INDEMNIFICATION; LIMITATIONS ON LIABILITY

Section 10.1 Concessionaire’s Indemnification of BOR.

10.1.1 Except as otherwise expressly provided herein or in any other Operative Agreement, the Concessionaire shall indemnify and hold harmless the BOR, and its trustees, officers, agents, employees and affiliated and support entities (collectively, and including the BOR itself, the **“BOR Indemnitees”**) from and against any and all claims and demands (each, a **“Claim”**) and any and all liabilities, obligations, losses, damages, fines, penalties, costs, charges and expenses, including without limitation reasonable fees of architects, engineers, consultants and attorneys and costs associated with administrative and judicial proceedings incurred by the BOR Indemnitees (each, an **“Indemnified Obligation”**), which may be imposed upon, incurred by or asserted against the BOR Indemnitees in connection with, or arising out of, any act or omission of the Concessionaire or its licensees or subcontractors in connection with the administration of this Agreement, the development of the New Housing Projects or the operation of the Projects, including without limitation (a) failure by Concessionaire to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations in this Agreement, any of the Leases or the Project Operating Agreement required by the provisions of such agreement to be performed or complied with by the Concessionaire, (b) negligent, grossly negligent or willful acts or omissions of the Concessionaire and (c) failure of the Concessionaire to comply in any respect with any Applicable Law.

10.1.2 The Concessionaire's assumption of risk and indemnity of the BOR Indemnitees contained in this Article X shall not include damages caused by the gross negligence or willful misconduct of the BOR Indemnitees.

10.1.3 If any action or proceeding is brought against the BOR Indemnitees because of any one or more of the Claims described in Section 10.1.1 above or relating to any one or more of the Indemnified Obligations described in Section 10.1.1 above, the Concessionaire, at its sole cost and expense shall be responsible for the defense of that action or proceeding provided that in any such action or proceeding the sole legal counsel for the BOR Indemnitees shall be the Attorney General of the State of Georgia (the "**Attorney General**") or a Special Assistant Attorney General so appointed by the Attorney General (which may include counsel recommended by the Concessionaire at the Attorney General's sole and absolute discretion). Any settlement of a Claim brought against or otherwise involving the BOR Indemnitees must be approved in writing by the BOR and the Attorney General to be effective.

10.1.4 Without limiting any other provisions of this Article X and subject to Section 10.1.3 above, it is understood and agreed by the Concessionaire that if any of the BOR Indemnitees is made a defendant in any action or proceeding relating to any one or more of the Claims for which it is entitled to be indemnified pursuant to this Article X, and the Concessionaire fails or refuses to assume the defense thereof, after having received notice by the BOR of its obligation hereunder to do so, the BOR may compromise or settle or defend against any such Claim in any such action or proceeding, and the Concessionaire shall be bound and obligated to reimburse the BOR for the amount expended by the BOR in settling and compromising any such Claim, or for the amount expended by BOR in paying any judgment rendered therein, together with all reasonable attorneys' fees incurred by the BOR for defense or settlement of such Claim. Any judgment rendered against the BOR Indemnitees or amount expended by the BOR in compromising or settling such Claim shall be conclusive as determining the amount for which the Concessionaire is liable to reimburse the BOR hereunder.

10.1.5 The Concessionaire shall reimburse the BOR or the Georgia Department of Administrative Services, as applicable, for any funds that may be paid by the State Tort Claims Trust Fund, the State Insurance and Hazard Reserve Fund and all other self-insured funds established and maintained by the Georgia Department of Administrative Services and which are paid in respect to any damage or loss (including costs and expenses) covered by the Concessionaire's indemnification obligations under this Agreement (including without limitation in relation to personal injuries, property damage and/or other claims arising out of or resulting from the performance of this Agreement or due to acts or omissions of the Concessionaire this Agreement or any other Operative Agreement).

10.1.6 The BOR will give the Concessionaire written notice of any Claim against the BOR Indemnitees covered by this Article X or Indemnified Obligation incurred by the BOR Indemnitees covered by this Article X as soon as practicable after learning of such claim; *provided, however*, that the BOR's failure to give timely notice to the Concessionaire shall not relieve the Concessionaire from any liability which it may have to the BOR Indemnitees, except and solely to the extent that such failure or delay in notification shall have adversely affected the Concessionaire's ability to defend against, settle or satisfy any Claim or Indemnified Obligation. Not later than fifteen (15) days after receipt by Concessionaire of

written notice from the BOR of any Claim or Indemnified Obligation, the Concessionaire shall affirm in writing by notice to the BOR that the Concessionaire will, as applicable, defend any action or proceeding that is brought against the BOR Indemnitees because of any one or more Claims in accordance with this Article X or indemnify and hold harmless the BOR Indemnitees against any Indemnified Obligations.

Section 10.2 No Waiver; Survival. Nothing contained in this Agreement shall limit or waive the BOR's protections or defenses that the State of Georgia has at law or in equity, and nothing in this Agreement shall be construed to limit the Concessionaire's obligation to indemnify the BOR Indemnitees as provided under any Lease or any other Operative Agreement. The provisions of this Article X shall survive indefinitely, notwithstanding the expiration or earlier termination of this Agreement. Although the Concessionaire has caused the BOR to be named as loss payee or additional insured under the Concessionaire's insurance policies pursuant to Article V above, the Concessionaire's liability under the indemnification provisions in the Article X shall not be limited to the liability limits set forth in such insurance policies. Notwithstanding any provision of this Agreement, nothing in this Article X shall limit or supersede the Concessionaire's obligations under Section 19 of each Lease.

Section 10.3 LIMITATIONS ON LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT OR UNDER APPLICABLE LAW, THE BOR SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES TO PROPERTY OR INJURIES OR DEATH TO PERSONS THAT MAY ARISE FROM OR BE ATTRIBUTABLE OR INCIDENT TO THE CONDITION OR STATE OF REPAIR OF ANY PROJECT, OR THE USE AND OCCUPATION OF ANY PROJECT, OR FOR ANY DAMAGES TO THE PROPERTY OF THE CONCESSIONAIRE, OR INJURIES OR DEATH OF THE CONCESSIONAIRE'S OFFICERS, AGENTS, SERVANTS, EMPLOYEES OR RESIDENTS, OR OTHERS WHO MAY BE ON ANY PROJECT AT THEIR INVITATION OR THE INVITATION OF ANY ONE OF THEM.

ARTICLE XI.

DEFAULT PROVISIONS

Section 11.1 Events of Default. Each of the following shall constitute an "Event of Default" under this Agreement:

11.1.1 any failure of the Concessionaire to pay any Rent, or any other amount due hereunder, when due and payable, and the continuation of such failure for ten (10) days;

11.1.2 any failure of the Concessionaire to comply with any provision of this Agreement (other than occurrences described in any other provision of this Section 11.1), where such failure continues for thirty (30) days after delivery of written notice thereof by the BOR to the Concessionaire (an "MCA Event of Default" and all such failures collectively, the "MCA Events of Default"); *provided that* if an MCA Event of Default is not reasonably susceptible to cure within such thirty (30) day period, the Concessionaire shall have such longer period as may be approved in writing in advance by the BOR, which approval shall not be unreasonably withheld, to cure such MCA Event of Default so long as the Concessionaire commences curing

such MCA Event of Default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the BOR, which approval shall not be unreasonably withheld; *provided further that* the occurrence of an MCA Event of Default shall also be subject to the provisions of Section 11.4;

11.1.3 (a) the filing by the Concessionaire or the Guarantor of a voluntary petition in bankruptcy, (b) the adjudication of the Concessionaire a bankrupt, (c) the filing by the Concessionaire or the Guarantor of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future federal, state or other bankruptcy or insolvency statute or law (collectively, “**Insolvency Laws**”), (d) the seeking, consenting to or acquiescing in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of the Concessionaire or the Guarantor by any of the foregoing, (e) the seeking, consenting to or acquiescing in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of all or any substantial part of the Concessionaire’s properties or the Concessionaire’s interests in the Projects, (f) the making of a general assignment for the benefit of creditors by the Concessionaire or the Guarantor, or (g) the inability of any of the Concessionaire or the Guarantor to pay its respective debts as they mature;

11.1.4 the commencement of any action, case or proceeding against the Concessionaire or the Guarantor seeking (a) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Insolvency Laws, or (b) the appointment, without the consent or acquiescence of the Concessionaire or the Guarantor, of any trustee, receiver or liquidator of the Concessionaire or the Guarantor or of any of the Concessionaire’s or Guarantor’s properties or of any Project, and such proceedings shall continue undismissed for a period of sixty (60) days;

11.1.5 the dissolution or liquidation of the Concessionaire or the Guarantor, or the involvement of either of the foregoing in proceedings towards dissolution or liquidation;

11.1.6 any transfer, assignment or sublease in violation of Article XII;

11.1.7 the failure by the Concessionaire to maintain any insurance required to be maintained pursuant to this Agreement or any other Operative Agreement and such failure continues for ten (10) days after delivery of written notice thereof by the BOR to the Concessionaire; *provided that* if the required insurance has lapsed or would otherwise lapse within the ten (10) day cure period, such cure period is shortened to three (3) Business Days;

11.1.8 an event of default under any of the Leases;

11.1.9 an event of default under the Project Operating Agreement; and

11.1.10 an event of default under the Performance Guaranty.

Section 11.2 Remedies and Termination Rights. If an Event of Default exists, then the BOR may, at its option and in its sole and absolute discretion, pursue any one or more of the following remedies, without any notice or demand to the extent permitted by Applicable Law:

11.2.1 declare an “Event of Default” arising under and as defined in the other Operative Agreements by reason of the occurrence of such Event of Default, and thereafter exercise each and every remedy available to the BOR under the Operative Agreements;

11.2.2 terminate this Agreement and any or all of the Operative Agreements upon written notice to the Concessionaire without cost or liability to the BOR (such notice is referred to herein as a “**Termination Notice**” and shall be effective as of the date specified therein, which shall be at least five (5) but not more than thirty (30) days after its receipt by the Concessionaire);

11.2.3 terminate the Concessionaire’s right of possession under the Leases, as provided in the Leases;

11.2.4 recover from the Concessionaire its actual damages incurred as a result of such Event of Default, including without limitation all costs and expenses associated with the BOR’s repossession of the Projects and resumption of the responsibility for the operation or development, as applicable, any advisors’ or attorneys’ fees incurred in connection with the termination of this Agreement and/or the identification of and contracting with a replacement concessionaire and all lost rents or portions thereof; and

11.2.5 exercise any and all other rights available to the BOR at law or in equity.

Section 11.3 No Limitation of Remedies. Nothing in this Article XI shall limit the remedies available to the BOR under any other Operative Agreement.

Section 11.4 Dispute Resolution.

11.4.1 If any issue, claim or dispute involving the BOR under this Agreement or any other Operative Agreement (a “**Dispute**”) should arise, the Parties shall first attempt to resolve the Dispute without involvement of other Persons (“**Unassisted Negotiations**”). Either Party may request in writing that Unassisted Negotiations commence. As part of the Unassisted Negotiations, the Parties shall consider employing joint fact finding if material factual disputes are involved and shall use other early resolution techniques appropriate to the circumstances. If the Dispute involves material issues of fact, the Parties may employ a neutral third party to provide a confidential evaluation of the issues of fact.

11.4.2 If the Dispute is not resolved within twenty (20) days of the request for Unassisted Negotiations and the Parties do not mutually agree to continue Unassisted Negotiations, the Parties may enter non-binding mediation of the Dispute by a neutral third party (the “**Mediation**”). The Mediation procedures to be employed in resolution of the Dispute shall be documented in a Mediation agreement executed by the Parties. The Mediation must be completed within twenty (20) days.

11.4.3 If the Parties are unable to resolve the Dispute following Unassisted Negotiations and the use of Mediation procedures, either Party may file an action in the Superior Court of Fulton County, Georgia pursuant to Section 14.11 below, *provided that* any action brought against the BOR must be brought in accordance with O.C.G.A. § 50-21-1(a).

11.4.4 Each Party acknowledges and agrees (a) that the Mediation procedures provided in Section 11.4.2 are voluntary procedures that supplement rather than replace other dispute resolution techniques available to the BOR and (b) that nothing contained in this Agreement shall limit or waive the BOR's protections or defenses under Applicable Law and, without limiting the foregoing, the Constitution of the State of Georgia.

11.4.5 The Parties understand and agree that the BOR's obligation to make any payment arising out of an agreement between the Parties resolving a Dispute is contingent upon the availability of funds proper for such payment. Any agreement between the Parties resolving a Dispute must be approved in writing by the BOR and the Attorney General to be effective.

11.4.6 Any order or judgment under this Section 11.4 with respect to a dispute that is not subject to appeal shall be considered a **"Final Dispute Decision."**

11.4.7 Notwithstanding anything to the contrary in this Agreement, the BOR shall not be required to engage in Unassisted Negotiations or Mediation prior to seeking redress for an Event of Default under Sections 11.1.1, 11.1.3, 11.1.4, 11.1.5, 11.1.6 and 11.1.7 or any breaches of the covenants contained in Articles VI and IX or Sections 3.5, 5.2, 5.3, 5.4 and 5.5 of this Agreement.

Section 11.5 Limitations on Damages. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE OPERATIVE AGREEMENTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY PROVISION OF THIS AGREEMENT OR OTHERWISE FOR LOST OR PROSPECTIVE PROFITS, OR FOR ANY OTHER SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, IN CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT CAUSED BY OR RESULTING FROM SUCH PARTY'S OWN, SOLE OR CONCURRENT NEGLIGENCE OR THE NEGLIGENCE OF ITS AFFILIATES OR RELATED PARTIES, INCLUDING CLAIMS OF THE OTHER PARTY ARISING OUT OF THIRD PARTY CLAIMS.

ARTICLE XII.

ASSIGNMENT AND SUCCESSORS

Section 12.1 No Assignment by Concessionaire. Except as otherwise provided in Section 12.2 below, the Concessionaire shall not transfer, sublease or assign this Agreement, any Lease, any other Operative Agreement or any interest in any Project or any portion of any Project without the prior written consent of the BOR. For purposes of this Agreement a prohibited transfer, sublease or assignment shall be deemed to include any transfer, whether voluntary, involuntary or by operation of law, and including without limitation any transfer resulting from the withdrawal or change of members or other persons owning a Controlling interest in the Concessionaire, any dissolution, merger, consolidation or other reorganization of the Concessionaire or the sale or transfer of a Controlling interest in the capital stock of or comparable ownership interest in the Concessionaire, that directly or indirectly results in a change of Control of the Concessionaire or the transfer of the direct or indirect beneficial ownership interests of the Concessionaire in the Projects. Any purported transfer, sublease or

assignment which does not receive the prior written consent of the BOR, or is otherwise not made in accordance with the terms of this Agreement, shall be null and void and of no effect. Such consent may be withheld by the BOR in its sole and absolute discretion for any reason or no reason at all.

Section 12.2 Permitted Assignments.

12.2.1 **Types of Permitted Assignment.** Notwithstanding anything to the contrary contained in this Agreement or any of the other Operative Agreements but subject to Section 12.3 below, the occurrence of any of the following events (each, a **“Permitted Assignment”**) shall not constitute a violation of Section 12.1 or any other Section of this Agreement or any of the other Operative Agreements:

- (a) the Resident Housing Agreements;
- (b) the grant of an easement, license or similar agreement as permitted by the Leases;
- (c) the creation of a tax lien or a mechanics’, materialmans’, or judgment lien against the Concessionaire’s interest in a Project that does not constitute a breach of this Agreement;
- (d) a transfer or assignment to an Approved Mortgagee pursuant to Article VII; and
- (e) a transfer, assignment or sublease to a Qualified Assignee, *provided that* (i) at least five (5) years have passed since the Effective Date and (ii) the conditions in Section 12.3 below are met.

12.2.2 **Certain Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

(a) **“Qualified Assignee”** means a person or entity that, as of the date of the proposed transfer, assignment or sublease: (i) has a Tangible Net Worth greater than or equal to the Qualified Assignee Tangible Net Worth Requirement (which condition may be satisfied on a consolidated basis with an affiliate guarantor which guarantees the obligations of such entity) and (ii) has at least seven (7) years of experience owning, managing and operating student housing facilities comparable to the Projects, or retains a third party management company with such experience pursuant to a management agreement reasonably satisfactory to the BOR; *provided that* the BOR shall have the right to approve the entity responsible for the management of the Projects following the assignment, which approval shall be reasonable under the then current circumstances.

(b) **“Qualified Assignee Tangible Net Worth Requirement”** means \$100,000,000. Promptly after each fifth (5th) anniversary of the Effective Date, the BOR and the Concessionaire will review the Qualified Assignee Tangible Net Worth Requirement and agree upon any changes to such requirement necessary to reflect economic conditions (including

without limitation prevailing inflation rates) that could affect the appropriate level of Tangible Net Worth for a Qualified Assignee.

(c) **“Tangible Net Worth”** means an amount equal to: (a) net worth determined in accordance with GAAP; less (b) all intangible assets (determined in accordance with GAAP) including, without limitation, goodwill, intellectual property, licenses, organizational costs, deferred amounts, covenants not to compete, unearned income and restricted funds; less (c) prepaid expenses; and less (d) all obligations owed by any affiliate, owner or employee.

Section 12.3 Conditions on Assignment. Any transfer, sublease or assignment of this Agreement, any Lease, any other Operative Agreement or any interest in any Project or any portion of any Project (including any Permitted Assignment) shall be subject to each of the following conditions:

(a) No transfer, sublease or assignment of the Concessionaire’s interests shall occur except in connection with the assignment of all of the Concessionaire’s interests in the Projects and the Operative Agreements.

(b) No transfer, sublease or assignment shall be effective if, at the time made, there exists any Event of Default under this Agreement or any default under any other Operative Agreement.

(c) Any transfer, sublease or assignment granted by the Concessionaire shall be consistent with all of the terms and conditions of this Agreement, the Leases and the other Operative Agreements, and the rights of the transferee, sublessee or assignee shall terminate immediately upon the expiration or any earlier termination of such Operative Agreements, without any liability on the part of the BOR to the Concessionaire or any transferee, sublessee or assignee. Without limiting Section 12.4 below, under any transfer, sublease or assignment made, the transferee, sublessee or assignee shall be deemed to have assumed all of the obligations of the Concessionaire under this Agreement, the Leases and the other Operative Agreements.

(d) No transfer, sublease or assignment shall be effective unless the Concessionaire has furnished to the BOR, for its prior written consent, a copy of each transfer, sublease or assignment agreement it proposes to execute and all information required by the BOR concerning the proposed transferee, sublessee or assignee. The BOR may require the Concessionaire to delete, add, or change provisions in the transfer, sublease or assignment instrument as the BOR deems necessary to protect its interests. Consent or rejection of any changes required by the BOR shall be provided within thirty (30) Business Days of receipt of the proposed agreement.

(e) Any agreement of transfer, sublease or assignment must comply with the specific requirements, if any, for transfer, sublease or assignment in any of the Operative Agreements and expressly provide that: the transfer, sublease or assignment, as the case may be, is subject to all of the terms and conditions of the Operative Agreements; all rights of the transferee, sublessee or assignee shall terminate on the expiration or earlier termination of each of the Operative Agreements; the transferee, sublessee or assignee, as the case may be, shall

assume all of the Concessionaire's obligations and responsibilities under the Operative Agreements; in the case of any conflict between any provisions of any of the Operative Agreements and any provisions of the agreement of transfer, sublease or assignment, the Operative Agreements will control; and, in the case of an agreement of sublease, the sublessee (i) acknowledges the right of the BOR to continue or terminate such sublease, in the BOR's sole discretion, upon termination of this Agreement and the Leases and (ii) agrees to recognize and attorn to the BOR in the event that the BOR elects under such circumstances to continue such sublease. A copy of each Operative Agreement must be attached to the agreement of transfer, sublease or assignment.

Failure to comply with this Section 12.3 shall constitute a breach of this Agreement by the Concessionaire. The BOR shall not be obligated to recognize any right of any Person to an interest in the Projects or to own or operate any facilities and/or improvements or conduct any other activity or activities on any of the Premises acquired in violation of this Section 12.3.

Section 12.4 Survival of Obligations. Notwithstanding the occurrence of any transfer, sublease or assignment permitted by this Article XII, the Concessionaire shall remain liable for all obligations to the BOR arising under this Agreement (including without limitation Article X hereof), the Leases and all other Operative Agreements for the entire remaining Term, except as otherwise agreed in writing by the BOR. Nothing in the preceding sentence shall be construed to relieve the Concessionaire of any obligations that extend beyond the Term (including without limitation any obligations imposed by Article X hereof).

ARTICLE XIII.

REPRESENTATIONS AND WARRANTIES

Section 13.1 Representations and Warranties of the Concessionaire. As an inducement to the BOR to enter into this Agreement, the Concessionaire hereby represents and warrants to the BOR, as of the Effective Date, as follows:

(a) The Concessionaire is a [type of entity] validly existing and in good standing under the laws of [State], [duly qualified and in good standing under the laws of the State of Georgia] *[if not a Georgia entity]*.

(b) The Concessionaire has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform under this Agreement and has or will have (as the case may be) all requisite power and authority to execute, deliver and perform under each of the Operative Agreements upon the respective dates of such Operative Agreements.

(c) This Agreement is the valid and binding obligation of the Concessionaire, enforceable against the Concessionaire in accordance with its terms, subject to applicable provisions of Insolvency Law, general equitable principles and the discretion of courts in granting equitable remedies.

(d) This Agreement does not and the Operative Agreements do not or will not (as the case may be) contravene any provision of the Concessionaire's [certificate of

formation and operating agreement][articles of incorporation and bylaws] in effect on the date hereof.

(e) The execution, delivery and performance by the Concessionaire of this Agreement and each other Operative Agreement do not or will not (as the case may be), with the passing of time or the giving of notice or both, conflict with or result in a breach of any of the provisions of, or constitute a default under, any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any lease or any other material agreement or contract by which the Concessionaire, its activities or its property is bound or any Applicable Law, including without limitation any order, judgment or decree of any court or other governmental authority having jurisdiction over the Concessionaire, its activities or its property.

(f) The individual executing and delivering this Agreement on behalf of the Concessionaire has all requisite power and authority to execute and deliver this Agreement and to bind the Concessionaire hereunder.

(g) As of the Effective Date, neither the Concessionaire nor, to the knowledge of the Concessionaire, the Guarantor, has any current plans, or is party to any discussions, which would relate to or would result in (i) a change of Control of the Concessionaire or the Guarantor or (ii) a sale or transfer of all or substantially all of the assets of the Concessionaire or the Guarantor.

(h) There are no lawsuits, claims, suits, or legal, administrative or other proceedings or investigations, civil or criminal, pending or threatened against or affecting the Concessionaire, nor is there any basis for any of the same; and there is no action, suit or legal, administrative or other proceeding pending or threatened which questions the legality or propriety of the transactions contemplated by this Agreement.

(i) No order, permission, consent, approval, license, authorization, registration or filing of, by or with any partner, board of directors, shareholder, creditor, investor, manager, governmental authority or other Person is required for the execution, delivery or performance by the Concessionaire of this Agreement or any other Operative Agreement, other than any such order, permission, consent, approval, license, authorization, registration or filing which has already been given, obtained or made.

(j) All information contained in the Proposal was true and correct as of the date the Proposal was submitted and remains true and correct in all material respects, and the Proposal did not omit to state any material facts necessary in order to make the statements made in the Proposal, in light of the circumstances at the time, not misleading, nor has there been any occurrence since the date the Proposal was submitted that would make the statements made in the Proposal misleading as of the Effective Date.

Section 13.2 Representations of the BOR. As an inducement to the Concessionaire to enter into this Agreement, the BOR hereby represents to the Concessionaire, as of the Effective Date, as follows:

(a) The BOR has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement.

(b) Assuming the due execution and delivery of this Agreement by the Concessionaire, this Agreement is the valid and binding obligation of the BOR, enforceable against the BOR in accordance with its terms, subject to general equitable principles and the discretion of courts in granting equitable remedies.

(c) The execution and delivery by BOR of this Agreement and each other Operative Agreement does not materially conflict with or result in a material breach of any of the provisions of, or constitute a material default under, any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any lease or any other material agreement or contract by which the BOR, its activities or its property is bound or any Applicable Law.

(d) No order, permission, consent, approval, license, authorization, registration or filing of, by or with any governmental authority is required for the execution, delivery or performance by the BOR of this Agreement or any other Operative Agreement, other than any such order, permission, consent, approval, license, authorization, registration or filing which has already been given, obtained or made.

ARTICLE XIV.

GENERAL PROVISIONS

Section 14.1 No Joint Venture. Nothing contained in this Agreement or any other Operative Agreement will make, or be construed to make, the Parties hereto partners or joint venturers with each other, joint owners of any property or joint stockholders in any enterprise or create, or be construed to create, any other similar relationship or arrangement or agency relationship between the Parties, and any implication to the contrary is hereby expressly disavowed, it being understood and agreed (a) that the only relationship between the BOR and the Concessionaire under the Operative Agreements is that of independent parties, each acting in its own best interests, and (b) that the principal objectives of the BOR in pursuing the transactions evidenced by the Operative Agreements are (i) to ensure the quality and safety of the student housing available at each Institution and thereby to enhance the educational experience of students at the Institutions and (ii) to reduce the amount of BOR capital lease obligations associated with existing on-campus housing assets at the Institutions and to use an alternative method of financing for new housing facilities at the Institutions. Nothing in this Agreement or any other Operative Agreement will render, or be construed to render, either of the Parties hereto liable to any third party for the debts or obligations of the other Party hereto.

Section 14.2 No Pledge of Credit. Neither this Agreement nor any other Operative Agreement shall be deemed to create a debt of the BOR for the payment of any sum beyond the Fiscal Year of execution.

Section 14.3 Letter of Credit Requirements. Whenever the Concessionaire has the option or obligation pursuant to any Operative Agreement to deliver to the BOR a letter of credit, the following provisions shall apply except to the extent expressly provided otherwise.

14.3.1 The Concessionaire shall ensure that the letter of credit shall:

- (a) be an irrevocable standby letter of credit;
- (b) at all times during the term of such letter of credit, be maintained by a financial institution with (i) long-term, unsecured debt ratings of not less than “A” or “A2,” as applicable, issued by at least two of the three major rating agencies (Fitch Ratings, Moody’s Investor Service and Standard & Poor’s Ratings Group) and (ii) an office in Atlanta, Georgia at which the letter of credit can be presented for payment;
- (c) be in a form approved by the BOR.
- (d) be payable immediately, conditioned only on written presentment from the BOR to the issuer of a sight draft draw on the letter of credit and a certificate stating that the BOR has the right to draw on the letter of credit in the amount of the sight draft, up to the amount due to the BOR, without requirement to present the original letter of credit;
- (e) provide an expiration date not earlier than one (1) year from the date of issue (or such longer term as may be required under the Operative Agreements);
- (f) allow for multiple draws; and
- (g) name the BOR as the sole beneficiary, except as otherwise expressly provided to the contrary in the Operative Agreements.

14.3.2 The BOR shall have the right to draw on the letter of credit without prior notice to the Concessionaire. Draw on the letter of credit shall not be conditioned on prior resort to any other security of the Concessionaire.

14.3.3 The Concessionaire’s sole remedy in connection with the improper presentment or payment of sight draws drawn under letters of credit delivered pursuant to any Operative Agreement shall be to obtain from the BOR a refund of the proceeds improperly drawn, interest thereon at the Default Rate from the date of improper draw until repaid and, subject to Section 11.5, reimbursement of the reasonable costs that the Concessionaire incurs as a result of such improper draw; *provided that* at the time of such refund, the Concessionaire increases the amount of the letter of credit to the amount (if any) then required under the applicable Operative Agreement. The Concessionaire acknowledges that the presentment of sight drafts drawn upon a letter of credit could not under any circumstances cause the Concessionaire injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy. Accordingly, the Concessionaire covenants (a) not to request or instruct the issuer of any letter of credit to refrain from paying any sight draft drawn under the letter of credit and (b) not to commence or pursue any legal proceeding seeking, and the Concessionaire irrevocably waives and relinquishes any right, to enjoin, restrain, prevent, stop or delay any draw on any letter of credit.

14.3.4 If at any time the issuer of any outstanding letter of credit delivered in accordance with the terms of any Operative Agreement receives a current credit rating lower than that specified in Section 14.3.1(b) above, the Concessionaire shall (a) immediately notify the BOR thereof in writing and (b) promptly replace such letter of credit with a new letter of credit meeting the requirements set forth in Section 14.3.1 above. The Concessionaire shall obtain and furnish all letters of credit and replacements thereof required hereunder at its sole cost and expense, and shall pay all charges imposed in connection with the BOR's presentment of sight drafts and drawing against letters of credit or replacements thereof.

Section 14.4 Compliance with Law. The Concessionaire shall comply, at its sole cost and expense, with all Applicable Laws. Responsibility for compliance with all Applicable Laws rests exclusively with the Concessionaire, and the Concessionaire shall be liable for all costs associated with compliance, defense of enforcement actions or suits, payment of fines, penalties, or other sanctions and remedial costs related to the Concessionaire's use and occupation of the Projects. The Concessionaire shall have the right to contest by appropriate proceedings diligently conducted in good faith, without cost or expense to the BOR, the validity or application of any law, ordinance, order, rule, regulation, or requirement. The BOR shall not be required to join in or assist the Concessionaire in any such proceedings.

Section 14.5 Remedies Cumulative; Failure of BOR to Insist on Compliance. The specified remedies to which the BOR may resort under the terms of the Operative Agreements are distinct, separate, and cumulative, and are not intended to be exclusive of any other remedies or means of redress to which the BOR may be lawfully entitled in case of any breach or threatened breach by the Concessionaire of any provisions of the Operative Agreements. The failure of the BOR to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Agreement or the other Operative Agreements shall not be construed as a waiver or a relinquishment of the BOR's right to the future performance of any such terms, covenants, or conditions, but the obligations of the Concessionaire with respect to such future performance shall continue in full force and effect. No waiver by the BOR of any provisions of this Agreement or the other Operative Agreements shall be deemed to have been made unless expressed in a writing signed by an authorized representative of the BOR.

Section 14.6 Notices.

14.6.1 Whenever a Party is required or shall desire to give or serve upon any other Party any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Agreement, such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served as provided in Section 14.6.2 and addressed as follows:

If to the Concessionaire: [Concessionaire]

With copies to: [Attorney]

If to the BOR:

Vice Chancellor for Fiscal Affairs and Treasurer
Office of Fiscal Affairs
Board of Regents of the University of Georgia
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: 404-962-3200
Fax: 404-962-3215

With copies to:

Vice Chancellor for Legal Affairs
Office of Legal Affairs
Board of Regents of the University of Georgia
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: 404-962-3255
Fax: 404-962-3264

or at such other address or addresses as the Parties may from time to time designate by notice given by certified mail.

14.6.2 Every notice, demand, order, direction, determination, requirement, consent or approval, request, or communication hereunder shall be (a) personally served, (b) sent by certified first-class mail, return receipt requested, (c) sent by recognized overnight delivery service or (d) sent by e-mail, provided that notice by e-mail shall be promptly supplemented by delivery of notice as provided in (c) above. Any such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be deemed to have been delivered on the date of the receipt of such delivery or transmission at the address set forth above (or such other address designated pursuant hereto), or, if sent by certified first-class mail, return receipt requested, and delivery is refused, upon the date of refusal to accept service.

Section 14.7 Headings or Titles. The brief headings or titles preceding each Section are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Agreement.

Section 14.8 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original of equal dignity with the other, and each of which is deemed one and the same instrument as the others.

Section 14.9 No Reliance. Each Party has entered into this Agreement upon the advice of advisors of its own choosing, and each Party warrants and represents that it is not relying on any statement or advice of or from the other Party or any advisor of the other Party except as set forth expressly in this Agreement. Each Party is entering into this Agreement freely and voluntarily and each desires to be bound by this Agreement. Each Party has been fully informed of the terms, conditions and effects of this Agreement.

Section 14.10 Entire Agreement. It is expressly agreed that this written instrument, together with the provisions of the other Operative Agreements and any other documents that are

expressly incorporated by reference into any Operative Agreement by the terms thereof, embodies the entire agreement between the Parties regarding the terms of this Agreement. The terms and conditions with respect to the use of the Premises by the Concessionaire are set forth in the Leases and other terms and conditions relating to the development and management of the Project are contained in other Operative Agreements. There are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein or in the other Operative Agreements.

Section 14.11 Governing Law; Venue. This Agreement and the actions of the Parties hereunder shall in all respects be governed by, and construed in accordance with, the laws of the State of Georgia (excluding conflict of law principles). Venue for any actions brought under this Agreement or any other Operative Agreement shall be laid exclusively in the Superior Court of Fulton County, State of Georgia pursuant to O.C.G.A. § 50-21-1(b) and each party hereto consents to the jurisdiction and venue of such court and further agrees that service of process for any such action may be properly and completely made upon each party at the address provided for notices hereunder in Section 14.6 of this Agreement.

Section 14.12 Severability. If any term or provision of this Agreement, or the application of the term or provision to any Person or circumstance is, to any extent, invalid or unenforceable in any jurisdiction, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain between these Parties as contained herein, the remainder of this Agreement, or the application of the term or provision to Persons or circumstances other than those as to which the term or provision is held invalid or unenforceable, will not be affected by such invalidity or unenforceability, and each remaining term or provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

Section 14.13 Identification of Government Agencies, Statutes, Programs and Forms. Any reference in this Agreement, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

Section 14.14 Approvals. Any approval or consent of the Parties required for any matter under this Agreement shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Agreement.

Section 14.15 Binding Effect. Each of the provisions of this Agreement and each other Operative Agreement shall apply to, extend to, be binding upon and inure to the benefit or detriment of the Parties and, to the extent that any transfer, assignment or sublease is permitted under Article XII hereof, to any transferee, assignee, sublessee or other successor of the Concessionaire.

Section 14.16 Third Party Beneficiaries. The Pre-Concession Lessees are hereby declared to be third-party beneficiaries of Sections 3.2.1 and 3.3 of this Agreement (but only such Sections 3.2.1 and 3.3). Sections 3.2.1 and 3.3 of this Agreement may be amended only with the consent of each Pre-Concession Lessee, and each Pre-Concession Lessee shall be

entitled to enforce Sections 3.2.1 and 3.3 of this Agreement against the Concessionaire directly and in its own name. Except as provided in the preceding two sentences, there shall be no third party beneficiaries of this Agreement, and none of the provisions of this Agreement shall be for the benefit of, enforceable by or relied upon by any third parties, including any creditors of the Concessionaire.

Section 14.17 No Individual Liability of BOR Officials. No covenant or agreement contained in this Agreement or any other Operative Agreement shall be deemed to be the covenant or agreement of any individual officer, official, agent, employee or representative of the BOR, in his or her individual or official capacity and none of such persons shall be subject to any personal liability or accountability by reason of such person's execution of this Agreement or any other Operative Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise. The provisions of this Section 14.17 shall survive indefinitely, notwithstanding the expiration or early termination of this Agreement.

Section 14.18 Antidiscrimination Clause. In accordance with Applicable Law, neither Party shall discriminate on the basis of race, sex, religion, national or ethnic origin, age, disability or military status in connection with this Phase I.

Section 14.19 E-Verify. Concessionaire certifies that it has complied, and will comply, with the Georgia Security and Compliance Act (O.C.G.A. § 13-10-90 *et seq.*). Concessionaire will sign and comply with the Immigration and Security Affidavit attached hereto as Exhibit D.

Section 14.20 Amendment. This Agreement may be amended at any time by mutual agreement of the Parties but only by the execution of a writing signed by a duly authorized representative of each of the respective Parties hereto.

Section 14.21 Further Assurances. At any time or times after the Effective Date, each Party shall execute, have acknowledged and deliver to the other any instruments, and take any other actions, as may be necessary to effectuate the transaction described herein.

Section 14.22 Confidentiality.

14.22.1 The Concessionaire has familiarized itself with the Georgia Open Records Act (O.C.G.A. § 50-18-70 *et seq.*) and the Georgia Open Meetings Act (O.C.G.A. § 50-14-1 *et seq.*) (collectively, the "**Open Government Laws**") applicable to the issues of confidentiality and public information. The BOR will not advise the Concessionaire as to the nature or content of documents entitled to protection from disclosure under the Open Government Laws, as to the interpretation of such laws, or as to definition of "confidential" or "proprietary" as such terms are used under the Open Government Laws or other applicable provisions of law. In no event shall the BOR or any of its agents, representatives, consultants, directors, officers or employees be liable to the Concessionaire for the disclosure of all or a portion of any information or material pursuant to a request under the Open Government Laws.

14.22.2 To the extent permitted by law, all information obtained by either Party from the other pursuant to this Agreement shall be and remain confidential; provided, however, that the foregoing shall not prevent either Party from disclosing such information, if any, as (a)

may reasonably be required to carry out its obligations hereunder (including without limitation disclosure to its lenders, attorneys, accountants or consultants retained for the purposes of this transaction) or as reasonably requested by potential or current investors or as reasonably requested by a prospective construction lender or permanent lender or as may be required in connection with any litigation or alternative dispute resolution proceedings between the parties to this Agreement, or (b) as required by Applicable Law, court order or any rule, regulation or order of any governmental authority or agency having jurisdiction over the Parties or the Projects, including as required by any Open Government Laws.

Section 14.23 Clery Act. The Concessionaire agrees to assist the BOR in fulfilling its duties under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f), by providing to the BOR certain information and otherwise cooperating with the BOR in accordance with the provisions of the Project Operating Agreement.

Section 14.24 University System of Georgia Ethics Policy. The Concessionaire agrees to comply with the University System of Georgia Ethics Policy, BOR Policy 8.2.20, as amended from time to time.

Section 14.25 Tobacco and Smoke Free Campus. Each campus of the System is tobacco and smoke free in accordance with BOR Policy 9.1.7. The Concessionaire will comply with BOR Policy 9.1.7, as amended from time to time.

Section 14.26 Time of the Essence. Time is of the essence to each and every provision of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

BOR:

**BOARD OF REGENTS OF THE
UNIVERSITY SYSTEM OF GEORGIA**

By: _____ L.S.
Name:
Title:

Attest: _____ L.S.
Name:
Title:

(Seal Affixed Here)

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM THE PREVIOUS PAGE]

CONCESSIONAIRE:

[CONCESSIONAIRE],
a [State] [entity]

By: _____
Authorized Representative

[SEAL]

EXHIBIT A
Initial Residential Rates (Existing Housing)

FY 2013 - FY 2015 Actual Rental Rates and FY 2016 Projected Rental Rates by Room Type per Student

	FY 13 Semester Rates	FY 14 Semester Rates	% increase	FY 15 Semester Rates	% increase	FY 15 Annual Rent (10 month contracts)	# of beds *	FY 16 Semester Rates	Projected FY 16 Annual Rent
Abraham Baldwin Agricultural College									
ABAC Place									
4-Bedroom, 2-Bathroom Apartment	\$2,606	\$2,685	3.03%	\$2,765	2.98%	\$5,530	788	\$2,848	\$5,696
3-Bedroom, Private Bathroom Apartment	\$3,023	\$3,115	3.04%	\$3,210	3.05%	\$6,420	13	\$3,306	\$6,613
3-Bedroom, Shared Bathroom Apartments	\$2,927	\$3,015	3.01%	\$3,105	2.99%	\$6,210	26	\$3,198	\$6,396
2-Bedroom, Private Bathroom Apartments	\$3,278	\$3,380	3.11%	\$3,480	2.96%	\$6,960	8	\$3,584	\$7,169
Lakeside									
Single (2 people)	\$2,245	\$2,315	3.12%	\$2,385	3.02%	\$4,770	230	\$2,457	\$4,913
Double (4 people)	\$1,941	\$2,000	3.04%	\$2,060	3.00%	\$4,120	259	\$2,122	\$4,244
Armstrong Atlantic State University									
Windward Commons									
2 BDR Semi-Private Suite	\$3,052	\$3,144	3.01%	\$3,144	0.00%	\$6,288	210	\$3,238	\$6,477
2 BDR Private Suite	\$3,189	\$3,285	3.01%	\$3,285	0.00%	\$6,570	314	\$3,384	\$6,767
Single Suite	\$3,298	\$3,397	3.00%	\$3,397	0.00%	\$6,794	41	\$3,499	\$6,998
2 BDR Apartment RD							4		
Compass Point									
2-bedroom, 1.5-semi-private bath apartment	\$3,314	\$3,413	2.99%	\$3,413	0.00%	\$6,826	60	\$3,515	\$7,031
4-bedroom, 2-bath apartment	\$2,954	\$3,043	3.01%	\$3,043	0.00%	\$6,086	504	\$3,134	\$6,269
University Crossing									
2-bedroom, 2-bedroom	\$3,626	\$3,735	3.01%	\$3,735	0.00%	\$7,470	72	\$3,847	\$7,694
Large Bedroom in a 2 bedroom, 1-bath apartment	\$3,314	\$3,413	2.99%	\$3,413	0.00%	\$6,826	17	\$3,515	\$7,031
Small Bedroom in a 2 bedroom, 1-bath apartment	\$3,221	\$3,318	3.01%	\$3,318	0.00%	\$6,636	17	\$3,418	\$6,835
College of Coastal Georgia									
Lakeside Village									
2 bedroom/1 bath suite	\$2,563	\$2,691	4.99%	\$2,772	3.01%	\$5,544	50	\$2,855	\$5,710
2 bedroom/1 bath semi-suite	\$2,383	\$2,478	3.99%	\$2,552	2.99%	\$5,104	140	\$2,629	\$5,257
4 bedroom/2 bath suite	\$2,292	\$2,361	3.01%	\$2,432	3.01%	\$4,864	160	\$2,505	\$5,010
2 BDR 1 bath Apartment RD							2		
Columbus State University									
Courtyard I/ Courtyard North									
Single Occupancy-Private Bedroom/Private Bath (4 bedroom units)	\$2,800	\$2,905	3.75%	\$2,990	2.93%	\$5,980	192	\$3,080	\$6,159
Single Occupancy- Private Bedroom/Shared Bath (4 bedroom units)	\$2,550	\$2,645	3.73%	\$2,725	3.02%	\$5,450	240	\$2,807	\$5,614
Single Room with shared bath	\$2,200	\$2,270	3.18%	\$2,390	5.29%	\$4,780	12	\$2,462	\$4,923
East Georgia State College									
Bobcat Villas									
4-bedroom, 2-bathroom apartments	\$2,575	\$2,652	2.99%	\$2,730	2.94%	\$5,460	200	\$2,812	\$5,624
Georgia State University									
University Commons									
<i>Private Rooms</i>									
2 bedroom 2 bath (private bedroom private bath)	\$4,488	\$4,668	4.01%	\$4,808	3.00%	\$9,616	292	\$4,952	\$9,904
2 bedroom 1 bath (private bedroom shared bath)	\$3,978	\$4,217	6.01%	\$4,344	3.01%	\$8,688	308	\$4,474	\$8,949
4 bedroom 2 bath (private bedroom shared bath)	\$3,749	\$3,898	3.97%	\$4,016	3.03%	\$8,032	1384	\$4,136	\$8,273
1 bedroom 1 bath apartment RD							4		
Patton Hall									
<i>Shared bedrooms</i>									
Shared Rooms with 3 bath mates	\$1,985	\$2,095	5.54%	\$2,158	3.01%	\$4,316	232	\$2,223	\$4,445
<i>Single Bedrooms</i>									
Single Room with 3 bath mates	\$2,907	\$3,095	6.47%	\$3,188	3.00%	\$6,376	102	\$3,284	\$6,567
University of North Georgia									
Owen Hall									
4 BDR 2 bath Apartments	\$3,145	\$3,239	2.99%	\$3,336	2.99%	\$6,672	314	\$3,436	\$6,872
Total Beds							6,195		

* Bed numbers by room type reflect the number of beds in the original construction. Actual occupancy by room may vary over time.
Rates are published indicators of on-campus rates.

EXHIBIT B

CONSTRUCTION INSURANCE REQUIREMENTS

Capitalized terms used but not defined in this Exhibit B shall have the meanings set forth in the Construction Requirements.

1. **Insurance Certificates.** The Concessionaire shall, prior to the commencement of Work or any portion of the Project Services, procure, or cause to be procured by the Concessionaire Parties, the insurance coverages identified in this Exhibit B at the Concessionaire's own expense and shall furnish the BOR an insurance certificate listing the BOR as a certificate holder. The insurance certificates must provide the following:

- (a) Name and address of authorized agent
- (b) Name and address of insured
- (c) Name of insurance company(ies)
- (d) Description of policies
- (e) Policy Number(s)
- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of Board of Regents as certificate holder
- (i) Name of Facility and Address of Premises
- (j) Signature of authorized agent
- (k) Telephone number of authorized agent
- (l) Mandatory forty-five (45) days' notice of cancellation/non-renewal.

2 **Policy Provisions.** Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:

(a) The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse, or allowed to expire until forty-five (45) days after the certificate holders have received written notice thereof as evidenced by return receipt of registered letter or until such time as other insurance coverage providing protection equal to protection called for in this Exhibit shall have been received, accepted, and acknowledged by the BOR.

(b) The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").

(c) Each insurer is hereby notified of the statutory requirements that the Attorney General shall represent and defend the Board of Regents of the University System of Georgia, the Institution, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees, directors and agents (collectively the "Indemnitees") but will, without limiting the authority of the Attorney General, consider

attorneys recommended by the insurance company for appointment as Special Assistant Attorney General to represent and defend the Indemnitees. The insurance company may, at the option of the Attorney General, have the right to participate in the defense of the Indemnitees. In the event of litigation, any settlement on behalf of the Indemnitees must be expressly approved by the Attorney General.

(d) Self-insured retention in any policy shall not exceed \$10,000.00.

3. Insurance Coverages. The Concessionaire shall purchase and cause to be purchased the following insurance by the Concessionaire Parties:

(a) **Concessionaire’s Insurance.** The Concessionaire shall, at no cost to the BOR, provide and maintain in force, with responsible companies with a Best Policyholders Rating of “A-” or better and with a financial size rating of Class VIII or larger and licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and satisfactory to the BOR, the following minimum insurance coverage:

- (i) Worker’s Compensation (statutory amount);
- (ii) Employer’s Liability (\$1,000,000 per accident or disease);

(iii) Commercial General Liability (1993 ISO Occurrence Form or equivalent) (occurrence basis) which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury and advertising liability, contractual liability, fire legal liability, blasting and explosion, collapse of structures and underground damage liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<i>Coverage</i>	<i>Limit</i>
1. Premises and Operations	\$1,000,000 per Occurrence
2. Products and Completed Operations	\$1,000,000 per Occurrence
3. Personal Injury and Advertising	\$1,000,000 per Occurrence
4. Contractual	\$1,000,000 per Occurrence
5. Fire Legal	\$1,000,000 per Occurrence
6. Blasting and Explosion	\$1,000,000 per Occurrence *
7. Collapse of Structures	\$1,000,000 per Occurrence *
8. Underground Damage	\$1,000,000 per Occurrence *
9. General Aggregate	\$2,000,000

* Required during any construction period.

(iv) Commercial Business Automobile Liability (owned, non-owned, and hired vehicles) (occurrence basis):

and combined single limit.....\$1,000,000;

(v) Commercial Umbrella Excess Liability (occurrence basis):

per occurrence.....\$10,000,000;

aggregate.....\$10,000,000.

(vi) The Commercial General Liability and Umbrella Excess Liability policies shall include contractual liability coverage for liabilities assumed by the Concessionaire under this Agreement, subject to standard policy stipulations. The Commercial General Liability and Commercial Business Automobile Liability policies shall include a deductible provision not to exceed \$10,000 per occurrence. The cost of all insurance required under this Agreement is to be paid by the Concessionaire. The Commercial General, Automobile, and Umbrella Excess Liability policies shall include endorsements naming the BOR as additional insureds, but only with respect to claims arising out of performance under or in connection with this Agreement for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., is not the exclusive remedy. All insurance policies of the Concessionaire shall be primary and non-contributing.

(vii) The Concessionaire shall purchase and maintain or cause to be purchased and maintained “all risk” builder’s risk insurance, written on a completed value basis, in an amount not less than the total replacement cost of the Project under construction (excluding site preparation and grading, but specifically including paving, parking lots, foundations and other undersurface installations subject to collapse or damage by other insured perils), including, if applicable, the coverages available under the so-called “installation floater” and written on a 1991 Causes of Loss - Special Form, or its equivalent. This insurance shall name the BOR as an insured, as its respective interests may appear, and shall insure against loss from the periods of Fire and Extended Coverage, including flood and earthquake, and the value of related soft costs as confirmed by the BOR’s insurance administrator. All deductibles shall be the sole responsibility of the Concessionaire, and in no event shall the amount of any deductible exceed \$10,000.00. The builder’s risk policy shall be endorsed as follows:

“The following may occur without diminishing, changing, altering, or otherwise affecting the coverage and protection afforded the insured under this policy:

(i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and

(ii) Partial or complete occupancy by the BOR or; and

(iii) Performance of work in connection with construction operations insured by the BOR, or by agents or sublessees or other contractors of the BOR, or by contractors of the BOR.

(viii) The Concessionaire shall bear all costs of all insurance, including any and all deductibles, and shall be held responsible for any and all damages as may result from the failure of the Concessionaire to exercise its responsibilities as defined under this Agreement.

(ix) The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Concessionaire for acts or omissions of it and its Design Professionals and their respective representatives who may be engaged in performing any Development Services.

(x) The Concessionaire shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required of the Concessionaire under this Agreement. In the event the Concessionaire neglects, refuses, or fails to provide or maintain any of the insurance required under this Agreement or if such insurance is canceled, ceases, or expires for any reason, the BOR shall have the right, but not the duty, to procure or maintain the same. In the event the BOR does procure or maintain such insurance, the BOR shall have, in addition to any and all other available remedies, the right to recover from the Concessionaire (including the right of set-off against sums otherwise due the Concessionaire) all of the costs associated with procuring or maintaining such insurance.

(xi) It is agreed that the BOR will be held harmless by the Concessionaire for any loss or damage to sheds, tools, equipment, property, and materials of the Concessionaire, the Concessionaire Parties and their respective servants and employees, it being understood that the Concessionaire may at its own expense carry any insurance which may be required to provide the necessary protection against such loss or damage.

(xii) It is understood that all of the foregoing provisions requiring the Concessionaire to carry insurance shall not be construed as in any manner waiving or restricting the liability of the Concessionaire as to any obligations imposed under this Agreement.

(b) Design Professionals' Insurance.

(i) The Concessionaire shall require that the Design Professionals provide and maintain in force with responsible companies with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class VIII or larger and licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and satisfactory to the BOR the following minimum insurance coverage:

(ii) Errors and Omissions Professional Liability Insurance having minimum limits of \$5,000,000 per occurrence and in the aggregate (including excess coverage), with a deductible not in excess of \$150,000 per occurrence and in the aggregate (claims made basis);

(iii) Worker's Compensation (statutory amount);

(iv) Employer's Liability (\$1,000,000 per accident or disease);

(v) Commercial General Liability (1993 ISO Occurrence Form or equivalent) (occurrence basis) which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury and advertising liability, contractual liability, fire legal liability, blasting and explosion, collapse of structures and underground damage liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<i>Coverage</i>	<i>Limit</i>
1. Premises and Operations	\$1,000,000 per Occurrence
2. Products and Completed Operations	\$1,000,000 per Occurrence
3. Personal Injury and Advertising	\$1,000,000 per Occurrence
4. Contractual	\$1,000,000 per Occurrence
5. Fire Legal	\$1,000,000 per Occurrence
6. Blasting and Explosion	\$1,000,000 per Occurrence *
7. Collapse of Structures	\$1,000,000 per Occurrence *
8. Underground Damage	\$1,000,000 per Occurrence *
9. General Aggregate	\$2,000,000

* Required during any construction period.

(vi) Commercial Automobile Liability (owned, non-owned, and hired vehicles) (occurrence basis):

combined single limit\$1,000,000;

and

(vii) Commercial Umbrella Excess Liability (occurrence basis):

per occurrence\$2,000,000;

aggregate\$5,000,000

(viii) The Commercial General Liability and Umbrella Excess Liability policies shall cover the contractual liability assumed by a Design Professional under its respective Design Agreement. The Commercial General and Umbrella Excess Liability policies shall include endorsements naming the BOR and its officers, members, agents, and employees, as additional insureds, but only with respect to claims arising out of services or performance under or its respective Project contract for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., is not the exclusive remedy.

(ix) The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for a Design Professional for acts or omissions of it and its representatives who may be engaged in performing any Design Services.

(x) All insurance policies of a Design Professional shall be primary and non-contributing. All insurance policies shall provide for forty-five (45) days' prior written notice of cancellation, expiration, or modification to the BOR and Program Manager.

(xi) The Errors and Omissions Professional Liability Insurance shall cover all liability arising out of or based upon any negligent design, engineering, professional, or architectural services performed by a Design Professional (and its respective officers, directors, employees, or agents) under the Design Professional's respective contract. Said insurance shall have a retroactive date prior to the performance of any such services to be provided under the Design Professional's respective Project contract, shall have a policy period extending through the termination or expiration of the Design Professional's respective Project contract, and shall have an extended discovery period of five years following the termination or expiration of the Design Professional's respective Project contract.

(C) Construction Parties' Insurance.

(i) Each Construction Party shall, at no cost to the BOR, provide and maintain in force, with responsible companies with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class VIII or larger and licensed by the Georgia Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and satisfactory to the BOR, the following minimum insurance coverage:

(ii) Worker's Compensation (statutory amount);

(iii) Employer's Liability (\$1,000,000 per accident or disease);

(iv) Commercial General Liability (1993 ISO Occurrence Form or equivalent) (occurrence basis) which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, personal injury and advertising liability, contractual liability, fire legal liability, blasting and explosion, collapse of structures and underground damage liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

<i>Coverage</i>	<i>Limit</i>
1. Premises and Operations	\$1,000,000 per Occurrence
2. Products and Completed Operations	\$1,000,000 per Occurrence
3. Personal Injury and Advertising	\$1,000,000 per Occurrence
4. Contractual	\$1,000,000 per Occurrence
5. Fire Legal	\$1,000,000 per Occurrence
6. Blasting and Explosion	\$1,000,000 per Occurrence *
7. Collapse of Structures	\$1,000,000 per Occurrence *
8. Underground Damage	\$1,000,000 per Occurrence *
9. General Aggregate	\$2,000,000

* Required during any construction period.

(v) Commercial Business Automobile Liability (owned, non-owned, and hired vehicles) (occurrence basis):

combined single limit.....\$1,000,000;

and

(vi) Commercial Umbrella Excess Liability (occurrence basis):

per occurrence.....\$50,000,000;

aggregate.....\$50,000,000.

(vii) The Commercial General Liability and Umbrella Excess Liability policies shall include contractual liability coverage for liabilities assumed by each Construction Party under the Contract Documents, subject to standard policy stipulations. The Commercial General, Automobile, and Umbrella Excess Liability policies shall include endorsements naming the BOR, and its respective officers, members, agents, and employees, as additional insureds, but only with respect to claims arising out of performance under or in connection with this Agreement for which the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., is not the exclusive remedy. All insurance policies of the Construction Parties shall be primary and non-contributing.

(viii) The BOR shall be furnished Certificate(s) of Insurance with respect to said insurance upon execution of this Agreement. All insurance policies shall provide for 45 days' prior written notice of cancellation, expiration, or modification to the BOR and the BOR's Representative.

(ix) Each Construction Party shall bear all costs of its deductibles and shall be held responsible for any and all damages as may result from the failure of such Construction Party to exercise its responsibilities under the Contract Documents.

(x) The Commercial General Liability Insurance, Commercial Automobile Liability Insurance, and Commercial Umbrella Excess Liability Insurance shall provide coverage for the Construction Party for acts or omissions of it and its respective representatives who may be engaged in performing any Work.

(xi) Each Construction Party shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance required of the Construction Party under this Agreement. In the event any Construction Party neglects, refuses, or fails to provide or maintain any of the insurance required under this Agreement or if such insurance is canceled, ceases, or expires for any reason, the BOR shall have the right, but not the duty, to procure or maintain the same. In the event the BOR does procure or maintain such insurance, the BOR shall have, in addition to any and all other available remedies, the right to recover from

the Concessionaire (including the right of set-off against sums otherwise due the Concessionaire) all of the costs associated with procuring or maintaining such insurance.

(xii) It is agreed that the BOR will be held harmless by each Construction Party for any loss or damage to sheds, tools, equipment, property, and materials of the Construction Party, and their respective servants and employees, it being understood that any Construction Party may at its own expense carry any insurance which may be required to provide the necessary protection against such loss or damage.

(xiii) It is understood that all of the foregoing provisions requiring each Construction Party to carry insurance shall not be construed as in any manner waiving or restricting the liability of each Construction Party as to any obligations imposed under this Agreement.

EXHIBIT C

FORM OF PERFORMANCE GUARANTY

THIS PERFORMANCE GUARANTY (this “**Guaranty**”) is made and entered into this ___ day of November, 2014, by [CONCESSIONAIRE PARENT], a [State] [entity] (the “**Guarantor**”) in favor of the BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA (the “**BOR**”).

WITNESSETH:

WHEREAS, the BOR and [Concessionaire], a [State] [entity], (together with any of its successors and assigns, including without limitation any assignee of any of its interest under the Operative Agreements, the “**Concessionaire**”) have entered into that certain Master Concession Agreement, dated November ___, 2014 (the “**Master Concession Agreement**”) governing the leasing and development of certain student housing resources as more particularly described in the Operative Agreements and the exhibits and schedules thereto. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Master Concession Agreement.

WHEREAS, the BOR and the Concessionaire have also entered into the other Operative Agreements in connection with the execution of, and to effect the transactions contemplated by, the Master Concession Agreement.

WHEREAS, the Concessionaire is a wholly owned subsidiary of the Guarantor.

WHEREAS, the BOR would not enter into any of the Operative Agreements but for the execution and delivery of this Guaranty by the Guarantor, and the Guarantor desires to execute this Guaranty for the express and intended purpose of inducing the BOR to enter into the Operative Agreements.

WHEREAS, the Guarantor will benefit from the execution of the Operative Agreements and is executing this Guaranty in consideration of that anticipated benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the Guarantor hereby agrees as follows:

1. **Guaranty.** The Guarantor hereby absolutely, unconditionally and irrevocably guarantees to the BOR the full, prompt and faithful performance by the Concessionaire of all the Concessionaire Obligations (as defined below). As used herein, the “**Concessionaire Obligations**” means all present and future obligations imposed by the covenants, terms and conditions of the Operative Agreements or arising in connection with the transactions contemplated by the Operative Agreements, and any extensions, modifications or renewals thereof, to be hereafter performed and kept by the Concessionaire, including without limitation the prompt payment of all amounts that the Concessionaire may at any time owe under the Operative Agreements, and any extensions, renewals or modifications thereof. The Concessionaire Obligations shall also include any attorneys’ fees that the BOR incurs in its pursuit of any remedies against the Concessionaire that arise in connection with the

Concessionaire Obligations, regardless of whether such pursuit occurs prior to or concurrent with the BOR's pursuit of any remedies available to it under this Guaranty. This Guaranty is a guaranty of performance and/or payment and not a guaranty of collection only. The liability of the Guarantor under this Guaranty is unlimited.

2. **Independent Obligations.** The Guarantor's obligations hereunder are independent of the obligations of the Concessionaire, and a separate action or actions may be brought and prosecuted against the Guarantor whether or not any action or actions are brought against the Concessionaire and whether or not the Concessionaire shall be joined in any such action or actions. The BOR shall not be required to exercise, pursue or exhaust any of its rights or remedies against the Concessionaire prior to (a) demanding the performance of the Concessionaire Obligations by the Guarantor under this Guaranty or (b) exercising any other rights or remedies of the BOR under this Guaranty.

3. **Rights of the BOR.** The Guarantor authorizes the BOR, without notice or demand and without affecting the Guarantor's liability hereunder, from time to time to (a)(i) extend, accelerate or otherwise change the time of, or change the manner or place of, any payment provided for in the Operative Agreements, (ii) delay enforcing the BOR's remedies or rights against the Concessionaire in connection with the Operative Agreements and (iii) consent to any assignment, subletting or reassignment of the Operative Agreements and (b)(i) take and hold security for any payment provided for in the Operative Agreements or for the performance of any covenant, term or condition of the Operative Agreements, or exchange, waive or release any such security and (ii) apply such security and direct the order or manner of sale thereof as the BOR in its sole and absolute discretion may determine. Except as expressly provided in Section 13, notwithstanding any termination, renewal, extension, or holding over of the Operative Agreements, or any assignment of the Operative Agreements, this Guaranty shall continue for as long as the Master Concession Agreement remains in effect and, if applicable, thereafter until all of the Concessionaire Obligations have been fully and completely performed by the Concessionaire. The BOR reserves the exclusive right to exercise, or decline to exercise, if it so desires, any remedies that arise under the Operative Agreements, and the Guarantor hereby waives all rights of exoneration against the Concessionaire.

4. **Absolute and Unconditional Obligations.** The Guarantor shall not be released by any act or event which might, but for this provision of this Guaranty, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of the BOR or its failure to proceed promptly or otherwise as against the Concessionaire or the Guarantor, or by reason of any action taken or omitted or circumstance which may or might vary the risk to the Guarantor or affect the rights or remedies of the Guarantor as against the Concessionaire, or by reason of any further dealings between the Concessionaire and the BOR, whether relating to the Operative Agreements or otherwise, and the Guarantor hereby expressly waives and surrenders any defense to its liability hereunder based upon any of the foregoing acts, omissions, things, or agreements. It is the purpose and intent of this Guaranty that the obligations of the Guarantor hereunder are absolute and unconditional under any and all circumstances. The foregoing sentence shall in no way affect any waivers or any bankruptcy provisions set forth herein.

5. **Preferential Payments.** The Guarantor further agrees that to the extent the Concessionaire or the Guarantor makes any payment to the BOR in connection with the Concessionaire Obligations and all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the BOR or paid over to a trustee, receiver or any other entity, whether under any Insolvency Laws or otherwise (a “**Preferential Payment**”), then this Guaranty shall continue to be effective or shall be reinstated, as the case may be, and, to the extent of such payment (or to the extent of the reimbursement of such payment by the BOR), the Concessionaire Obligations or part thereof intended to be satisfied by such Preferential Payment shall be revived and continued in full force and effect as if such Preferential Payment had not been made.

6. **Guarantor’s Representations and Warranties.**

(a) The Guarantor is a [type of entity] validly existing and in good standing under the laws of the State of [State], duly qualified and in good standing under the laws of the State of Georgia.

(b) The Guarantor has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform under this Guaranty.

(c) This Guaranty is the valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, subject to applicable provisions of Insolvency Law, general equitable principles and the discretion of courts in granting equitable remedies.

(d) This Guaranty does not and will not contravene any provision of the Guarantor’s [certificate of formation and operating agreement][articles of incorporation and bylaws] in effect on the date hereof.

(e) The execution, delivery and performance by the Guarantor of this Guaranty does not or will not (as the case may be), with the passing of time or the giving of notice or both, conflict with or result in a breach of any of the provisions of, or constitute a default under, any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any lease or any other material agreement or contract by which the Guarantor, its activities or its property is bound or any Applicable Law, including without limitation any order, judgment or decree of any court or other governmental authority having jurisdiction over the Guarantor, its activities or its property.

(f) The individual executing and delivering this Guaranty on behalf of the Guarantor has all requisite power and authority to execute and deliver this Guaranty and to bind the Guarantor hereunder.

(g) As of the execution of this Guaranty, the Guarantor does not have any current plans, and is not party to any discussions, that relate to or would result in (i) a change of Control of the Guarantor or the Concessionaire or (ii) a sale or transfer of all or substantially all of the assets of the Guarantor or the Concessionaire.

(h) There are no lawsuits, claims, suits, or legal, administrative or other proceedings or investigations, civil or criminal, pending or threatened against or affecting the Guarantor, nor is there any basis for any of the same; and there is no action, suit or legal, administrative or other proceeding pending or threatened which questions the legality or propriety of the transactions contemplated by this Guaranty.

(i) No order, permission, consent, approval, license, authorization, registration or filing of, by or with any partner, board of directors, shareholder, creditor, investor, manager, governmental authority or other Person is required for the execution, delivery or performance by the Guarantor of this Guaranty, other than any such order, permission, consent, approval, license, authorization, registration or filing which has already been given, obtained or made.

(j) No financial statements or any other document, certificate or written statement furnished to the BOR by the Guarantor and no document or statement furnished by any third party on behalf of the Guarantor for use in connection with this Guaranty or the transactions contemplated hereby, when taken as a whole, contains any untrue representation, warranty or statement of a material fact, and none omits or will omit to state a material fact necessary in order to make the statements contained herein or therein not misleading. There is no material fact known to the Guarantor that has had or will have a Material Adverse Effect (as defined below) and that has not been disclosed in writing to the BOR by the Guarantor or by any third party on behalf of the Guarantor. As used herein, “**Material Adverse Effect**” means (i) a material adverse effect upon the business, operations, properties, assets or condition (financial or otherwise) of the Guarantor or the Concessionaire, with respect to such party, when taken as a whole, or (ii) the material impairment of the ability of the Guarantor to perform its obligations under this Guaranty, or (iii) the material impairment of the BOR’s rights or remedies under the Guaranty. In determining whether any individual event would result in a Material Adverse Effect, regardless of whether such event by itself has such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other then occurring events and existing conditions would result in a Material Adverse Effect

(k) There is no litigation or other claim pending before any court or administrative or other governmental body or threatened against the Guarantor for which an unfavorable decision, finding or result would have a Material Adverse Effect or otherwise materially and adversely affect the Guarantor’s financial condition or ability to perform its obligations under this Guaranty.

7. **Guarantor’s Financial Covenants.**

(a) The Guarantor shall provide, or cause to be provided, to the BOR: (i)(A) annual financial statements of the Guarantor, audited by a firm of independent certified public accountants of recognized national standing, within one hundred twenty (120) days after the end of the Guarantor’s fiscal year and (B) quarterly financial statements of the Guarantor within sixty (60) days of the end of the first three (3) fiscal quarters of the Guarantor; (ii) any (A) earnings releases of the Guarantor or (B) other material financial information regarding the Guarantor that is made publicly available, in either case as soon as reasonably practicable following such public release (and in any event on the same day as such public release); and (iii)

such other information with respect to the Guarantor as may be reasonably requested from time to time by the BOR, within a reasonable time after such request.

(b) In the event that the Guarantor or any Person who has Control of the Guarantor is required to make regular filings with the Securities and Exchange Commission, the Guarantor shall provide, or cause to be provided, to the BOR copies of all information filed with the Securities and Exchange Commission by either the Guarantor or any Person who has Control of the Guarantor as soon as reasonably practicable after such information is filed (and in any event on the same day as such information is filed). In the event that the Guarantor is required to make regular filings with the Securities and Exchange Commission, its provision to the BOR of (i) each Annual Report it files on Form 10-K and (ii) each Quarterly Report it files on Form 10-Q in accordance with, and at the times set forth, in this Section 7(b) shall be deemed to satisfy its obligations under Section 7(a)(i)(A) and (B) above, respectively.

(c) The Guarantor shall, at all times while this Guaranty remains in effect, comply with the following financial covenants:

(i) The Guarantor's Unrestricted Cash and Investments as of the end of each fiscal quarter shall equal at least ____ days of Daily Operating Expenses.

(ii) The Guarantor's Leverage Ratio as of the end of each fiscal quarter shall be not greater than __:1.

(iii) The Guarantor's Total Assets as of the end of each fiscal quarter shall not be less than \$_____.

(iv) The Guarantor's Fixed Charge Coverage Ratio as of the end of each fiscal quarter shall not be less than _____:1.

(d) The following terms shall have the meanings set forth below for the purposes of this Section 7:

(i) **“Daily Operating Expenses”** means as of any date the cumulative operating expenses of the Guarantor for the immediately preceding twelve (12) month period, including provision for bad debts but excluding interest, depreciation and amortization expense, divided by the number of calendar days for the applicable period.

(ii) **“EBITDA”** means the sum of (A) net income, or deficit, as the case may be (excluding gains or losses from sales of assets, extraordinary and non-recurring gains or losses, interest income (including non-cash interest income), the write up or off of any asset, any investment income or loss (equity earnings or loss) from affiliates or other persons not consolidated with the Guarantor under GAAP), (B) interest expense (including non-cash interest expense), (C) depreciation and amortization expense, (D) all non-cash charges and expenses including equity-based compensation expense and (E) management fees and related expenses and indemnification. EBITDA shall be adjusted to give effect to any acquisition, sale or other disposition of any operation or business (or any portion thereof) during the period of calculation, as if such acquisition, sale or other disposition occurred on the first day of such period of calculation.

(iii) **“Fixed Charge Coverage Ratio”** means as of any date the ratio derived by dividing (A) EBITDA calculated for the then most recently completed four fiscal quarters by (B) the sum for the then most recently completed four fiscal quarters of the following: (1) interest expense (including non-cash interest expense, interest during construction and interest paid from restricted funds) plus (2) principal payments required to be paid on Indebtedness, plus (3) preferred distributions and preferred dividends.

(iv) **“Indebtedness”** means without duplication: (A) all obligations for borrowed money; (B) obligations representing the deferred purchase price of property or services other than accounts payable arising in connection with the purchase of goods or services on terms customary in the trade; (C) obligations, whether or not assumed, secured by liens or a pledge of or an encumbrance on the proceeds or production from property now or hereafter owned or acquired; (D) obligations which are evidenced by notes, acceptances or other instruments; (E) leases of real or personal property which are required to be capitalized under GAAP or which are treated as operating leases under regulations applicable to them but which otherwise would be required to be capitalized under GAAP; (F) fixed payment obligations under guarantees, whether or not due; (G) net termination obligations under hedging agreements, calculated as of any date as if such agreement or arrangement were terminated on such date; and (H) similar obligations.

(v) **“Leverage Ratio”** means the ratio derived by dividing (A) Indebtedness on the date of the calculation by (B) EBITDA calculated for the then most recently completed four fiscal quarters.

(vi) **“Total Assets”** means the total assets of the Guarantor computed in accordance with GAAP.

(vii) **“Unrestricted Cash and Investments”** means unrestricted and unencumbered cash, cash equivalents, and marketable liquid investments; provided, however, that there shall be excluded (or deducted in the case of clause (B) below) therefrom the following: (A) the amount of or in any trustee-held funds, debt service funds, debt service reserve funds, construction funds, litigation reserve funds, malpractice funds or other self-insurance or captive insurer funds, pension or retirement funds and any other funds set aside or reserved in such a manner so as to restrict the funds so that such funds are not available to the Borrowers to pay debt service on Indebtedness; (B) the principal amount of any borrowed moneys payable in one year or less (other than the current portion of long-term debt); and (C) any amounts pledged or posted, or currently required to be pledged or posted, to secure obligations under a swap agreement or in connection with any derivative transaction. For purposes of this definition, if marketable securities are loaned pursuant to a security lending program, either the market value of such securities that are loaned or any cash held as collateral under such lending program shall be included as Unrestricted Cash and Investments, but not both such amounts.

(e) All financial statements delivered by the Guarantor pursuant to Section 7(a), including, if applicable, Annual Reports filed on Form 10-K and Quarterly Reports filed on Form 10-Q delivered in satisfaction of the obligations imposed by Section 7(a)(i)(A) and (B), shall be accompanied by a compliance certificate executed by the principal financial officer of

the Guarantor in which such officer shall (i) certify (A) that, to his or her knowledge after reasonable investigation, the financial statements and other information being delivered to the BOR along with such certificate pursuant to this Section 7 are true and accurate and (B) that the Guarantor met each of the financial covenants set forth in Section 7(c) as of the end of its most recent fiscal quarter and (ii) provide calculations demonstrating, based on the financial statements being delivered to the BOR along with such certificate pursuant to this Section 7, that the Guarantor met each of the financial covenants set forth in Section 7(c) as of the end of its most recent fiscal quarter.

8. **Waiver of Defenses and Certain Rights.** The Guarantor waives (a) any right to require the BOR to (i) proceed against the Concessionaire or any other person or entity in any way; (ii) proceed against or exhaust any security held from the Concessionaire or the Guarantor; (iii) pursue any other remedy in the BOR's power against the Concessionaire which the Guarantor cannot itself pursue, and which would lighten its burden; (b) all statutes of limitation as a defense to any action brought against the Guarantor by the BOR to the fullest extent permitted by law; (c) any defense based upon any legal disability of the Concessionaire, or any discharge or limitation of the liability of the Concessionaire to the BOR, whether consensual or arising by operation of law or in connection with any proceeding under any Insolvency Law, or from any other similar cause; (d) any defense based upon the invalidity or unenforceability of any Operative Agreement, (e) any defense based upon a change in the legal or corporate structure or assets of the Concessionaire; (f) any defense based upon a failure of the BOR to disclose any information, (g) presentment, demand or protest of any kind and (h) any defense based upon or arising out of any defense which the Concessionaire may have to the payment or performance of any part of the Concessionaire Obligations, other than any defense arising under the express terms of the Operative Agreements. Without limiting the foregoing, the Guarantor waives all rights of setoff and all demand and notices, including without limitation demands for performance, notices of the creation and existence of Concessionaire Obligations, notices of non-performance, notices of nonpayment, notices of dishonor, notices of protest and notice of acceptance of this Guaranty.

9. **Effect of Concessionaire's Bankruptcy.** Without limiting any other provisions of this Guaranty, the liability of the Guarantor under this Guaranty shall in no way be affected by: (a) the release or discharge of the Concessionaire in any creditor proceeding, receivership, bankruptcy or other proceeding; (b) the impairment, limitation, or modification of the Concessionaire's liability or the estate, or of any remedy for the enforcement of the Concessionaire's liability, which may result from the operation of any present or future Insolvency Laws, or from the decision of any court; (c) the rejection or disaffirmance of the Operative Agreements, or any portion of the Operative Agreements, in any such proceeding; (d) the cessation, from any cause whatsoever, whether consensual or by operation of law, of the Concessionaire's liability to the BOR resulting from any such proceeding; or (e) the modification or replacement of the Concessionaire Obligations in any such proceeding.

10. **Waiver of Subrogation.**

(a) Notwithstanding any other provision of this Guaranty to the contrary, until the Concessionaire Obligations are fully performed and paid, the Guarantor hereby waives any claims or other rights which the Guarantor may now have or hereafter acquire against the

Concessionaire or any other guarantor of all or any of the Concessionaire Obligations, which claims or other rights arise from the existence or performance of the Guarantor's obligations under this Guaranty (all such claims and rights are referred to as the "**Guarantor's Conditional Rights**"), including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, or indemnification, any right to participate in any claim or remedy of the BOR against the Concessionaire or any collateral which the BOR now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including without limitation, the right to take or receive from the Concessionaire, directly or indirectly, in cash or other property or in any other manner, payment or security on account of such claim or other rights. If, notwithstanding the foregoing provision, any amount shall be paid to the Guarantor on account of any Guarantor's Conditional Rights and either (i) such amount is paid to the Guarantor at any time when the Concessionaire Obligations shall not have been paid or performed in full, or (ii) regardless of when such amount is paid to the Guarantor, any payment made by the Concessionaire to the BOR is at any time determined to be a Preferential Payment, then such amount paid to the Guarantor shall be held in trust for the benefit of the BOR and shall forthwith be paid to the BOR to be credited and applied upon the Concessionaire Obligations, whether matured or unmatured, in such order as the BOR, in its sole and absolute discretion, shall determine.

(b) To the extent that any of the provisions of subsection (a) of this Section 10 shall not be enforceable, the Guarantor agrees that until such time as the Concessionaire Obligations have been paid and performed in full and the period of time has expired during which any payment made by the Concessionaire or the Guarantor to the BOR may be determined to be a Preferential Payment, the Guarantor's Conditional Rights to the extent not validly waived shall be subordinate to the BOR's right to full payment and performance of the Concessionaire Obligations, and the Guarantor shall not enforce the Guarantor's Conditional Rights during such period.

11. **Costs and Expenses.** If the Guarantor fails to perform any of its obligations under this Guaranty or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Guaranty, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements. Any such attorneys' fees and other expenses incurred by the BOR in enforcing a judgment in its favor under this Guaranty shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorney's fees' obligation is intended to be severable from the other provisions of this Guaranty and to survive and not be merged into any such judgment.

12. **Assignment.** The Guarantor shall not be permitted to assign or delegate its obligations under this Guaranty except in connection with an assignment to a Qualified Assignee of the Concessionaire's interest in the Projects made in accordance with Section 12.2 of the Master Concession Agreement.

13. **Termination of Guaranty.** Notwithstanding anything herein to the contrary, this Guaranty and all of the Guarantor's obligations hereunder shall terminate without further action by the BOR or the Guarantor at such time as there is an assignment to a Qualified Assignee of the Concessionaire's interest in the Projects made in accordance with Section 12.2 of the Master Concession Agreement. No termination of this Guaranty shall affect the Guarantor's liability for any Concessionaire Obligations already outstanding as of the date of such termination. No termination of this Guaranty shall affect the Guarantor's obligation to satisfy any Concessionaire Obligation that is reinstated as described in Section 5 above, regardless of whether such termination predates such reinstatement.

14. **Miscellaneous.**

(a) **Notices.**

(i) Whenever the Guarantor is required, or the Guarantor or the BOR shall desire, to give or serve any notice, demand, order, direction, determination, requirement, consent or approval, request or other communication with respect to this Guaranty, such notice, demand, order, direction, determination, requirement, consent or approval, request or other communication shall be in writing and shall not be effective for any purpose unless same shall be given or served as provided in Section 14(a)(ii) and addressed as follows:

If to the Guarantor: [Guarantor]

With copies to: [Attorney]

If to the BOR: Vice Chancellor for Fiscal Affairs and Treasurer
Office of Fiscal Affairs
Board of Regents of the University of Georgia
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: 404-962-3200
Fax: 404-962-3215

With copies to: Vice Chancellor for Legal Affairs
Office of Legal Affairs
Board of Regents of the University of Georgia
270 Washington Street, SW
Atlanta, Georgia 30334
Telephone: 404-962-3255
Fax: 404-962-3264

or at such other address or addresses as the Parties may from time to time designate by notice given by certified mail.

(ii) Every notice, demand, order, direction, determination, requirement, consent or approval, request, or communication hereunder shall be (A) personally served, (B) sent by certified first-class mail, return receipt requested, (C) sent by recognized

overnight delivery service or (D) sent by e-mail, provided that notice by e-mail shall be promptly supplemented by delivery of notice as provided in clause (C) above. Any such notice, demand, order, direction, determination, requirement, consent or approval, request, or other communication shall be deemed to have been delivered on the date of the receipt of such delivery or transmission at the address set forth above (or such other address designated pursuant hereto), or, if sent by certified first-class mail, return receipt requested, and delivery is refused, upon the date of refusal to accept service.

(b) **Headings or Titles.** The brief headings or titles preceding each Section are merely for purposes of identification, convenience, and ease of reference, and will be completely disregarded in the construction of this Guaranty.

(c) **No Reliance.** The Guarantor has made entered into this Guaranty upon the advice of advisors of its own choosing, and the Guarantor warrants and represents that it is not relying on any statement or advice of or from the BOR or any advisor of the BOR. The Guarantor is entering into this Guaranty freely and voluntarily and desires to be bound by this Guaranty. The Guarantor has been fully informed of the terms, conditions and effects of this Guaranty.

(d) **Entire Agreement.** It is expressly agreed that this written instrument embodies the entire agreement contemplated by the Guarantor and the BOR regarding the terms hereof. There are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein or in the other Operative Agreements.

(e) **Governing Law; Venue.** This Guaranty and the actions of the Guarantor hereunder, as well as the exercise by the BOR of any rights granted to it hereby, shall in all respects be governed by, and construed in accordance with, the laws of the State of Georgia (excluding conflict of law principles). Venue for any actions brought under this Guaranty shall be laid exclusively in the Superior Court of Fulton County, State of Georgia pursuant to O.C.G.A. § 50-21-1(b) and the Guarantor consents to the jurisdiction and venue of such court and further agrees that service of process for any such action may be properly and completely made upon each party at the address provided for notices hereunder in Section 14(a)(i) of this Guaranty.

(f) **Severability.** If any term or provision of this Guaranty, or the application of the term or provision to any Person or circumstance is, to any extent, invalid or unenforceable in any jurisdiction, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain between the Guarantor and the BOR as contained herein, the remainder of this Guaranty, or the application of the term or provision to Persons or circumstances other than those as to which the term or provision is held invalid or unenforceable, will not be affected by such invalidity or unenforceability, and each remaining term or provision of this Guaranty will be valid and will be enforced to the fullest extent permitted by law. To the extent permitted by Applicable Law, the Guarantor hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

(g) **Modification.** This Guaranty may be amended at any time by mutual agreement of the Guarantor and the BOR but only by the execution of a writing signed by a duly

authorized representative of each of the Guarantor and the BOR. No waiver by the BOR of any provisions of this Guaranty or the other Operative Agreements shall be deemed to have been made unless expressed in a writing signed by an authorized representative of the BOR.

(h) **Further Assurances.** At any time or times after the execution of this Guaranty, the Guarantor shall execute, have acknowledged and deliver to the BOR any instruments, and take any other actions, as may be necessary to effectuate the transaction described herein.

(i) **Time of the Essence.** Time is of the essence to each and every provision of this Guaranty.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed by its duly authorized representatives as of the date first above written.

GUARANTOR:

[GUARANTOR],
a [State] [entity]

By: _____
Authorized Representative

[SEAL]

EXHIBIT D

**FORM OF IMMIGRATION AND SECURITY AFFIDAVIT
REQUIRED BY SECTION 14.19**

Contractor Affidavit under O.C.G.A. § 13-10-91(b)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Board of Regents of the University System of Georgia (public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this ____ day of _____, 20__.

Name of Signatory

Title of Signatory

Subscribed and sworn before me this ____ day of _____, 20__.

Notary Public

My Commission expires: _____

Schedule 3.3

Existing Housing Bonds

Schedule 4.1.1

Existing Housing Projects

Schedule 4.1.2

New Housing Projects

Schedule 5.4

Capital Repair and Replacement Account Requirements

Institution	Initial Deposit	Annual/Bed	
	<i>Existing Housing</i>	<i>Existing Housing</i>	<i>New Housing</i>
Armstrong State University	\$	\$	N/A
Abraham Baldwin Agricultural College	\$	\$	N/A
College of Coastal Georgia	\$	\$	\$
Columbus State University	\$	\$	\$
Dalton State College	N/A	N/A	\$
East Georgia State University	\$	\$	\$
Georgia State University	\$	\$	\$
Georgia Regents University	N/A	N/A	\$
University of North Georgia	\$	\$	\$

Schedule 8.1.1

Information for Retained Housing

[Qualified Concessionaire should comment on the items to be provided by the BOR regarding Retained Housing proposed to be leased]

Schedule 8.1.2

Information for Proposed Future Housing

[Qualified Concessionaire should comment on the items to be provided by the BOR regarding proposed Future Housing]