

**FORM OF EXISTING HOUSING LEASE AGREEMENT**

**[INSTITUTION]**

**Between**

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

**and**

**[CONCESSIONAIRE]  
a [State] [entity]**

**Dated \_\_\_\_\_, 2014**

**Project Name: \_\_\_\_\_**

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Counterpart No. \_\_\_\_ of Two Original Executed Counterparts  
Counterpart of the \_\_\_\_\_  
Project Name: \_\_\_\_\_

## FORM OF EXISTING HOUSING LEASE AGREEMENT

### [INSTITUTION]

**THIS EXISTING HOUSING LEASE AGREEMENT** (this “**Lease**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014 (the “**Lease Effective Date**”), by and between **THE BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA**, whose address for the purposes of this Lease is: \_\_\_\_\_, Party of the First Part (the “**BOR**”), and [CONCESSIONAIRE], a [State] [entity], whose address for the purposes of this Lease is: \_\_\_\_\_ (the “**Concessionaire**,” and collectively with the BOR, the “**Parties**,” with each separately sometimes referred to herein as a “**Party**”), for the use of real property located on the campus of \_\_\_\_\_ (the “**Institution**”), a unit of the System (as defined below).

### 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 contract for the development of certain new student housing resources on, the campuses of nine institutions [*to insert “the Institution” in place of the applicable institution*]: 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; and

WHEREAS, the BOR issued a Request for Proposals (the “**RFP**”) soliciting proposals for the aforementioned leasing and development projects, which involve the transfer, development, design, demolition, construction, management, operation, repair, maintenance and replacement, as applicable, of certain student housing resources and other buildings, structures, appurtenances and other improvements now or to be located on certain portions of the aforementioned institutions’ campuses; and

WHEREAS, in order to effect or coordinate the effecting of the transactions contemplated by the RFP, the BOR and the Concessionaire have entered into that certain Master Concession Agreement, dated as of November [\_\_\_], 2014 (the “**Master Concession Agreement**”; capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Master Concession Agreement); and

WHEREAS, the Master Concession Agreement provides that certain parcels at each of the aforementioned institutions and certain student housing resources and other buildings,

structures, appurtenances and other improvements now or to be located on such parcels will be leased to the Concessionaire pursuant to the terms of fourteen (14) separate leases; and

WHEREAS, the BOR is the owner of certain premises consisting of approximately \_\_\_\_\_ acres situated on the campus of the Institution, more particularly described in Exhibit A attached hereto (the “**Premises**”); and

WHEREAS, the BOR desires to lease the Premises to the Concessionaire; and

WHEREAS, the BOR desires to lease to the Concessionaire all buildings, structures, appurtenances and other improvements, together with the personal property owned by the BOR, located on the Premises (the “**Premises Improvements**” and, together with the Premises, the “**Project**”), to be operated and maintained in accordance with this Lease and the Master Concession Agreement; and

WHEREAS, the Concessionaire desires to lease the Premises and the Premises Improvements from the BOR on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, upon the following terms and conditions to be paid and kept by the Concessionaire, the BOR grants and leases, and the Concessionaire does hereby accept, take and lease from the BOR the Premises and Premises Improvements. This Lease creates in the Concessionaire an estate for years;

TOGETHER WITH a non-exclusive easement over and across all existing and future walkways and drives located from time to time on the BOR’s property adjacent to the Premises, for vehicular and pedestrian ingress and egress from the Premises to public rights-of-way, as well as a non-exclusive easement to use the BOR’s parking facilities that the BOR designates for the intended use of the Project, subject to such parking fees and regulations as the BOR may impose;

RESERVING, HOWEVER, unto the BOR, its officers, agents, employees, contractors and subcontractors, a right of access to the Project for the purpose of exercising the rights, interests, privileges and benefits contained herein and in the other Operative Agreements, together with a non-exclusive easement over and across all existing and future walkways and drives located from time to time on the Premises, for vehicular and pedestrian ingress and egress from the BOR’s property adjacent to the Premises to public rights-of-way;

RESERVING FURTHER, HOWEVER, unto the BOR, its officers, agents, employees, contractors and/or subcontractors, as applicable, those rights to use and occupy certain portions of the Project as set forth in Section 24 of this Lease; and

RESERVING FURTHER, HOWEVER, unto the BOR, its officers, agents, employees, contractors and subcontractors the BOR Reserved Rights set forth in Section 5.8 of the Master Concession Agreement.

THIS LEASE is granted subject to the following terms and conditions to be paid and kept by the Concessionaire:

## SECTION 1.

### USE OF THE PROJECT

1.1 The sole purposes for which the Project may be used are set forth in the Master Concession Agreement. The Concessionaire shall operate the Project in accordance with the terms of the Master Concession Agreement and the Project Operating Agreement.

1.2 Without limiting Section 1.1 above, in no event shall the Concessionaire (a) use, or permit the use of, the Project for any illegal purpose, nor for any purpose inimical to the health, safety and welfare of the public, (b) commit, or suffer to be committed, any waste in or on the Project or (c) create or permit any nuisance in or on the Premises.

## SECTION 2.

### OCCUPANCY

The Concessionaire shall occupy the Project continuously throughout the Lease Term and shall not desert, surrender, abandon or cease to use the Project during the Lease Term.

## SECTION 3.

### TERM AND DELIVERY OF POSSESSION

3.1 The term of this Lease (the “**Lease Term**”) shall begin upon the delivery of this Lease on the Project Turnover Date and shall end at 11:59 o’clock P.M. prevailing legal time in Atlanta, Georgia on June 30, 2045 (the “**Expiration**”), or at such earlier time at which the Master Concession Agreement is terminated in accordance with the provisions thereof or this Lease is terminated in accordance with the provisions of the Master Concession Agreement (either of the foregoing, if applicable, a “**Termination**”).

3.2 Possession of the Project will be delivered to the Concessionaire upon delivery of this Lease on the Project Turnover Date.

3.3 Upon the earlier of the Expiration or Termination of this Lease, all rights and interests of the Concessionaire (and all persons whatsoever claiming by, under or through the Concessionaire) in and to the Project shall wholly cease and all such rights and interests in and to the Project shall revert to and vest in the BOR without further act or conveyance, and without liability to make compensation therefor to the Concessionaire or to anyone whatsoever (except as provided in Section 2.3 of the Master Concession Agreement in the event of a Termination pursuant thereto) and shall be free of and discharged from each and every lien, encumbrance, claim and charge of any character created or attempted to be created by the Concessionaire at any time, other than encumbrances created by the Concessionaire permitted under the terms of this Lease and the other Operative Agreements. Upon the Expiration, if no earlier Termination occurs, the Concessionaire shall either (a) return the Project to the BOR as is, without representation or warranty, or (b) tear down and remove the Premises Improvements and return the unimproved Premises to the BOR, in either case as provided in Section 15 of this Lease. Nothing in this Section 3.3 shall be construed to relieve the Concessionaire from liability for

having failed to maintain the Project in accordance with the Operative Agreements or otherwise having left the Project in unsound or unsafe condition or subject to any encumbrances.

## SECTION 4.

### RENT

4.1 The Concessionaire shall pay to the BOR as consideration for this Lease:

4.1.1 on the Effective Date, the Prepaid Rent, the receipt of which the BOR acknowledges by execution of this Lease; and

4.1.2 throughout the Lease Term, the Base Rent and Contingent Rent owed by the Concessionaire to the BOR as set forth in the Master Concession Agreement, in the amounts and on the dates set forth in the Master Concession Agreement.

4.2 As a material inducement to the BOR to enter into this Lease, the Concessionaire has agreed to operate the Project in accordance with the terms of this Lease, the Project Operating Agreement, the Master Concession Agreement and each other Operative Agreement.

4.3 All costs, expenses and obligations of every kind and nature whatsoever relating to the Project and the appurtenances thereto and the use and occupancy thereof which may arise or become due and payable with respect to the period beginning on the Lease Effective Date and which ends on the Expiration or earlier Termination of the Lease Term in accordance with the provisions hereof, including, but not limited to, expenses related to the maintenance and repair of the Premises, and Impositions and insurance costs, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof (“**Additional Rent**”), shall be paid by the Concessionaire. All Additional Rent shall be paid directly by the Concessionaire to the party to whom such Additional Rent is due. If the Concessionaire shall fail to pay any such Additional Rent or any other sum due hereunder when the same shall become due, the BOR shall have all rights, powers and remedies with respect thereto as are provided herein or by law in the case of non-payment of any Rent and shall, except as expressly provided herein, have the right, not sooner than ten (10) days after notice to the Concessionaire (except in the event of an emergency, as reasonably determined by the BOR, in which case prior notice shall not be necessary) of its intent to do so, to pay the same on behalf of the Concessionaire, and the Concessionaire shall repay such amounts to the BOR within thirty (30) days after demand. Any request by the BOR to the Concessionaire for payment of Additional Rent shall identify the expenses included in such request. If any installment of Additional Rent is not paid when due, such arrearage shall be subject to the late payment provisions set forth in Section 6.7 of the Master Concession Agreement.

4.4 For the purposes of this Lease, the rent obligations imposed on the Concessionaire under Section 4.1 above and Additional Rent shall sometimes hereinafter be collectively referred to as “**Lease Rent.**”

4.5 Except as set forth in this Lease, this is an absolutely net lease to the BOR. The obligations of the Concessionaire hereunder shall be separate and independent covenants and agreements. The Lease Rent shall continue to be payable in all events, and the obligations of the

Concessionaire hereunder shall continue unaffected in all events, unless this Lease has been terminated in accordance with this Lease or the Master Concession Agreement. In furtherance and not in limitation of the foregoing, it is the intent of the parties hereto that the Lease Rent payable under this lease shall be an absolutely net return to the BOR and that the Concessionaire shall pay all costs and expenses relating to the Project and the business carried on therein, unless otherwise expressly provided to the contrary in this Lease or the Master Concession Agreement. Lease Rent shall be paid by the Concessionaire without notice or demand (except as expressly provided herein), setoff, counterclaim, abatement, suspension, deduction or defense.

4.6 EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE OR THE MASTER CONCESSION AGREEMENT, THE CONCESSIONAIRE WAIVES ALL RIGHTS WHICH MAY NOW OR HEREAFTER BE CONFERRED BY LAW (A) TO QUIT, TERMINATE OR SURRENDER THIS LEASE OR (B) TO ANY ABATEMENT, SUSPENSION, DEFERMENT OR REDUCTION OF THE LEASE RENT.

## **SECTION 5.**

### **EASEMENTS AND RIGHTS OF WAY**

5.1 As set forth in the granting clause hereof, the BOR, its officers, agents, employees, contractors and subcontractors, hereby retain a perpetual non-exclusive easement on, in, over, under, upon, across, or through the Project together with rights of ingress and egress to adjoining land of the BOR as may be necessary for the BOR to operate the Institution and to exercise the rights, interests, privileges and benefits contained herein and in the other Operative Agreements.

5.2 The BOR reserves to itself the right, from time to time and without the consent or joinder of the Concessionaire, to grant such easements, rights and dedications affecting the Premises as the BOR may deem necessary, and to cause the recordation of easements, licenses and restrictions, so long as such easements, licenses, rights, and restrictions do not unreasonably interfere with the use of the Project by the Concessionaire. The Concessionaire agrees to sign any documents reasonably requested by the BOR to effectuate any such easement rights, licenses or restrictions.

5.3 Upon written request from the Concessionaire to the BOR, the BOR shall execute such easements on, over and through the Premises as may be reasonably required by the Concessionaire in connection with the operation of the Project, including, but not limited to, easements in connection with the provision of water, sewer, electrical, telephone, electronic and other communication facilities, television, internet and other such utility lines and services to serve the Project. Any such easements shall be subject to the review and approval of the BOR. The Concessionaire shall reimburse the BOR, as Additional Rent, for all reasonable costs and expenses incurred by the BOR in connection with the review and execution of any such easement.



## **SECTION 6.**

### **CONDITION OF PREMISES**

6.1 The Concessionaire acknowledges and agrees that the BOR has not made, does not make and specifically negates and disclaims any and all representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, quality or condition of the Project, including, without limitation, the water, soil and geology thereof, (b) the income derived or to be derived from the Project, (c) the suitability of the Project for any and all activities and uses that the Concessionaire may conduct thereon, (d) the compliance of or by the Project or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body, (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Project, (f) the manner or quality of the construction or materials, if any, incorporated into the Project, or (g) the manner, quality, state of repair or lack of repair of the Project, and that the BOR has not made, does not make and specifically disclaims any and all representations regarding compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, including solid waste, as defined by the U.S. Environmental Protection Agency regulations at 40 C.F.R., Part 261, or the presence or absence, in or on the Project, of any substance or material, including but not limited to any hazardous substance, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder, asbestos, asbestos-containing materials, PCB's, radon gas, urea formaldehyde foam insulation or any other substance or material. The Concessionaire further acknowledges and agrees that having been given the opportunity to inspect the Project, the Concessionaire is relying solely on the Concessionaire's own knowledge of the Project and investigation of the Project and not on any information provided or to be provided by the BOR. The Concessionaire acknowledges and agrees that to the maximum extent permitted by law, the lease of the Project as provided for herein is made on an "AS-IS" condition and basis with all faults. It is understood and agreed that the Rent has been negotiated to reflect that the Project is leased by the BOR to the Concessionaire subject to the foregoing. The BOR shall not be liable to the Concessionaire for any damages or losses, whether direct or consequential, incurred by the Concessionaire as the result of the discovery of any latent or patent defect in the Premises or Premises Improvements.

6.2 Notwithstanding the foregoing, the Concessionaire shall repair, reconstruct and maintain the Project in accordance with this Lease, the Master Concession Agreement and the Project Operating Agreement.

## **SECTION 7.**

### **INSPECTION AND TITLE**

7.1 The Concessionaire hereby acknowledges that it has fully inspected the Premises and Premises Improvements and that the Premises and Premises Improvements and title thereto are accepted and are in satisfactory and suitable condition for the use intended by the Concessionaire.

7.2 This Lease is made subject to all existing easements, rights of way, licenses and other documents recorded in the public records of the county in which the Premises is located, as well as any unrecorded easements, rights of way, licenses and other property interests, provided such unrecorded easements, rights of way, licenses and other property interests do not unreasonably interfere with the use of the Project by the Concessionaire.

7.3 The Concessionaire acknowledges that any information of any type which the Concessionaire has received or may receive from the BOR or the BOR's agents, including, without limitation, any title reports, environmental reports and surveys, is furnished on the express condition that the Concessionaire shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty whatsoever. The Concessionaire agrees that the Concessionaire will not attempt to assert any liability against the BOR, its officers, employees, agents, controlling persons or affiliates for furnishing such information.

## **SECTION 8.**

### **OWNERSHIP OF PREMISES IMPROVEMENTS**

8.1 [RESERVED]

8.2 The Premises Improvements shall at all times be owned solely by the BOR, and no other Person shall have any ownership interest therein. In furtherance and not in limitation of the foregoing, any replacements of the Premises Improvements constructed pursuant to the terms of this Lease (including without limitation as and when required by Section 10), shall at all times, including as the construction of the same progresses, be owned solely by the BOR, and no other Person shall have any ownership interest therein.

8.3 Subject to and without limiting Section 8.2 above, as between the BOR and the Concessionaire and to the extent allowed by Applicable Law, the Concessionaire shall hold the depreciable interest in the Premises Improvements for income tax purposes and shall be entitled to all depreciation for the Premises Improvements.

## **SECTION 9.**

### **OPERATION, MANAGEMENT AND MAINTENANCE OF THE PROJECT**

The Concessionaire shall operate, manage and maintain the Project in accordance with the Operative Agreements. From and after the delivery of possession of the Project to the Concessionaire, the Concessionaire, at its expense, will at all times, (a) maintain the Project in good order, repair and condition in accordance with the guidelines and requirements set forth in the Operative Agreements; (b) maintain the Project in material compliance with Applicable Law; and (c) make any and all repairs of the Project necessary or appropriate to keep the same in the condition required by the preceding clauses (a) and (b), whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All construction, repairs, reconstruction and maintenance made by the Concessionaire pursuant to this Lease shall be

performed in a good and workmanlike manner. In no event shall such work be done for the BOR's account or in a manner which allows any liens to be filed against the Project.

## **SECTION 10.**

### **DESTRUCTION OR DAMAGE TO PROPERTY**

10.1 Subject to the terms herein, if the Premises Improvements are damaged or destroyed by storm, fire, earthquake, hurricane or any other casualty, the Concessionaire shall, at its sole cost and expense, restore the Premises Improvements substantially to the condition in which they were prior to such damage or destruction, unless the Lease is then terminated in accordance with the Master Concession Agreement.

10.2 Notwithstanding the above, if the Premises Improvements are damaged or destroyed by a casualty suffered during the last two (2) years of the Lease Term and either (i) the damage is sufficiently extensive to result in rendering more than fifty percent (50%) of the Premises Improvements untenable by Residents, or (ii) the estimated cost of reconstruction required under this Lease is more than fifty percent (50%) of the total cost of the Premises Improvements, then the Concessionaire at its option may elect to terminate this Lease upon thirty (30) days' advance written notice to the BOR, and upon so notifying the BOR this Lease shall terminate as of the date on which the damage occurred. Notwithstanding the foregoing, in the event of a termination of this Lease as a result of such a casualty, the proceeds payable under the casualty insurance policy (plus any applicable deductible or self-insured amounts) shall be paid over to BOR. Notwithstanding any provision of this Lease or the Master Concession Agreement to the contrary, a termination pursuant to this Section 10.2 shall not give rise to any obligation on the part of the BOR to pay any Early Termination Amount with respect to the Project.

10.3 Lease Rent shall not be reduced as a result of any casualty if this Lease is not terminated pursuant to the provisions of this Lease or the other Operative Agreements.

10.4 The Concessionaire shall promptly (and in any event no later than twenty-four (24) hours following the event causing the damage or destruction) notify the BOR of the occurrence of such casualty. Any restoration of the Premises Improvements shall be performed pursuant to a design, plans and specifications each approved in writing by the BOR, and in accordance with all applicable provisions of this Lease, the other Operative Agreements and all Applicable Laws. Unless this Lease is terminated in accordance with the terms of this Lease or the other Operative Agreements, the Concessionaire shall commence restoration of the Premises Improvements within sixty (60) days of the date of the casualty; provided, however, that the BOR may grant such extensions of time the BOR determines, in its sole discretion, are required. Once reconstruction of the Premises has been commenced following a casualty, the Concessionaire shall diligently complete the restoration. The architect, engineer and general contractor engaged in connection with the reconstruction of the Premises Improvements shall be selected by the Concessionaire and approved in writing by the BOR, which approval may be granted, conditioned or withheld in the BOR's sole and absolute discretion.

10.5 In the event a casualty results in the Project being untenable by some or all of the Residents, the Concessionaire shall, at its sole cost and expense, provide suitable substitute

housing for the applicable Residents and provide transportation for the applicable Residents to and from the main campus of the Institution. The BOR will cooperate, and will cause the Institution to cooperate, with the Concessionaire to house any Residents displaced by such casualty in other residential facilities located at the Institution which are owned by the BOR to the extent available, provided the BOR shall not be required to expend any of its own funds in connection therewith.

10.6 Unless this Lease is terminated by the BOR in accordance with the Master Concession Agreement, no destruction or damage to the Project or any part thereof shall permit the Concessionaire to surrender the Project or shall relieve the Concessionaire from its obligation to pay Lease Rent or from any of its other obligations under this Lease or the Master Concession Agreement. The Concessionaire waives any rights now or in the future conferred upon it by statute or otherwise to quit or surrender the Project or to any rebate, refund, suspension, diminution, abatement or reduction of rent on account of any destruction or damage to the Project.

## **SECTION 11.**

### **EMINENT DOMAIN**

11.1 If all or substantially all of the Project shall be taken for any public or quasi-public use under any statute, by right of eminent domain or by transfer or purchase in lieu thereof (the “**Condemnation Proceedings**”), this Lease shall automatically terminate on the date title passes to or possession is taken by the taking authority, whichever occurs first. For purposes of this Section 11, “substantially all” of the Project shall be deemed taken if more than fifty (50%) of the Premises Improvements are untenable by Residents as a result of the Condemnation Proceeding. Notwithstanding any provision of this Lease or the Master Concession Agreement to the contrary, a termination pursuant to this Section 11.1 shall not give rise to any obligation on the part of the BOR to pay any Early Termination Amount.

11.2 To the extent permitted by law, in the event of a taking in a Condemnation Proceeding which results in the termination of this Lease pursuant to Section 11.1, the BOR and the Concessionaire shall cooperate in the defense in the Condemnation Proceedings, provided that in any Condemnation Proceeding the sole legal counsel for the BOR 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 involving the BOR must be approved in writing by the BOR and the Attorney General to be effective. The condemnation award and/or proceeds of the Condemnation Proceeding shall be payable as follows:

11.2.1 the BOR shall be entitled to claim and recover from the condemning authority the fair market value of (a) the Premises Improvements and (b) the fee estate in Premises, as if (i) the Premises were unimproved but encumbered by this Lease and (ii) no condemnation was pending, threatened or under consideration;

11.2.2 the Concessionaire shall be entitled to claim and recover from the condemning authority an amount equal to the value of its interest in the Premises Improvements for the remainder of the Lease Term; and

11.2.3 the balance of the award, if any, shall be paid to the BOR.

11.3 If less than substantially all of the Project is taken (a **“Partial Taking”**), this Lease shall remain in full force and effect; *provided, however*, that on the date of such Partial Taking this Lease shall terminate as to the portion of the Project taken, which portion shall no longer be deemed part of the Project. Whether or not the award for a Partial Taking is sufficient to restore the Premises Improvements, the Concessionaire shall promptly restore the Premises Improvements, to the extent reasonably practicable given the nature and scope of the Partial Taking, to their condition immediately prior to such Partial Taking in accordance with the provisions of this Lease, the Master Concession Agreement and the Project Operating Agreement, and to a standard and quality no less than the construction of the original Improvements (the **“Condemnation Restoration”**). If the Partial Taking includes any of the Premises Improvements, the award shall first be applied by the Concessionaire to effect the Condemnation Restoration. The balance of the award (if any) shall be allocated between the BOR and the Concessionaire as follows:

11.3.1 the BOR shall be entitled to an amount equal to the diminution in the value of its fee estate in the Premises;

11.3.2 the Concessionaire shall be entitled to an amount equal to the diminution in the value of the Premises Improvements; and

11.3.3 the balance of the award, if any, shall be paid to the BOR.

## **SECTION 12.**

### **HOLDING OVER**

In the event of holding over by the Concessionaire after the end of the Lease Term, the hold over shall be as a tenant at sufferance subject to immediate eviction or dispossession and not as a tenant at will, and the Concessionaire shall otherwise be subject to all the covenants and provisions of this Lease insofar as the same are applicable to a tenant at sufferance, including, without limitation, the payment of Additional Rent. The Concessionaire shall pay the BOR, on demand, as quarterly rent for the period of such hold over an amount equal to two hundred percent (200%) of the Rent payable under Section 4.1 of this Lease during the last quarter of the Lease Term prior to the holdover. The Concessionaire shall also pay all Additional Rent accruing during such holdover, together with the amount of any actual, direct or, notwithstanding anything in Section 11.5 of the Master Concession Agreement, consequential damages suffered or incurred by the BOR, including any claim made by any succeeding tenant to the Project, on account of such hold over by the Concessionaire or any violation by the Concessionaire of any other term or condition of this Lease during such hold over period.

## SECTION 13.

### DEFAULT, REMEDIES AND TERMINATION

13.1 Subject to Section 13.2, any one or more of the following shall constitute an event of default (each, an “**Event of Default**” and collectively, the “**Events of Default**”) under this Lease by the Concessionaire:

13.1.1 any Event of Default under the Master Concession Agreement; or

13.1.2 any failure of the Concessionaire to pay Lease Rent to the BOR when the same is due and payable under the terms of this Lease or the Master Concession Agreement, and the continuation of such failure for a period of ten (10) days after written notice thereof is given to the Concessionaire, or

13.1.3 [RESERVED]

13.1.4 any failure of the Concessionaire to discharge any mechanic’s or other lien that is its obligation to discharge under the terms of this Lease within the applicable time period provided in this Lease; or

13.1.5 any failure of the Concessionaire, whether by action or inaction, to timely perform or observe any of the other terms, covenants or conditions of this Lease and such default is not remedied within thirty (30) days after written notice thereof is given to the Concessionaire, provided that if such default cannot, with reasonable diligence, be fully remedied within such thirty (30) day period, the Concessionaire shall have as long as is reasonably necessary to cure such default, but in no event longer than three (3) months after the date such default notice is given to the Concessionaire, provided the Concessionaire commences compliance within such thirty (30) day period (or as promptly as reasonably possible in an emergency) and thereafter pursues compliance to completion with reasonable diligence; or

13.1.6 the Concessionaire’s desertion or abandonment of the Premises for thirty (30) or more consecutive days; or

13.1.7 the sale under execution or other legal process of the Concessionaire’s interest in this Lease or the rents from the Project.

13.2 Upon the occurrence of any Event of Default, the BOR may at its option pursue any one or more of the following remedies, and any and all other rights or remedies accruing to the BOR by law or otherwise, without any notice or demand to the extent permitted by applicable law:

13.2.1 terminate this Lease, in which event the Concessionaire shall immediately surrender the Project to the BOR. The Concessionaire agrees to indemnify the BOR for all loss, damage and expense which the BOR may suffer by reason of such termination, which damages shall include the difference between the amount of Lease Rent that would have been due hereunder were it not for such termination and fair rental value of the Project for the same

period, both discounted to present value using an interest rate equal to the Federal Funds Rate as announced by the Federal Reserve Bank located in Atlanta, Georgia;

13.2.2 without terminating this Lease, terminate the Concessionaire's right of possession, whereupon Lease Rent shall continue to accrue and be owed by the Concessionaire hereunder. Thereafter, at the BOR's option, the BOR may enter upon and relet all or a portion of the Project (or relet the Project together with any additional space) for a term longer or shorter than the remaining term hereunder and otherwise on terms satisfactory to the BOR. The Concessionaire shall be liable to the BOR for the deficiency, if any, between the Concessionaire's rent hereunder and all net sums received by the BOR on account of such reletting (after deducting all costs incurred by the BOR in connection with any such reletting, including without limitation, the Concessionaire improvement costs, brokerage commissions and attorneys' fees);

13.2.3 pursue a dispossessory action against the Concessionaire, in which event the Concessionaire shall remain liable for all amounts owed hereunder, including amounts accruing hereunder from and after the date that a writ of possession is issued; and

13.2.4 perform any unperformed obligation of the Concessionaire. Any sums expended by the BOR shall be repaid by the Concessionaire, as Additional Rent, within ten (10) days of demand therefor by the BOR.

13.3 Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedies provided by law. In the event the BOR places the enforcement of all or any part of this Lease in the hands of an attorney on account of the Concessionaire's default, the Concessionaire agrees to pay the BOR's costs of collection, including reasonable attorney's fees, whether suit is actually filed or not.

13.4 Nothing in this Section 13 shall limit the remedies available to the BOR under any other Operative Agreement.

13.5 Notwithstanding anything to the contrary in any Operative Agreement, the BOR shall not be required to engage in Unassisted Negotiations or Mediation pursuant to Section 11.4 of the Master Concession Agreement prior to seeking redress for an Event of Default under Sections 13.1.2, 13.1.4, 13.1.6 or 13.1.7. Whether any Event of Default under Section 13.1.1 shall require the BOR to engage in Unassisted Negotiations or Mediation shall be governed by the Master Concession Agreement.

13.6 The Concessionaire hereby waives any claims or suits against the BOR arising out of any termination of this Lease pursuant to Sections 13.2.

## **SECTION 14.**

### **TAXES**

14.1 The Concessionaire covenants and agrees, during the Lease Term, to pay or cause to be paid, to the public officer charged with collection thereof and before any of the same shall become delinquent and shall indemnify, protect, save and hold harmless the BOR from the

payment of (a) any and all taxes, assessments, license fees, excises, imposts, fees and charges of every sort, nature and kind (each, an **“Imposition”** and collectively, **“Impositions”**), which during the Lease Term, may be assessed, levied, charged or imposed against or with respect to the Project, including, but not limited to the Premises Improvements and any fixtures, equipment and personal property, if any located therein or otherwise on the Premises; and (b) any Impositions assessed, levied, charged or imposed on or with respect to the conduct of the Concessionaire’s business in or on the Project. If any Impositions may by law be paid in installments, Tenant may pay such Impositions in installments as permitted by law.

14.2 The Concessionaire may, at the Concessionaire’s sole cost and expense, endeavor from time to time to reduce the assessed valuation of the Project for the purpose of reducing the Impositions payable by the Concessionaire. Notwithstanding the foregoing, the Concessionaire shall timely pay all Impositions. The BOR agrees to offer no objection to such contest or proceeding and, at the request of the Concessionaire, to reasonably cooperate with the Concessionaire in pursuing such contest or proceeding, but without expense to the BOR. Any such contest or proceeding shall be brought in the Concessionaire’s name unless otherwise required by law, in which case the contest or proceeding may be brought in the BOR’s name. The Concessionaire agrees to indemnify and hold the BOR harmless from all liabilities arising by reason of or in connection with any such proceeding. Upon written notice from the BOR, the Concessionaire shall post security with (and acceptable to) the BOR in an amount equal to the amount of the Imposition claimed to be due.

14.3 Within ten (10) days after the payment by the Concessionaire of any Imposition, the Concessionaire shall furnish the BOR with a copy of the receipt or other document evidencing such payment.

## **SECTION 15.**

### **RESTORATION AND SURRENDER**

15.1 Upon the earlier of the Expiration or any Termination of this Lease, the Concessionaire shall terminate its operations on or at the Project and vacate and surrender possession of the Project without compensation therefor (except as provided in Section 2.3 of the Master Concession Agreement in the event of a Termination pursuant thereto), whereupon the Project, and all of the Concessionaire’s rights and interests in the Project shall automatically revert to the BOR, subject to demolition required pursuant to an Improvement Removal Notice (as hereinafter defined). Such reversion shall be automatic and subject to all Applicable Laws, provided, upon request by the BOR, the Concessionaire shall execute any documentation reasonably requested by the BOR to confirm such reversion, which reversion shall be free and clear of any and all liens and encumbrances (including any lien or encumbrance created by an Approved Mortgagee) other than those permitted under this Lease, the Master Concession Agreement and the Project Operating Agreement, or otherwise approved in writing by the BOR.

15.2 At the Expiration or Termination of this Lease, to the extent the BOR has not delivered an Improvement Removal Notice, the Concessionaire agrees to return the Project to the BOR in an “as-is, where-is” condition, provided the Concessionaire has maintained the Project through the date of the Expiration or Termination in accordance with the Project Operating



Agreement. Failure to comply with this paragraph will constitute holding over by the Concessionaire.

15.3 Notwithstanding anything to the contrary in this Section 15, prior to the Expiration of this Lease, the BOR may elect to (a) require the Concessionaire to return the Project as required in the immediately preceding section, in an “as-is, where-is” condition, without representation or warranty, or (b) remove the Premises Improvements and all of the Concessionaire’s personal property from the Premises, and return the Premises unimproved, in accordance with the provisions of this Section 15. If the BOR elects to require the Concessionaire to remove the Premises Improvements in accordance with clause (b) above, the BOR shall provide written notice of such election to the Concessionaire (an “**Improvement Removal Notice**”) no later than (y) eighteen (18) months prior to the Expiration of this Lease, or (z) upon a Termination of this Lease, immediately after the date of such Termination.

15.4 If the BOR delivers an Improvement Removal Notice pursuant to Section 15.3, then no later than (a) one hundred eighty (180) days after the Expiration or Termination of this Lease, as applicable, or (b) such later date as is mutually agreed to by the Concessionaire and the BOR in writing, the Concessionaire shall remove all of the Premises Improvements and its other personal property from the Premises, and restore the Premises to a good, usable and buildable condition, consisting of a level, graded buildable pad with no excavations, hollows, hills or humps other than those existing prior to the removal of such structures. Any construction or demolition expert hired by the Concessionaire to fulfill all or a portion of its removal and restoration obligations under this Section 15 must be approved by the BOR in writing in its sole and absolute discretion prior to its commencement of any removal or restoration work on the Project.

15.5 If the BOR delivers an Improvement Removal Notice pursuant to Section 15.3, then during the period after the Expiration of this Lease until the date on which the Concessionaire satisfies its obligations under this Section 15 with respect to a particular parcel of the Premises, all obligations set forth in Sections 16, 17, 19 and 20 of this Lease shall remain in full force and effect with respect to any portion of the Premises for which the Concessionaire has not satisfied its obligations under this Section 15.

15.6 If, following the delivery by the BOR of an Improvement Removal Notice pursuant to Section 15.3, the Concessionaire fails to satisfy its removal and restoration obligations pursuant to this Section 15, then the BOR may, at the sole cost and expense of the Concessionaire, cause the Premises Improvements to be removed and the Premises restored to a good, usable and buildable condition, and no claim for damages against the BOR, its officers, employees, agents, or contractors shall be created by or made on account of such removal and/or destruction and restoration work.

15.7 The provisions of this Section 15 shall survive indefinitely, notwithstanding the expiration or early termination of this Lease.

## SECTION 16.

### ENVIRONMENTAL LAW; HAZARDOUS SUBSTANCES

16.1 The Concessionaire at all times during the Lease Term (a) shall comply with all requirements imposed by any Environmental Law, whether or not such requirements are actually imposed upon the BOR or Concessionaire, and whether or not compliance shall require structural changes to the Premises Improvements and (b) will not allow any violation of any Environmental Law to occur on the Project, regardless of cause and regardless of whether the Concessionaire itself has acted or failed to act in violation of any Environmental Law. For the purposes of this Lease, “**Environmental Law**” means any applicable present or future federal, state or local law, statute, rule, regulation or ordinance relating to the regulation, pollution, preservation or protection of human health, safety, the environment, or natural resources or to emissions, discharges, releases or threatened releases of pollutants, contaminants, Hazardous Materials (as defined below) or wastes into the environment (including ambient air, soil surface water, ground water, wetlands, land or subsurface strata).

16.2 Without limiting Section 16.1 above, the Concessionaire shall not bring, deposit, or allow to be brought or deposited, in or upon the Project any Hazardous Materials, unless such Hazardous Materials are (a) ordinarily used in the care and maintenance of the Project and are in fact used by the Concessionaire for the care and maintenance purposes for which they are ordinarily used and (b) used by the Concessionaire in compliance with all laws, including without limitation all Environmental Laws, and all provisions of this Lease. For the purposes of this Lease, “**Hazardous Materials**” means and includes any (i) “hazardous substances”, “pollutants” or “contaminants” (as defined in the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.* (“**CERCLA**”), or the regulations pursuant to CERCLA), including any element, compound, mixture, solution, or substance which is or may be designated pursuant to Section 102 of CERCLA; (b) all substances which are or may be designated pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.* (“**FWPCA**”); (c) any hazardous waste having the characteristics which are identified under or listed pursuant to Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (“**RCRA**”) or having such characteristics which shall subsequently be considered under RCRA to constitute a hazardous waste; (d) any substance containing petroleum, as that term is defined in RCRA; (e) any toxic pollutant which is or may be listed under FWPCA; (f) any hazardous air pollutant which is or may be listed under the Clean Air Act, 42 U.S.C. §7401 *et seq.*; (g) any imminently hazardous chemical substance or mixture with respect to which action has been or may be taken pursuant to the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (h) any substance or mixture subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, (i) waste oil and other petroleum products; (j) any asbestos, urea formaldehyde, or polychlorinated biphenyls, or material which contains one or more of such substances; or (k) any other materials, chemicals, substances, products, or wastes which are now or hereafter either (i) deemed by any governmental authority with an appropriate jurisdiction over the Concessionaire to be, under any applicable Environmental Law, contaminants or pollutants, or hazardous, toxic, radioactive, ignitable, reactive, corrosive, or otherwise harmful to the environment or (ii) otherwise regulated pursuant to any applicable Environmental Law.

16.3 Furthermore, and without limiting Section 16.1 above, the Concessionaire will not allow any of the following to occur on the Project, regardless of cause and regardless of whether the Concessionaire itself engages in the prohibited activity: (a) any generation, treatment, recycling, storage or disposal of any Hazardous Materials; (b) the creation or installment of any underground storage tank, surface impoundment, lagoon or other containment facility for the temporary or permanent storage, treatment or disposal of Hazardous Materials; (c) the creation or installment of any landfill or solid waste disposal area; (d) the use or presence of any asbestos-containing material as defined in the Toxic Substances Control Act; (e) the use or presence of any polychlorinated biphenyl used in hydraulic oils, electric transformers or other equipment; or (f) any release or threatened release of Hazardous Materials requiring remedial action under Environmental Laws.

## **SECTION 17.**

### **COMPLIANCE WITH APPLICABLE LAWS**

The Concessionaire shall comply, and the Concessionaire shall cause the Project to comply, at its sole cost and expense, with all Applicable Laws. 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 18.**

### **ACCESS AND INSPECTION**

The BOR and its authorized agents shall at any and all reasonable times have the right to enter the Project to inspect the same. The Concessionaire hereby waives any claim for damages for injury or inconvenience to or interference with the Concessionaire's business, any loss of occupancy or use of the Project, and any other loss occasioned thereby; *provided, however*, that the BOR shall make reasonable efforts to minimize any such inconvenience to or interference with the Concessionaire's business.

## **SECTION 19.**

### **GENERAL INDEMNIFICATION BY CONCESSIONAIRE**

#### **19.1 Concessionaire's Indemnification of BOR.**

19.1.1 Except as otherwise expressly provided herein or in any Operative Agreement, the Concessionaire shall defend with competent counsel, 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 as a result of the Concessionaire's breach of its obligations under this Lease (each, an **"Indemnified Obligation"** and collectively, the **"Indemnified Obligations"**), which may be imposed upon, incurred by or asserted against the BOR Indemnitees in connection with, or arising out of:

- (a) any work done in, on or about the Premises, the Premises Improvements;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises, the Premises Improvements, or any part thereof, or any adjacent sidewalk, curb, passageway or space, excluding those Claims that are a result of the acts or omissions of the BOR Indemnitees;
- (c) any act or omission of the Concessionaire or any of its agents, concessionaires, contractors, servants, employees, or invitees, excluding the acts or omissions of the BOR Indemnitees;
- (d) any accident, injury or death to any person or damage to any property occurring in, on or about the Premises, Premises Improvements or any adjacent sidewalk, curb, passageway or space, excluding those Claims that result from the gross negligence or willful misconduct of the BOR Indemnitees; or
- (e) any failure by the Concessionaire to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations in this Lease.

19.1.2 In addition to, and without limiting the generality of, the foregoing provisions of this Section, the Concessionaire shall indemnify, and hold harmless the BOR Indemnitees from and against all Claims and Indemnified Obligations which may be imposed upon, incurred by or asserted against the BOR Indemnitees, arising out of the Concessionaire's failure to comply with any Environmental Law or with any of the provisions of Section 16 above.

19.1.3 Concessionaire's assumption of risk and indemnity of the BOR Indemnitees contained in this Section 19 shall not include damages caused by the gross negligence or willful misconduct of the BOR Indemnitees.

19.1.4 If any action or proceeding is brought against the BOR Indemnitees because of any one or more of the Claims described in Section 19.1.1 above or relating to any one or more of the Indemnified Obligations described in Section 19.1.1 above, 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 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.

19.1.5 Without limiting any other provisions of this Section 19 and subject to Section 19.1.4 above, it is understood and agreed by the Concessionaire that if any BOR

Indemnitee 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 Section 19, 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 the 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.

19.1.6 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 Lease (including, without limitation, in relation to personal injuries, property damage and/or other claims arising out of or resulting from the performance of this Lease or due to acts or omissions of the Concessionaire pursuant to this Lease or any other Operative Agreement).

19.1.7 The BOR will give the Concessionaire written notice of any Claim against the BOR Indemnitees covered by this Section 19 or Indemnified Obligation incurred by the BOR Indemnitees covered by this Section 19 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 the 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 Section 19 or indemnify and hold harmless the BOR Indemnitees against any Indemnified Obligations.

19.2 **No Waiver or Limitation; Survival.** Nothing contained in this Lease shall be construed to (a) limit or waive the BOR's protections or defenses that the State of Georgia has at law or in equity or (b) limit the Concessionaire's obligation to indemnify the BOR Indemnitees as provided under the Master Concession Agreement. The provisions of this Section 19 shall survive indefinitely, notwithstanding the Expiration or Termination of this Lease. Although the Concessionaire has caused the BOR to be named as loss payee or additional insured under Concessionaire's insurance policies pursuant to Section 20 below, Concessionaire's liability under the indemnification provision in this Section 19 shall not be limited to the liability limits set forth in such insurance policies.

**19.3 LIMITATIONS ON LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN THIS LEASE 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 THE PROJECT, OR THE USE AND OCCUPATION OF THE 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 THE PROJECT AT THEIR INVITATION OR THE INVITATION OF ANY ONE OF THEM.

## **SECTION 20.**

### **INSURANCE**

**20.1 Insurance Requirements.** The Concessionaire, at no expense to the BOR, shall provide and maintain the insurance as required under the Master Concession Agreement.

**20.2 Use of Insurance Proceeds.** So long as an Event of Default has not occurred and is continuing, any insurance proceeds received as a result of any casualty loss to the Project shall be applied by the Concessionaire to the reconstruction and replacement of the Premises Improvements in accordance with this Lease, unless this Lease has been terminated as provided herein, or in the Master Concession Agreement. In the event of a casualty, if this Lease is not terminated as provided herein, or in the Master Concession Agreement, the Concessionaire shall rebuild and restore the Premises Improvements in accordance with the provisions of this Lease, whether or not the insurance proceeds received by the Concessionaire as a result of any casualty loss be sufficient to provide for such reconstruction and replacement.

## **SECTION 21.**

### **UTILITIES AND SERVICES**

At its sole cost and expense, the Concessionaire shall cause to be furnished and shall pay for all water, gas, light, power, sanitation (sewage or otherwise), garbage pick-up and disposal, telephone, internet and other utilities or services required for Concessionaire's use and operation of the Project in accordance with the terms of this Lease, the Master Concession Agreement and the Project Operating Agreement.

## **SECTION 22.**

### **ASSIGNMENT AND SUCCESSORS**

Except as is expressly provided in Article XII of the Master Concession Agreement, the Concessionaire shall not assign, in whole or in part, this Lease, or allow it to be assigned, in whole or in part, by operation of law or otherwise (including without limitation by transfer, in a single transaction or a series of transactions, of a majority interest of stock, partnership interests, limited liability company interests or other ownership interests, merger, or dissolution, which transfer of majority interest of stock, partnership interests or other ownership interests, merger or

dissolution shall be deemed an assignment), without the prior written consent of the BOR, which consent may be withheld in the BOR's sole and absolute discretion.

## **SECTION 23.**

### **LIENS AND MORTGAGES**

23.1 The Concessionaire shall not assign or grant, and is hereby prohibited from assigning or granting, any mortgages, liens, encumbrances or security interests in the Premises, the Premises Improvements, and the rents, receipts and profits derived therefrom, except as is expressly permitted by Article VII of the Master Concession Agreement.

23.2 The BOR's title in and to the Premises is and always shall be paramount to the rights and interests of the Concessionaire and nothing contained in this Lease shall empower the Concessionaire to do any act which can, shall or may encumber the title of the BOR. The Concessionaire covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Premises, the Premises Improvements or against the Concessionaire's leasehold interest in the Project and, in case of any such lien attaching, the Concessionaire shall discharge, within thirty (30) days (by payment or by filing the necessary bond, or otherwise), any mechanics', materialmen's or other lien against the Project and/or the BOR's interest therein, which lien may arise out of any payment due for any labor, services, materials, supplies, or equipment furnished to or for the Concessionaire in, upon, or about the Project; provided, however, that if said lien has not been discharged or bonded-over or otherwise secured within thirty (30) days, then the BOR may elect in writing delivered to the Concessionaire to satisfy such lien and the Concessionaire shall reimburse the BOR for the actual costs incurred in connection therewith. Such sums shall be deemed to be Additional Rent due and payable by the Concessionaire at once without notice or demand.

## **SECTION 24.**

### **PROJECT SPECIFIC PROVISIONS**

24.1 *[To be provided.]*

## **SECTION 25.**

### **GENERAL PROVISIONS**

25.1 **Quiet Enjoyment.** Subject to the terms of this Lease and the other Operative Agreements, provided no Event of Default exists, the Concessionaire shall not be disturbed in its possession of the Project by the BOR or any other party claiming by, through or under the BOR and the Concessionaire shall have the right to peaceably and quietly hold and use the Project during the Lease Term.

25.2 **No Joint Venture.** Nothing contained in this Lease 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 this Lease is that of landlord and lessee, each an independent party 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 certain of the System institutions, including the Institution, and thereby to enhance the educational experience of students at such institutions and (ii) to reduce the amount of the BOR's capital lease obligations associated with existing on-campus housing assets at certain of the System institutions, including the Institution, and to use an alternative method of financing for new housing facilities at such institutions. Nothing in this Lease 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.

25.3 **No Pledge of Credit.** Neither this Lease 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.

25.4 **Remedies Cumulative; Failure of BOR to Insist on Compliance.**

25.4.1 The specified remedies to which the BOR may resort under the terms of this Lease 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 this Lease or any other Operative Agreement. The failure of the BOR to insist in any one or more instances, upon strict performance of any of the terms, covenants, or conditions of this Lease 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 Lease shall be deemed to have been made unless expressed in writing and signed by an authorized representative of the BOR. Nothing in this Lease, and no waiver by the BOR of any provisions of this Lease, shall be construed to limit the availability any remedies to the BOR under any other Operative Agreement.

25.4.2 No waiver of any condition expressed in this Lease shall be implied by any neglect of the BOR to enforce any remedy on account of the violation of such condition whether or not such violation is continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting the BOR's rights, it is agreed that no receipt of moneys by the BOR from the Concessionaire after the termination in any way of the Lease Term or of the Concessionaire's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Lease Term or affect any notice given to the Concessionaire prior to the receipt of such moneys.



**25.5 Notices.**

25.5.1 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 Lease, 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 25.5.2 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.

25.5.2 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.

**25.6 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 Lease.

25.7 **Counterparts.** This Lease is executed in two (2) counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

25.8 **Inconsistent Provisions.** Notwithstanding anything in this Lease to the contrary, any inconsistency between this Lease and any other Operative Agreement shall be governed by Section 4.2.2 of the Master Concession Agreement.

25.9 **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 use of the Project by the Concessionaire. There are no understandings or agreements, verbal or otherwise, between the Parties except as expressly set forth herein or in the other Operative Agreements.

25.10 **Governing Law; Venue.** This Lease 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 Lease shall be laid exclusively in the Superior Court of Fulton County, State of Georgia pursuant to O.C.G.A. § 50-21-1(b).

25.11 **Severability.** If any term or provision of this Lease, 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 Lease, 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 Lease 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.

25.12 **Recording.** A memorandum of this Lease substantially in the form attached hereto as Exhibit D shall be filed for record in the appropriate real estate records on or after the Effective Date.

25.13 **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Lease, 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.

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

25.15 **Binding Effect.** Each of the provisions of this Lease 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 of the Master Concession Agreement, to any transferee, assignee, sublessee or other successor of the Concessionaire.

25.16 **Third Party Beneficiaries.** There shall be no third party beneficiaries of this Lease, and none of the provisions of this Lease shall be for the benefit of, enforceable by or relied upon by any third parties, including any creditors of the Concessionaire.

25.17 **No Individual Liability of BOR Officials.** No covenant or agreement contained in this Lease 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 capacity and none of such persons shall be subject to any personal liability or accountability by reason of such person's execution of this Lease 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 shall survive indefinitely, notwithstanding the expiration or early termination of this Lease.

25.18 **Antidiscrimination Clause.** In accordance with Applicable Law, the Concessionaire shall not discriminate on the basis of race, sex, religion, national or ethnic origin, age, disability or military status in its use or occupancy of the Project. This covenant of the Concessionaire may be enforced by termination of this Lease, injunction and any other remedy available at law or in equity to the BOR.

25.19 **Amendment.** This Lease 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.

25.20 **Further Assurances.** At any time or times after the execution of this Lease, 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 transactions described herein.

25.21 **Confidentiality.**

25.21.1 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.

25.21.2 To the extent permitted by law, all information obtained by either Party from the other in connection with 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 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.

25.22 **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.

25.23 **Tobacco and Smoke Free Campus.** The Institution 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.

25.24 **Time of the Essence.** Time is of the essence to each and every provision of this Lease.

## **SECTION 26.**

### **EXHIBITS**

The following exhibits attached hereto are incorporated into and made a part of this Lease:

Exhibit A – Legal Description of the Premises

Exhibit B – [RESERVED]

Exhibit C – [RESERVED]

Exhibit D – Form of Memorandum of Lease

**[Signature Pages Follow]**

IN WITNESS WHEREOF, the BOR, acting pursuant to and in conformity with a properly considered and adopted resolution, and acting by and through its duly authorized hereinafter named representatives, and the Concessionaire, acting pursuant to and in conformity with a properly considered and adopted resolution and acting by and through its duly authorized hereinafter named officers, have caused these presents to be signed, sealed and delivered all as of the date hereof.

**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 PREVIOUS PAGE]

**APPROVED:**

By: \_\_\_\_\_  
Name:  
Governor

Attest: \_\_\_\_\_  
Name:  
Secretary of State

(Great Seal of the State of Georgia)

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM THE PREVIOUS PAGE]

**CONCESSIONAIRE:**

**[CONCESSIONAIRE],**  
a [State] [entity]

By: \_\_\_\_\_  
Authorized Representative

[SEAL]

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PREMISES**

*[To be provided.]*



**EXHIBIT B**  
**[RESERVED]**

**EXHIBIT C**

**[RESERVED]**

**EXHIBIT D**

**FORM OF MEMORANDUM OF LEASE**

*[To be provided.]*