

FORM OF NEW 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 NEW HOUSING LEASE AGREEMENT

[INSTITUTION]

THIS NEW 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 Concessionaire will construct certain buildings, structures, appurtenances and other improvements in accordance with the Construction Requirements (as hereinafter defined) which will be located on the Premises, together with any and all personal property required to be furnished pursuant to the Construction Requirements (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;

FURTHERMORE, the BOR grants to the Concessionaire and each of its respective officers, directors, partners, members, employees, contractors, subcontractors, representatives, invitees, permittees, agents and sublessees (collectively and including the Concessionaire itself, the “**Concessionaire Parties**”) the Construction Easements set forth in Exhibit B, but only to the extent necessary in order to fulfill the Concessionaire’s contractual obligations to construct the Premises Improvements in accordance with the Construction Requirements;

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 execution and delivery of this Lease on the Effective 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 the execution and delivery of this Lease on the Effective 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 construct the Premises Improvements in accordance with the Construction Requirements and 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 construction of the Premises Improvements and 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.

6.2 Notwithstanding the foregoing, the Concessionaire shall construct, 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 that the Premises 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.

CONSTRUCTION AND RECONSTRUCTION OF PREMISES IMPROVEMENTS; OWNERSHIP OF PREMISES IMPROVEMENTS

8.1 The Concessionaire shall at its own cost and expense construct and reconstruct, when required (including without limitation as and when required by Section 10), the Premises Improvements in accordance with the construction requirements set forth in Exhibit C hereto (the "**Construction Requirements**"), which are incorporated into and made a part of this Lease pursuant to Section 26 below.

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. Commencing at the time that the Concessionaire begins the construction of the Premises Improvements, and from time to time throughout the Construction Term as the construction of the Premises Improvements progresses, the BOR will acquire title to the Premises Improvements as the same are constructed, together with any replacements thereof from time to time, by operation of law. All improvements, materials and equipment provided by the Concessionaire, or on its behalf, shall be deemed to become a part of the Premises Improvements upon being added thereto or incorporated 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 any failure of the Concessionaire to timely perform its construction obligations in accordance with the Construction Requirements; or

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 or the Construction Easement Area (as defined in Exhibit B);

(b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises, the Premises Improvements, the Construction Easement Area, 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 the Construction Easement Area, 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 Indemnites 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 Indemnites 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 Indemnites 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 Indemnites 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 Indemnites covered by this Section 19 or Indemnified Obligation incurred by the BOR Indemnites 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 Indemnites, 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 Indemnites 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 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.

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 – Construction Easements

Exhibit C – Construction Requirements

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

CONSTRUCTION EASEMENT

The BOR hereby creates and grants, to the Concessionaire Parties a non-exclusive, temporary construction easement over, upon and across the property owned by the BOR which is located immediately adjacent to the Premises (the “**Construction Easement Area**”), for the purpose of facilitating the construction of the Premises Improvements, including access to and from the Premises, and for staging and storage in connection with the construction of the Premises Improvements. The Concessionaire agrees that it will utilize, and cause the other Concessionaire Parties to utilize, this temporary construction easement only to the extent reasonably necessary to initially construct the Premises Improvements. The Concessionaire further agrees that that it will utilize, and cause the other Concessionaire Parties to utilize, this temporary construction easement in a manner so as not to interfere with or interrupt the use of, or access to, any improvements or driveways which are currently located within the Construction Easement Area. This temporary construction easement shall be utilized by the Concessionaire Parties in connection with the construction of the Premises Improvements as required under the Lease and related improvements. This temporary construction easement shall terminate automatically and without further action by any party upon the earlier to occur of (i) the completion of the construction of the Premises Improvements, as evidenced by the issuance of a temporary or final certificate of occupancy for the Premises Improvements, or (ii) July 1, 2015, or such later date as is agreed to by the BOR in writing.

The Concessionaire covenants and agrees that no structures shall be erected on the Construction Easement Area by or at the direction of the Concessionaire. Following the termination of the temporary construction easement, the Concessionaire shall restore the Construction Easement Area to its condition prior to the Concessionaire Parties’ use of the Construction Easement Area, except that the Concessionaire shall not be responsible for changes in the condition of the Construction Easement Area which are caused by the acts or omissions of the BOR, or which are caused by weather or Acts of God; *provided, however*, that the Concessionaire shall take commercially reasonable precautions to prevent or minimize to the extent possible any such changes caused by weather or Acts of God.

EXHIBIT C

CONSTRUCTION REQUIREMENTS

ARTICLE 1 DEFINITIONSC-1

ARTICLE 2 ENGAGEMENT OF CONCESSIONAIRE; NATURE OF THE
ENGAGEMENT.....C-9

ARTICLE 3 DEVELOPMENT SERVICESC-11

ARTICLE 4 DOCUMENTS; PERMITS; PROJECT SCHEDULE.....C-17

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ARTICLE 10 FORCE MAJEURE DELAY; TENANT DELAY.....C-35

ARTICLE 11 FIRE OR OTHER CASUALTY; CONDEMNATION.....C-35

ARTICLE 12 MISCELLANEOUSC-36

SECTION 1.
DEFINITIONS.

1.1 **Definitions.**

1.1.1 The terms defined in this **Article 1** shall have the following meanings for purposes of these Construction Requirements when initially capitalized herein:

“**Actual Final Completion Date**” means the date on which Final Completion occurs.

“**Actual Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Approved Project Budget**” means that iteration of the Project Budget approved as the Approved Project Budget, as provided in **Section 5.3**, as adjusted in accordance with the terms and provisions hereof.

“Approved Project Schedule” means that iteration of the Project Schedule approved as the Approved Project Schedule, as provided in **Section 4.8**, as adjusted in accordance with the terms and provisions hereof.

“Architect” means the Design Professional engaged by Concessionaire as the principal architect for the Premises Improvements, to perform or provide Design Services.

“Architect Agreement” means the agreement between Concessionaire and the Architect for the performance of Design Services.

“Authorized Representative” means the person designated by Concessionaire or BOR pursuant to **Section 12.1** to make decisions that require the approval of Concessionaire or BOR, as the case may be, pursuant to the terms hereof.

“Baseline Design Standards for Student Housing” means the Baseline Design Standards for Student Housing published by the University System of Georgia, First Edition, July 2014 which are hereby incorporated by reference.

“BOR” means the Board of Regents of the University System of Georgia.

“BOR Delay” means any period of time during which an activity on the critical path of the Project is delayed by the BOR’s failure to perform its obligations under the Agreement or by changes in the Project Services requested by BOR.

“Building Permits” means all of the building permits to be issued by all Governmental Authorities that are required for the construction of the Premises Improvements. **“Building Permit”** shall mean any one of the Building Permits.

“Change” means any change to the Program; preliminary design; schematic design; design development; construction drawings; the Project; the Premises Improvements; or the Furniture, Fixtures, and Equipment after such has been approved in writing by the BOR.

“Commencement Date” means the date of commencement of the Work.

“Concessionaire Party” means any Design Professional, Construction Party, Subcontractor or other Person performing or providing any of the Project Services or furnishing or supplying goods, materials or services in connection with the Project Services.

“Construction Agreement” means any agreement between Concessionaire and any Construction Party for the performance of any of the Work, including, without limitation, the Contractor Agreement.

“Construction Costs” means all amounts payable by Concessionaire to any Construction Party for the performance of the Work.

“Construction Documents” means the final drawings and specifications for the Premises Improvements to be prepared by the Design Professionals and submitted by Concessionaire to BOR and BOR’s Representative, and approved by, BOR as provided in **Article 4**, which shall be in sufficient detail for review by the appropriate Governmental Authority as may be necessary for the issuance of a Building Permit, and which shall set forth the complete requirements for construction of the element of the Premises Improvements to which they pertain in sufficient detail for each category or technical area necessary for construction of the Premises Improvements.

“Construction Party” means the Contractor or any other Person that is engaged directly by Concessionaire to perform any of the Work.

“Construction Phase” means the period of time beginning on the Commencement Date and ending on the Actual Final Completion Date.

“Contract Documents” shall be composed of the following-described documents, as each comes into existence, and as amended from time to time: **(a)** these Construction Requirements; **(b)** all Construction Agreements; **(c)** all Design Documents; and **(d)** all written or graphic interpretations, clarifications, amendments and changes to any of the foregoing documents (including Change Orders) approved in writing by Concessionaire with the approval of BOR.

“Contractor” means the Person that is engaged by Concessionaire as the general contractor or construction manager for the Work.

“Contractor Agreement” means the agreement between Concessionaire and the Contractor for construction of the Premises Improvements.

“Design Agreement” means any agreement between Concessionaire and any Design Professional for the performance of any Design Services, including, without limitation, the Architect Agreement.

“Design Costs” means the fees and reimbursable expenses payable to the Architect and all other Design Professionals for the Design Services.

“Design Development Documents” means the intermediate level of plans, drawings and specifications for the Premises Improvements to be prepared by the Design Professionals and submitted by Concessionaire to BOR and BOR’s Representative, and approved by, BOR as provided in **Article 4**, which documents shall set forth the requirements for each category or technical area necessary for the construction of the Premises Improvements in sufficient detail for determination of the Approved Project Budget and the GMP, and establish the size and character of the Premises Improvements, including architectural, structural, mechanical and electrical systems, materials and other elements thereof.

“Design Documents” means, collectively, the Preliminary Design Documents, Schematic Design Documents, the Design Development Documents, the Construction Documents, and the Furniture, Fixture, and Equipment Design Documents.

“Design Phase” means the phase during which the Design Documents are to be prepared by the Design Professionals, and which may overlap the Construction Phase during completion of the Design Documents.

“Design Professional” means the Architect or any other Person hired, retained or engaged by, through or under Concessionaire or Architect to provide any Design Services.

“Design Services” means all architectural, engineering, design or other services required for the design and engineering of the Premises Improvements and the administration of the Work, to be performed by the Architect and other Design Professionals.

“Development Costs” means the costs and expenses for or in connection with the Development Services.

“Development Services” means the services required to be performed or procured by Concessionaire pursuant to the terms and provisions of the Lease Agreement, other than the Design Services and the Work.

“Effective Date” means the later of the date of BOR’s or Concessionaire’s execution of the Lease Agreement.

“Environmental Costs” means any cleanup costs, remediation, removal, or other response or site rehabilitation costs (including, without limitation, costs to bring the Project into compliance with all Environmental Laws), investigation costs (including, without limitation, fees and costs of consultants, legal counsel and other experts in connection with any environmental investigation, testing, audits, assessments or studies), losses, liabilities, obligations, payments, damages (including, without limitation, any actual, punitive, consequential damages, fines, penalties, judgments, and amounts paid in settlement arising out of or resulting from any Environmental Matter).

“Environmental Laws” means all applicable federal, state and local laws, rules and Governmental Requirements relating to the environment and/or the use, generation, storage disposal, treatment, transportation, recycling, sale or release of Hazardous Materials, including, without limitation, the various statutes identified in the definition of “Hazardous Materials” set forth herein.

“Expiration Date” means the date **ninety (90) days** after the date on which Final Completion occurs.

“Final Completion” or **“Finally Completed”** means: **(a)** the occurrence of Substantial Completion; **(b)** the completion of all Punch List Items; and **(c)** the delivery of all items required by **Section 7.11(d)**.

“Force Majeure” means any of the following events or circumstances, but only **(i)** if and to the extent such event or circumstance is beyond the reasonable control of Concessionaire and all Concessionaire Parties, **(ii)** if and to the extent Concessionaire and

all Concessionaire Parties shall have taken all reasonable precaution to prevent delays by reason of such event or circumstance if such event or circumstance was actually known in advance to Concessionaire or any Concessionaire Party, (iii) if and to the extent such event or circumstance is not caused by the fault or negligence of Concessionaire, any Concessionaire Party, or any of their respective employees, agents or contractors, (iv) if and to the extent Concessionaire and all Concessionaire Parties shall have taken all reasonable precautions to prevent further delays owing to such event or circumstance, and (v) if and to the extent such event or circumstance causes actual delay to an activity on the critical path of the Project: (a) strikes, work stoppages, lockouts or picketing (legal or illegal); (b) acts of God, including, without limitation, tornadoes, hurricanes, floods, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence; (c) adverse weather conditions not reasonably anticipatable; (d) fire and other casualties; (e) condemnation or other exercise of the power of eminent domain; and (f) acts of a public enemy, acts of war, terrorism, effects of nuclear radiation, blockades, insurrections, riots, civil disturbances or national or international calamities. Force Majeure shall in any event exclude: (i) economic hardship, (ii) changes in market conditions, (iii) late delivery or failure of materials, equipment or supplies, (iv) local or direct strikes, or other similar labor actions, (v) unavailability of subcontractors, sub-subcontractors or suppliers, or (vi) nonperformance or delay by Concessionaire or anyone for whom it is responsible.

“Force Majeure Delay” means any period of time during which an activity on the critical path of the Project is delayed by events of Force Majeure.

“Governmental Authority” means any Federal, state, county or municipal governmental authority, including all executive, legislative, judicial and administrative bodies thereof.

“Governmental Requirement” means all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives promulgated by a Governmental Authority and applicable to the Project or the performance by Concessionaire of its duties and obligations under the Lease Agreement.

“Hazardous Materials” means any material or substance, or combination of materials or substances, which by reason of quantity, concentration, composition, or characteristic is or in the future becomes regulated under any federal, state or local environmental or common law, rule, regulation, ordinance or requirement, as may be amended, replaced or superseded, and shall include, without limitation: (a) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. § 9601 *et seq.*; (b) any hazardous substance, constituent or waste as defined by applicable Georgia statutes; (c) any material identified as a hazardous waste under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 *et seq.*; (d) any solid or hazardous waste identified under applicable Georgia statutes; (e) any material regulated as a toxic pollutant as defined under the Federal Water Pollution Control Act, 33 U.S.C.A. § 1251 *et seq.*; (f) any hazardous substance or toxic pollutant as defined under the Federal Water Pollution Control Act, 33 U.S.C.A. § 1251 *et seq.*; (g) any hazardous substance as defined by the

Oil Pollution Act, 33 U.S.C.A. § 2701 *et seq.* and applicable Georgia statutes; **(h)** any hazardous air pollutant as defined under the Federal Clean Air Act, 42 U.S.C.A. § 7401 *et seq.* and applicable Georgia statutes; **(i)** any substance regulated under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C.A. § 135 *et seq.*; **(j)** a special nuclear or byproduct material within the meaning of the Atomic Energy Act, 42 U.S.C.A. § 2014 *et seq.*; and **(k)** any material or substance, or combination of materials or substances displaying any explosive, volatile, radioactive, toxic, corrosive, flammable, ignitable or reactive characteristic or which may cause a nuisance, injury, harm or degradation to human health, welfare or the environment.

“Intended Use” means the development and use of the Premises and the Premises Improvements as provided in the Master Concession Agreement.

“Institution” means the college or university on whose campus the Premises Improvements are to be constructed.

“Lease Agreement” means the Lease Agreement between BOR and Concessionaire to which these Requirements are attached as an Exhibit.

“Lien” means any liens for services or labor performed or rendered, or for materials delivered, supplied or furnished, to or in connection with the Project Services, and any other lien, encumbrance or charge against the Project arising by reason of the Project Services or arising by, through or under Concessionaire or any Concessionaire Party.

“Line Item” means each category of activity for the Project for which a separate dollar amount is shown on the Project Budget or Schedule of Values.

“Master Concession Agreement” means that certain Master Concession Agreement dated November ____, 2014, between BOR and Concessionaire.

“Notice to Proceed” means the written notice given by BOR to Concessionaire to commence construction of the Premises Improvements, as provided in **Section 7.4**.

“Permits” means any and all certificates, licenses, permits, authorizations, consents and other approvals by the applicable Governmental Authority having jurisdiction in such matters required to be obtained, issued, granted or received for the performance of the Work and Final Completion, specifically including, without limitation, the Building Permits.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, unincorporated business association or Governmental Authority.

“Premises” means the land upon which the Premises Improvements will be developed, as more particularly described on **Exhibit “A”** attached hereto.

“Premises Improvements” means all interior and exterior improvements, infrastructure, site improvements, landscaping and other onsite or offsite improvements

of any kind or nature whatsoever to be developed, constructed and installed pursuant to the Lease Agreement.

“Program Manager” means any third party that BOR designates to act on BOR’s behalf for purposes of these Requirements.

“Project” means the facility to be developed, constructed and installed pursuant to the Lease Agreement, and shall include, as the context shall require, the Premises and the Premises Improvements.

“Project Budget” means the detailed estimate of the Project Costs.

“Project Costs” means the sum of: **(a)** all Design Costs; **(b)** all Development Costs; and **(c)** all Construction Costs.

“Project Encumbrances” means all easements, covenants and restrictions affecting the Premises or title thereto.

“Project Schedule” means the schedule for all activities required for the Final Completion and the time periods during which such components are estimated to be completed.

“Project Services” means, collectively, the Development Services, the Design Services and the Work.

“Punch List” means the list of Punch List Items to be prepared initially by the Architect pursuant to **Section 7.11(c)**.

“Punch List Items” means items of Work on the Premises Improvements that are incomplete but, in the aggregate, do not materially interfere with the use or enjoyment of the Premises Improvements for their intended purposes.

“Required Substantial Completion Date” means July 15, 2016.

“Requirements” mean these Construction Requirements.

“Schedule of Values” means that portion of the Approved Project Budget that pertains to the Construction Costs which sets forth, for each Line Item: **(a)** Concessionaire’s best estimate therefor; or **(b)** if a subcontract has been awarded for such Line Item, then the contract price described in such subcontract.

“Schematic Design Documents” means schematic designs and preliminary specifications for the Premises Improvements, a site plan, and elevations, all of which are to be prepared by the Architect and submitted by Concessionaire to BOR and Program Manager, and approved by BOR as provided in **Article 4**.

“Subcontractor” means any person, firm or entity having a direct contract with any Construction Party or with any other Subcontractor for the performance of any part of the Work.

“Substantial Completion” or **“Substantially Complete”** means the occurrence of all of the following requirements: (a) completion of all items of the Premises Improvements in accordance with and in compliance with the Design Documents, all applicable Governmental Requirements so that (i) Concessionaire can use the Premises Improvements for the Intended Use without material interference to Concessionaire conducting its ordinary business activities, and (ii) the only incomplete items are Punch List Items; (b) the issuance of a final, permanent and unconditional certificate of occupancy from the applicable Governmental Authority; (c) the issuance by the Architect of the Substantial Completion Certificate; (d) BOR, its employees, agents and invitees, have ready access to the Premises Improvements; (e) all fixtures, and equipment, including, without limitation, all mechanical, electrical, plumbing and life safety systems, are installed and in good operating order such that the Premises Improvements can be utilized for their intended purposes; (f) the Premises Improvements are ready for the installation of any equipment, furniture, fixtures, or decoration that BOR will install; and (g) the Premises Improvements are broom clean.

“Substantial Completion Certificate” means the certificate of substantial completion issued by the Architect to the effect that the Work is Substantially Completed.

“Substantial Completion Inspection” means the inspection of the Premises Improvements, after Concessionaire certifies to BOR that the Premises Improvements are Substantially Completed pursuant to **Section 7.11**.

“Supplemental Instruction” means a minor change, including minor changes necessary to clarify a specification or resolve a technical execution problem, during the Construction Phase, involving or resulting in no change in the total Project Costs or the Required Final Completion Date.

“Surety Bonds” means the performance and payment bonds required to be obtained pursuant to **Section 7.7**.

“Work” means the construction and installation of the Premises Improvements, as described in the Design Documents. The **“Work”** does not include the Design Services or the Development Services.

1.1.2 Any words, phrases or terms defined in the text of these Requirements shall have the meaning set forth therein for purposes of these Requirements.

1.2 Use of Words and Phrases.

1.2.1 Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter,” and other equivalent

words refer to these Requirements and not solely to the particular portion thereof in which any such word is used.

1.2.2 Whenever in these Requirements either of the words “day” or “days” is used it means a calendar day unless specifically stated to be a “business day” or a “working day.”

SECTION 2.

ENGAGEMENT OF CONCESSIONAIRE; NATURE OF THE ENGAGEMENT.

2.1 **Engagement of Concessionaire.** As a condition to the execution of the Lease Agreement, Concessionaire is to perform or procure the services related to the design, development and construction of the Project required by these Requirements. Concessionaire hereby accepts such engagement, and agrees to perform the services related to the Project required by these Requirements.

2.2 **Scope of Engagement.** The scope of Concessionaire’s responsibilities under these Requirements shall include, but is not limited to, among other things, performing, providing or procuring the performance of: (a) the programming, design, engineering, development, site development and construction of the Premises Improvements; (b) efficient design and construction administration, supervision and superintendence; and (c) site development tasks, permitting, approvals, testing, surveying, geotechnical investigations, environmental assessments, architectural, engineering, landscaping, construction, post-construction, threshold inspections, accounting and control, coordination and efficient management to completion of the Project. Concessionaire acknowledges and agrees that, subject to the terms of these Requirements, it has been retained to provide, perform and procure all professional design services, work, labor, materials and equipment necessary to deliver and complete the Premises Improvements, and that Concessionaire shall be responsible and liable for accomplishing same, including, without limitation, the Project Services.

2.3 **Nature of Responsibility.** Concessionaire shall, subject to the terms of these Requirements, be fully and primarily liable and responsible for the development, design and construction of the Project, for payment of all Project Costs, and for the performance of all Concessionaire Parties and for the compliance by all Concessionaire Parties with the terms and provisions of these Requirements, and for all services, work and materials performed, provided, and/or furnished by Concessionaire or by any Concessionaire Party, including, without limitation: (a) the development, design, construction and furnishing of the Project as a complete and fully operational facility for the Intended Use; (b) the preparation of the Design Documents, and the design, architectural and engineering services related thereto; (c) the design, functional and structural quality and integrity of the Project, as constructed in accordance with the Design Documents; (d) the compliance of the Project with all applicable Governmental Requirements of all Governmental Authorities having jurisdiction with respect thereto; (e) the compliance of the construction of the Project with the Design Documents and all Project Encumbrances; (f) the quality, integrity and freedom from defects of the workmanship and materials incorporated into the Project; and (h) the professional quality, technical adequacy and accuracy of the Design Documents and the Work.

2.4 **Standards of Performance.** Concessionaire covenants and agrees to perform, or cause to be performed, the Project Services and the other services required under these Requirements, properly, diligently and in good faith, in accordance with accepted standards of ethical and professional practice, and in accordance with Governmental Requirements.

2.5 **Status of Concessionaire.** In the performance of its duties and obligations under these Requirements, Concessionaire is, and shall be, at all times during the term of these Requirements, an independent contractor, and not an agent or employee of BOR. These Requirements does not create any agency relationship between or among BOR, Concessionaire, and the Concessionaire Parties.

2.6 **Relationship.** Concessionaire accepts the relationship of trust and confidence established between it and BOR by these Requirements and agrees to cooperate with BOR in furthering BOR's interests.

2.7 **No Partnership or Joint Venture.** Nothing contained in these Requirements shall constitute or be deemed or construed to create a partnership or joint venture between BOR and Concessionaire.

2.8 **No Responsibility of BOR.** Nothing contained in these Requirements shall create, and BOR does not assume, any duty, obligation, liability or responsibility of any kind or nature whatsoever to any Concessionaire Party either in contract, tort, law, or equity. Specifically, and without limitation, BOR assumes no duty, obligation, liability or responsibility to pay any portion of the Project Costs, including, but not limited to, delay damages and any part or all of the compensation owed to any Concessionaire Party. The Lease Agreement is not, either in whole or in part, entered into for the benefit of any one or more of the Concessionaire Parties, none of whom shall have third-party beneficiary status under the Lease Agreement. Concessionaire shall include or cause to be included in all agreements with Concessionaire Parties a provision which states, in substance, the terms of this **Section 2.8**.

2.9 **Personnel Matters.** Neither Concessionaire, any Concessionaire Party nor any employee, agent or representative of Concessionaire or any Concessionaire Party shall be an employee of BOR or entered on BOR's payroll. Neither Concessionaire, any Concessionaire Party nor any employee, agent or representative of Concessionaire or any Concessionaire Party shall be entitled to receive from BOR any form of fringe benefits or be entitled to participate in any group insurance, pension or other benefit plan administered for the benefit or on behalf of BOR's employees. Concessionaire and the Concessionaire Parties shall retain full authority over and responsibility for their respective employees and other personnel, and their compensation, retention and performance, and shall be responsible for complying with all Governmental Requirements in respect of their respective employees and other personnel. Concessionaire and the Concessionaire Parties shall be solely responsible for all fees, wages, salaries and other compensation, and the costs and expenses of workers' compensation insurance, employee benefits, social security taxes, unemployment insurance, health insurance, and all other withholding obligations, taxes or levies now or hereafter imposed with respect to, their respective employees and other personnel.

2.10 **Conflict with Other Documents.** These Requirements are provided in furtherance of the transactions contemplated by the Master Concession Agreement and the Lease Agreement. The Master Concession Agreement and Lease Agreement shall govern in the event of any conflict between these Requirements and the Master Concession Agreement or the Lease Agreement; these Requirements shall govern in the event of any conflict between these Requirements and any other Contract Document.

SECTION 3. DEVELOPMENT SERVICES

3.1 **Development Services.** Commencing on the Effective Date of the Lease Agreement, Concessionaire agrees to perform the Development Services in an expeditious manner consistent with the interests of BOR. In the performance of the Development Services hereunder, Concessionaire shall furnish its sound skill and judgment: (a) in accordance with the standards established by the real estate development industry; (b) consistent with real estate development practices and sound and efficient business practices; (c) utilizing skill and judgment available throughout its organization in the performance of the Lease Agreement to provide its professional knowledge, ideas, experience and abilities relating to the design, scheduling, development and construction of the Project; and (d) in a competent, professional and efficient manner. Concessionaire and BOR acknowledge that, notwithstanding that performance of the Project Services is hereinafter described as prospective, certain of the Development Services may have been performed by Concessionaire prior to the execution and delivery of the Lease Agreement at the request and direction of BOR.

3.2 **Preconstruction Related Activities.**

3.2.1 **Programming.** Concessionaire shall, through one or more qualified consultants, provide programming services for the Project. These services shall include consultations with BOR, Institution, and Program Manager to identify the objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements relating to the Project. The final Program shall be submitted to the BOR for its written approval which will not be unreasonably withheld, conditioned, or delayed.

3.2.2 **Due Diligence.** Concessionaire shall, through one or more qualified consultants: (i) compile and review all existing data with respect to the Premises from BOR and the Using Agency; (ii) with the BOR's approval, cause to be performed any and all necessary or desirable analyses, examinations, investigations, tests and inspections of the Premises, including, but not limited to, surveys, geotechnical studies, soil borings and environmental studies; (iii) make, or cause to be made, inquiries of all Governmental Authorities and Persons who will furnish water, sewer, electric power, telephone service or any other utility to the Premises as to any matters which may affect or be necessary to the Project; and (iv) determine all Governmental Requirements for the Project. Concessionaire shall supervise the activities described in **clauses (i) through (iv)**, above, and shall deliver to BOR and Program Manager copies of all written reports, memoranda or material correspondence prepared by or for Concessionaire with respect to the foregoing.

3.2.3 **Governmental Requirements.** Concessionaire shall obtain, or cause to be obtained, the consent or approval of all required Governmental Authorities, and all Permits, necessary for the design, development and construction of the Project.

3.2.4 **Utilities.** Concessionaire, or one or more of the Design Professionals, shall negotiate with all utility companies servicing the Project, and submit to BOR and BOR's Representative, for BOR's approval, a plan for the services of such utility companies to the Project. Concessionaire shall make application for all such utility companies to furnish services to the Premises.

3.2.5 **Architect and Contractor Selection.** Concessionaire shall obtain the consent of the BOR in the selection of the Architect and Contractor as provided in **Sections 4.4 and 7.6.**

3.2.6 **Contract Preparation.** Concessionaire shall prepare or cause to be prepared all Design Agreements and the Construction Agreements.

3.2.7 **Project Schedule.** Pursuant to the terms and provisions of these Requirements, Concessionaire shall prepare the Project Schedule as may be necessary or desirable from time to time. The Project Schedule shall specify the proposed starting and finishing dates for each contract and the dates by which each major component is scheduled to be completed. The Project Schedule shall not exceed the time limits specified in the Master Concession Agreement. Concessionaire shall submit the Project Schedule to BOR and Program Manager for written approval by BOR.

3.2.8 **Project Budget.** Pursuant to the terms and provisions of these Requirements, Concessionaire shall prepare the Project Budget and revisions to the Project Budget. Concessionaire shall review the Project Budget with the appropriate Design Professional, and Concessionaire shall submit the Project Budget to BOR, Institution, and Program Manager as part of the design review and approval process and shall be subject to the prior written approval of BOR. Such approval not to be unreasonably withheld, conditioned, or delayed.

3.2.9 **Cost Analysis.** Concessionaire shall analyze and report to BOR, Institution, and Program Manager the cost of various design and construction alternatives. As a part of the cost analysis, Concessionaire shall consider costs related to efficiency, usable life, maintenance, energy and operation of the Building.

3.3 **Design Related Activities.**

3.3.1 **Design Phase Information.** Concessionaire shall supervise the Design Professionals' compliance with the Project Schedule, and shall inform BOR and Program Manager of any significant deviations therefrom.

3.3.2 **Preparation of Design Documents.** Concessionaire shall supervise and direct the Design Professionals in the preparation of the Design Documents, and shall provide oversight and direction to the Design Professionals in developing the design and

function of the Project and specifications for equipment required for the use and operation of the Project.

3.3.3 **Review of Design Documents.** Concessionaire shall review the Design Documents and make recommendations to BOR, Institution, Program Manager, and the Design Professionals as to constructability, and as to cost, sequencing, scheduling and time of construction. Concessionaire shall also review and evaluate all Design Documents for all disciplines, including, but not limited to, architectural, structural, mechanical, electrical, plumbing, and all other engineering disciplines, interior design, graphics, food service and life safety systems. Concessionaire shall provide BOR, Program Manager and the Design Professionals with recommendations resulting from such review.

3.3.4 **BOR's Design Reviews.** Concessionaire shall expedite BOR's and Institution's design reviews by compiling and conveying BOR's and Institution's comments concerning the Design Documents to the Design Professionals.

3.3.5 **Approvals by Governmental Authorities.** Concessionaire shall manage and coordinate the Design Professionals' preparation of the Design Documents, shall manage and coordinate the submission of the Design Documents to the appropriate Governmental Authorities, and shall advise BOR and Program Manager of any potential problems in connection with approvals of the Design Documents required from any Governmental Authority.

3.3.6 **Revisions to the Project Schedule.** While performing the services provided in this **Section 3.3**, and as necessary throughout the Design Phase, Concessionaire shall advise BOR and Program Manager of compliance with the Project Schedule and revisions to the Project Schedule which may be desirable.

3.3.7 **Project Budget Revision.** Concessionaire shall make recommendations to BOR concerning design changes that may result in revisions to the Project Budget.

3.3.8 **Cost Control.** Concessionaire shall prepare, or cause to be prepared, an estimate of the construction cost for each submittal of Design Documents from the Design Professionals. Concessionaire shall coordinate and expedite the activities of BOR, Program Manager and the Design Professionals when changes to the design are required to remain within the then-current Project Budget.

3.3.9 **Value Analysis Studies.** Concessionaire shall provide value analysis studies on major construction components.

3.3.10 **Schedule Maintenance Reports.** In conjunction with the services to be provided by Concessionaire pursuant to this **Section 3.3**, Concessionaire shall prepare and distribute, or cause to be prepared and distributed, to BOR, Institution, and Program Manager schedule maintenance reports that shall compare actual progress with scheduled progress for the Design Phase.

3.4 **Construction Related Activities.**

3.4.1 **Notice to Proceed.** Upon receiving the Notice to Proceed from BOR pursuant to **Section 7.4**, Concessionaire shall issue to the Contractor a notice to proceed under the Contractor Agreement.

3.4.2 **Notices of Commencement.** Concessionaire shall prepare, file and execute on BOR's behalf any and all required notices of commencement of the Project.

3.4.3 **Pre-Construction Conference.** In consultation with BOR, Institution, Program Manager, and the Design Professionals, Concessionaire shall conduct a pre-construction conference during which Concessionaire shall review the reporting procedures.

3.4.4 **Permits, Bonds and Insurance.** Concessionaire shall obtain, or cause to be obtained, all required Building Permits, Surety Bonds, and insurance necessary for the commencement and completion of the Work; *provided, however*, that BOR shall sign applications and other documentation reasonably related thereto, to the extent the fee owner of the Premises is a required signatory.

3.4.5 **On-Premises Management and Construction Phase Communication Procedures.** Concessionaire shall provide a management team or a representative on the Premises on a periodic basis (but not less frequently than weekly) to provide oversight of the Work. Concessionaire shall establish and implement coordination and communication procedures among Concessionaire, BOR, Institution, Program Manager, the Design Professionals and the Construction Parties. Concessionaire shall require the Contractor to maintain on a current basis and make available to BOR, Institution, and Program Manager, at any time at the Premises, a daily written log recording job conditions, including, without limitation, daily weather conditions, a list of important visitors or officials to the Premises and daily progress and activities on the Premises. Concessionaire shall require the Contractor to make available for inspection by BOR, Institution, and Program Manager, at any time at the Premises, a complete set of all Construction Documents.

3.4.6 **Construction Administration Procedures.** Concessionaire shall establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Design Documents, shop drawings, samples and other submittals; contract schedule adjustments; change order proposals; and written proposals for substitutions. Concessionaire shall maintain on a current basis and make available to BOR, Program Manager and Contractor, at any time at the Premises, logs recording information relevant to such submittals, including, without limitation, the date of such submittal, Concessionaire comments, Design Professional comments and whether the submittal has been approved or disapproved. Such procedures shall be designed to ensure that all such submittals are duly reviewed by BOR and Program Manager and approved by BOR prior to the commencement of related work. All changes and change orders shall be subject to the prior written approval of BOR and Institution. Such approval shall not to be unreasonably withheld, conditioned, or delayed.

3.4.7 **Review of Requests for Information, Shop Drawings, Samples, and Other Submittals.** Concessionaire shall cause the Architect to review the Contractor's

requests for information, shop drawings, samples, and other submittals to determine the anticipated effect on compliance with the applicable requirements, the Project Budget, and the Project Schedule. Concessionaire shall forward to the Design Professionals for their review, the request for information, shop drawing, sample, or other submittal, along with Concessionaire comments. Concessionaire comments shall not relate to design considerations, but rather to matters of constructability, cost, sequencing, scheduling and time of construction, and clarity, consistency, and coordination in documents. Concessionaire shall obtain from the Design Professionals written comments to the submittals.

3.4.8 **BOR Proposed Changes.** All BOR proposed Changes shall first be described in detail in a change request issued to Concessionaire. The Concessionaire shall review all BOR proposed Changes and advise the BOR, Institution, and Program Manager regarding the impact the BOR proposed Change will have on constructability, cost, sequencing, scheduling, time of construction, and financial implications to the requirements of the Master Concession Agreement. Unless the BOR determines that the BOR proposed Change is not desirable after receiving advice from the Concessionaire, the BOR proposed Change shall be implemented.

3.4.9 **Non-BOR Proposed Changes.** All Non-BOR proposed Changes shall be subject to the prior written approval of the BOR and Institution. Such approvals shall not to be unreasonably withheld, conditioned, or delayed.

3.4.10 **Quality Review.** Concessionaire shall establish and implement a program to supervise the quality of the construction consistent with the Baseline Design Standards for Student Housing. The purpose of the program shall be to assist in guarding against defects and deficiencies in the Work. Concessionaire shall reject Work rejected by the Architect, BOR, Institution, or Program Manager and transmit to BOR, Institution, and Program Manager a notice of nonconforming Work when it is the opinion of Concessionaire that the Work does not conform to the requirements of the Contract Documents.

3.4.11 **Compliance with Requirements.** Concessionaire shall monitor and ensure that the Work complies with all Contract Documents, Governmental Requirements, insurance policies required by the Master Concession Agreement, and all Project Encumbrances as they pertain to the design, development, construction and Intended Use of the Project. Concessionaire shall cause all Concessionaire Parties to comply with all Contract Documents, Governmental Requirements, insurance policies required by the Master Concession Agreement, and all, if any, Project Encumbrances as they pertain to the design, development, construction and Intended Use of the Project.

3.4.12 **Operation and Maintenance Materials.** Concessionaire shall obtain, compile and make available to BOR and Institution all operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Premises Improvements.

3.4.13 **Project Schedule.** Concessionaire shall, on a periodic basis (but not less frequently than monthly), adjust and update the Project Schedule and deliver a copy to BOR, Institution, and Program Manager.

3.4.14 **Monthly Reports.** At least three days prior to the Monthly BOR meeting, the Concessionaire shall issue the following reports to BOR, Institution, and Program Manager:

3.4.14.1 **Construction Schedule Report.** Concessionaire shall, on a periodic basis (but not less frequently than monthly), review the progress of the construction, evaluate the percentage of completion of each construction activity as indicated in the Schedule of Values, and review such percentages with BOR, Institution, and Program Manager. This evaluation shall serve as data for input to the periodic construction schedule report that shall be prepared and delivered to BOR, Institution, and Program Manager by Concessionaire. The construction schedule report shall be distributed not less frequently than monthly during the Construction Phase of the Project and shall indicate the actual progress compared to the scheduled progress of the Work. Concessionaire shall advise BOR, Institution, and Program Manager and make recommendations to BOR concerning the alternative courses of action to be taken to achieve contract compliance by the Construction Parties.

3.4.14.2 **Schedule Maintenance Reports.** Concessionaire shall prepare and distribute to BOR, Institution, and Program Manager schedule maintenance reports during the Construction Phase. The reports shall compare the actual construction dates to the scheduled construction dates of each separate contract and to the Project Schedule. In the event that the actual progress of any portion of the Work is delayed by **ten (10) days** or more compared to the scheduled progress of that portion of the Work, Concessionaire shall submit to BOR, Institution, and Program Manager a written plan detailing how such delay can be remedied and how the Project Schedule may be maintained.

3.4.14.3 **Project Cost and Payment Reports.** Concessionaire shall prepare and distribute project cost and payment reports during the Construction Phase to BOR and Program Manager, among others, not less often than monthly. The reports shall specify: **(i)** actual construction costs for the Project compared to the Approved Project Budget; and **(ii)** the total Construction Costs payments to date.

3.4.14.4 **Changes Reports.** Concessionaire shall periodically (not less often than monthly) prepare and distribute to BOR, Institution, and Program Manager Change reports during the Construction Phase. The reports shall list all Changes by number, a brief description of the Change, the cost of the Change and the percentage of completion of the Changed Work.

3.4.15 **Concessionaire's Financial Reports.** Concessionaire shall furnish to BOR periodic financial and operating information, including, at a minimum, annual financial statements audited by a national firm of independent public accountants acceptable to the BOR and quarterly financial statements.

3.4.16 **Monthly BOR Meetings.** Concessionaire shall meet with BOR, Institution, and Program Manager on a periodic basis during design, preconstruction, and the construction process to provide updates and to discuss the Monthly Reports.

3.4.17 **Schedule of Values.** Concessionaire shall review the Schedule of Values for the construction of the Work. The Schedule of Values shall be the basis for the allocation of the Construction Costs under the Construction Agreements.

3.4.18 **Allocation of Cost to Schedule of Values.** The Schedule of Values shall have the Construction Costs under the Construction Agreements allocated among the Construction Parties' scheduled activities so that each of the Construction Parties' activities shall be allocated a cost and the sum of the costs of the activities shall equal the Construction Costs under the Construction Agreements. Concessionaire shall review the allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents.

3.4.19 **Notices.** Concessionaire shall provide the appropriate Construction Party notice of all, if any, Punch List Items, defects, warranty claims and guaranty claims under the Contract Documents.

3.4.20 **Notices of Completion.** Concessionaire shall prepare, file and execute on BOR's behalf any and all required notices of completion of the Project.

3.5 **Post-Construction Phase.** Concessionaire shall supervise, direct and expedite submittals of documents, plans and other information from the Construction Parties, as required by the Construction Agreements, and shall supervise, direct and expedite the transmittal of the same to BOR, Institution, and Program Manager.

SECTION 4. **DOCUMENTS; PERMITS; PROJECT SCHEDULE**

4.1 **Preparation and Submission of Documents.** For the purposes of performing the Design Services and determining the Approved Project Budget, Concessionaire shall enter into the Architect Agreement and shall cause the Architect to prepare, and shall submit to BOR, Institution, and Program Manager for BOR's review and approval in accordance with **Section 4.3**, the Preliminary Design Documents as provided in **Section 4.2(a)**, the Schematic Design Documents as provided in **Section 4.2(b)**, the Design Development Documents as provided in **Section 4.2(c)**, the Construction Documents as provided in **Section 4.2(f)**, and the Furniture, Fixtures, and Equipment Design as provided in **Section 4.2(g)**. Concessionaire will also provide at least one formal design presentation to the BOR and Institution at each design stage listed in **Section 4.2**.

4.2 **Documents.**

4.2.1 Concessionaire shall submit to BOR, Institution, and Program Manager for BOR's review and approval as provided in **Section 4.3**, the Preliminary Design Documents, a Project Schedule and a Project Budget for the Project.

4.2.2 After the approval by BOR of the items submitted pursuant to **Section 4.2(a)**, Concessionaire shall submit to BOR, Institution, and Program Manager for BOR's review and approval as provided in **Section 4.3**, the Schematic Design Documents, a proposed Project Schedule and a proposed Project Budget for the Project.

4.2.3 After the approval by BOR of the items submitted pursuant to **Section 4.2(b)**, Concessionaire shall submit to BOR, Institution, and Program Manager for BOR's review and approval as provided in **Section 4.3**, the Design Development Documents, a proposed Project Schedule, and a proposed Project Budget.

4.2.4 As and when completed, Concessionaire shall submit the Architect's Agreement to BOR and Program Manager for BOR's review and approval as provided in **Section 4.3**.

4.2.5 As and when completed, Concessionaire shall submit the Construction Agreement to BOR and Program Manager for BOR's review and approval as provided in **Section 4.3**.

4.2.6 After the approval by BOR of the items submitted pursuant to **Section 4.2(c)**, Concessionaire shall submit to BOR, Institution, and Program Manager for BOR's review and approval as provided in **Section 4.3**, the Construction Documents, a proposed Project Schedule, and a proposed Project Budget.

4.2.7 Concessionaire shall submit to BOR, Institution, and Program Manager for BOR's review and approval as provided in **Section 4.3**, the Furniture, Fixtures, and Equipment Design Documents, a proposed Approved Project Schedule, and a proposed Approved Project Budget

4.2.8 To expedite the design, development and construction of the Premises Improvements, Concessionaire shall prepare the Design Documents in parts, as agreed by Concessionaire and BOR, for review and approval. If BOR so elects, BOR will receive and review parts of the Design Documents in lieu of all such documents being submitted at one time.

4.3 **Review of Design Documents.**

4.3.1 Upon receipt by BOR, Institution, and Program Manager of any Preliminary Design Documents; Schematic Design Documents; Design Development Documents; Construction Documents; Furniture, Fixtures, and Equipment Design Documents; Architect's Agreement; or Construction Agreements, and the other items submitted therewith in each instance, BOR shall promptly and diligently review the items submitted and either approve them in writing as submitted or notify Concessionaire in writing of the desired changes in each of them.

4.3.2 If BOR requests changes to any of the Design Documents or Construction Documents, Concessionaire, at its sole cost and expense, shall promptly make such changes and, if necessary, the currently submitted Project Schedule and Project Budget, as appropriate.

4.3.3 Any proposed Design Documents, Construction Documents, Architect's Agreement or Construction Agreement, or changes thereto, not approved by BOR under this **Section 4.3** shall promptly be revised by Concessionaire and resubmitted to BOR, Institution, and Program Manager after notice to Concessionaire of BOR's objection to such

proposed Design Documents, Architect's Agreement or Construction Agreement, or changes thereto.

4.4 **Architect and Other Design Professionals.**

4.4.1 Concessionaire shall engage, and shall execute and enter into the Architect Agreement and other Design Agreements with, the Architect and the other Design Professionals. The Architect Agreement and other Design Agreements shall be freely assignable to the BOR without fee or penalty. The Design Services will be performed by the Design Professionals pursuant to the Design Agreements, under the direction and supervision of Concessionaire, in accordance with the terms and provisions of these Requirements. Overhead costs and fees for the Architect and other Design Professionals shall be those agreed to in the Master Concession Agreement.

4.4.2 BOR will not participate in the selection of any Design Professional; *provided, however*, that BOR shall have the right to make reasonable objection to the appointment of any Design Professional prior to such appointment being finalized. Any objection by BOR to a Design Professional shall be delivered by written notice to Concessionaire as soon as reasonably practicable after receipt by BOR of Concessionaire's notice of the selection of the Design Professional but in all events within that time period that is consistent with the then-current Project Schedule. Upon receipt of a reasonable objection to the Design Professional, Concessionaire shall withdraw its selection of the Design Professional, and promptly select another firm or individual to serve as Design Professional and submit its selection to BOR and BOR's Representative as provided in this **Section 4.4(b)**.

4.4.3 BOR shall be a third-party beneficiary of the duties and obligations of all Design Professionals with respect to the Project.

4.4.4 Concessionaire shall require each Design Professional to possess all applicable valid and current licenses to perform their respective services in the State of Georgia, _____ County and the City of _____.

4.4.5 Notwithstanding anything in these Requirements to the contrary, Concessionaire acknowledges that BOR is a third-party beneficiary of the Design Agreements. In the event of any termination of the Lease Agreement by BOR: (i) in the event that BOR shall seek to enforce any right of Concessionaire under any Design Agreement, it shall have the right to do so without the consent of, or interference by, Concessionaire; and (ii) Concessionaire shall do all things necessary, upon written request of BOR, to assign its interest in any Design Agreement to BOR.

4.5 **Responsibility for Design Documents.** Concessionaire shall be liable and responsible to BOR, jointly and severally with the Design Professionals, for all Design Services and Design Documents, any error or omission in the Design Documents, any failure of the Design Documents, or any part thereof, to comply with any Governmental Requirement, and any of the Design Documents resulting in or causing a defective design or construction.

4.6 **Ownership and Use of Design Documents.** All Design Agreements shall provide that all work product of the Design Professionals and their respective agents, employees

and representatives performed pursuant to the Design Agreement (collectively, the “**Work Product**”) shall be deemed, to the greatest extent possible, “works made for hire” (as defined in the Copyright Act, as amended 17 U.S.C.A. § 101 *et seq.*) and owned exclusively by BOR (and its successors and assigns). Concessionaire shall ensure that each Design Professional unconditionally and irrevocably transfers and assigns to BOR (and its successors and assigns) all right, title and interest in and to any and all Work Product, including, without limitation, all patents, copyrights, trademarks, service marks and other intellectual property rights, upon payment to the Design Professional of amounts owed under the Design Agreements. The Design Agreements shall provide that each Design Professional agrees to execute and deliver and cause their respective agents, employees and representatives to execute and deliver, to BOR (or its successors and assigns, if applicable) any transfers, assignments, documents or other instrument which BOR (or its successors and assigns, if applicable) may deem necessary or appropriate to vest complete title and ownership of any or all Work Product, and all rights therein, exclusively in BOR (or its successors and assigns, if applicable). Notwithstanding the foregoing, the BOR hereby grants to the Concessionaire and the Design Professionals a nonexclusive license to reproduce the documents specifically created for this Project for purposes relating directly to the Concessionaire’s or Design Professionals’ performance of this Project, for the Design Professional’s archival records, and for marketing materials provided the contents of those materials, as to this Project, are approved in writing by BOR. No other documents specifically created for this Project may be reproduced for any purpose without the express written permission of the BOR. No other copyrights are included in this grant of nonexclusive license to the Concessionaire and the Design Professionals. This nonexclusive license shall terminate immediately upon the breach of the Lease Agreement by the Concessionaire. This Paragraph is not intended to prevent the Design Professionals from using or reusing their standard specifications, details, or designs (“**Standard Specifications, Details, and Designs**”) used on this Project on other projects. All Design Agreements shall grant to the BOR a nonexclusive license to use the Standard Specifications, Details, and Designs solely and exclusively for purposes of constructing, using, marketing, maintaining, altering and adding to the Project. The BOR agrees and hereby forever releases the Concessionaire and the Design Professionals from all liabilities that might arise from the BOR’s use of the Work Product for any alterations, additions, subtractions, or modifications of the Work Product, or the buildings, improvements, and structures of the Project resulting therefrom, or for use in other projects; *provided, however*, that this release does not apply to liabilities arising from the original Work Product and the buildings, improvements and structures of the Project that have not been altered, added to, subtracted from, or modified subsequent to completion of construction of the Project by BOR, its successors, or assigns.

4.7 **Permits.**

4.7.1 Except where prohibited by law, Concessionaire or the Contractor shall be the applicant for any and all required Permits and the Building Permits. Concessionaire or the Contractor shall supervise, direct and manage all professional and technical services required in connection with the preparation and filing of applications for and obtaining all required Permits and the Building Permits. Concessionaire or the Contractor shall be responsible for diligently preparing and filing all applications for, and pursuing and obtaining, the Permits and the Building Permits.

4.7.2 BOR shall cooperate with and assist Concessionaire and the Contractor in securing the Permits and the Building Permits. BOR shall act or join as applicant for any of the Permits or Building Permits when required by applicable Governmental Requirements.

4.7.3 Concessionaire shall use its best efforts to obtain the Building Permits and any Permits required to commence construction of the Premises Improvements at a time consistent with the Project Schedule.

4.8 **Project Schedule.**

4.8.1 To enable the Project to be planned, scheduled and prosecuted in an orderly and expeditious manner, Concessionaire shall prepare and submit to BOR and Program Manager for BOR's review and approval a Project Schedule that is consistent with the Development Schedules and the Design Documents at each stage of their preparation. The Project Schedule shall include a minimum of **fourteen (14) days** for BOR, Institution, and Program Manager to review and approve any submittals for which BOR's, Institution's, or Program Manager's approval is required.

4.8.2 The Project Schedule approved by BOR in connection with its approval of the Approved Project Budget shall constitute the "**Approved Project Schedule**" under these Requirements.

SECTION 5. **BUDGETING**

5.1 **Preliminary Project Budgets.**

5.1.1 As provided in **Section 4.2**, in conjunction with the submittal of the proposed Preliminary Design Documents, Concessionaire will submit to BOR and Program Manager an estimated Project Budget based upon the proposed Project Schedule and the proposed Preliminary Design Documents.

5.1.2 BOR shall review and consider the proposed estimated Project Budget, and may either approve such items as submitted or reject such items in writing. BOR's approval or rejection of the estimated Project Budget shall be delivered to Concessionaire within the time period provided to BOR for its approval or rejection of the proposed Preliminary Design Documents. BOR's approval of the estimated Project Budget shall not be unreasonably withheld, conditioned, or delayed.

5.2 **Schematic Design Project Budget.**

5.2.1 As provided in **Section 4.2**, in conjunction with the submittal of the proposed Schematic Design Documents, Concessionaire will submit to BOR and Program Manager a revised Project Budget based upon the proposed Project Schedule and the proposed Schematic Design Documents.

5.2.2 BOR shall review and consider the proposed revised Project Budget, and may either approve such items as submitted or reject such items in writing. BOR's approval or rejection of the revised Project Budget shall be delivered to Concessionaire within the time period provided to BOR for its approval or rejection of the proposed Schematic Design Documents. BOR's approval of the revised Project Budget shall not be unreasonably withheld, conditioned, or delayed.

5.3 **Approved Project Budget.**

5.3.1 As provided in **Section 4.2**, in conjunction with the submittal of the Design Development Documents, Concessionaire will submit to BOR and Program Manager a revised Project Budget based upon the then-current Project Schedule and the proposed Design Development Documents.

5.3.2 BOR shall review and consider the proposed revised Project Budget, and may either approve such items as submitted or reject such items in writing. BOR's approval or rejection of the revised Project Budget shall be delivered to Concessionaire within the time period provided to BOR for its approval or rejection of the proposed Design Development Documents. BOR's approval of the revised Project Budget shall not be unreasonably withheld, conditioned, or delayed. If the revised Project Budget is approved by BOR and if BOR has approved the Design Development Documents pursuant to **Section 4.3**, then BOR shall accept the revised Project Budget, and the same shall constitute the "**Approved Project Budget**" for the purposes of these Requirements.

5.4 **Costs.** Concessionaire shall be responsible for the payment of all Project Costs, including increased costs resulting from inflation, market escalation or other market factors or cost overruns. All cost overruns in the construction of the Project will be the responsibility of the Concessionaire and all cost savings in the construction of any project will be for the benefit of the Concessionaire.

SECTION 6.

ADDITIONAL COVENANTS OF CONCESSIONAIRE

6.1 **Design and Construction Agreements.** Concessionaire shall enforce the duties, obligations, liabilities and responsibilities of the other parties to all of the Design Agreements and the Construction Agreements. Concessionaire shall provide BOR and BOR's Representative with copies of all such Design Agreements and Construction Agreements. The design, construction, and furniture bids, quotes, estimates, budgets, and allowances will be shared with the BOR, Institution, and Program Manager in an "open book" manner summarizing the actual costs of work subcontracted or self-performed by the Concessionaire.

6.2 **Investigation Of Concessionaire.** Concessionaire shall: (a) give BOR and Program Manager access from time to time during normal business hours to Concessionaire's business property, offices, books, records and information related to the Project; and (b) permit BOR and Program Manager to make such examination thereof and conduct such other investigations as BOR or Program Manager considers appropriate to review

the construction progress and determine if the construction progress is in compliance with the Design Documents.

6.3 **Books and Records of Concessionaire; Right of Inspection by BOR.**

Concessionaire shall keep such accounts as may be necessary for its proper financial management of activities under the Lease Agreement. Concessionaire shall provide the BOR with access to all documentation evidencing and supporting the actual costs of the Project and the amounts expended by Concessionaire on the Project. The system of accounting employed by Concessionaire shall be such as is reasonably satisfactory to BOR. BOR and Program Manager shall be afforded access to all of Concessionaire's logs, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Project and Concessionaire's activities to be performed pursuant to the Lease Agreement. Upon reasonable written notice, such books and records shall be open to BOR and Program Manager and their respective Authorized Representatives for inspection and copying, at BOR's cost, at reasonable hours at Concessionaire's principal office in the State of Georgia. Such books and records shall be retained by Concessionaire and made available to BOR for a period of **five (5) years** after Final Completion.

6.4 **Inspection of Construction.**

Concessionaire shall permit BOR, Institution, and Program Manager, and their respective agents, employees, representatives or consultants, and any interested Governmental Authority, to enter upon the Premises at any reasonable time and from time to time to inspect the same and all materials used in the Work or stored on the Premises, and to examine and copy: (a) all plans, shop drawings and work details which are or may be kept on the Premises; (b) all of Concessionaire's books, records and accounts relating to the Project Services and all disbursements and accounts payable in connection with the Premises Improvements; (c) certificates and reports of inspecting architects, engineers and public officials; and (d) all subcontracts, bills, bank accounts, payroll records, employment records and other records pertaining to the Project. Concessionaire shall maintain such records in a single, consolidated, easily accessible location. BOR and Program Manager shall cause such inspections to be performed in a manner so as not to delay or interfere with the progress of the Project.

6.5 **No Liens.**

Concessionaire shall not permit or suffer to exist any lien, encumbrance or charge against the Project or any part thereof, and Concessionaire shall at all times maintain the Project free and clear of all Liens. If any Lien is filed against all or any part of the Project, Concessionaire shall cause the same to be discharged by payment, satisfaction or posting of bond within **fifteen (15) days** after receipt of written notice from the BOR. If Concessionaire fails to cause any Lien to be discharged within the permitted time, BOR may cause it to be discharged and may make any payment which BOR, in BOR's sole judgment, considers necessary, desirable or proper in order to do so. If BOR makes any such payment, all amounts paid by BOR shall bear interest at the rate of **twelve percent (12%)** per annum from the date of payment by BOR and shall be payable by Concessionaire to BOR upon demand.

6.6 **Compliance.**

Concessionaire shall cause the Premises Improvements to be developed, designed, constructed and installed in compliance with all Project Encumbrances, the Baseline Design Standards for Student Housing, and all applicable Governmental Requirements, including, without limitation, all Environmental Laws.

6.7 **Completion.** Concessionaire shall cause Final Completion to be achieved on or before the Required Final Completion Date, and shall otherwise cause Substantial Completion and Final Completion to be achieved in accordance with these Requirements.

6.8 **Correction of Errors, Omissions and other Deficiencies.**

6.8.1 Concessionaire, without compensation, shall correct, revise, and/or have corrected or revised for the period required by **Section 6.9**, any omissions, defects or other deficiencies in the Work, the Premises Improvements and/or the Design Documents, and all other services, work and materials performed, provided, and/or furnished by Concessionaire or by any Concessionaire Party with respect to the Project, whether or not caused by Concessionaire or any Concessionaire Party, or any of their agents or employees. To the extent any such correction requires any change in the Work in progress or completed, any and all costs associated therewith shall be the Concessionaire's sole responsibility.

6.8.2 BOR's receipt, review, and approval of the Design Documents, and incidental professional services, work and materials furnished hereunder by Concessionaire, or by any Concessionaire Party shall not in any way relieve Concessionaire of responsibility for the adequacy, sufficiency, completeness and/or accuracy of the Design Documents.

6.9 **Correction Of Work.** Concessionaire shall promptly correct all Work that is defective or is not in accordance with the Design Documents, whether observed before or after Substantial Completion, and whether or not fabricated, installed or completed; and Concessionaire shall correct all Work found to be or to have been defective or non-conforming within a period of **one (1) year** from the date of Substantial Completion, except with respect to the Punch List Items, in which case Concessionaire shall correct all Work found to be or to have been defective or non-conforming within a period of **one (1) year** from the date of Final Completion; *provided, however*, that nothing contained in this **Section 6.9** shall be construed to establish a period of limitation with respect to other obligations of Concessionaire. If Concessionaire fails to correct defective or non-conforming Work as required, BOR may order Concessionaire to stop the Work or any portion thereof, until the cause for such order has been eliminated. If Concessionaire fails or neglects to carry out the Work, or any portion thereof, in accordance with the Design Documents, and fails within **seven (7) days** after receipt of written notice from BOR to commence and continue correction of such deficiencies, failures or neglects with diligence and promptness, BOR may, without prejudice to other remedies BOR may have, correct such deficiencies, failures or neglects. Nothing in these Requirements is intended to reduce the obligations of Concessionaire to maintain the Project in accordance with the terms of the Master Concession Agreement.

6.10 **Responsible For Concessionaire Parties.** Concessionaire shall be liable and responsible to BOR for acts and omissions of Concessionaire, all Concessionaire Parties, and their respective agents and employees.

6.11 **Supply All Work.** Concessionaire shall provide or cause to be provided all Design Services and all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other utilities, facilities and services

necessary for providing, performing and completing all Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

6.12 **Concessionaire's Project Officer.** Concessionaire shall employ and designate, in writing, a qualified person to serve as Concessionaire's "**Project Officer**", who shall be reasonably approved by BOR. The Project Officer shall be authorized and responsible to act on behalf of Concessionaire and shall have full authority to bind and obligate Concessionaire on any matter arising under these Requirements, unless substitute arrangements or individuals have been furnished to and approved by BOR in writing. The Project Officer shall be responsible for acting on Concessionaire's behalf to administer and coordinate all aspects of the Project Services and to otherwise manage the contractual provisions and requirements set forth in these Requirements. Concessionaire agrees that the Project Officer shall devote whatever time is required to satisfactorily direct, supervise, coordinate and manage the Project Services.

6.13 **Removal Of Personnel.** Concessionaire shall promptly remove and replace Concessionaire's Project Officer after receipt of a written request from the BOR's Authorized Representative setting forth reasonable reasons for such removal and requesting such removal. Concessionaire shall promptly remove any employee(s) of Concessionaire and of any Concessionaire Party upon receipt of a written request from BOR or Institution.

6.14 **Timely Accomplishment Of Project Services.** Concessionaire shall employ, engage, retain and/or assign an adequate number of personnel throughout the period of the Project so that all Project Services will be provided, performed and completed in a timely and diligent manner in accordance with these Requirements.

6.15 **Concessionaire To Repair Property Damage.** Concessionaire shall promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense, any property damage occurring on or to the Project and/or to any adjacent property to the Project or common utility or underground systems, caused by Concessionaire, any Concessionaire Party, or any of their employees or agents.

6.16 **Cumulative Responsibilities, Duties And Obligations.** The responsibilities, duties and obligations imposed upon Concessionaire and BOR by these Requirements, and the rights and remedies available to each of them hereunder, shall be in addition to, and not a limitation of, any otherwise imposed or available by law, statute, regulation, code or ordinance.

6.17 **Quality Of Supplies.** Concessionaire represents and warrants to BOR that all supplies, materials and equipment incorporated in the Premises Improvements shall be new (unless otherwise permitted by the Design Documents), of good quality, free from faults and defects, and substantially in accordance with the Design Documents. Work not conforming to these requirements shall be corrected in accordance with the terms of these Requirements.

6.18 **Maintain Project.** Concessionaire shall keep the Project free from accumulation of waste materials or rubbish caused by Concessionaire's operations and shall maintain the Project in compliance in all material respects with all applicable Governmental

Requirements. Concessionaire shall control water and silt run-off (with approved materials) and shall respond promptly to any complaints. Concessionaire shall control dust (with tarps, water or other approved materials) and blowing rubbish or construction materials at all times and shall respond promptly to any complaints. Concessionaire shall erect protective screening along the boundary between the Premises and the adjacent property if dust becomes a problem during construction. Further, upon or prior to Substantial Completion, Concessionaire shall promptly remove from and about the Project all of Concessionaire's and Construction Parties' tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

6.19 **Premises Development Tests And Inspections.** Concessionaire shall procure and furnish to BOR all structural, mechanical, chemical, electrical, geotechnical, materials and other laboratory or on-site tests, inspections and reports necessary for completion of the Project. Such testing services shall include, as required, applicable test borings, test pits, soil-bearing values, percolation tests, air and water pollution tests, pressurization tests and other necessary operations for determining subsoil, air, water, and materials conditions, with reports and appropriate professional recommendations. A testing program meeting these requirements shall be clearly described in the Design Documents.

6.20 **Protection Of Persons And Property.** Concessionaire shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Project Services. Concessionaire shall take precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (a) employees of Concessionaire and of any Concessionaire Party, and any other Persons on or about the Project; (b) the Work and the Premises Improvements, including any and all materials and equipment to be incorporated therein; and (c) other property at or adjacent to the Project, or any portion thereof.

6.21 **Drug-Free Workplace.** Concessionaire shall take all reasonable steps to insure that, throughout the term of the Project, all agents and employees of Concessionaire and all Concessionaire Parties are at all times drug-free.

6.22 **Non-Discrimination Policy.** Concessionaire will not deny participation in the Project to any person, or discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, disability or other applicable protected classification. Concessionaire will take affirmative action to insure that the evaluation and treatment of employees are free from such discrimination. Concessionaire, unless exempt, will abide by the terms of all non-discrimination provisions of all applicable Governmental Requirements, including Paragraphs (1) through (7) of the contract clause set forth in Section 202 of Executive Order 11246, Paragraphs (a) through (f) of the contract clause set forth at 41 C.F.R. § 60-741.5, and Paragraphs (a) through (m) of the contract clause set forth at 41 C.F.R. § 60-250.4, which are incorporated herein by reference. If required by the provisions of 41 C.F.R. §§ 60.1.7 and 1.4, Concessionaire will file the appropriate EEO-1 reports and will develop and maintain a written Affirmative Action Program in compliance with the requirements of 41 C.F.R. § 60-2. Concessionaire shall include this non-discrimination policy clause in all Contract Documents. Concessionaire shall notify all labor organizations with which it has a collective bargaining agreement of the obligations of this **Section 6.22.**

6.23 Environmental Matters.

6.23.1 Neither Concessionaire nor any Concessionaire Party shall violate any Environmental Laws in the performance of the Project Services. Concessionaire and Concessionaire Parties may handle, store, use, and dispose of Hazardous Materials to the extent customary and necessary for the performance of the Project Services. However, neither Concessionaire nor any Concessionaire Party shall: (i) direct, suffer, or permit the handling, use, storage, or disposal of any Hazardous Materials in, on or about the Premises or otherwise in connection with the performance of the Project Services, except by employees of Concessionaire and Concessionaire Parties fully qualified to do so; or (ii) suffer or permit (A) any Hazardous Materials to be handled, used, stored, or disposed of in any manner not fully in compliance with Environmental Laws, or (B) the Premises to become contaminated with any non-preexisting Hazardous Materials or preexisting Hazardous Materials that are to be remediated as a part of the Project Services hereunder.

6.23.2 Within **thirty (30) calendar days** after discovery of any Hazardous Materials on, or other environmental condition affecting, the Premises, Concessionaire shall advise BOR and Program Manager in writing of such condition, the costs and expenses which will be incurred to rectify such condition, and the effect upon the Approved Project Budget and the Approved Project Schedule. Any required remediation of Hazardous Materials shall be at Concessionaire's sole cost and expense.

6.23.3 Notwithstanding anything in these Requirements to the contrary, BOR shall have no responsibility or liability whatsoever for, and Concessionaire shall indemnify, defend and save harmless BOR from, any and all liabilities, damages, losses, Environmental Costs and other costs and expenses (including attorneys' fees, costs and expenses) which may be suffered, incurred or sustained by any such indemnified party as a result of, by reason of or in connection with: (i) any alleged or actual violation of any Environmental Law; (ii) the presence on the Project of any Hazardous Materials, including, without limitation, contamination of ground water, surface water, air or soils on, over, under or around the Premises or on, over, under or around any adjacent property; or (iii) any Hazardous Material transported or released by Concessionaire or Concessionaire Parties.

6.23.4 This **Section 6.23** shall survive the Expiration Date or any earlier termination of the Lease Agreement and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists.

6.24 **University System of Georgia Ethics Policy.** Concessionaire agrees to comply with the University System of Georgia Ethics Policy, BOR Policy 8.2.20, as amended from time to time and to require the Contractor and each Design Professional to comply with this policy.

6.25 **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 and will require the Contractor and each Design Professional to comply with this policy.

6.26 **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 as Schedule 6.26. Concessionaire will obtain this Immigration and Security Affidavit from the Contractor, each Design Professional, each subcontractor performing Work, Design Services and Development Services and any other person or entity required by the Georgia Security and Compliance Act.

6.27 **Additional Matters.**

6.27.1 All sales or use taxes, or any other federal or local taxes arising out of or in connection with the Work described herein shall be paid by Concessionaire.

SECTION 7.
CONSTRUCTION PHASE

7.1 **General.**

7.1.1 Concessionaire shall engage, and shall execute and enter the Contractor Agreement and other Construction Agreements with, the Contractor and the other Construction Parties. All Contract Agreements and other Construction Agreements shall be freely assignable to the BOR without fee or penalty. Overhead costs and fees for the Contractor shall be those agreed to in the Master Concession Agreement. The Premises Improvements shall be constructed by the Construction Parties pursuant to the Construction Agreements and the Design Documents, under the supervision and direction of Concessionaire and as observed and reviewed by the Architect, in accordance with the terms and provisions of these Requirements. Concessionaire shall not execute or enter into any Construction Agreement, or any modification or amendment thereof, unless and until the form and substance thereof, and the execution and entry into thereof, has been approved in writing by BOR.

7.1.2 Should any information or approval be required from BOR as any Work progresses, Concessionaire shall request such information or approval in writing. Unless a specific time period applies pursuant to these Requirements, said requests shall be submitted sufficiently in advance of the date upon which the information or approval is needed, but in no event less than **three (3) days** in advance of such date, to permit BOR to act without affecting the progress or sequence of the Work. Such request shall provide a reasonable time for a response by BOR.

7.2 **Performance of the Work.** Concessionaire shall have the responsibility and obligation to engage the Construction Parties to perform the Work.

7.3 **Construction Schedule.** Concessionaire shall prepare, or cause to be prepared, a construction schedule setting forth in detail the various tasks for construction and completion of the construction of the Premises Improvements. Throughout the Construction Phase, Concessionaire shall keep BOR informed of the status of adherence to the construction schedule.

7.4 **Notice to Proceed.** After BOR has approved the Design Development Documents and the Approved Project Budget, and provided Concessionaire is not then in default under the Master Concession Agreement or Lease Agreement beyond any applicable cure period, BOR shall issue and deliver to Concessionaire the Notice to Proceed. BOR may give separate Notices to Proceed with separate components of the Work.

7.5 **Commencement of the Work; Time for Completion; Liquidated Damages.**

7.5.1 The Contractor shall commence the Work promptly after the date of Concessionaire's receipt of the Notice to Proceed from BOR.

7.5.2 Time being of the essence for the Lease Agreement, and subject to the terms and provisions of the Lease Agreement, Concessionaire shall use its best efforts to cause the Construction Parties to prosecute the Work diligently, using such means and methods of construction as will maintain the progress of the Work substantially in accordance with the Approved Project Schedule, and to cause Substantial Completion in accordance with the requirements of the Contract Documents not later than the Required Substantial Completion Date. Concessionaire expressly acknowledges that if Substantial Completion does not occur on or before the Required Substantial Completion Date, damages suffered by BOR and Institution due to such delay may include, without limitation, alternative housing costs, transportation costs, loss of reputation, and reduced enrollment.

7.5.3 If the Actual Substantial Completion Date has not occurred on or before the Required Substantial Completion Date, then Concessionaire shall, at its sole cost and expense, provide suitable substitute housing for the Residents (as defined in the Master Concession Agreement) of the Project and provide transportation for the Residents of the Project to and from the main campus of the Institution (as defined in the Lease Agreement) beginning on the effective date of each Resident's Resident Housing Agreement (as defined in the Master Concession Agreement) for the period through and including the date that falls seven (7) calendar days after the Actual Substantial Completion Date. Notwithstanding the foregoing, in the event Concessionaire fails to achieve Substantial Completion within one hundred eighty (180) days following the Required Substantial Completion Date, as this date may be adjusted in accordance with **Sections 10.1 and 10.2**, Concessionaire shall be in default under the Lease Agreement and the Master Concession Agreement.

7.5.4 At any time that Concessionaire reasonably believes that Substantial Completion will not occur by the Required Substantial Completion Date, for any reason, Concessionaire shall immediately notify BOR of such fact and will submit at that time a plan for suitable alternative housing for and transportation of Permitted Residents who are or may become (as the case may be) Residents of the Project.

7.6 **Contractor and Other Construction Parties; Subcontractors.**

7.6.1 BOR will not participate in the selection of any Contractor; *provided, however*, that BOR shall have the right to make reasonable objection to the appointment of any Contractor prior to such appointment being finalized. Any objection by

BOR to a Contractor shall be delivered by written notice to Concessionaire as soon as reasonably practicable after receipt by BOR of Concessionaire's notice of the selection of the Contractor but in all events within that time period that is consistent with the then-current Project Schedule. Upon receipt of a reasonable objection to the Contractor, Concessionaire shall withdraw its selection of the Contractor, and promptly select another firm to serve as the Contractor and submit its selection to BOR and Program Manager as provided in this **Section 7.6(a)**.

7.6.2 BOR shall be a third-party beneficiary of the duties and obligations of all Construction Parties and Subcontractors with respect to the Work.

7.6.3 Concessionaire shall require each Construction Party to be fully qualified to perform its Work, and shall possess all applicable valid and current licenses to perform its Work in the State of Georgia, _____ County and the City of _____.

7.6.4 Notwithstanding anything in these Requirements to the contrary, Concessionaire acknowledges that BOR is a third-party beneficiary of the Construction Agreements. In the event of any termination of the Lease Agreement by BOR: (i) in the event that BOR shall seek to enforce any right of Concessionaire under any Construction Agreement, it shall have the right to do so without the consent of, or interference by, Concessionaire; and (ii) Concessionaire shall do all things necessary, upon written request of BOR, to assign its interest in any Construction Agreement to BOR. This **Section 7.6(d)** shall survive the Expiration Date or any earlier termination of the Lease Agreement and shall continue in full force and effect.

7.7 **Surety Bonds.**

7.7.1 Prior to the Commencement Date, Concessionaire shall deliver, or cause to be delivered, to BOR the Surety Bonds, which shall be one or more separate payment and performance bonds for the Work, in forms reasonably acceptable to BOR, in an aggregate amount at least equal to one hundred percent (100%) of the amount of the construction contract(s). The Surety Bonds shall be executed by a surety having a rating of not less than A-, Class XIV as evaluated in the most recently circulated Best's Key Rating Guide Property-Liability and shall be duly authorized to do business in the State of Georgia.

7.7.2 The Surety Bonds shall be countersigned by a local resident producing agent of such surety regularly commissioned and licensed in the State of Georgia. Satisfactory evidence of the authority of the person or persons executing the Surety Bonds to execute the same shall be submitted therewith.

7.7.3 The premiums on, and the costs incurred in connection with, the Surety Bonds shall be paid by the Concessionaire. The Surety Bonds shall name BOR as an obligee.

7.8 **Responsibility for Construction.** Concessionaire shall be liable and responsible to BOR, jointly and severally with the Construction Parties, for all Work, any labor

or services performed or rendered, and materials supplied or furnished to the Project, and any error or omission, or defect in, the construction and installation of the Premises Improvements.

7.9 **Inspection.**

7.9.1 BOR, Institution, and Program Manager shall have access to the Premises during all working hours, and shall have the right to observe the Work and all facilities where the Work or any part thereof is being fabricated or stored; *provided, however*, that neither BOR nor Program Manager shall delay, hinder or interfere with the performance of the Work.

7.9.2 Finished or unfinished Work found not to be in accordance with the Contract Documents in any material respect shall be replaced as directed by BOR through Concessionaire, or by the Architect, except to the extent a specific deviation from the Design Documents is or has been accepted in writing by BOR.

7.9.3 The Architect and BOR shall each have the right to reject materials and workmanship which are defective or not in conformance with the Contract Documents. Rejected Work must be promptly removed from the Premises, which must be kept in a reasonably clean and neat condition.

7.9.4 Failure on the part of BOR to reject defective or nonconforming Work shall not be construed to imply an acceptance of such Work; nor shall it be construed as barring BOR from the recovery of a sum of money to correct or rebuild anew, where necessary, defective or nonconforming portions of the Work; *provided, however*, that, to the extent a specific deviation from the Design Documents is or has been accepted in writing by BOR, such deviation shall not be deemed to be defective or nonconforming Work.

7.9.5 Should it be considered necessary or reasonably advisable by BOR at any time before Substantial Completion to examine Work already completed therein by removing or tearing out all or portions of such Work, Concessionaire shall, on request of BOR, promptly furnish all necessary facilities, labor, and material for that purpose.

7.9.6 If the Design Documents or any Governmental Requirements require that any Work be inspected or tested, Concessionaire shall use its reasonable efforts to give BOR and Program Manager not less than **three (3) days** prior written notice of readiness of the Work for inspection or testing and the date fixed for such inspection or testing.

7.9.7 BOR shall notify Concessionaire of defective or nonconforming Work actually discovered by BOR promptly after such discovery.

7.10 **Minor Changes to the Work.** In the event Concessionaire desires to make a change in the Work that will not have a material aesthetic or functional impact on the Premises Improvements, Concessionaire shall have the right to issue Supplemental Instructions ordering minor changes in the Work with the written consent of BOR, which consent shall not be unreasonably withheld.

7.11 **Completion; Inspections.**

7.11.1 When the Work has reached Substantial Completion in accordance with the requirements of the Contract Documents, a date for Substantial Completion Inspection of the Work by the Architect shall be set by Concessionaire in a written notice to BOR, Institution, Program Manager, and the Architect, which date shall not be less than **three (3) days** after the date of the receipt of the written notice from Concessionaire of such inspection.

7.11.2 If the Substantial Completion Inspection reveals that Substantial Completion has not occurred, Concessionaire shall promptly cause any unperformed Work to be performed and then shall request a reinspection by the same procedure set forth in **Section 7.11(a)** providing for a reinspection date not less than **three (3) days** after the date of the receipt of the written notice from Concessionaire of such reinspection. If the Substantial Completion Inspection (or reinspection, as the case may be) reveals that Substantial Completion has occurred, the Architect shall issue the Substantial Completion Certificate.

7.11.3 During the Substantial Completion Inspection, or the reinspection as applicable, the Architect shall prepare the Punch List, and deliver the Punch List to Concessionaire within **three (3) business days** after the Substantial Completion Inspection. Within **thirty (30) days** of the Required Substantial Completion Date, Concessionaire shall cause the Construction Parties to complete and correct all Punch List Items, and to perform any and all recleaning required by the completion and correction of the Punch List Items and removal of equipment and excess materials and debris from the Premises. The Punch List shall be subject to the approval of BOR, Institution, and Program Manager.

7.11.4 At or before Substantial Completion, Concessionaire shall provide BOR, Institution, and Program Manager with the following:

7.11.4.1 to the extent then available, all warranties and guaranties from Construction Parties, vendors, suppliers and manufacturers required by the Contract Documents;

7.11.4.2 to the extent then available, all maintenance and operating manuals for the Premises Improvements required by the Contract Documents;

7.11.4.3 such affidavits and lien waivers as are sufficient under applicable Governmental Requirements to dissolve as a matter of law all liens or claims of lien for labor or services performed or rendered, or materials supplied or furnished, in connection with the Work;

7.11.4.4 the final, permanent and unconditional certificate of occupancy from the applicable Governmental Authority;

7.11.4.5 **five (5)** marked sets of Design Documents in the form of record drawings reflecting “as-built” conditions (with one of them in reproducible form), plus one electronic copy of such “as-built” Design Documents;

7.11.4.6 reproducible sepia drawings (to be supplied by Architect) upon which Contractor shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components;

7.11.4.7 an assignment and/or transfer of all guarantees and warranties from Construction Parties, vendors, suppliers and manufacturers;

7.11.4.8 all documentation required to be delivered pursuant to the Construction Agreements upon, or as a condition to, substantial completion thereunder; and

7.11.4.9 all other items required by the Contract Documents.

7.11.5 At or before Final Completion, Concessionaire shall provide the following to BOR, Institution, and Program Manager:

7.11.5.1 to the extent not theretofore delivered, all warranties and guaranties from Construction Parties, vendors, suppliers and manufacturers required by the Contract Documents;

7.11.5.2 to the extent not theretofore delivered, all maintenance and operating manuals for the Premises Improvements required by the Contract Documents;

7.11.5.3 such affidavits and lien waivers as are sufficient under applicable Governmental Requirements to dissolve as a matter of law all liens or claims of lien for labor or services performed or rendered, or materials supplied or furnished, in connection with the Work;

7.11.5.4 all documentation required to be delivered pursuant to the Construction Agreements upon, or as a condition to, final completion thereunder; and

7.11.5.5 all other items required by the Contract Documents.

SECTION 8. **LIABILITY; INDEMNITY**

8.1 **Indemnity.** To the fullest extent permitted by law, Concessionaire shall, and Concessionaire does hereby agree to, indemnify BOR, Institution, and Program Manager and agents and employees of any of them (the “Indemnified Parties”) against, and hold, save and defend the Indemnified Parties 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 any Indemnified Party may suffer or incur, or which may be asserted against any Indemnified Party, whether meritorious or not, if and to the extent the same arise out of, by reason of or in connection with: (a) injury to persons (including death) or damage to property (other than the Project) caused by any act, omission, negligence or willful misconduct of Concessionaire, any Concessionaire Party, or any of their respective agents,

employees or contractors, or otherwise arising out of the performance of the Project Services; or (b) any Lien; or (c) any claim in respect of the Project by any Concessionaire Party or other Person claiming under Concessionaire; or (d) any breach by Concessionaire of, or default by Concessionaire under, the Lease Agreement; or (e) any act or omission by Concessionaire or any party for whom Concessionaire is liable. Concessionaire's obligation under this provision shall not be limited in any way by Concessionaire's limit of, or lack of, sufficient insurance protection. This **Section 8.1** shall survive the Expiration Date or any earlier termination of the Lease Agreement and shall continue in full force and effect so long as the possibility of any liability, claim or loss exists. Nothing in this **Section 8.1** shall require Concessionaire to indemnify any Indemnified Party for such Indemnified Party's sole negligence.

8.2 **Relationship to Insurance.** In no event shall the indemnification provisions of **Section 8.1** above (a) diminish, affect, impede or impair, in any manner whatsoever, the benefits to which any party may be entitled under any insurance policy with respect to the Project required by the Master Concession Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein or (b) limit the obligations of Concessionaire under the provisions of either Section 19 of the Lease Agreement or Article X of the Master Concession Agreement.

8.3 **Independent Contractors.** No Person who shall be engaged as an independent contractor by either BOR or Concessionaire, or both, shall be considered an employee, servant, agent or other Person for whom either BOR or Concessionaire (as the case may be) is responsible for the purposes of indemnifications in the foregoing Sections of this **Article 8**.

SECTION 9.

OBLIGATIONS UPON TERMINATION

9.1 **Concessionaire's Obligations.** Upon the termination of the Lease Agreement, Concessionaire shall promptly:

9.1.1 Meet with BOR as soon as practicable and, if requested by BOR, develop a program to transfer or shut down the Project, give appropriate notices, and implement an appropriate program to secure the Premises against unlawful entry and vandalism.

9.1.2 Implement the program for transfer or shut down of the Project agreed to between Concessionaire and BOR.

9.1.3 Upon request by BOR, deliver to BOR or such other Person as BOR shall designate all materials, supplies, equipment, keys, contracts and documents, all books of account and records maintained pertaining to the Lease Agreement or the Project.

9.1.4 Deliver to BOR copies of all existing contracts and assign those contracts BOR elects to assume relating to the Project to BOR or such other Person as BOR shall designate, and indemnify BOR against any liability by reason of anything done or

required to be done under any such contract by Concessionaire prior to the effective date of such assignment.

9.1.5 Furnish all such information, take all such other action, and cooperate with BOR as BOR shall reasonably require in order to effectuate an orderly and systematic transfer, assignment or termination of the Development Services and Concessionaire's other, duties, obligations and activities hereunder.

9.2 **BOR's Obligations.** Upon termination of the Lease Agreement, BOR shall promptly:

9.2.1 Meet with Concessionaire as soon as practicable and, if BOR desires, develop a program to transfer or shut down the Project, give appropriate notices, and implement an appropriate program to secure the Premises against unlawful entry and vandalism.

9.2.2 Assume, or cause the assignee to assume, any contracts which it chooses to assume relating to the Project and which are assigned to BOR .

SECTION 10. FORCE MAJEURE DELAY; TENANT DELAY

10.1 **Effect of Force Majeure Delay.** If one or more events of Force Majeure Delay occur, Concessionaire shall be entitled to an equitable adjustment of the Approved Project Schedule and the Required Substantial Completion Date due to such event(s) of Force Majeure Delay.

10.2 **BOR Delay.** If one or more events of BOR Delay occur, Concessionaire shall be entitled to an equitable adjustment of the Approved Project Schedule and the Required Final Completion Date due to such event(s) of BOR Delay. In the event Concessionaire's performance of the work is delayed, accelerated, or interfered with, for any reason, and for any period of time, by acts or omissions of the BOR, Institution, or Program Manager, Concessionaire may request an equitable adjustment of the Approved Project Schedule and the Required Substantial Completion Date, but Concessionaire shall not be entitled to any compensation as a consequence of such delays, accelerations, or interferences.

SECTION 11. FIRE OR OTHER CASUALTY; CONDEMNATION

11.1 **Obligation to Reconstruct; Use of Insurance Proceeds.** Any destruction or damage to the Project by fire or other casualty prior to the Actual Substantial Completion Date shall constitute an event of Force Majeure. In the event of destruction or damage to the Project by fire or other casualty prior to the Actual Substantial Completion Date, and if the Lease Agreement is not terminated, Concessionaire shall restore, reconstruct and repair the Project. Concessionaire shall use all available insurance proceeds for restoration, reconstruction or repair, as required by the Master Concession Agreement, and BOR, shall consent to such use of insurance proceeds for such purposes. The effect of such occurrence on

the Approved Project Schedule and the Approved Project Budget shall be governed by **Section 10.1**.

11.2 **Condemnation of the Project; Application of Compensation.** Any damage or taking of the Project, or any part thereof, by the exercise of the power of eminent domain at any time prior to the Actual Substantial Completion Date shall constitute an event of Force Majeure. In the event of damage or taking of the Project, or any part thereof, by the exercise of the power of eminent domain at any time prior to the Actual Substantial Completion Date, and if the Lease Agreement is not terminated, the compensation awarded to and received by BOR shall be applied to restoration, reconstruction and repair of the Project, provided that the Project **(a)** can be restored, reconstructed or repaired, and **(b)** can be commercially feasible for its Intended Use after the taking. The effect of such occurrence on the Approved Project Schedule and the Approved Project Budget shall be governed by **Section 10.1**.

SECTION 12. **MISCELLANEOUS**

12.1 **Authorized Representatives; BOR's Representative.**

12.1.1 **Authorized Representatives.** Any consent, approval, authorization or other action required or permitted to be given or taken under the Lease Agreement by BOR or Concessionaire, as the case may be, shall be given or taken by one or more of the authorized representatives of each. For purposes of these Requirements: **(a)** the Authorized Representatives of BOR shall be any one or more of the following – _____; **(b)** the Authorized Representatives of Institution shall be any one or more of the following – _____; and **(c)** the Authorized Representatives of Concessionaire shall be any one or more of the following – _____. Any party hereto may from time to time designate other or replacement authorized representatives to the other party hereto. The written statements and representations of any Authorized representative of BOR or Concessionaire shall be binding upon the party for whom such person is an Authorized Representative, and the other party hereto shall have no obligation or duty whatsoever to inquire into the authority of any such representative to take any action which he proposes to take.

12.2 **Program Manager.** Concessionaire acknowledges that BOR has retained Program Manager to facilitate BOR's supervision of the Project and Concessionaire agrees to cooperate with Program Manager in this regard and to pay all costs, fees, and expenses relating to the Program Manager's services.

12.3 **Defined Terms.** Capitalized terms used in the Requirements shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

EXHIBIT D

FORM OF MEMORANDUM OF LEASE

[To be provided.]