

## **AGENDA**

### **LSU BOARD OF SUPERVISORS MEETING**

Board Room, LSU System Building  
Baton Rouge, Louisiana

**WEDNESDAY, APRIL 17, 2013**

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**1:00 P.M.**

### **INTEGRATED COMMITTEE MEETINGS**

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#### **PUBLIC COMMENTS**

Public Comments may be made only (1) when they relate to a matter on the agenda and (2) when individuals desiring to make public comments have registered at least one hour prior to the meeting. For additional information see:

<http://www.lsusystem.edu/index.php/board-of-supervisors/public-comments/>

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#### **I. PROPERTY AND FACILITIES COMMITTEE**

Mr. Raymond J. Lasseigne, Chairman

1. Final Approval to Execute and Deliver Lease Agreements with the Louisiana Public Facilities Authority in Connection with the Issuance of LPFA's Leave Revenue Bond (Louisiana State University Cogeneration Project) in One or More Series in an Amount Not Exceeding \$32,000,000 ("The Bonds") on Behalf of the LSU Board
  2. Resolution to extend authorization to the President to nominate land to be leased by the State Mineral Board
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**II. ATHLETIC COMMITTEE**

Mr. Stanley J. Jacobs, Chairman

1. Approval of the contract for employment for Mr. Malcolm “Cam” Cameron, Offensive Coordinator, Louisiana State University
  2. Recommendation to name the baseball field at Alex Box Stadium the “Skip Bertman Field”
  3. Recommendation regarding further development of LSU at Alexandria’s Intercollegiate Athletic Program
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**III. HEALTH CARE AND MEDICAL EDUCATION  
COMMITTEE**

Dr. John F. George, Chairman

1. Cooperative Endeavor Agreement among the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the State of Louisiana through the Division of Administration, the Louisiana Department of Health and Hospitals, University Medical Center Management Corporation and Louisiana Children’s Medical Center for the management and operation of Charity Hospital and Medical Center of Louisiana at New Orleans
  2. Cooperative Endeavor Agreement among the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the State of Louisiana through the Division of Administration, the Louisiana Department of Health and Hospitals, Lafayette General Health System, Inc. and University Hospital and Clinics, Inc. for the management and operation of University Medical Center at Lafayette
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#### **IV. AUDIT COMMITTEE**

Mr. James W. Moore, Jr., Chairman

The Audit Committee will meet in the President's Conference Room following the Integrated Committee Meetings and the Board Meeting. The Committee may go into Executive Session in accordance with the provisions of LA. R.S. 42:6.1 A (4)

**AGENDA**  
**LSU BOARD OF SUPERVISORS MEETING**

**(Immediately following the Integrated Committee Meetings)**

**Wednesday, April 17, 2013**

**Mr. Hank Danos, Chairman**

1. Call to Order and Roll Call
2. Invocation and Pledge of Allegiance
3. Approval of the Minutes of the Board Meeting held on March 18, 2013 and the Special Board Meeting held on March 27, 2013
4. Personnel Actions Requiring Board Approval
5. President's Report
6. Reports from the Council of Faculty Advisors and the Council of Staff Advisors
7. Report on Activities of the Board of Regents
8. Reports to the Board
  - A. Health Plan Status Report (Written Report Only)
9. Approval of Consent Agenda Items
  - A. Request approval of an Exclusive License between the LSU Ag Center and ProGene Plant Research, LLC
  - B. Request approval of an Exclusive License between the LSU Ag Center and Terral Seed, Inc.
  - C. Recommendation for a Determination of Acceptable University Purpose for the construction of a Trees and Trails Restrooms at Burden Center
  - D. Request to approve a Tuition and Fee Framework for the Dual Enrollment Program at LSU System Institutions
  - E. Approve of LSUA's Mission Statement

- F. Request approval of the Graduate Certificate in Materials Sciences and Engineering at LSU
- G. Recommendation to enter into Right-of-Way Agreement with Entergy Gulf States, Inc. (Louisiana)

10. Committee Reports

**I. PROPERTY AND FACILITIES COMMITTEE**

Mr. Raymond J. Lasseigne, Chairman

**II. ATHLETIC COMMITTEE**

Mr. Stanley J. Jacobs, Chairman

**III. HEALTH CARE AND MEDICAL EDUCATION COMMITTEE**

Dr. John F. George, Chairman

- 11. Recommendations for Honorary Degrees
- 12. Recommendation for a Boyd Professorship
- 13. Approval of the 2013-14 LSU Board of Supervisors meeting schedule
- 14. Chairman's Report
- 15. Adjournment

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If you plan to attend any meeting listed on this notice and need assistance because you are disabled, please notify the Office of the LSU Board of Supervisors at (225) 578-2154 at least 7 days in advance of the meeting.

**2013-2014 (Proposed)  
LSU BOARD OF SUPERVISORS MEETING SCHEDULE**

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**Friday, October 25, 2013**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: September 24, 2013

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**Friday, December 6, 2013**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: November 6, 2013

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**Friday, January 31, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: January 3, 2014

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**Friday, March 14, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: February 13, 2014

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**Friday, April 25, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: March 26, 2014

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**Friday, June 6, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: May 7, 2014

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**Friday, July 25, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: June 26, 2014

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**Friday, September 5, 2014**  
**10:00 a.m. Committee Meetings and 1:00 p.m. Board Meeting**  
Baton Rouge, LSU System Building

Deadline for Submitting Agenda Items: August 6, 2014

I. PROPERTY AND FACILITIES COMMITTEE

**Mr. Raymond J. Lasseigne, Chair**

**Mr. Lee Mallett, Vice Chair**

Mr. Scott A. Angelle

Dr. John F. George

Mr. Stanley J. Jacobs

Mr. Jack E. Lawton, Jr.

Mr. Justin Mannino

Mr. Rolfe McCollister, Jr.

Mr. J. Stephen Perry

AGENDA

1. Final Approval to Execute and Deliver Lease Agreements with the Louisiana Public Facilities Authority in Connection with the Issuance of LPFA's Leave Revenue Bond (Louisiana State University Cogeneration Project) in One or More Series in an Amount Not Exceeding \$32,000,000 ("The Bonds") on Behalf of the LSU Board
2. Resolution to extend authorization to the President to nominate land to be leased by the State Mineral Board



**FINAL APPROVAL AUTHORIZING THE BOARD OF SUPERVISORS  
OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE (THE "LSU BOARD"), ON BEHALF OF  
LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL  
COLLEGE TO, AMONG OTHER THINGS, EXECUTE AND DELIVER LEASE  
AGREEMENTS WITH THE LOUISIANA PUBLIC FACILITIES AUTHORITY  
(THE "LPFA") IN CONNECTION WITH THE ISSUANCE OF THE LPFA'S LEASE  
REVENUE BONDS (LOUISIANA STATE UNIVERSITY COGENERATION PROJECT)  
IN ONE OR MORE SERIES IN AN AMOUNT NOT EXCEEDING \$32,000,000  
(THE "BONDS") ON BEHALF OF THE LSU BOARD**

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8, D.1 of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter."

D.1 Any matter having a significant fiscal (primary or secondary) or long-term educational or policy impact on the LSU System or any of its campuses or divisions.

**1. Summary of Matter**

At its December 7, 2012, meeting, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the "LSU Board") authorized Louisiana State University and Agricultural and Mechanical College (the "University" or "LSU") to (i) make application to the Louisiana Public Facilities Authority (the "LPFA") for the issuance of the LPFA's Lease Revenue Bonds (Louisiana State University Cogeneration Project) in one or more series in an aggregate principal amount not exceeding \$32,000,000 (the "Bonds") in order to refinance the outstanding Certificates of Participation evidencing Assignment of a Proportionate Interest in Rights to Receive Certain Revenues Pursuant to the Lease Agreement dated February 18, 2003 (the "Initial Lease Agreement") of natural gas fueled cogeneration equipment, currently outstanding in the principal amount of \$32,055,000 (the "Certificates"), (ii) make application to the Louisiana State Bond Commission for approval of a Lease Agreement with the LPFA relating to the Bonds (the "New Lease Agreement"), pursuant to which the LSU Board will lease the Equipment and sublease the land and building housing the Equipment from the LPFA as authorized by L.S.A. R.S. 17:3365.

The issuance of the Bonds was approved by the LPFA on December 11, 2012, and March 12, 2013. The issuance of the Bonds was preliminarily approved by the Louisiana State Bond Commission on March 21, 2013, and is expected to receive final approval by the Louisiana State Bond Commission on April 18, 2013. The Bonds will be issued pursuant to a Trust Indenture (the "Indenture") between the LPFA and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

Pursuant to the New Lease Agreement, LSU will make lease payments in amounts sufficient to pay debt service on the Bonds. LSU's obligation to make payments under the New Lease Agreement will be conditioned on funds being appropriated therefore. The non-appropriation clause under the New Lease Agreement will provide that the Board will make the determination whether, at any time, insufficient funds have been appropriated to LSU by the Louisiana Legislature to enable LSU to make the lease payments when due. At the termination of the New Lease Agreement, LSU will own the Equipment. The term of the New Lease Agreement will not extend beyond June 25, 2024.

LSU is requesting the Board to grant final approval and authorization to representatives of LSU, the LPFA, bond counsel to the LPFA and counsel to the Board to (i) proceed with the necessary steps to refinance the Certificates through the issuance of the Bonds by the LPFA for the purposes of (a) acquisition of the Equipment by the LPFA from the University Energy Equipment Corporation, (b) funding a debt service reserve fund, if necessary, and (c) paying the costs of issuance of the Bonds, (ii) terminate



the Initial Lease Agreement, (iii) execute and deliver a Lease Agreement for Land and Building to House Cogeneration Equipment between the LSU Board and the LPFA (the "Ground Lease Agreement"), pursuant to which the LSU Board will lease to the LPFA the land and building housing the Equipment, as authorized pursuant to L.S.A. R.S. 17:3361, *et seq.*, (iv) execute and deliver the New Lease Agreement, (v) approve the form of the Indenture and (vi) execute and deliver such other documents, instruments and certificates necessary on the advice of bond counsel to the LPFA and counsel to the Board to accomplish the foregoing, including, without limitation, a Tax Compliance Certificate to be dated the date of delivery of the Bonds (the "Tax Certificate").

LSU anticipates that the Bonds will be issued and placed with a financial institution, and the Ground Lease Agreement, New Lease Agreement and Tax Certificate will be executed and delivered, in late April or early May 2013.

## **2. Review of Business Plan**

Not applicable at this time.

## **3. Fiscal Impact**

This refinancing of the Certificates will not have any negative fiscal impact on LSU. Rather, under current market conditions, the refinancing of the Certificates is expected to result in approximately \$400,000 in annual debt service savings to LSU. The obligations of the Board to make rental payments under the Initial Lease Agreement are, and under the New Lease Agreement will continue to be, payable from any funds available therefore and such obligations are unsecured. Under the New Lease Agreement, as under the Initial Lease Agreement, the Board will covenant and agree to use its best efforts to cause to be included in its budget request each year amounts sufficient, together with existing appropriations and any other lawfully available money, to enable the Board to make each payment of rent and all other amounts payable under the New Lease Agreement when due; provided, however, payment of such amounts each year is subject to annual appropriation.

## **4. Description of Competitive Process**

As previously reported to the LSU Board, a competitive process was used to select the underwriter for the initial issuance of the 2003 Certificates of Participation. The successful underwriter for the 2003 issuance, Raymond James & Associates, Inc. (successor to Morgan Keegan & Company, Inc.) will be used by the LPFA as placement agent for the refinancing due to its experience with the issue.

## **5. Review of Legal Documents**

This refinancing request is consistent with Board policy as previously adopted on October 26, 2001, and March 20, 2002, authorizing the execution and delivery of the Initial Lease Agreement.

## **6. Parties of Interest**

None of the parties relevant to the approval of the New Lease Agreement and the refinancing of the Certificates have any related interest in the New Lease Agreement or refinancing, nor will they receive any financial gain from this approval. The LPFA's sole purpose is to assist LSU in this refinancing to obtain debt service savings.

## **7. Related Transactions**

Issuance of lease revenue bonds by the LPFA to accomplish refinancing.

## **8. Conflicts of Interest**

None.

**ATTACHMENTS:**

- Letter from Interim Vice Chancellor Kuhn
- Attachment I – Form of the New Lease Agreement [**Available on LSU System Website**]
- Attachment II – Form of the Ground Lease Agreement [**Available on LSU System Website**]
- Attachment III – Form of the Trust Indenture [**Available on LSU System Website**]

## RECOMMENDATION

It is recommended that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College adopt the following resolution:

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the "Board") that:

SECTION 1. The Board has been advised that (i) the Louisiana Public Facilities Authority will issue its Lease Revenue Bonds (Louisiana State University Cogeneration Project) in one or more series in an aggregate principal amount not exceeding \$32,000,000 (the "Bonds") in order to acquire certain natural gas fueled cogeneration equipment (the "Equipment"), thus refinancing the outstanding Certificates of Participation evidencing Assignment of a Proportionate Interest in Rights to Receive Certain Revenues Pursuant to the Lease Agreement dated February 18, 2003 (the "Initial Lease Agreement"), between the Board, as Lessee, and the University Energy Equipment Corporation (the "Corporation"), as Assignee of Bernhard Mechanical Contractors, Inc., as Lessee, currently outstanding in the principal amount of \$32,055,000 (the "Certificates") and (ii) the Bonds will bear interest at a fixed rate not to exceed five percent (5%) per annum for a term ending on or before July 1, 2024.

SECTION 2. The Board hereby ratifies all prior actions taken on its behalf by LSU officials in furtherance of this transaction.

SECTION 3. The Board does hereby approve the forms of (i) Lease Agreement for Land and Building to House Cogeneration Equipment (the "Ground Lease") and Lease Agreement (the "Lease Agreement") to be entered into by the Board and the LPFA and (ii) Trust Indenture (the "Indenture") between the LPFA and The Bank of New York Mellon Trust Company, N.A., each relating to the Bonds, the forms of which are attached hereto, with such changes and modifications which are deemed by an Authorized Board Representative (defined herein) to be in the best interest of the Board and Louisiana State University and Agricultural and Mechanical College ("LSU"), including, without limitation, such changes as are required by the purchaser of the Bonds and as are recommended by counsel to the Board and Bond Counsel to the LPFA.

SECTION 4. The Board does hereby authorize the Chairman, Chairman-Elect and/or Secretary of the Board, and/or the Interim Vice Chancellor for Finance and Administrative Services and CFO of LSU, or any one of them acting alone (each, an "Authorized Board Representative"), to (i) terminate the Initial Lease Agreement, (ii) execute and deliver the Ground Lease and the Lease Agreement and (iii) execute and deliver such other documents, instruments and certificates necessary on the advice of Bond Counsel to the LPFA and counsel to the Board to accomplish the foregoing, including, without limitation, a Tax Compliance Certificate to be dated the date of delivery of the Bonds.

SECTION 5. The Board does hereby request the University Energy Equipment Corporation (the "Corporation"), pursuant to Section 4.1(c) of the Indenture of Trust dated as of January 1, 2003 (the "Certificate Indenture") between The Bank of New York Mellon Trust Company, N.A. (successor to Bank One Trust Company, N.A.) as trustee (the "Certificate Trustee" and the Corporation, pursuant to which the Certificates were issued, to take all action necessary to (i) direct the Certificate Trustee to redeem, on July 1, 2013, the Certificates maturing July 1, 2018, and thereafter, at a price of 101% of the par amount thereof, and to send the necessary notice(s) in connection therewith and (ii) direct the Certificate Trustee to use all moneys on deposit in the funds and accounts under the Certificate Indenture, together with a deposit by the LPFA, on behalf of the Corporation, of a portion of the proceeds of the Bonds, to pay principal and interest on the Certificates maturing July 1, 2013, and to redeem the Certificates maturing July 1, 2018, and thereafter, as set forth in clause (i) above, and, upon receipt of the purchase price of the Equipment from the LPFA (the amount necessary to pay the Certificates in full on July 1, 2013), to take all action necessary to transfer title to the Equipment to the LPFA.

SECTION 6. The foregoing is being undertaken pursuant to L.S.A. R.S. 17:3361, et seq., and other constitutional and statutory authority.

TO: William L. Jenkins  
Interim President

DATE: March 20, 2013

FROM: Robert Kuhn  
Interim Vice Chancellor for  
Finance & Administrative Services and CFO

RE: Final Approval to Execute and Deliver Lease Agreements with the Louisiana Public Facilities Authority in Connection with the Issuance of LPFA's Lease Revenue Bond (Louisiana State University Cogeneration Project) in One or More Series in an Amount Not Exceeding \$32,000,000 (The "Bonds") on Behalf of the LSU Board

The Board of Supervisors, at its December 7, 2012 meeting, authorized LSU to make application to the Louisiana Public Facilities Authority for issuance of the LPFA's Lease Revenue Bonds (Louisiana State University Cogeneration Project) in one or more series in an aggregate principal amount not to exceed \$32,000,000 (the "Bonds") in order to refinance the outstanding Certificates of Participation.

LSU is now requesting that the Board grant final approval and authorization to representatives of LSU, LPFA, bond counsel to LPFA and counsel to the Board to proceed with the necessary steps to refinance the Certificates through the issuance of Bonds by LPFA and as so stipulated in the resolution.

I respectfully request, should you concur, that the resolution be submitted for placement on the agenda for the April 2013 meeting of the Board of Supervisors.

Please let me know if you have additional questions. Thank you.

Attachments

**Institutional Approval – Robert Kuhn for William L. Jenkins**

*Robert Kuhn for William Jenkins*

# **LEASE AGREEMENT**

**BETWEEN**

**LOUISIANA PUBLIC FACILITIES AUTHORITY**

**AND**

**BOARD OF SUPERVISORS  
OF LOUISIANA STATE UNIVERSITY  
AND AGRICULTURAL AND MECHANICAL COLLEGE**

**DATED AS OF APRIL 1, 2013**

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**\$ \_\_\_\_\_  
LOUISIANA PUBLIC FACILITIES AUTHORITY  
LEASE REVENUE BONDS  
(LOUISIANA STATE UNIVERSITY COGENERATION PROJECT)  
Series 2013**

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**FINANCING AGREEMENT**

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# LEASE AGREEMENT

This **LEASE AGREEMENT** dated as of April 1, 2013 (together with any amendments or supplements hereto, the “Agreement”), is between the **LOUISIANA PUBLIC FACILITIES AUTHORITY**, a public trust and public corporation of the State of Louisiana (the “Authority”), and the **BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE**, a public constitutional corporation duly created and existing under the Constitution and laws of the State of Louisiana (the “Board”).

## WITNESSETH:

WHEREAS, the Authority is a public trust created for public purposes for the benefit of the State of Louisiana (the “State”) by a certain Indenture of Trust dated August 21, 1974 under and pursuant to the provisions of the Louisiana Public Trust Act (La. R.S. 9:2341-2347, as amended) (the “Act”); and

WHEREAS, the Act and said Indenture of Trust empower the Authority to promote, encourage and further the accomplishment of all activities which are or may become of benefit to the State of Louisiana and its inhabitants and which have a public purpose, and to procure any funds necessary therefor by mortgage, pledge or other encumbrance of the trust estate dedicated by it therefor and to provide for the issuance and delivery of special obligation revenue bonds of the Authority to evidence any indebtedness so incurred; and

WHEREAS, the Board has requested that the Authority issue \$\_\_\_\_\_ aggregate principal amount of Louisiana Public Facilities Authority Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013 (the “Bonds”) for the purpose of (i) financing the acquisition of certain natural gas fueled cogeneration equipment (the “Equipment”) from University Energy Equipment Corporation (the “Corporation”) at a price necessary to pay in full the Certificates of Participation evidencing Assignment of a Proportionate Interest in Rights to Receive Certain Revenues Pursuant to the Lease Agreement dated February 18, 2003 (the “Certificates”), thus refinancing the Certificates, and (ii) paying the costs of issuance of the Bonds; and

WHEREAS, the Board has leased to the Authority certain land and improvements located on the campus of Louisiana State University and Agricultural and Mechanical College which house the Equipment (the “Equipment Housing”) pursuant to that certain Ground Lease Agreement dated as of April 1, 2013 (the “Ground Lease”); and

WHEREAS, the Company and the Authority are empowered to consummate the transactions contemplated hereunder and to do all acts and exercise all powers and assume all obligations necessary or incident thereto; and

WHEREAS, in consideration of the issuance of the Bonds by the Authority and the lease of the Equipment to the Board pursuant to this Agreement, the Company will agree to make rental

payments pursuant to this Agreement in an amount sufficient to pay, among other things, the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, the Authority has adopted a resolution authorizing the sale and the issuance of the Bonds, the execution and delivery of instruments pertaining to the issuance thereof and other actions to be taken by the Board of Trustees of the Authority in connection with the authorization, issuance, sale and delivery of the Bonds and the application of the proceeds thereof; and

WHEREAS, all acts, conditions and things required by the laws of the State to happen, exist and be performed precedent to and in the execution and delivery of this Agreement have happened, exist and have been performed as so required in order to make this Agreement a valid and binding agreement in accordance with its terms; and

WHEREAS, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Agreement and the parties are now prepared to execute and deliver this Agreement; and

WHEREAS, in consideration of the respective representations and agreements contained herein, the parties hereto, recognizing that under the Act this Agreement shall not in any way obligate the State or any public corporation thereof, including, without limitation, the Authority, to raise any money by taxation or use other public moneys for any purpose in relation to the Bonds and that neither the State nor the Authority shall pay or promise to pay any debt or meet any financial obligation to any person at any time in relation to the Bonds except from moneys received under the Indenture or derived from the exercise of the rights of the Authority thereunder, agree as follows:

NOW, THEREFORE, THIS LEASE AGREEMENT WITNESSETH:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the preamble hereto or in the Indenture. In addition to words and terms elsewhere defined in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless some other meaning is plainly intended:

**“Agreement”** means this Lease Agreement dated as of April 1, 2013, between the Board and the Authority, including any amendments and supplements hereto as permitted hereunder.

**“Bond Counsel”** means Adams and Reese LLP and its successors, or such other nationally recognized bond counsel as may be selected by the Authority and acceptable to the Board.

**“Contaminant”** shall mean any waste, pollutant or hazardous substance, as those terms are defined in CERCLA, regulations promulgated thereunder and any applicable state statutes, and any toxic substance, solid or hazardous waste as defined in RCRA and any applicable state statutes, special waste, petroleum or petroleum-derived substance, radioactive material or waste, polychlorinated biphenyls (PCBs), asbestos, or any continuant of any such substances or wastes.

**“Environmental Lien”** shall mean a lien in favor of any Governmental Authority for (i) any liability under federal or state environmental laws or regulations or (ii) damages arising from, or costs incurred by such Governmental Authority in response to, a Release or threatened Release of a Contaminant into the environment.

**“Environmental Regulation”** shall mean any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating to dangerous, toxic or hazardous pollutants, contaminants, chemical waste, materials or substances.

**“Equipment”** means the natural gas fueled cogeneration equipment more particularly described in **Exhibit A** hereto.

**“Equipment Housing”** means certain land and improvements located on the campus of the University which house the Equipment, as more particularly described in the Ground Lease.

**“Event of Nonappropriation”** shall have the meaning assigned thereto in Section 4.6 hereof.

**“Fiscal Year”** means any period of twelve consecutive months adopted by the Board as its Fiscal Year for financial reporting purposes, presently the period beginning on July 1 of any year and ending on June 30 of the following year.

**“Governmental Authority”** shall mean any nation or government, any federal, state, local, or other political subdivision thereof and any agency or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

**“Hazardous Substances”** shall mean dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances as defined in Environmental Regulations, and also any urea formaldehyde, polychlorinated biphenyls, asbestos, asbestos-containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or any other waste, material, substance, pollutant or contaminant which would subject the owner or mortgagee or any Holder (as defined in Environmental Regulations) of the subject property to any damages, penalties or liabilities under any applicable Environmental Regulation.

**“Indenture”** means the Trust Indenture dated as of April 1, 2013, between the Authority and the Trustee, as it may be amended or supplemented from time to time by supplemental indentures in accordance with the provisions thereof.

**“Independent Counsel”** means an attorney or firm of attorneys duly admitted to practice law before the highest court of any state and which attorney, firm or any member thereof is not an officer, director or full time employee of the Authority, the Board or the Trustee.

**“Liabilities and Costs”** shall mean all liabilities, obligations, responsibilities, losses, damages, costs and expenses (including, without limitation, attorney, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties, monetary sanctions and interest, whether direct or contingent, matured or otherwise.

**“Net Proceeds”** when used with respect to any proceeds from any condemnation award or policies of insurance required hereby, or proceeds from any repossession and liquidation of the Equipment or proceeds from the sale of the Equipment, means the amount remaining after deducting from such proceeds (i) all expenses (including, without limitation, reasonable attorneys fees and costs) incurred in the collection of such proceeds or award; and (ii) all other fees, expenses, and indemnities and payments due to the Authority and the Trustee.

**“Officer's Certificate”** means a certificate signed by an Authorized Board Representative.

**“Payments”** means the amounts of rental payments with respect to the Equipment to be made by the Board as provided in Article IV of this Agreement.

**“Permitted Liens”** means, with respect to the Equipment and the Equipment Housing, as of any particular time, (i) any liens and encumbrances described in **Exhibit B** hereto (provided that any such existing lien or encumbrance may not be extended, renewed or modified in any way unless it would otherwise qualify as a Permitted Lien), (ii) liens for ad valorem taxes not then delinquent, (iii) the Indenture, the Ground Lease and this Agreement, (iv) mechanic's, materialmen's, warehousemen's, carrier's and other similar liens, all to the extent permitted under Section 6.2(d) hereof, (v) any other encumbrances consented to in writing by the Authority and the Trustee and (vi) such minor defects, irregularities, encumbrances, easements, rights-of-way, or clouds on title as normally exist with respect to properties similar in character and location to the Equipment and as do not, in the opinion of Independent Counsel, materially impair the use or value of the property affected thereby for the purpose for which it was acquired or held by the Authority or impair the lien of the security interest created by the assignment hereof.

**“Purchase Option Price”** means, as of any date, the amount necessary to pay the Bonds in full, pay all other amounts due and owing under this Agreement and discharge the Indenture in accordance with Article XII thereof.

**“Release”** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing or dispersing into the indoor or outdoor environment or into or out of the Equipment Housing, including, but not limited to, the movement of Contaminants through or in the air, soil, surface water, groundwater or the Equipment Housing and the abandonment or discard or barrels, containers, and other open or closed receptacles containing any Contaminant.

**“Remedial Action”** shall mean actions related to (i) cleaning up, removing, treating or in any other way addressing Contaminants in the indoor or outdoor environment; (ii) preventing or minimizing the Release or threat of Release of Contaminants so that Contaminants do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; and (iii) collecting environmental data or performing pre-remedial studies and investigations and performing operations and maintenance and post-remedial monitoring and care.

**“Requirement of Law”** shall mean any federal, state or local statute, ordinance, rule or regulation, any judicial or administrative order (whether or not on consent), request or judgment, any common law doctrine or theory, and any provision or condition of any permit or other binding determination of any Governmental Authority.

**“State”** means the State of Louisiana.

**“Tax Compliance Certificate”** means the Tax Compliance Certificate dated April 30, 2013, by the Authority, the Board and the Trustee.

**“UCC”** means Chapter 9 of the Louisiana Commercial Laws (La. R.S. 10:9-101 *et seq.*), as amended.

**“University”** means Louisiana State University and Agricultural and Mechanical College located in Baton Rouge, Louisiana.

SECTION 1.2. Rules of Construction. (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, the word “person” shall include the plural as well as the singular number, and “person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(c) Provisions calling for the redemption of Bonds or the calling of Bonds for redemption do not mean or include the payment of Bonds at their stated maturity or maturities.

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

## ARTICLE II

### REPRESENTATIONS

SECTION 2.1. Representations by the Authority. The Authority represents and warrants as follows:

- (a) The Authority is a public trust and a public corporation of the State.
- (b) Under the provisions of the Act, the Authority is duly authorized to enter into, execute and deliver the Indenture, this Agreement, the Tax Regulatory Agreement and the Ground Lease and to undertake the transactions contemplated by the Indenture, this Agreement, the Tax Regulatory Agreement and the Ground Lease and to carry out its obligations hereunder and thereunder.
- (c) The Authority has duly authorized the execution and delivery of this Agreement, the Indenture, the Tax Regulatory Agreement, the Ground Lease and the Bonds.
- (d) The Authority agrees that it will do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

SECTION 2.2. Representations of the Board. The Board makes the following representations and warranties:

- (a) The Board is public constitutional corporation duly created and existing under the Constitution and laws of the State, has power to execute and deliver this Agreement, the Tax Regulatory Agreement and the Ground Lease, and by proper action has been duly authorized to execute and deliver this Agreement, the Tax Regulatory Agreement and the Ground Lease.
- (b) Each of the statements made with respect to the Board in the recitals of this Agreement is true, correct and complete.
- (c) The Board is not in breach of or in default under any of the provisions of (i) any judgment, decree, order, statute, rule or regulation applicable to it or to its properties or (ii) any material provision of any indenture, mortgage, loan agreement, financing agreement, bond resolution or other contract or instrument to which it is a party or by which it or any of its properties are bound.
- (d) The Board is not required in connection with the transactions contemplated by this Agreement and the Ground Lease to obtain any consent not already obtained.
- (e) The Board has obtained or timely will obtain, as required, all authority, permits, licenses, consents and authorizations as are necessary to own, lease and operate its properties and to carry on its business and to carry out and consummate all the transactions contemplated by this Agreement, the Tax Regulatory Agreement and the Ground Lease.

(f) This Agreement, the Tax Regulatory Agreement and the Ground Lease in accordance with their terms, are legal, valid and binding obligations of the Board, and the authorization, execution and delivery hereof and thereof and compliance with the provisions hereof and thereof do not conflict with or constitute on the part of the Board a violation of, breach of, or default under (i) any provision of any indenture, mortgage, deed of trust, loan agreement or other contract or instrument to which the Board is a party or by which it or any of its properties are bound, (ii) any order, injunction or decree of any court or governmental authority, or (iii) the provisions of its bylaws, rules or regulations.

(g) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against the Board or the University, wherein an unfavorable decision, ruling or finding would materially and adversely affect the properties, business, prospects, profits or condition of the Board or the University, or which would adversely affect the validity or enforceability of this Agreement, the Ground Lease, the Tax Regulatory Agreement or any other agreement or instrument to which the Board is a party used in consummation of the transactions contemplated hereunder.

(h) The Equipment constitutes movable property and will not be deemed to be affixed to or part of the immovable property on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to immovable property.

SECTION 2.3. Environmental Representations.

(a) To the best of its knowledge, after due inquiry, no litigation, investigation or administrative or other proceeding of any kind before or by any Governmental Authority or private party relating to (i) any environmental, health, or safety Requirement of Law, (ii) any Remedial Action, (iii) any Liabilities and Costs arising from the Release or threatened Release of Contaminant into the environment or (iv) any other Liabilities and Costs arising from or concerning environmental, health or safety issues or conditions is pending or threatened against or involving the Equipment Housing.

(b) The Board is not subject to any judgment, injunction, writ, order or agreement respecting (i) any environmental, health or safety Requirement of Law, (ii) any Remedial Action, (iii) any Liabilities and Costs arising from the Release or threatened Release of any Contaminant into the environment or (iv) any other Liabilities and Costs arising from or concerning environmental, health or safety issues or conditions arising from a violation of law. In addition, the Board is not now aware, after due inquiry, of any grounds on which such judgment, injunction, writ, order or agreement might be based.

(c) The Board has taken all steps reasonably necessary to determine and has determined to the best of its knowledge that no Contaminants have been disposed of on the Equipment Housing in any material manner and that there has been no Release of any Contaminant on, from, under or to the Equipment Housing other than in compliance with applicable law.



(d) The operations or other activities of the Board will not result in the disposal or other Release of any Contaminant on or from the Equipment Housing other than in all cases in compliance with applicable law.

(e) The Board has not entered into any negotiations or agreements with any person relating to any Remedial Action with respect to the Equipment Housing.

(f) The Board has not received any notice or claim or information with respect to the Equipment Housing to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment in violation of applicable law.

(g) No Environmental Lien has attached to the Equipment Housing.

(h) The Equipment Housing does not contain any asbestos or PCB containing material in violation of any Requirement of Law.

The operations or other activities of the Board shall not result in the disposal or other Release of any Contaminant on or from the Equipment Housing other than in compliance with all current and future applicable environmental laws and the Board shall not engage in any activities that will result in the violation of any current or future environmental laws related to the Equipment Housing. The Board shall obtain from time to time all permits required under any current or future environmental laws so that the operations of the Board related to the Equipment Housing will be in accordance with such laws.

The Board will make available for inspection from time to time all documents and information in its possession and control regarding activities and conditions relating to the Equipment Housing which may result in noncompliance with, or liability under, any Requirement of Law.

The Board shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the Equipment Housing other than in accordance with all applicable Environmental Regulations, shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom other than in accordance with all applicable Environmental Regulations, shall not install or permit to be installed any underground storage tank therein or thereunder other than in accordance with all applicable Environmental Regulations, and shall comply with all Environmental Regulations which are applicable to the Equipment Housing. To the extent permitted by applicable law, the Board shall indemnify the Trustee and the Authority and shall hold the Trustee and the Authority harmless from, and shall reimburse the Trustee and the Authority for, any and all claims, demands, judgments, penalties, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the Trustee or the Authority and the payee and holder of any Bond (prior to trial, at trial and on appeal) in any action against or involving the Trustee or the Authority, resulting from any breach of the foregoing covenants, or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Equipment Housing, it being the intent of the Board that

the Trustee and the Authority shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or other with respect to, Hazardous Substances by virtue of their interests, if any, in the Equipment Housing created by the Indenture, and the Agreement or otherwise, or hereafter created, or as the result of the Trustee or the Authority exercising any instrument, including but not limited to becoming the owner thereof by foreclosure or conveyance in lieu of foreclosure.

The foregoing representations, warranties and covenants shall be deemed continuing covenants, representations and warranties for the benefit of the Trustee and the Authority and any successors and assigns thereof, including but not limited to any transferee of the title of the Trustee and any subsequent owner of the Equipment Housing, and shall survive the satisfaction and release of the Indenture and this Agreement, or under any other instrument, and/or any acquisition of title to the Equipment Housing or any part thereof by the Trustee or the Authority by deed in lieu of foreclosure or otherwise.

## ARTICLE III

### TERM, NATURE AND BENEFITS OF AGREEMENT; ACQUISITION OF PROJECT

SECTION 3.1. Term. The term of this Agreement shall commence on the Closing Date for the Bonds, and shall terminate (unless discharged upon prepayment of all sums due hereunder by the Board prior thereto as hereinafter provided) on the date on which the Bonds and all other sums secured hereunder shall have been paid or provision for their payment shall have been made in accordance herewith. Notwithstanding the foregoing, the indemnification provisions of this Agreement shall survive the termination thereof and the defeasance of the Bonds under the Indenture.

SECTION 3.2. Nature and Benefits. This Agreement has been executed and delivered in part to induce concurrently herewith the purchase by others of the Bonds, and, accordingly, all covenants and agreements on the part of the Board and the Authority, as set forth therein and herein, are hereby declared to be for the benefit of the Trustee for the owners from time to time of the Bonds. The Board consents and agrees to the assignment by the Authority to the Trustee under the Indenture of all of the Authority's right, title and interest (except for certain rights relating to exculpation, notices, indemnification and payment of expenses) in, to and under this Agreement and agrees that the provisions hereof may be enforced by the Trustee under the provisions of the Indenture. The Board agrees to do all things within its power in order to comply with, and to enable the Authority to comply with, all requirements and to fulfill, and to enable the Authority to fulfill, all covenants of the Indenture and the Bonds.

Subject to Section 4.6 hereof, this Agreement is a general obligation of the Board, the full faith and credit of the Board are pledged to the payment of the Board's obligations hereunder, and this Agreement shall remain in full force and effect until the Bonds and the interest therein have been fully paid or otherwise provided for or discharged.

SECTION 3.3. Lease of the Equipment. In consideration for payment by the Board of the Payments as required by Section 4.2 hereof and other valuable consideration, the Authority hereby demises and leases and/or subleases to the Board, and the Board hereby leases and/or subleases from the Authority, the Equipment and the Equipment Housing.

SECTION 3.4. Quiet Possession. The Authority covenants and represents that, so long as no Event of Default by the Board has occurred and is continuing hereunder, the Board shall have, hold and enjoy, during the term of this Agreement, peaceful, quiet and undisturbed possession of the Equipment, subject to the terms and provisions hereof.

SECTION 3.5. No Warranty of Condition or Suitability. The Board acknowledges its full familiarity with the Equipment and that the Authority has no responsibility for the Equipment. The Authority makes no representation or warranty, either express or implied, and offers no assurance that the Equipment will be suitable for the purposes of the Board.

## ARTICLE IV

### **DISBURSEMENT OF BOND PROCEEDS; PAYMENTS; CREDITS; OBLIGATIONS UNCONDITIONAL; NONAPPROPRIATION; PREPAYMENT; PURCHASE OPTION; CONVEYANCE**

SECTION 4.1. Disbursement of Bond Proceeds. In order to provide funds to acquire the Equipment (thus defeasing the Certificates) and to pay the costs of issuance of the Bonds, the Authority, as soon as practicable after the execution of this Agreement will proceed to issue, sell and deliver the Bonds to the purchasers thereof and will deposit the proceeds thereof as provided by Section 4.1 of the Indenture with the Trustee for disbursement in accordance with the provisions of the Indenture.

SECTION 4.2. Amounts Payable. Upon the terms and conditions of this Agreement, the Authority shall use the proceeds of the Bonds to acquire the Equipment by paying in full the Certificates. A portion of the proceeds of the Bonds shall be deposited with the Escrow Trustee and applied in accordance with the Escrow Agreement.

The Board, for and in consideration of the issuance of the Bonds under the Indenture by the Authority and the application of the proceeds thereof by the Authority as provided in the Indenture and in this Agreement for the benefit of the Board, hereby promises, subject only to Section 4.6 hereof, to make the following rental payments (collectively called the "Payments") to or for the account of the Authority:

(a) Payments being, in the aggregate, an amount sufficient for the payment in full of all Bonds from time to time issued under the Indenture and then outstanding, including (i) the total interest becoming due and payable on the Bonds to the date of payment thereof, and (ii) the total principal amount of and premium, if any, on the Bonds. The Payments with respect to the Bonds shall be payable directly to the Trustee for the account of the Authority in installments as follows:

(i) Semiannually, on or before the 25th day of each June and December, commencing June 25, 2013, an amount equal to the interest due and payable on the Bonds on the next Interest Payment Date, and

(ii) Annually, on or before the 25<sup>th</sup> day of each June, commencing June 25, 2013, the principal amount of the Bonds maturing or scheduled for mandatory sinking fund redemption on the next principal payment date.

Each installment of the Payments payable by the Board hereunder shall be in an amount which, including moneys in the Debt Service Fund then available, shall be designed to provide for the timely payment in full of the principal of, premium, if any, and interest on the Bonds.

The Board promises, subject only to Section 4.6 hereof, that it will pay the Payments at such times and in such amounts as to assure that no default in the payment of the principal of, premium, if any, or interest on the Bonds shall at any time occur.

Whenever the Board shall fail to pay the full amount of any installment of Payments payable under this Section 4.2(a) by the day of the month in which such installment is due, the Trustee shall give immediate telephonic notice thereof, promptly confirmed in writing, to an Authorized Board Representative.

(b) Default or Delay Payments consisting of the amounts, fees and expenses which the Authority may incur or be or become legally obligated to pay under the terms of the Bonds or the Indenture by reason of any default hereunder or thereunder or any default or delay in payment of the sums due hereunder or thereunder, provided that such default or delay shall have resulted from the Board's default or breach of covenant under this Agreement; the amount expended by the Authority or the Trustee or indebtedness incurred by the Authority or the Trustee for the purpose of curing the Board's defaults hereunder or in connection with any defaults under the Bonds or the Indenture and all costs, expenses and charges, including reasonable attorneys' fees, incurred by the Authority or the Trustee in collecting the Payments or in enforcing any covenant or agreement of the Board contained in this Agreement or incurred in pursuing any remedy hereunder or under the Indenture.

(c) Costs of Issuance, Trustee Expense Payments consisting of costs of issuance of the Bonds and the Trustee's fees and expenses, including the Trustee's initial acceptance fee and the fees and expenses of counsel to the Trustee in connection with the issuance of the Bonds, to be paid directly to the Trustee or counsel to the Trustee upon demand, commencing on the Closing Date and continuing until the principal of and interest on all Bonds outstanding under the Indenture shall have been fully paid, including (i) the annual fee, if any, of the Trustee for the ordinary services of the Trustee rendered and ordinary expenses incurred under the Indenture during the twelve month period preceding that date, (ii) the reasonable fees and charges of the Trustee, and all costs relating to the exchanging of Bonds as provided in the Indenture, as and when the same become due, and (iii) the reasonable fees and charges of the Trustee for necessary extraordinary services rendered by it and extraordinary expenses incurred by it under the Indenture, including attorneys' fees, as and when the same become due, provided that the Board may, without creating a default hereunder, contest in good faith the necessity for any such extraordinary services and extraordinary expenses and the reasonableness of any such fees, charges or expenses, and in the event of such contest may only withhold payment of the contested fees, charges or expenses.

(d) Administrative Payments to be paid directly to the Authority. The Board agrees to pay to the authority on the date of initial delivery of the Bonds a financing acceptance fee equal to 1/20th of 1% of the principal amount of the Bonds. The Board further agrees to make annual administrative payments directly to the Authority on June 1 of each year in an amount equal to 1/10th of 1% of the outstanding Bonds on January 1 of each year unless waived by the Authority. The annual administrative payments shall be used for the purpose of paying administrative and related costs of the Authority, but shall not include Trustee fees or expenses incurred by the Authority in enforcing the provisions of this

Agreement. The Authority has determined to waive the annual administrative payment for the calendar year ending December 31, 2013, and agrees that it will notify the Board in writing prior to March 15 of each year thereafter whether it shall waive such administrative payment for such year. The Board further agrees to pay the Administrative Expenses of the Trustee under the Indenture directly to the Trustee and the Trustee shall receive and disburse such payments as provided in Section 9.4 of the Indenture. In the event the Board should fail to pay any Administrative Expenses, the payment so in default shall continue as an obligation of the Board until the amount in default shall have been fully paid, and the Board agrees to pay the same with interest thereon (to the extent legally enforceable) at a rate per annum equal to the interest rate in effect from time to time on the Bonds, until paid.

SECTION 4.3. Credits Against Payments. A credit against and reduction of the Payments shall be derived only from the following sources:

- (a) Any accrued interest derived from the sale of the Bonds;
- (b) Any capitalization of interest from the proceeds of the Bonds;
- (c) Surplus moneys (including investment earnings) contained in the Funds and Accounts held by the Trustee under the Indenture;
- (d) Advance payments or prepayments of Payments; and
- (e) Reductions in principal and interest requirements of Bonds due to the purchase or redemption of Bonds as provided in the Indenture.

SECTION 4.4. Obligation to Make Payments Unconditional. Except as otherwise provided in Section 4.6 hereof and to the extent permitted by applicable law, the obligation of the Board to make the Payments shall be absolute and unconditional and shall not be subject to, nor shall the Board be entitled to assert, any rights of abatement, deduction, reduction, deferment, recoupment, setoff, offset or counterclaim by the Board or any other person, nor shall the same be abated, abrogated, waived, diminished, postponed, delayed or otherwise modified under or by reason of any circumstance or occurrence that may arise or take place, irrespective of what statutory rights the Board may have to the contrary, including but without limiting the generality of the foregoing:

- (a) Any damage to or destruction of part or all of the Equipment Housing or the Equipment;
- (b) The taking or damaging of part or all of the Equipment Housing or the Equipment or any temporary or partial use thereof by any public authority or agency in the exercise of the power of eminent domain, sequestration or otherwise;
- (c) Any assignment, novation, merger, consolidation, transfer of assets, leasing or other similar transaction of, by or affecting the Board, except as otherwise provided in this Agreement;

(d) Any change in the tax or other laws of the United States, the State or any governmental authority;

(e) Any failure of title or any lawful or unlawful prohibition of the Board's use of the Equipment Housing, the Equipment or any portion thereof or the interference with such use by any person or any commercial frustration of purpose or loss or revocation of any permits, licenses or other authorizations required for the operation of the Equipment Housing and the Equipment; and

(f) Any failure of the Authority or the Trustee to perform and observe any agreement or covenant, expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement, the invalidity, unenforceability or disaffirmance of any of this Agreement, the Ground Lease, the Indenture or the Bonds or for any other cause similar or dissimilar to the foregoing.

The Board hereby covenants and agrees that it shall use its best efforts to cause to be included in its annual budget request amounts sufficient, together with existing appropriations and any other lawfully available funds, to enable it to make each Payment required hereunder when due; provided, however, any failure to do so shall not constitute an Event of Default or an Event of Nonappropriation hereunder.

Furthermore, the Board covenants and agrees that it will remain obligated under this Agreement in accordance with its terms, and that it will not take or participate or acquiesce in any action to terminate, rescind or avoid this Agreement, so long as the Bonds are Outstanding.

SECTION 4.5. Prepayment of Payments. The Board shall have the option to prepay the Payments, in whole or in part, on any date on which the Bonds are subject to optional redemption pursuant to Section 3.4 of the Indenture.

To exercise such option, the Board shall give written notice to the Authority and the Trustee and shall specify therein the date of such prepayment, which prepayment date shall be not less than 45 days from the date such notice is received by the Trustee. The Authority and the Trustee shall make all necessary arrangements satisfactory to the Trustee for the redemption of Bonds to be redeemed under the Indenture in accordance with the provisions thereof.

The prepayment price payable by the Board, in the event of its exercise of the option granted in this Section, or in the case of its obligation to prepay the Payments shall be the sum of the following:

(a) An amount of money which, when added to the moneys and investments held by the Trustee pursuant to the provisions of the Indenture and available for such redemption, is sufficient to pay and discharge the Bonds to be redeemed (including the total principal amount of such Bonds and interest to accrue thereon to the date fixed for redemption of such Bonds to be redeemed, plus a premium equal to the amount of premium required to be paid in connection with the redemption of such Bonds) on the date fixed for redemption; plus

(b) An amount of money equal to the fees and expenses of the Trustee and the Authority accrued and to accrue through such redemption.

SECTION 4.6. Event of Nonappropriation.

(a) Anything to the contrary contained in this Agreement notwithstanding, the continuation of this Agreement is contingent upon the appropriation of funds by the Legislature of the State (the "State Legislature") to the Board to fulfill the requirements of this Agreement. In the event the State Legislature fails to appropriate sufficient moneys to make the required Payments under this Agreement, this Agreement shall terminate on the last day of the Fiscal Year for which funds have been appropriated. Such termination shall be without penalty or expense to the Board, provided that any Payments due and payable during the last Fiscal Year for which funds have been appropriated by the State Legislature shall be paid by the Board hereunder. The Board shall not be obligated to pay any Payments or perform any other obligations hereunder (other than to surrender the Equipment) for any period beyond the last Fiscal Year for which funds have been appropriated to the Board by the State Legislature. The Authority hereby acknowledges and agrees that any such Event of Nonappropriation shall not be deemed an Event of Default under this Agreement. The Board, reserves the right, at its sole discretion, to determine for each Fiscal Year whether its appropriation from the State Legislature for such Fiscal Year includes sufficient moneys to make required Payments under this Agreement. If the Board determines that the State Legislature did not include sufficient moneys to make required Payments under this Agreement for a Fiscal Year, such determination by the Board shall constitute an event of nonappropriation (an "Event of Nonappropriation") for purposes of this Agreement and the Board shall, at the earliest possible date, adopt a resolution declaring that there has been an Event of Nonappropriation hereunder. The Board agrees to notify the Authority, the Trustee and the Purchaser within ten (10) Business Days of a declaration by the Board of an Event of Nonappropriation hereunder.

(b) In the event of a declaration by the Board of an Event of Nonappropriation hereunder, the Board shall, at its expense, cause the Equipment to be disconnected and available for removal within ninety (90) days following the end of the last Fiscal Year for which funds sufficient to make Payments have been appropriated to the Board by the State Legislature.

SECTION 4.7. Purchase Option. There is expressly reserved to the Board the right, and the Board is authorized and permitted upon reasonable notice to the Authority and the Trustee, to purchase the Equipment on any Business Day by payment of the Purchase Option Price, all Payments due and payable hereunder as of the date of purchase and all reasonable and necessary fees, charges and expenses of the Authority and the Trustee in connection with the purchase of the Equipment. Such purchase shall be effective upon receipt of evidence satisfactory to Lessor and its assigns that sufficient arrangements have been made for the payment of the Purchase Option Price.

To exercise the purchase option, the Board shall notify the Authority and the Trustee in writing not less than forty-five (45) days prior to the date on which it proposes to effect such purchase and, on the date of such purchase, shall pay the Purchase Option Price to the Authority in cash.



If at any time the Purchase Option Price, all Payments due and payable hereunder and the reasonable and necessary fees, charges and expenses of the Authority and the Trustee in connection therewith shall be paid, the Board shall be entitled to the conveyance to the Board of the title to the Equipment by the Authority and the Ground Lease shall terminate.

At the closing of any purchase of the Equipment upon payment of the Purchase Option Price pursuant to Section 4.7 hereof, the Authority will, upon receipt of the Optional Purchase Price, deliver to the Board (at the Board's expense) the following:

(a) Documents conveying to the Board title to the Equipment being purchased, as such Equipment then exists (without warranty by the Authority, but with subrogation to all rights of the Authority in and to the Equipment), subject to the following: (i) those liens and encumbrances (if any) to which title to the Equipment was subject when conveyed to the Authority; (ii) those liens and encumbrances created by or with the consent of the Board; (iii) those liens and encumbrances resulting from the failure of the Board to perform or observe any of the agreements on its part contained in this Agreement; (iv) Permitted Liens other than the Indenture, the Ground Lease and this Agreement; and (v) if the option is exercised pursuant to a condemnation, the rights and title of the condemning authority.

(b) Documents evidencing the cancellation of this Agreement, the Ground Lease and the Indenture.

## ARTICLE V

### NON-ARBITRAGE

SECTION 5.1. Covenants as to Arbitrage. The Board hereby agrees to prepare and provide instructions to the Trustee as to the investment and reinvestment of moneys held as part of any fund or account relating to the Bonds. Any such moneys so held as part of any fund or account shall be invested or reinvested by the Trustee in Permitted Investments as specified in Section 4.4 of the Indenture. The Board hereby covenants that it will comply with the terms of the Tax Regulatory Agreement and that it will make such use of the proceeds of the Bonds and all other funds held by the Trustee under the Indenture, regulate the investment of such proceeds and other funds and take such other and further action as may be required so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code and the regulations promulgated thereunder. The Board agrees that it will comply with the terms of any letter of instructions provided to it by Bond Counsel relating to compliance with the provisions of Section 148 of the Code.

If the Board determines that it is necessary to restrict or limit the yield on the investment of any money paid to or held by the Trustee hereunder or under the Indenture in order to avoid classification of the Bonds as arbitrage bonds within the meaning of the Code, the Board may issue to the Trustee an instrument to such effect (along with appropriate written instructions), in which event the Trustee will take such action as is necessary to restrict or limit the yield on such moneys in accordance with such instrument and instructions.

## ARTICLE VI

### CERTAIN COVENANTS OF THE BOARD

SECTION 6.1. General Covenants of Board. The Board further expressly represents, covenants and agrees:

(a) To comply with the terms, covenants and provisions expressed or implied, of all contracts pertaining to, affecting or involving the Equipment Housing and the Equipment or the business of the Board, the violation or breach of which would materially and adversely affect the ability of the Board to fulfill its obligations hereunder;

(b) Whenever and so often as requested so to do by the Trustee or the Authority, promptly to execute and deliver or cause to be executed and delivered all such other and further instruments and documents, and to promptly do or cause to be done all such other and further things, as may be necessary or reasonably required in order to further and more fully vest in the Authority, the Trustee and the owners of the Bonds all rights, interests, powers, benefits, privileges and advantages conferred upon them by this Agreement, the Ground Lease and the Indenture;

(c) Promptly, upon the request of the Authority or the Trustee from time to time, to take such action as may be necessary or proper to remedy or cure any material defect in or cloud upon the title to the Equipment Housing, the Equipment or any part thereof, whether now existing or hereafter developing, to prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and to, to the extent permitted by applicable law, indemnify and save the Authority and the Trustee harmless from all loss, cost, damage and expense, including attorney's fees, which they or either of them may ever incur by reason of any such defect, cloud, suit, action or proceeding;

(d) To the extent permitted by applicable law, to defend against every suit, action or proceeding at any time brought against the Authority or the Trustee based on any claim arising out of the receipt, application or disbursement of any of the Trust Estate or involving the Authority's or the Trustee's rights or obligations under this Agreement, the Ground Lease or the Indenture (except in the case of the Trustee's negligence or willful misconduct), to (to the extent permitted by applicable law) indemnify and hold harmless the Trustee and each officer, employee, agent, or other representative thereof against claims arising out of the Trustee's responsibilities under this Agreement, the Indenture or any other document entered into by the Trustee in connection with the Bonds (except in the case of the Trustee's negligence or willful misconduct), to (to the extent permitted by applicable law) indemnify and hold harmless the Authority and any officer, employee, agent, servant or trustee of the Authority against claims during the term of this Agreement that may be occasioned by any cause pertaining to the use, possession, operation, service, design or management or leasing or subleasing of the Equipment or the Equipment Housing and any liabilities or losses resulting from violations by the Board of conditions, agreements and requirements of law affecting the Equipment or the Equipment Housing or the ownership, occupancy or use thereof or arising from any defect in or from the operation of the Equipment or the Equipment Housing, and to protect and insulate the Authority and the members of its Board

of Trustees individually from any and all financial responsibility or liability whatsoever with respect to the Equipment or the Equipment Housing;

(e) At all times to maintain the Board's rights to carry on the business of the Board and to duly procure all licenses and other authorizations required for the carrying on of its business and to provide all renewals and replacements and improvements to, and extensions of, the Equipment and the Equipment Housing and to diligently maintain, preserve and renew all the rights, powers, privileges, approvals, licenses and franchises required for the carrying on of its business;

(f) To fulfill its obligations and to perform punctually its duties and obligations under this Agreement and to otherwise carry on its business in accordance with the terms hereof to assure the continued proper operation, management, repair and maintenance of the Equipment and the Equipment Housing, and to promptly notify the Trustee in writing of any failure by the Board to fully and timely fulfill any of its obligations hereunder;

(g) To cause compliance with all material provisions of applicable federal, State and local laws;

(h) To pay, discharge, indemnify (to the extent permitted by applicable law) and save the Authority and the Trustee (except in the case of the Trustee's negligence or willful misconduct) and their respective officers, agents, employees, servants and trustees harmless of, from and against any and all costs, claims, damages, expenses, liabilities, liens, obligations, penalties and taxes of every character and nature, by or on behalf of any person, firm, corporation, entity or governmental authority regardless of by whom advanced, asserted, held, imposed or made, which may be imposed upon, incurred by or asserted against the Authority and the Trustee and their respective officers, agents, employees, servants and trustees arising out of, resulting from or in any way connected with this Agreement, the Ground Lease, the Bonds or the Indenture (excepting willful misconduct and negligence on the part of the Trustee or its respective officers, agents, employees, servants and trustees). The Board also covenants and agrees, at its expense, to pay and to indemnify (to the extent permitted by applicable law) and to save the foregoing harmless of, from and against, all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand; and

(i) To furnish to the Authority and Bond Counsel such information necessary to satisfy the reporting requirements of La. R.S. 39:1405.4, as may be amended from time to time. This information shall be delivered to the Authority and Bond Counsel not less than five Business Days prior to the date such information is to be reported to the State Bond Commission.

SECTION 6.2. Covenants Regarding Operation and Maintenance by the Board of the Equipment and the Equipment Housing. The Board acknowledges and agrees that it shall pay during the term hereof all Payments and other sums required hereunder and all operation and maintenance expenses of the Equipment and Equipment Housing. The Board also expressly covenants and agrees:

(a) That it shall maintain the Equipment and Equipment Housing, and each and every portion thereof, including all additions and improvements and all facilities adjoining and/or appurtenant thereto, in good operating order and condition, reasonable and ordinary wear and tear alone excepted, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and otherwise to make all replacements, alterations, improvements and modifications to the Equipment Housing necessary to ensure that the same at all times shall be suitable for the efficient operation thereof for the purpose intended;

(b) That it shall have full and sole responsibility for the condition, repair, replacement, maintenance and management of the Equipment and the Equipment Housing; provided, however, the Authority, the Trustee and their agents shall have the right to inspect the Equipment and the Equipment Housing at any reasonable time in a manner which will not interfere unreasonably with the Board's use thereof;

(c) That no construction undertakings shall be commenced until the Board shall have first procured, so far as the same may be required from time to time, all necessary approvals and authorizations from municipal departments and governmental subdivisions having jurisdiction, and all construction undertakings shall be made and effected promptly and in a good and workmanlike manner and in full compliance with all applicable permits, authorizations and laws and in accordance with all such requirements as insurers of the Equipment and the Equipment Housing, and all components thereof, may reasonably establish;

(d) That it shall pay, as the same respectively become due, all taxes and assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment and the Equipment Housing. The Board shall not allow any part of the Equipment or the Equipment Housing to become and remain subjected to any mechanics', laborer's or materialmen's liens of record. Notwithstanding the foregoing, the Board may, at its own expense and in its own name, contest any such item of tax, assessment, liens or other governmental charge and, in the event of such contest, may permit the item so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority or the Trustee shall notify the Board that, in the opinion of Bond Counsel, by nonpayment of any such items the security afforded the Bonds pursuant to the terms of the Indenture, the Ground Lease or this Agreement will be materially endangered, in which event such taxes, assessments or charges shall be paid forthwith. The Authority will cooperate to the extent reasonably necessary with the Board in any such claim, defense or contest. In the event the Board fails to do so, the Authority or the Trustee may, but shall be under no obligation to, pay any such item and any amounts so advanced therefor by the Authority or the Trustee shall become an additional obligation of the Board to the one making the advancement, which amount the Board agrees to pay together with interest thereon at the rate of the Trustee's prime lending rate;

(e) That it shall comply promptly with all material provisions of present and future laws, ordinances, orders, rules, regulations and requirements of every duly constituted Governmental Authority or agency and all material orders, rules and regulations of any

regulatory, licensing, insurance underwriting or rating organization or other body exercising similar functions. The Board shall likewise perform and comply with all duties and obligations of any kind imposed by law, covenant, condition, agreement or easement and the requirements of all policies of insurance at any time in force with respect to the Equipment and the Equipment Housing;

(f) That it shall not use or allow the Equipment or the Equipment Housing to be used or occupied for any unlawful purpose or in violation of any private covenant, restriction, condition, easement or agreement covering or affecting the use of the Equipment or the Equipment Housing. The Board likewise shall not suffer any act to be done or any condition to exist in the Equipment or the Equipment Housing or any article to be brought therein or thereon which may be dangerous, unless safeguarded as required by law, or which, under law, constitutes a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto;

(g) That it shall provide all equipment, furnishings, supplies, facilities, services and personnel required for the proper operation, management, repair and maintenance of the Equipment and the Equipment Housing in an economical and efficient manner, consistent with standards of operation and administration generally acceptable for facilities of comparable size and scope of operations; and

(h) That it shall take all action, if any, that may be required to obtain such consents, exceptions, exemptions or approvals of Governmental Authorities as may be necessary to permit it to comply fully with all covenants, stipulations, obligations and agreements of the Board contained in this Agreement.

SECTION 6.3. Covenant as to Encumbrances. The Board covenants that, so long as any of the Bonds remain outstanding, it shall not hereafter alienate and shall not hereafter create or suffer to be created any assignment, pledge, hypothecation or lien on any of the Equipment or the Equipment Housing, except for Permitted Liens.

SECTION 6.4. Covenants, Representations and Warranties Relating to Federal Income Taxation. The Board covenants that it shall regulate investment of proceeds of the Bonds and take such other and further actions as may be required by the Code and applicable temporary, proposed and final regulations and procedures, necessary to assure that interest on the Bonds is excludable from gross income for federal income tax purposes. Without limiting the generality of the foregoing covenant, the Board hereby covenants, represents and warrants, as follows:

(a) The Board will not take, fail to take or permit the commission of any action within its control necessary to be taken in order that interest on the Bonds will continue to be excludable from gross income for federal income tax purposes;

(b) The Board will timely file a statement with the United States of America setting forth the information required pursuant to Section 149(e) of the Code;

(c) The Equipment will have a useful life that is substantially in excess of the term of this Agreement;

(d) The Board will not cause the Bonds to be treated as “federally guaranteed” obligations within the meaning of Section 149(b) of the Code (as may be modified in any applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to “federally guaranteed” obligations described in Section 149(b) of the Code);

(e) Based upon all facts and estimates now known or reasonably expected to be in existence on the date the Bonds are delivered, the Board reasonably expects that the proceeds of the Bonds will not be used in a manner that would cause the Bonds or any portion thereof to be an “arbitrage bond” within the meaning of Section 148 of the Code;

(f) As provided in Article V hereof, the Board will monitor the yield on the investment of the proceeds of the Bonds and moneys pledged to the repayment of the Bonds, other than amounts not subject to yield restriction and will restrict the yield on such investments to the extent required by the Code or the Regulations;

(g) The Board agrees to comply with all the terms and provisions of the Tax Regulatory Agreement executed in connection with the issuance and sale of the Bonds, and to perform the covenants and duties imposed on it contained therein.

All officers, employees and agents of the Board are authorized and directed to provide certifications of facts and estimates that are material to the reasonable expectations of the Board as of the date the Bonds are delivered. In complying with the foregoing covenants, the Board may rely from time to time upon an opinion issued by Bond Counsel to the effect that any action by the Board or reliance upon any interpretation of the Code or Regulations contained in such opinion will not cause interest on the Bonds to be includable in gross income for federal income tax purposes under existing law.

SECTION 6.5. Information. The Board agrees, whenever reasonably requested by the Authority or the Trustee, to provide and certify or cause to be provided and certified such information concerning the Equipment and the Equipment Housing, the Board, its finances, and other topics as the Authority or Trustee, as the case may be, considers necessary to enable counsel to the Authority or the Trustee, as the case may be, to issue its opinions and otherwise advise the Authority or the Trustee, as the case may be, as to the transaction or the legal capacity of the parties to enter into the same, or to enable it to make any reports required by law, governmental regulation or the Indenture. When any such information is provided by the Board pursuant to this Section 6.5 the Board shall provide such information to both the Authority and the Trustee.

The Issuer and the Board hereby acknowledge that, as of the date of issuance and delivery of the Bonds, the Bonds are exempt from the requirements of Rule 15c2-12 (the “Rule”) under the Securities Exchange Act of 1934, as amended, by virtue of the exemption contained in paragraph (d)(i) thereof.

SECTION 6.6. Source of Payments. Subject to Section 4.6 hereof, the Board agrees to pay or cause to be paid the payments required by this Agreement from all moneys legally available to it in the manner and at the times provided by this Agreement. The Board further agrees that, subject to any applicable legal limitations upon its ability to fix, revise and collect fees, rentals or other charges for its facilities and services, it shall charge all persons using any facilities of the

Board such fees, rentals or other charges as, together with its general funds and any other moneys legally available to it, will provide moneys sufficient at all times (i) to make all payments required by this Agreement, and (ii) to pay all other obligations of the Board as the same become due and payable.

SECTION 6.7. Insurance. The Equipment and the Board's activities related thereto shall be insured by the Board (either through insurance obtained separately by the Board or the University or through the Office of Risk Management of the State) against such risks and in such amounts as are consistent with the insurance practices of the Board, including, but not limited to, the following:

(a) All risk insurance against loss and/or damage to the Equipment with such exclusions as the Board shall determine reasonable, including fire and uniform standard extended coverage and vandalism and malicious mischief endorsements, in an amount equal to the replacement value of the Equipment or the amount required to pay the Payments when due, whichever is greater and provided such insurance is reasonably available on a commercial basis, in the names of the Authority and its assignees and the Board as their interest may appear, but any such policy may have a deductible amount of not more than \$50,000;

(b) Comprehensive general public liability insurance for injuries to persons and/or property occurring in or about the Equipment, in the minimum amount of \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage; and

(c) Workmen's compensation insurance or self-insurance with respect to all employees of the Board in such manner and amount as is required by State law.

Each policy or program of self-insurance shall provide that such policy or program cannot be modified or cancelled without at least thirty (30) days prior written notice to the Board, the Authority and the Trustee. To the extent that the Board at any time shall carry insurance or provide coverage under a program of self-insurance with respect to the Equipment, the Authority and the Trustee shall be named as additional insureds as their interests may appear.

All such policies, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Trustee and, prior to the expiration of any such policy, the Board shall furnish to the Trustee evidence satisfactory to the Trustee that the policy has been renewed or replaced or is no longer required by this Agreement.

The Net Proceeds of any insurance carried pursuant to this Section shall be applied as follows: (i) the Net Proceeds of insurance (other than liability or workmen's compensation insurance) shall be applied as set forth in Section 6.10 hereof and (ii) the Net Proceeds of liability or workmen's compensation insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.



In lieu of separate policies, the Board may maintain blanket policies having the same coverage required herein, in which event the board shall deposit with the Trustee a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Equipment.

SECTION 6.8. Annual Reports. Annually, within two hundred seventy (270) days from the end of each Fiscal Year, the Board will have made a complete audit of its records and accounts by an independent certified public account or by the Legislative Auditor of the State. A signed counterpart of its audited financial statements shall be furnished to the Authority and the Trustee, and a copy thereof shall be furnished by the Board to any Bondholder who requests the same in writing.

SECTION 6.9. Board to Maintain its Existence; Conditions Under Which Exceptions Permitted. The Board agrees that, during the term of this Agreement, it will maintain its existence or the existence of any successor as an entity that may issue obligations that are exempt from federal and state income taxation, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity; provided that the Board may, without violating the agreement contained in this Section, consolidate with or merge into another, or permit the consolidation or merger into another, or permit the consolidation or merger into it, or sell or otherwise transfer to another all or substantially all of its assets as an entirety and thereafter dissolve, provided that the surviving, resulting or transferee entity, as the case may be, (i) is an agency, department, public corporation, instrumentality or political subdivision of the State and (ii) irrevocably and unconditionally assumes by means of an instrument in writing or by operation of law all of the obligations of the Board hereunder.

SECTION 6.10. Damage or Destruction.

(a) If, prior to full payment of the Payments, the Equipment is destroyed or damaged (in whole or in part) by fire or other casualty to an extent not greater than \$50,000, the Board shall (or shall cause a person on its behalf to) (i) promptly replace, repair, rebuild or restore the property damaged or destroyed to substantially the same condition thereof as existing prior to the event causing such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Board and (ii) apply for such purpose so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses, as well as any additional money of the Board necessary therefor. All Net Proceeds of insurance resulting from claims for such losses not in excess of \$50,000 shall be paid to the Board.

(b) If, prior to full payment of the Payments, the Equipment is destroyed or damaged (in whole or in part) by fire or other casualty to an extent in excess of \$50,000, the Board shall promptly give written notice thereof to the Authority and the Trustee and the Board shall be obligated to continue to make the payments specified in Section 4.2 hereof. All Net Proceeds of insurance resulting from claims for such losses, including said \$50,000, shall be paid to and held by the Trustee as a separate trust account and applied in one or more of the following ways as shall be directed in writing by the Board, with the approval of the Authority and the Trustee:

(i) To the prompt repair, restoration, modification or improvement of the Equipment, but only upon receipt by the Trustee from the Board of proper requisitions therefor, and any balance of the Net Proceeds remaining after such work has been completed shall be paid to the Board.

(ii) To the payment of the Purchase Option Price and the redemption of Bonds pursuant to Section 3.4(b) of the Indenture on the earliest practicable date as specified in a written notice by the Board to the Authority and the Trustee.

(c) In the event the Net Proceeds described in the preceding two paragraphs are insufficient to pay in full the costs of such replacement, repair, rebuilding, restoration or acquisition or the payment of the full Purchase Option Price, the Board shall, nonetheless, to the extent permitted by applicable law, pay that portion of the costs necessary to complete such work or the amount of the Purchase Option Price in excess of the amount of said Net Proceeds or take such other action acceptable to the Authority and the Trustee.

(d) The Board shall not, by reason of the payment of any costs, be entitled to any reimbursement from the Authority or the Trustee or to any abatement or diminution of the Payments payable under Section 4.2 hereof.

(e) Within ninety (90) days from the date of such damage or destruction, the Board shall either direct the Authority and the Trustee in writing as to which option the Board elects to apply any Net Proceeds or (ii) notify the Authority and the Trustee in writing as to how the Board elects to apply its own funds.

(f) The Board shall be entitled to the Net Proceeds of any insurance or portion thereof received for damage to or destruction of the Equipment Housing.

SECTION 6.11. Condemnation. In the event that title to or the temporary use of the Equipment or any part thereof shall be taken under the exercise of the power of eminent domain by any Governmental Authority or by any person, firm or corporation acting under any Governmental Authority, the Board shall, to the extent permitted by applicable law, be obligated to continue to make the Payments specified in Section 4.2 hereof. The Authority, the Trustee and the Board shall cause the Net Proceeds received by them or any of them from any award made in such eminent domain proceedings to be applied in the same manner as provided for the application of Net Proceeds in Section 6.10 hereof.

The Board shall be entitled to the Net Proceeds of any condemnation award or portion thereof made for the taking of the Equipment Housing.

SECTION 6.12. Disposition of Equipment; Equipment Housing. The Board agrees that it will not sell, lease, encumber or otherwise dispose of (including without limitation any involuntary disposition) the Equipment or the Equipment Housing, except for transfers or other dispositions of the Equipment or the Equipment Housing:

(a) If prior to such sale, lease or other disposition there is delivered to the Trustee a certificate of an Authorized Board Representative stating that, in the judgment of the

signer, such Equipment or Equipment Housing, as applicable has, or within the next succeeding 24 calendar months is reasonably expected to, become inadequate, obsolete, worn out, unsuitable, unprofitable, undesirable or unnecessary and the sale, lease or other disposition thereof will not impair the structural soundness, efficiency or economic value of the remaining Equipment or Equipment Housing; or

(b) Upon fair and reasonable terms not less favorable to the Board than would obtain in a comparable arm's-length transaction, if following such transfer the proceeds received by the Board are applied in full to repay the principal of Bonds.

SECTION 6.13. Financing Statements under the Uniform Commercial Code. The Board covenants to file or cause to be filed all financing statements in the forms and in the locations necessary to reflect any lien or ownership claim of the Authority under the Uniform Commercial Code in effect in the State (the "UCC"). The Board also covenants to file or cause to be filed all continuation statements required under the UCC to continue and maintain such financing statements for so long as the Bonds are outstanding. In furtherance of the foregoing, the Board shall provide to the Trustee, no later than the thirtieth day next preceding each fifth anniversary of the issuance of the Bonds (or such less frequent anniversaries consistent with the continuation statement filing requirements under the applicable UCC), evidence satisfactory to the Trustee to the effect that all filings necessary to continue and maintain such filing until the next such anniversary have been made.

## ARTICLE VII

### ASSIGNMENT

SECTION 7.1. Assignment of this Agreement. The rights of the Board under this Agreement may be assigned as a whole or in part but no such assignment shall constitute a release of the Board from its obligations hereunder.

Each transferee of the Board's interest in this Agreement shall assume the obligations of the Board hereunder to the extent of the interest assigned, sold or leased, and the Board shall, not more than 60 nor less than 30 days prior to the effective date of any such assignment or lease, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of each such assignment or lease.

SECTION 7.2. Restrictions on Transfer of Authority's Rights. The Authority agrees that, except for the assignment of certain of its rights, title and interest under this Agreement (including its rights to receive Payments to be made hereunder) to the Trustee pursuant to the Indenture, it will not during the term of this Agreement sell, assign, transfer or convey its interests in this Agreement except pursuant to the Indenture and as hereinafter in Section 7.3 provided.

SECTION 7.3. Assignment by the Authority. It is understood, agreed and acknowledged that the Authority will assign to the Trustee pursuant to the Indenture certain of its rights, title and interests in and to this Agreement (reserving its rights, however, pursuant to sections of this Agreement providing that notices, reports and other statements be given to the Authority and also reserving its rights to reimbursement and payment of costs and expenses under Sections 4.2(d) and 9.5 hereof, its rights to indemnification under Sections 6.1(d) and 2.3 hereof and its individual and corporate rights to exemption from liability under Section 10.12 hereof) and the Board hereby assents to such assignment and pledge.

## ARTICLE VIII

### SUPPLEMENTS AND AMENDMENTS

SECTION 8.1. Amendment Without Consent. The Authority and the Board, with the consent of the Trustee with respect to Sections 8.1(c), 8.1(e) and 8.1(f) hereof, but without the consent of the owners of any of the Bonds outstanding under the Indenture, may enter into supplements to this Agreement which shall not be inconsistent with the terms and provisions hereof for any of the purposes heretofore specifically authorized in this Agreement or the Indenture, and in addition thereto for the following purposes:

- (a) To cure any ambiguity or formal defect, inconsistency or omission in this Agreement or to clarify matters or questions arising hereunder;
- (b) To add covenants and agreements for the purpose of further securing the obligations of the Board hereunder;
- (c) To prescribe further limitations and restrictions upon the incurring of indebtedness by the Board which are not contrary to or inconsistent with the limitations and restrictions theretofore in effect;
- (d) To confirm as further assurance any mortgage or pledge of additional property, revenues, securities or funds;
- (e) To conform the provisions of this Agreement in connection with the provisions of any supplements or amendments to the Indenture entered into pursuant to the provisions of Section 10.1 thereof; or
- (f) To provide any other modifications which are not prejudicial to the interests of the Bondholders.

SECTION 8.2. Amendment Upon Approval of a Majority of Bondholders. The provisions of this Agreement may be amended in any particular with the written consent of the owners of not less than a majority of the aggregate principal amount of Bonds then outstanding; provided, however, that no such amendment may be adopted which decreases the percentage of owners of Bonds required to approve an amendment, or which permits a change in the date of payment of the principal or interest on any Bonds or of any redemption price thereof or the rate of interest thereon.

If at any time the Authority and the Board shall request the Trustee to consent to a proposed amendment for any of the purposes of this Section 8.2, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such proposed amendment to be given in the manner required by the Indenture to redeem Bonds. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders. If, within 90 days or such longer period as shall be prescribed by the Authority following such notice, the owners of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the

execution of any such proposed amendment shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee, the Board or the Authority from executing or approving the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such proposed amendment as in this Section permitted and provided, this Agreement shall be and be deemed to be modified and amended in accordance therewith.

SECTION 8.3. Filing. Copies of any such supplement or amendment shall be filed with the Trustee and delivered to the Authority and the Board before such supplement or amendment may become effective.

SECTION 8.4. Reliance on Counsel. The Authority and the Trustee shall be entitled to receive, and shall be fully protected in relying upon the opinion of counsel satisfactory to the Trustee, who may be counsel for the Authority, as conclusive evidence that any such proposed supplement or amendment complies with the provisions of this Agreement and the Indenture and that it is proper for the Authority and the Trustee under the provisions of this Article to execute or approve such supplement or amendment.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

SECTION 9.1. Events of Default Defined. The terms “Event of Default” and “Default” shall mean any one or more of the following events:

(a) Subject to Section 4.6 hereof, the Board shall default in the timely payment of any Payment pursuant to Article IV of this Agreement.

(b) An Event of Default shall exist under the Indenture, the Ground Lease or the Tax Regulatory Agreement.

(c) The Board shall fail duly to perform, observe or comply with any other covenant, condition or agreement on its part under this Agreement (other than a failure to make any Payment required under this Agreement), and such failure continues for a period of 30 days after the date on which written notice of such failure, requiring the same to be remedied, shall have been given to the Board by the Trustee; provided, however, that if such performance, observance or compliance requires work to be done, action to be taken, or conditions to be remedied, which by their nature cannot reasonably be done, taken or remedied, as the case may be, within such 30 day period, no Event of Default shall be deemed to have occurred or to exist if, and so long as the Board shall commence such performance, observance or compliance within such period and shall diligently and continuously prosecute the same to completion.

(d) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Board a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Board under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Board or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days.

(e) The institution by the Board of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Board or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

SECTION 9.2. Remedies. Whenever any Event of Default under Section 9.1 hereof shall have happened and be continuing, any one or more of the following remedial steps may be taken:

(a) The Authority or the Trustee may declare all installments of Payments under Section 4.2 hereof to be immediately due and payable, whereupon the same shall become immediately due and payable;

(b) The Authority or the Trustee may take whatever action at law or in equity may appear necessary or desirable to collect the Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Board under this Agreement;

(c) The Authority or the Trustee may terminate this Agreement, exclude the Board from possession of the Equipment, remove the Equipment from the campus of the Board and use its best efforts to lease or sell the Equipment to another party;

(d) The Authority or the Trustee may have access to and inspect, examine and make copies of any and all books, accounts and records of the Board; and/or

(e) The Authority or the Trustee (or the owners of the Bonds in the circumstances permitted by the Indenture) may exercise any option and pursue any remedy provided by the Indenture.

SECTION 9.3. No Remedy Exclusive; Selective Enforcement. No remedy conferred upon or reserved to the Authority or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement and as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any event of nonperformance shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event the Authority or the Trustee shall elect to selectively and successively enforce its rights under this Agreement, such action shall not be deemed a waiver or discharge of any other lien, encumbrance or security interest securing payment of the indebtedness secured hereby or thereby until such time that it shall have been paid in full all sums secured hereunder and thereunder. The foreclosure of any lien provided pursuant to this Agreement without the simultaneous foreclosure of all such liens shall not merge the liens granted which are not foreclosed with any interest which the Authority or the Trustee might obtain as a result of such selective and successive foreclosure.

SECTION 9.4. Indenture Overriding. All of the provisions of this Article are subject to and subordinate to the rights and remedies of the Bondholders and the Trustee pursuant to the Indenture. The Authority shall have no power to waive any event of default hereunder, except with respect to indemnification and its administrative payments, without the consent of the Trustee to such waiver.

SECTION 9.5. Agreement to Pay Attorneys' Fees and Expenses. In any Event of Default, if the Authority or the Trustee employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any



covenants or agreements on the part of the Board herein contained, whether or not such suit is commenced, the Board agrees that it will, on demand therefor, pay to the Authority or the Trustee the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Authority or the Trustee.

SECTION 9.6. Authority and Board to Give Notice of Default or Nonappropriation. The Authority and the Board severally covenant that they will, at the expense of the Board, promptly give to the Trustee written notice of any Event of Default or any Event of Nonappropriation under this Agreement of which they shall have actual knowledge or written notice, but the Authority shall not be liable (except as provided in Section 6.1(d) hereof) for failing to give such notice.

SECTION 9.7. Correlative Waivers. If an Event of Default under Section 8.2 of the Indenture shall be cured or waived and any remedial action by the Trustee rescinded, any correlative Default under this Agreement shall be deemed to have been cured or waived.

## ARTICLE X

### MISCELLANEOUS

SECTION 10.1. References to the Bonds Ineffective After Bonds Paid. Upon payment of the Bonds, all references in this Agreement to the Bondholders shall be ineffective and the Authority and any holder of the Bonds shall not thereafter have any rights hereunder, excepting those that shall have theretofore vested.

SECTION 10.2. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Funds and Accounts existing pursuant to the Indenture upon the expiration or sooner cancellation or termination of this Agreement, as provided herein, after payment in full of all Bonds then outstanding under the Indenture (or provisions for payment thereof having been made in accordance with the provisions of the Indenture), and the fees, charges and expenses of the Authority and the Trustee and all other amounts required to be paid hereunder and under the Indenture (other than amounts payable as arbitrage rebate pursuant to the Code), shall belong to and be paid to the Board.

SECTION 10.3. Notices. All notices demands and requests to be given or made hereunder to or by the Authority, the Trustee or the Board, or their designated successors, shall be in writing and shall be properly made if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Authority: Louisiana Public Facilities Authority  
2237 South Acadian Thruway, Suite 650  
Baton Rouge, Louisiana 70808  
Attention: President and CEO

If to the Board: Louisiana State University  
and Agricultural and Mechanical College  
330 Thomas Boyd Hall  
Baton Rouge, Louisiana 70803  
Attention: Vice Chancellor for Finance and  
Administrative Services and Chief Financial  
Officer

If to the Trustee: The Bank of New York Mellon Trust Company, N.A.  
301 Main Street, Suite 1510  
Baton Rouge, Louisiana 70825  
Attention: Corporate Trust Department

Notice hereunder shall be deemed effective on the date of its receipt by the addressee. The Board, the Authority and the Trustee may, by notice given hereunder, designate any further or different addresses, counsel or counsel addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 10.4. Binding Effect. This Agreement shall inure to the benefit and shall be binding upon the Authority, the Board and their respective successors and assigns, subject to the limitation that any obligation of the Authority created by or arising out of this Agreement shall not be a general debt of the Authority, but shall be payable solely out of the proceeds derived from this Agreement and the sale of the Bonds under the Indenture.

SECTION 10.5. Performance on Legal Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption or purchase of any Bonds or the date fixed for the giving of notice or the taking of any action under this Indenture shall not be a Business Day, then payment of such interest, principal, purchase price and redemption premium, if any, the giving of such notice or the taking of such action need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

SECTION 10.6. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument; provided, however, that upon the assignment and pledge to the Trustee provided for in Section 3.2 hereof, the Authority shall deliver to the Trustee an executed counterpart of this Agreement which executed counterpart shall be deemed to be collateral of which the Trustee has taken possession and no other counterpart shall be deemed to be collateral for any other purpose.

SECTION 10.7. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 10.8. Severability. If any clause, provision or Section of this Agreement be held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or Section had not been contained herein. In case any agreement or obligation contained in this Agreement be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Authority or the Board, as the case may be, only to the extent permitted by law.

SECTION 10.9. Captions. The table of contents, captions or headings of the several articles and sections of this Agreement are for convenience only and shall not control, affect the meaning of or be taken as an interpretation of any provisions of this Agreement.

SECTION 10.10. Consents and Approvals. Whenever the consent or approval of the Authority, the Board or the Trustee shall be required under the provisions of this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

SECTION 10.11. Third Party Beneficiaries. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to make the public or any member thereof, other than the Trustee and except as expressly provided herein or as contemplated in the Indenture, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property

damage pursuant to the terms or provisions of this Agreement. The duties, obligations and responsibilities, if any, of the parties to this Agreement with respect to third parties shall remain as imposed by law.

SECTION 10.12. Exculpatory Provision - Authority. In the exercise of the powers of the Authority and its trustees, officers, employees and agents under this Agreement the Authority shall not be accountable or liable to the Board (i) for any actions taken or omitted by it or its trustees, officers, employees or agents in good faith and believed by it or them to be authorized or within their discretion or rights or powers conferred upon them, or (ii) for any claims based on this Agreement against any trustee, officer, employee or agent of the Authority, all such liability, if any, being expressly waived by the Board by the execution of this Agreement. The Board shall, to the extent permitted by applicable law, indemnify and hold harmless the Authority and its trustees, officers, employees and agents against any claim or liability based on the foregoing asserted by any other person.

In case any action shall be brought against the Authority in respect of which indemnity may be sought against the Board, the Authority shall promptly notify the Board in writing and the Board shall, to the extent permitted by applicable law, assume the defense thereof, including the employment of counsel of the Board's choice and the payment of all expenses. The Authority shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Authority unless the employment of such counsel has been authorized by the Board. The Board shall not be liable for any settlement of any such action without its consent but if any such action is settled with the consent of the Board or if there be final judgement for the plaintiff of any such action, the Board agrees, to the extent permitted by applicable law, to indemnify and hold harmless the Authority from and against any loss or liability by reason of such settlement or judgment.

SECTION 10.13. Exculpatory Provision - Trustee. In the exercise of the powers of the Trustee and its directors, trustees, officers, employees and agents under this Agreement the Trustee shall not be accountable or liable to the Board (i) for any actions taken or omitted by it or its trustees, officers, employees or agents in good faith and believed by it or them to be authorized or within their discretion or rights or powers conferred upon them, or (ii) for any claims based on this Agreement against any director, trustee, officer, employee or agent of the Trustee, all such liability, if any, being expressly waived by the Board by the execution of this Agreement. The Board shall, to the extent permitted by applicable law, indemnify and hold harmless the Trustee and its directors, trustees, officers, employees and agents against any claim or liability based on the foregoing asserted by any other person.

In case any action shall be brought against the Trustee in respect of which indemnity may be sought against the Board, the Trustee shall promptly notify the Board in writing and the Board shall, to the extent permitted by applicable law, assume the defense thereof, including the employment of counsel of the Board's choice and the payment of all expenses. The Trustee shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be paid by the Trustee unless the employment of such counsel has been authorized by the Board. The Board shall not be liable for any settlement of any such action without its consent but if any such action is settled with the consent of the Board or if there be final judgement for the plaintiff of any such action, the Board agrees, to the extent

permitted by applicable law, to indemnify and hold harmless the Trustee from and against any loss or liability by reason of such settlement or judgment.

SECTION 10.14. Accounts and Audits. The Authority shall cause the Trustee to keep proper books of records and accounts (separate from all other records and accounts) in which complete and correct entries shall be made of its transactions relating to the Bonds.

SECTION 10.15. Date of Loan Agreement. The dating of this Agreement as of April 1, 2013, is intended as and for the convenient identification of this Agreement and is not intended to indicate that this Agreement was executed and delivered on said date, this Agreement being executed on the dates of the respective acknowledgments hereto attached.

[signature page to Lease Agreement]

IN WITNESS WHEREOF, the Authority has caused this Agreement to be executed by its Chairman and has caused the seal of the Authority to be affixed hereto and attested by its Assistant Secretary and the Board has caused this Agreement to be executed in its behalf by its Authorized Board Representative, all as of the day and year above written.

**LOUISIANA PUBLIC FACILITIES AUTHORITY**

[SEAL]

By: \_\_\_\_\_  
Guy Campbell, III, Chairman

ATTEST:

By: \_\_\_\_\_  
James W. Parks II, Assistant Secretary

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A  
TO THE LEASE AGREEMENT**

**DESCRIPTION OF EQUIPMENT**

Certain natural gas fueled cogeneration equipment consisting of the following:

- 20 MW Gas Turbine Generator
- 150 KPPH Heat Recovery Steam Generator
- 150 MMBYUH Cooling Towers
- 6,195 Ton Steam Driven Chillers
- 18,900 GPM Condenser Water Pumps
- 150 GPM Feed Water Pumps
- 150 GPM Condensate Return Pumps
- 2 x 750 cfm Air Compressors
- 700 KW Black Start Generator
- 110 GPM Demineralizer
- Substation Transformers
- Distribution Transformers

**EXHIBIT B  
TO THE LEASE AGREEMENT**

**PERMITTED LIENS**



**LEASE AGREEMENT FOR LAND AND BUILDING  
TO HOUSE COGENERATION EQUIPMENT**

**THIS LEASE AGREEMENT FOR LAND AND BUILDING TO HOUSE  
COGENERATION EQUIPMENT** (“Ground and Building Lease”) is entered into as of the  
dates indicated on the attached Acknowledgments by and between,

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND MECHANICAL COLLEGE** a public constitutional  
corporation organized and existing under the Constitution and laws of the State of  
Louisiana, domiciled in the Parish of East Baton Rouge, said State, (hereinafter  
referred to as the “Board”) appearing herein through William L. Jenkins, Interim  
President of the LSU System, duly authorized and empowered by resolution of  
the Board,

and

**LOUISIANA PUBLIC FACILITIES AUTHORITY**, a public trust and public  
corporation of the State of Louisiana (hereinafter referred to as the "Authority");

provides as follows:

**WHEREAS**, Board is the owner of a certain tract of immovable property and the  
building located thereon (the “Leased Premises”) in the Parish of East Baton Rouge on the  
campus of Louisiana State University and Agricultural and Mechanical College (the  
“University”), as more fully described on Exhibit “A” hereto;

**WHEREAS**, Louisiana Revised Statute 17:3361 expressly authorizes the Board to lease  
immovable property to a nonprofit entity and/or public body such as Authority;

**WHEREAS**, the Authority desires to own, locate, operate, and maintain in the building,  
the Improvements, as hereinafter defined, and consisting, among other things, of natural gas  
fueled cogeneration equipment, which Improvements are to be leased to Board by Authority for  
the benefit of the University pursuant to that certain Lease Agreement between Louisiana Public  
Facilities Authority and Board of Supervisors of Louisiana State University and Agricultural and  
Mechanical College (the “Lease Agreement”);

**WHEREAS**, the Board desires to grant to Authority a lease of the Leased Premises, along with certain rights of use and access in order to facilitate the operation and use of Authority's Improvements located therein for the purposes described herein; and,

**WHEREAS**, pursuant to the terms of this Ground and Building Lease, the Improvements to be located on the Leased Premises by Authority will become owned by the Board upon the expiration of, and in accordance with this Ground and Building Lease.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions and agreements which follow, the parties agree:

**CERTAIN TERMS DEFINED**

**"Applicable Laws"** refers to all laws, statutes, rules, regulations, ordinances, resolutions and orders of any Governmental Authority, including but not limited to applicable rules and regulations of Board, applicable to the parties and substantially affecting the ability of the parties to meet their obligations hereunder; provided, however, that this definition shall not be interpreted as waiving protections granted to any party against future laws impairing the obligations of contracts between the parties and/or any third parties.

**"Award"** refers to payment or other compensation received or receivable as a consequence of a Taking from or on behalf of any Governmental Authority or any other Person vested with the power of eminent domain.

**"Business Day"** refers to a day excluding Saturday, Sunday, and any Holiday.

**"Authority's Property"** refers to any personal property, equipment, furniture, inventory, trademarked items, signs, and other movable trade fixtures installed in or on the Leased Premises by Authority.

**"Debt"** refers to \_\_\_\_\_.

“**Effective Date**” refers to \_\_\_\_\_, 2013, the effective date of this Ground and Building Lease.

“**Equipment**” refers to the natural gas fueled cogeneration equipment owned by Authority and leased to Board for the benefit of the University.

“**Force Majeure**,” refers to any act of God, lightning, hurricane, tornado, and other extraordinarily adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, insurrection, riot, or civil disturbance, labor dispute, strike, work slow-down or work stoppage, and any other similar cause or similar event beyond the reasonable control of either Board or Authority.

“**Governmental Authority**,” refers to any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, parish, district, municipality, city or otherwise) whether now or hereafter in existence.

“**Ground and Building Lease**,” refers to this Lease Agreement for Land and Building to House Cogeneration Equipment between the Board and the Authority.

“**Holiday**,” refers to any day which shall be a legal holiday in the State of Louisiana or for the federal government, or a day on which banking institutions in the State of Louisiana are authorized or required by law to be closed, or a day on which Board or University is required by law to close, or a day on which Board or University is authorized to close or is closed.

“**Improvements**,” refers to the Equipment and any other construction or work made to the Leased Premises by Authority.

“**Land**,” refers to the immovable property and all rights, ways, and privileges pertaining thereto, depicted as Areas A, B, C, and D depicted on the map attached hereto as Exhibit “\_\_\_\_.”

“**Lease Agreement**” refers to the Lease Agreement between the Authority and the Board for the lease of the Equipment.

“**Leased Premises**” refers to that certain tract of immovable property and the building located thereon as more fully described as Exhibit “A” hereto.

“**LSU Representative,**” refers to one or more of the persons designated and authorized in writing by Board to represent Board in exercising Board’s rights and performing Board’s obligations under this Ground and Building Lease. Unless and until another LSU Representative is designated in addition to or in place thereof by the LSU President, the LSU Representative shall be the University’s chief administrative officer, which as of the date of execution of this Ground and Building Lease is the Interim Vice Chancellor for Finance and Administrative Services and CFO of the University, or his designee(s), and, upon the appointment of a non-interim successor, shall be the Vice Chancellor for Finance and Administrative Services and CFO of the University.

“**Permitted Uses,**” refers to authorized uses of the Land and Improvements by Authority which uses are limited to: (a) the location, operation, and maintenance of the Improvements for the provision of electricity, chilled water, steam and hot water to the University, and other uses related thereto; and (b) such other uses as may be agreed to from time-to-time in writing by Authority and the LSU Representative. **[LSU TO REVIEW THIS LANGUAGE.]**

“**Person(s),**” refers to an individual, a trust, an estate, a Governmental Authority, or a partnership, joint venture, corporation, limited liability company, firm, or any other legal entity.

“**Term,**” refers to the term of this Ground and Building Lease as described in Article II hereof.

“**Taking**,” refers to the actual or constructive condemnation, expropriation or the actual or constructive acquisition by condemnation, expropriation, eminent domain or similar proceeding by or at the direction of any Governmental Authority or other Person with the power of eminent domain.

**ARTICLE I.  
LEASE OF THE LEASED PREMISES**

In consideration of the covenants, agreements, and conditions herein set forth, which Authority hereby agrees shall be kept and performed, the Board hereby leases the Leased Premises unto Authority, and Authority does hereby lease the Leased Premises from the Board.

**ARTICLE II.  
TERM**

Unless sooner terminated as herein provided, the Term of this Ground and Building Lease shall be coterminous with the term of the Lease Agreement and continue in full force and effect for an initial term beginning on the Effective Date and terminating on the day on which the Lease Agreement terminates.

**ARTICLE III.  
CONSIDERATION**

In consideration of the Board leasing the Leased Premises to Authority, and as Rent therefor, Authority agrees to locate its Equipment and any other Improvements in the Leased Premises at all times during the Term of this Ground and Building Lease.

**ARTICLE IV.  
USE, MAINTENANCE, AND REPAIRS**

4.1 Use. Subject to the terms and provisions hereof, Authority shall use the Leased Premises and the Improvements solely for Permitted Uses.

4.2 Prohibited Uses. Authority shall not make any use of the Leased Premises in violation of Applicable Laws and shall not permit any contamination or pollution on or about the

Leased Premises or materially and unreasonably increase the fire or insurance hazard by any use thereof. Before beginning any work on the Leased Premises, Authority shall obtain any permits required by Governmental Authorities in connection with the sale, distribution, storage, transportation, or handling of petroleum or synthetic products. Authority shall not install or otherwise place storage tanks in or on the Leased Premises without the LSU Representative's prior written consent, which, in addition to any other conditions required by the Board, shall be subject to the condition that any such tank shall be located on a concrete slab and shall be surrounded by a retaining wall that shall retain the products stored in the tanks in the event of any spill, discharge, leak, overflow, or other release.

4.3 Utilities, Operating Expenses, and Maintenance Repairs. All expenses and obligations related to the payment for and provision of utilities, operating expenses and maintenance repairs shall be as set forth in the Lease Agreement and the Board and the University shall have no obligation therefor except during any time that the Lease Agreement is in full force and effect.

4.4 Alteration, Renovation, or Remodeling. At least sixty (60) days prior to undertaking any addition, alteration, renovation, or remodeling of the Improvements, Authority shall submit written plans for such addition, alteration, renovation, or remodeling to the LSU Representative for prior approval, which approval shall not be unreasonably withheld, delayed, or conditioned. The LSU Representative shall either approve or disapprove any such alteration within sixty (60) days after receipt of such plans from Authority. If, in the LSU Representative's sole and unfettered judgment, the decision should be made by the Board at a regularly-scheduled or special Board meeting, the LSU Representative shall notify Authority and shall present the matter to the Board for its consideration at a regularly-scheduled or special Board meeting. If

the LSU Representative or the Board fails to approve or disapprove the proposed alteration, renovation, or remodeling within such sixty (60) day period, it shall be deemed that LSU Representative and/or the Board disapproves any such alteration, renovation, or remodeling.

4.5 Mineral Exploration and Production. Notwithstanding any other provision of this Ground and Building Lease, the Board expressly reserves all mineral rights regarding the Leased Premises, including but not limited to the right, acting directly or through its agents, contractors, and/or mineral lessees, to conduct mineral exploration and production activities below the Leased Premises by directional drilling. Notwithstanding said reservation of rights, the Board agrees that it shall not conduct any surface operations on the Leased Premises. Authority shall allow the Board, its employees, agents, and contractors to access the Leased Premises for and shall not in any way interfere with such operations. In the event that the Board, its agents, and/or contractors perform such operations on the Leased Premises, it shall do so in a manner that does not interfere with Authority's Permitted Use of the Land and Leased Premises.

4.6 Waiver and Disclaimer of Warranties. Authority accepts the Leased Premises in its "as is" and existing condition, at Authority's sole risk and without any warranty of any kind or nature, whether express or implied, contractual or statutory, and whether as to the condition (patent or latent) or state of repair of the Leased Premises or the fitness of same for Authority's purposes or for any other purpose whatsoever, except as may otherwise be specifically provided for herein. The Board warrants only that provided that an Event of Default has not occurred, Authority shall be maintained in peaceable possession of the Leased Premises and Improvements, and all other warranties are expressly disclaimed by the Board and waived and renounced by Authority.

**ARTICLE V.  
INSURANCE**

5.1 Required Insurance. All expenses and obligations related to the payment for and provision of insurance shall be as set forth in the Lease Agreement and Board and University shall no obligation therefor except during any time that the Lease Agreement is in full force and effect.

5.2 Limitation on Liability. The insurance and other provisions of this Ground and Building Lease do not waive or abrogate, are not intended to waive or abrogate, and shall not be interpreted to waive or abrogate, the limitation of liability established under La. R.S. 13:5106 in favor of Board.

**ARTICLE VI.  
DISPOSITION OF IMPROVEMENTS FOLLOWING TERMINATION**

During the Term of this Ground and Building Lease, Authority shall own all Improvements. The Improvements shall be separately owned by Authority, and not component parts of the Leased Premises, and the provisions of Article 495 of the Louisiana Civil Code shall not be applicable. Upon termination of this Ground and Building Lease, all Improvements shall be transferred to and shall be owned by Board without any further payment or consideration, and Authority shall execute any and all documents necessary to effectuate such transfer to and ownership by the Board.

**ARTICLE VII.  
INDEMNIFICATION**

7.1 Indemnification by Authority. Authority, for itself and for its successors, assigns, agents, contractors, employees, invitees, customers, and licensees, agrees to indemnify, defend, and to hold Board harmless against any loss for damages or injuries that may be suffered by Board or by any Person, including but not limited to Authority's agents, contractors, employees,



invitees, and licensees, to the extent such loss arises out of or is related to the use of the Leased Premises, by the Authority or its agents, contractors, employees, invitees, customers or licensees, except with respect to acts or omissions by Board's members, officers, employees, and authorized agents unless said Board members, officers, and employees are acting at the direction or request of Authority, and Authority agrees to defend Board with an attorney reasonably acceptable to the LSU Representative in any legal action against it and pay in full and satisfy any claims, demands or judgments made or rendered against Board, and to reimburse Board for any legal expenses, including attorney's fees and court costs, which may be incurred by it in defense of any claim or legal action arising thereunder.

7.2 Indemnification by Board. To the extent allowed by Applicable Laws, Board, agrees to indemnify, defend, and hold Authority harmless against any loss for damages or injuries that may be suffered by Authority or by any Person including but not limited to Board's agents, contractors, employees, invitees, and licensees, except if any of such persons are acting at the direction or request of Authority, to the extent that such loss, damage, or injuries arise out of, or are related to the fault or negligence of Board, its members, employees, officers, or authorized agents, and Board agrees to defend Authority in any legal actions against it and, to the extent allowed by Applicable Laws, pay in full and satisfy any claims, demands, or judgments made or rendered against Authority, and to reimburse Authority for any legal expenses, including attorney's fees and court costs, which may be incurred by it in defense of any claim or legal action arising thereunder; provided, however, that Board's costs and expenses incurred in fulfilling this indemnity and defense shall be limited to proceeds from the Office of Risk Management or other applicable insurance which are available for this purpose.

**ARTICLE VIII.  
NOTICES**

All notices, demands, and correspondence made necessary by or provided pursuant to this Ground and Building Lease shall be in writing and shall be deemed to have been properly given, served and addressed, if and when (i) deposited in Federal Express (or any other national "next day" delivery service), or (ii) deposited in the United States mail via registered or certified mail, postage prepaid, return receipt requested, or (iii) hand delivered, or (iv) sent via facsimile or email, if a copy is also sent the same day via (i), (ii) or (iii) above, provided that if so sent, a copy thereof is received by the receiving party from the sending party, directed as follows:

The Board:	Board of Supervisors of Louisiana State University and Agricultural and Mechanical College Attention: President 3810 West Lakeshore Drive Baton Rouge, Louisiana 70808
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With a copy to:	Vice Chancellor for Finance and Administrative Services and CFO Louisiana State University 330 Thomas Boyd Hall Baton Rouge, Louisiana 70803
-----------------	--

Authority:	_____
	_____

With a copy to:	_____
	_____

**ARTICLE IX.  
AUTHORITY DEFAULT**

9.1 Authority Events of Default. The Board may declare Authority to be in default upon one or more of the following events, any of which shall constitute an "Authority Event of Default" hereunder:

- A. Failure of the Authority to observe or perform any covenant, condition, or agreement upon its part to be observed or performed under this Ground and Building Lease, for a period of thirty (30) days (or longer period of time as reasonably required in the event that the default cannot be reasonably cured within the deadline and Authority is diligently working to cure the default) after receipt of written notice from the LSU Representative specifying such failure and requesting that it be remedied;
- B. The taking by execution of the Improvements for the benefit of any Person other than the Board;
- C. A court of proper jurisdiction entering an order for relief in any involuntary case commenced against Authority, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, or other similar official of or for Authority or any substantial part of the properties of Authority, or ordering the winding up or liquidation of the affairs of Authority, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days; or
- D. The commencement by Authority of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or the consent or acquiescence by Authority to the commencement of a case under such Code or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, or other similar official of or for Authority or any substantial part of the properties of Authority;

9.2 Rights of Board Upon Default by Authority. Whenever any Authority Event of Default referred to in this section shall have occurred and be continuing and Authority refuses or fails to take the reasonable and necessary remedial action to cure such default within the time period specified therefor, in addition to any other remedies herein or by law provided, Board shall have the right, without any further demand or notice, to declare this Ground and Building Lease terminated. In the event of the termination of this Ground and Building Lease, Authority expressly waives any notice to vacate. Furthermore, in such event and at Board's sole option and direction, Authority shall transfer any or all Improvements on the Leased Premises pursuant to the Ground and Building Lease to another non-profit corporation or entity which meets the requirements of La. R.S. 17:3390 and which is acceptable to Board.

#### **ARTICLE X. BOARD DEFAULT**

Authority may declare the Board in default upon the failure of the Board to observe or perform any covenant, condition, or agreement upon its part to be observed or performed under this Ground and Building Lease for a period of sixty (60) days (or such additional reasonable time provided that Board is diligently working to cure such default) after receipt of written notice specifying such failure and requesting that it be remedied. If the default be continuing and the Board has not taken any action reasonably anticipated to cure such default, then in addition to any other remedies herein or by law or equity provided, Authority shall have the right to select any one or more of the following remedies, without further demand or notice: (a) require the Board to correct the specific failure; or, (b) to declare this Ground and Building Lease terminated and to be reimbursed the full amount required to pay the Bonds in full, and to recover reasonable damages suffered by Authority. **[TO BE DISCUSSED WITH LSU.]**

**ARTICLE XI.  
CONDEMNATION**

11.1 Condemnation of All Improvements. Upon the permanent Taking of all Improvements, this Ground and Building Lease shall terminate and expire as of the date of such Taking, and both Authority and Board shall thereupon be released from any liability thereafter accruing hereunder. Authority and Board shall each provide to the other notice of any proceedings relating to a Taking, and Board and Authority shall each have the right to participate therein.

11.2 Partial Condemnation. Upon a temporary Taking or a Taking of less than all of the Improvements, Authority, at its election, may terminate this Ground and Building Lease by giving Board notice of its election to terminate at least sixty (60) days prior to the date of such termination if Authority reasonably determines that the Improvements cannot be economically and feasibly used by Authority for their intended purposes.

11.3 Payment of Awards. Provided any Debt has been paid in full, or legally defeased as applicable, upon the Taking of all or any portion of the Improvements (a) Authority shall be entitled (free of any claim by Board) to that portion of the award equal to the value of its interest in the Improvements and its rights under this Ground and Building Lease and any authorized subleases and damages to any of its other property, together with any other compensation or benefits paid as a consequence of the interruption of Authority business; and, (b) Board shall be entitled (free of any claim by Authority) to the award for the value of Board's interest in the Improvements, if any (such value to be determined as if this Ground and Building Lease were in effect and continuing to encumber Board's interest). Notwithstanding the foregoing, any award for any Taking of all or any portion of the Improvements shall first be used to pay off the Debt then outstanding and any excess proceeds shall be disbursed as set forth above.

11.4 Repair After Condemnation. Should a Taking occur that does not result in termination as provided by Sections \_\_\_\_\_ or \_\_\_\_\_, Authority, at its expense, shall commence and proceed with reasonable diligence to repair or reconstruct the Improvements in as good or better condition than before the Taking. Any and all such repairs or reconstruction shall be subject to prior reasonable approval of Board and the provisions of Article \_\_\_\_\_ hereof. If the Debt has not been paid in full or legally defeased, all or any portion of the award payable to Authority as a consequence of a Taking affecting the Improvements shall be deposited in escrow pending the completion of the restoration of the Improvements and held and disbursed in accordance with the procedures agreed to by Authority's lenders. Notwithstanding the foregoing provisions of this Section \_\_\_\_\_, if the award payable as a consequence of a Taking (after payment of all or any portion of such award toward payment of the Debt) is insufficient, in the reasonable judgment of Authority and Board, to permit such restoration, then Authority may terminate this Ground and Building Lease by written notice to Board in which event, at the request of Board in its reasonable discretion, Authority shall, within one hundred eighty (180) days after such request, demolish the Improvements, and restore the Leased Premises to substantially the same condition as it existed on the Effective Date at Authority's sole cost and expense. In the event of termination under this Section \_\_\_\_\_, this Ground and Building Lease shall terminate ten (10) Business Days after the date of such notice with the same force and effect as if such date were the date herein fixed for the expiration of the Term, and the rent shall be apportioned and paid at the time of such termination. **[TO BE DISCUSSED.]**

**ARTICLE XII.**  
**MISCELLANEOUS**

12.1 Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and

agent, partners, joint venturers, or any other similar such relationship, between Authority and Board.

12.2 Attorney's Fees. If either party is required to commence legal proceedings relating to this Ground and Building Lease, the prevailing party to the extent allowed by law shall be entitled to receive reimbursement for its reasonable attorney fees and costs of suit from the non-prevailing party.

12.3 Louisiana Law to Apply. This Ground and Building Lease shall be construed under and in accordance with the laws of the State of Louisiana, and the sole forum for all disputes arising out of this Ground and Building Lease shall be the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

12.4 Non-Waiver. No waiver by the Board or Authority of a breach of any of the covenants, conditions, or restrictions of this Ground and Building Lease shall constitute a waiver of any subsequent breach of any of the covenants, conditions, or restrictions of this Ground and Building Lease. The failure of the Board or Authority to insist in any one or more cases upon the strict performance of any of the covenants of the Ground and Building Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of any other covenant or option. No waiver, change, modification, or discharge by the Board or Authority of any provision of this Ground and Building Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by the parties hereto.

12.5 Severability. If any clause or provision of this Ground and Building Lease is illegal, invalid, or unenforceable under present or future laws effective during the term of this Ground and Building Lease, then and in that event, it is the intention of the parties hereto that the remainder of this Ground and Building Lease shall not be affected thereby.

12.6 Authorization. By execution of this Ground and Building Lease, Authority and the Board each represent to the other that they are entities validly existing, duly constituted, and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business; that all acts necessary to permit them to enter into and be bound by this Ground and Building Lease have been taken and performed; and that the individuals signing this Ground and Building Lease on their behalf have due authorization to do so.

12.7 Name, Logo, or Marks. Neither party shall make use of the other party's name, logo, or marks without its prior written consent.

12.8 Amendments. No amendment, modification, or alteration of the terms of this Ground and Building Lease shall be binding unless the same be in writing, dated on or subsequent to the date hereof, and duly executed by the parties hereto.

12.9 Assignment and Sub-Letting. Authority shall not assign or sublease this Ground and Building Lease or any part hereof without the prior written consent of the LSU Representative, which shall not be unreasonably withheld, conditioned, or delayed, and any attempted assignment or sublease without such consent shall be null and void as to the Board.

12.10 Books, Records, and Audit. The books, accounts, and records of Authority shall be maintained at the principal office of Authority for a period of three (3) years following termination of this Ground and Building Lease. The Board may at its option and at its own expense during customary business hours, conduct internal audits of the books, bank accounts, records, and accounts of Authority to the extent necessary to verify compliance with this Ground and Building Lease or insofar as said books, bank accounts, records, and accounts directly relate to Authority's performance of its obligations under this Ground and Building Lease. Audits may be made on either a continuous or periodic basis or both and may be conducted by employees of



the Board, or by independent auditors retained by the Board to conduct such audit, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs of Authority. It is further agreed that the Legislative Auditor of the State of Louisiana and /or the Office of the Governor, Division of Administration auditors shall have the option of auditing all accounts of Authority which directly relate to this Agreement.

12.11 Successors and Assigns. All of the covenants, agreements, terms, and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns including any successor by merger or consolidation of the Board into another educational institution.

12.12 Notice of Lease. Authority agrees not to record this Ground and Building Lease. The parties shall execute a Notice of Lease for recording in the records of East Baton Rouge Parish, meeting the requirements of La. R.S. 9:2742, and substantially in accordance with the form attached hereto as Exhibit "B." The cost of recording will be borne by Authority.

12.13 Entire Agreement. This Ground and Building Lease, including any exhibits attached hereto, contains the final and entire agreement between the parties hereto with respect to the Leased Premises and contains all of the terms and conditions agreed upon with respect to the Leased Premises and Improvements, and no other agreements, oral or otherwise, regarding the subject matter of this Ground and Building Lease shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written.

12.14 Maintenance of Surrounding Areas. The Board shall at all times cause all adjoining land and improvements owned or constructed pursuant to authority granted by Board

to be maintained and operated in a manner consistent with similar University areas and shall make available all common areas in \_\_\_\_\_ for the non-exclusive use of Authority, in common with other occupants of the area.

12.15 Authority's Property and Subordination of the Board's Privilege. Any personal property, equipment, furniture, inventory, trademarked items, signs, and other movable trade fixtures installed in or on the Leased Premises by Authority (the "Authority's Property"), shall remain the property of Authority and shall not be the property of the Board no matter how the same is affixed to the Leased Premises or used by Authority and regardless of whether same is subject to a valid perfected UCC security interest. Authority shall not remove any of the Improvements without the prior written approval of the LSU Representative. Authority, at its expense, shall immediately repair any damage occasioned by the removal of Authority's Property. Authority shall pay before delinquency all taxes, assessments, license fees, and public charges levied, assessed or imposed upon Authority's Property.

12.16 Transfer of Improvements. Except as set forth in Section 12.18 below, Authority shall not sell, lease, assign, mortgage, encumber or otherwise transfer title to the Improvements or Authority's leasehold estate without the prior written approval of the President of LSU or, in the event that the President of LSU in the exercise of his discretion deems it necessary, the Board.

12.17 Leasehold Mortgage, Collateral Assignment of Leases and Rents. **[INSERT DESCRIPTION OF DEBT TO BE INCURRED BY LPFA FOR PURCHASE OF EQUIPMENT.]**

12.18 Representations and Warranties of the Parties. To induce the other party to execute, deliver, and perform this Ground and Building Lease, and without regard to any

independent investigations made by the other party, each party represents and warrants to the other party on and as of the date of execution and delivery of this Ground and Building Lease that it has full capacity, right, power, and authority to execute, deliver, and perform this Ground and Building Lease and all documents to be executed pursuant hereto, and all required actions and approvals therefor have been duly taken and obtained. The individuals signing this Ground and Building Lease and all other documents executed or to be executed pursuant hereto are and shall be duly authorized to sign the same on that party's behalf and to bind that party thereto. This Ground and Building Lease and all documents to be executed pursuant hereto by the parties are and shall be binding upon and enforceable against each party in accordance with their respective terms, and the transactions contemplated hereby will not result in a breach of, or constitute a default, or permit acceleration of maturity under, any indenture, mortgage, deed of trust, loan agreement, or other agreement to which each respective party is subject or by which each respective party is bound. Additionally, the Board represents and warrants as follows:

A. The Board is the owner of the Leased Premises free of any liens, claims or encumbrances other than those that would be disclosed based on a review of the East Baton Rouge Parish public records and an accurate survey of the Leased Premises.

B. To the best of the Board's knowledge, there are no claims, causes of action, or other litigation, or proceedings pending or threatened in respect to the ownership, operation, or environmental condition of the Leased Premises or any part thereof (including disputes with lessees, mortgagees, governmental authorities, utility companies, contractors, or suppliers of goods or services),

except for claims which are fully insured and as to which the insurer has accepted defense without reservation.

C. To the best of the Board's knowledge as of the date of execution of this Ground and Building Lease, there are no violations of any Applicable Laws, ordinances, rules or regulations with respect to the Leased Premises, which have not been heretofore entirely corrected or disclosed to Authority in writing.

D. As long as the Authority is not in default of this Ground and Building Lease beyond any applicable cure period, Authority shall during the Term have lawful, quiet, and peaceful possession and occupation of the Leased Premises and enjoy all the rights herein granted and otherwise by law to a lessee, without hindrance, objection or interference.

12.19 Force Majeure. If either party hereto is delayed or prevented from the performance of any act required hereunder or the satisfaction of any condition contained herein by reason of an act of Force Majeure, then upon notice to the other party the period for the performance of such act or the satisfaction of such condition shall be extended for a period equal to the period of such delay; provided, however, the party so delayed or prevented from performing shall make good faith efforts to remedy the cause of delay and to resume performance. Nothing in this Section shall excuse Authority from the prompt payment of any rental or other charges required of Authority in accordance with the terms of this Ground and Building Lease.

12.20 Signage. Before erecting or placing any sign upon the Leased Premises, Authority shall submit the design specifications of such sign to the LSU Representative for approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

12.21 No Liens; Release of Recorded Liens. Authority shall not suffer or permit any liens to be enforced against the Land, Leased Premises, Improvements, University, Board, or State of Louisiana by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to Authority or to anyone through or under Authority. If any such liens shall be recorded against the Authority, Authority shall cause the same to be released of record, or in the alternative, if Authority in good faith desires to contest the same, Authority shall be privileged to do so, but in such case, Authority shall promptly deposit with the Recorder of Mortgages of East Baton Rouge Parish a bond guaranteeing payment of any such liens and hereby agrees to indemnify, defend with an attorney reasonably acceptable to the LSU Representative, and save Board harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said lien, cause the same to be discharged and released prior to the execution of such judgment.

12.22 Protection of Trees and Utility Lines. Authority will not remove or trim any trees located on or adjacent to the Leased Premises without the prior written consent of the LSU Representative, which consent shall not be unreasonably conditioned, withheld, or delayed. Any existing utility lines to surrounding buildings must be rerouted by Authority with the prior approval of the LSU Representative in order that the Improvements not be placed over any existing utility lines.

**IN WITNESS WHEREOF**, the parties hereto have executed this Ground and Building Lease as of the dates indicated on the attached Acknowledgments.

**WITNESSES:**

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

\_\_\_\_\_

By: \_\_\_\_\_

William L. Jenkins, Interim President

**LOUISIANA PUBLIC FACILITIES  
AUTHORITY**

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By: \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**BE IT KNOWN** that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, duly commissioned and qualified in and for the above Parish and State, and in the presence of the undersigned competent witnesses, personally came and appeared William L. Jenkins, appearing herein in his capacity as Interim President of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation organized and existing under the laws of the State of Louisiana, who, being by me first duly sworn, declared and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of said Board of Supervisors with full authority, and that said instrument is the free act and deed of said Board of Supervisors and was executed for the uses, purposes and benefits therein expressed.

**IN TESTIMONY WHEREOF**, Appearer has executed this acknowledgment in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

**WITNESSES:**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
William L. Jenkins, Interim President  
LSU System

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
Print Name  
No. \_\_\_\_\_

**ACKNOWLEDGMENT**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**BE IT KNOWN** that on this \_\_\_\_ day of \_\_\_\_\_, 2013, before me, the undersigned Notary Public, duly commissioned and qualified in and for the above Parish and State, and in the presence of the undersigned competent witnesses, personally came and appeared \_\_\_\_\_, appearing herein in his capacity as \_\_\_\_\_ of Louisiana Public Facilities Authority, a public constitutional corporation organized and existing under the laws of the State of Louisiana, who, being by me first duly sworn, declared and acknowledged to me, Notary, that he executed the above and foregoing instrument on behalf of said corporation with full authority, and that said instrument is the free act and deed of said corporation and was executed for the uses, purposes and benefits therein expressed.

**IN TESTIMONY WHEREOF**, Appearer has executed this acknowledgment in the presence of the undersigned competent witnesses and me, Notary, after due reading of the whole.

**WITNESSES:**

**LOUISIANA PUBLIC FACILITIES  
AUTHORITY**

\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
**NOTARY PUBLIC**

\_\_\_\_\_  
Print Name

No. \_\_\_\_\_



**EXHIBIT "A"**  
**LEASED PREMISES**

**EXHIBIT "B"**

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

R.S. 44:112

**NOTICE OF LEASE**

**BE IT KNOWN**, that as of the \_\_, day of \_\_\_\_\_, 2013, the undersigned parties made and entered into a "Lease Agreement for Land and Building Housing Cogeneration Equipment," pursuant to which Lessor, for good and valuable consideration, leased the immovable property described herein to Lessee.

**LESSOR'S NAME:** BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE

**LESSEE'S NAME:** LOUISIANA PUBLIC FACILITIES AUTHORITY

**LEASE TERM:** \_\_\_\_\_

**DESCRIPTION OF LEASED PROPERTY:** \_\_\_\_\_

SIGNED, this \_\_\_\_ day of \_\_\_\_\_, 2013.

**WITNESSES:**

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE**

\_\_\_\_\_

By: \_\_\_\_\_  
William L. Jenkins, Interim President  
LSU System

**LOUISIANA PUBLIC FACILITIES AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

---

# **Trust Indenture**

**Between**

**Louisiana Public Facilities Authority**

**And**

**The Bank of New York Mellon Trust Company, N.A.,  
as Trustee**

**Dated as of April 1, 2013**

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**\$ \_\_\_\_\_**  
**LOUISIANA PUBLIC FACILITIES AUTHORITY**  
**Lease Revenue Bonds**  
**(Louisiana State University Cogeneration Project)**  
**Series 2013**

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**TRUST INDENTURE**

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# TRUST INDENTURE

This **TRUST INDENTURE** dated as of April 1, 2013 (together with any amendments or supplements hereto, the “Indenture”), is between the **LOUISIANA PUBLIC FACILITIES AUTHORITY**, a public trust and public corporation of the State of Louisiana (the “Authority” or the “Issuer”), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association organized and existing under and by virtue of the laws of the United States of America and duly authorized to accept and execute trusts, with a corporate trust office located in Baton Rouge, Louisiana, as trustee (the “Trustee”).

## WITNESSETH:

WHEREAS, the Authority is a public trust created for public purposes for the benefit of the State of Louisiana (the “State”) by a certain Indenture of Trust dated August 21, 1974 under and pursuant to the provisions of the Louisiana Public Trust Act (La. R.S. 9:2341-2347, as amended) (the “Act”); and

WHEREAS, the Act and said Indenture of Trust empower the Authority to promote, encourage and further the accomplishment of all activities which are or may become of benefit to the State of Louisiana and its inhabitants and which have a public purpose, and to procure any funds necessary therefor by mortgage, pledge or other encumbrance of the trust estate dedicated by it therefor and to provide for the issuance and delivery of special obligation revenue bonds of the Authority to evidence any indebtedness so incurred; and

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Authority is authorized to issue revenue bonds and use the funds derived from the sale thereof for the purpose of financing, acquiring, constructing, purchasing, equipping, maintaining, installing, leasing, subleasing, holding, extending, enlarging, remodeling, storing, operating, repairing and administering educational services and facilities; and

WHEREAS, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation duly created and existing under the Constitution and laws of the State (the “Board”), is empowered to consummate the transactions contemplated hereunder and to do all acts and exercise all powers and assume all obligations necessary or incident thereto; and

WHEREAS, the Board has requested that the Authority issue \$\_\_\_\_\_ aggregate principal amount of Louisiana Public Facilities Authority Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013 (the “Bonds”) for the purpose of (i) financing the acquisition of certain natural gas fueled cogeneration equipment (the “Equipment”) from University Energy Equipment Corporation (the “Corporation”) at a price necessary to pay in full the Certificates of Participation Evidencing Assignment of a Proportionate Interest in Rights to Receive Certain Revenues Pursuant to the Lease Agreement dated February 18, 2003 (the “Certificates”), thus refinancing the Certificates, and (ii) paying the costs of issuance of the Bonds; and

WHEREAS, the Authority is authorized under the provisions of the Act and other constitutional and statutory authority to issue the Bonds for such purposes and the Authority has

determined that it is most advantageous to the Authority and necessary for it to issue its revenue bonds as hereinafter provided for such purposes; and

WHEREAS, the Board will lease to the Authority certain land and improvements located on the campus of Louisiana State University and Agricultural and Mechanical College which house the Equipment (the "Equipment Housing") pursuant to that certain Lease Agreement for Land and Building to House Cogeneration Equipment dated effective April 1, 2013 (the "Ground Lease"); and

WHEREAS, pursuant to that certain Lease Agreement dated as of April 1, 2013 (the "Agreement"), the Authority will lease to the Board the Equipment and sublease to the Board the Equipment Housing, and the Board will agree, subject to certain conditions set forth in the Agreement, to make rental payments in an amount sufficient to make timely payments of principal of, premium, if any, and interest on the Bonds and to pay such other amounts as are required by the Agreement; and

WHEREAS, the fully registered Bonds and the certificate of authentication by the Trustee to be endorsed thereon with respect to the Bonds are to be in substantially the form attached as **Exhibit A** hereto with all necessary and appropriate variations, omissions and insertions as permitted or required under this Indenture; and

WHEREAS, all acts, conditions and things required by the laws of the State to happen, exist and be performed precedent to and in the execution and delivery of this Indenture have happened, exist and have been performed as so required in order to make this Indenture a valid and binding agreement in accordance with its terms; and

WHEREAS, the execution and delivery of this Indenture have been duly authorized by the Authority and the Trustee; and

WHEREAS, each of the parties hereto represents that it is fully authorized to enter into and perform and fulfill the obligations imposed upon it under this Indenture and the parties are now prepared to execute and deliver this Indenture;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Authority and the Trustee hereby covenant and agree as follows:



## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.1. Definitions. All capitalized terms not otherwise defined herein shall have the meanings assigned thereto in the preamble hereto or in the Agreement. In addition to words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

**“Act”** means Sections 2341 to 2347, inclusive, of Title 9 of the Louisiana Revised Statutes of 1950, as amended, and all future acts supplemental thereto and amendatory thereof.

**“Administrative Expenses”** means the necessary, reasonable and direct out-of-pocket expenses incurred by the Authority or the Trustee pursuant to this Indenture and the Agreement, the compensation of the Trustee under this Indenture (including, but not limited to any annual administrative fee charged by the Trustee), and the necessary, reasonable and direct out-of-pocket expenses, including attorneys fees, of the Trustee incurred by the Trustee in the performance of its duties under this Indenture.

**“Agreement”** means the Lease Agreement dated as of April 1, 2013, between the Board and the Authority, including any amendments and supplements thereto as permitted thereunder and hereunder.

**“Authority”** means the Louisiana Public Facilities Authority, a public trust and public corporation of the State of Louisiana, created by the provisions of the Act, or any agency, board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the Authority by said provisions shall be given by law.

**“Authorized Authority Representative”** means the person(s) at the time designated to act under the Agreement and this Indenture on behalf of the Authority by a written certificate furnished to the Board and the Trustee containing the specimen signature of such person(s) and signed on behalf of the Authority by the Chairman or Vice Chairman of the Authority. Such certificate may designate an alternate or alternates.

**“Authorized Board Representative”** means the Chairman, the Chairman Elect and the Secretary of the Board, the President of the LSU System (including any interim or successor office) and the Vice Chancellor for Finance and Administrative Services and Chief Financial Officer of the University (including any interim or successor office), or any other Person designated in writing to the Trustee by the Chairman or Chairman-Elect of the Board or designated by a resolution of the Board, such designation in each case, to be evidenced by a certificate furnished to the Authority and the Trustee containing the specimen signature of such person or persons and signed on behalf of the Board by the Secretary of the Board.

**“Authorized Denomination”** means \$100,000 or any integral multiple of \$5,000 in excess thereof.

**“Beneficial Owner”** means, so long as a book-entry system of registration is in effect pursuant to Section 3.13 hereof, the actual purchaser of the Bonds.

**“Bill of Sale”** means the [**\*\*Bill of Sale\*\***] dated April 30, 2013, of the Equipment by the Corporation to the Authority.

**“Board”** means the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, a public constitutional corporation duly created and existing under the Constitution and laws of the State, and also includes every successor and assignee of the Board until payment or provision for the payment of all of the Bonds.

**“Bond Proceeds Fund”** means the fund of that name created under this Indenture.

**“Bond Register”** means, when used with respect to the Bonds, the registration books maintained by the Trustee pursuant to Section 3.8 of this Indenture.

**“Bondholder”** or **“owner”**, when used with reference to a Bond or Bonds, means the registered owner of any outstanding Bond or Bonds.

**“Bonds”** means the Louisiana Public Facilities Authority Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013, issued in the original aggregate principal amount of \$ \_\_\_\_\_, including such Bonds issued in exchange for other such Bonds pursuant to this Indenture, or in replacement for mutilated, destroyed, lost or stolen Bonds pursuant to this Indenture.

**“Business Day”** means any day other than (i) a Saturday, (ii) a Sunday, (iii) any other day on which banking institutions in New York, New York, or the cities in which the Issuer and the Trustee are located are authorized or required not to be open for the transaction of regular banking business, or (iv) a day on which the New York Stock Exchange is closed.

**“Closing Date”** means the date on which the Bonds are delivered and payment therefor is received by the Authority.

**“Code”** means the Internal Revenue Code of 1986, as amended, and the regulations and rulings promulgated thereunder.

**“Corporation”** means University Energy Equipment Corporation, a Louisiana nonprofit corporation, and its successors and assigns.

**“Costs of Issuance Account”** means the account so designated which is established pursuant to this Indenture.

**“Debt Service Fund”** means the fund of that name created under this Indenture.

**“Defeasance Obligations”** means any of the following which at the time are legal investments under the laws of the State of Louisiana for moneys held under an escrow deposit agreement and then proposed to be invested therein:

- (i) U. S. Treasury Certificates, Notes and Bonds (including State and Local Government Series -- “SLGS”).

- (ii) Direct obligations of the Treasury which have been stripped by the Treasury itself, CATS, TIGRS and similar securities.
- (iii) Obligations of the Resolution Funding Corp (REFCORP). Only the interest component of REFCORP strips which have been stripped by request to the Federal Reserve Bank of New York in book-entry form are acceptable.
- (iv) Pre-refunded municipal bonds rated “Aaa” by Moody's and “AAA” by S&P at the time of investment. If however, the issue is only rated by S&P (i.e., there is no Moody's rating), then the pre-refunded bonds must have been pre-refunded with cash, direct United States of America guaranteed obligations, or “AAA” rated pre-refunded municipals to satisfy this condition.
- (v) Obligations issued by the following agencies which are backed by the full faith and credit of the United States of America: (1) *U.S. Export-Import Bank* (Eximbank) - Direct obligations or fully guaranteed certificates of beneficial ownership; (2) *Farmers Home Administration* - (FmHA) Certificates of beneficial ownership; (3) *Federal Financing Bank*; (4) *General Services Administration* - Participation certificates; (5) *U.S. Maritime Administration* - Guaranteed Title XI financing; (6) *U.S. Department of Housing and Urban Development* (HUD) - Project Notes, Local Authority Bonds, New Communities Debentures - U.S. government guaranteed debentures, U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds.

**“DTC”** or **“Securities Depository”** means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, and its successors and assigns, including any successor securities depositories appointed pursuant to this Indenture.

**“Equipment”** means the natural gas fueled cogeneration equipment described in Exhibit A to the Agreement, the acquisition of which is to be financed with the proceeds of the Bonds.

**“Fiscal Year”** means any period of twelve consecutive months adopted by the Board as its fiscal year for financial reporting purposes, presently the period beginning on July 1 of any calendar year and ending on June 30 of the following calendar year.

**“Government Obligations”** means direct obligations of, or obligations the timely payment of principal of and interest on which is fully and unconditionally guaranteed by, the United States of America.

**“Ground Lease”** means that certain Lease Agreement for Land and Building to House Cogeneration Equipment dated effective April 1, 2013, between the Authority and the Board.

**“Indenture”** means this Trust Indenture dated as of April 1, 2013, between the Authority and the Trustee, as it may be amended or supplemented from time to time by supplemental indentures in accordance with the provisions hereof.

**“Interest Account”** means the Interest Account within the Debt Service Fund created pursuant to Article IV of this Indenture.

**“Interest Payment Date”** or **“interest payment date,”** when used with respect to the Bonds, means each January 1 and July 1, commencing July 1, 2013.

**“Investment Letter”** means the investment letter in the form attached as **Exhibit B** to this Indenture to be executed and delivered to the Authority by the Purchaser.

**“Moody’s”** means Moody’s Investors Services a Delaware corporation, and its successors and assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority with the approval of the Board.

**“Outstanding”** or **“outstanding”**, when used with reference to Bonds, means all Bonds which have been authenticated and issued under this Indenture except:

- (a) Bonds cancelled by the Trustee pursuant to this Indenture;
- (b) Bonds for the payment of which moneys or Defeasance Obligations shall be held in trust for their payment by the Trustee as provided in the defeasance provisions of this Indenture;
- (c) Bonds which have been duly called for redemption and for which the redemption price thereof is held in trust by the Trustee as provided in this Indenture;
- (d) Bonds in exchange for which other Bonds shall have been authenticated and delivered by the Trustee as provided in this Indenture; and
- (e) for all purposes regarding consents and approvals or directions of Bondholders under the Agreement or this Indenture, Bonds held by or for the Authority, the Board or any person controlling, controlled by or under common control with either of them.

**“Participant”** means any broker-dealer, bank and other financial institution from time to time for which DTC holds Bonds as securities depository.

**“Payments”** means the amounts of rental payments required by the Agreement with respect to the Bonds to be made by the Board as provided in Article IV of the Agreement.

**“Permitted Investments”** means, with respect to the Series 2013 Bonds, the following, to the extent permitted by applicable law:

- (1) Cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (2) below);
- (2) Direct obligations of (including obligations issued or held in book-entry form on the books of) the Department of the Treasury of the United States of America;

(3) Obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America:

- Export-Import Bank
- Farm Credit System Financial Assistance Corporation
- Rural Economic Community Development Administration (formerly the Farmers Home Administration)
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing and Urban Development (PHA's)
- Federal Housing Administration
- Federal Financing Bank;

(4) Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America:

- Senior debt obligations rated "Aa" by Moody's and "AA" by S&P issued by the Federal National Mortgage Association (FNMA) or the Federal Home Loan Mortgage Corporation (FHLMC)
- Senior debt obligations of the Federal Home Loan Bank System
- Senior debt obligations of other Government Sponsored Agencies;

(5) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of "A-1+" by S&P and "P-1" by Moody's and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(6) Commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by S&P and "P-1" by Moody's, and which matures not more than 270 days after the date of purchase;

(7) Investments in a money market fund rated "AAAm" or "AAAm-G" or better by S&P;

(8) Pre-refunded Municipal Obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(A) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest rating category of S&P and Moody's or any successors thereto; or

(B) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in paragraph (A)(2) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity or redemption date or dates specified in the irrevocable instructions referred to above, as appropriate;

(9) General obligations and revenue bonds of any state of the United States of America with a rating of at least “A2/A” or higher by both Moody’s and S&P;

(10) Investment agreements (supported by appropriate opinions of counsel); and

(11) Other forms of investments (including repurchase agreements); and

(12) Any other investment approved in writing by the Purchaser.

**“Principal Account”** means the Principal Account within the Debt Service Fund created pursuant to Article IV of this Indenture.

**“Purchaser”** means Regions Capital Advantage, Inc., and its successors and assigns.

**“Record Date,”** when used with respect to the Bonds, means each June 15 and December 15, as the case may be, next preceding an Interest Payment Date, or, if such day shall not be a Business Day, the next preceding Business Day.

**“State”** means the State of Louisiana.

**“S&P” or Standard & Poor’s Ratings Services”** mean Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, a New York corporation, its successors and assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, “S&P” shall be deemed to refer to any other nationally recognized securities rating agency designated by the Authority with the approval of the Board.

**“Tax Regulatory Certificate”** means the Tax Regulatory Certificate dated April 30, 2013, by the Authority, the Board and the Trustee, as supplemented and amended from time to time in accordance with the provisions thereof.

**“Trust Estate”** means all the property assigned by the Authority to the Trustee pursuant to this Indenture as security for the Bonds.

**“Trustee”** means the state banking corporation or national banking association with corporate trust powers qualified to act as Trustee under this Indenture which may be designated

(originally or as a successor) as Trustee for the owners of the Bonds issued and secured under the terms of this Indenture, initially The Bank of New York Mellon Trust Company, N.A., Baton Rouge, Louisiana.

SECTION 1.2. Rules of Construction.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, the word “person” shall include the plural as well as the singular number, and “person” shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

(c) Provisions calling for the redemption of Bonds or the calling of Bonds for redemption do not mean or include the payment of Bonds at their stated maturity or maturities.

(d) All references in this Indenture to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this Indenture. The words “herein”, “hereof”, “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

## ARTICLE II

### GRANTING CLAUSES

SECTION 2.1. Granting Clauses. In consideration of the acceptance by the Trustee of the trusts and duties set forth in this Indenture on behalf of the owners of all Bonds issued and secured hereunder; of the purchase and acceptance of the Bonds issued and secured by this Indenture by the owners thereof; of the payment of the purchase price of the Bonds to the Trustee for application as provided hereinafter; and in order to secure the payment of any and all Bonds at any time outstanding hereunder, according to the tenor and effect thereof and the premium and interest thereon, the payment of all costs, fees and charges specified herein, and the payment of all other sums if any, from time to time due to the owners of all Bonds secured hereunder and to the Trustee or its successors and assigns, or to others, according to the intent and meaning of all such Bonds and this Indenture, up to a maximum amount of \$\_\_\_\_\_, and for the purpose of securing the performance and observance by the Authority of all the covenants and conditions herein contained, the Authority does hereby PLEDGE, TRANSFER, ASSIGN AND DELIVER TO AND IN FAVOR OF the Trustee, and its successor or successors in trust, for the benefit of the owners of all Bonds secured hereunder, its interest in the following described properties, rights, interests and benefits which are collectively called the “Trust Estate”:

(a) All right, title and interest of the Authority in, to and under the Ground Lease and the Agreement, including the interest of the Authority in and to all payments, proceeds, revenues, income, receipts, issues, benefits and other moneys received or derived by the Authority under the Agreement including, without limitation, the Payments (except the administrative payments) to be paid by the Board to the Trustee for the account of the Authority pursuant to Section 4.2 of the Agreement, saving and excepting, however, the Authority's rights to exculpation, indemnification, notices and payment of expenses by the Board under the Agreement;

(b) All cash, moneys, securities and investments which may at any time and from time to time, pursuant to the provisions of this Indenture or the Agreement, be paid to the Trustee or be in the hands of the Trustee, except as the interest of said Trustee in such cash, moneys, securities and investments may otherwise appear in this Indenture, provided, however, that nothing in this Indenture shall be construed to affect any property held by the Trustee in any capacity other than as Trustee hereunder;

(c) all right, title and interest of the Authority in and to the Equipment and the Equipment Housing; and

(d) To the extent not covered by the clauses above, all proceeds of any and all of the foregoing.

TO HAVE AND TO HOLD all and singular the Trust Estate, whether now owned or hereafter acquired, unto the Trustee and its successor or successors and assigns forever; in trust, nevertheless subject to the terms and conditions and trusts herein set forth, for the equal benefit, security and protection of all and singular the present and future owners of all of the Bonds issued under and secured by this Indenture, without preference, priority or distinction as to lien or



otherwise, except as may otherwise be provided herein, of any one Bond over any other Bond or of principal over interest or interest over principal, all as herein provided, and for the uses and purposes, and upon the terms, agreements and conditions set forth herein.

The Trust Estate assigned hereunder is also assigned to secure the payment of any and all sums which the Trustee may expend or become obligated to expend (including but not limited to court costs and attorneys' fees) to preserve and protect any of the Trust Estate or to cure any default of the Board under the Agreement or arising out of any such default or incident of delay in payment of sums and the performance of obligations thereunder, or in pursuing or exercising any right, rights, remedy or remedies consequent upon the default of the Board thereunder.

PROVIDED, HOWEVER, that if the Authority, its successors or assigns, shall well and truly pay, or cause to be paid, or provide for the payment pursuant to the provisions of this Indenture, the principal of the Bonds, premium, if any, and the interest due or to become due thereon, at the times and in the manner set forth in the Bonds and this Indenture solely from amounts provided therefor under the Agreement, according to the true intent and meaning thereof, and shall well and truly keep, perform and observe all the covenants and agreements as provided in and pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such performance and payments this Indenture and the rights created hereby shall cease, terminate and be discharged as provided in Article XII hereof; otherwise this Indenture shall be and remain in full force and effect.

The Authority hereby covenants and agrees with, and does hereby covenant unto the Trustee, that it has good right and lawful authority to transfer and assign the Trust Estate to the extent and in the manner herein provided; that the Authority will not suffer any lien or encumbrance to exist upon the Trust Estate, or any part thereof, superior to the security or lien to accrue or be created under this Indenture; or do or suffer any act or thing whereby the security hereof may be diminished or impaired; and the Authority further does covenant, and by these presents hereby covenants and agrees to defend or cause to be defended forever the title to each and every part of said Trust Estate against the claims and demands of all persons whomsoever.

THIS INDENTURE FURTHER WITNESSETH and it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all of said Trust Estate hereby conveyed, transferred, assigned, confirmed, pledged and encumbered is to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Authority has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective owners, from time to time, of the Bonds, or any part thereof as follows:

## ARTICLE III

### AUTHORIZATION, TERMS AND CONDITIONS OF BONDS

SECTION 3.1. Bonds Issuable Under this Article Only. No Bonds may be issued under the provisions of this Indenture except in accordance with the provisions of this Article.

SECTION 3.2. Authorization of Bonds.

(a) There is hereby authorized and issued under this Indenture (i) \$ \_\_\_\_\_ aggregate principal amount of bonds to be known as "Louisiana Public Facilities Authority Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013" to be issued for the purpose of (i) financing the acquisition of the Equipment and (ii) paying the costs of issuance of the Bonds.

(b) The Bonds are issuable as fully registered Bonds without coupons, in Authorized Denominations and shall be numbered from No. R-1 upwards. The Bonds shall be dated the date of delivery thereof, shall mature (subject to prior redemption as hereinafter set forth) on July , 2023, and shall bear interest from the date thereof, payable on January 1 and July 1 of each year, commencing July 1, 2013, at the rate of \_\_\_\_% per annum (using a year of 360 days composed of twelve 30-day months) .

The Bonds shall bear interest from the last Interest Payment Date preceding the date of their authentication and delivery to which interest on the Bonds has been paid, provided, however, that if the Bonds are authenticated and delivered before the first Interest Payment Date they shall bear interest from its dated date; and provided further that if the Bonds are authenticated and delivered between a Record Date and the Interest Payment Date to which such Record Date relates, inclusive, they shall bear interest from such Interest Payment Date, unless interest on the Bonds due on such Interest Payment Date is not paid, in which case th Bonds shall bear interest from the last Interest Payment Date preceding the date of their authentication and delivery to which interest hereon has been paid, or if no interest has been paid, from their dated date.

(c) The principal of, and premium, if any, of the Bonds shall be payable to the registered owners thereof upon surrender of the Bonds at the principal corporate trust office of the Trustee. The interest on the Bonds, when due and payable, shall be paid by check or draft mailed by the Trustee on such due date to each person in whose name a Bond is registered, at the address(es) as they appear on the Bond Register maintained by the Trustee at the close of business on the applicable Record Date irrespective of any transfer or exchange of the Bonds subsequent to such Record Date and prior to such Interest Payment Date, unless the Authority shall default in payment of interest due on such Interest Payment Date, provided that the owners of \$1,000,000 or more in aggregate principal amount of Bonds may request payment by wire transfer if such owners have requested such payment in writing to the Trustee, which request shall be made no later than the Record Date and shall include all relevant bank account information and shall otherwise be acceptable to the Trustee. Such notice shall be irrevocable until a new notice is delivered not later than a Record Date. In the event of any default, such defaulted interest shall be payable on a

payment date established by the Trustee to the persons in whose names the Bonds are registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed by the Trustee to the registered owners of the Bonds not less than 15 days preceding such special record date. Payment as aforesaid shall be made in such coin or currency of the United States of America as, at the respective times of payment, is legal tender for the payment of public and private debts.

SECTION 3.3. Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form set forth in **Exhibit A** attached hereto and made a part hereof with such appropriate variations, additions, omissions and insertions as are permitted or required by this Indenture. All Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or of any securities exchange on which the Bonds may be listed or any usage or requirement of law with respect thereto. All Bonds may bear identifying CUSIP numbers, but any failure to include such numbers or any error in any CUSIP number so included shall not in any way affect the validity of the Bonds.

SECTION 3.4. Redemption of Bonds.

(a) **Optional Redemption.** The Bonds are subject to redemption prior to maturity at the option of the Authority, upon written direction from an Authorized Board Representative and upon receipt of prior written approval of the Purchaser, as a whole or in part at any time, the maturity of said Bonds to be redeemed to be designated by the Authorized Board Representative and selected within a maturity by the Trustee in such manner as the Trustee may determine, at a redemption price equal to the par amount of the Bonds to be redeemed plus accrued interest thereon to the redemption date.

(b) **Extraordinary Optional Redemption.** The Bonds are also subject to redemption at the option of the Authority, upon written direction from an Authorized Board Representative, in whole or in part at any time at the principal amount thereof plus accrued interest to the redemption date, but without premium, in the event of damage, destruction or condemnation resulting in losses with respect to the Equipment in excess of \$50,000.

(c) **Mandatory Redemption.** The Bonds are subject to mandatory sinking fund redemption prior to maturity, in part, by lot in such manner as may be designated by the Trustee at the principal amount of such Bonds to be redeemed, plus accrued interest thereon to the date of redemption, on July 1 of the following years and in the following amounts:

<b><u>Year</u></b> <b><u>(July 1)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023 <sup>*</sup>	

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<sup>\*</sup>Final Maturity

Unless otherwise specified above, if less than all of the Bonds shall be called for redemption, the maturity of the Bonds to be redeemed shall be designated by the Board and selected by the Trustee within a maturity in such manner as the Trustee may determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of an Authorized Denomination. If a portion of any Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon the surrender thereof.

The Trustee shall give notice of any redemption of the Bonds (other than pursuant to subparagraph (c) above) not less than 30 days prior to the redemption date to the registered owners of the Bonds to be redeemed by mailing such notice by first class mail, postage prepaid, to such owners at their addresses appearing in the Bond Register maintained by the Trustee. Any such notice shall (i) specify (A) in the case of a partial redemption, the aggregate principal amounts of the Bonds to be redeemed, (B) the redemption date, (C) the redemption price per \$5,000, and (D) the place or places where amounts due upon such redemption will be payable and (ii) state that on the redemption date, if sufficient moneys are available for such redemption, the Bonds or the portions thereof to be redeemed shall cease to bear interest.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds or portions thereof shall be deemed to have been paid within the meaning hereof, such notice shall state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest on such Bonds or portions thereof to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect, the Authority shall not be required to redeem such Bonds or portions thereof and the redemption price shall not be due and payable. In the event that such notice of redemption contains such a condition and such moneys are

not so received, the Trustee shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not so received and that such Bonds or portions thereof will not be redeemed and that the failure to redeem such Bonds or portions thereof shall not constitute an Event of Default under this Indenture or the Agreement.

On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, money for payment of the redemption price being held in the Debt Service Fund in trust for the owners of the Bonds or portions thereof to be redeemed and any other conditions to such redemption having been satisfied, the Bonds or portions of Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date, interest on the Bonds or portions of Bonds so called for redemption shall cease to accrue, such Bonds or portions of Bonds shall cease to be entitled to any benefit or security under this Indenture, and the owners of such Bonds or portions of Bonds shall not have rights in respect thereof except to receive payment of the redemption price thereof and, to the extent provided in the next paragraph, to receive Bonds for any unredeemed portions of Bonds.

In case part, but not all, of an outstanding Bond shall be selected for redemption, the registered owner thereof or his legal representative shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption, and the Trustee shall authenticate and deliver to or upon the order of such registered owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a new Bond.

Bonds and portions of Bonds which have been duly called for redemption under the provisions of this Section, or with respect to which irrevocable instructions to call for redemption have been given to the Trustee in form satisfactory to it, and for the payment of the redemption price for which moneys, or Defeasance Obligations, shall be held by the Trustee in a segregated account in trust for the owners of the Bonds or portions thereof to be redeemed, shall not thereafter be deemed to be outstanding under the provisions of this Indenture and shall cease to be entitled to any security or benefit under this Indenture other than the right to receive payment from such moneys.

**SECTION 3.5.        Execution; Limitation of Liability.** The Bonds shall be executed on behalf of the Authority with the manual or facsimile signatures of the Chairman or Vice Chairman and the Secretary-Treasurer or an Assistant Secretary of the Authority, and shall have impressed or imprinted thereon the official seal of the Authority or a facsimile thereof. The Bonds, together with interest and premium, if any, thereon, shall not constitute a debt of the State or any political subdivision thereof. The Bonds, together with interest thereon, shall be limited obligations of the Authority and shall be secured by and payable solely out of the Trust Estate, including revenues derived from payments made pursuant to the Agreement. The Authority shall not be obligated to pay the principal of the Bonds or the interest or premium, if any, thereon or other costs incidental thereto except from payments made pursuant to the Agreement. In case any officer of the Authority whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. **THE BONDS ARE LIMITED AND SPECIAL OBLIGATIONS OF THE AUTHORITY AND DO NOT CONSTITUTE OR CREATE AN OBLIGATION, GENERAL OR SPECIAL,**

DEBT, LIABILITY OR MORAL OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER AND NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE AUTHORITY (WHICH HAS NO TAXING POWER AND RECEIVES NO FUNDS FROM ANY GOVERNMENTAL BODY) BUT ARE A LIMITED AND SPECIAL REVENUE OBLIGATION OF THE AUTHORITY PAYABLE SOLELY FROM THE TRUST ESTATE, INCLUDING THE INCOME, REVENUES AND RECEIPTS DERIVED OR TO BE DERIVED FROM PAYMENTS MADE PURSUANT TO THE AGREEMENT.

SECTION 3.6. Authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until a certificate of authentication substantially in the form set forth in **Exhibit A** attached hereto and made a part hereof shall have been duly executed by a duly authorized representative of the Trustee, and such executed certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized representative of the Trustee, but it shall not be necessary that the same representative sign the certificate of authentication on all of the Bonds issued hereunder.

SECTION 3.7. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any outstanding Bond, whether temporary or definitive, is mutilated, lost, stolen or destroyed, the Authority may execute and, upon its request, the Trustee may authenticate a new Bond of the same principal amount and of like tenor as the mutilated, lost or stolen or destroyed Bond; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Authority and the Trustee evidence of such loss, theft or destruction in form satisfactory to the Authority and the Trustee, together with indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a substitute Bond the Authority may authorize the payment of the same. The Authority and the Trustee may charge the owner of such Bond with their reasonable fees and expenses in this connection. Any Bond issued under the provisions of this Section 3.7 in lieu of any Bond alleged to be destroyed, lost or stolen shall constitute an original additional contractual obligation on the part of the Authority, whether or not the Bond so alleged to be destroyed, lost or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture together with all other Bonds in substitution for which such Bonds were issued.

SECTION 3.8. Registration of Bonds. The Trustee shall be the bond registrar for the Bonds. So long as any of the Bonds shall remain outstanding, there shall be maintained and kept for the Authority, at the principal corporate trust office of the Trustee, the Bond Register for the registration and transfer of the Bonds and, upon presentation thereof for such purpose at said office, the Trustee shall register or cause to be registered therein, and permit to be transferred thereon, under such reasonable regulations as it may prescribe, any Bond.

Each Bond shall be transferable only upon the Bond Register at the principal corporate trust office of the Trustee at the written request of the registered owner thereof or his legal representative duly authorized in writing upon surrender thereof, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or his legal representative duly authorized in writing. Upon the transfer of any such Bond, the Trustee shall issue in the name of the transferee, in authorized denominations, one or more Bonds of the same aggregate principal amount as the surrendered Bonds.

SECTION 3.9. Persons Treated as Owners. The Authority and the Trustee may, for the purpose of receiving payment of, or on account of, the principal of, premium, if any, and interest on any Bond and for all other purposes, deem and treat the person in whose name such Bond shall be registered upon the Bond Register as the absolute owner of such Bond, whether or not such Bond is overdue, and neither the Authority nor the Trustee shall be affected by any notice to the contrary.

Payment made to the person deemed to be the owner of any Bond for the purpose of such payment in accordance with the provisions of this Section 3.9 shall be valid and effectual, to the extent of the sum or sums so paid, to satisfy and discharge the liability upon such Bond in respect of which such payment was made.

SECTION 3.10. Exchange and Transfer of Bonds. As long as any of the Bonds remain outstanding, there shall be permitted the exchange of Bonds at the principal corporate trust office of the Trustee. Any Bond or Bonds upon surrender thereof at the principal corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner or his legal representative duly authorized in writing, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of other Bonds of the same maturity in Authorized Denominations.

For every such exchange or transfer of Bonds, the Authority or the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer.

The Trustee shall not be required to register the transfer or exchange of (a) any Bonds during the 15 day period next preceding the selection of Bonds to be redeemed and thereafter until the date of the mailing of a notice of redemption of Bonds selected for redemption, or (b) any Bonds selected, called or being called for redemption in whole or in part, except in the case of any Bond to be redeemed in part, the portion thereof not so to be redeemed.

**The Bonds may be sold and transferred only to (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the 1933 Act), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; (iv) a “qualified institutional buyer,” as defined in Rule 144A of the Securities and Exchange Commission; or (v) a securitization Special Purpose Vehicle (“SPV”), the interests in which SPV are sold to an entity described in clauses (i) through (iv) above in this paragraph. Each transferee shall be**

**required to execute and delivery to the Authority an investment letter in the form attached as Exhibit B to this Indenture.**

SECTION 3.11. Cancellation and Destruction of Surrendered Bonds. Upon the surrender to the Trustee of any temporary or mutilated Bonds, or Bonds transferred or exchanged for other Bonds, or Bonds paid at maturity by the Authority, the same shall forthwith be cancelled and destroyed by the Trustee, and the Trustee, upon the request of the Authority, shall deliver its certificate of such destruction to the Authority.

SECTION 3.12. Delivery of the Bonds. Upon the execution and delivery of this Indenture, the Authority shall execute and deliver to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the purchasers thereof as shall be directed by the Authority as hereinafter in this Section provided. The Authority shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds and deliver them to the purchasers thereof as shall be directed by the Authority as hereinafter in this Section provided.

Prior to or simultaneously with the delivery by the Trustee of the Bonds there shall be filed with the Trustee:

- (a) A copy, duly certified by the Secretary-Treasurer or an Assistant Secretary of the Authority, of the resolution or resolutions adopted by the Authority authorizing the execution and delivery of this Indenture and the Agreement, and all other instruments contemplated thereby and the authorization, issuance, sale and delivery of the Bonds;
- (b) A copy, duly certified by the Administrative Secretary of the Board, of the resolution or resolutions of the Board authorizing the execution and delivery of the Agreement and the Ground Lease, and all other instruments contemplated thereby and approving this Indenture and the authorization, issuance, sale and delivery of the Bonds;
- (c) Original executed counterparts of this Indenture, the Agreement, the Tax Regulatory Agreement, the Bill of Sale and the Ground Lease;
- (d) Signed copy of an opinion of Adams and Reese LLP, Bond Counsel, and signed copies of all other opinions of counsel required in connection with the issuance of the Bonds and the transactions contemplated thereby;
- (e) A request and authorization to the Trustee on behalf of the Authority and signed by its Chairman, Vice Chairman, Secretary-Treasurer or an Assistant Secretary to authenticate and deliver the Bonds to the purchasers thereof and specifying the amounts to be deposited in the Bond Proceeds Fund, the Cost of Issuance Account and the Debt Service Fund; and
- (f) Such other documents, certificates, instruments and opinions required in connection with the execution and delivery of the Bonds.



## ARTICLE IV

### FUNDS AND ACCOUNTS; FLOW OF FUNDS; INVESTMENTS; DEPOSITS; ARBITRAGE

SECTION 4.1. Creation and Use of Funds and Accounts; Application of Bond Proceeds. Upon delivery of and payment for the Bonds, the following special trust funds and accounts shall be established and maintained with the Trustee so long as any Bonds issued under this Indenture are outstanding to be used for the following purposes:

(a) The *Bond Proceeds Fund* shall be maintained with the Trustee and used to receive the proceeds of the Bonds and certain available moneys of the Board; to transfer to The Bank of New York Mellon Trust Company, N.A., as trustee for the Certificates, an amount of proceeds required to pay the Certificates in full on July 1, 2013 (which shall constitute payment of the purchase price of the Equipment); and to retain in a special account created therein called the Costs of Issuance Account the balance of the proceeds of the Bonds.

(b) The *Debt Service Fund* and its corresponding accounts shall be maintained with the Trustee and used for the following purposes:

(i) The *Interest Account* shall be used to receive the portions of the Payments applicable to interest on the Bonds and to pay the interest on the Bonds as it becomes due and payable; and

(ii) The *Principal Account* shall be used to receive the portion of the Payments applicable to the principal requirements of the Bonds; to pay the principal of the Bonds as it becomes due and payable whether at maturity or upon scheduled sinking fund redemption; and, if funds are available for such purpose and at the written direction of the Authority, to effect the redemption of the Bonds prior to their maturity in accordance with the redemption provisions thereof or the purchase of Bonds prior to their maturity in the open market at a price not in excess of the principal amount thereof, premium, if any, plus accrued interest.

SECTION 4.2. Flow of Funds. The Authority covenants and agrees to cause the Board to pay the Payments in the amounts, time and manner as provided in Section 4.2 of the Agreement, and the Trustee agrees to cause the Payments with respect to the Bonds to be applied in the amounts, time and manner as hereinafter provided:

(a) Semiannually, on or before each January 1 and July 1, commencing July 1, 2013, an amount equal to the interest due and payable on the Bonds on such January 1 or July 1, as the case may be; and

(b) Annually, on or before each July 1, commencing July 1, 2013, an amount equal to the principal amount of the Bonds maturing on such July 1.

The required payments for Sections 4.2(a) and 4.2(b) above shall be reduced by any surplus amount contained in or investment income received in or transferred to the Interest and/or Principal Accounts.

SECTION 4.3. Intentionally Left Blank.

SECTION 4.4. Investments. Moneys contained in the funds and accounts held by the Trustee shall be continuously invested and reinvested by the Trustee at the direction of the Board in Permitted Investments, to the extent practicable, that shall mature (or be readily convertible to cash) not later than the respective dates, as estimated by the Trustee, when the moneys in said Funds and Accounts shall be required for the purposes intended, and:

(a) No such investment shall be required to be made unless the cash at the time available therefor is at least equal to \$1,000;

(b) The Trustee shall be authorized, to the extent necessary to enable the Trustee to discharge or perform its obligations hereunder, at any one or more times to sell any part or all of the investments whenever it may, for any reason or purpose whatsoever, deem any such sale to be desirable;

(c) Any income derived from and any profit or loss on any such investment of moneys on deposit in any such fund or account shall be credited or debited, as the case may be, to the respective fund or account in which earned; and

(d) No Permitted Investments in any fund or account may mature beyond the latest maturity date of any Bonds outstanding at the time such Permitted Investments are deposited. For the purposes of this section, the maturity date of repurchase agreements for Government Obligations or other obligations is the maturity date of such repurchase agreements and not the maturity date of the underlying Government Obligation or other obligation.

An Authorized Board Representative shall give to the Trustee directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Article and Article V of the Agreement, and the Trustee shall then invest such money under this Section as so directed. The Trustee shall in no event have any liability for any loss resulting from the investment of moneys in accordance with the directions of the Authorized Board Representative. The Trustee shall furnish the Authority annually with a written copy and the Board with a written copy, on at least a monthly basis, of the types, amounts, yield and maturities of all such investments. If an Authorized Board Representative fails to give written investment instructions to the Trustee, the Trustee shall invest funds in the foregoing accounts in \_\_\_\_\_ or, if such fund is not available, in a comparable money market fund which invests only in Defeasance Obligations.

Investments shall be valued by the Trustee as frequently as deemed necessary by the Trustee, but not less often than quarterly, at the market value of such investments. Deficiencies in the amount on deposit in any fund or account resulting from a decline in market value shall be restored no later than the succeeding valuation date. Investments purchased with funds on deposit in the Debt Service Reserve Fund shall have an average aggregate weighted term to maturity not greater

than five years (the final termination date of any investment consisting of a repurchase or investment agreement being the maturity of such investment for purposes of this limitation).

SECTION 4.5. Depository of Moneys and Security for Deposits. All of the funds and accounts established hereunder shall be special trust accounts held by the Trustee in trust for the benefit of the owners of the Bonds and shall not be subject to lien or attachment by any creditors of the Trustee, the Authority or the Board. Uninvested sums in these funds and accounts shall be continually secured as are deposits of uninvested sinking funds of political subdivisions of the State or in the manner prescribed by federal law for securing any federal trust funds as may be prescribed from time to time by the Comptroller of the Currency.

SECTION 4.6. Arbitrage. Notwithstanding all the provisions hereof, the Authority shall not direct the investment of moneys in the various funds and accounts created hereunder in a manner which would result in the loss of exclusion from gross income of interest on the Bonds for Federal income tax purposes or in such manner which would result in the Bonds becoming “arbitrage bonds” within the meaning of Section 148 of the Code.

SECTION 4.7. Amounts Remaining in Funds; Releases. It is agreed by the parties hereto that any amounts remaining in the funds and accounts existing pursuant to this Indenture upon the expiration or sooner cancellation or termination of the Agreement, as provided therein, after payment in full of all Bonds then outstanding under this Indenture (or provisions for the payment thereof having been made in accordance with Article XII of this Indenture), and the fees, charges and expenses of the Authority and the Trustee and all other amounts required to be paid under the Agreement and under this Indenture, other than amounts payable as arbitrage rebate under Section 148(f) of the Code, shall belong to and be paid to the Board.

**ARTICLE V**  
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## ARTICLE VI

### COSTS OF ISSUANCE

SECTION 6.1. Payment of Costs of Issuance from Bond Proceeds Fund. There shall be paid into the Costs of Issuance Account in the Bond Proceeds Fund the amounts required to be so paid from Bond proceeds pursuant to Section 4.1(a) of this Indenture; and such amounts shall be applied to the payment of the legal, administrative, financing and incidental expenses of the Authority and the Board relating to the issuance of the Bonds. Any additional costs of issuance shall be paid solely by the Board as Rent under the Agreement. The Trustee shall make payments from the Costs of Issuance Account upon receipt of statements from the parties entitled to be paid therefrom accompanied by a written request of the Authority, signed by an Authorized Board Representative, directing the Trustee to pay such statements. Any amounts in the Costs of Issuance Account remaining after payment in full of all of the expenses and costs of issuance of the Bonds shall be transferred, first, to the Interest Account and, second, to the Principal Account of the Debt Service Fund.

## ARTICLE VII

### ENFORCEMENT OF AGREEMENT

SECTION 7.1. Assignment of Agreement. The Authority has assigned all of its right, title and interest in, to and under the Agreement (except for rights relating to exculpation, indemnification, notices and payment of fees and expenses thereunder) to the Trustee as security for the Bonds and hereby agrees that the Agreement may be enforced by the Trustee and/or the owners of the Bonds issued hereunder in accordance with the terms hereof and thereof. Notwithstanding such assignment, the Authority agrees to cause the Board to comply with the terms contained in the Agreement, and the rights of the Bondholders and the Trustee shall be governed by the provisions of this Indenture and the Agreement.

SECTION 7.2. Trustee or Bondholders to Enforce Agreement. The Trustee may, and upon request of the owners of a majority in aggregate principal amount of the Bonds then outstanding shall, subject to the provisions of Section 8.11 and Article IX hereof, strictly and promptly enforce the provisions of the Agreement so long as any of the Bonds remain outstanding under this Indenture. All rights of action (including the right to file proof of claims) to enforce the Agreement under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of the Bonds and without their production in any trial or other proceeding relating thereto. Any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee for the Bondholders without the necessity of joining as plaintiffs or defendants any of the Bondholders.

## ARTICLE VIII

### EVENTS OF DEFAULT; REMEDIES

SECTION 8.1. No Extension of Time for Payment of Principal, Premium or Interest. The Trustee shall not be authorized to extend the time for any payment of principal, premium or interest without the prior written consent of or authorization by the owner of the Bonds so affected.

SECTION 8.2. Events of Default. Each of the following events is hereby declared to be an “Event of Default”:

(a) The payment of any installment of interest on any of the Bonds shall not be made when the same shall become due and payable;

(b) The payment of the principal of or premium, if any, on any of the Bonds shall not be made when the same shall become due and payable, whether at maturity or by proceedings for redemption or by acceleration or otherwise;

(c) An “Event of Default” under Article IX of the Agreement shall have occurred and shall not have been cured within the applicable cure period;

(d) If by action or inaction of the Authority or the Board the interest on the Bonds shall become includable in “gross income” for federal income tax purposes; or

(e) Default by the Authority in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or in this Indenture on the part of the Authority to be performed, if such default shall continue for 30 days after written notice specifying such default and requiring the same to be remedied shall have been given to the Authority and the Board by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the owners of not less than 25% in principal amount of the Bonds then outstanding. Such default shall not become an Event of Default if said default be of the nature that (i) it cannot be corrected within the 30 day period after receipt of notice, but the Authority (or the Board pursuant to the provisions of Section 8.14 of this Indenture) promptly shall institute and diligently pursue corrective action until such default is cured, or (ii) the Trustee shall determine that such default is not curable but such default does not affect the validity or enforceability of the Bonds, this Indenture or the Agreement, an event of nonperformance shall not have occurred under the Agreement (other than as a result of the cross-default provisions), and such default does not impair the security or the obligations provided for or under the Bonds, this Indenture or the Agreement.

The word “default” as used herein means failure of performance when due, exclusive of any period of grace, if any, allowed to correct any such failure.

SECTION 8.3. Remedies. Upon the occurrence of an Event of Default, the Authority, the Trustee and, subject to Sections 8.10 and 8.11, the Bondholders shall have all the rights and remedies as may be allowed by law, this Indenture or pursuant to the provisions of the Agreement

by virtue of their assignment hereunder, including but not limited to, acceleration of the maturity of all Bonds, or suit at law or in equity to enforce or enjoin the action or inaction of parties under the provisions of this Indenture or the Agreement.

SECTION 8.4. Acceleration; Annulment of Acceleration. (a) Upon the occurrence of an Event of Default described in Section 8.2 of this Indenture, the Trustee may, and upon the written request of the owners of not less than a majority of the aggregate principal amount of Bonds outstanding shall, by notice in writing to the Authority and the Board, declare the Bonds then outstanding immediately due and payable, and such Bonds shall become and be immediately due and payable, anything in such Bonds or in the Agreement or this Indenture to the contrary notwithstanding, and, subject to Article IX, the Trustee may exercise any remedies granted to it herein. In such event, there shall be due and payable on the Bonds an amount equal to the principal amount of all the Bonds then outstanding plus all interest accrued thereon and which will accrue thereon to the date of payment; and

(b) Anything to the contrary in this Indenture notwithstanding, at any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Indenture or the Agreement, the Trustee may annul such declaration and its consequences with respect to the Bonds if (i) moneys shall have been deposited in the Debt Service Fund sufficient to pay all matured installments of principal (other than principal due solely because of acceleration) and interest; (ii) moneys shall be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Authority and the Trustee; (iii) all other amounts then payable by the Authority or the Board under this Indenture or the Agreement shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every Event of Default known to the Authority or the Trustee (other than a default in the payment of the principal of the Bonds due only because of such declaration) shall have been remedied to the satisfaction of the Authority and the Trustee. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

SECTION 8.5. Insufficiency in the Debt Service Fund; Application of Moneys. Anything in this Indenture to the contrary notwithstanding, if at any time the moneys in the Debt Service Fund shall not be sufficient to pay the interest on, premium, if any, or the principal of the Bonds as the same shall become due and payable (either by their terms or by acceleration of maturities), such moneys, together with any other moneys then available or thereafter becoming available for such purpose, whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST, to the payment to the persons entitled thereto of all installments of interest then due and payable in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay any particular installment, then to the payment thereof, ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or



preference except as to any difference in the respective rates of interest specified in the Bonds; then

SECOND, to the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture) in the order of their due dates, with interest on the principal amount of such Bonds due and payable, and, if the amount available shall not be sufficient to pay in full the principal of the Bonds and their interest thereon, then to the payment thereof ratably, according to the amount of the interest due on such date, and next to the payment of the principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto without any discrimination or preference; and then

THIRD, to the payment of the interest on and the principal of the Bonds, to the purchase and retirement of Bonds and to the redemption of Bonds, all in accordance with the provisions of this Indenture.

(b) If the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference; and

(c) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled, then, subject to the provisions of Section 8.5(b) above, in the event that the principal of all the Bonds shall later become or be declared due and payable, then all such moneys shall be applied in accordance with the provisions of Section 8.5(a) above.

Whenever money is to be applied by the Trustee pursuant to the provisions of this Section, such money shall be applied by the Trustee at such times and from time to time as the Trustee in its sole discretion shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for application in the future; the deposit of such money or otherwise setting aside such money in trust for the proper purpose shall constitute proper application by the Trustee; and the Trustee shall incur no liability whatsoever to the Authority, to any Bondholder or to any other person for any delay in applying any such money, so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of this Indenture as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such money, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date and

shall not be required to make payment to the owner of any Bond until such Bond shall be surrendered to the Trustee for appropriate endorsement or for cancellation if fully paid.

SECTION 8.6. Discontinuance of Proceedings. In case any proceeding taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, then and in every such case the Authority, the Trustee, the Board and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no proceeding had been taken.

SECTION 8.7. Appointment of Receiver. Upon the occurrence of an Event of Default, and upon filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or keeper pending such proceedings, with such powers as the court making such appointment shall confer.

SECTION 8.8. Remedies Not Exclusive. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or the Bondholders is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Indenture or existing at law or in equity on or after the date of adoption of this Indenture.

SECTION 8.9. Remedies Vested in Trustee. All rights of action under this Indenture, the Agreement or under any of the Bonds may be enforced by the Trustee without possession of the Bonds and without their production in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee may be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any owners of the Bonds.

SECTION 8.10. Majority of Bondholders Control Proceedings. If an Event of Default shall have occurred and be continuing, notwithstanding anything in this Indenture to the contrary, the owners of at least a majority of the aggregate outstanding principal amount of Bonds then outstanding shall have the right, at any time by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting any proceeding to be taken in connection with the enforcement of the terms and conditions of this Indenture, provided the direction is in accordance with law and the provisions of this Indenture and, in the sole judgment of the Trustee, is not unduly prejudicial to the interest of Bondholders not joining in such direction, and provided further, that nothing in this Section shall impair the right of the Trustee in its discretion to take any other action under this Indenture which it may deem proper and which is not inconsistent with the direction by Bondholders.

SECTION 8.11. Individual Bondholder Action Restricted.

(a) No owner of any Bond shall have any right to institute any suit, action or proceeding for the enforcement of this Indenture or for the execution of any trust hereunder or for any remedy under this Indenture unless:

(i) An Event of Default has occurred (other than under Sections 8.2(a) or 8.2(b)) as to which the Trustee has actual notice, or as to which the Trustee has been notified in writing; and

(ii) The owners of at least a majority of the aggregate outstanding principal amount of Bonds outstanding shall have made written request to the Trustee to proceed to exercise the powers granted in this Indenture or to institute an action, suit or proceeding in its own name; and these Bondholders shall have offered the Trustee such indemnity as may be satisfactory to the Trustee, and the Trustee shall have failed or refused to exercise the powers granted in this Indenture or to institute an action, suit or proceeding in its own name for a period of 60 days after receipt of the request and offer of indemnity.

(b) No one or more owners of Bonds shall have any right in any manner whatsoever to disturb or prejudice the security of this Indenture or to enforce any right hereunder except in the manner herein provided and then only for the equal benefit of the owners of all outstanding Bonds.

SECTION 8.12. Waiver and Non-Waiver of Event of Default.

(a) No delay or omission of the Trustee or of any owner of Bonds to exercise any right or power accruing upon any Event of Default shall impair the right or power or shall be construed to be a waiver of an Event of Default or an acquiescence therein. Every power and remedy given by this Article to the Trustee and to the owners of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

(b) The Trustee may waive any Event of Default which in its opinion shall have been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Indenture or before the completion of the enforcement of any other remedy under this Indenture.

(c) Notwithstanding anything contained in this Indenture to the contrary, the Trustee, upon written request of the owners of at least a majority of the aggregate principal amount of the Bonds then outstanding, shall waive any Event of Default and its consequences; provided, however, that a default in the payment of the principal of, premium, if any, and interest on any Bond, when due and payable or upon call for redemption, may not be waived after the date the same becomes due and payable without the written consent of the owners of all the Bonds at the time outstanding.

(d) In case of a waiver by the Trustee of any Event of Default, the Authority, the Trustee and the Bondholders shall be restored to their former positions and rights under this Indenture, but no waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon. The Trustee shall not be responsible to anyone for waiving or refraining from waiving any Event of Default in accordance with this Section.

SECTION 8.13. Notice of Defaults.

(a) Within 30 days after the receipt of written notice of an Event of Default or the occurrence of an Event of Default of which the Trustee is deemed to have notice, the Trustee shall (unless the Event of Default has already been cured) give written notice of the Event of Default to the owners of all Bonds then outstanding in the manner provided in Section 13.8 of this Indenture, provided that, except in the case of a default in the payment of principal, redemption price, or interest on any of the Bonds, the Trustee may withhold the notice to the Bondholders if, in its sole judgment, it determines that the withholding of notice is not detrimental to the best interest of the Bondholders.

(b) The Trustee shall immediately notify, in writing, the Authority and the Board of any Event of Default known to the Trustee; provided, however, the failure of the Trustee to send such notice or the failure of the Authority or the Board to receive such notice shall not affect the obligations of the Authority or the Board under this Indenture or the Agreement.

SECTION 8.14. Opportunity of Board to Cure Certain Defaults. The Authority and the Trustee hereby grant the Board full authority on the account of the Authority to perform any covenant or obligation and to otherwise fulfill any condition the failure or non-performance of which is or is alleged to be a default under Section 8.2(e) of this Indenture, and the Trustee agrees that performance by the Board shall be deemed to be performance by the Authority, unless the Authority has been notified of such intended performance and has objected to such performance in writing.

## ARTICLE IX

### CONCERNING THE TRUSTEE

SECTION 9.1. Acceptance of Trusts. The Trustee hereby represents and warrants to the Authority (for the benefit of the Board and the Bondholders as well as the Authority) that it is a bank and trust company duly organized and existing under the laws of the State or of the United States of America and that it is duly authorized under such laws to accept and execute trusts of the character herein set out. The Trustee accepts and agrees to execute the trusts imposed upon it by this Indenture, but only upon the terms and conditions set forth in this Article and subject to the provisions of this Indenture including the following express terms and conditions, to all of which the parties hereto and the respective Owners of the Bonds agree:

(a) Except during the continuance of an Event of Default within the purview of Section 8.2, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and the Trustee shall not be responsible for (x) the legality or enforceability of this Indenture (except with respect to performance of its obligations hereunder), the Agreement (except with respect to performance of its obligations hereunder), the Tax Regulatory Agreement (except with respect to performance of its obligations thereunder), and any supplement thereto, the Bonds (except as to the authentication of the Bonds), or any instruments or documents related thereto (collectively, the “Bond Documents”) or (y) the legality, perfection, sufficiency or priority of the Trust Estate or any lien purported to be granted thereon under any of the aforesaid documents or otherwise. No implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its negligence or willful misconduct, except that:

(i) in the absence of bad faith on the part of the Trustee, the Trustee may rely upon the authenticity of, and the truth of the statements and the correctness of the opinions expressed in, and shall be protected fully from liability in relying or acting upon, any resolution, opinion of counsel, certificate, request, notice, consent, waiver, order, signature guaranty, notarial seal, stamp, acknowledgment, verification, appraisal, report or other paper or document believed by the Trustee to be genuine and to have been signed, affixed or presented by the proper party or parties; but in the case of any such certificates or opinions that by any provision hereby are specifically required to be furnished to the Trustee, as the case may be, the Trustee shall be under a duty to examine the same to determine whether or not they conform to requirements of this Indenture; and

(ii) in the absence of bad faith on the part of the Trustee, whenever the Trustee, or any of its agents, representatives, experts or counsel, shall consider it necessary or desirable that any matter be proved or established, such matter shall be deemed to be conclusively proved and established by a certificate executed by an Authorized Authority Representative; provided, however, that the Trustee, or such agent, representative, expert or counsel may require, but is not obligated to require, such

further and additional evidence and make such further investigation as it or they may consider reasonable; and

(iii) the Trustee may consult with counsel and the advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered hereunder in good faith and in accordance with such advice or opinion of counsel; and

(iv) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith and in accordance with any direction or request of the Bondholders; and

(v) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless the Trustee is negligent in ascertaining the pertinent facts; and

(vi) the Trustee shall not be deemed to have knowledge of any Event of Default, except for the failure of the Board to make or cause to be made scheduled payments to the Trustee provided for in the Agreement, unless and until an officer of the Trustee who customarily handles corporate trusts shall have actual knowledge thereof or the Trustee shall have received written advice thereof from any Bondholder; and

(vii) anything in any of the Bond Documents to the contrary notwithstanding, whether or not an Event of Default shall have occurred, the Trustee shall not be under any obligation to take any action under this Indenture that may involve it in any expense or liability, the payment of which within a reasonable time is not, in its opinion, assured to it by the security afforded to it by the terms of this Indenture, unless it is requested in writing to do so by one or more owners of the Bonds outstanding hereunder and furnished, from time to time as it may require, with security and indemnity satisfactory to it; and

(viii) the Trustee need not take any action or follow any direction from any one or more Bondholders if the Trustee shall be advised by counsel that the action or proceedings so directed may not lawfully be taken or would be prejudicial to Bondholders not parties to such direction, or the Trustee in good faith believes following such direction would involve the Trustee in personal liability; and

(ix) in no event shall the Trustee be liable to any person for special, indirect or consequential damages, lost profits or loss of business arising under or in connection with this Indenture, even if previously informed of the possibility of such damages and regardless of the form of action; and

(x) anything to the contrary in the Bond Documents notwithstanding, the permissive right of the Trustee to do anything enumerated or set forth in any of the Bond Documents shall not be construed as a duty, and the Trustee shall not be held responsible or liable for other than its negligence or willful misconduct.

(c) In case an Event of Default within the purview of Section 8.2 hereof has occurred and is continuing and the Trustee has actual knowledge of such Event of Default or is deemed to have knowledge pursuant to (vi) above, subject to the provisions of this Article IX, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the degree of care and skill in their exercise as a prudent man would exercise under the circumstances.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee, including without limitation Sections 9.3 and 9.4 hereof, shall be subject to the provisions of this Section 9.1. The Trustee also accepts, and agrees to do and perform, the duties and obligations imposed upon it by and under the Agreement, but only upon the terms and conditions set forth in the Agreement and this Indenture. The rights of the Trustee to do things enumerated in this Indenture shall not be construed as a duty.

SECTION 9.2. Trustee Entitled to Indemnity. The Trustee shall be under no obligation to institute any suit, or to take any remedial proceeding under this Indenture or under the Agreement, or to enter any appearance in or in any way defend against any suit, in which it may be made a defendant (except in the case of the Trustee's own negligence), or to take any steps in the execution of the trusts hereby created or in the enforcement of any rights and powers hereunder or under the Agreement, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all liability; the Trustee may, nevertheless, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without indemnity, and in such case the Authority shall reimburse the Trustee from funds available therefor under the Agreement for all costs and expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. If the Authority shall fail to make reimbursement, the Trustee may reimburse itself from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference over any of the Bonds.

SECTION 9.3. Trustee Not Responsible for Insurance, Taxes, Execution of Indenture, Acts of the Authority or Application of Moneys Applied in Accordance with this Indenture. The Trustee shall not be under any obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the Board or to report, or make or file claims or proof of loss for, any loss or damage insured against or which may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. The Trustee shall have no responsibility in respect of the validity, sufficiency, due execution or acknowledgment of this Indenture or the validity or sufficiency of the security provided hereunder or in respect of the validity of the Bonds or the due execution or issuance thereof, except as to the authentication thereof.

The Trustee shall not be under any obligation to see that any duties herein imposed upon any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Trustee shall be under no obligation for failure to see that any such duties or covenants are so done or performed.

The Trustee shall not be liable or responsible because of the failure of the Authority or of any of its employees or agents to make any collections or deposits or to perform any act herein required of the Authority or because of the loss of any moneys arising through the insolvency or the act or default or omission of any other depository in which such moneys shall have been deposited under the provisions of this Indenture. The Trustee shall not be responsible for the application of any of the proceeds of the Bonds or any other moneys deposited with it and paid out, withdrawn or transferred hereunder if such application, payment, withdrawal or transfer shall be made in accordance with the provisions of this Indenture.

The immunities and exemptions from liability of the Trustee hereunder shall extend to its directors, officers, employees and agents.

SECTION 9.4. Compensation. The Trustee shall be entitled to reasonable compensation for its ordinary services hereunder consistent with the results of the bidding process by which the Trustee was selected and any extraordinary services rendered hereunder and to reimbursement for all expenses incurred in good faith hereunder, including the compensation, expenses and disbursements of such agents, representatives, experts and counsel as the Trustee may employ in connection with the exercise and performance of its powers and duties hereunder. Subject to the provisions of any contract relating to the compensation of the Trustee, the Authority shall cause the Board to pay to the Trustee as Administrative Expenses its reasonable fees and charges in accordance with the Agreement upon the written request of the Trustee and provided the Authority shall be furnished with sufficient funds to pay all costs and expenses (including attorneys' fees) reasonably incurred by the Trustee in connection therewith as such costs and expenses accrue. If the Board shall fail to make any payment required by this Section, the Trustee may, but shall be under no obligation to, make such payment from any moneys in its possession under the provisions of this Indenture, and the Trustee shall be entitled to a preference therefor over any of the Bonds Outstanding hereunder.

SECTION 9.5. Trustee to Preserve Records. All records and files pertaining to the Board in the custody of the Trustee shall be open at all reasonable times to the inspection of the Authority, the Board, the owners of 10% of the aggregate principal amount of the Bonds then outstanding, and their agents and representatives, any of whom may make copies thereof.

SECTION 9.6. Trustee May be Bondholder. The Trustee and its directors, officers, employees or agents may in good faith buy, sell, own, hold and deal in any of the Bonds issued under and secured by this Indenture, and may join in the capacity of a Bondholder in any action which any Bondholder may be entitled to take with like effect as if such institution were not the Trustee under this Indenture.

SECTION 9.7. Trustee Not Responsible for Recitals. The recitals, statements and representations contained herein and in the Bonds (exclusive of the certificate of authentication for the Bonds) shall be taken and construed as made by and on the part of the Authority and not by the Trustee, and the Trustee shall not be under any responsibility for the correctness of the same.

SECTION 9.8. Intentionally Left Blank.



SECTION 9.9. Trustee May Rely on Certificates. Subject to the provisions of Section 9.1(b)(ii), the Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Indenture, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of the Agreement or this Indenture, or upon the written opinion of any attorney, engineer, accountant or other expert believed by it to be qualified in relation to the subject matter, and the Trustee shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

SECTION 9.10. Qualification of the Trustee. There shall at all times be a Trustee hereunder. Any successor Trustee hereunder shall be a trust company or commercial bank (having trust powers) organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers, having unimpaired capital and surplus of at least \$50,000,000, and subject to supervision or examination by Federal or state authority. If such trust company or bank publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the unimpaired capital and surplus of such association or corporation shall be deemed to be its unimpaired capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect specified in Section 9.11 hereof.

SECTION 9.11. Resignation and Removal of Trustee.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 9.12 hereof.

(b) The Trustee may resign at any time by giving written notice thereof to the Authority, the Board and the Bondholders. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the retiring Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed for cause at any time by an instrument or instruments in writing to the Trustee, with copies to the Authority and the Board, signed by the owners of 25% in aggregate principal amount of the Bonds then outstanding or by their attorneys, legal representatives or agents and delivered to the Trustee, the Authority and the Board (such instruments to be effective only when received by the Trustee).

(d) If at any time

(i) the Trustee shall cease to be eligible under Section 9.10 hereof and shall fail to resign after written request therefor by the Board or by any Bondholder, or

(ii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (1) the Authority, in its discretion and without obligation, may or the Board may remove the Trustee, or (2) any Bondholder may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor.

(e) If the Trustee shall be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause other than resignation (it being understood that no vacancy may occur as a result of resignation since the Trustee may not resign unless a successor has been appointed) or if the Trustee tenders its resignation, the Authority, with the approval of the Board (so long as the Board is not in default hereunder), shall promptly appoint a successor provided the Authority shall be furnished with sufficient funds to pay all costs and expenses (including attorneys' fees) reasonably incurred by the Authority in connection therewith as such costs and expenses accrue. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by an instrument or concurrent instruments in writing executed by the owners of 25% in aggregate principal amount of the Bonds then outstanding and delivered to the Board and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Authority. If no successor Trustee shall have been so appointed by the Authority or the Bondholders and accepted appointment in the manner hereinafter provided, any Bondholder who has been a bona fide owner of a Bond for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Authority shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, to all Bondholders upon the written request of the Trustee and provided the Authority shall be furnished with sufficient funds to pay all costs and expenses (including attorney's fees) reasonably incurred by the Authority in connection therewith as such costs and expenses accrue. Each notice shall include the name and address of the principal corporate trust office of the successor Trustee.

SECTION 9.12. Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, and also to the Authority and the Board, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, shall become fully vested with all the rights, immunities, powers and trusts, and subject to all the duties and obligations, of its predecessors; but such predecessor shall, nevertheless, on the written request of its successor or of the Authority and upon payment of the expenses, charges and other disbursements of such predecessor which are payable pursuant to the provisions of Section 9.4 hereof, execute and deliver an instrument transferring to such successor Trustee all the rights, immunities, powers and trusts of such predecessor hereunder; and every predecessor Trustee shall deliver all property and moneys held by it hereunder to its successor,

subject, nevertheless, to its preference, if any, provided for in Sections 9.2 and 9.4 hereof. Should any instrument in writing from the Authority be required by any successor Trustee for more fully and certainly vesting in such Trustee the rights, immunities, powers and trusts hereby vested or intended to be vested in the predecessor Trustee any such instrument in writing shall and will be executed, acknowledged and delivered by the Authority upon the written request of the Trustee and provided the Authority shall be furnished with sufficient funds to pay all costs and expenses (including attorneys' fees) reasonably incurred by the Authority in connection therewith as such costs and expenses accrue.

Notwithstanding any of the foregoing provisions of this Article, any bank or trust company having power to perform the duties and execute the trusts of this Indenture and otherwise qualified to act as Trustee hereunder with or into which the bank or trust company acting as Trustee may be merged or consolidated, or to which the assets and business of such bank or trust company shall be deemed the successor of the Trustee.

SECTION 9.13. Co-Trustee. It is the purpose hereof that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustee in such jurisdiction. It is recognized that in case of litigation hereunder and in particular in case of the enforcement of this Indenture upon the occurrence of an Event of Default, it may be necessary that the Trustee appoint an additional individual or institution as a separate Trustee or Co-Trustee. The following provisions of this Section are adapted to these ends.

Upon the incapacity or lack of authority of the Trustee, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers and trusts herein granted to the Trustee or to hold title to the trust estate or to take any other action which may be necessary or desirable in connection therewith, each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in a separate Trustee or Co-Trustee appointed by the Trustee but only to the extent necessary to enable the separate Trustee or Co-Trustee to exercise such rights, powers and trusts, and every agreement and obligation necessary to the exercise thereof by such separate Trustee or Co-Trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from the Authority be required by the separate Trustee or Co-Trustee so appointed by the Trustee in order to more fully and certainly vest in and confirm to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments shall, on request, be executed, acknowledged and delivered by the Authority upon the written request of the Trustee and provided the Authority shall be furnished with sufficient funds to pay all costs and expenses (including attorneys' fees) reasonably incurred by the Authority in connection therewith as such costs and expenses accrue. In case any separate Trustee or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate Trustee or Co-Trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a new Trustee or successor to such separate Trustee or Co-Trustee.

SECTION 9.14. Disclosure Documents. The Trustee shall have no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or other disclosure material prepared or distributed with respect to the Bonds.

## ARTICLE X

### SUPPLEMENTAL INDENTURES

SECTION 10.1. Supplemental Indentures Not Requiring Consent of Bondholders. The Authority and the Trustee may, without the consent of, or notice to, any of the Bondholders, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof and in the opinion of the Trustee shall not materially and adversely affect the interest of the Bondholders for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may be lawfully granted to or conferred upon the Bondholders or the Trustee or either of them;
- (c) To subject to the lien and pledge of this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification hereof or thereof under any federal statute hereafter in effect or under any state Blue Sky Law, and, in connection therewith, if they so determine, to add to this Indenture or any indenture supplemental hereto such other terms, conditions and provisions as may be permitted or required by any said federal statute or Blue Sky Law; provided, that any such indenture supplemental hereto referred to in this Section 10.1(d) shall not, in the judgment of the Trustee, which may rely on an opinion of counsel, be to the prejudice of the owners of the Bonds; or
- (e) To provide any other modifications which are not prejudicial to the interests of the Bondholders.

SECTION 10.2. Supplemental Indentures Requiring Consent of Bondholders. Anything contained in this Indenture to the contrary notwithstanding, except for indentures supplemental hereto authorized by Section 10.1 of this Indenture and subject to the terms and provisions contained in this Section 10.2, and not otherwise, the owners of not less than a majority in aggregate principal amount of the Bonds then outstanding shall have the right from time to time, to consent to and approve the execution by the Authority and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the Authority for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any indenture supplemental hereto; provided, however, that nothing contained in this Section 10.2 shall permit, or be construed as permitting, without the consent of the owners of all the Bonds then outstanding (a) an extension of the stated maturity or scheduled sinking fund redemption or reduction in the principal amount or premium of, or reduction in the rate or extension of the time of payment of interest on, any Bonds, or (b) the creation of any lien on the Trust Estate or any part thereof pledged under this Indenture prior to or on a parity with the lien of this Indenture, or (c) a reduction in the aforesaid aggregate outstanding principal amount of Bonds the owners of which are required to consent to any such indenture

supplemental hereto. No such amendment shall modify the rights, duties or immunities of the Trustee without the written consent of the Trustee.

If at any time the Authority shall request the Trustee to enter into any such supplemental indenture for any of the purposes of this Section 10.2, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given to the Bondholders in the manner set forth in Section 3.4 of this Indenture. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee for inspection by all Bondholders. If, within 90 days or such longer period as shall be prescribed by the Authority following the giving of such notice, the owners of not less than a majority in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Authority from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section 10.2 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

So long as no event of nonperformance under the Agreement has occurred and is continuing, no such supplement shall become effective unless the Board shall have given its prior written approval.

SECTION 10.3. Filing. Copies of any supplemental indenture shall be filed with the Trustee and delivered to the Authority and the Board.

SECTION 10.4. Reliance on Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of counsel satisfactory to the Trustee, who may be counsel for the Authority, as conclusive evidence that any such proposed supplemental indenture complies with the provisions of this Article prior to joining in the execution of such supplemental indenture.

SECTION 10.5. Supplement Binding. Upon the execution of any supplemental indenture pursuant to the provisions of this Article, this Indenture shall be deemed to be supplemented, modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Trustee, the Authority, the Board and the owners of Bonds then outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modification and amendment.

SECTION 10.6. Supplemental Agreement. The Authority and the Board, with the approval of the Trustee in certain events, may consent to supplemental lease agreements for the purposes and in the manner provided in Article VIII of the Agreement, and the Trustee agrees that it shall take the actions required of it as provided thereunder.

## ARTICLE XI

## COVENANTS OF AUTHORITY

SECTION 11.1. Payment of Principal, Premium and Interest. The Authority covenants that it will promptly pay, or cause to be paid, the principal of, premium, if any, and the interest on every Bond at the places, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof but solely from the revenues of the Trust Estate and not from any other fund or source. The Authority further covenants that it will faithfully perform at all times all of its covenants, undertakings and agreements contained in this Indenture, the Agreement or in any Bond executed, authenticated and delivered hereunder or in any proceedings of the Authority pertaining thereto.

SECTION 11.2. Additional Security. The Authority covenants, whenever and so often as reasonably required to do so by the Trustee, promptly to execute and deliver or cause to be delivered all such other and further instruments, documents or assurances, and to promptly do or cause to be done all such other further things, as may be necessary or reasonably required in order to further and more fully vest in the Trustee and the owners of the Bonds all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon them by this Indenture.

SECTION 11.3. Cure Title Defects. The Authority covenants to promptly, upon the request of the Trustee, from time to time, take or cause to be taken such action as may be necessary or proper to use its best efforts to remedy or cure any material defect in or cloud upon the title to the Trust Estate or any part thereof, whether now existing or hereafter developing, and to prosecute all such suits, actions and other proceedings as may be appropriate for such purpose and to indemnify and save the Trustee and every owner of Bonds, solely from the Trust Estate, harmless from all loss, cost, damage and expense, including attorneys' fees, which they or either of them may ever incur by reason of any such defect, cloud, suit, action or proceedings.

SECTION 11.4. Defend Against Actions. The Authority covenants to defend or cause to be defended every suit, action or proceeding at any time brought against the Trustee or any owner of Bonds upon any claim arising out of the receipt, application or disbursement of any of the revenues of the Trust Estate or involving the Authority's, the Trustee's or such Bondholders' rights under this Indenture or the Agreement and to indemnify and save harmless, solely from the Trust Estate, the Trustee and Bondholders against any and all liability claimed or asserted by any person whomsoever, arising out of such receipt, application or disbursement of any such revenues; provided, however, that the Trustee or any owner of Bonds at its or his election may appear in and defend against any such suit, action or proceeding; and notwithstanding any contrary provision hereof, this covenant shall continue and remain in full force and effect until all indebtedness, liabilities, obligations and other sums secured hereby have been fully paid and satisfied, and this Indenture has been released of record and the lien hereof discharged.

SECTION 11.5. Non-Impairment of Security. The Authority covenants that so long as any of the Bonds issued pursuant to this Indenture are outstanding and unpaid, the Authority will not voluntarily consent to any amendment to the Agreement or otherwise take any action which will reduce the amount of moneys made available thereunder to the Trustee, or which will in any manner impair or adversely affect the rights of the Authority or the Trustee or the security provided by this Indenture to the owners from time to time of the Bonds.

SECTION 11.6. Authority's Obligation Limited. Nothing in the Agreement or this Indenture is intended to require or obligate nor shall anything therein be interpreted to require or obligate the Authority for any purpose or at any time whatsoever, to provide, apply or expend any funds coming into the hands of the Authority other than from the Trust Estate.



## ARTICLE XII

### DEFEASANCE

SECTION 12.1. Payment. When all of the Bonds shall have been paid and discharged, and there shall have been paid all fees and charges of the Trustee due or to become due through the date on which the last of the Bonds is retired, then this Indenture shall cease, terminate and become null and void, and thereupon the Trustee shall release this Indenture including the cancellation and discharge of the lien hereof, and execute and deliver to the Authority such instruments in writing as shall be requisite to satisfy the lien hereof and, if necessary, to enter on the records such satisfaction and discharge and to re-convey to the Authority any property or interest therein or other rights hereby conveyed and such other instruments to evidence such release and discharge as may be reasonably required by the Authority, and the Trustee shall assign and deliver to the Authority any property at the time subject to the lien of this Indenture which may then be in its possession, except amounts in any Fund otherwise required to be paid by this Indenture and except such cash and investments as are held by the Trustee for the payment of interest and premium, if any, on and retirement of the Bonds.

Notwithstanding the foregoing, the obligation of the Board to pay the fees and expenses of the Trustee in accordance with the terms of this Indenture shall survive the defeasance of the Bonds, the discharge of this Indenture and the termination of the Agreement.

SECTION 12.2. Provision for Payment. Any Bonds shall be deemed to have been paid and discharged within the meaning of Section 12.1, if the Trustee, or an escrow trustee, shall hold, in trust for and irrevocably committed thereto, moneys or Defeasance Obligations of such maturities and interest payment dates and bearing such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (likewise to be held in trust and committed, except as hereinafter provided), be sufficient for the payment of such Bonds, at their maturity or redemption date, of the principal thereof, together with the redemption premium, if any, and interest accrued to the date of maturity or redemption, as the case may be, or, if default in such payment shall have occurred on such date, then to the date of the tender of such payment; provided, that if any Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or provisions satisfactory to the Trustee shall have been duly made for the giving of such notice. Any moneys held in accordance with the provisions of this Section shall be invested only in Defeasance Obligations the maturities or redemption dates and interest payment dates of which, at the option of the owner, shall coincide as nearly as practicable with, but not later than, the time or times at which said moneys will be required for the aforesaid purposes. Any income or interest earned by the Defeasance Obligations held under this Section shall, as determined by the Trustee or the escrow trustee, to the extent not required for the purposes of this Section, be paid to the Board as overpayment of Payments.

SECTION 12.3. Certifications. The Authority and the Board covenant and agree that they will furnish to the Trustee:

- (a) Certificates or opinions made by officers of the Authority and the Board required by this Indenture stating that provisions of this Article relating to the satisfaction and discharge of this Indenture have been fulfilled; and

(b) An opinion of Bond Counsel to the effect that the payment of the Bonds has been provided for in the manner set forth in the Indenture and the Agreement and that all obligations of the Authority and the Board with respect to the Bonds have been discharged and satisfied.

(c) In the case of an advance refunding, a mathematical verification prepared by a firm of independent certified public accountants acceptable to the Trustee that the Defeasance Obligations are sufficient to pay the principal of, premium, if any, and interest on the Bonds which are defeased.

## ARTICLE XIII

### MISCELLANEOUS

SECTION 13.1. Covenants of Authority Binds its Successors. In the event of the dissolution of the Authority, all of the covenants, stipulations, obligations and agreements contained in this Indenture by or on behalf of or for the benefit of the Authority shall bind or inure to the benefit of the successor or successors of the Authority from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law, and the word “Authority” as used in this Indenture shall include such successor or successors.

SECTION 13.2. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Authority, the Board and the owners of 10% of the aggregate principal amount of the Bonds then outstanding and their agents and their representatives, any of whom may make copies thereof.

SECTION 13.3. Parties Interest Herein. Nothing in this Indenture expressed or implied, is intended or shall be construed to confer upon, or give to, any person or corporation, other than the Authority, the Trustee, the Board and the Bondholders, any right, remedy or claim or by reason of this Indenture or any covenant, agreement, condition or stipulation therein.

SECTION 13.4. No Recourse on the Bonds. No recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereunder or under this Indenture against any trustee, director, officer, employee or agent of the Authority or of the Trustee.

SECTION 13.5. Severability. If any clause, provision or Section of this Indenture be held illegal or invalid by any court, the invalidity of such clause, provision or Section shall not affect any of the remaining clauses, provisions or Sections hereof and this Indenture shall be construed and enforced as if such illegal or invalid clause, provision or Section had not been contained herein. In case any agreement or obligation contained in this Indenture be held to be in violation of law, then such agreement or obligation shall be deemed to be the agreement or obligation of the Authority or the Board, as the case may be, only to the extent permitted by law.

SECTION 13.6. Consents and Approvals. Whenever the written consent or approval of the Authority, the Trustee or the Board shall be required under the provisions of this Indenture, such consent or approval shall not be unreasonably withheld or delayed.

SECTION 13.7. Notices. All notices demands and requests to be given or made hereunder to or by the Authority, the Trustee or the Board, or their designated successors, shall be in writing and shall be properly made if hand delivered or sent by United States certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to the Authority: Louisiana Public Facilities Authority  
2237 South Acadian Thruway, Suite 650  
Baton Rouge, Louisiana 70808  
Attention: President and CFO

If to the Board: Louisiana State University  
and Agricultural and Mechanical College  
330 Thomas Boyd Hall  
Baton Rouge, Louisiana 70803  
Attention: Vice Chancellor for Finance and  
Administrative Services and Chief Financial  
Officer

If to the Trustee: The Bank of New York Mellon Trust Company, N.A.  
301 Main Street, Suite 1510  
Baton Rouge, Louisiana 70825  
Attention: Corporate Trust Department

If to the Purchaser: Regions Capital Advantage, Inc.  
1900 5<sup>th</sup> Avenue North  
24<sup>th</sup> Floor  
Birmingham, Alabama 35203

Notice hereunder shall be deemed effective on the date of its receipt by the addressee. The above addresses may be changed at any time upon written notice of such change sent by United States mail, postage prepaid, to the other parties by the party effecting the change.

SECTION 13.8. Notices to Bondholders. Any notices or other communications required or permitted to be given to the Bondholders pursuant to this Indenture shall be mailed by first class mail in a sealed envelope, postage prepaid, addressed to each such Bondholder as his address last appears on the Bond Register. In case, by reason of the suspension of or irregularities in regular mail service, it shall be impractical to mail notice to the Bondholders of any event when such notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be sufficient giving of such notice. Any notice herein required may be omitted if the owners of all the Bonds entitled to such notice give to the Trustee a written waiver of such notice.

SECTION 13.9. Applicable Law. This Indenture shall be governed exclusively by the applicable laws of the State.

SECTION 13.10. Captions. The table of contents, captions and headings of the several articles and sections of this Indenture are for convenience only and shall not control, affect the meaning of or be taken as an interpretation of any provisions of this Indenture.

SECTION 13.11. Indenture to Constitute a Contract. This Indenture, upon execution by the Authority and the Trustee shall constitute a third party beneficiary contract between the Authority and the Trustee for the benefit of owners of all Bonds issued hereunder.

SECTION 13.12. Performance on Legal Holidays. In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption or purchase of any Bonds or the date fixed for the giving of notice or the taking of any action under this Indenture shall not be a Business Day, then payment of such interest, principal, purchase price and redemption premium, if any, the giving of such notice or the taking of such action need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption or purchase, and no interest on such payment shall accrue for the period after such date.

SECTION 13.13. Date of Indenture. The dating of this Indenture as of April 1, 2013, is intended as and for the convenient identification of this Indenture and is not intended to indicate that this Indenture was executed and delivered on said date, this Indenture being executed on the dates of the respective acknowledgments hereto attached.

[Signature Page to Trust Indenture]

IN WITNESS WHEREOF, the Authority has caused this Indenture to be executed by its Chairman and has caused the seal of the Authority to be affixed hereto and attested by its Assistant Secretary. and the Trustee has caused this Indenture to be executed in its behalf by its authorized representative, all as of the day and year above written.

LOUISIANA PUBLIC FACILITIES AUTHORITY

[SEAL]

By: \_\_\_\_\_  
Guy Campbell, III, Chairman

ATTEST:

By: \_\_\_\_\_  
James W. Parks II, Assistant Secretary

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**FORM OF BOND**

**This Bond may be sold and transferred only to (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the 1933 Act”), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; (iv) a “qualified institutional buyer,” as defined in Rule 144A of the Securities and Exchange Commission; or (v) a securitization Special Purpose Vehicle (“SPV”), the interest in which SPV are sold to the entities described in clauses (i) through (iv) above in this paragraph. Each transferee shall be required to execute and deliver to the Authority an investment letter in the form attached as Exhibit B to the Indenture.**

Unless this certificate is presented by an authorized representative of the Depository Trust Board, a New York corporation (“DTC”), to the Authority or its agent for registration of transfer, exchange or payment, any certificate issued is registered in the name of CEDE & CO. or in such other name as is requested by an authorized representative of DTC (and any payment is made to CEDE & CO. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, CEDE & CO., has an interest herein.

**UNITED STATES OF AMERICA  
STATE OF LOUISIANA**

**LOUISIANA PUBLIC FACILITIES AUTHORITY  
LEASE REVENUE BOND  
(LOUISIANA STATE UNIVERSITY COGENERATION PROJECT)  
SERIES 2013**

No. R- \_\_\_\_\_

INTEREST RATE

MATURITY DATE

DATED DATE

REGISTERED OWNER:

PRINCIPAL AMOUNT:

KNOW ALL PERSONS BY THESE PRESENTS that the Louisiana Public Facilities Authority (the “Authority”), being a public trust and public corporation of the State of Louisiana (the “State”), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns solely from the special funds provided therefor, the Principal Amount specified above, on the Maturity Date specified above (unless called for earlier redemption), and to pay from such special funds interest thereon on January 1 and July 1 of each year (each an “Interest Payment Date”) commencing July 1, 2013, at the Interest Rate per annum specified above, until the Principal Amount specified above is paid or duly provided for. This Bond will bear interest from the last

Interest Payment Date preceding the date of its authentication and delivery to which interest on this Bond has been paid, provided, however, that if this Bond is authenticated and delivered before the first Interest Payment Date it shall bear interest from its dated date; and provided further that if this Bond is authenticated and delivered between a Record Date and the Interest Payment Date to which such Record Date relates, inclusive, it shall bear interest from such Interest Payment Date, unless interest on this Bond due on such Interest Payment Date is not paid, in which case this Bond shall bear interest from the last Interest Payment Date preceding the date of its authentication and delivery to which interest hereon has been paid, or if no interest has been paid, from its dated date. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day periods. The principal of and premium, if any, on this Bond is payable upon presentation and surrender hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as trustee and paying agent (the "Trustee"). Interest on this Bond will be paid on each Interest Payment Date (or, if such Interest Payment Date is not a Business Day, on the next succeeding Business Day), by check mailed by the Trustee to the person in whose name this Bond is registered (the "Bond Owner") in the registration records of the Authority maintained by the Trustee and at the address appearing thereon at the close of business on the fifteenth (15th) day of the calendar month next preceding such Interest Payment Date (the "Record Date"); provided that any Bond Owner of an aggregate principal amount of at least \$1,000,000 of the Bonds may elect to have interest payments made by wire transfer of federal funds. The interest on the Bonds, when due and payable, shall be paid by check or draft mailed by the Trustee on such due date to each person in whose name a Bond is registered, at the address(es) as they appear on the Bond Register maintained by the Trustee at the close of business on the applicable Record Date irrespective of any transfer or exchange of the Bonds subsequent to such Record Date and prior to such Interest Payment Date, unless the Authority shall default in payment of interest due on such Interest Payment Date. In the event of any default, such defaulted interest shall be payable on a payment date established by the Trustee to the persons in whose names the Bonds are registered at the close of business on a special record date for the payment of such defaulted interest established by notice mailed by the Trustee to the registered owners of the bonds not less than 15 days preceding such special record date.

This Bond is one of the duly authorized issue of the Authority's Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013 (the "Bonds"), issued under and secured by the Indenture (hereinafter defined) pursuant to which the Authority is issuing \$\_\_\_\_\_ aggregate principal amount of said revenue bonds on behalf of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the "Board"), for the purpose of (i) financing the acquisition of certain natural gas fueled cogeneration equipment from University Energy Equipment Corporation at a price necessary to pay in full the Certificates of Participation Evidencing Assignment of a Proportionate Interest in Rights to Receive Certain Revenues Pursuant to the Lease Agreement dated February 18, 2003 (the "Certificates"), thus refinancing the Certificates, and (ii) paying the costs of issuance of the Bonds. The Board has leased to the Authority certain land and improvements located on the campus of Louisiana State University and Agricultural and Mechanical College which house the Equipment (the "Equipment Housing") pursuant to that certain Lease Agreement for Land and Building to House Cogeneration Equipment dated as of April 1, 2013 (the "Ground Lease"). Pursuant to that certain Lease Agreement dated as of April 1, 2013 (the "Agreement"), the Authority has leased to the Board the Equipment and subleased to the Board the Equipment Housing, and the Board has agreed, subject to certain conditions set forth therein as more particularly described below, to make rental payments in an



amount sufficient to make timely payments of principal of, premium, if any, and interest on the Bonds and to pay such other amounts as are required by the Agreement; and

The Bonds are issued pursuant to the laws of the State, particularly Chapter 2-A of Title 9, as amended (the "Act") and other constitutional and statutory authority, and pursuant to a Trust Indenture dated as of April 1, 2013, between the Authority and the Trustee (together with all amendments and supplements thereto, the "Indenture"), to which Indenture, a fully executed counterpart of which is on file in the corporate trust office of the Trustee, reference is hereby made for a more complete description of the assigned revenues constituting the Trust Estate, the nature and extent of the security, the terms and conditions under which the Bonds are issued and secured, the rights, duties and immunities of the Authority, the rights, duties and immunities of the Trustee and the rights of the registered owners of the Bonds. The registered owner of this Bond shall have no rights to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture, and by acceptance of this Bond, the owner hereof consents and assents to all of the provisions of the Indenture. All terms not defined herein shall have the meanings assigned in the Indenture.

The Bonds are limited and special obligations of the Authority and are payable solely from the Trust Estate, which includes, without limitation, the income, revenues and receipts derived or to be derived from payments made pursuant to the Agreement. The Agreement, a fully executed counterpart of which is on file in the corporate trust office of the Trustee, provides that the Board is obligated to make payments in an aggregate amount sufficient, with any other funds available therefor, for the payment in full of the principal, premium, if any, and interest of all Bonds issued and outstanding under the Indenture, to the date of payment thereof, and certain costs, expenses and charges of the Authority and the Trustee; provided, however, the continuation of the Agreement is contingent upon the appropriation of funds by the Legislature of the State to the Board to fulfill the requirements of the Agreement, as more particularly provided therein. The Agreement imposes upon the Board certain obligations respecting the use and operation of the Equipment and the maintenance and repair of said Equipment.

THE BONDS ARE LIMITED AND SPECIAL OBLIGATIONS OF THE AUTHORITY AND DO NOT CONSTITUTE OR CREATE AN OBLIGATION, GENERAL OR SPECIAL, DEBT, LIABILITY OR MORAL OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISIONS WHATSOEVER AND NEITHER THE FAITH OR CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR THE INTEREST ON THE BONDS. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE AUTHORITY (WHICH HAS NO TAXING POWER AND RECEIVES NO FUNDS FROM ANY GOVERNMENTAL BODY) BUT ARE LIMITED AND SPECIAL REVENUE OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM THE TRUST ESTATE, INCLUDING THE INCOME, REVENUES AND RECEIPTS DERIVED OR TO BE DERIVED FROM PAYMENTS MADE PURSUANT TO THE AGREEMENT.

***Exchange and Transfer of Bonds.*** The Trustee shall not be required to register the transfer or exchange of (a) any Bonds during the 15 day period next preceding the selection of Bonds to be redeemed and thereafter until the date of the mailing of a notice of redemption of Bonds selected for redemption, or (b) any Bonds selected, called or being called for redemption in whole or in part, except in the case of any Bond to be redeemed in part, the portion thereof not so to be redeemed.

The Bonds are issuable in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof (“Authorized Denominations”) and the Bonds are numbered R-1 upwards. As long as any of the Bonds remain outstanding, there shall be permitted the exchange of Bonds at the principal corporate trust office of the Trustee.

This Bond may be transferred by the registered owner hereof in person or by his legal representative at the principal corporate trust office of the Trustee. Any Bond or Bonds, upon surrender thereof at the principal corporate trust office of the Trustee with a written instrument of transfer satisfactory to the Trustee, duly executed by the registered owner or his legal representative duly authorized in writing, may, at the option of the registered owner thereof, be exchanged for an equal aggregate principal amount of other Bonds of the same maturity in Authorized Denominations.

**This Bond may be sold and transferred only to (i) an investment company registered under the Investment Company Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the 1933 Act”), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; (iv) a “qualified institutional buyer,” as defined in Rule 144A of the Securities and Exchange Commission; or (v) a securitization Special Purpose Vehicle (“SPV”), the interest in which SPV are sold to the entities described in clauses (i) through (iv) above in this paragraph. Each transferee shall be required to execute and deliver to the Authority an investment letter in the form attached as Exhibit B to the Indenture.**

For every such exchange or transfer of Bonds, the Authority or the Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer.

The Trustee shall not be required to register the transfer or exchange of (a) any Bonds during the 15 day period next preceding the selection of Bonds to be redeemed and thereafter until the date of the mailing of a notice of redemption of Bonds selected for redemption, or (b) any Bonds selected, called or being called for redemption in whole or in part, except in the case of any Bond to be redeemed in part, the portion thereof not so to be redeemed.

This Bond is transferable only at the corporate trust office of the Trustee.

### ***Optional Redemption***

The Bonds are subject to redemption prior to maturity at the option of the Authority, upon written direction from an Authorized Board Representative and upon receipt of prior written

approval of the Purchaser, as a whole or in part at any time, the maturity of said Bonds to be redeemed to be designated by the Authorized Board Representative and selected within a maturity by the Trustee in such manner as the Trustee may determine, at a redemption price equal to the par amount of the Bonds to be redeemed plus accrued interest thereon to the redemption date.

***Extraordinary Optional Redemption***

The Bonds are also subject to redemption at the option of the Authority, upon written direction from an Authorized Board Representative, in whole or in part at any time at the principal amount thereof plus accrued interest to the redemption date, but without premium, in the event of damage, destruction or condemnation resulting in losses with respect to the Equipment in excess of \$50,000.

***Mandatory Redemption***

The Bonds are subject to mandatory sinking fund redemption prior to maturity, in part, by lot in such manner as may be designated by the Trustee at the principal amount of such Bonds to be redeemed, plus accrued interest thereon to the date of redemption, on July 1 of the following years and in the following amounts:

<b><u>Year (July 1)</u></b>	<b><u>Principal Amount</u></b>
2013	
2014	
2015	
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023 <sup>*</sup>	

<sup>\*</sup>Final Maturity

Unless otherwise specified above, if less than all of the Bonds shall be called for redemption, the maturity of the Bonds to be redeemed shall be designated by the Board and selected by the Trustee within a maturity in such manner as the Trustee may determine; provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of an Authorized Denomination. If a portion of any Bond shall be called for redemption, a new Bond in principal amount equal to the unredeemed portion thereof shall be issued to the registered owner upon the surrender thereof.

The Trustee shall give notice of any redemption of the Bonds (other than a mandatory redemption) not less than 30 days prior to the redemption date to the registered owners of the Bonds to be redeemed by mailing such notice by first class mail, postage prepaid, to such owners at their addresses appearing in the Bond Register maintained by the Trustee. Any such notice shall (i) specify (A) in the case of a partial redemption, the aggregate principal amounts of the Bonds to be redeemed, (B) the redemption date, (C) the redemption price per \$5,000, and (D) the place or places where amounts due upon such redemption will be payable and (ii) state that on the redemption date, if sufficient moneys are available for such redemption, the Bonds or the portions thereof to be redeemed shall cease to bear interest.

With respect to any notice of optional redemption of Bonds, unless upon the giving of such notice such Bonds or portions thereof shall be deemed to have been paid within the meaning hereof, such notice shall state that such redemption shall be conditioned upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, premium, if any, and interest on such Bonds or portions thereof to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect, the Authority shall not be required to redeem such Bonds or portions thereof and the redemption price shall not be due and payable. In the event that such notice of redemption contains such a condition and such moneys are not so received, the Trustee shall give notice, in the same manner in which the notice of redemption was given, that such moneys were not so received and that such Bonds or portions thereof will not be redeemed and that the failure to redeem such Bonds or portions thereof shall not constitute an Event of Default under the Indenture or the Agreement.

On the date so designated for redemption, notice having been given in the manner and under the conditions hereinabove provided, money for payment of the redemption price being held in the Debt Service Fund in trust for the owners of the Bonds or portions thereof to be redeemed and any other conditions to such redemption having been satisfied, the Bonds or portions of Bonds so called for redemption shall become and be due and payable at the redemption price provided for redemption of such Bonds or portions of Bonds on such date, interest on the Bonds or portions of Bonds so called for redemption shall cease to accrue, such Bonds or portions of Bonds shall cease to be entitled to any benefit or security under this Indenture, and the owners of such Bonds or portions of Bonds shall not have rights in respect thereof except to receive payment of the redemption price thereof and, to the extent provided in the next paragraph, to receive Bonds for any unredeemed portions of Bonds.

In case part, but not all, of an outstanding Bond shall be selected for redemption, the registered owner thereof or his legal representative shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption, and the Trustee shall authenticate and deliver to or upon the order of such registered owner or his legal representative, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a new Bond.

Bonds and portions of Bonds which have been duly called for redemption under the provisions of the Indenture, or with respect to which irrevocable instructions to call for redemption have been given to the Trustee in form satisfactory to it, and for the payment of the redemption price for which moneys, or Defeasance Obligations, shall be held by the Trustee in a segregated account

in trust for the owners of the Bonds or portions thereof to be redeemed, shall not thereafter be deemed to be outstanding under the provisions of the Indenture and shall cease to be entitled to any security or benefit under the Indenture other than the right to receive payment from such moneys.

No recourse under, or upon any statement, obligation, covenant, or agreement contained in the Indenture or in any Bond thereby secured or in the Agreement or in any document or certification whatsoever or under any judgment obtained against the Authority or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution, statute or rule of law, or by the enforcement of any penalty or otherwise, shall be had against any trustee, employee or officer, as such, of the Authority, either directly or through the Authority, or otherwise, for payment for, or to, the Authority or any receiver thereof, or for, or to, the owner of any Bond issued under the Indenture or otherwise, of any sum that may be due and unpaid by the Authority upon any such Bond. Any and all personal liability of every nature, whether at law or in equity, or by statute or by constitution or otherwise, of any such trustee, employee or officer, as such, to respond by reason of any act or omission on his or her part or otherwise for the payment for, or to, the Authority or any receiver thereof, or for, or to the owner of any Bond issued under the Indenture or otherwise, of any sum that may remain due and unpaid upon the Bonds thereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for the execution of the Indenture and the issuance of the Bonds.

It is hereby certified that all acts, conditions and things required to be done precedent to and in the issuance of this Bond and the series of which it is a part have been properly done, have happened and have been performed in regular and due time, form and manner as required by the Constitution and laws of the State and the proceedings herein mentioned, and that the Bonds do not exceed any constitutional or statutory limitation.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate or authentication hereon shall have been manually signed by a duly authorized representative of the Trustee.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law.

IN TESTIMONY WHEREOF, the Louisiana Public Facilities Authority has caused this Bond to be signed and executed in its name by the manual or facsimile signature of its Chairman or Vice Chairman, and to be attested, signed, subscribed and executed with the manual or facsimile signature of its Assistant Secretary and has caused a manual or facsimile of its seal to be affixed hereon all as of the date specified above.

**LOUISIANA PUBLIC FACILITIES AUTHORITY**

By \_\_\_\_\_

Chairman

[SEAL]

Attest:

---

Assistant Secretary

**CERTIFICATE OF AUTHENTICATION**

This is one of the Bonds described in the within-mentioned Indenture, and this Bond has been duly registered on the registration records kept by the undersigned as Trustee for such Bonds.

DATE OF AUTHENTICATION:

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee**

---

By \_\_\_\_\_  
Authorized Signatory

**[FORM OF ASSIGNMENT]**

**ASSIGNMENT**

FOR VALUE RECEIVED, the undersigned sells, assigns, and transfers unto

\_\_\_\_\_  
SOCIAL SECURITY OR FEDERAL EMPLOYER  
IDENTIFICATION NUMBER OF ASSIGNEE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name and Address of Assignee)

\_\_\_\_\_  
the within bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney,  
to transfer said bond on the books kept for registration thereof with full power of substitution in the  
premises.

Dated: \_\_\_\_\_

Signature of Registered Owner:

\_\_\_\_\_

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Signature guaranteed:

\_\_\_\_\_  
(Bank, Trust Board, or Firm)

**TRANSFER FEE MAY BE REQUIRED**

**[FORM OF CERTIFICATE AS TO LEGAL OPINION]**

**LEGAL OPINION CERTIFICATE**

I, the undersigned Assistant Secretary of the Louisiana Public Facilities Authority, do hereby certify that the following is a true copy of the complete legal opinion of Adams and Reese LLP, Baton Rouge, Louisiana, the original of which was manually executed, dated and issued as of the date of payment for and delivery of this Bond and is on file in my office and that an executed copy thereof has been furnished to the Trustee for this Bond.

**LOUISIANA PUBLIC FACILITIES AUTHORITY**

By \_\_\_\_\_  
Assistant Secretary

[INSERT LEGAL OPINION]



## EXHIBIT B

### FORM OF INVESTMENT LETTER

[DATE]

Louisiana Public Facilities Authority  
2237 South Acadian Thruway, Suite 650  
Baton Rouge, Louisiana 70808

Re: \$\_\_\_\_\_ Louisiana Public Facilities Authority Lease Revenue Bonds (Louisiana State University Cogeneration Project) Series 2013

Gentlemen:

The undersigned is an authorized representative of the purchaser of \$\_\_\_\_\_ in aggregate principal amount of the above-captioned issue of bonds (the “Bonds”) issued by the Louisiana Public Facilities Authority (the “Authority”) pursuant to that certain Trust Indenture dated as of April 1, 2013 (the “Indenture”), between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee for the owners of the Bonds (the “Trustee”). In connection with such purchase, the undersigned hereby represents, warrants, covenants, and agrees as follows:

1. The undersigned is: (i) an investment company registered under the Investment Board Act of 1940; (ii) a bank, as defined in Section 3(a)(2) of the Securities Act of 1933 (the “1933 Act”), whether acting in its individual or fiduciary capacity; (iii) an insurance company, as defined in Section 2(13) of the 1933 Act; or (iv) a “qualified institutional buyer” as defined in Rule 144A promulgated under the 1933 Act.

2. The undersigned is purchasing the Bonds for investment for its own account and is not purchasing the Bonds for resale, distribution, or other disposition, and the undersigned has no present intention to resell, distribute, or otherwise dispose of all or any part of the Bonds. Nevertheless, if the undersigned resells or otherwise disposes of all or any part of the Bonds (or any legal or beneficial interest therein), it will resell or otherwise dispose of the Bonds only to an entity described in paragraph 1. above or a securitization Special Purpose Vehicle (“SPV”), the interests in which SPV are sold to the entities described in paragraph 1. above. The undersigned further agrees that it will not sell, transfer, assign, or otherwise dispose of the Bonds (or any legal or beneficial interest therein except in compliance with the 1933 Act, the Securities Exchange Act of 1934, any rules and regulations promulgated under either of such Acts, and the applicable securities laws of any state or other jurisdiction. The undersigned acknowledges that the Bonds: (a) are not being registered under the 1933 Act and are not being registered or otherwise qualified for sale under the securities or “Blue Sky” laws of any state; (b) are being sold to the undersigned in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the undersigned set forth herein; (c) will not be listed on any stock or other securities exchange; (d) will not be rated by Standard & Poor’s

Corporation, Moody's Investors Service, Inc., or any other similar rating service; and (e) may not be readily marketable.

3. The undersigned has investigated the natural gas fueled cogeneration equipment to be financed with the proceeds of the Bonds and has investigated the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (the "Board"), which will lease the Equipment from the Authority. The undersigned acknowledges that it has been furnished with or has been given access to all of the underlying documents in connection with this transaction, the Equipment and the Board, as well as such other information as it deems necessary or appropriate as a prudent and knowledgeable investor in evaluating the purchase of the Bonds. The undersigned acknowledges that the Board has made available to it and its representatives the opportunity to obtain additional information and the opportunity to ask questions of and receive satisfactory answers from the Board concerning the Equipment and the Board and that the undersigned has not relied upon the Authority in connection with such inquiry and analysis. The undersigned acknowledges that the Bonds do not constitute an obligation, general or special, debt, liability, or moral obligation of the State of Louisiana or any political subdivision thereof within the meaning of any constitutional or statutory provision whatsoever and that neither the faith and credit nor the taxing power of the State of Louisiana or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds. The undersigned acknowledges that the Bonds are not a general obligation of the Authority, but are limited and special revenue obligations of the Authority payable solely from amounts provided by or at the direction of the Board and that are encumbered by the Indenture. The undersigned acknowledges that no covenant, stipulation, obligation, or agreement contained in the Indenture or the Bonds shall be deemed to be a covenant, stipulation, obligation, or agreement of any present or future trustee, officer, agent, or employee of the Authority in his or her individual capacity. The undersigned acknowledges that neither the State of Louisiana nor any political subdivision thereof shall in any manner be liable for the performance of any agreement or covenant of any kind which may be undertaken by the Authority and that no breach thereof by the Authority shall create any obligation upon the State of Louisiana or any political subdivision thereof. The undersigned acknowledges that the Authority has no taxing power and receives no funds from the State of Louisiana or any other governmental body.

In reaching the conclusion that it desires to acquire the Bonds, the undersigned has carefully evaluated all risks associated with this investment and acknowledges that it is able to bear the economic risk of this investment. The undersigned, by reasons of its knowledge and experience in financial and business matters, is capable of evaluating the merits and risks of the investment in the Bonds.

4. The undersigned acknowledges that it has made its own inquiry and analysis with respect to the Authority, the Bonds (including the security therefor), the Equipment, the Board, and the other material factors affecting the security and payment of the Bonds and that the undersigned has in no way relied upon the Authority or Adams and Reese LLP, Bond Counsel, in connection with such inquiry or analysis.

5. The undersigned acknowledges that it has either been supplied with or has had access to all information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and that it has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the Board, the Equipment and the Bonds, including the security therefor, so that as a reasonable investor it has been able to make its decision to purchase the above-stated principal amount of the Bonds.

6. The form, terms and provisions of the Indenture, the Ground Lease, the Agreement, the issuance, sale and delivery of the Bonds, the maturities, interest rate, redemption terms and sale price of the Bonds, and the sale of the Bonds to be used for the cost of financing the acquisition of the Equipment, all as provided in the Indenture, the Ground Lease, the Agreement and the Bonds, are hereby in all respects approved.

7. The undersigned acknowledges receipt of and has reviewed the opinion of Bond Counsel delivered in connection with the issuance of the Bonds.

8. This Investment Letter shall be binding upon the undersigned.

Very truly yours,

[PURCHASER]

By: \_\_\_\_\_  
Name:  
Title:



**RESOLUTION TO EXTEND AUTHORIZATION  
TO THE PRESIDENT  
TO NOMINATE LAND TO BE LEASED  
BY THE STATE MINERAL BOARD**

**WHEREAS**, pursuant to the provisions of La. R.S. 30:153.A this Board has, by Resolution adopted on August 28, 2008 and extended by subsequent Resolution adopted June 4, 2009, on July 16, 2010, and on August 26, 2011, delegated to its President authority for determining which land owned by the Board should be leased through the Louisiana State Mineral and Energy Board and which should be leased directly by the Board of Supervisors;

**WHEREAS**, the previous Resolution, as extended, was effective through June 30, 2012, and the Board desires to extend the effective period of that Resolution;

**WHEREAS**, the Mineral and Energy Board has requested that state agencies which seek to utilize the provisions of La. R.S. 30:153.A use specific language in the delegation of authority to the Mineral and Energy Board to act on behalf of such agencies; and

**WHEREAS**, the Board desires to delegate authority for determining which land should be leased through the Mineral and Energy Board to the President:

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, in legal session convened that, it does hereby delegate authority for determining which land should be leased through the Mineral and Energy Board to its President; and

**BE IT FURTHER RESOLVED that**, pursuant to the provisions of La. R.S. 30:153A, it does hereby authorize the Louisiana State Mineral and Energy Board and the Office of Mineral Resources, on behalf of said Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, to accept nominations and advertise for oil, gas and mineral leases, accept bids, award and execute oil, gas, and mineral leases, on such specific tracts of land as may be hereinafter designated in writing by its President with the written concurrence of the Chair of the Board of Supervisors; and

**BE IT FURTHER RESOLVED** that this Resolution shall remain in effect until June 30, 2018, unless sooner revoked by the Board, in which case this Resolution shall remain in effect until written notice of such revocation is provided to the State Mineral and Energy Board or the Secretary of the Department of Natural Resources; and

**BE IT FURTHER RESOLVED** that the President shall notify the members of the Board of Supervisors prior to taking any action pursuant to the authority granted herein, provided that failure to provide such notice with the written concurrence of the Chair of the Board of Supervisors shall not affect the validity of any such actions taken by the President.

## II. ATHLETIC COMMITTEE

**Mr. Stanley J. Jacobs, Chair**  
**Mr. Rolfe McCollister, Vice Chair**

Mr. Scott Ballard  
Mr. R. Blake Chatelain  
Dr. John F. George  
Mr. Raymond J. Lasseigne  
Mr. Jack E. Lawton, Jr.  
Mr. James W. Moore, Jr.  
Mr. Robert "Bobby" Yarborough

### AGENDA

1. Approval of the contract for employment for Mr. Malcolm "Cam" Cameron, Offensive Coordinator, Louisiana State University
2. Recommendation to name the baseball field at Alex Box Stadium the "Skip Bertman Field"
3. Recommendation regarding further development of LSU at Alexandria's Intercollegiate Athletic Program



**APPROVAL OF THE CONTRACT FOR EMPLOYMENT FOR  
MR. MALCOLM "CAM" CAMERON, OFFENSIVE COORDINATOR  
LOUISIANA STATE UNIVERSITY**

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8, D.5(c) of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter".

D.5(c) Such other matters that are not expressly delegated herein or hereafter by the Board to the President or equivalent and which reasonably should be considered to require Board approval as generally defined above and as construed in light of the illustrative listings.

**1. Summary of the Matter**

See attached memo and contract.

**ATTACHMENTS**

- Memo from Joe Alleva, Vice Chancellor and Athletic Director, Reviewed by L. Robert Kuhn, Interim Vice Chancellor for Finance and Administrative Services and CFO
- Contract for Employment

**RECOMMENDATION**

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**"NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby approve the Contract of Employment for Mr. Malcolm "Cam" Cameron, Offensive Coordinator, Louisiana State University. (A copy of this contract is attached.)"



## Summary of Athletic Coaching Contract Cam Cameron, Assistant Coach Football

		Current	Proposed	Change	%	Notes
<i>Basic</i>	Term Ends	N/A	3/31/2016	3 Year		a
	Base Salary	\$ 425,000	\$ 500,000	\$ 75,000	18%	a
	Supplemental Media Comp.	\$ -	\$ 100,000	\$ 100,000		b
<i>Incentive</i>	Post-Season (max)	\$ 70,000	\$ 115,000	\$ 45,000	64%	c
	Academic (max)	\$ -	\$ -	\$ -		
<i>Benefits</i>	Automobile	\$ 9,600	\$ 9,600	\$ -		a
	Club Membership	Yes	Yes			a
	Other					d
<b>Total Certain Compensation</b>		<b>\$ 425,000</b>	<b>\$ 600,000</b>	<b>\$ 175,000</b>	<b>41%</b>	<b>e</b>

**Notes**

(a) Coach Cameron is a new hire. The "current" figures listed are the amounts earned by the prior assistant football coach. The "proposed" amounts are those contained in the proposed contract for Coach Cameron. Automobile payment is up to \$800/month. Club membership is at the option of the Head Coach.

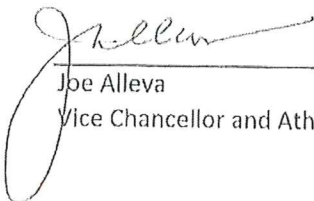
(b) Supplemental Media Compensation for calendar year 2014 increases to \$800,000 and for calendar year 2015 it increases to \$1,000,000.

(c) As per Schedule A of Coach Cameron's contract, he will receive set amounts for team achievements in SEC and for post season bowl compensation.

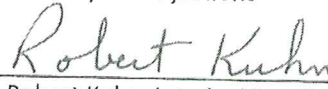
(d) Reimbursement of moving expenses in accordance with LSU policy and a one-time payment of \$5,000 to be used for miscellaneous relocation expenses not otherwise reimbursed, and temporary housing for up to 60 days.

(e) Total Certain Compensation includes all compensation which the coach is contractually guaranteed to receive annually. It does not include the value of any fringe benefits, such as car and cell phone allowances, nor any one-time amounts, such as contract buy-outs or relocation allowances.

Recommended

  
 Joe Alleva  
 Vice Chancellor and Athletic Director

Reviewed, No Objections

  
 L. Robert Kuhn, Interim Vice Chancellor for Finance  
 and Administrative Services and CFO

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

**EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) is made and entered into as of this 15th day of February, 2013, by and between BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE (“LSU”), a body corporate existing under the Constitution and laws of the State of Louisiana, herein represented by William L. Jenkins, its duly authorized Interim President, and Malcolm G. Cameron, III (“EMPLOYEE”):

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meaning shown:
  - A. “LSU A&M”: The campus of LSU which is located in Baton Rouge, Louisiana.
  - B. “Chancellor”: The Chancellor of LSU A&M.
  - C. “Athletic Director”: The Director of Athletics at LSU A&M.
  - D. “Base Salary Amount”: The annual sum of Five Hundred Thousand and No/100 dollars (\$500,000.00)
  - E. “Start Date”: February 15, 2013.
  - F. “End Date”: March 31, 2016.
  - G. “Program”: The intercollegiate Football program at LSU A&M.
  - H. “Team”: The intercollegiate athletic team which is a part of the Program.
  
2. **Employment.** LSU does hereby employ EMPLOYEE as an Assistant Coach of the Team. EMPLOYEE will report directly to the Head Coach of the Team and through him to the



Athletic Director. It is the goal of the parties that Employee will serve in such position throughout the term of this Agreement. It is understood, however, that LSU retains the right to assign Employee to other positions within LSU with different duties without penalty during the term of this Agreement, provided that Employee will not be assigned to any position which is not consistent with Employee's education and training. EMPLOYEE hereby agrees to accept such employment and to devote full-time attention to the performance of the duties herein.

3. **Duties and Responsibilities.** As Assistant Coach of Team, EMPLOYEE's duties and responsibilities shall include the following, all subject to law, LSU policy, and the directives, input, and advice of the Athletic Director and the Head Coach of the Team:
  - A. Performing all duties reasonably assigned to EMPLOYEE by the Head Coach of the Team or the Athletic Director;
  - B. Promoting the success of the Team and its student athletes both athletically and academically;
  - C. Being reasonably knowledgeable, with reasonable assistance of LSU, of: (i) all applicable federal and state laws governing intercollegiate athletics; and (ii) all governing constitutions, by-laws, rules, policies, interpretations, and regulations of the NCAA, the Southeastern Conference (SEC), LSU, and any other conference or organization of which LSU is or becomes a member during the term of this Agreement; all hereinafter collectively referred to as "**Governing Athletics Regulations**";

- D. Complying with all Governing Athletics Regulations;
- E. Promptly reporting any violation of Governing Athletics Regulations to the Athletic Director and the Associate Athletic Director for Compliance;
- F. Cooperating fully in any investigation of possible NCAA violations conducted or authorized by LSU or the NCAA at any time;
- G. Reasonably observing, respecting, and promoting the principles of institutional control in the Program;
- H. Reasonably understanding, observing, and upholding LSU's written academic standards, requirements, and policies, and reasonably promoting an environment in which admissions, financial aid, academic services for student athletes, and recruiting can be conducted consistently with LSU's mission;
- I. Cultivating and maintaining reasonable interaction with members of the LSU community, in accordance with the policies and instructions of the Head Coach of the Team and the Athletic Director;
- J. Using reasonable efforts to exercise due care and supervision to provide that all student athletes and other individuals under or subject to EMPLOYEE's control, authority, or supervision comply with all Governing Athletics Regulations and act in accordance with the high moral, ethical, and academic standards of the Program and LSU;

- K. Using reasonable efforts to promote the goal of LSU, that every student athlete obtain a baccalaureate degree, and reasonably cooperating with academic counselors or similar persons designated by LSU to assist student athletes and the faculty and administrators of LSU in connection with the academic pursuits of student athletes; and
  - L. Performing these duties at all times in a manner consistent with good sportsmanship and in accordance with the high moral, ethical, and academic standards of the Department of Athletics and LSU;
  - M. Performing all other reasonable duties customarily performed by associate coaches in Team's sport of commensurate rank serving other NCAA member institutions.
4. **Term.** The term (the "Term") of this AGREEMENT shall be for a definite term, commencing on the Start Date and ending on the End Date unless terminated sooner in accordance with Section 12 of this Agreement. This Agreement will automatically renew itself for additional periods of one year effective the day after the End Date and each anniversary thereof unless the Agreement has been terminated pursuant to Section 12 or written notice of non-renewal has been given by either party to the other at least 30 days before the End Date.
5. **Base Salary.** LSU agrees to pay EMPLOYEE the Base Salary Amount annually, in twelve (12) equal monthly installments. The Base Salary Amount shall be reviewed at the end of each season of Team and may be adjusted at that time by the Athletic Director, subject to recommendation, review, and approval pursuant to LSU personnel policies.

6. **Supplemental Compensation.**

A. In addition to the salary described above, EMPLOYEE each contract year shall receive Supplemental Compensation for EMPLOYEE appearing on or participating in, as requested, University sanctioned television, radio and internet programs concerning LSU and the Team. The amount earned by EMPLOYEE pursuant to this provision shall be considered earned on the date(s) on which Employee appears on or participates in the television, radio, and internet programs and shall be paid within 30 days of the last game played by Team in its season, including any post-season play.

B. EMPLOYEE shall not appear without the prior written approval of the Chancellor on, or in, any radio, television, or internet programs or other electronic medium other than those produced or sponsored by LSU, except routine news media interviews for which no compensation is received. EMPLOYEE shall not appear in or make any commercial or commercial endorsement without the prior written approval of the Chancellor and the Athletic Director. Such approval shall not be unreasonably withheld.

C. EMPLOYEE will earn or receive Supplemental Compensation during each calendar year of this agreement in the following amounts:

One Hundred Thousand and No/100 (\$100,000.00) Dollars for Calendar Year 2013

Eight Hundred Thousand and No/100 (\$800,000.00) Dollars for Calendar Year 2014

One Million and No/100 (\$1,000,000.00) for Calendar Year 2015 and thereafter.

This compensation may be payable from affiliated foundation funds, subject to approval by LSU and the foundation. The compensation will be paid in equal monthly installments each calendar year of this Agreement.

7. **Incentive Compensation.**

A. **Post-Season Incentive Compensation.** In the event the Team participates in post-season games, EMPLOYEE may be eligible for Post-Season Incentive Compensation as additional compensation for the extra services required of EMPLOYEE in the preparation for and participation in post-season play in accordance with LSU's policies and procedures. The additional sum or sums, if payable, shall be considered earned on the date(s) services are provided for each game at which a post-season goal is attained (or, for SEC Regular Season Champion, the date of the last SEC game in Team's sport played by any SEC team during the regular season) and shall be paid within sixty (60) days following the final post-season game in which Team participates. This Post-Season Incentive Compensation shall be in the amounts and for meeting the goals set forth in Schedule A, which is attached to and made a part of this Agreement. Post-Season Incentive Compensation may be payable from affiliated foundation funds, subject to approval of LSU and the foundation. To be eligible for such compensation, EMPLOYEE must provide additional services required in the preparation for and participation in post-season play and be employed by LSU as of the date on which the incentives are earned.

B. **Academic Incentive Compensation.** In the event LSU adopts policies and procedures providing for incentive payments to EMPLOYEE for attainment by the Team of certain academic performance goals, LSU will pay EMPLOYEE Academic Incentive Compensation in accordance with those policies and procedures. The additional sum or sums, if payable, shall be considered earned on the date(s) set forth in such policies and procedures. More than one (1) academic incentive may be earned by EMPLOYEE during a single contract year; however, the total amount of Academic Incentive Compensation shall not exceed any cap established for such compensation in the policies and procedures. Academic Incentive Compensation may be payable from affiliated foundation funds, subject to approval of LSU and the foundation. To be eligible for such compensation, EMPLOYEE must be employed by LSU as of the date on which the incentives are earned.

8. **Retirement and Fringe Benefits.** EMPLOYEE shall be entitled to participate in the retirement and fringe benefit programs available to all unclassified professional LSU employees, with contributions and benefit amounts (including state retirement benefits) based only upon the Base Salary Amount and any Post-Season Incentive Compensation and in accordance with the limitations of state retirement law. During the term of this Agreement and in accordance with applicable LSU policy and applicable law, EMPLOYEE will also receive the following benefits, part or all of which may be payable from affiliated foundation funds, subject to approval of LSU and the foundation:

A. Membership(s) in a social club, such as the University Club of Baton Rouge, provided that: (i) monthly dues shall be payable from affiliated foundation funds,

subject to approval of such foundation; (ii) business-related (non-personal) expenses incurred in accordance with LSU and foundation policy will be reimbursed from affiliated foundation funds; and (iii) EMPLOYEE shall be responsible for payment of all personal charges;

B. Mobile communications device and service for business purposes;

C. An annual automobile allowance in an amount determined by the Athletic Director, but which shall not exceed \$800 per month or, to the extent consistent with state ethics law, use of courtesy vehicle(s) provided by dealership(s) and related insurance reimbursed from affiliated foundation funds.

9. **Additional Revenue.**

Subject to compliance with Governing Athletics Regulations, including but not limited to current NCAA Bylaw 11.2 and 11.3, *et seq.*, and LSU's PM-11, EMPLOYEE may earn or receive other revenue ("Additional Revenue") while employed by LSU, including working with sports camps or clinics, provided, however, that EMPLOYEE shall obtain prior written approval, which approval shall not be unreasonably withheld, from the Chancellor before engaging in any commercial or private venture, including the use of EMPLOYEE's name by any commercial, public or private entity. EMPLOYEE shall report annually to the Chancellor and the Athletic Director on January 31<sup>st</sup>, in writing, in compliance with NCAA Bylaw 11.2.2 and 11.2.2.1, and any applicable LSU policy, all athletically-related income from sources outside LSU, and LSU shall have reasonable access to all records of EMPLOYEE to verify this report. LSU does not guarantee any amount of Additional Revenue.

10. **Sports Camps.** EMPLOYEE, subject to Governing Athletics Regulations and Athletic Department guidelines, rules and regulations, may operate or work at sports camps/clinics at LSU. LSU does not guarantee or provide any supplemental compensation or additional revenue from operation of sports camps/clinics. EMPLOYEE shall not be permitted to sell, assign, lease, donate or otherwise transfer any ownership, assets or interests in such a camp or clinic to any other person or entity, without the prior written approval of the Chancellor.

11. **Assignment and Retirement Benefits.**

Sums paid or authorized under Section 6 (Supplemental Compensation, if any), 7.B (Academic Incentive Compensation), 8 (Retirement and Fringe Benefits), 9 (Additional Revenue), and 10 (Sports Camps) of this Agreement shall not be considered “base pay,” “earned compensation,” or “earnable compensation” as such terms are defined in Louisiana Revised Statutes 11:403 and 11:701, or other applicable Louisiana retirement laws, and shall not be included as compensation for the purpose of computation of retirement benefits. Only the Base Salary Amount and any Post Season Incentive Compensation earned pursuant to Section 7.A shall be considered for the purpose of computation of retirement benefits, all subject to the limitations of state retirement law.

12. **Termination.** This Agreement may be terminated by the parties as follows:

A. **Termination by LSU for Cause.** This Agreement may be terminated for cause by LSU, acting through the Chancellor, at any time prior to its expiration, upon written notice to EMPLOYEE. In the event of termination for cause, EMPLOYEE’s Base Salary Amount, Supplemental Compensation (if any), and all



other compensation and benefits provided for in this Agreement shall terminate on the termination date, and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than compensation earned prior to the termination date. The termination date shall be the date on which notice of termination is given, or on such later date as may be set forth by LSU in the notice of termination.

Any decision as to the existence of cause for termination shall not be made arbitrarily or capriciously by LSU, and EMPLOYEE will be afforded a reasonable opportunity to address the issues.

For purposes of this Section, "cause" for termination shall be defined as:

- (1) Committing a material violation of Governing Athletics Regulations, or failing promptly to report any such violation by another person to the Athletic Director and the Associate Athletic Director for Compliance;
- (2) Committing or being convicted of either: (i) any felony; or (ii) any misdemeanor involving gambling, drugs, or alcohol;
- (3) Engaging in serious misconduct which either: (i) displays a continual, serious disrespect or continual, serious disregard for the mission of LSU; (ii) brings EMPLOYEE into substantial public disrepute sufficient to materially impair EMPLOYEE's ability to perform the obligations contained herein without material adverse impact on the Team or Program; or (iii) constitutes moral turpitude or breaches the high moral and ethical standards applicable to EMPLOYEE as a visible representative of LSU;

- (4) Unreasonably refusing or repeatedly failing to perform any duties imposed upon EMPLOYEE herein (including, but not limited to, those duties and responsibilities set forth in Section 3 of this Agreement), or failing to perform the same to the best of EMPLOYEE's reasonable ability, after written notice to EMPLOYEE of LSU's reasonable expectation;
- (5) Knowingly committing material or repeated significant violations of any provision of this Agreement, provided said initial violations are not cured within ten (10) days of EMPLOYEE's receipt of written notice of the same;
- (6) Prolonged absence from LSU without its consent, which will not unreasonably be withheld;
- (7) (i) Committing fraud in the performance of any duties and responsibilities herein, including, but not limited to, fraud in the preparation, falsification, or alteration of documents or records of LSU, the NCAA, or the SEC, or documents or records pertaining to any recruit or student athlete, including without limitation transcripts, eligibility forms, and compliance reports; or (ii) counseling, instructing, encouraging, or knowingly permitting any other person to commit such fraud;
- (8) (i) Failing to respond reasonably accurately and fully within a reasonable time to any reasonable requests or inquiry relating to the performance of any duties herein or at any prior employment at any other institution of higher learning propounded by LSU, the NCAA, the SEC or any other governing body having supervision over the athletic programs of LSU or such other institution of higher education, or required by law or Governing Athletics Regulations; or (ii) counseling, instructing,

encouraging, or knowingly and intentionally permitting any other person to fail to so respond;

- (9) (i) Participating in any gambling, bookmaking, wagering, or betting involving any athletic contest whether by soliciting, placing, or accepting a bet or wager or through a bookmaker, a pool, or any other method of gambling; or (ii) counseling, instructing, encouraging, or knowingly and intentionally permitting any student athlete or other individual under or subject to EMPLOYEE's control, authority, or supervision to participate in such activity;
- (10) (i) Furnishing any information or data, other than information or data provided to the general public through press conferences, news releases, and the like, relating in any manner to any intercollegiate sport or to any student athlete to any individual whom EMPLOYEE knows (or has constructive knowledge) to be a gambler, better, or bookmaker, or an agent of any such person; or (ii) counseling, instructing, or encouraging any student athlete or other individual under EMPLOYEE's control, authority, or supervision to furnish such information or data;
- (11) Using or consuming alcoholic beverages or controlled substances, steroids, or other drugs or chemicals to such degree and for such appreciable period as to substantially impair EMPLOYEE's ability to perform the duties herein;
- (12) Selling, purchasing, using, or possessing any controlled substances, steroids, or other drugs or chemicals, the sale, purchase, use, or possession of which by EMPLOYEE is prohibited by law or Governing Athletics Rules. The provisions of

this subsection do not prohibit the use or possession of substances or drugs lawfully prescribed by a healthcare provider, and used in accordance therewith.

- (13) Knowingly encouraging or permitting the sale, purchase, use, or possession by any student athlete or other individual under EMPLOYEE's control, authority, or supervision of any controlled substances, steroids, or other drugs or chemicals, the sale, purchase, use, or possession of which by such person is prohibited by law or Governing Athletics Rules;
- (14) (i) Failing reasonably to cooperate in the investigation and enforcement of Governing Athletics Regulations; or (ii) counseling, instructing, or encouraging any other person to fail to cooperate in such investigation and enforcement;
- (15) Subject to any right of administrative appeal permitted or granted to EMPLOYEE by the NCAA or SEC, the making or rendition of a finding or determination by the NCAA, SEC, or any commission, committee, council, or tribunal of the same, of any major or repetitive violations by EMPLOYEE of NCAA or SEC rules, or of any such major or repetitive violations by others under the direct supervision of EMPLOYEE which were knowingly and intentionally permitted, encouraged, or condoned by EMPLOYEE, or about which violations EMPLOYEE knew or should have known, and should have acted reasonably to prevent, limit, or mitigate (it is recognized that this sub-section includes findings or determinations of violations during employment of EMPLOYEE at any other institution of higher education);  
or

- (16) Failing to report promptly to the Athletic Director and the Associate Athletic Director for Compliance any violations of Governing Athletics Regulations involving the Team of which EMPLOYEE has actual knowledge.

**B. Termination by LSU Without Cause.**

- (1) LSU shall have the right to terminate this Agreement without cause upon written notice to EMPLOYEE. In such event, LSU will pay EMPLOYEE liquidated damages, in lieu of any and all other legal remedies or equitable relief as detailed below. In the event of termination by LSU without cause, EMPLOYEE's Base Salary Amount, Supplemental Compensation (if any), Fringe Benefits, and all other compensation and benefits provided for in this Agreement shall terminate on the termination date, and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than the liquidated damages provided for herein and any compensation earned pursuant to this Agreement prior to the termination date. The termination date shall be the date on which notice of termination is given, or on such later date as may be set forth by LSU in the notice of termination.
- (2) Liquidated damages under this Section 12.B will be the Base Salary and Supplemental Compensation Amount per year for the remaining term of this Agreement, including any extended term. A partial year shall be pro rated.
- (3) Liquidated damages under this Section 12.B will be paid in equal monthly installments over a period of time equal to the amount of time then remaining in the term of this Agreement, including any extended term.
- (4) In the event of termination by LSU without cause, the amount of liquidated damages owed by LSU under this Section 12.B shall be reduced and extinguished

by and to the extent of any compensation EMPLOYEE earns, receives, or is entitled to receive from the termination date until LSU's obligation pursuant to this Section 12.B to EMPLOYEE terminates or ceases to exist. EMPLOYEE shall exercise due diligence and good faith in seeking other athletically-related employment. In the event EMPLOYEE obtains other employment, EMPLOYEE will notify LSU and provide any and all documentation requested by LSU to determine the amount of compensation received by EMPLOYEE and the amount of offset due to LSU.

- (5) The parties have bargained for this liquidated damages provision, giving consideration to the following. This is a contract for personal services. The parties recognize that termination of this Agreement by LSU prior to its expiration by lapse of term would cause EMPLOYEE to lose the salary, supplemental compensation, fringe benefits, certain other LSU-provided benefits, and possibly other income and benefits provided by third parties, which damages are impossible to determine with certainty. As such, the damages to be suffered by EMPLOYEE in the event of a termination of this Agreement by LSU without cause are difficult to presently and accurately estimate. In addition, the parties expressly agree that all liquidated damages herein are not in any way a penalty.

**C. Termination by EMPLOYEE Without Cause.**

- (1) EMPLOYEE shall have the right to terminate this Agreement without cause upon thirty days written notice to LSU. In the event EMPLOYEE terminates this Agreement without cause, EMPLOYEE will pay LSU liquidated damages, in lieu of any and all other legal remedies or equitable relief. In the event of termination

by EMPLOYEE without cause, EMPLOYEE's Base Salary Amount, Supplemental Compensation (if any), Fringe Benefits, and all other compensation and benefits provided for in this Agreement shall terminate on the termination date, which shall be no later than thirty days after the written notice is provided to LSU (unless otherwise mutually agreed by LSU and EMPLOYEE), and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than any compensation earned pursuant to this Agreement prior to the termination date.

- (2) Liquidated damages under this Section 12.C will be One Million and No/100 dollars (\$1,000,000.00). EMPLOYEE shall have the option to pay such amount to the Athletic Department in a lump sum or in equal monthly installments over a period of time equal to the amount of time then remaining in the Agreement, including any extended term.
- (3) Liquidated damages under this Section 12.C will be waived if EMPLOYEE is hired as Head Coach in the National Football League or is hired as Head Football Coach at a NCAA football program, except a football program within the Southeastern Conference. Should EMPLOYEE accept employment at a Southeastern Conference institution, liquidated damages will NOT be waived. Liquidated damages under this Section 12.C may also be waived, at the recommendation of the Athletic Director and upon approval by the President, if EMPLOYEE is not in breach of any provision of this Agreement and LSU determines that such a waiver would serve the best interests of LSU, considering factors such as, but not limited to, EMPLOYEE's length of service with LSU, whether EMPLOYEE is taking another athletically-related job, the impact the

timing of EMPLOYEE's notice has on the Team (whether it is given before, during, or after the Team's season and recruiting period), EMPLOYEE's ability and willingness to assist LSU if requested during any transition period (such as during post-season play after giving notice at the end of the regular season), ease of recruiting a replacement for EMPLOYEE, and the impact requiring the payment of liquidated damages would have on recruiting and retaining other similarly-situated coaches.

- (4) The parties have bargained for this liquidated damages provision, giving consideration to the following. This is a contract for personal services. The parties recognize that termination of this Agreement by EMPLOYEE prior to its expiration by lapse of term, including any extended term, would cause LSU to incur administrative, recruiting, and resettlement costs in obtaining a replacement for EMPLOYEE's position with Team, in addition to potentially increased compensation costs and loss of ticket revenues, which damages are impossible to determine with any certainty. EMPLOYEE recognizes that his promise to work for LSU until its expiration by lapse of term (including any extended term) is an essential consideration of and a material inducement for LSU's decision to employ him in the position described in Section 2, above. EMPLOYEE also recognizes that LSU is making a highly valuable investment in his continued employment by entering into this Agreement and its investment would be lost or diminished were he to resign or otherwise terminate his employment with LSU prior to the End Date (including any extended term). The payment owed pursuant to this liquidated damages provision is to reimburse LSU for expenses resulting from EMPLOYEE's



early resignation or termination, including but not limited to: (i) searching for, recruiting and hiring a replacement for EMPLOYEE, (ii) relocating a replacement employee, and (iii) buying out the previous contract, if applicable, of a replacement employee. EMPLOYEE expressly agrees that the amount of liquidated damages provided for herein is a reasonable approximation of the harm that LSU will incur in the event of such early termination by EMPLOYEE.

- (5) Unless notice of termination under this Section 12 has been given by either party, neither EMPLOYEE nor EMPLOYEE's agent shall, under any circumstances, discuss or negotiate directly or indirectly prospective employment with any other institution of higher education, professional athletic team, or other athletically-related (including media and sports marketing) prospective employer without giving at least 24 hours prior written notice to the Athletic Director.

**D. Suspension or Other Disciplinary Action.**

- (1) In lieu of termination for cause, and apart from any rights it may have under Section 12.A, LSU may impose disciplinary sanctions less severe than termination upon EMPLOYEE, up to and including suspension or leave without pay for a period no longer than ninety (90) days for any act or omission which would be grounds for termination for cause. Imposition of such sanctions shall be at the discretion of LSU, which shall not be exercised arbitrarily or capriciously.
- (2) LSU may suspend EMPLOYEE for an indefinite period during any investigation by LSU, another governmental entity, or the NCAA or SEC to determine whether EMPLOYEE has violated any laws or Governing Athletics Regulations. During such suspension, EMPLOYEE shall receive only the Base Salary Amount, and

shall not be entitled to receive any other benefits, compensation or remuneration set forth in this Agreement for the period of such suspension. If the matter giving rise to the suspension is finally resolved completely in favor of EMPLOYEE, and does not otherwise represent an independent basis for termination herein for cause, LSU shall pay or make available to EMPLOYEE the benefits and other compensation herein otherwise payable to EMPLOYEE during the period of suspension. Any such benefits which are payable pursuant to this Agreement by an affiliated foundation shall only be paid by such foundation, subject to its approval. Suspension under this sub-section shall not limit any rights of LSU to terminate EMPLOYEE for cause.

- (3) EMPLOYEE shall be subject to disciplinary or corrective action by the NCAA or SEC for any violation of NCAA and SEC regulations, respectively. Such action by the NCAA or the SEC shall not preclude or in any manner affect LSU's right to take such other corrective or disciplinary action as it deems necessary or proper, including termination for cause.

E. **Termination by Death or Disability.** In the event of the death of EMPLOYEE or the inability of EMPLOYEE to perform the obligations described in this Agreement by reason of illness or some other occurrence beyond the control of either party, and such inability to perform has continued or will continue beyond a reasonable period of time, but not less than sixty (60) days, this Agreement shall terminate as a termination with cause and all future obligations between the parties shall cease upon the termination date reasonably established by LSU, unless otherwise required by law.

F. **Waiver of Claims.** The financial consequences of termination of this Agreement or suspension herein are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause, or suspension or other disciplinary sanction effected in accordance with the procedures established in this Agreement, neither EMPLOYEE nor LSU shall be entitled to receive, and each hereby waives any claim against the other, and their respective board members, officers, directors, agents, employees, successors, and personal representatives for consequential damages by reason of any alleged economic loss, including without limitation loss of collateral income, deferred income, loss of earning capacity, loss of business opportunity, loss of perquisites, loss of fees from speaking, camps or other outside activity, or expectation income, or damages allegedly sustained by reason of alleged humiliation or defamation or other non-compensatory and compensatory damages and attorney's fees resulting from the fact of termination, the public announcement thereof, or the release by LSU or EMPLOYEE of information or documents required by law. EMPLOYEE acknowledges that in the event of either termination of this Agreement for cause, without cause, or otherwise, or suspension or other disciplinary sanction effected in accordance with the procedures established in this Agreement, EMPLOYEE shall have no right to occupy the position of associate coach of Team and that EMPLOYEE's sole remedies are provided herein and shall not extend to injunctive relief. EMPLOYEE further acknowledges and agrees that EMPLOYEE is not eligible for and will not be considered for or granted tenure by LSU.

G. **Termination by Departure of Head Coach.** Notwithstanding any provision of, and addition to any other causes for termination set forth in, this Agreement, in the event that the current Head Coach of Team ceases to hold such position for any reason, LSU shall have the option, in its sole discretion, to terminate this Agreement effective six (6) months after the last date on which the current Head Coach of Team holds such position, or on such earlier date as is mutually agreed between EMPLOYEE and LSU, and LSU shall not thereafter be liable to EMPLOYEE for any sums or damages other than any compensation earned pursuant to this Agreement prior to such termination date.

13. **Retention and Return of all Materials, Records, and Other Items.** All documents, records, or materials, including without limitation personnel records, recruiting records, team information, films, statistics, or any other material or data furnished to EMPLOYEE by LSU or developed by EMPLOYEE on behalf of or at the expense of LSU or otherwise in connection with the employment of EMPLOYEE are and shall remain the sole and confidential property of LSU. Within ten (10) days of the expiration or termination of this Agreement, EMPLOYEE shall cause any such materials in EMPLOYEE's possession or control to be delivered to LSU. At the same time, EMPLOYEE shall return to LSU all credit cards, keys, computers, mobile communication devices and other items belonging to LSU which were issued to or are in the possession of EMPLOYEE.

14. **Entire Contract.** This Agreement, including Schedule A, constitutes and expresses the entire agreement and understanding of the parties concerning the employment of EMPLOYEE by LSU and shall, upon the effective date hereof, supersede any other oral

and written agreements between the parties. There are no oral or other agreements, understandings, promises, or representations between the parties affecting this Agreement. Both parties have relied solely on their own respective judgments in entering into this agreement, with full opportunity to seek advice of competent counsel. It shall be construed, if necessary, without reference to the party that was the principal drafter of the Agreement.

15. **Amendments to Contract.** This Agreement may be amended only by a written instrument duly approved by LSU through its designated representatives and accepted by EMPLOYEE, such approval and acceptance to be acknowledged in writing.
16. **Severability.** If any provision of this Agreement shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or to alter the bounds thereof in order to render it valid and enforceable.
17. **No Waiver of Default.** No waiver by the parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.
18. **Sovereign Immunity Not Waived.** It is expressly agreed and understood between the parties that nothing contained herein shall be construed to constitute a waiver or relinquishment by LSU of any rights to claim such exemptions, privileges and immunities as may be provided by law.
19. **“Force Majeure” Clause.** Neither party shall be considered in default of performance of any obligations under this Agreement if such performance is prevented or delayed by

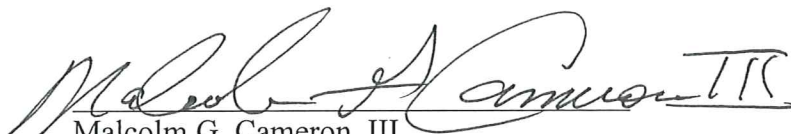
Force Majeure. "Force Majeure" shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, accident, fire, wind or flood or any requirements of law, or an act of God.

20. **Governing Laws.** This Agreement shall be enforced and construed in accordance with the laws of Louisiana. Any civil action to enforce this Agreement shall be brought in a state or federal court having jurisdiction and domiciled in East Baton Rouge Parish, Louisiana.


THE PARTIES hereto have executed this Agreement on the day, month and year first above written.


BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE

By: \_\_\_\_\_  
William L. Jenkins, Ph.D., Interim President

  
Malcolm G. Cameron, III

RECOMMENDED:

  
Joseph Alleva, Vice Chancellor and Athletic Director  
Louisiana State University and  
Agricultural and Mechanical College

  
L. Robert Kuhn, Interim Vice Chancellor and CFO  
Louisiana State University and  
Agricultural and Mechanical College

## Schedule A – Supplemental Terms for Malcolm G. Cameron, III

This Schedule A supplements and further defines the provisions of the Employment Agreement dated February 15, 2013 entered into between LSU and Malcolm G. Cameron, III., to which it is attached (the “Agreement”). In the event of a direct and clear conflict between the other provisions of the Agreement and this Schedule A, the provisions of this Schedule A shall control.

1. Subject to the terms and conditions set forth in section 7.A of the Agreement, EMPLOYEE shall receive Post-Season Incentive Compensation in the amounts, and based on attaining the goals, shown below. The maximum amount of Post-Season Incentive Compensation paid shall be \$115,000:

- |    |  |             |
|----|--|-------------|
| a) | Western Division Representative SEC Championship Game        | \$15,000    |
|    | AND any one of the following:                                |             |
| b) | Non BCS Bowl Participant with SEC payout below \$2.6 million | \$10,000 OR |
| c) | Non BCS Bowl Participant with SEC payout above \$2.6 million | \$25,000 OR |
| d) | BCS Bowl Participant   | \$50,000 OR |
| e) | BCS National Championship Game Participant                   | \$75,000 OR |
| f) | BCS National Champion  | \$100,000   |

2. Section 8 of the Agreement is supplemented to add the following subsections after the end of subsection C:

- D. One-time reimbursement of household moving expenses in accordance with LSU policy and state law;
- E. One payment of \$5,000 to be used for miscellaneous relocation expenses not reimbursed in accordance with the provisions of subsection D above; and
- F. Temporary housing at a site chosen by the Athletic Director for a period not to exceed 60 days.

3. All other provisions of the Agreement remain unchanged.



*Approved:*

For LSU by:

\_\_\_\_\_  
William L. Jenkins, Ph.D.  
Interim President  
Louisiana State University System

By:

  
Malcolm G. Cameron, III



**RECOMMENDATION TO NAME THE BASEBALL FIELD  
AT ALEX BOX STADIUM  
THE "SKIP BERTMAN FIELD"**

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8, D.5(c) of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter".

D.5(c) Such other matters that are not expressly delegated herein or hereafter by the Board to the President or equivalent and which reasonably should be considered to require Board approval as generally defined above and as construed in light of the illustrative listings.

**1. Summary of the Matter**

LSU and the LSU Athletic Hall of Fame Election Board are proposing to the LSU Board of Supervisors to name the baseball field at Alex Box Stadium in honor of former LSU Baseball coach Skip Bertman. Skip Bertman has arguably had the single most influence of any individual in LSU athletic history on an individual sport. He helped grow interest in the sport of baseball, increasing average attendance from less than 500 fans per game in 1983 to today's annual NCAA attendance leader of more than 10,000 fans per game in a new stadium constructed under his direction as athletic director.

In 18 seasons as head coach at LSU (1983-2001), he led the LSU Tigers to five National Championships (1991, 1993, 1996, 1997, 2000) and seven Southeastern Conference Championships. He finished his career with a total record of 870-330-3.

Bertman took LSU to 11 College World Series appearances, 16 NCAA Tournament appearances and he coached 31 LSU players who reached Major League Baseball. He was named national Coach of the Year six times (1986, 1991, 1993, 1996, 1997, 2000) and SEC Coach of the year seven times (1986, 1990, 1991, 1992, 1993, 1996, 1997).

He represented LSU on the international stage as well, serving as assistant coach on several USA national teams and the 1988 US Olympic Gold Medal Team, and was head coach of the 1996 US Olympic Team in Atlanta that won the Bronze Medal.

Bertman also served as Director of Athletics at LSU from 2001-07, directing one of the greatest periods of facility growth and athletic accomplishments in the history of the institution,

Bertman is a member of the LSU Athletic Hall of Fame, the Louisiana Sports Hall of Fame, the University of Miami Sports Hall of Fame, the American Baseball Coaches Association Hall of Fame and the College Baseball Hall of Fame. Upon his retirement as baseball coach, his No. 15 jersey was retired at LSU.

Throughout his career and to this day, Coach Bertman remains a pillar of the Baton Rouge community, serving on numerous philanthropic organizations such as United Way, Cancer Services and the Alzheimer's Association and he has been honored by the likes of the Arthritis Foundation, the Boy Scouts of America and the Anti-Defamation league.

Thirty years ago in April 1983, LSU hired Skip Bertman as baseball coach. Today, LSU and the LSU Athletic Hall of Fame Election Board wish to honor Skip Bertman for his unique and stellar career and his contributions to LSU and the Baton Rouge community and enthusiastically recommend that the Board approve the naming of the baseball field at Alex Box Stadium the "Skip Bertman Field".

## **ATTACHMENTS**

- Letter from Interim Chancellor William L. Jenkins
- Letter from Paul E. Hoffman, Chair of Naming University Facilities Committee
- Letter from Joe Alleva, Vice Chancellor & Director of Athletics and Bill Demastes, Chairman of Athletic Hall of Fame Election Board

## **RECOMMENDATION**

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**“NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby approve the renaming of the baseball field at Alex Box Stadium the “Skip Bertman Field”.”



**MEMORANDUM**  
*Office of the Chancellor*

OFFICE OF THE  
PRESIDENT

APR 09 2013

RECEIVED

APR 09 2013

PROPERTY & FACILITIES

**To:** LSU System Office

**Date:** April 9, 2013

**From:** Dr. William L. Jenkins  
Interim Chancellor

A handwritten signature in blue ink, appearing to read "W. L. Jenkins", with a long horizontal stroke extending to the right.

**Re:** "Skip Bertman Field" – Alex Box Baseball Stadium

The Committee on Naming University Facilities has recommended the baseball field at Alex Box Baseball Stadium be named "Skip Bertman Field".

The LSU Athletic Department requests this naming in honor of Skip Bertman, coach of the LSU Baseball Tigers from 1983 – 2001 and Athletic Director from 2001 – 2007.

Therefore, I am requesting System Office review for ultimate submission to the Board of Supervisors.

**Attachments:**

Memo of Vice Chancellor Joe Alleva

Memo of Dr. Paul Hoffman, Chair, Naming University Facilities Committee

**cc:** Joe Alleva  
Herb Vincent  
Dr. Paul Hoffman  
Dr. Jane Cassidy

April 8, 2013

**TO:** Interim Chancellor and System President William Jenkins

**FROM:** Naming University Facilities Committee

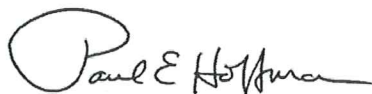
**RE:** Naming Proposal 2013-06, Skip Bertman Field (Alex Box Stadium)

Dear Interim Chancellor and President Jenkins,

Attached please find a memo from Vice Chancellor and Director of Athletics Joe Alleva recommending that the playing field at Alex Box Stadium be named for Skip Bertman, coach of the LSU Baseball Tigers, 1983-2001 and Athletic Director, 2001-2007. Please see the memo for more particulars on Mr. Bertman's career and civic engagements.

Your Naming University Facilities Committee has reviewed this proposal and recommends its approval.

For the Committee,

A handwritten signature in black ink that reads "Paul E. Hoffman". The signature is written in a cursive style with a large, looped initial "P".

Paul E. Hoffman, Chair  
Naming University Facilities Committee

Paul W. and Nancy W. Murrill Distinguished Professor  
And Professor of History

Attached: Memo of Vice Chancellor Joe Alleva  
CC: Bunnie R. Cannon  
Jane W. Cassidy



March 20, 2013

TO: William Jenkins, Interim President

FROM: Joe Alleva, Vice Chancellor & Director of Athletics  
Bill Demastes, Chairman, Athletic Hall of Fame Election Board

RE: Recommendation to name baseball field

The LSU Athletic Hall of Fame Election Board has voted unanimously to recommend that the field at Alex Box Stadium be named in honor of former LSU baseball coach Skip Bertman.

It is recommended that the name "Skip Bertman Field" be used to refer to the baseball field at LSU. The stadium name will remain "Alex Box Stadium."

Skip Bertman has arguably had the single most influence of any individual in LSU athletics history on an individual sport. He helped grow interest in the sport of baseball from an average attendance of less than 500 fans per game in 1983 to now become the annual NCAA attendance leader of more than 10,000 fans per game in a new stadium constructed under his direction as athletic director.

In 18 seasons as head coach at LSU (1983-2001), he led the Tigers to five National Championships (1991, 1993, 1996, 1997, 2000) and seven Southeastern Conference Championships. He finished his career with a total record of 870-330-3.

Bertman took LSU to 11 College World Series appearances, 16 NCAA Tournament appearances and he coached 31 LSU players who reached Major League Baseball. He was named National Coach of the Year six times (1986, 1991, 1993, 1996, 1997, 2000) and SEC Coach of the Year seven times (1986, 1990, 1991, 1992, 1993, 1996, 1997).

He represented LSU on the international stage as well, serving as assistant coach on several USA national teams and the 1988 US Olympic Gold Medal Team, and was head coach of the 1996 US Olympic Team in Atlanta that won the Bronze Medal.

Bertman also served as Director of Athletics at LSU from 2001-07, directing one of the greatest periods of facility growth and athletic accomplishments in the history of the institution.

Bertman is a member of the LSU Athletic Hall of Fame, the Louisiana Sports Hall of Fame, the University of Miami Sports Hall of Fame, the American Baseball Coaches Association Hall of Fame and the College Baseball Hall of Fame. Upon his retirement as baseball coach, his No. 15 jersey was retired at LSU.

Recommendation letter – "Skip Bertman Field" – page 2

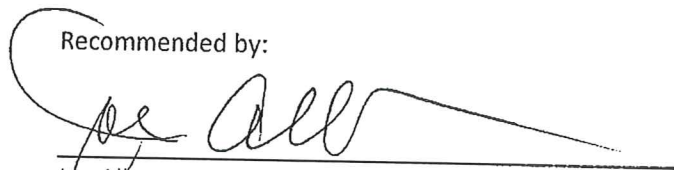
Throughout his career and to this day, Coach Bertman remains a pillar of the Baton Rouge community, serving on numerous philanthropic organizations such as United Way, Cancer Services and the Alzheimer's Association and he has been honored by the likes of the Arthritis Foundation, the Boy Scouts of America and the Anti-Defamation League.

We are hopeful the naming of the baseball field can be proposed to the LSU Board of Supervisors at its April 26 meeting in order to announce this honor the week of the 30<sup>th</sup> anniversary of the hiring of Skip Bertman as baseball coach in April 1983.

Because of his unique and stellar career, and his contributions to LSU and the Baton Rouge community, the LSU Athletic Hall of Fame Election Board enthusiastically recommends that the baseball field at LSU be named "Skip Bertman Field."

Thank you for your consideration of this recommendation.

Recommended by:



Joe Alleva  
Vice Chancellor & Director of Athletics

3/20/12  
Date

Recommended by:



Bill Demastes  
Chairman, Athletic Hall of Fame Election Board

4-1-13  
Date



**RECOMMENDATION REGARDING  
FURTHER DEVELOPMENT OF  
LSU AT ALEXANDRIA  
INTER-COLLEGIATE ATHLETIC PROGRAM**

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8, D.5(c) of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter".

D.5(c) Such other matters that are not expressly delegated herein or hereafter by the Board to the President or equivalent and which reasonably should be considered to require Board approval as generally defined above and as construed in light of the illustrative listings.

**1. Summary of the Matter**

In order to meet the National Association of Intercollegiate Athletics (NAIA) requirement, LSU Alexandria needs to support a minimum of six sports programs; LSUA currently has two sports: the Generals Baseball and Softball teams. In close consultation with LSUA administration, and after student forums, LSUA Student Government determined that Men's Basketball, Women's Basketball, Men's Soccer, Women's Soccer, and Women's Tennis would be the appropriate additions to improve LSUA campus life, increase community support for the school and bring LSUA into compliance with the NAIA requirement.

As a member of the National Association of Intercollegiate Athletics LSUA baseball and softball teams compete with a limited number of other independent programs. This limited number of team sports has hindered LSUA's ability to join a conference with peer universities as athletic competitors. In addition, as indicated above, the NAIA has ruled that member institutions "must field and compete in at least six NAIA championship sports by the beginning of the 2015-2016 academic year to remain a member in good standing."

Membership in the NAIA ensures LSUA's connection to the nationally recognized "Champions of Character" program through which the NAIA encourages student athletes' success and encourages positive civic engagement on the part of intercollegiate athletes.

Further positive aspects of the plan are that LSUA has facilities that readily lend themselves to these additional sports. LSUA already has state of the art outdoor tennis courts and a properly graded soccer field. It also has a Fitness Center with a basketball court. The tennis courts and soccer field are on campus, as is the Fitness Center. The locations of these venues are responsive to the LSUA master plan and have parking.

The additional sports would involve a two-phased increase in the LSUA Student Athletic fee; the current fee of \$3.50 per credit hour would increase by \$6.50 per credit hour in the fall, 2013 and by \$4.00 per credit hour in fall, 2014. Doing this would make LSUA's athletic fee equal to the athletic fee of LSU Shreveport.

A student-wide referendum vote on this LSUA athletic fee adjustment was conducted March 18-20, 2013. The outcome of this vote was as follows:

Number of votes cast:	617
Votes in favor:	352 (57.1%)
Votes not in favor:	265 (42.9%)



**Athletic Program and Athletic Fee Comparison**

School	Sports	Per Credit Hour		Average per Sport	
LSU Shreveport	<ul style="list-style-type: none"> <li>• Baseball</li> <li>• Men's Basketball</li> <li>• Women's Basketball</li> <li>• Men's Soccer</li> <li>• Women's Soccer</li> <li>• Women's Tennis</li> </ul>	\$14		\$28	
LSU Eunice	<ul style="list-style-type: none"> <li>• Baseball</li> <li>• Softball</li> <li>• Women's Basketball</li> </ul>	\$9		\$36	
LSU Alexandria	<ul style="list-style-type: none"> <li>• Softball</li> <li>• Baseball</li> <li>• Men's Soccer</li> <li>• Women's Soccer</li> <li>• Men's Basketball</li> <li>• Women's Basketball</li> <li>• Women's Tennis</li> </ul>	<b>Current</b>	<b>Proposed</b>	<b>Avg. per Sport Current</b>	<b>Avg. per Sport Proposed</b>
		\$3.50	\$14*	\$21	\$24

\*\$10 per credit hour in 2013-2014; \$14 per credit hour for 2014-2015 forward

**Background**

LSU Alexandria was approved to offer baccalaureate degrees in 2001; the university received approval of its substantive change to baccalaureate status from the Commission on Colleges of the Southern Association of Schools in December 2004. The first baccalaureate graduates were in December, 2004. As part of fulfilling the baccalaureate mission of the university, LSUA began the development of an intercollegiate athletic program. Such a program is a part of the maturation of student life, is part of the development of co-curricular activities at the university and is a proven recruitment tool.

In September 2004, the students of LSU at Alexandria voted to assess a \$3.50 per student per credit hour athletic fee. That approval followed a spring 2004 survey in which 81% of the students participating in an annual survey indicated strong support for an athletic program and indicated baseball and softball as the first choice for sports at LSU at Alexandria.

In May 2005, the Board of Supervisors of the LSU System approved the fee as voted on by the students; implementation of the fee began in the fall of 2006. The 2005-2006 year was a planning year; 2006-2007 (first year of the fee). Competition in softball and baseball began in the spring semester of the 2007-2008 academic year.

This program has proved highly successful with 32 current softball student athletes and 45 baseball student athletes. While the related business plan assumes approximately 80% of these softball and baseball student athletes would not be attending LSUA if it did not have an intercollegiate athletic program, virtually all of the current softball and baseball student athletes indicate that they would not be attending LSUA if they did not have these two sports. LSUA softball and baseball are financially self-sufficient with a fund balance, as of June 30, 2012, of \$50,500 in university restricted funds and about \$65,000 currently in related LSUA Foundation accounts.

## **Policy Implications**

The university is cognizant of the fact that an increase in athletic programs will bring with it the need to develop appropriate athletic related policies. A Manual of Athletics is submitted in partial response for membership in the NAIA. The University has already developed an Intercollegiate Athletics Council which is in keeping with other institutions in the LSU System. The program reports directly to the Chancellor of LSUA who will be responsible for the evaluation of personnel, monitoring of the athletic budget and related matters. The university will also develop appropriate compliance policies which will be fully in keeping with the NAIA and the conference. The university has appointed Dr. Melissa Parks as the Faculty Athletic Representative and she chairs the Athletic Council which serves as the primary governing and compliance body. Fund raising policies associated with athletics have been developed. Other related policies have been developed for booster clubs, alumni organizations supporting athletics and related activities.

## **2. Review of Business Plan**

The university estimates that based on steady state enrollment, the increased in athletic fee will generate \$493,904 in the second year of implementation (2014-2015). The university, recognizing the budgetary issues facing the state of Louisiana, will implement intercollegiate athletics and more specifically the soccer, basketball and tennis teams using the money generated through the student athletic fee, external revenue generate by the programs, and related fund raising efforts.

In summary the business plan is quite straightforward. The university anticipates that the approved athletic fee increase will generate \$493,904 in fiscal year 2014-2015. Given the nature of the fee, revenues will increase with student enrollment; the athletic programs – by recruiting student-athletes, both male and female, who are not currently enrolled or attending LSUA, will increase revenue to the university. The university will proportionately adjust its overall current scholarship program to accommodate the additional sports.

The 2013-14 year is one in which basic elements of the infrastructure would be put in place for the additional sports. This is the period in which the coaches are employed and the student-athletes are recruited. Intercollegiate play would begin with the 2014-2015 school year.

In the related business plan anticipated revenues exceed anticipated expenditures; the cautious approach of the university to intercollegiate athletics will ensure that it recruits quality student-athletes and limits the growth and development of the athletic program to its ability to pay for the program through the student athletic fee, external revenue generated by the program and fund raising.

Also positive is that the university will seek membership in the Red River Athletic Conference; the conference includes similarly sized public and private universities and the schools are located within a reasonable travel distance of LSU Alexandria.

Finally, the presence of an athletic program developing simultaneously with the development of university housing will begin to create a residential feel for a campus that has historically been an exclusively commuter campus. While LSU at Alexandria does not anticipate becoming a residential campus in the mold of many others in the state of Louisiana, the university nevertheless seeks to strengthen student life through athletics, housing and the concomitant development of other aspects of student life.

The potential negative aspects of the business plan are that revenues are not sufficiently large to develop all of the coaching positions which will ultimately be appropriate for these intercollegiate sports. The university will thus start "lite" in its athletic programs and remain "lite" until such time as revenues can increase thus allowing the hiring of additional coaches. To offset

this potential negative, the athletic program will be closely integrated to other aspects of the university such that coaches will also have teaching responsibilities and some current full-time faculty may take on coaching responsibilities; and volunteers will be used. Additionally, while the business plan assumes finishing enhancements to the related existing campus facilities will be done in FY 2013-2014, these enhancements will be phased in as financials dictate. Donors will also be sought to cover some of these costs and LSUA Athletics already has a positive fund balance of over \$100,000 in its combined accounts

Based on the success of softball and baseball attracting students who would otherwise not come to LSUA, the university feels certain that there are significant numbers of would be student-athletes who will enroll at LSUA not only for quality and developing baccalaureate programs but also because of the opportunity to engage in intercollegiate athletics.

### **3. Fiscal Impact**

The fiscal impact of intercollegiate athletics can be considerable; expenditures could exceed revenues and hence the Board of Regents has set limits on the amount of state support that can be extended to athletic programs. This program is funded through a dedicated student fee and the total revenues and expenditures are well within the scope of the maximums allowed to universities by the Board of Regents. Because of the cautious approach that the LSUA administration is taking to athletics, the fiscal impact will be manageable. The enhanced athletic program will be budgeted as a part of the restricted university budget; the budgeting should be a straightforward aspect of that process. Fund raising opportunities associated with athletics will be carefully coordinated with the LSUA Foundation.

#### **Financial Consequences**

The Financial Consequences are outlined in the detailed business plan and proforma included with this document. The proposed budget includes the costs of developing and then operating the additional sports. Further financial consequences may be tied to the use of current staff and/or faculty as coaches and/or assistant coaches. Such appointments would either be through reassigned time or through overload payments and the potential consequence is to the adjunct pay roll. Such appointments will be fully in keeping with the existing policies regarding compensation. Maintenance will be a combination of routine maintenance through the facility services staff of the university and maintenance by the student-athletes (a customary approach on smaller campuses).

### **4. Description of Competitive Process**

None

### **5. Review of Legal Documents**

The proposed request has been reviewed by the System's Chief Financial Officer

### **6. Parties of Interest**

None.

### **7. Future Related Transactions**

The university is deliberately initiating a relatively modest increase in its intercollegiate athletic program. As these intercollegiate sports develop and begin to mature, the university will consider adding additional intercollegiate sports in keeping with demand by the students, revenue sources to support the programs and in keeping with NAIA and Red River Conference requirements. The university anticipates that new sports may include but not necessarily be

limited to low-cost sports such as golf (the university already owns and maintains a self-supporting 9-hole golf course and a driving range), cross-country (there is ample space on campus and in the adjacent LSU AgCenter space for this sport) and perhaps women's volleyball (the university Fitness Center has a regulation size volleyball court). While the development of additional intercollegiate sports is sometime in the future and will occur only as revenues and demand makes it possible, the university is fortunate to have existing facilities in which these sports can develop.

As an extension of continuing education and as a means of enhancing the revenues of the university, the university has developed summer camps for youth which focus on athletic endeavors. The university does not anticipate developing a program in intercollegiate football.

#### **8. Conflicts of Interest**

None.

#### **ATTACHMENTS:**

- Related Proforma and business plan

#### **RECOMMENDATION**

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University does hereby approve involve a two-phased increase in the LSUA Student Athletic fee; the current fee of \$3.50 per credit hour would increase by \$6.50 per credit hour in the fall, 2013 and by \$4.00 per credit hour in fall, 2014.

**BE IT FURTHER RESOLVED THAT** the funds generated by this fee increase will be used to implement additional sports programs at LSU at Alexandria in accordance with the Athletics Proforma Chart submitted to the President of the Louisiana State University System that is on file in the Office of the LSU Board of Supervisors.

## New Athletics Proforma Chart

	Per Student Effect	Basketball 2013-2014	Basketball 2014-2015	Basketball 2015-2016
New FTE's (80% of players)	1	0	19	19
Self Generated-LSUA	5,219	0	99,161	99,161
Self Generated-Athletics	-	0	23,500	23,500
Revenue	5,219	0	122,661	122,661
Faculty	4,466	0	84,854	84,854
Other/Coach	-	321,747	216,175	216,175
Expenses	4,466	321,747	301,029	301,029
<b>Gain Loss</b>	<b>753</b>	<b>(321,747)</b>	<b>(178,368)</b>	<b>(178,368)</b>

	Per Student Effect	Tennis 2013-2014	Tennis 2014-2015	Tennis 2015-2016
New FTE's (80% of players)	1	0	8	8
Self Generated - LSUA	5,219	0	41,752	41,752
Self Generated-Athletics	-	0	5,000	5,000
Revenue	5,219	0	46,752	46,752
Faculty	4,466	0	35,728	35,728
Other/Coach	-	7,500	28,100	28,100
Expenses	4,466	7,500	63,828	63,828
<b>Gain Loss</b>	<b>753</b>	<b>(7,500)</b>	<b>(17,076)</b>	<b>(17,076)</b>

	Per Student Effect	Soccer 2013-2014	Soccer 2014-2015	Soccer 2015-2016
New FTE's (80% of players)	1	0	48	48
Self Generated - LSUA	5,219	0	250,512	250,512
Self Generated-Athletics	-	0	10,400	10,400
Revenue	5,219	0	260,912	260,912
Faculty	4,466	0	214,368	214,368
Other/Coach	-	122,330	110,425	110,425
Expenses	4,466	122,330	324,793	324,793
<b>Gain Loss</b>	<b>753</b>	<b>(122,330)</b>	<b>(63,881)</b>	<b>(63,881)</b>

<b>\$14 Athletic Fee</b>		2013-2014	2014-2015	2015-2016
New FTE's (80% of players)	1	0	75	75
Self Generated-LSUA	5,219	0	391,425	391,425
Self Generated-Athletics		0	38,900	38,900
Athletic fee Increase	(\$14 per student)	292,936	493,904	493,904
Revenue	5,219	292,936	924,229	924,229
Athletics Overhead			118,835	118,835
Faculty	4,466	0	334,950	334,950
Scholarships			90,769	90,769
Other/Coach	-	451,577	354,700	354,700
Expenses	4,466	451,577	899,254	899,254
<b>Gain Loss</b>	<b>753</b>	<b>(158,642)</b>	<b>24,975</b>	<b>24,975</b>

**Athletics Proforma - University Impact Chart**  
**FY 2015-2016**

**Additional Revenue - Athletics**

Basketball	23,500	
Tennis	5,000	
Soccer	10,400	
<b>Total Revenue</b>	<b>\$ 38,900</b>	

**Athletic Expenses**

Basketball	216,175	
Tennis	28,100	
Soccer	110,425	
Overhead	118,835	
<b>Total Expense</b>	<b>\$ 473,535</b>	

**Athletics (Net) \$ (434,635)**

**Additional Revenue - LSUA**

Tuition & Fees		
Basketball	99,161	
Tennis	41,752	
Soccer	250,512	
Increase in Athletic Fee	493,904	
<b>Total Revenue</b>	<b>\$ 885,329</b>	

**University Expenses**

Faculty	334,950	
<b>Total Expense</b>	<b>\$ 334,950</b>	

**University (Net) \$ 550,379**

**Net Effect**

Athletics	(434,635)	
Univ. Scholarships/Athletics	(90,769)	
University	550,379	

**Total \$ 24,975**

### III. HEALTH CARE AND MEDICAL EDUCATION COMMITTEE

**Dr. John F. George, Chair**  
**Mrs. Ann D. Duplessis, Vice Chair**  
Mr. Ronald R. Anderson  
Mr. Scott A. Angelle  
Mr. Scott Ballard  
Mr. R. Blake Chatelain  
Mr. Garret "Hank" Danos  
Mr. Stanley J. Jacobs  
Mr. Raymond J. Lasseigne  
Mr. Jack E. Lawton, Jr.  
Mr. Lee Mallett  
Mr. Justin T. Mannino  
Mr. Rolfe McCollister, Jr.  
Mr. James W. Moore, Jr.  
Mr. J. Stephen Perry  
Mr. Robert "Bobby" Yarborough

#### AGENDA

1. Cooperative Endeavor Agreement among the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the State of Louisiana through the Division of Administration, the Louisiana Department of Health and Hospitals, University Medical Center Management Corporation and Louisiana Children's Medical Center for the management and operation of Charity Hospital and Medical Center of Louisiana at New Orleans
2. Cooperative Endeavor Agreement among the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the State of Louisiana through the Division of Administration, the Louisiana Department of Health and Hospitals, Lafayette General Health System, Inc. and University Hospital and Clinics, Inc. for the management and operation of University Medical Center at Lafayette

**COOPERATIVE ENDEAVOR AGREEMENT**

**BY AND AMONG**

**LOUISIANA CHILDREN'S MEDICAL CENTER;**

**UNIVERSITY MEDICAL CENTER  
MANAGEMENT CORPORATION;**

**BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY  
AND AGRICULTURAL AND MECHANICAL COLLEGE;**

**THE LOUISIANA  
DIVISION OF ADMINISTRATION;**

**THE LOUISIANA DEPARTMENT OF HEALTH & HOSPITALS;**

**AND**

**THE STATE OF LOUISIANA  
THROUGH THE DIVISION OF ADMINISTRATION**

**DATED \_\_\_\_\_, 2013**



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Legal Proceedings; Orders. There is no pending Proceeding that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To LCMC’s Knowledge, no event has occurred or circumstance exists that is reasonably likely to give rise to, or serve as a basis for, the commencement of any such Proceeding which is reasonably likely to result in an inability to perform the terms and conditions of this Agreement. There is no Order is subject that would limit or affect LCMC’s ability to enter into this Agreement or consummate the Contemplated Transactions. ....	53
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Section 16.1 Limitations on Withdrawal. LCMC shall be allowed or required, as applicable, to withdraw as a member of UMCMC prior to the expiration of the Term of this CEA only in accordance with this Article XVI, and for no other reason, including, without limitation, any breach of this CEA, the Master Collaborative Agreement or other agreement related to the Contemplated Transactions. Any early withdrawal by LCMC as a member of UMCMC shall be subject to the one-year Withdrawal Wind Down Period provided in Section 16.9. ....58

Section 16.2 Elective Withdrawal Events. Subject to the Parties’ good faith participation in the Pre-Withdrawal Process set forth in Section 16.7, upon the occurrence of one or more of the following events (each, a “Potential Elective Withdrawal Event”), LCMC shall have the option to withdraw from UMCMC in accordance with Section 16.8: .....59

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	world class academic medical center providing top quality patient care, medical education and clinical research that is competitive in the health care marketplace. The Parties further acknowledge and agree that the damages LCMC will sustain if it elects or is required to withdraw under certain circumstances will be substantial and difficult to quantify. Accordingly, stipulated damages are an appropriate remedy for LCMC in the event of its withdrawal as a member of UMCMC under certain circumstances as follows:.....	68
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## COOPERATIVE ENDEAVOR AGREEMENT

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (“CEA” or “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (“Effective Date”), by and among Louisiana Children’s Medical Center, a Louisiana nonprofit corporation (“LCMC”), University Medical Center Management Corporation (A Major Affiliate of LSU pursuant to La. R.S. 17:3390), a Louisiana nonprofit corporation (“UMCMC”), Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (“LSU”), the Louisiana Division of Administration, acting through the Commissioner (the “DOA”) the Louisiana Department of Health and Hospitals, acting through the Secretary (“DHH”), and the State of Louisiana, through the Commissioner of Administration (the “State”). LCMC, UMCMC, LSU, DOA, DHH and the State are referred to together as the “Parties,” and each, a “Party.” Capitalized terms shall have the meanings set forth on Appendix 1.

### RECITALS

WHEREAS, the State of Louisiana, through public and private educational institutions, facilities and health providers, has long endeavored to create and maintain a system of medical education and training of the highest quality while also providing the highest quality of health care services to all citizens of the State;

WHEREAS, it is a collective goal of the Parties to enhance the stability and competitiveness of Louisiana’s medical education and training programs so that Louisiana is positioned to continue to attract the most talented faculty, students, residents and other medical professionals;

WHEREAS, a highly competitive academic and training environment furthers the additional goal of the Parties to leverage the research capabilities of Louisiana's public and private educational institutions, facilities and health providers;

WHEREAS, sustainable partnerships among health providers and LSU and the Administrators of the Tulane Educational Fund (“Tulane”), as well as other universities and training institutions in Louisiana, are necessary to optimize the medical training resources available in Louisiana and to ensure that sufficient numbers of qualified health care professionals are trained to address the current and future healthcare needs of the State;

WHEREAS, Louisiana has traditionally relied on a state-wide public hospital system, most recently owned and operated by LSU pursuant to constitutional and statutory authority, to (i) provide health care to the State’s uninsured and high-risk Medicaid populations, as well as inmate care, and (ii) serve as the primary training sites for LSU’s medical education programs;

WHEREAS, the state-wide public hospital system is financially unsustainable, compromising LSU’s and the State’s ability to provide medical education opportunities, a full range of clinical services to all Louisiana citizens, including the uninsured and Medicaid high-risk populations, and promote clinical research and other advances in health care;

WHEREAS, Louisiana’s health care reform effort has focused on ways to remodel the delivery of care through partnerships and cooperative efforts between the public and private sectors;

WHEREAS, LSU owns the facility that since Hurricane Katrina has served as an interim facility (the “Interim Facility”) for the LSU hospital with Medicare Provider Number 190005 (the “Hospital”) and the ongoing operations of the Hospital;

WHEREAS, upon completion of construction by the Louisiana Office of Facilities Planning and Control, LSU will own the facility currently under construction in New Orleans to serve as the Hospital's new, permanent facility, as well as an ambulatory care building and parking garage currently under construction as part of the Hospital's new campus (collectively, the "New Facility");

WHEREAS, in accordance with a Memorandum of Understanding dated August 2, 2009, as amended by amendment thereto dated March 2, 2010, by and among LSU, DOA, DHH and Tulane (the "MOU"), it is contemplated that UMCMC will assume the operations of the Hospital upon completion of the New Facility as a private enterprise in accordance with the terms of this CEA and part of a collaborative academic medical center (the "AMC") to serve and enhance opportunities to achieve State's medical education, clinical care and research goals;

WHEREAS, due to (i) the closing of the former Charity Hospital facility, the Federal Emergency Management Agency ("FEMA") provided funds to convert the former University Hospital to the Interim Facility to provide services until construction of the New Facility could be completed and the commencement of operations therein, and (ii) the subsequent execution of the MOU by LSU, Tulane and the State, the provisions of La. R.S. 17:1519.9 are no longer applicable to the Hospital's operations and so are not applicable to this CEA or the Contemplated Transactions;

WHEREAS, the LCMC health care system (the "LCMC System" or "System") has extensive experience in nonprofit hospital operations and finances, including management and operation of Touro Infirmary ("Touro") and Children's Hospital of New Orleans ("Children's"), ongoing academic relationships with LSU, Tulane, and other academic and community

organizations throughout New Orleans and Louisiana, and is committed to the growth and expansion of the charitable clinical, teaching and research missions in the communities it serves;

WHEREAS, UMCMC has determined that the System has the resources and expertise necessary to help UMCMC achieve its vision of an integrated, world class academic medical center consistent with the MOU;

WHEREAS, to maintain the viability of Hospital operations and the current range of patient care services and programs in the Interim Facility, and to protect and enhance the Hospital's vital role in the AMC as the Hospital transitions to the New Facility, the Parties desire to immediately bring LCMC's financial, operational and relationship and other expertise and resources to the Hospital for the mutual benefit of the State and LSU by entering into a series of transactions in which (i) LCMC will become the sole member of UMCMC with certain reserved powers, resulting in UMCMC becoming an Affiliate of LCMC; (ii) UMCMC will assume responsibility for Hospital operations in accordance with and subject to the terms and conditions of this CEA, (iii) LSU will lease the Interim Facility and the New Facility and certain furniture, fixtures and equipment used in connection with the Hospital's operations to UMCMC pursuant to the Master Hospital Lease and the Equipment Lease; (iv) UMCMC will purchase certain consumable inventory and the accounts receivable of the Hospital; (v) LSU and DOA will grant to UMCMC a right of use of the land upon which the New Facility is being constructed and will be operated and certain land and improvements surrounding the New Facility pursuant to the Right of Use Agreement; (vi) LSU will assist in transitioning Hospital operations from LSU to UMCMC; (vii) UMCMC and LCMC will commit to supporting the academic, clinical and research missions of the AMC in accordance with this CEA; and (viii) such other or additional

transactions or agreements as may be necessary to effect the foregoing (collectively, the “Contemplated Transactions”);

WHEREAS, among other things, the Contemplated Transactions will afford LCMC and its Affiliates the opportunity to extend their management abilities and mission to additional hospital facilities in the New Orleans area, access and support a Level 1 Trauma Center and a robust clinic infrastructure, create innovative health care delivery systems (such as accountable care organizations), and facilitate greater clinical integration across a broader base of providers in and around New Orleans, all of which will serve to expand and diversify the LCMC system to better serve its patient population and the patient population of the greater New Orleans area;

WHEREAS, among other things, this CEA and the Contemplated Transactions will: (i) stabilize and enhance the medical education and training experiences and opportunities available to LSU students and residents, as well as students and residents of other educational institutions; (ii) optimize the training resources to build Louisiana’s health care workforce and further the health care enterprise in the State; (iii) based on available and reasonable means of financing, provide better access to a full range of clinical care services to the uninsured and high risk Medicaid populations; (iv) allow the AMC to compete with academic medical centers in other states to attract the best faculty, residents and students; (v) enhance opportunities for faculty to perform and attract funding for cutting edge research; (vi) attract private and publicly financed third party payments in order to compete in the health care marketplace; and (vii) promote better health care for Louisiana citizens through an evidence-based, outcomes driven integrated delivery system focused on high quality, cost-effective health care.

WHEREAS, LCMC is willing and desires to provide, either directly or through its new Affiliate, UCMC, the financial resources, operational expertise, and other necessary resources

and to take steps to ensure that the Hospital continues to, and, upon completion of construction of the New Facility will: (i) serve as a safety-net hospital, and play a central role in providing healthcare services to the uninsured and high-risk Medicaid populations; (ii) provide the citizens of Louisiana, whether through the Hospital or another LCMC Affiliate, services that might not otherwise be available in their communities; (iii) preserve the quality of medical education in Louisiana through medical training partnerships and academic affiliations with LSU, Tulane, and other universities and training institutions; and (iv) prevent the major reductions currently contemplated for the Hospital and their devastating effects on LSU's academic programs in the health sciences and patient access to clinical care;

WHEREAS, the Parties recognize that UMCMC's assumption of the operations and management of the Hospital and the physical transition from the Interim Facility to the New Facility will include the commitment and the assumption of significant financial and operational investments by UMCMC and its Affiliates, including without limitation, working capital, transition costs, and funding or financing for certain improvements for the New Facility, and UMCMC and its Affiliates desire to assure sustainable reimbursement levels commensurate with such investments;

WHEREAS, as contemplated by the MOU, it will be necessary for the Hospital to be operated in a manner consistent with the best practices of private, non-profit institutions, and it must function responsibly as an independent entity;

WHEREAS, the Parties recognize the importance of and desire to ensure the continued provision of charitable care at the Hospital to the extent it is funded by the State and DHH or otherwise required by law;



WHEREAS, DHH, DOA, LSU, LCMC and UMCMC recognize the need to work collaboratively and exercise their best efforts to secure funding from the State for the cost of the services provided to uninsured patients at the Hospital;

WHEREAS, the Louisiana Constitution in Article VII, Section 14(C) permits the State and its political subdivisions or political corporations to engage in cooperative endeavors with any public or private association, corporation or individual for a public purpose;

WHEREAS, LSU has the legal authority to provide the health care services that are the subject of this cooperative endeavor;

WHEREAS, the Parties desire to enter into this CEA, as well as related agreements, to facilitate and advance the goals recited herein;

WHEREAS, in addition to this CEA and the Exhibits hereto, LSU and UMCMC will enter into an agreement to address ancillary matters related to the Contemplated Transactions (the "Master Collaborative Agreement");

WHEREAS, the Parties recognize this CEA shall be subject to presentation and review by, and any required approval of, the Louisiana Legislature's Joint Legislative Committee on the Budget in accordance with law; and

WHEREAS, the Parties intend and expect that this CEA and the Contemplated Transactions will benefit the State and LSU, and such expenditure is not gratuitous.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I.  
STATEMENT OF PUBLIC PURPOSE**

Section 1.1 In accordance with Article 7, Section 14(c) of the Louisiana Constitution, the Parties enter into this Cooperative Endeavor Agreement for the public purpose of creating an academic medical center in which the Parties continuously work in collaboration and are committed and aligned in their actions and activities, in a manner consistent with a sustainable business model and adequate funding levels, to serve the State and its citizens: (i) as a premier site for graduate medical education, capable of competing in the health care marketplace, comparable among its peers, with the goal of attracting the best faculty, residents and students, to enrich the State’s health care workforce and their training experience; (ii) in fulfilling the State’s historical mission of assuring access to Safety Net Services to all citizens of the State, including its Medically Indigent, high risk Medicaid and State inmate populations, and (iii) by focusing on and supporting the Core Services and Key Service Lines, as defined and agreed by the Parties, necessary to assure high quality GME Programs and access to Safety Net Services.

Section 1.2 Contract Monitor. LSU shall appoint a contract monitor (“Contract Monitor”) whose role shall be to monitor the Parties’ compliance with the terms of this CEA. The Contract Monitor shall be an employee of LSU Health Care Services Division (“HCSD”) or a successor or related institution under the supervision of the LSU Board of Supervisors. The Contract Monitor’s responsibilities with respect to this CEA shall be to perform all public accountability and reporting functions in accordance with Legal Requirements. LSU may assign such other duties and responsibilities to the Contract Monitor in its discretion.

**ARTICLE II.  
MEDICAL EDUCATION AND RESEARCH SUPPORT**

Section 2.1 Commitment to Academic Mission. Recognizing the special character of an academic medical center, including the vital role the Hospital plays in medical education,

research and patient care, and the vital role academic institutions play and will play in the Hospital's financial viability and potential to succeed in a dynamic health care marketplace, and the interdependence among the Hospital and academic institutions in establishing and maintaining the AMC as a world-class academic medical center, UMCMC's governance documents, including its Articles of Incorporation and Bylaws, will recognize the traditional roles the Hospital, LSU and Tulane have played in providing medical education, research and patient care. UMCMC will enter into academic affiliation agreements with LSU, Tulane, Xavier University, Dillard University, University of New Orleans, Delgado Community College and other academic institutions to strengthen and enhance medical education in the AMC and the health care workforce in Louisiana.

Section 2.2 Office of Academic Affairs. UMCMC will establish an Office of Academic Affairs ("OAA") to be led by UMCMC's Chief Academic Officer. The Chief Academic Officer shall be a physician employed by UMCMC who has experience and demonstrated capability in the management and administration of an academic medical center. The Chief Academic Officer will report to the UMCMC's Chief Executive Officer and will be supported by UMCMC's Academic Advisory Committee as provided in the UMCMC Bylaws ("AAC"). The AAC's operating procedures will provide for representation on the AAC by LSU, Tulane, UMCMC and other LCMC institutions involved in GME. The Chief Academic Officer, as supported by the AAC, will be responsible for recommending to the UMCMC Board of Directors and Chief Executive Officer the overall educational strategy for the AMC, giving appropriate consideration to the AMC's mission, budgetary impacts, fulfillment of Residency Review Committee ("RRC") requirements, and other relevant factors. The AAC will seek to create structures and promote collaboration and support among LSU, Tulane, UMCMC and other

LCMC institutions involved in GME such as coordination of patient care through clinical service line committees, that will allow each institution to achieve its respective goals and optimize opportunities for the AMC enterprise. The AAC operating procedures will provide that the AAC will develop a dispute resolution process for resolving disputes among AAC members and their sponsoring institutions that will foster collaboration, input, and decision-making in making recommendations in the best interests of the entire AMC enterprise.

Section 2.3 Academic Affiliation with LSU. UMCMC and LSU will enter into an Academic Affiliation Agreement (“AAA”) that sets forth the terms and conditions upon which UMCMC and LSU specifically agree and will collaborate to strengthen LSU, the Hospital, the AMC and their respective programs, particularly when the Hospital relocates to the New Facility. The AAA will provide that (i) LSU maintains ultimate authority over its academic programs, policies and procedures as they directly relate to the LSU faculty, residents and students, and (ii) UMCMC maintains ultimate authority over the business, management, policies, operations and assets of the Hospital. Without limiting the foregoing, the AAA between UMCMC and LSU will provide for the following:

(a) Flagship Agenda. LSU and UMCMC will agree to and implement a comprehensive flagship agenda (“Flagship Agenda”) for the Hospital designed to promote and attract (i) skilled and highly-regarded medical faculty, fellows, residents and students; (ii) research grants of the type associated with leading academic institutions; (iii) sufficient patient volumes with an appropriate payer mix to sustain high quality, accredited education and research programs; and (iv) innovative models of patient care delivery and financing that are quality and evidence-based, patient-centered and data-driven.

(b) Hospital Residency Caps. Although the Hospital Residency Caps are attached to the Hospital through the Hospital's Medicare Provider Agreement and Provider Number, the Parties agree that the AAA will include provisions regarding the allocation of Hospital Residency Caps that acknowledge and bind LSU, UMCMC and LCMC to certain provisions, including, but not limited to, the following:

(i) UMCMC will support LSU and Tulane residency programs by allocating the Hospital Residency Caps between LSU and Tulane in accordance with the UMCMC Bylaws.

(ii) The commitment of LSU's academic training programs to the Hospital as provided in the Flagship Agenda, including provisions that the Hospital shall receive a right of first refusal with respect to any new LSU GME Program;

(iii) LSU's prior commitments of Hospital Residency Caps to other academic partners in accordance with the AAA;

(iv) LSU's placement of residents through affiliation agreements will preferentially be to the Hospital or another LCMC institution unless GME needs may dictate placement of such residents in an unrelated institution. The assignment of Hospital Residency Caps shall be under the authority of the Chief Executive Officer in consultation with the Chief Academic Officer and the AAC, and may be separate from LSU's assignment of residents;

(v) UMCMC shall not be required to provide any financial or administrative support for any resident or fellow which is not supported by federal program funding, unless agreed to by UMCMC.

(c) Academic Autonomy. Subject to commitments made to the Flagship Agenda, LSU will retain discretion to determine how to develop and where to place its research and education programs, including their clinical components. The LSU Board, administration and various academic deans will retain authority over educational policy, curriculum design, educational program leadership, research policy, academic appointments and all other academic policy matters. The AAA shall not impinge on LSU's academic integrity and independence. Without limiting the foregoing, if LSU and Tulane determine they can no longer support a certain academic program, UMCMC shall be permitted to staff such program in its discretion with non-faculty members, or the faculty of other educational institutions, and operate the relevant unit as a non-academic department or unit of the Hospital.

(d) Research Support. The AAA will address a method for determining Hospital support for LSU's research activities, including, without limitation, infrastructure support for funded research grants, access to data, Institutional Review Board (IRB) support, and, potentially, Hospital funding of LSU faculty research at the Hospital.

(e) Intellectual Property. The AAA will include provisions to address the ownership and use of intellectual property between UMCMC and LSU.

Section 2.4 Academic Affiliation with Tulane. UMCMC shall enter into an Academic Affiliation Agreement with Tulane , which agreement shall contain provisions related to academic autonomy, Tulane research support, and Tulane's educational mission at the Hospital.

**ARTICLE III.  
COMMITMENTS TO PATIENT CARE**

Section 3.1 Care for the Medically Indigent and Uninsured. Recognizing (i) the State’s historical commitment to providing free or reduced cost health care to the uninsured and Medically Indigent populations, as defined by Louisiana law, and (ii) LSU’s mission of providing access to high quality medical care for all patients, including the Medically Indigent and uninsured populations, within available financing and approved budgets, and (iii) the need to support the AMC’s education and training mission, UMCMC agrees, subject to its receipt of the Required Funding as provided in Article VIII, to provide free or reduced cost health care to Medically Indigent and uninsured patients of the Hospital in accordance with a charity care policy that is consistent in all material respects with LSU Policy Number 2525-11 attached as Exhibit 3.1, the current policy for determining eligibility for free or reduced cost health care services at the Hospital, which may be amended from time-to-time with proper notice to LSU in a manner consistent with the Public Purpose.

Section 3.2 Care for High-Risk Medicaid Patients. Recognizing LSU’s traditional role as a high-volume provider of health care services to patients covered by Medicaid, particularly medically complex and otherwise high-risk Medicaid patients, and the AMC’s capability and capacity to provide specialized physician and hospital care not always readily available to these patients in the private sector, UMCMC and LSU will make available the Core Services and Key Services Lines as described in this Article III to high-risk Medicaid patients in accordance with the terms of this CEA.

Section 3.3 State Inmate Care. Subject to its receipt of reasonable and appropriate cost reimbursement, UMCMC, with the support of LSU, will provide medically necessary health care to the State’s inmates. In the event UMCMC does not receive reasonable and appropriate

cost reimbursement, it may suspend the provision of health care services to State inmates, and the State shall arrange for alternative sources of medically necessary health care until such time as reasonable and appropriate cost reimbursement is provided to UMCMC for such medically necessary services. Suspension of care to State inmates due to lack of reasonable and appropriate cost reimbursement for such services shall not constitute a violation of this CEA. UMCMC will assure that telemedicine capability is available to LSU in accordance with Section 3.6 for use in providing cost-effective, medically necessary health care to State inmates.

Section 3.4 Core Services. The Parties acknowledge and agree that the services identified in the AAA are core Safety Net services (“Core Services”) currently being provided to the community and the region through the Hospital, and that UMCMC will continue to provide the Core Services through the Hospital on and after the Commencement Date, subject to the terms of this CEA, including receipt of the Required Funding. Except for reasons of (i) UMCMC’s inability to reasonably obtain professional staff through LSU or other resources, or (ii) a lack of Required Funding, UMCMC will not unilaterally discontinue any Core Service currently provided at or through the Hospital. Notwithstanding the foregoing, the Core Services, and Exhibit 3.4, may be amended in the future to add or delete a Core Service by mutual agreement of LSU and UMCMC based on community need, patient access, cost, available resources and other relevant considerations.

Section 3.5 Key Service Lines. The parties acknowledge and agree that the clinical service lines identified in the AAA (“Key Service Lines”) are critical not only to comprehensive patient care, but also to the AMC’s mission of providing robust medical education and clinical research experiences. LSU and UMCMC agree that, subject to UMCMC’s receipt of the Required Funding, the Hospital will offer a baseline of services in the Key Service Lines at least



at the level provided at the Interim Facility on the Commencement Date as agreed upon by UCMCMC and LSU (“Key Service Baseline”), and will work collaboratively with LSU, Tulane and other academic partners within the AMC to grow the Key Service Lines above the Key Service Baseline with a financially sustainable payer mix in the New Facility. Subject to receipt of the Required Funding, UCMCMC will not eliminate or substantially reduce a Key Service Line below the Key Service Baseline without first consulting LSU and engaging in the Collaborative Process, taking into account medical education needs, services available at other LCMC facilities, community needs, and other relevant factors.

Section 3.6 Telemedicine.

(a) UCMCMC and LSU will maintain the infrastructure, such as nursing support, space, and scheduling, of telemedicine services provided at the Interim Facility in order to continue providing cost-effective care to State inmates as provided in **Error! Reference source not found.****Error! Reference source not found.****Error! Reference source not found.**, as well as other patients in remote locations, and work to grow the Hospital’s telemedicine program at the New Facility. LSU will provide the physician support and UCMCMC, subject to receipt of the Required Funding, will provide the infrastructure support, necessary to maintain the Hospital’s telemedicine program at least at the level provided in the Interim Facility as of the Commencement Date. LSU and UCMCMC will collaborate to grow the Hospital’s telemedicine program, provided that a sustainable business model can be created and UCMCMC’s receipt of the Required Funding, to serve patients in remote locations and fulfill the Hospital’s role as a regional referral center within the AMC.

Section 3.7 Closure; Reduction of Services. UMCMC will not close the Hospital or the Hospital's emergency room or reduce services except in compliance with Legal Requirements.

Section 3.8 Open Medical Staff. Consistent with the Public Purpose, UMCMC may maintain an open Medical Staff as may be determined by its Board of Directors.

#### **ARTICLE IV. FACILITIES AND EQUIPMENT**

Section 4.1 UMCMC Lease of Interim Facility and New Facility.

Contemporaneous with and subject to the terms and conditions of this CEA, LSU, DOA, the State and UMCMC shall enter into, and LCMC shall intervene for certain purposes in, that certain Master Hospital Lease Agreement in the form attached as Exhibit 4.1 ("Master Hospital Lease"). Under the Master Hospital Lease, LSU agrees to take all the necessary actions required to transfer possession of the Interim Facility and, upon its completion, the New Facility, to UMCMC. The Master Hospital Lease shall include all property set forth in the Master Hospital Lease (the "Leased Premises"), but shall not include the land upon which the New Facility is located and shall not include any liens, claims, security interests, charges, privileges, pledges, mortgages, deeds of trust or encumbrances, except as may be further described in the Master Hospital Lease. Without limiting the foregoing, the Master Hospital Lease will also provide for the following:

(a) Rental Payments. The rental payments paid by UMCMC for the Interim Facility and New Facility ("Rent") represent fair market value, as set forth in the Master Hospital Lease.

(b) LCMC Guarantee. Payment of Rent by UMCMC to LSU will be guaranteed by LCMC in accordance with the Master Hospital Lease.

(c) Master Hospital Lease Term, Renewal Options. The Master Hospital Lease shall provide for a term of forty-two years, and shall include three (3) fifteen (15) year options to extend the term of the Master Hospital Lease.

(d) Option to Amend the Lease. If the Parties deem it advantageous to the implementation of this CEA, the Parties may amend the Master Hospital Lease to exclude certain portions of the Leased Premises (the “Excluded Premises”) from the Master Hospital Lease and enter into a separate lease for the Excluded Premises. Any such amendment and separate lease of the Excluded Premises shall provide for fair market value Rent for the Leased Premises and the Excluded Premises, shall continue the guarantee of Rent for the Leased Premises by LCMC, and shall have the same initial forty-two (42) year initial term and three (3) optional fifteen (15) year renewal terms as the current Master Hospital Lease.

Section 4.2 Right of Use. Contemporaneous with and subject to the terms and conditions of this CEA, LSU, the State, and UMCMC shall enter into a Right of Use, Possession and Occupancy Agreement by and among LSU, the State, and UMCMC in the form attached as Exhibit 4.2 (“Right of Use”). Under the Right of Use, UMCMC shall have the right of ingress, egress, and other rights over the entirety of the land upon which the New Facility is located and certain surrounding land (the “Land”), as more particularly described in the Right of Use.

Section 4.3 UMCMC Lease of Certain Equipment. Contemporaneous with and subject to the terms and conditions of this CEA, LSU and UMCMC shall enter into an Equipment Lease Agreement in the form attached as Exhibit 4.3 (“Equipment Lease”), which shall govern the lease of certain equipment necessary for UMCMC’s operation of the Hospital.

**ARTICLE V.  
MEMBER SUBSTITUTION**

Section 5.1 Member Substitution. Immediately following the execution of this CEA by the Parties, UMCMC shall execute and file with the Louisiana Secretary of State and the Clerk and Recorder of East Baton Rouge Parish the Amendment to and Restatement of the Articles of Incorporation of UMCMC and LCMC shall thereby be substituted as and become the sole member of UMCMC as of the Effective Date (the “Member Substitution Date”) in accordance with a Member Substitution Agreement as approved by the UMCMC Board of Directors. All assets and properties, whether tangible or intangible, of UMCMC shall at the Member Substitution Date remain assets of UMCMC and all liabilities of UMCMC shall at the Member Substitution Date remain with UMCMC.

Section 5.2 Member Withdrawal. LCMC shall have the right or obligation, as applicable, to withdraw as the sole member of UMCMC prior to the expiration of the Term only in accordance with Article XVI, and for no other reason, including, without limitation, any breach of this CEA, the Master Collaborative Agreement or other agreement related to the Contemplated Transactions. Subject to the Parties’ compliance with the provisions of Article XVI, LCMC shall have the right or obligation, as applicable, to withdraw as the sole member of UMCMC in accordance with Article XVI. Any withdrawal by LCMC as the sole member of UMCMC shall be subject to the provisions of Article XVI.

Section 5.3 Amendments upon LCMC Withdrawal. Effective upon LCMC’s voluntary withdrawal as the sole member of UMCMC the Parties agree that the following

amendments to this Agreement shall become effective on the Member Withdrawal Date without further action by the Parties:

(a) All references to LCMC in Article VIII (Required Funding) shall be deleted and, if the context so requires, replaced with UMCMC or any successor entity to LCMC, as the case may be, such that UMCMC or LCMC's successor, as the case may be, may continue to receive the funding contemplated in Article VIII (Required Funding).

(b) Section 4.1(b) (LCMC Guarantee) shall be deleted in its entirety unless a successor entity to LCMC agrees to guarantee the Master Hospital Lease, in which case LCMC shall be replaced with the name of such successor entity. In any event, at the time of LCMC's withdrawal from UMCMC, the Parties agree that LCMC shall no longer guarantee the Master Hospital Lease with respect to obligations accruing under the Master Hospital Lease after the Member Withdrawal Date.

(c) UMCMC Articles and Bylaws will be amended according to the terms of the Member Substitution Agreement.

## **ARTICLE VI. CONSUMABLES, INVENTORY AND ACCOUNTS RECEIVABLE**

Section 6.1 Purchase of Inventory. All usable inventories of (i) supplies, drugs, food, and other disposables, and (ii) tangible assets valued at less than one thousand dollars (\$1,000.00) and are untagged and untracked by LSU and DOA, and are on hand at the Interim Facility as of the Commencement Date, will be transferred to UMCMC for fair market value pursuant to the terms and conditions to be set forth in the Master Collaborative Agreement.

Section 6.2 Purchase of Accounts Receivable UMCMC will purchase all of the Hospital's outstanding accounts receivable existing as of 12:00 a.m. on the Commencement Date

for fair market value pursuant to the terms and conditions to be set forth in the Master Collaborative Agreement, subject to and in accordance with applicable law.

**ARTICLE VII.  
HOSPITAL EMPLOYEES**

Section 7.1     Employee Matters.

(a)     Termination of Employment by LSU. LSU will timely file a layoff plan (the “Layoff Plan”) with the Louisiana Civil Service Commission that will provide for the layoff of certain LSU Hospital employees, subject to the approval of the Civil Service Commission, as of 11:59 p.m on the day before the Commencement Date.

(b)     Offers of Employment. LSU Hospital employees may apply to UMCMC for employment and UMCMC may offer employment to such LSU Personnel as UMCMC, in its discretion, deems necessary for the operation of the Hospital. At any time prior to the Commencement Date, UMCMC may communicate with any of the LSU Hospital employees to the extent necessary to allow such LSU employees to apply for employment, to offer employment and to otherwise reasonably permit UMCMC to satisfy its obligations under this Section.

(c)     UMCMC Terms and Conditions of Employment. All LSU Hospital employees offered employment by UMCMC shall be hired on an at-will basis for job classifications and job descriptions established by UMCMC, and shall be employed subject to terms and conditions established by UMCMC.

(d)     Employee Assistance. UMCMC shall establish a website through which LSU Hospital employees may apply for positions at UMCMC. In addition, LSU shall arrange for the Louisiana Workforce Commission (“LWC”) to host a job fair at the Interim Facility. UMCMC, as well as other public and private sector employers, shall

conduct on-site interviews at the job fair. LSU may arrange for Louisiana Rehabilitation Services within the LWC to participate in the job fair and provide individual assistance and guidance to employees in response to the implications of an impending layoff. Other agencies or entities that may participate in the job fair include (i) the LaChip program within DHH to inform and offer assistance and services to LSU Personnel that may qualify; (ii) the Louisiana State Employees Retirement System; and (iii) banking institutions and credit unions. LSU will provide LSU Hospital employees with a “Frequently Asked Questions” document regarding the civil service process, retirement benefits and health benefits.

(e) LSU Wages, other Compensation and Employee Benefits. LSU shall retain all liabilities and obligations in respect of past, present and future employees of LSU, including but not limited to Hospital employees, for wages and other compensation, under any LSU Benefit Plans and under applicable Laws. Without limiting the generality of the foregoing, UMCMC shall have no liability or obligation whatsoever under any LSU Benefit Plans and/or for any wages and other compensation that may be due to LSU Hospital employees including any past, present and future employees of LSU.

(f) Employee Information. Subject to applicable legal restrictions, UMCMC and LSU shall provide each other, in a timely manner, with any information which the other may reasonably request with respect to (i) any LSU Personnel or, after the Commencement Date, any Person employed by UMCMC who formerly was an employee of LSU, (ii) his or her employment with and compensation from LSU or UMCMC, or (iii) rights or benefits under any employee plan or any personnel policy of LSU.

**ARTICLE VIII.  
REQUIRED FUNDING**

Section 8.1 Required Program Funding.

(a) Rulemaking. Subject to any approvals required by CMS, DHH shall publish and promulgate reimbursement rules which will provide that DHH will pay to UMCMC or LCMC Affiliates total funding obligations (“Required Program Funding” or “Required Funding”) as defined in Exhibit 8.1(a)(i) (“Cost Analysis Worksheet”) and Exhibit 8.1(a)(ii) (“Shared Cost Savings Incentive Worksheet”). Failure to publish and promulgate these rules, the amendment or repeal of these rules without the consent of LCMC, or the failure to pay amounts to UMCMC or a reduction in the amount of funding, with the exception of funding reductions that have been uniformly applied across the State to private non-state acute care hospital participants in the Medical Vendor Payment Program as provided in Section 8.2, in effect as of the Commencement Date to any LCMC Affiliate, as the case may be, pursuant to such rule as may be applicable to the funding in question, will constitute a Potential Voluntary Withdrawal Event and LCMC will have the option, subject to Sections 8.3 and 16.7, to initiate the Pre-Withdrawal Process and, if applicable, effect a Member Withdrawal in accordance with Section 16.8.

(b) Methodology. With respect to determining the Required Program Funding, LCMC, UMCMC, and DHH agree that the funding methodologies set forth and embodied in the Cost Analysis Worksheet (the “Cost Methodology”) and the Shared Cost Savings Incentive Worksheet (the “Shared Savings Methodology”) shall be used to determine the Required Program Funding, which calculations are based on estimates,



payment sources and CMS cost reporting principles as they exist on the Commencement Date.

(i) **Required Program Funding and Ancillary Program Funding.**

As defined on the Cost Analysis Worksheet, Exhibit 8.1(a)(i) the Required Program Funding shall equal the total of (i) the program costs listed in Line 10, Column 4 of the Cost Analysis Worksheet, less the total DHH payments listed in Line 14, Column 4, plus the ancillary program costs listed in Line 20, Column 4.

(ii) **Shared Cost Savings Funding Requirement.** The purpose of the Shared Savings Methodology is to incentivize more efficient and effective delivery of care. Thus it will create a shared cost savings incentive payment to direct cost savings that UMCMC achieves, resulting in a decrease in required expenditures by the State and DHH, which is shared with the LCMC Affiliates to further enhance their delivery of quality Medicaid program services, promote health care effectiveness, further support the educational and training mission of LCMC and its Affiliates, promote greater medical services access, and provide additional funding to maintain and enhance programs for indigent patients.

(a) **Shared Cost Savings (Existing Hospital)** As defined in the Shared Cost Savings Incentive Worksheet, Exhibit 8.1(a)(ii), the demonstrated Medicaid and uninsured cost adjusted per patient cost savings in State funding created through the efficiencies generated by the System parent through effective cost management, while maintaining patient care quality, shall be utilized to improve the overall

financial performance of the Medicaid and Indigent Care services provided by the System.

- (b) **Shared Cost Savings Funding Requirement for New Facility.** Following the filing of the first full Annual Cost Report for the New Facility, DHH, and LCMC agree to negotiate in good faith to increase the demonstrated Medicaid and uninsured cost (Shared Cost Savings Incentive Worksheet Line 16) and the Projected Growth Rate (Shared Cost Savings Incentive Worksheet Line 18) to account for the increased capital and operational cost structure of the New Facility. Thereafter, adjustments to the Shared Savings Methodology shall be made in such a fashion as to not deprive LCMC of the economic benefits realized as a result of prior years' realized cost savings as determined in Exhibit 8.1(a)(ii).

(c) Modification to Methodology. So long as the assumptions, payment sources and CMS cost reporting principles of the Cost Analysis Worksheet and Shared Cost Savings Incentive Worksheet remain as they are on the Commencement Date, LCMC and DHH will continue to use the Cost Analysis Worksheet and Shared Cost Savings Incentive Worksheet in determining the Required Program Funding for the period in question. In the event of a change in the assumptions, payment sources, and CMS cost reporting principles, the Parties to the Required Funding provisions agree that the methodology for determining Required Program Funding shall be modified to

account for such changes in a manner that is revenue neutral to UMCMC and the LCMC Affiliates with respect to the amounts that would have been paid had the Methodology in effect as of the Commencement Date continued to be applied to determine the Required Funding. In that case, the affected party will provide the other party with written notice (a “Methodology Adjustment Notice”) of such request for modification, which notice shall include an explanation of why the Cost Analysis Worksheet or Shared Cost Savings Incentive Worksheet is to be adjusted, and describe the proposed adjustments to the Cost Methodology and/or Shared Savings Methodology, as applicable. DHH and LCMC shall engage in good faith negotiations for a period of ten business (10) days following the receipt of the Methodology Adjustment Notice in an attempt to agree on any proposed adjustments to the Cost Methodology and Shared Savings Methodology, as applicable. If DHH and LCMC agree on the adjustments to the applicable Methodology, such adjusted Methodology shall be set forth in an amended Cost Analysis Worksheet or Shared Cost Savings Incentive Worksheet, as applicable, and shall apply in determining the Required Program Funding going forward from the date of the change which gave rise to the adjustment. The amended Cost Analysis Worksheet or Shared Cost Savings Incentive Worksheet shall be attached to and made part of this Agreement as of the Methodology change date. If DHH and LCMC do not agree on any proposed adjustments to the applicable Methodology within such ten (10) day period, such failure to reach agreement shall constitute a Potential Voluntary Withdrawal Event and LCMC will have the option, subject to Sections 8.3 and 16.7, to initiate the Pre-Withdrawal Process and, if applicable, effect a Member Withdrawal in accordance with Section 16.8. During the Transition Period the Required Program Funding shall be determined and paid in accordance with

the Cost Analysis Worksheet and Shared Cost Savings Incentive Worksheet in place immediately before the Methodology Adjustment Notice.

(d) Processes for Payment and Addressing Inadequate Funding.

(i) Payments. DHH shall make payments to UMCMC based on the administrative rules described in Section 8.1(a). Medicaid per diem and other applicable payments pursuant to such rule shall be paid in accordance with DHH's normal payment procedure. DHH shall make estimated prospective supplemental payments, with respect to Uncompensated Care Cost ("UCC") and Disproportionate Share ("DSH") amounts as will ultimately be determined in accordance with the Cost Analysis Worksheet. The prospective supplemental payment will be 85% of the estimated annual amount of UCC and shall be due no later than 15 days following the end of the first quarter of the State Fiscal Year or, alternatively, paying 95% of the estimated quarterly amount of UCC due in within ten (10) days of the commencement of each quarter of the State's Fiscal Year. DHH and UMCMC agree to periodically adjust the interim payment amounts and estimated annual UCC amount due based on the actual operating experience and interim Medicaid cost reports of the Hospital during its occupancy of the Interim Facility, or New Facility, as applicable, in order to equitably and ratably make interim payments so as to minimize the potential payments required for the final year end settlement. DHH, LCMC and UMCMC shall establish a reasonable process for reconciling all costs and payments made pursuant to this Agreement and the repayment or offset of any differences resulting from such reconciliation.

(ii) Disputes Regarding Cost Calculations; Notice and Review. In reconciling the payments due to UMCMC as provided in Section 8.1(d)(i), the Required Program Funding will be based on the Cost Methodology and Shared Savings Methodology as applicable under Section 8.1(b). If DHH disagrees with the nature or amount of the costs submitted by UMCMC, DHH shall prepare its calculations of the Required Program Funding (the “DHH Funding Calculations”) and provide a copy of such calculations to UMCMC and LCMC. LCMC will have eighteen (18) Business Days (the “Funding Review Period”) to review the DHH Funding Calculations. If LCMC agrees with the DHH Funding Calculations, the DHH Funding Calculations shall constitute the Required Program Funding for the period in question. If LCMC disagrees with the DHH Funding Calculations, it shall provide written notice to DHH of the objection not later than the end of the Funding Review Period, which notice shall include a copy of LCMC’s calculations of the Required Program Funding (the “LCMC Funding Calculations”) and Section 8.1(d)(iii) shall apply.

(iii) Good Faith Negotiations. If LCMC timely delivers notice of objection as provided in Section 8.1(d)(ii) above, LCMC and DHH will diligently work in good faith for a period of ten (10) Business Days to resolve the disputed amounts in the DHH Funding Calculations and the LCMC Funding Calculations. Final determination of acceptable solutions pursuant to such good faith negotiations, if any, will reside with the LCMC CEO and the Secretary of DHH. If LCMC and DHH do not resolve such objections within such ten (10) Business

Day period, the determination of Required Program Funding shall be submitted to an Academic Health System CPA as provided in Section 8.1(d)(iv) below.

(iv) Independent Review. If LCMC and DHH are not able to resolve the disputed amounts in the DHH Funding Calculations and the LCMC Funding Calculations as provided in Section 8.1(d)(iii), such disputed amounts shall be submitted to an independent third party certified public accountant. Such certified public accountant must be nationally recognized and possess significant experience in the review and analysis of the financial and reimbursement operations of hospital systems and academic medical centers and may not have been engaged by UMCMC, LCMC, LSU or DHH during the two (2) year period prior to delivery of the objection notice by LCMC described in Section 8.1(d)(iii) above (an “Academic Health System CPA”). LCMC and DHH shall select a mutually agreeable Academic Health System CPA meeting the requirements described above. If LCMC and DHH cannot agree on an Academic Health System CPA within five (5) days of expiration of the ten (10) Business Day negotiation period in Section 8.1(d)(iii), each of LCMC and DHH shall within five (5) business days of the expiration of such five (5) day period designate a certified public accountant (who will not be required to meet the experience requirements above) and those certified public accountants shall within five (5) business days select a mutually agreeable Academic Health System CPA. If the certified public accountants selected by LCMC and DHH are unable to select an Academic Health System CPA by agreement, then such certified public accountants shall submit a request to the American Arbitration Association for

appointment of an Academic Health System CPA. The appointment of the Academic CPA by the American Arbitration Association shall be final and binding on LCMC and DHH, provided that nothing herein shall be construed as an intent to institute arbitration. Each of LCMC and DHH shall be entitled to engage, at its own expense, any other professionals or advisors to assist in preparing or analyzing material to be presented to the Academic Health System CPA. The Academic Health System CPA so selected shall review the DHH Funding Calculations and the LCMC Funding Calculations and render a written report to LCMC and DHH within thirty (30) days of being engaged as to his or her conclusion as to what portion of the disputed amounts should be included in the Required Program Funding, determined by applying the Cost Methodology or Shared Savings Methodology, as applicable under Section 8.1(b). Such determination shall be final, binding and conclusive as to how to treat the disputed amounts in determining the Required Program Funding. If the report of the Academic Health System CPA verifies or validates the DHH Funding Calculations, the cost of the Academic Health System CPA will be borne by LCMC. If the report of the Academic Health System CPA verifies or validates the LCMC Funding Calculations, the cost of the Academic Health System CPA will be borne by DHH. The party whose Funding Calculations are farthest from the determined Funding Calculations shall pay the full costs of the Academic Health System CPA.

(e) Request for Appropriations.

(i) Obligations Conditioned on Appropriations; Notice of Expected Event of Inadequate Funding. All payment obligations under this Agreement may be subject to appropriation by the Louisiana Legislature of sufficient funds and the availability of funds following such legislative appropriation. If DHH becomes aware of circumstances that lead it to conclude that UCMC is unlikely to receive the Required Program Funding or the financial performance of Medicaid and Indigent Care services at another LCMC affiliate will be adversely impacted without additional legislative appropriations, DHH shall immediately notify UCMC and LCMC of such conclusion and the amounts by which DHH expects payments to UCMC will fall short of the Required Program Funding or the amount of LCMC Affiliate funding for Medicaid and Indigent Care Service are adversely impacted.

(ii) Commissioner's Required Efforts. The DOA, through the Commissioner of Administration, covenants to (i) include in its annual budget request a request for the appropriation of funds necessary to pay to UCMC and other LCMC Affiliates for the State's next fiscal year the Required Program Funding for such period, and (ii) use its best efforts to get such budget amount approved and funded by the Legislature. If the funds necessary to satisfy these budget amounts are appropriated, the DOA agrees to use its best efforts to ensure such funding is used by DHH for the intended purpose and use of such funds under this Agreement.

(iii) DHH's Required Efforts. DHH covenants to (i) include in its annual budget a request for the appropriation of funds necessary to pay to



UMCMC or an LCMC affiliate for the State's next fiscal year the Required Program Funding for such period, (ii) use its best efforts to get such budget amount approved and funded by the Legislature and if such funds are appropriated, to provide such funding to UMCMC or an LCMC affiliate for the intended purpose and use of such funds under this Agreement, and (iii) if the funds necessary to prevent an event of Inadequate Funding are not specifically identified as such and appropriated to DHH by the Legislature, use its best efforts to allocate and pay such amounts to UMCMC or an LCMC affiliate from all appropriate funds available to DHH.

(iv) LSU's Required Efforts; Appropriation Contingency. LSU covenants to use its best efforts to support UMCMC, LCMC, the Commissioner and DHH in their efforts to obtain the funding necessary to pay to UMCMC and its affiliates for the State's next fiscal year the Required Program Funding for such period.

(v) Obligations to Implement Upper Payment Limit. Subject to CMS approval, DHH will submit State Plan Amendments, and promulgate conforming rules, that will obligate it to make supplemental Medicaid payments to UMCMC or an LCMC affiliate equal to a range of eight percent (8%) to twenty-five percent (25%) of billed and allowable Inpatient Hospital and Distinct Part Psychiatric Unit Medicaid charges, as necessary to effectuate the Shared Savings Methodology, appropriately provide Medicaid and Indigent Care funding of LCMC affiliates and provide for the low income and needy and improve access to

care and health care effectiveness. DHH will make these payments within thirty (30) days of the beginning of each respective quarter.

Section 8.2 No Diminution in System Funding. The State, acting through DOA and DHH, warrants that the payment of the Required Program Funding shall not result in a diminution in funding to an LCMC Affiliate, unless any such diminution in funding is applicable to all similarly situated non-state owned private hospitals in the State of Louisiana. A violation of this Section 8.2 shall constitute a Potential Voluntary Withdrawal Event and LCMC will have the option, subject to Sections 8.3 and 16.7, to initiate the Pre-Withdrawal Process and, if applicable, effect a Member Withdrawal in accordance with Article XVI.

Section 8.3 Withdrawal Considerations. In determining whether to exercise its option to initiate the Pre-Withdrawal Process and effect a Member Withdrawal as the result of a Voluntary Withdrawal Event arising under the provisions of this Article VIII, LCMC will consider the total amount of funds provided by the State and DHH to all of the LCMC Affiliates, UMCMC's role as a non-profit health care provider, and the aggregate impact of financial reimbursement levels made with respect to Medicaid and Indigent Care services throughout the System.

Section 8.4 Payments During Pre-Withdrawal Process and Transition Period. If LCMC elects to initiate the Pre-Withdrawal Process in accordance with Article XVI, during the Pre-Withdrawal Process and the Withdrawal Transition Period, if applicable, DHH shall continue to pay UMCMC or an LCMC Affiliate the Required Program Funding accruing during the Pre-Withdrawal Process and Transition Period (collectively the "Transition Payments"). Notwithstanding the foregoing, DHH shall have a Cure Period beginning on the first day of the Transition Period described above in which to pay all Required Program Funding accrued to but

not yet paid to UMCMC or an LCMC Affiliate, as applicable. If such payment is made within such Cure Period, the Transition Period described above shall cease, the withdrawal by LCMC shall not occur, and the Parties shall continue operate pursuant to the terms of this Agreement. If all accrued Required Program Funding is not paid during the Cure Period, the Transition Period will continue uninterrupted. If UMCMC or an LCMC Affiliate fails to receive all Transition Payments during the Transition Period, LCMC shall provide written notice to LSU and DHH and LCMC will automatically withdraw from UMCMC upon conclusion of the Transition Period.

Section 8.5 Amendment. In the event that the state of Louisiana expands its Medicaid program to provide coverage to adults with income below 133% of the federal poverty line pursuant to the authority contained in Social Security Act section 1902(a)(10)(i)(VIII) (42 U.S.C. section 1396a(a)(10)(i)(VIII)), as added by the Patient Protection and Affordable Care Act, then DOA, DHH and LCMC agree to review, and if necessary, amend this Article VIII to accommodate such expansion in such a manner as to continue to assure adequate funding as set forth in this Article. In the event that such funding is not reached, then LCMC may elect to withdraw in accordance with the provisions of Article XVI.

## **ARTICLE IX. MASTER COLLABORATIVE AGREEMENT**

Section 9.1 In General. Subsequent to the execution and consistent with the terms of this CEA, but prior to the Commencement Date, LSU, UMCMC and LCMC will enter into a Master Collaborative Agreement (the “MCA”) to address key operational issues related to the transition of the Hospital from LSU to UMCMC in accordance with this CEA. The MCA shall address, without limitation, the mutually agreeable terms, conditions under which:

(a) Provider Numbers. UMCMC shall accept the Hospital's (i) Medicare Provider Agreement and corresponding provider number 190005, and (ii) Medicaid Provider Agreement and corresponding provider number 1765651;

(b) Professional Services. UMCMC shall contract with LSU to obtain the services of LSU physicians and related services necessary to provide patient care in the Hospital and its provider-based outpatient clinics;

(c) Accountable Care Services. UMCMC shall contract with LSU for data warehouse, disease management and related health care effectiveness services designed to improve quality and patient outcomes, and reduce to cost of health care services, particularly among the uninsured and high risk Medicaid populations;

(d) Medical Staff. In accordance with policies and procedures to be determined by the UMCMC Board of Directors, the Hospital's current medical staff will be credentialed and/or recredentialed by UMCMC's governing body upon transition of the Hospital to UMCMC;

(e) Medical Records. The Parties will arrange for UMCMC to become the custodian of the Hospital's patient records for the period prior to the Commencement Date and maintain such records in accordance with the Legal Requirements, provided that LSU and its agents and attorneys shall have access to such records as needed for litigation and other appropriate purposes in accordance with the Legal Requirements;

(f) Transition Support Services. UMCMC shall contract with LSU for certain support services during a transition period, including, without limitation, certain information technology, billing and collections, and other support and maintenance services; and

**ARTICLE X.**  
**LSU REPRESENTATIONS AND WARRANTIES**

LSU represents and warrants that the statements contained in this Article are correct and complete as of the date of this CEA.

Section 10.1 Organization and Standing. LSU is a public constitutional corporation organized under the laws of Louisiana. LSU is validly existing and in good standing under the laws of Louisiana, with full power and authority to perform all of its obligations under this CEA.

Section 10.2 Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of LSU, enforceable against it in accordance with its terms, and any other agreement executed and delivered by LSU in connection with this Agreement will constitute the legal, valid and binding obligation of LSU, enforceable against it in accordance with its terms. LSU has the power and authority to execute and deliver this Agreement and such other documents to which it is a party and such action has been duly authorized by all necessary action by LSU's Board of Supervisors. A copy of the authorizing consent resolution or meeting minutes as certified by LSU's board secretary is attached as Exhibit 10.2(a).

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions hereby will, directly or indirectly (with or without notice or lapse of time):

- (i) Breach any resolution adopted by LSU's Board of Supervisors;
- (ii) Cause UCMCMC or LCMC to become subject to, or to become liable for the payment of, any Liability of LSU; or
- (iii) Result in the LSU GME Programs violating any rules, policies, procedures or accreditation requirements of ACGME or otherwise result in (A)

the LSU GME Programs ceasing to be accredited by ACGME, (B) the LSU GME Programs ceasing to be funded by DOA, or (C) LSU ceasing to comply with or satisfy any CMS reimbursement requirements or regulations applicable to the LSU GME Programs.

(c) LSU warrants that it will not take any action, fail to take any action, enter into any agreement or consummate any transaction that would prevent LSU from performing the Contemplated Transactions or performing its obligations under this Agreement or any agreement delivered in connection with this Agreement or otherwise materially and adversely affect the Hospital or the LSU GME Programs without the prior written consent of an authorized representative of UMCMC.

Section 10.3 Employee Benefits. No event has occurred that would result in, and consummation of the Contemplated Transactions shall not result in, UMCMC incurring any Liability for any Benefit Plan of LSU or to any employee of LSU with respect to such Benefit Plan of LSU or to any employee of LSU with respect to such Benefit Plans, to the extent such plans are established and administered by LSU. LSU has and will comply with all of the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”) with respect to all of its employees, including but not limited to the LSU Personnel, before and after the Commencement Date.

Section 10.4 Compliance with Legal Requirements. To LSU’s Knowledge, LSU Personnel have operated the Hospital and the LSU GME Programs in compliance with all Legal Requirements, including Health Care Laws. To LSU’s Knowledge, in connection with LSU’s operation of the Hospital and LSU GME Programs, neither (i) LSU nor any LSU Personnel has received or made any payment or any remuneration whatsoever to induce or encourage the

referral of patients or the purchase of goods and/or services as prohibited under any state law or Health Care Law, nor (ii) has any Governmental Body or third-party payer formally alleged in writing or LSU received any notice of any violation of any Health Care Law within the last ten (10) years. Without limiting the generality of the foregoing:

(a) Permits, Licenses and Accreditation. The Hospital has all permits and licenses and other governmental authorizations required by all Legal Requirements and are not in violation of any of said permitting or licensing requirements. The Hospital is owned and duly licensed by the State and operated by LSU as a general acute care hospital. LSU has all permits and licenses necessary for the proper operation of the Hospital and LSU GME Programs, including a valid Medicare provider number. The LSU GME Programs are accredited BY ACGME and, to LSU's Knowledge, are in compliance with the ACGME requirements necessary for accredited GME Programs.

(b) Medicare/Medicaid Participation. The Hospital and all LSU Personnel who are medical providers are participating in or otherwise authorized to receive reimbursement from Medicare and Medicaid. All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned, and, to LSU's Knowledge, no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such third-party payer program, or the obligation to make any repayment with respect to any federal health care program. No LSU Personnel is an Excluded Provider.

(c) Fraud and Abuse. To LSU's Knowledge, neither the Hospital nor LSU Personnel has engaged in any activities which are prohibited under any Health Care Law, or the regulations promulgated thereunder pursuant to such statutes, or related state or local statutes or regulations, or which are prohibited by rules of professional conduct, including the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or representation of a fact for use in determining rights to any benefit or payment; (iii) knowingly and willingly concealing any event affecting the initial or continued right to receive any benefit or payment with intent to fraudulently secure such benefit or payment in an amount or quantity greater than that which is due or which is authorized; or (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid or (2) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid. LSU is not a party to any Corporate Integrity Agreement or similar settlement, compliance or oversight agreement with any Governmental Body relating to LSU's services provided at the Hospital.

Section 10.5 Legal Proceedings; Orders. There is no Order to which LSU is subject that would limit or affect LSU's ability to enter into this Agreement or consummate the



Contemplated Transactions. Except as set forth on Schedule 10.5, there is no Proceeding pending, or to LSU's Knowledge threatened against, or affecting the Hospital, LSU GME Programs, or any LSU Personnel

Section 10.6 Insurance; Malpractice. All clinical LSU Personnel have been continuously insured for professional malpractice claims during the lesser of (i) the last three (3) years, or (ii) the period during which such LSU Personnel has been authorized to provide professional medical services on behalf of LSU. All clinical LSU Personnel are "qualified state health care providers" as defined in LA R.S. 40:1299.39, et seq., and are thus named insureds covered under DOA's professional liability insurance administered through the Office of Risk Management. To LSU's Knowledge no LSU Personnel is in default with respect to any provision contained in any policy covering the professional acts of such LSU Party and none of them has failed to give any notice or present any claim under any such policy in a due and timely fashion. LSU has maintained in effect and continues to maintain in effect such other policies of insurance as are customary for an academic medical center of size and scope of the operations of LSU, with such limits and other terms of coverage as are commercially reasonable for an academic medical center similar in size and scope to LSU.

Section 10.7 Taxes.

(a) With respect to the Hospital, LSU has, to its Knowledge, filed, all federal, state, county and local tax returns it is required to file, including, without limitation, income, sales, single business, payroll, premium, withholding, informational, real estate, school and, personal property tax returns, required to be filed and, such returns have been duly prepared and filed and were true, correct, and complete. All taxes due by reason of the operations conducted by LSU with respect to the Hospital have, to LSU's

Knowledge, been paid, including, without limitation, all taxes which the LSU is obligated to withhold from accounts owing to employees, creditors, and third parties. There is no tax lien, whether imposed by any federal, state, county or local taxing authority outstanding against the assets, properties or businesses of LSU as they relate to the Hospital. Other than regular property assessments, there is no pending examination or proceeding by any authority or agency relating to the assessment or collection of any such taxes, interest, or penalties thereon, nor to LSU's Knowledge do there exist any facts that would provide a basis for any such assessment. With respect to the Hospital, LSU has not filed any consent or agreement to extend the period for assessment or collection of any such taxes.

(b) Except as set forth in Schedule 7.11(b) of the LSU Disclosure Schedules, the Hospital is exempt from Federal income tax pursuant to [Section \_\_\_\_\_ of the Internal Revenue Code ("IRSC")] and the Hospital is a "hospital" within the meaning of Section 170(b)(1)(A)(iii) of the IRSC. LSU is not aware of any proceeding, pending or threatened, or of any existing circumstances, which could reasonably be anticipated to result in the loss or revocation of any of the aforementioned exemptions held by LSU or the imposition of tax liability which would have a material adverse effect on the business and operations of the Hospital.

#### Section 10.8 Contracts and Other Commitments.

(a) LSU has provided to UMCMC copies of all material written agreements and all material oral understandings including, but not limited to, all material provider contracts, material management agreements, material leases and material services contracts to which the Hospital will be subject on the Commencement Date. For the

purposes of this Section 10.8, “material” shall mean any agreement or understanding having an aggregate value of at least [Fifty Thousand Dollars (\$50,000)], and each such agreement or obligation is listed in Schedule 10.8(a) of the LSU Disclosure Schedules.

(b) Schedule 10.8(b) of the LSU Disclosure Schedules lists the following contracts, agreements and understandings, whether or not the same have been reduced to writing: (a) all agreements with health care providers from which Hospital receives referrals of patients; (b) all agreements involving or affecting the Hospital that are not terminable by LSU upon twelve (12) months or less notice; and (c) all joint venture, partnership, residency training agreement, or affiliation agreements involving or affecting Hospital.

(c) To LSU’s Knowledge, each such material contract or commitment is a valid and binding obligation of the parties thereto, enforceable in accordance with its terms (subject to bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors’ rights generally and except for limitations upon the availability of equitable remedies, including specific performance).

Section 10.9 Reimbursement Contracts. Neither DHH nor CMS, during the past five (5) years, has refused to enter into or has terminated any participation agreement pursuant to which Hospital was entitled to reimbursement for services or facilities provided to patients. LSU is a party to contracts with Medicare and Medicaid with respect to payment for services to beneficiaries and is eligible to participate therein, which contracts and certification are currently in full force and effect, and to LSU’s Knowledge no event has occurred which, with or without the giving of notice or passage of time or both, would constitute a material default thereunder.

Section 10.10 Cost Reports. LSU has delivered to LCMC true and exact copies of (i) all cost reports which LSU has filed with Medicare and Medicaid for the last five (5) years with respect to Hospital, as well as all correspondence and other documents relating to any disputes and/or settlements with Medicare or Medicaid within the last five (5) years regarding Hospital; and (ii) all appraisal reports, surveys, or other documents which evaluate or describe any of the assets of any of the Hospital. The Medicare and Medicaid cost reports of Hospital were filed when due. Except for disputes between LSU and the intermediary which concern the payment of an individual claim (as opposed to such disputes concerning the right of LSU to receive Medicare or Medicaid reimbursement generally or to participate in the Medicare or Medicaid programs), there is no dispute between LSU and any governmental authorities or the Medicare fiscal intermediary regarding such cost reports other than with respect to adjustments thereto made in the ordinary course of business which do not involve amounts in excess of One Hundred Thousand dollars (\$100,000) in the aggregate.

(a) Medicare and Medicaid Certification. With respect to the Hospital, LSU has met and does meet, without material exception, the conditions for participation in the Medicare and Medicaid programs, and LSU does not have Knowledge of any pending or threatened proceeding or investigation under such programs involving the Hospital or any basis for the revocation or limitation on such participation. To LSU's Knowledge there is no pending or threatened criminal, civil, or administrative action, audit, or investigation by a fiscal intermediary or by the federal government with respect to the Hospital, which could reasonably be anticipated to affect adversely the right of the Hospital to receive Medicare and Medicaid reimbursement or to participate in the Medicare and Medicaid

programs, or which could reasonably be anticipated to otherwise have an adverse effect on the receipt of Medicare and Medicaid reimbursement by the Hospital.

Section 10.11 Interim Changes. Except as set forth in Schedule 10.11 of the LSU Disclosure Schedules, after \_\_\_\_\_, 2013, there has not been:

(a) Any change in the financial condition, assets, liabilities, properties or results of operation of either of the Hospital which has had or could reasonably be expected to have, in the aggregate, a materially adverse effect on the Hospital;

(b) Any damage, destruction or loss, whether or not covered by insurance, which has had or could reasonably be expected to have, in the aggregate, a material adverse effect on the Hospital;

(c) Any disposition which has or could have a material adverse effect on the Hospital of any property, rights or other assets owned by or employed by it other than in the ordinary course of business;

(d) Any amendment or termination of any material contract which has had or could have, in the aggregate, a materially adverse effect on the Hospital;

Section 10.12 Full Disclosure. No representation or warranty made by LSU in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

## **ARTICLE XI. STATE REPRESENTATIONS AND WARRANTIES**

The State, through DOA and DHH, represents and warrants that the statements contained in this Article XI are correct and complete as of the date hereof.

Section 11.1 Organization and Standing.

(a) The State of Louisiana has full power and authority to perform its obligations under this CEA.

(b) DOA is an agency within the Office of the Governor and DHH is a department of the State of Louisiana, validly existing under the laws of Louisiana, with full power and authority to perform their obligations under this CEA.

Section 11.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of the State, through DOA and DHH, enforceable against it in accordance with its terms. Upon the execution and delivery by DOA and DHH of any document or agreement to be executed in connection with this Agreement, each other agreement will constitute the legal, valid and binding obligation of the State, through DOA and DHH, enforceable against them in accordance with its terms. DOA and DHH have the absolute and unrestricted right, power and authority to execute and deliver this Agreement on behalf of the State and such other documents to which it is a party and to perform its obligations under this Agreement and such other documents.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions hereby will, directly or indirectly (with or without notice or lapse of time):

(i) Breach any provision of any of the governing statutes or authorities of DHH or DOA;

(ii) To DHH's or DOA's Knowledge, give any Governmental Body or other person the right to validly challenge any of the Contemplated Transactions,

or to exercise any remedy or obtain any relief under, any Legal Requirement to which the State, DHH or DOA may be subject;

(iii) Contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the State, DHH or DOA;

(iv) Cause UMCMC or LCMC to become subject to, or to become liable for the payment of, any Liability of the State, DHH or DOA; and

(v) The State, through DHH and DOA, warrants that it will not take any action, fail to take any action, enter into any agreement or consummate any transaction that would prevent the State, DHH or DOA from performing the Contemplated Transactions or performing its obligations under this Agreement or any agreement delivered in connection with this Agreement or otherwise materially and adversely affect the Hospital without the prior written consent of an authorized representative of UMCMC.

Section 11.3 Employee Benefits. No event has occurred that would result in, and consummation of the Contemplated Transactions shall not result in, UMCMC incurring any Liability for any Benefit Plan of the State or to any employee of the State with respect to such Benefit Plans.

Section 11.4 Legal Proceedings; Orders. To the DOA's and DHH's Knowledge, there is no Order to which the State, DOA or DHH is subject that would limit or affect the State's, DOA's or DHH's ability to enter into this Agreement or consummate the Contemplated Transactions.

Section 11.5 Full Disclosure. No representation or warranty made by the State, through DHH or DOA, in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

**ARTICLE XII.**  
**UMCMC REPRESENTATIONS AND WARRANTIES**

UMCMC represents and warrants that the statements contained in this Article XII are correct and complete as of the date hereof.

Section 12.1 Organization and Good Standing. UMCMC is a nonprofit Louisiana corporation. UMCMC is validly existing and in good standing under the laws of the State of Louisiana, with full corporate power and authority to perform all its obligations under this Agreement.

Section 12.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of UMCMC, enforceable against it in accordance with its terms subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally. Upon the execution and delivery by UMCMC of the Master Hospital Lease, Equipment Lease, Right of Use Agreement and Member Substitution Agreement (each, an “Ancillary Agreement”), each such Ancillary Agreement will constitute the legal, valid and binding obligation of UMCMC, enforceable against it in accordance with its terms subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally.



UMCMC has the corporate power and authority to execute and deliver this Agreement and each Ancillary Agreement, and such action has been duly authorized by all necessary action by UMCMC's Board of Directors and members. A copy of the authorizing resolutions or certified meeting minutes are attached as Exhibit 12.2(a).

(b) Neither the execution and delivery of this Agreement nor the Ancillary Agreements, directly or indirectly (with or without notice or lapse of time),:

(i) will breach (A) any provision of any of the governing documents of UMCMC, as amended or restated , or (B) any resolution adopted by UMCMC's Board of Directors;

(ii) will contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by UMCMC;

(iii) will result in the creation of any lien, charge, or encumbrance of any kind against UMCMC's assets except as contemplated therein or the acceleration of any indebtedness or other obligation of UMCMC;

(iv) are prohibited by, materially violate or conflict with any provision of, and constitute a default under or a breach of (x) any judgment, decree, order, regulation or rule of any court or regulatory authority applicable to UMCMC, or (y) any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority or arbitration tribunal to which UMCMC is subject; or

(v) will have a Materially Adverse Effect upon any contract, lease, agreement, indenture, mortgage, pledge, lease, sublease, option or commitment to which UMCMC is a party or by which UMCMC is bound, or any assignment, permit, license, approval or other commitment to which UMCMC is a party or by which UMCMC is bound.

Section 12.3 No Operations. UMCMC has conducted no operations, has not had any employees and holds no licenses or permits.

Section 12.4 Legal Proceedings; Orders. There is no Order to which UMCMC is subject that limits or adversely affects UMCMC's ability to execute and deliver this Agreement. There is no material Proceeding pending against UMCMC.

Section 12.5 Insurance. DOA's Office of Risk Management has issued a certificate of insurance to LSU which shows UMCMC as insured thereon.

Section 12.6 Compliance with Legal Requirements. To UMCMC's Knowledge, UMCMC has operated in compliance with all Legal Requirements, including Health Care Laws. Neither UMCMC nor any director, officer, or agent of UMCMC is an Excluded Provider. UMCMC is not a party to any Corporate Integrity Agreement or similar settlement, compliance or oversight agreement with any Governmental Body.

Section 12.7 Title to Assets. UMCMC does not own or lease any real property, personal property, or intellectual property.

Section 12.8 Contracts, Leases, Indebtedness. Except for those agreements previously provided to LCMC, UMCMC is not a party to any contract, lease, or agreement. UMCMC has no indebtedness for borrowed funds.

Section 12.9 Undisclosed Liabilities. To UMCMC's Knowledge, other than amounts owing for professional services, UMCMC does not have any liabilities or obligations of any nature whatsoever, due or to become due, accrued, absolute, contingent or otherwise, that would materially and adversely affect UMCMC.

Section 12.10 Financial Statements. UMCMC has provided LCMC with a copy of the "UMCMC Financial Statements" (as defined below). The UMCMC Financial Statements (a) were prepared in accordance with UMCMC's books of account and other financial records and (b) present fairly in all material respects the financial condition and results of UMCMC's business operations as of the respective dates thereof and for the respective periods covered thereby. For purposes of this Agreement, the term "UMCMC Financial Statements" shall mean UMCMC's audited financial statements for the fiscal year ended 2011.

Section 12.11 Taxes/Tax Returns. Pursuant to a letter from the IRS dated January 11, 2006, UMCMC (then named Earl K. Long Medical Foundation, Inc.) was recognized as exempt from federal income tax under Section 501(c)(3) of the IRS Code. UMCMC has no knowledge of any action by the IRS to revoke or terminate its tax exempt status. UMCMC has filed, or has caused to be filed, on a timely basis and subject to all permitted extensions, all tax returns with appropriate governmental agencies in all jurisdictions in which such tax returns are required to be filed, and all such tax returns were correct and complete. All taxes that are shown as due on such tax returns, if any, have been timely paid, or delinquencies cured with payment of any applicable penalties and interest.

### **ARTICLE XIII. LCMC REPRESENTATIONS AND WARRANTIES**

LCMC represents and warrants that the statements contained in this Article XIII are complete and correct as of the date hereof.

Section 13.1 Organization and Standing. Each of LCMC, Touro and Children's is validly existing and in good standing under the laws of the State of Louisiana, with full power and authority to conduct its operations as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

Section 13.2 Authority to Enter into Agreement; Consent. LCMC has all corporate right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement. No approvals or consents of any persons are necessary for the execution, delivery and performance of this Agreement by LCMC, except those that have been obtained or will be obtained prior to the close of each of the Contemplated Transactions. The execution and delivery of the Agreement by LCMC, and the performance by LCMC of all of its obligations hereunder, have been duly authorized by all necessary corporate action. The Agreement is a valid obligation of LCMC, enforceable against LCMC in accordance with its terms.

Section 13.3 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of LCMC, enforceable against it in accordance with its terms. Upon the execution and delivery by LCMC, of any document or agreement to be executed in connection with this Agreement, each other agreement will constitute the legal, valid and binding obligation of LCMC, enforceable against it in accordance with its terms. LCMC has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and such other documents to which it is a party and to perform its obligations under this Agreement and such other documents, and such action has been duly authorized by all necessary action by LCMC Board. A copy of the authorizing consent resolution or certified meeting minutes is attached as Exhibit 13.5(a).

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions hereby will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of LCMC or (B) any resolution adopted by LCMC's Board;

(ii) Breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement to which LCMC may be subject; or

(iii) Contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by LCMC.

Section 13.4 Financial Statements. LCMC has furnished to LSU (i) LCMC's audited consolidated financial statements for the three (3) most recent fiscal years and the balance sheet and the related statements of income, and changes in financial position of LCMC for the three (3) most recent fiscal years with available reports thereon from an independent certified public accounting firm, (the "Audited Financial Statements") including any management letters regarding the operations of LCMC with respect to such fiscal year, and (ii) unaudited interim financial statements for the monthly periods from the close of the most recently completed fiscal year through \_\_\_\_\_, or if LCMC prepares unaudited interim financial statements on a quarterly basis, for the last quarter which ended no more than ninety (90) calendar days prior to the date of execution of this Agreement, and shall furnish such unaudited interim financial

statements for the monthly or quarterly periods, respectively, through the month or quarter ending immediately prior to the Commencement Date (collectively referred to as the “Unaudited Financial Statements”) (the Audited Financial Statements and the Unaudited Financial Statements are sometimes referred to herein collectively as the “Financial Statements”). The Financial Statements have been prepared in accordance with generally accepted accounting principles (“GAAP”) consistently applied (except, in the case of the Unaudited Financial Statements, for the absence of footnotes and year end adjustments), reflect all liabilities of LCMC, Touro and Children’s, including all contingent liabilities, and fairly present the financial position of the LCMC, Touro and Children’s and the results of operations and changes in financial position as of the dates and for the periods specified. Except as set forth in the Financial Statements, none of LCMC, Touro or Children’s has incurred any liability other than in the ordinary course of business. Since the date of the most recent Audited Financial Statements, none of LCMC, Touro or Children’s has incurred any liabilities other than in the ordinary course of business and consistent with past practice.

Section 13.5 Compliance with Legal Requirements. To LCMC’s Knowledge, LCMC, Touro and Children’s have each materially operated in material compliance with the Legal Requirements, including applicable Health Care Laws, which would affect the ability of LCMC, Children’s and Touro to continue to operate as providers under any federal or state health care program. To LCMC’s Knowledge, none of LCMC, Touro or Children’s currently employed staff has received or made any payment or any remuneration whatsoever to induce or encourage the referral of patients or the purchase of goods and/or services as prohibited under any state law or Health Care Law, nor has any Governmental Body or third-party payer formally alleged in writing any violation of Health Care Law by LCMC, Touro, or Children’s, or any of

their currently employed staff, within the last ten (10) years. Without limiting the generality of the foregoing:

(c) Permits and Licenses. LCMC, Touro and Children's each has, or shall have at the time such services are performed, all permits and licenses and other Governmental Authorizations required by all Legal Requirements for the operation of LCMC, Touro and Children's, and are not in material violation of any of said permitting or licensing requirements. Touro and Children's are currently duly licensed by the State of Louisiana.

(d) Medicare/Medicaid Participation. Touro and Children's are participating in or otherwise authorized to receive reimbursement from Medicare and Medicaid. All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned, and, to LCMC's Knowledge, no condition exists or event has occurred which would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such third-party payer program. None of LCMC, Touro or Children's are Excluded Providers.

Section 13.6 Legal Proceedings; Orders. There is no pending Proceeding that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To LCMC's Knowledge, no event has occurred or circumstance exists that is reasonably likely to give rise to, or serve as a basis for, the commencement of any such Proceeding which is reasonably likely to result in an inability to perform the terms and conditions of this Agreement. There is no Order is subject that would limit

or affect LCMC's ability to enter into this Agreement or consummate the Contemplated Transactions.

Section 13.7 Insurance; Malpractice. Touro and Children's are, and have been for the past three consecutive (3) years, qualified health care providers covered under the provisions of the Louisiana Medical Malpractice Act, La. R.S. 40:1299.41, *et seq.*, and are, and have been for the past three consecutive (3) years, members of the Louisiana Patient's Compensation Fund.

Section 13.8 Full Disclosure. No representation or warranty made by LCMC in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

Section 13.9 Definition of Knowledge. For purposes of this Section, the term "Knowledge" shall mean the actual knowledge of (i) the President and Chief Executive Officer and (ii) the Chief Financial Officer of LCMC.

#### **ARTICLE XIV. FURTHER COVENANTS OF THE PARTIES**

The Parties covenant that between the Effective Date and the Commencement Date:

Section 14.1 Master Collaborative Agreement. LSU and UMCMC will enter into the Master Collaborative Agreement and its associated agreements.

Section 14.2 Compliance with ACGME Requirements. The Parties shall use commercially reasonable efforts to cause the LSU GME Programs to maintain their accreditation by ACGME and to cause the LSU GME Programs to continue to be in material compliance with all ACGME rules, regulations, policies, procedures and other accreditation requirements. UMCMC and LCMC shall use commercially reasonable efforts to cause the Hospital to maintain its status as a Major Participating Site in compliance with all ACGME rules, regulations, policies, procedures and other accreditation requirements.



Section 14.3 Third Party Consents and Approvals. The Parties will have obtained all consents, approvals, Order or authorizations of, or registrations, declarations or filings with any Person required in connection with the execution, delivery or performance of this CEA.

Section 14.4 Continuation of Hospital Operations. From the Effective Date of this Agreement until the earlier of the Commencement Date or the termination of this Agreement, LSU shall, and shall cause Hospital to: (i) conduct the Hospital's operations in the ordinary course; and (ii) use commercially reasonable efforts to maintain in all material respects the assets, properties and business organizations and current relationships and goodwill with their respective customers, suppliers and payors of Hospital and Facility.

Section 14.5 Preservation of Property. From the Effective Date of this Agreement until the earlier of the Commencement Date or the termination of this Agreement, LSU shall not sell, transfer, lease, sublease, license or otherwise dispose of any material properties or assets (real, personal or mixed, including intangible property) of the New Facility or Interim Facility, other than in the ordinary course of business.

Section 14.6 Further Acts and Assurances. The Parties shall, at any time and from time to time at and after the execution of this Agreement, upon request of another Party, take any and all steps reasonably necessary to consummate the Contemplated Transactions, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to consummate the Contemplated Transactions.

**ARTICLE XV.  
TERM AND TERMINATION**

Section 15.1 Term. Unless earlier terminated as provided herein, the Term of this Agreement shall begin on the Effective Date and shall expire forty-two (42) years following the Commencement Date (the “Initial Term”) and may be renewed by UMCMC, at its option, for three (3) consecutive periods of fifteen (15) years each (each a “Renewal Term”), for a total of forty-five (45) additional years, under the same terms and conditions herein. To exercise any of said options to renew, UMCMC shall notify LSU, DOA, DHH and the State, in writing, at least one hundred eighty (180) days prior to the scheduled expiration date of the then current Term of this Lease, of its election to renew this CEA under the terms of this Section 15.1.

Section 15.2 Early Termination. This Agreement shall terminate prior to the expiration of the Term only in accordance with this Section 15.2, and for no other reason, including, without limitation, any breach of this CEA, the Master Collaborative Agreement or other agreement related to the Contemplated Transactions. Any early termination of this CEA shall be subject to the six (6) month Termination Wind Down Period provided in Section 15.4. Subject to the foregoing, this CEA may terminate prior to the expiration of the Term for the following (each a “Terminating Event”):

- (a) upon the mutual agreement of all Parties;
- (b) if the Contemplated Transactions have not occurred by June 24, 2013;
- (c) there is a change in (or a new interpretation of) the law, whether statutory, regulatory or other position or rule set forth by a Governmental Body, agency, accreditation organization, or similar body, that materially and adversely affects the fundamental relationship of the Parties, and the Parties are unable to agree, following the process in Section 19.4, on terms to amend the CEA or otherwise address the

consequences of the change in or new interpretation of the law. If the Parties agree that a change in laws or interpretation thereof has occurred and are unable to reach a new agreement or otherwise address the consequences of the change in or new interpretation of the law, no Party shall be liable or responsible for any damages suffered by any other Party as a result of a termination pursuant to this subsection; or

(d) Termination prior to its term or expiration of the Master Hospital Lease or Right of Use in accordance with its terms.

Section 15.3 Effects of Termination. Subject to the Wind Down Period in Section 15.4, the following shall apply consistent with the Wind Down Period:

(a) Each Party shall surrender possession, and deliver to another Party, all property belonging to the other Party, update and complete all files, records and charts and cooperate with each other as may be necessary to insure uninterrupted treatment of patients;

(b) Each Party shall cooperate in the defense of any claims or suits for acts or omissions occurring during the term of this Agreement;

(c) UMCMC shall vacate facilities owned by LSU;

(d) The Master Hospital Lease and Right of Use shall terminate;

(e) Ownership of the Hospital's Medicare and Medicaid Provider Numbers shall be transferred to LSU; and

(f) If the termination is for reasons provided in Section 15.2(a), (b), or (c), the State shall return to UMCMC (i) unearned prepaid rent under the terms of the Master Hospital Lease and any related lease for the New Facility entered into by the Parties in accordance with Section 4.1(d) ("Prepaid Rent"), and (ii) the value as of the termination

date of unamortized capital expenditures computed on a GAAP basis made by UMCMC or an LCMC Affiliate to the New Facility (“Unamortized Improvements”).

Section 15.4 Wind Down Period Upon Termination. Any early termination of this Agreement allowed under Article XV shall be subject to a period not to exceed six (6) months (the “Termination Wind Down Period”), if applicable, during which the Parties will transition Hospital operations in an orderly fashion to assure the Public Purpose continues to be satisfied at all times. Upon the occurrence of an event giving rise to an early termination right under Section 15.2, any Party may give notice to the other Parties of its intent to terminate this CEA. The Termination Wind Down Period shall begin two (2) days after the terminating Party or Parties give Notice of intent to terminate (the “Wind Down Commencement Date”) and end on the six (6) month anniversary of the Wind Down Commencement Date. Subject to the ultimate authority of the UMCMC Board of Directors, during the Termination Wind Down Period, LSU, DOA, DHH, UMCMC and LCMC will establish a committee consisting of at least eight (8) people, with each of LSU, UMCMC, and LCMC appointing an equal number of members to the committee and each of DOA and DHH appointing one member to the committee, to work with the UMCMC Board of Directors in the transition of Hospital operations. The Tulane representative on the UMCMC Board of Directors shall serve on the transition committee. To the extent necessary and applicable, the Parties will continue to comply with the terms and conditions of this Agreement during the Termination Wind Down Period.

## **ARTICLE XVI. LCMC WITHDRAWAL**

Section 16.1 Limitations on Withdrawal. LCMC shall be allowed or required, as applicable, to withdraw as a member of UMCMC prior to the expiration of the Term of this CEA only in accordance with this Article XVI, and for no other reason, including, without limitation,

any breach of this CEA, the Master Collaborative Agreement or other agreement related to the Contemplated Transactions. Any early withdrawal by LCMC as a member of UMCMC shall be subject to the six (6) month Withdrawal Wind Down Period provided in Section 16.9.

Section 16.2 Elective Withdrawal Events. Subject to the Parties' good faith participation in the Pre-Withdrawal Process set forth in Section 16.7, upon the occurrence of one or more of the following events (each, a "Potential Elective Withdrawal Event"), LCMC shall have the option to withdraw from UMCMC in accordance with Section 16.8:

- (a) Mutual agreement of all the Parties;
- (b) Any action, or pattern or practice of action, by LSU that is materially inconsistent with the Public Purpose of this Cooperative Endeavor Agreement;
- (c) The Required Program Funding as provided in Article VIII has not been timely received;
- (d) Any final, non-appealable judgment against a Public Party that remains unpaid for more than one (1) year from the date of the final judgment;
- (e) A Public Party fails to perform or observe any covenant, term or condition of this Agreement to be performed by it which is solely within such Party's ability to satisfy and which has a material and adverse effect on LCMC or UMCMC's ability to perform its obligations under this CEA; or
- (f) A Public Party shall have made any representation or warranty in this Agreement or in any document or certificate which is executed by such Party incident to this Agreement, which is at any time found to have been inaccurate in any material respect at the time such representation or warranty was made and the consequences of such inaccuracy has a material adverse effect on LCMC's or UMCMC's ability to

perform its obligations under this CEA, provided that inaccuracies that are not the result of intentional misrepresentation, and which inaccuracies are corrected at or prior to the Commencement Date, shall be excused.

Section 16.3 Amendments Upon Elective Withdrawal. Effective upon LCMC's elective withdrawal as a member of UMCMC, the Parties agree that the following amendments to this Agreement shall become effective at the time of the withdrawal without further action by the Parties:

(a) All references to LCMC in Article VIII (Required Funding) shall be deleted and, if the context so requires, replaced with UMCMC or any successor entity to LCMC, as the case may be, such that UMCMC or LCMC's successor, as the case may be, may continue to receive the funding contemplated in Article VIII (Required Funding).

(b) Section 4.1(b) (LCMC Guarantee) shall be deleted in its entirety unless a successor entity to LCMC agrees to guarantee the Master Hospital Lease, in which case LCMC shall be replaced with the name of such successor entity. In any event, at the time of LCMC's withdrawal from UMCMC, the Parties agree that LCMC shall no longer guarantee the Master Hospital Lease.

Section 16.4 Other Effects of Elective Withdrawal. Subject to the provisions of Section 17.2(a) regarding stipulated damages in the event of LCMC's elective withdrawal as a member of UMCMC due to (i) Inadequate Funding, (ii) failure to pay any final, binding, and non-appealable judgment within one (1) year of the date of judgment, or (iii) breach of any representation or warranty by LSU or the State that this CEA constitutes a valid and binding contract enforceable in accordance with its terms, upon LCMC's elective withdrawal, it shall be entitled to pursue any damages or remedies available at law.

Section 16.5 Involuntary Withdrawal Events. Subject to the Parties' good faith participation in the process set forth in Section 16.7, upon the occurrence of one or more of the following events (each, a "Potential Involuntary Withdrawal Event"), LSU shall have the option to compel LCMC to withdraw as a member of UMCMC in accordance with Section 16.8:

(a) Any action, or pattern or practice of action, by LCMC or UMCMC that is materially inconsistent with the Public Purpose of this Cooperative Endeavor Agreement;

(b) Termination of the Master Hospital Lease for any reason;

(c) A Change in Control of UMCMC or LCMC without LSU's consent ;

(d) Either of the UMCMC Articles of Incorporation or Bylaws is amended except in accordance with its terms;

(e) LCMC or UMCMC fails to perform or observe any covenant, term or condition of this Agreement to be performed by it which is solely within LCMC's or UMCMC's ability to satisfy and which has a material and adverse effect on another Party's ability to perform its obligations under this CEA.

(f) LCMC or UMCMC shall have made any representation or warranty in this Agreement or in any document or certificate which is executed by LCMC or UMCMC incident to this Agreement, which is at any time found to have been inaccurate in any material respect at the time such representation or warranty was made and the consequences of such inaccuracy has a material adverse effect on another Party's ability to perform its obligations under this CEA, provided that inaccuracies that are not the result of intentional misrepresentation, and which inaccuracies are corrected at or prior to the Commencement Date, shall be excused.

Section 16.6 Effect of Involuntary Withdrawal. Subject to the provisions of Section 17.2(b) regarding stipulated damages upon LCMC's involuntary withdrawal as a member of UMCMC due to a breach of the Master Hospital Lease or Right of Use by a Public Party, LCMC shall not be entitled to any payment upon its involuntary withdrawal as a member of UMCMC, including, without limitation, refund or payment of (i) unearned Prepaid Rent; (ii) Unamortized Improvements; or (iii) the difference between UMCMC's current assets and current liabilities, as computed on a GAAP basis ("Working Capital").

Section 16.7 Process for Addressing Potential LCMC Voluntary Withdrawal Events and Potential Involuntary Withdrawal Events (collectively, a "Potential Withdrawal Event"). The process the Parties shall follow upon the occurrence of a Potential Withdrawal Event (the "Pre-Withdrawal Process") with the objective of avoiding a Member Withdrawal shall be as follows:

(a) Notice and Cure Period. A Party asserting a Potential Withdrawal Event shall provide the other Party or Parties written notice of such event, which notice shall include a detailed description of the basis for such event and the Party's requirements to remedy such asserted event. The Party asserted to have caused the Potential Withdrawal Event shall be entitled to a 60 day cure period ("Cure Period"), or such other time period agreed to by the Parties, to remedy the asserted Potential Withdrawal Event.

(b) Consultative Process. If such Potential Withdrawal Event is not cured within the Cure Period, the Parties shall engage in the Consultative Process for a period of not less than thirty (30), but not more than sixty (60), days to attempt to resolve the Potential Withdrawal Event. Unless this Agreement provides that the Consultative Process is to



proceed automatically, the Consultative Process shall commence upon receipt of written notice from the Party requesting the Consultative Process by the other Parties.

(c) Executive Level Negotiations. If an alleged Potential Withdrawal Event is not resolved in the Consultative Process, the president or equivalent executive of each such Party, or his or her designee, shall discuss and negotiate in good faith for thirty (30) calendar days, or such longer period as the Parties may agree, to attempt to resolve the issue.

Section 16.8 Withdrawal Rights. If the asserted Potential Withdrawal Event is not resolved pursuant to the procedures in Section 16.7 set forth above, then LCMC, in the case of an LCMC Potential Withdrawal Event, may declare its intent to withdraw from UMCMC, or the affected Party, in the case of an Involuntary Potential Withdrawal Event, may declare its intent to cause LCMC's withdrawal from UMCMC, as the case may be, by delivery written notice of such intent to the other Parties (the "Withdrawal Notice"). Such a withdrawal shall be in addition to any other remedies which the applicable Party may have at law, including damages, but shall be subject to the Transition Period provided in Section 16.9.

Section 16.9 UMCMC Transition upon Withdrawal.

(a) Transition Generally. During the period commencing on the effective date of the Member Withdrawal Notice and ending on the date of LCMC's withdrawal as a member of UMCMC (the "Member Withdrawal Date") (such period, the "Transition Period"), LCMC, UMCMC, and LSU shall coordinate LCMC's withdrawal to minimize the likelihood of any adverse impact on the Hospital's operations, including, without limitation, inpatient and outpatient hospital care, outpatient clinics, and GME. The Transition Period shall be for a period of six (6) months beginning two (2) days after the

date of the Member Withdrawal Notice, unless otherwise extended by the Board of Directors of UMCMC or the Transition Board of Directors (as defined below), as the case may be, and approved by LCMC, provided that any payments due LCMC upon its withdrawal shall not be due until one (1) year after the Member Withdrawal Date as provided in Section 17.3. The Member Withdrawal Date shall be the last day of the Transition Period.

(b) New Member. During the Transition Period, UMCMC may seek a new entity(ies) to become the sole member(s), and to replace LCMC as the member, of UMCMC (the “New Member”) that, upon such terms and conditions as UMCMC, LCMC and the New Member agree in writing, will (i) support UMCMC’s management and operation of the Hospital in accordance with the CEA, including without limitation, guaranteeing the payment and performance of UMCMC’s obligations under the Master Hospital Lease and Right of Use Agreement arising immediately following the Member Withdrawal Date, and (ii) pay LCMC such amount and on such terms acceptable to LCMC the following: (i) Unamortized Improvements; and (ii) UMCMC’s Working Capital as of the Member Withdrawal Date. For purposes of this Agreement, LSU and UMCMC agree, absent a mutual agreement otherwise among them and Tulane, that, in the event a New Member(s) is substituted for LCMC as the sole member(s) of UMCMC:

(i) The New Member(s) shall be required to honor and shall be bound by the Graduate Medical Education provisions (the “GME Provisions”) set forth in the MOU, including, without limitation, (i) the GME Provisions related to the allocation and use of residency slots, (ii) the GME Provisions requiring non-discrimination in the administration of Graduate Medical Education programs

(“GME Programs”) with respect to any sponsoring institutions, or any sponsoring institution’s students, faculty and residents, and (iii) the GME Provisions related to entering into and administering certain GME contracts.

(ii) The New Member(s) shall be required to (i) maintain Tulane’s and LSU’s respective rights with respect to representation on UMCMC’s Board of Directors as set forth in the MOU; (ii) ensure that no alterations, modifications or changes are made to any GME Programs, or the administration of such programs, without the approval of the affected sponsoring institution; (iii) have provisions contained in UMCMC’s bylaws consistent with the MOU pertaining to the GME Programs and the allocation of residency slots and ensure there are no modifications, alterations, changes or amendments to such provisions without the consent of the affected sponsoring institution; and (iv) ensure that a majority of the members of UMCMC’s Board of Directors shall continue to be independent of Tulane and LSU.

(iii) The New Member(s) shall be required to agree to and be bound by the terms of the CEA.

Section 16.10 UMCMC Transition Period Governance.

(a) Special Meeting of Board of Directors. Within thirty (30) days following the Member Withdrawal Notice, the UMCMC Board of Directors shall convene a special meeting to determine the composition of the Board of Directors during the Transition Period. Upon an affirmative supermajority vote of the UMCMC Board of Directors, defined as \_\_\_ of fourteen (14) voting Directors, the existing composition of the Board of Directors shall continue during the Transition Period.

(b) Transition Board of Directors. If an affirmative supermajority vote to maintain the composition of the Board of Directors does not occur, then LCMC and the Board of Directors shall immediately cause the UMCMC Articles and Bylaws then in effect to be amended to (i) provide for a reconstituted Board of Directors to serve UMCMC during the Transition Period (the “Transition Board of Directors”), and (ii) remove the reserved powers of LCMC. The Transition Board of Directors shall consist of:

(i) One (1) Director who shall be a representative of LSU appointed by the President of LSU after obtaining the advice and consent of the LSU Board of Supervisors;

(ii) One (1) Director who shall be appointed by the President of Tulane;

(iii) One (1) Director who shall be appointed by the President of Xavier University (“Xavier”); and

(iv) Three (3) Directors who shall be appointed by LCMC.

(c) Appointment of Special Director. If any vote of the Transition Board of Directors results in deadlock and such deadlock extends for two consecutive meetings of the Transition Board of Directors, then the Transition Board of Directors shall petition the Chief Bankruptcy Judge of the United States District Court, Eastern District of Louisiana to appoint a neutral special director (the “Special Director”), with the qualifications set forth in Section 16.9(d) below. In the event that such bankruptcy judge does not have jurisdiction to appoint the Special Director, then the Special Director shall be appointed by the American Arbitration Association. The Special Director shall only

participate in the activities of the Transition Board of Directors to cast the deciding vote in the event of a deadlock that has lasted for two meetings. In making a deciding vote, the Special Director shall consider the following factors:

- (i) The impact of the exercise on UMCMC;
- (ii) The impact of the exercise on the educational programs operated by UMCMC;
- (iii) The impact of the exercise on the System; and
- (iv) The impact of the exercise on the delivery of Safety Net Services in the New Orleans area and the State.

(d) Qualifications, Compensation and Indemnification of Special Director.

The Special Director shall have (i) at least fifteen (15) years' experience in hospital administration as a senior executive, and (ii) experience with distressed hospitals. UMCMC shall enter into such compensation and indemnification arrangements with the Special Director as the Transition Board of Directors deems necessary to attract a qualified Special Director.

**ARTICLE XVII.  
SPECIAL REMEDIES**

Section 17.1 Remedies Cumulative. The Parties expressly agree that this CEA may only be terminated, and LCMC may only withdraw as a member of UMCMC, or be caused to withdraw as a member of UMCMC, as provided in Article XVI and for no other reason. Subject to the foregoing, and subject to any provision in this CEA to the contrary, all rights and remedies of any Party provided for in this CEA shall be construed and held to be cumulative, and no single right or remedy shall be exclusive of any other which is consistent with the former. No waiver

by any Party of a Breach of any of the covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding Breach of the same or of any other covenant, condition or restriction herein contained. The failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future Breaches of such covenant or option. A receipt by any Party of payment by any other Party with knowledge of the Breach of any covenant hereof shall not be deemed a waiver of such Breach. No waiver, change, modification or discharge by any Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Parties.

Section 17.2 Stipulated Damages. The Parties acknowledge and agree that the System is making a substantial financial and managerial commitment and will continue to make such commitments of resources over time, to support the Public Purpose as set forth in this CEA. The Parties further acknowledge and agree that the damages the System will sustain if LCMC elects or is required to withdraw under certain circumstances will be substantial and difficult to quantify. Accordingly, stipulated damages are an appropriate remedy for LCMC in the event of its withdrawal as a member of UMCMC under certain circumstances as follows:

- (a) Elective Withdrawal If LCMC elects to withdraw as a member of UMCMC due to (i) Inadequate Funding, (ii) failure of the State to pay a final, binding, and non-appealable judgment in accordance with Section 16.2(d), or (iii) it is ultimately determined by a final, binding and non-appealable judgment by a court of competent jurisdiction that LSU has breached its representation and warranty in Section 10.2 and the State has breached its representation and

warranty in Section 11.2 that this CEA constitutes a valid and binding contract enforceable in accordance with its terms against the LSU or the State, then upon LCMC's withdrawal as a member of UMCMC the State shall be obligated to pay LCMC stipulated damages in the amount of (i) unearned prepaid rent under the terms of the Master Hospital Lease and any related lease entered into by the Parties in accordance with Section 4.1(d); (ii) Unamortized Improvements; and (iii) Working Capital.

(b) Involuntary Withdrawal. If LCMC is required to withdraw as a member of UMCMC upon termination of the Master Hospital Lease due to the fault or Breach by a Public Party, then UMCMC shall be obligated to pay LCMC (i) any amounts due UMCMC from LSU, the State or DOA for early termination of the Master Hospital Lease in accordance with its terms, provided that UMCMC shall not be obligated to make such payment to LCMC until such funds are received by UMCMC under the terms of the Master Hospital Lease, and (ii) UMCMC's Working Capital as of the date of Withdrawal. LCMC shall not be entitled to stipulated damages upon early termination of the Master Hospital Lease due to a Breach or otherwise by the fault of UMCMC or LCMC.

(c) Federal Program Recoupment Action. In the event of a federal program recoupment action which results in a set-off of reimbursement due UMCMC as a result of an overpayment while LSU was responsible for the Hospital's Medicare and Medicaid Provider Numbers, the State will seek an immediate appropriation to reimburse UMCMC, and UMCMC will assign to LSU any rights to negotiate, contest, settle or otherwise resolve such recoupment action. Notwithstanding the

foregoing, UMCMC shall have an immediate right of set-off against Rent due under the Master Hospital Lease to compensate UMCMC in an amount consistent with the amount withheld under the recoupment action.

Section 17.3 Appropriation Contingency. Obligations of any Public Party arising under this CEA other than the Required Program Funding are contingent obligations and shall be subject to appropriation by the Louisiana Legislature of sufficient funds specifically and expressly appropriated therefor and shall not be due and payable until such funds are available following Legislative appropriation. Notwithstanding the foregoing, no amounts payable to LCMC upon its withdrawal from UMCMC shall be due sooner than one (1) year from the Member Withdrawal Date. The foregoing provisions shall not limit the application of Section 17.1 or 16.2(d) of this CEA.

## **ARTICLE XVIII. INSURANCE AND INDEMNIFICATION**

Section 18.1 Insurance. UMCMC will provide commercially reasonable insurance as provided in the Master Hospital Lease, Equipment Lease, and the Professional Services Agreement.

Section 18.2 Indemnification.

(a) Survival. All representations, warranties, covenants and obligations in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the consummation of the Contemplated Transactions and the termination of this Agreement, subject to Section \_\_\_\_\_.

(b) Indemnification. Each Party will indemnify the other Party in accordance with Paragraphs (c) through (e) of this Section 18.2.

(c) Time Limitations.



(i) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, LSU will have liability (for indemnification or otherwise) for all costs, expenses, losses, damages, fines, penalties, forfeitures or liabilities (including, without limitation, interest which may be imposed by a court in connection therewith), court costs, litigation expenses, reasonable attorneys' and paralegals' fees and accounting fees (collectively, the "Damages") incurred by UMCMC or LCMC as a result of (A) a Breach of any representation or warranty by LSU, disregarding any Knowledge qualification contained therein, or (B) the actions or failure to act by LSU Personnel; provided however, that LSU's obligation under this Section shall only apply if, on or before the third (3<sup>rd</sup>) anniversary of the Commencement Date, UMCMC or LCMC notifies LSU of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UMCMC or LCMC. Notwithstanding the foregoing, with respect to a Breach resulting from fraud, a claim may be made at any time, and with respect to a Breach resulting from a violation of Health Care Laws, a claim may be made within ten (10) years of the Commencement Date.

(ii) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, the State, through DOA, will have liability (for indemnification or otherwise) for all costs, expenses, losses, damages, fines, penalties, forfeitures or liabilities (including, without limitation, interest which may be imposed by a court in connection therewith), court costs, litigation expenses, reasonable attorneys' and paralegals' fees and accounting fees (collectively, the "Damages") incurred by UMCMC or LCMC as a result of (A) a

Breach of any representation or warranty by DOA, which claim shall be made on or before the third (3<sup>rd</sup>) anniversary of the Commencement Date, except with respect to a Breach resulting from fraud, in which case a claim may be made at any time, or (B) any liability pertaining to Federal Emergency Management Agency funds related to the New Facility, in which case a claim must be made on or before the sixth (6<sup>th</sup>) anniversary of the Commencement Date,; provided however, that UMCMC or LCMC notifies DOA of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UMCMC or LCMC.

(iii) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, DHH will have liability (for indemnification or otherwise) for all costs, expenses, losses, damages, fines, penalties, forfeitures or liabilities (including, without limitation, interest which may be imposed by a court in connection therewith), court costs, litigation expenses, reasonable attorneys' and paralegals' fees and accounting fees (collectively, the "Damages") incurred by UMCMC or LCMC as a result of a Breach of any representation or warranty by DHH; provided however, that DHH's obligation under this Section shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3<sup>rd</sup>) anniversary of the Commencement Date, UMCMC or LCMC notifies DHH of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UMCMC or LCMC.

(iv) Except as otherwise provided in this Agreement, UMCMC will have liability (for indemnification or otherwise) for all Damages incurred by LSU or the State as a result of (A) a Breach of any representation or warranty by UMCMC, or (B) the actions or failure to act by the employees or agents of UMCMC; provided however, that UMCMC's obligation under this Section shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at anytime, on or before the third (3rd) anniversary of the termination of this Agreement, LSU, DOA or DHH notifies UMCMC of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by LSU, DOA or DHH.

(v) Except as otherwise provided in this Agreement, LCMC will have liability (for indemnification or otherwise) for all Damages incurred by LSU or the State as a result of (A) a Breach of any representation or warranty by LCMC, or (B) the actions or failure to act by the employees or agents of LCMC; provided however, that LCMC's obligation under this Section shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the termination of this Agreement, LSU, DOA or DHH notifies UMCMC of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by LSU, DOA or DHH.

(d) Third-Party Claims.

(i) Promptly after receipt by a Person entitled to indemnity under this Agreement (an "Indemnified Person") of notice of the assertion of a Third-Party

Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an “Indemnifying Person”) of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person’s failure to give such notice.

(ii) If an Indemnified Person gives notice to the Indemnifying Person pursuant hereto of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense

of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, no compromise or settlement of such Third-Party Claim may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of a Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its consent.

(iii) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(iv) With respect to any Third-Party Claim subject to indemnification under this Article: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where

such Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(v) With respect to any Third-Party Claim subject to indemnification under this Article, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that, to the extent allowed by law: (i) it will use its commercially reasonable efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any Party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

(e) Other Claims. A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

## **ARTICLE XIX. GENERAL PROVISIONS**

Section 19.1 Interpretation. In this Agreement, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes the other gender;

(d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(e) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(h) "or" is used in the inclusive sense of "and/or";

(i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding";

(j) references to “day,” rather than the defined term “Business Day,” shall mean a calendar day; and

(k) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

Section 19.2 Legal Representation of the Parties. This Agreement was negotiated by the signatories hereto with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any signatory hereto shall not apply to any construction or interpretation hereof.

Section 19.3 Expenses. Except as otherwise provided in this Agreement, each Party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its representatives. If this Agreement is terminated, the obligation of each Party to pay its own fees and expenses will be subject to any rights of such Party arising from a Breach of this Agreement by another Party.

Section 19.4 Dispute Resolution. The Parties will attempt to resolve any material breaches, disputes or issues of concern to or affecting the transactions or relationships contemplated by this CEA that are not Termination Events or Potential Withdrawal Events as follows:

(a) Cure Period. If the basis of the dispute is alleged to constitute a Breach of the CEA, the Master Collaborative Agreement or any other agreement associated with the Contemplated Transactions, the Party alleging the Breach shall provide the alleged Breaching Party with written notice of such alleged Breach, with sufficient detail to provide the alleged Breaching Party with the factual basis or circumstances giving rise to



the alleged Breach. The Breaching Party shall be entitled to a Cure Period to cure the alleged Breach.

(b) Consultative Process. If the alleged Breach is not cured within the Cure Period, or if the dispute does not involve an alleged Breach or is not otherwise subject to cure, the Parties shall engage in the Consultative Process for a period of ten (10) days, or such longer period as may be appropriate but not to exceed sixty (60) days, to attempt to resolve the dispute.

(c) Right to Legal Remedies for non-Termination Events and non-Potential Withdrawal Events; No Termination or Withdrawal Rights. If such dispute involving a non-Termination Event or non-Potential Withdrawal Event is not resolved pursuant to the Consultative Process, the Parties shall be entitled to such remedies as are available at law, including damages, but not including any equitable or injunctive relief which could or would limit LSU's access to the Interim Facility or the New Facility, as applicable. No Party shall have the right to terminate this Agreement, nor may LCMC elect or be compelled to withdraw as a member of UMCMC, for a non-Termination Event or a non-Potential Withdrawal Event, except by authority of a final order of a court of competent jurisdiction after all rights of appeal have been exhausted.

Section 19.5 Public Announcements. Any public announcement, press release or similar publicity with respect to entering this Agreement or the Contemplated Transactions will be issued In the best interests of the Parties.

Section 19.6 Confidential Information.

(a) Restricted Use of Confidential Information. Subject to subsection (h) below, except as otherwise required by any Legal Requirement, each Receiving Party

acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information to the extent allowed by law (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of LSU with respect to Confidential Information of LSU or the LCMC CEO with respect to Confidential Information of LCMC, or the UMCMC CEO with respect to the Confidential Information of UMCMC. Each of LCMC, UMCMC and LSU shall disclose the Confidential Information of the other party only to its representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by LSU or LCMC or UMCMC, as the case may be, of the obligations of this Article with respect to such information. Each of LSU, LCMC and UMCMC shall (i) enforce the terms of this Article as to its respective representatives; (ii) take such action to the extent necessary to cause its representatives to comply with the terms and conditions of this Article; and (iii) be responsible and liable for any Breach of the provisions of this Article by it or its representatives.

(b) Exceptions. does not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (i) was, is or becomes generally available to the public other than as a result of a Breach of this Article or the Confidentiality Agreement by the Receiving Party or its representatives; (ii) was or is developed by the Receiving Party independently of and without reference to any

Confidential Information of the Disclosing Party; or (iii) was, is or becomes available to the Receiving Party on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

(c) Legal Proceedings. Subject to subsection (h) below, if a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article. In the absence of a protective order or other remedy, the Receiving Party may disclose that portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section do not apply to any Proceedings among the Parties to this Agreement.

(d) Return or Destruction of Confidential Information. Except as required by any Legal Requirement, if this Agreement is terminated, each Receiving Party shall, to the extent allowed by law, (i) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material; (ii) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or

control of the Receiving Party or, alternatively, with the written consent of the Disclosing Party, destroy all such Confidential Information; and (iii) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

(e) Attorney-Client Privilege. The Disclosing Party is not waiving, and will not be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges as a result of disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The Parties (i) share a common legal and commercial interest in all of the Disclosing Party's Confidential Information that is subject to such privileges and protections; (ii) are or may become joint defendants in Proceedings to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; (iii) intend that such privileges and protections remain intact should either party become subject to any actual or threatened Proceeding to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; and (iv) intend that after the consummation of the Contemplated Transactions the Receiving Party shall have the right to assert such protections and privileges. No Receiving Party shall admit, claim or contend, in Proceedings involving either Party or otherwise, that any Disclosing Party waived any of its attorney work-product protections, attorney-client

privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to a Receiving Party due to the Disclosing Party disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party.

(f) Trade Secret Protection. Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article to the extent included within the definition. In the case of trade secrets, each Party hereby waives any requirement that the other Party submit proof of the economic value of any trade secret or post a bond or other security.

(g) HIPAA Override. Notwithstanding anything to the contrary in this Agreement, any Confidential Information which constitutes “protected health information” as defined in HIPAA shall be maintained by the Parties in accordance with the provisions of HIPAA and the Health Information and Technology Act (“HITECH Act”) and the rules and regulations promulgated thereunder, and such provisions, rules and regulations shall take precedence over any other provisions of this Agreement governing Confidential Information to the extent there is a conflict between the terms of this Agreement and such provisions, rules and regulations of HIPAA and each Party will act in accordance therewith.

(h) Public Records Request. The financial and other records created by, for or otherwise belonging to LCMC or UMCMC shall remain in the possession, custody and

control of LCMC and UMCMC, respectively, regardless of whether, or the method by which, LSU reviews and/or audits such records in connection with the rights and obligations of this Agreement. LSU, LCMC and UMCMC consider records of LCMC to be proprietary to LCMC, and records of UMCMC to be proprietary of UMCMC, and, to the extent that LCMC or UMCMC makes any such records or documents available to LSU, such records shall be clearly marked as confidential and/or proprietary to indicate its or their position that such records or documents are not public records. To the extent a public records request is received by LSU pursuant to La. R.S. 44:1, *et seq.* (the “Public Records Act”) which may include documents marked as confidential and/or proprietary to LCMC or UMCMC, LSU will use its best efforts to give notice to LCMC or UMCMC, as applicable, that LSU has received such a public records request prior to producing any documents considered to be proprietary to LCMC or UMCMC, and if such notice cannot be provided to LCMC or UMCMC before LSU is required to produce such documents, LSU shall provide notice to LCMC or UMCMC, as applicable, as soon thereafter as possible. In the event that LCMC or UMCMC objects to the production and believes that the records are not subject to production pursuant to the Public Records Act, LCMC or UMCMC, as appropriate, will immediately so notify LSU in writing and take such action as LCMC or UMCMC deems necessary to protect the disclosure of such records. In the event of a final, binding, non-appeal judgment that LSU’s refusal to produce such documents was in violation of the Public Records Law, LCMC and UMCMC will indemnify and hold harmless LSU and the State, their employees, attorneys and agents from and against any costs, expenses, liabilities, attorneys fees, losses, damages, fines

and/or penalties resulting from or relating to LSU's failure to produce such documents in response to a public records request.

Section 19.7 Notice of Force Majeure. In the event of a failure or anticipated failure by any Party to perform its obligations hereunder caused by Force Majeure, such Party shall provide notice to the other Parties within thirty (30) days of the occurrence of such Force Majeure event causing such failure or anticipated failure. A Party's failure to perform due to a Force Majeure shall not constitute a Breach.

Section 19.8 Notices. Except as otherwise provided in this Agreement, any notice, payment, demand, request or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be duly given by the applicable Party if personally delivered to the applicable Party, or if sent certified or registered mail, at its address set forth below:

If to LSU:

Board of Supervisors of Louisiana State  
University  
and Agricultural and Mechanical College  
3810 West Lakeshore Drive  
Baton Rouge, LA 70808  
Attention: William L. Jenkins, President

With a copy to:

Taylor, Porter, Brooks & Phillips  
LLP  
8th Floor Chase Tower South  
451 Florida Street  
Baton Rouge, LA 70801  
Attention: Patrick D. Seiter, Esq.

If to DOA:

State of Louisiana, Division of  
Administration  
Claiborne Building, 7th Floor  
1201 N. Third Street  
Baton Rouge, LA 70802  
Attention: Commissioner

With a copy to:

State of Louisiana, Division of  
Administration  
P. O. Box 94004  
Baton Rouge, LA 70804-9004  
Attention: Elizabeth Baker Murrill,  
Esq.

If to DHH:

State of Louisiana, Department of Health  
and Hospitals  
628 N. Fourth Street  
P.O. Box 629  
Baton Rouge, Louisiana 70821-0629  
Attention: Secretary  
If to UMC MC:

University Medical Center Management  
Corporation  
(A Major Affiliate of LSU Pursuant to  
La. R.S. 17:3390)  
P. O. Box 3374  
Baton Rouge, LA 70821  
Attention: Robert V. "Bobby"  
Yarborough, Chair

If to LCMC:

Louisiana Children's Medical Center  
200 Henry Clay Avenue  
New Orleans, LA 70118  
Attention: Steve Worley, President and  
CEO  
Richard Guevara, Vice President of  
Legal Affairs

With a copy to:

State of Louisiana, Department of  
Health and Hospitals  
628 N. Fourth Street  
P.O. Box 629  
Baton Rouge, Louisiana 70821-0629  
Attention: Stephen Russo, Esq.  
With a copy to:

Kantrow, Spaht, Weaver & Blitzer  
(APLC)  
City Plaza, Suite 300  
445 North Boulevard  
Baton Rouge, LA 70802  
Attention: Lee C. Kantrow, Esq  
.

With a copy to:

Foley & Lardner LLP  
111 Huntington Avenue, Suite 2500  
Boston, MA 02199  
Attention: J. Mark Waxman, Esq.

or to such other address as such Party may from time to time specify by written notice to the other Parties.

Any such notice shall, for all purposes, be deemed to be given and received:

- (i) if by hand, when delivered;
- (ii) if given by nationally recognized and reputable overnight delivery service, the business day on which the notice is actually received by the Party; or
- (iii) if given by certified mail, return receipt requested, postage prepaid, three (3) Business Days after posted with the United States Postal Service.



Section 19.9 Jurisdiction; Service of Process. Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the Nineteenth Judicial District for the Parish of East Baton Rouge, Louisiana, or, if it has or can acquire jurisdiction, in the United States District Court for the Middle District of Louisiana, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction in any other court. The Parties agree that any of them may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

Section 19.10 Enforcement of Agreement; Legal Fees and Costs. Subject to the limitation on equitable or injunctive relief set forth in Section \_\_\_\_ and Section \_\_\_\_\_, each Party acknowledges and agrees that the other Parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by a Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches pursuant to Legal Requirements, without posting any bond or other undertaking. In the event that either Party elects to incur legal

expenses to enforce or interpret any provision of this Agreement, the prevailing Party will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such Party shall be entitled.

Section 19.11 Entire Agreement and Modification. This Agreement supersedes all prior agreements, whether written or oral, among the Parties with respect to its subject matter and constitutes (along with the other documents and Exhibits delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by LSU, DOA, DHH, LCMC and UMCMC.

Section 19.12 Assignments, Successors and No Third-Party Rights. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section.

Section 19.13 Severability and Reformation. If any term, provision, covenant or condition of this CEA is held unenforceable or invalid for any reason and not susceptible to reformation due to a change in applicable Legal Requirements, the remaining portions or provisions shall continue in full force and effect, unless the effect of such severance

would be to substantially alter the CEA or obligations of the parties, in which case the CEA may be immediately terminated.

Section 19.14 Construction. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to “Articles,” and “Sections” refer to the corresponding Articles and Sections of this Agreement.

Section 19.15 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 19.16 Governing Law. This Agreement will be governed by and construed under the laws of the State of Louisiana without regard to conflicts-of-laws principles that would require the application of any other law.

Section 19.17 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Section 19.18 Compliance with Health Care Laws. This Agreement is intended to comply with all Health Care Laws and nothing herein is intended to require, nor shall the Agreement be construed or interpreted as requiring, directly or indirectly, explicitly or implicitly, any Party to take any action that would violate any Health Care Law.

Section 19.19 Access to Records. To the extent that the services provided under this Agreement are deemed by the Secretary of the Department of Health and Human Services, the U.S. Comptroller General, or the Secretary's or Comptroller's delegate, to be subject to the provisions of Section 952 of Public Law 96-499, the Parties, until the expiration of four (4) years subsequent to the furnishing of services under this Agreement, shall make available, upon written request to the Secretary, the Comptroller, or any of their duly authorized representatives this Agreement, and the books, documents and records of the Parties that are necessary to certify the nature and extent of the charges to each Party. If any Party carries out any of its duties under the Agreement through a subcontract, with a value of \$10,000 or more over a twelve (12)-month period, with a related organization (as that term is defined with regard to a provider in 42 C.F.R. § 413.17(1)), such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization upon written request shall make available, to the Secretary, the Comptroller, or any of their duly authorized representatives the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs. If any Party is requested to disclose any books, documents, or records relevant to this Agreement for the purpose of an audit or investigation relating directly to the provision of services under this Agreement, such Party shall notify the other Parties of the nature and scope of such request and shall make available to the other Parties, upon written request, all such books, documents, or records. This Section is included pursuant to and is governed by the requirements of federal law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the Parties or any of the Parties' representatives by virtue of this Agreement.

Section 19.20 Name and Trademark. Except as provided in this Agreement and the Master Collaborative Agreement, no Party will use any other Party's name, symbol, or trademark in any marketing, advertising, or any other public communications without the prior written consent of such Party regarding the use of its name, symbol, or trademark.

Section 19.21 LCMC and UMCMC Not Intended to be Public Bodies. Nothing in this Agreement is intended, and it is not the intent of the Parties, DOA or DHH, to cause or result in LCMC or UMCMC being considered a public or quasi-public body, governmental authority or subdivision thereof, other public entity or otherwise subject to public inspection laws of the State, public audit, public meeting, or other disclosure procedures generally applicable to public bodies in the State.

Section 19.22 Non-Discrimination Clause. UMCMC agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and UMCMC agrees to abide by the requirements of the Americans with Disabilities Act of 1990. UMCMC agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Section 19.23 Further Acts and Assurances. Each of the Parties shall, at any time and from time to time at and after the execution of this Agreement, upon reasonably request of another Party, take any and all steps reasonably necessary to consummate the Contemplated

Transactions, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to consummate the Contemplated Transactions.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Witnesses:

**BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY AND  
AGRICULTURAL AND MECHANICAL  
COLLEGE**, a public constitutional  
corporation of the State of Louisiana

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
William L. Jenkins, President of  
Louisiana State University System

the

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**STATE OF LOUISIANA,  
DEPARTMENT OF HEALTH AND  
HOSPITALS**

By: \_\_\_\_\_  
Kathy Kliebert, Interim Secretary

Date: \_\_\_\_\_

\_\_\_\_\_

**STATE OF LOUISIANA, DIVISION OF  
ADMINISTRATION**

By: \_\_\_\_\_  
Kristy Nichols, Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**LOUISIANA CHILDREN'S MEDICAL  
CENTER**

By: \_\_\_\_\_  
Steve Worley, President and Chief  
Executive Officer

Date: \_\_\_\_\_

\_\_\_\_\_

**UNIVERSITY MEDICAL CENTER  
MANAGEMENT CORPORATION (A  
MAJOR AFFILIATE OF LSU  
PURSUANT TO LA R.S. 17:3390)**

By: \_\_\_\_\_  
Robert V. "Bobby" Yarborough,  
Chair

Date: \_\_\_\_\_



## APPENDIX 1 DEFINITIONS

“ACB” means the ambulatory care building currently under construction, which is part of the New Facility.

“Academic Affairs Committee” or “AAC” means a committee of the Hospital established for the purpose of supporting the the Chief Academic Officer. The AAC members shall be representatives of LSU, Tulane, UMCMC and other LCMC institutions involved in GME.

“Academic Affiliation Agreement” or “AAA” means the agreement between UMCMC and LSU setting forth terms and conditions upon which LSU and UMCMC will collaborate to strengthen LSU, the Hospital, the AMC, and their respective programs.

“Academic Health System CPA” means an independent, nationally-recognized certified public accountant possessing significant experience in the review and analysis of the financial reimbursement operations of hospital systems and academic medical centers.

“Academic Medical Center” or “AMC” means the collaborative academic medical center operated by the University Medical Center Management Corporation.

“ACGME” means the Accreditation Council for Graduate Medical Education.

“Affiliate” means a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another Person. “Control” (including the term “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of a Person, whether through membership in a non-profit corporation, appointment of the board of directors or board of supervisors, ownership of voting securities, by contract, as trustee or executor, or otherwise.

“Agreement” or “CEA” means this Cooperative Endeavor Agreement among the LSU, UMCMC, LCMC, DOA and DHH.

“Audited Financial Statements” shall mean audited consolidated financial statements for the LCMC System and the balance sheet and the related statements of income, and changes in financial position of the LCMC System with available reports thereon from an independent certified public accounting firm. .

“Benefit Plans” means any pension, retirement, savings, disability, medical, hospital, surgical, dental, optical or other health plan (including such benefits that are provided through insurance or a health maintenance organization), life insurance (including any individual life insurance policy as to which LSU makes premium payments whether or not LSU is the owner, beneficiary or both of such policy) or other death benefit plan (including accidental, death insurance), profit sharing, present or deferred compensation, employment consulting, termination of employment, change-in-control, retention stock option, bonus or other incentive plan, excess benefit plan vacation benefit plan, holiday, sick pay, severance plan, “golden parachute”, prepaid legal services, day care, employee assistance (referral) benefits, cafeteria plan, scholarship, or

educational benefit, supplemental unemployment, expense reimbursement, medical service discount, any fringe benefits referenced in Section 132 of the Code or other employee benefit plan or arrangement (whether written or arising from custom) to which LSU is a party or by which LSU or any of the Hospitals (or any of its rights, properties or assets) is bound, or with respect to which LSU has made payments, contributions or commitments or may otherwise have any liability (including any such plan or arrangement formerly maintained by LSU), but in either case, which provide benefits to one or more employees, former employees or non-employees service providers of LSU, including without limit Employees, or any of their respective dependents or beneficiaries.

“Breach” means \_\_\_\_\_ [TO BE DEFINED].

“Business Days” means Monday through Friday of each week, excluding legal holidays.

“Change in Control” means \_\_\_\_\_ [TO BE DEFINED].

“Children’s” means Children’s Hospital of New Orleans in New Orleans, Louisiana

“CMS” means the Centers for Medicare/Medicaid Services (CMS), an agency of the U.S. Department of Health and Human Services.

“Code” or “IRSC” means the Internal Revenue Code of 1986.

“Commencement Date” means June 24, 2013, the date on which UMCMC assumes operation and management of the Hospital.

“Confidential Information” includes, to the extent allowed by law, any and all of the following information of any Party that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by any Party or its Representatives (collectively, a “Disclosing Party”) to the other party or its Representatives (collectively, a “Receiving Party”):

- (i) all information that is a trade secret under applicable trade secret or other law;
- (ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;
- (iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however

documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

“Consultative Process” means an open, good faith dialogue among the appropriate individuals designated or identified by each Party on breaches, disputes or issues of concern to or affecting the transactions contemplated by the Agreement. Unless this Agreement provides that the Consultative Process is to proceed automatically, the Consultative Process shall commence upon receipt of written notice from the Party requesting the Consultative Process by the other Party.

“Contemplated Transactions” means a series of transactions involving the Parties to the CEA, including (i) the substitution of LCMC as a member of UMCMC; (ii) UMCMC's lease of the Interim Facility, New Facility, and furniture, fixtures, and, equipment, the purchase of consumable inventory and accounts receivable; (iii) execution of a Right of Use granted by LSU and the DOA to UMCMC and LCMC; (iv) transition of the Hospital from LSU to UMCMC; and (v) UMCMC's support academic, clinical and research missions of the AMC of the CEA.

“Core Services” means those core health care services that are described in Article III, Section 3.4 of this Agreement.

“Cost Analysis Worksheet” is the funding worksheet attached as Exhibit \_\_\_\_\_ to this Agreement.

“Cure Period” means a sixty (60) day period of time during which a Party may attempt to cure an asserted Breach.

“Damages” shall have the meaning set forth in Section \_\_\_\_\_.

“DHH Funding Calculations” means the calculations of the Required Program Funding prepared by DHH, as described in Article VIII, Section 8.1(d)(ii).

“Disclosing Party” has the meaning set forth in the definition of “Confidential Information.”

“DOA” means the Louisiana Division of Administration.

“Effective Date” means the date that this Cooperative Endeavor Agreement becomes effective and enforceable.

“Equipment Lease” means the lease agreement among LSU and UMCMC for certain equipment necessary for UMCMC's operation of the Hospital.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Excluded Provider” means an individual or entity who or that is excluded from participating in any state or federal health care program pursuant to 42 U.S.C. § 1320a-7.

“Flagship Agenda” means a comprehensive agenda agreed to and implemented by LSU and UMCMC designed to promote and attract (i) skilled and highly regarded medical faculty, fellows, residents and students; (ii) research grants of the type associated with leading academic institutions; (iii) sufficient patient volumes with an appropriate payer mix to sustain high quality, accredited education and research programs, and (v) innovative models of patient care delivery and financing that are quality and evidence-based, patient-centered and data-driven.

“Force Majeure” shall mean any (i) act of God, landslide, lightning, earthquake, hurricane, tornado, blizzard and other adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, blockade, insurrection, riot or civil disturbance; (ii) labor dispute or strike; or (iii) order or judgment of any governmental authority, if not the result of willful or negligent action of a Party, any of which results in loss, delay or inability of any party to perform the obligations hereunder.

“GAAP” means generally accepted accounting principles.

“GME” means graduate medical education.

“GME Provisions” means the provisions related to GME that are set forth in the MOU, including, without limitation, (i) the GME Provisions related to the allocation and use of residency slots, (ii) the GME Provisions requiring non-discrimination in the administration of Graduate Medical Education programs (“GME Programs”) with respect to any sponsoring institutions, or any sponsoring institution’s students, faculty and residents, and (iii) the GME Provisions related to entering into and administering certain GME contracts.

“GME Programs” means the GME Programs sponsored by LSU or Tulane.

“Governmental Authorization” means any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

“Governmental Agencies” means any United States or Louisiana agency or instrumentality.

“Governmental Body” or “Governmental Bodies” means any:

- (i) nation, state, parish, city, town, borough, village, district or other jurisdiction;
- (ii) federal, state, local, municipal, foreign or other government;
- (iii) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);
- (iv) multinational organization or body;

- (v) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or
- (vi) official of any of the foregoing.

“Health Care Laws” means all federal, state or local laws, statutes, codes, ordinances, regulation manuals or principles of common law relating to healthcare regulatory matters, including without limitation (i) 42 U.S.C. §§ 1320a-7, 7a and 7b, which are commonly referred to as the “Federal Anti-Kickback Statute”; (ii) 42 U.S.C. § 1395nn, which is commonly referred to as the “Stark Law”; (iii) 31 U.S.C. §§ 3729-3733, which is commonly referred to as the “Federal False Claims Act”; (iv) Titles XVIII and XIX of the Social Security Act, implementing regulations and program manuals; and (v) 42 U.S.C. §§ 1320d-1320d-8 and 42 C.F.R. §§ 160, 162 and 164, which is commonly referred to as HIPAA; (vi) 42 U.S.C. §§ 1395dd, et. seq., which is commonly referred to as the “Emergency Medical Treatment and Active Labor Act” (EMTALA).

“HIPAA” means the Health Information Protection and Portability Act of 1996, as amended.

“Historical Allocation” means the historical allocation of residency caps to the Hospital by LSU and Tulane, as defined in the MOU.

“HITECH Act” means the Health Information and Technology Act, as amended.

“Hospital” means the patient care and business operations of Louisiana State University Health Sciences Center – Charity Hospital and Medical Center of Louisiana at New Orleans, bearing Medicare Provider Number 190005.

“Hospital Residency Caps” means \_\_\_\_\_ [DEFINITION TO BE COMPLETED].

“Inadequate Funding” means funding by DHH to UMCMC or LCMC affiliates that is not sufficient to compensate UMCMC for the Medicaid and Indigent Care Services it provides.

“Indemnified Person” shall mean the Person entitled to indemnity under this Agreement.

“Indemnifying Person” means the Person obligated to indemnify another Party under this Agreement.

“Indigent Care Services” means health care services provided to persons whose annual income is below the federal poverty level.

“Initial Term” means the period from the Effective Date until the date that is forty-two (42) years following the Commencement Date.

“Intellectual Property” means licenses and other rights owned by LSU for the use its material patents, trade names, business names, service marks, and logos, and all applications and registrations therefor.

“Interim Facility” means the current, temporary facility located at 2021 Perdido Street, New Orleans, Louisiana 70112 in which the Medical Center of Louisiana at New Orleans d/b/a Interim LSU Hospital is operating.

“Inventory Date” means the date that inventories are taken of supplies, drugs, food, and other disposables and consumables.

“IRSC” means the Internal Revenue Service Code.

“Joint Commission” or “JC” means The Joint Commission responsible for accreditation of hospitals and other health care organizations.

“Key Service Baseline” means the baseline of services in the Key Service Lines provided by the Hospital on the Commencement Date as described in Article III, Section 3.5. “DHH” means the Louisiana Department of Health and Hospitals.

“Key Service Lines” means those service lines described in Article III, Section 3.5 of this Agreement.

“Knowledge” means knowledge of a particular fact or other matter if:

- (i) that individual is actually aware of that fact or matter; or
- (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.
- (iii) A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is serving, or who has at any time served, as an administrator, director, officer, partner, executor or trustee of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter (as set forth in (i) and (ii) above), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that Person or individual.

“Layoff Plan” means the layoff plan filed by LSU with the Louisiana Civil Service Commission regarding the layoff of LSU Personnel.

“LCCMC” means Louisiana Children’s Medical Corporation.

“Leased Premises” means all property set forth in the Master Hospital Lease attached as Exhibit 4.1 of this Agreement.

“Legislature” means the Senate and House of the Louisiana Legislature.

“LSU” or “LSU Board of Supervisors” means the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

“LSU GME Program” means Graduate Medical Education programs. NEED TO COMPLETE DEFINITION.

“LSU Personnel” means the employees of the LSU Health Care Services Division, School of Medicine, or the Hospital.

“LCMC Funding Calculations” means the calculations of the Required Program Funding prepared by LCMC, as described in Article VII, Section 7.1(d)(ii).

“Legal Requirement” means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty, including without limitation Health Care Laws.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Master Collaboration Agreement” or “MCA” means the agreement among LSU, UMCMC, and LCMC addressing matters related to the Contemplated Transaction and involving ancillary agreements pertaining to same.

“Master Hospital Lease Agreement” means the lease agreement among LSU and UMCMC for the Interim Facility, New Facility and other properties described in the lease agreement attached as Exhibit 4.1 of this Agreement.

“Materially Adverse” means \_\_\_\_\_ [TO BE DEFINED].

“Medically Indigent” means \_\_\_\_\_ [TO BE DEFINED].

“Member Substitution Agreement” shall mean that certain agreement pursuant to which LCMC is substituted as the sole member of UMCMC.

“Member Substitution Date” means the date upon which LCMC will be substituted as the sole member of UMCMC, which shall be the Effective Date of this CEA.

“Memorandum of Understanding” or “MOU” means the agreement dated August 2, 2009, as amended by agreement dated March 2, 2010, among LSU, UMCMC, LCMC, DOA and DHH in which it was contemplated that University Medical Center Management Corporation would assume the operations of the Hospital.

“Methodology Adjustment Notice” means written notice from one Party to another Party requesting modification of the Cost Analysis Worksheet or Shared Cost Savings Incentive Worksheet.

“Office of Academic Affairs” or “OAA” is an office located at UMCMC that has oversight of the management and administration of an AMC. The OAA will be led by UMCMC’s Chief Academic Officer, who shall be a physician employed by UMCMC with experience and demonstrated capabilities in management and administration of an AMC.

“New Facility” means the new, permanent acute care hospital building, ambulatory care building, and parking garage currently under construction in New Orleans at which the Hospital will operate upon the completion of those buildings and grounds.

“Office of Risk Management” means the Office of Risk Management within the DOA.

“Parking Garage” means the parking garage currently under construction, which is part of the New Facility.

“Party” or “Parties” means the State, LSU, UMCMC, LCMC, DOA and DHH.

“Potential Elective Withdrawal Event” means an event that may potentially result in LCMC’s elective withdrawal as a member of UMCMC in accordance with Article XVI.

“Potential Involuntary Withdrawal Event” means an event that may potentially result in LCMC’s involuntary withdrawal as a member of UMCMC in accordance with Article XVI.

“Potential Withdrawal Event” means a Potential Elective Withdrawal Event or a Potential Involuntary Withdrawal Event.

“Public Party” or “Public Parties” means the State, LSU, DOA and DHH.

“Order” means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

“Person” means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

“Potential Terminating Breaches” means those asserted Breaches that may result in termination of the CEA if not cured pursuant to the process provided in Article XV, Term and Termination.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator. “Required Funding” means the level of funding described in Article VII.

“Provider Numbers” shall mean all numbers or other identifying designations issued or assigned to a provider for purposes of a provider agreement, reimbursement or other payment or claims processing, including without limitation provider numbers as designated for purposes of Medicare, Medicaid, CHAMPUS or other governmental or third party payer programs.



“Public Purpose” means the purpose the Parties seek to accomplish through this Cooperative Endeavor Agreement, specifically, to create an academic medical center in which the Parties continuously work in collaboration and are committed and aligned in their actions and activities, in a manner consistent with a sustainable business model and adequate funding levels, to serve the State: (i) as a premier site for graduate medical education, capable of competing in the health care marketplace, comparable among its peers, with the goal of attracting the best faculty, residents and students, to enrich the State’s health care workforce and their training experience; (ii) in fulfilling the State’s historical mission of assuring access to Safety Net Services to all citizens of the State, including its Medically Indigent, high risk Medicaid and State inmate populations, and (iii) by focusing on and supporting the Core Services and Key Service Lines, as defined and agreed by the Parties, necessary to assure high quality GME Programs and access to Safety Net Services.

“Receiving Party” has the meaning set forth in the definition of “Confidential Information.”

“Renewal Term” means one (1) of three (3) fifteen (15) year periods following the Initial Term and any previous Renewal Term for which UMCMC has exercised its option to renew this CEA, up to a total of forty-five (45) years following the Initial Term.

“Required Program Funding” or “Required Funding” means payments made by DHH to UMCMC or LCMC affiliates as described in Article VII, the Cost Analysis Worksheet attached as Exhibit 8.1(a)(i) and the Shared Cost Savings Incentive Worksheet attached as Exhibit 8.1(a)(ii).

“Right of Use” means the agreement between UMCMC, LCMC, LSU and DOA wherein LSU and DOA grant a right of use to UMCMC and LCMC of the entirety of the land upon which the New Facility is located.

“RRC” means the Residency Review Committee.

“Safety Net Services” means health care services which are important to the health of the citizens of the State, and to which they may not otherwise have access, including, without limitation, the Core Services, whether such lack of access is due to the financial resources available to the patient, lack of availability of the service through alternative providers in the community, or other reason.

“Shared Cost Savings Incentive Worksheet” means the funding worksheet attached as Exhibit 8.1(a)(ii) to this Agreement.

“Special Director” means a neutral director appointed to serve as a member of the Transition Board of Directors to break a deadlock in accordance with Section 16.10.

“State” means the State of Louisiana, acting herein through the Division of Administration.

“System” means LCMC and its Affiliates, including Children’s and Touro and, upon completion of the Contemplated Transactions, UMCMC.

“Term” means the Initial Term and any Renewal Term.

“Terminating Event” means the events that may give rise to early termination of the CEA in accordance with Section 15.2.

“Termination Notice” means written notice by a non-breaching Party to the other Parties of the non-breaching Party’s intent to terminate this CEA.

“Termination Wind Down Period” means the one-year period of time (or such longer period of time to which LCMC, LSU and DHH agree at such time), if applicable, in accordance with Section 15.4.

“Third Party Claim” means any claim against any Indemnified Person by a third party, whether or not involving a Proceeding.

“Third Party Consents” means those consents or approvals needed from third parties in accordance with Section 14.3.

“Touro” means Touro Infirmary in New Orleans, Louisiana

“Transition Board of Directors” means the reconstituted Board of Directors to serve UMCMC during the Transition Period and assume the reserved powers of LCMC if, following the Member Withdrawal Date, an affirmative supermajority do not vote to maintain the composition of the Board of Directors in place as of the Member Withdrawal Date.

“Unamortized Improvements” means the value as of the Member Withdrawal Date of unamortized capital expenditures computed on a GAAP basis made by UMCMC or an LCMC Affiliate to the Interim Facility or New Facility while LCMC was a member of UMCMC.

“Unaudited Financial Statements” means \_\_\_\_\_ [NEED TO DEFINE].

“UMCMC” means University Medical Center Management Corporation.

“Wind Down Payments” means the Required Program Funding from DHH to UMCMC or a LCMC affiliate during the Wind Down Period.

“Working Capital” means the difference between current assets and current liabilities, as computed on a GAAP basis.

“Xavier” means Xavier University in New Orleans, Louisiana.

**MASTER HOSPITAL LEASE**

**BY AND AMONG**

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY  
AND AGRICULTURAL AND MECHANICAL COLLEGE,  
UNIVERSITY MEDICAL CENTER MANAGEMENT CORPORATION,**

**AND**

**STATE OF LOUISIANA, THROUGH THE DIVISION OF ADMINISTRATION**

**DATED \_\_\_\_\_, 2013**

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**MASTER HOSPITAL LEASE**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**PARISH OF ORLEANS**

This Master Hospital Lease (the “Lease”) is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and among:

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE**, a public constitutional corporation of the State of Louisiana, represented herein by William L. Jenkins, Interim President of the Louisiana State University System, duly authorized by virtue of a resolution of the Board of Supervisors, adopted \_\_\_\_\_, 2013, a copy of which is on file and of record, with a mailing address of 3810 West Lakeshore Drive, Louisiana State University, Baton Rouge, Louisiana 70808 (Federal I.D. No. XX-XXX0848) (hereinafter referred to as “LSU”);

**UNIVERSITY MEDICAL CENTER MANAGEMENT CORPORATION**, a Louisiana nonprofit corporation represented herein by Robert V. “Bobby” Yarborough, Chair, duly authorized by virtue of a resolution of its Board of Directors, adopted \_\_\_\_\_, 2013, a copy of which is on file and of record, with a mailing address of 200 Henry Clay Avenue, New Orleans, Louisiana 70118 (Federal I.D. No. XX-XXX-5187) (hereinafter referred to as “UMCMC”);

**STATE OF LOUISIANA, THROUGH THE DIVISION OF ADMINISTRATION**, herein represented and appearing through Kristy H. Nichols, Commissioner of Administration, Division of Administration, Office of the Governor, State of Louisiana, under the authority granted pursuant to La. R.S. 39:11 and other applicable law, whose mailing address is Post Office Box 94095, Baton Rouge, Louisiana 70804-9095 (hereinafter referred to as the “State” or “DOA”),

provides as follows:

**RECITALS**

**WHEREAS**, LSU is a public constitutional corporation organized and existing under the laws of the State of Louisiana, and LSU’s institutions, including its medical schools and hospitals, are under LSU’s supervision and management pursuant to La. Const. Art. VIII, Section 7 and La. R.S. 17:3215;



**WHEREAS**, that certain Memorandum of Understanding dated August 2, 2009, as amended by amendment thereto dated March 2, 2010 (as so amended, the “**MOU**”), by and among LSU, DOA, the State of Louisiana Department of Health and Hospitals (“**DHH**”), and Administrators of the Tulane Educational Fund (“**Tulane**”), contemplates that UMCMC will operate the hospital with Medicare Provider Number 190005 (the “**Hospital**”) when the Hospital relocates to its new facility currently under construction in New Orleans, to be owned by LSU upon its completion (as more particularly described on **Exhibit “B”** hereto, the “**New Facility**,” which term includes the new In Patient Towers, the Diagnostic & Treatment Building, the Utility Building, the Ambulatory Care Building and the Garage);

**WHEREAS**, LSU owns the facility that since Hurricane Katrina has served as an interim facility (as more particularly described on **Exhibit “A”** hereto, the “**Interim Facility**”) for the Hospital;

**WHEREAS**, UMCMC and LSU believe that they maintain shared values that support building a new model for the relationship between a major teaching hospital and a school of medicine and its teaching programs, and that this new model will provide physicians and patients with an environment of care that optimizes the use of all resources;

**WHEREAS**, contemporaneously herewith, LSU, UMCMC, DOA, DHH, and Louisiana Children’s Medical Center, a Louisiana nonprofit corporation that has or will become the sole member of UMCMC (“**LCMC**”), are entering into a Cooperative Endeavor Agreement (along with any subsequent amendments thereto, the “**CEA**”) to address the provision of healthcare in and through the Interim Facility and the New Facility and to address the stability and preservation of academic medicine in Louisiana, especially in New Orleans;

**WHEREAS**, this Lease is an integral aspect of the CEA and furthers the CEA and the above-stated goals; and,

**WHEREAS**, this Lease furthers the educational and public service missions of LSU and the State of Louisiana.

**NOW, THEREFORE**, in consideration of (1) LSU's obligation to lease the Leased Premises (as defined in this Lease) to be constructed pursuant to the Construction Contract Documents (as defined in this Lease) on the immovable property, which immovable property is the subject of that certain Right of Use, Possession and Occupancy Agreement of even date herewith attached as Exhibit [ ] to the CEA, (2) the rent to be paid by UMCMC during the term of this Lease, and the mutual benefits accruing to the parties under this Lease and the CEA, and (3) the terms, conditions and obligations among the parties as stated in this Lease, the parties do enter into this Lease, on the following terms and conditions:

**ARTICLE I.  
DEFINITIONS**

<b><u>Defined Term:</u></b>	<b><u>Defined in Article or Section:</u></b>
<b>Additional Rent</b>	Section 3.6
<b>Adjustment Date</b>	Section 3.5(a)
<b>Advance Rent</b>	Section 3.6
<b>Ambulatory Care Building</b>	Exhibit "B"
<b>Architect</b>	Section 2.4(b)
<b>Business Day</b>	Section 13.2
<b>Casualty</b>	Section 9.3
<b>CEA</b>	Fifth Whereas Clause of Recitals
<b>Commencement Date</b>	Section 2.2
<b>Construction Contract</b>	Section 2.4(b)
<b>Construction Contract Documents</b>	Section 2.4(b)

<b><u>Defined Term:</u></b>	<b><u>Defined in Article or Section:</u></b>
<b>CPI</b>	Section 3.5(c)
<b>CPI Calculation Date</b>	Section 3.5(a)
<b>CPI Fraction</b>	Section 3.5(a)
<b>Diagnostic &amp; Treatment Building</b>	Exhibit “B”
<b>DHH</b>	Second Whereas Clause of Recitals
<b>DOA</b>	Preamble
<b>DOA Event of Default</b>	Section 14.2
<b>Equipment Lease</b>	Section 6.2(b)
<b>Expropriation</b>	Section 9.3
<b>Fair Market Rental Value</b>	Section 3.5(e)(ii)
<b>Fair Market Rental Value Adjustment Date</b>	Section 3.5(e)
<b>FPC</b>	Section 2.1
<b>Force Majeure</b>	Section 16.12
<b>Future Plans</b>	Section 6.1(a)
<b>Garage</b>	Exhibit “B”
<b>Hazardous Material</b>	Section 10.1(c)
<b>Hospital</b>	Second Whereas Clause of Recitals
<b>Improvements</b>	Section 6.1(a)
<b>Indemnified Person</b>	Section 11.4
<b>Indemnifying Person</b>	Section 11.4
<b>Index</b>	Section 3.5(c)
<b>Interim Facility</b>	Third Whereas Clause of Recitals
<b>Interim Quarterly Rent</b>	Section 3.1
<b>Interim Term</b>	Section 2.3
<b>In Patient Towers</b>	Exhibit “B”
<b>Law</b>	Section 4.1

<u><b>Defined Term:</b></u>	<u><b>Defined in Article or Section:</b></u>
<b>LCMC</b>	Fifth Whereas Clause of Recitals
<b>Lease</b>	Preamble
<b>Leased Premises</b>	Section 2.1
<b>Lease Year</b>	Section 3.5(b)
<b>Leasehold Mortgage</b>	Section 5.4
<b>LSU</b>	Preamble
<b>LSU Affiliate</b>	Section 5.1
<b>LSU Director of Facilities</b>	Section 5.2
<b>LSU Event of Default</b>	Section 14.1
<b>LSU Director of Facilities</b>	Section 5.2
<b>Hospital</b>	Second Whereas Clause of Recitals
<b>Material Change</b>	Section 2.4(b)
<b>Member Substitution Agreement</b>	Section 2.5
<b>MOU</b>	Second Whereas Clause of Recitals
<b>New Facility</b>	Second Whereas Clause of Recitals
<b>New Facility Commencement Date</b>	Section 2.1
<b>New Facility Equipment</b>	Section 16.17
<b>New Facility Quarterly Rent</b>	Section 3.2
<b>New Facility Term</b>	Section 2.3
<b>ORM</b>	Section 9.1
<b>Permitted Uses</b>	Section 4.1
<b>Personal Property</b>	Section 6.2
<b>Plans and Specifications</b>	Section 2.4(b)
<b>Proceeding</b>	Section 11.4(a)
<b>Qualified Appraiser</b>	Section 3.5(e)(ii)
<b>Quarterly Rent</b>	Section 3.4
<b>Related Improvements</b>	Final paragraph of Recitals

<u>Defined Term:</u>	<u>Defined in Article or Section:</u>
<b>Renewal Term</b>	Section 2.6
<b>Rent</b>	Section 3.7
<b>State</b>	Preamble
<b>Term</b>	Section 2.3
<b>Third-Party Claim</b>	Section 11.4(a)
<b>Transition Period</b>	Section 2.1
<b>Tulane</b>	Second Whereas Clause of Recitals
<b>UMCMC</b>	Preamble
<b>UMCMC Event of Default</b>	Section 13.1
<b>Utility Building</b>	Exhibit “B”
<b>Utility Service</b>	Article VIII

**ARTICLE II.  
TERM AND LEASED PREMISES**

**Section 2.1 Term and Leased Premises.** For the consideration and upon the terms and conditions hereinafter expressed, LSU leases the Leased Premises unto UMCMC, here present and accepting the Interim Facility, commencing on the Commencement Date (as defined below), for the Term (as defined below), unless otherwise terminated sooner in accordance with the terms and conditions set forth herein. For the period of time from the Commencement Date through and including the day on which DOA’s Office of Facility Planning and Control (“**FPC**”) releases the New Facility and other related improvements (the “**Related Improvements**”) constructed pursuant to the Construction Contract Documents on the immovable property that is the subject of the Right of Use , Possession and Occupancy Agreement described hereinabove (the “**New Facility Commencement Date**”), the “**Leased Premises**” shall be the Interim Facility, as more particularly described on **Exhibit “A”** hereto. DOA shall cause the New Facility Commencement Date to occur no later than six (6) months after the Architect (as hereinafter

defined) has issued a certificate of substantial completion that the New Facility and the Related Improvements have been substantially completed in accordance with the Construction Contract Documents (as hereinafter defined). FPC will cooperate with UMCMC to provide UMCMC with access to the New Facility beginning on the New Facility Commencement Date. Beginning on the New Facility Commencement Date and terminating on the completion of the transfer and transition of all Hospital operations from the Interim Facility to the New Facility as evidenced by a certificate to be executed by UMCMC and LSU certifying the date of completion of such transfer and transition (the “**Transition Period**”), the “**Leased Premises**” shall be both the Interim Facility, as more particularly described on **Exhibit “A”** hereto, and the New Facility, as more particularly described on **Exhibit “B”** hereto. For a period of forty (40) years beginning the day immediately following the end of the Transition Period, and any extensions thereto, the “**Leased Premises**” shall be the New Facility, as more particularly described on **Exhibit “B”** hereto. Notwithstanding anything to the contrary herein, the Transition Period shall not exceed ninety (90) days, and if UMCMC and LSU have not executed the certificate certifying the date of completion of the transfer and transition of all Hospital operations from the Interim Facility to the New Facility referenced in this Section 2.1 on or before the expiration of such ninety-day period, the Transition Period shall end on such ninetieth day. UMCMC shall vacate the Interim Facility on or before the last day of the Transition Period, other than those portions UMCMC shall continue to occupy as agreed to by UMCMC and LSU, and UMCMC shall pay the fair market value rent on that portion of the Interim Facility that it continues to occupy for every day past the ninetieth day.

**Section 2.2 Commencement Date.** For the purposes of this Lease, the “**Commencement Date**” shall mean the 24<sup>th</sup> day of June, 2013.

**Section 2.3 Interim Term and New Facility Term.** The period of time from the Commencement Date through and including the day immediately prior to the New Facility Commencement Date shall be referred to herein as the “**Interim Term.**” The period of time from the New Facility Commencement Date through the expiration or earlier termination of this Lease shall be referred to herein as the “**New Facility Term.**” The Interim Term and the New Facility Term, together with any Renewal Term(s) as provided in Section 2.6, shall be referred to herein as the “**Term.**”

**Section 2.4 Limited Waiver of Warranties.**

(a) Except as otherwise provided in this Lease, DOA and LSU make no warranty of fitness, condition or title whatsoever, and UMCMC hereby waives any such warranties and acknowledges that DOA and LSU are not making any such warranties whatsoever, other than the warranty of peaceful possession against eviction from, or disturbance in fact caused by a person who successfully obtains, pursuant to final definitive judgment, ownership or a right to possession of, the Leased Premises, in whole or in material part, which adversely and materially affects the operations of the Hospital. Notwithstanding the foregoing, and to the extent allowed by Law, DOA and LSU hereby agree that DOA and LSU, at their sole cost, shall defend and indemnify UMCMC against any and all claims and lawsuits challenging the right of UMCMC to lease and occupy, or otherwise materially disturbing UMCMC’s actual physical possession of, all or part of the Leased Premises which adversely affects the operations of the Hospital.

(b) Furthermore, DOA warrants that the New Facility Commencement Date will occur no later than July 31, 2016, subject to delay caused or contributed to by Force Majeure, and that the New Facility and the Related Improvements shall be constructed in

accordance with the drawings, plans and specifications therefor prepared by Blich Knevel/NBBJ (the “**Architect**”), dated \_\_\_\_\_, consisting of \_\_\_ pages that have been delivered prior to the execution of this Lease by DOA to UMCMC (the “**Plans and Specifications**”). DOA warrants that there will be no, and LSU warrants that it shall not consent to any, Material Change (as hereinafter defined) to the Plans and Specifications or the construction contract between FPC and Skanska MAPP, A Joint Venture, for the construction of the New Facility and the Related Improvements (the “**Construction Contract**” and, together with the Plans and Specifications, the “**Construction Contract Documents**”) without prior consultation with, and written approval of UMCMC or verbal approval by UMCMC’s designated representative at the Owner, Architect, Contractor’s (OAC) meeting, which consent in any event shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. For purposes of the foregoing provision, any delay on the part of UMCMC beyond fifteen (15) days from the receipt of a written request for approval shall be deemed consent; and in such event, DOA may proceed with the related material change order, amendment or modification to the Construction Contract Documents without the prior written approval of UMCMC. In the event there is a Material Change to the Construction Contract Documents without UMCMC’s written consent, there shall be an equitable reduction in the Rent (as hereinafter defined) to compensate UMCMC for not receiving the New Facility and the Related Improvements in accordance with the Construction Contract Documents. For purposes of this provision, a “**Material Change**” is any change to the Construction Contract Documents which (i) is structural in nature; (ii) would materially affect the exterior appearance or the footprint of the New Facility or the Related Improvements; (iii) would materially change or affect the electrical, mechanical, heating, ventilating or air conditioning or utilities systems or routing of information technology services of the New



Facility or the Related Improvements; or (v) is programmatic in that it materially and adversely affects the function or quality of construction to be provided under the Construction Contract Documents.

(c) With respect to any and all claims related to the construction of the New Facility or the Related Improvements made within a period of five (5) years from the date on which the certificate of substantial completion has been issued by the Architect for the New Facility and the Related Improvements, DOA will pursue vigorously all such claims and will consult with UMCMC with respect to such pursuit. At the conclusion of such five (5) year period, any remaining claims available or any other manufacturer warranties shall be assigned by DOA to UMCMC, other than those relating to pending claims DOA is then pursuing. If any claims or manufacturer warranties are not assignable, DOA or LSU shall pursue vigorously all such claims and shall consult with UMCMC with respect to such pursuit.

(d) LSU warrants to the best of its knowledge and belief that the Interim Facility complies, and DOA, upon completion in accordance with the Construction Contract Documents, warrants that the New Facility shall comply with all applicable building codes and regulations including La. R.S. 40:1731 through La. R.S. 40:1744, and all applicable Law. Notwithstanding the above, if there are violations of the codes or regulations herein referenced with respect to the Interim Facility, and UMCMC incurs expenses related thereto in excess of \$250,000.00, said expenses shall be a credit against future Rent until said credit is exhausted.

**Section 2.5 Withdrawal of LCMC as sole member of UMCMC; Termination of CEA.** In the event LCMC withdraws as the sole member of UMCMC, in accordance with the CEA and that certain Member Substitution Agreement by and among UMCMC, LCMC, LSU

and Tulane (the “**Member Substitution Agreement**”), this Lease shall not terminate; provided, however, upon termination of the CEA, this Lease shall automatically terminate.

**Section 2.6** **Options to Renew.** Provided no uncured UMCMC Event of Default exists, UMCMC shall have three (3) consecutive options to renew this Lease for a period of fifteen (15) years each (each a “**Renewal Term**”), for a total of forty-five (45) additional years, under the same terms and conditions herein. In order to exercise any of said options to renew, UMCMC shall notify LSU in writing, at least one hundred eighty (180) days prior to the scheduled expiration date of the then current Term of this Lease, of its election to renew the Lease under the terms of this Section 2.6.

### **ARTICLE III. RENT**

**Section 3.1** **Interim Term Quarterly Rent.** During the Interim Term, the annual rent for this Lease is the payment by UMCMC to LSU of a sum [**not less than \$19,541,520.00 / UNDER DISCUSSION AND SUBJECT TO FINAL AGREEMENT ON APPRAISALS**], payable in four (4) equal quarterly installments (the “**Interim Quarterly Rent**”) of \$ \_\_\_\_\_ each, with the first installment being due and payable on the Commencement Date and the remaining installments being due and payable, respectively, on the first day of each calendar quarter thereafter. In the event the Commencement Date should be a date other than the first day of a calendar quarter, the first Interim Quarterly Rent payment shall be prorated to the end of that calendar quarter. In the event that the last day of the Interim Term is a day other than the last day of a calendar quarter, the last Interim Quarterly Rent payment shall be prorated from the first day of that final quarter of the Interim Term to the last day of the Interim Term. Notwithstanding the foregoing, UMCMC may, at its option, make payments of the Rent annually, in advance, during the Interim Term.

**Section 3.2 New Facility Term Quarterly Rent.** During the New Facility Term, the annual rent for this Lease is the payment by UMCMC to LSU of an annual amount equal to the sum of [not less than \$62,464,725.00 / UNDER DISCUSSION AND SUBJECT TO FINAL AGREEMENT ON APPRAISALS], for the New Facility, excluding the Ambulatory Care Building and the Garage, payable in four (4) equal quarterly installments (the “**New Facility Quarterly Rent**”) of \$ \_\_\_\_\_ each, with the first installment being due and payable on the first day of the New Facility Term and the remaining installments being due and payable, respectively, on the first day of each calendar quarter thereafter. In the event the first day of the New Facility Term should be a date other than the 1st day of a calendar quarter, the first New Facility Quarterly Rent payment shall be prorated to the end of that calendar quarter. In the event that the last day of the New Facility Term is a day other than the last day of a quarter, the last New Facility Quarterly Rent payment shall be prorated from the first day of the final quarter of the New Facility Term to the last day of the New Facility Term. Notwithstanding the foregoing, UMCMC may, at its option, make payments of the Rent annually, in advance, during the New Facility Term.

**Section 3.3 Rent During Transition Period.** During the Transition Period, the Rent, as set forth herein, shall be due by UMCMC to LSU on only the New Facility. Rent for the Interim Facility during the Transition Period shall terminate on the New Facility Commencement Date.

**Section 3.4 Quarterly Rent; Payment of Rent.** The Interim Quarterly Rent and the New Facility Quarterly Rent together shall be referred to herein as the “**Quarterly Rent.**” All Quarterly Rent, as well as all other Rent, is payable by UMCMC to LSU at the following address, until notified in writing differently by LSU: \_\_\_\_\_.

**Section 3.5 Adjustments to Quarterly Rent Based on Consumer Price Index.**

(a) The Quarterly Rent (i) during the Interim Term shall be increased annually, effective as of each anniversary of the Commencement Date, and (ii) during the New Facility Term shall be increased annually, effective as of each anniversary of the New Facility Commencement Date (each, an “**Adjustment Date**”), in each case by an amount equal to the product obtained by multiplying the then current Quarterly Rent times the CPI Fraction. (The “**CPI Fraction**” shall be determined as of sixty (60) days prior to the respective Adjustment Date (the “**CPI Calculation Date**”); the numerator shall be the CPI (as defined below) in effect as of such CPI Calculation Date and the denominator shall be the CPI in effect as of one (1) year prior to such CPI Calculation Date).

(b) In no event shall the CPI adjustment cause the Quarterly Rent to increase in any Lease Year by an amount greater than five (5%) percent more than the Quarterly Rent in the Lease Year preceding such CPI adjustment. In no event shall the Quarterly Rent decrease. During the Interim Term, “**Lease Year**” shall mean the twelve (12) month period commencing on the Commencement Date and each twelve (12) month period thereafter. During the New Facility Term, “**Lease Year**” shall mean the twelve (12) month period commencing on the New Facility Commencement Date and each twelve (12) month period thereafter.

(c) “**CPI**” shall mean the Consumer Price Index – U.S. City Average For All Items For All Urban Consumers (1982-1984 = 100) (the “**Index**”), published monthly in the “**Monthly Labor Review**” of the Bureau of Labor Statistics of the United States Department of Labor, or if the current Index is no longer available, then the current equivalent of the Index.

(d) No CPI adjustment shall be applied to Advance Rent (as defined below).

(e) The parties agree that every twenty (20) years of the New Facility Term (i.e., the twenty (20) year anniversary of the New Facility Commencement Date, and to the extent applicable by renewal, each of the fortieth, the sixtieth and the eightieth year anniversaries of the New Facility Commencement Date (each a “**Fair Market Rental Value Adjustment Date**”), the Quarterly Rent shall be reviewed and adjusted to the Fair Market Rental Value (as hereinafter defined) for the leasehold estate of the New Facility to UMCMC as determined by written agreement of LSU and UMCMC at least six (6) months prior to the end of each such twenty (20) year period of the New Facility Term. On the first Fair Market Rental Value Adjustment Date, solely for purposes of this Section 3.5(e), the term “New Facility” shall exclude the Ambulatory Care Building and the Garage. The calculation of Fair Market Rental Value shall assume that the terms and conditions of this Lease, other than the Rent, will continue to apply. In the event LSU and UMCMC cannot so agree in writing as set forth above no later than three (3) months prior to the end of such twenty (20) year period of the New Facility Term, then either LSU or UMCMC may initiate the following procedure to have the Quarterly Rent determined by independent appraisal:

(i) Either party may initiate the appraisal process by providing a written notice that it is invoking the procedure described in this Section 3.5(e).

(ii) Within twenty (20) days after the date of the written notice, LSU and UMCMC shall each appoint an appraiser having at least ten (10) years experience appraising commercial real estate in the New Orleans area and who is a member of the Appraisal Institute (hereinafter, a “**Qualified Appraiser**”). Each Qualified Appraiser shall make an estimate of the fair market rental value for the leasehold estate of the New Facility to UMCMC (the “**Fair Market Rental Value**”) as of the beginning of such twenty (20) year period. Each party shall

notify the other of the appointment of its Qualified Appraiser within ten (10) days after the appointment. Each party shall deliver to the other party a copy of its Qualified Appraiser's written report no later than thirty (30) days after the appointment of its Qualified Appraiser. If only one party appoints its Qualified Appraiser and delivers its Qualified Appraiser's report within thirty (30) days of the appointment of its Qualified Appraiser, then the Fair Market Rental Value shall be the value determined by that Qualified Appraiser. If neither party invokes the appraisal process or neither party appoints a Qualified Appraiser or neither party delivers its Qualified Appraiser's report within thirty (30) days after the appointment of its Qualified Appraiser, then UMCMC shall continue to pay the Quarterly Rent calculated in accordance with the terms of this Lease.

(iii) If the difference between the Fair Market Rental Value conclusions of the Qualified Appraisers is less than ten (10%) percent, the Quarterly Rent shall be set at the average of the two.

(iv) If the difference between the Fair Market Rental Value conclusions of the Qualified Appraisers is greater than ten (10%) percent, then the two Qualified Appraisers shall agree on a third Qualified Appraiser who shall be furnished the appraisal reports of the first two Qualified Appraisers along with any additional evidence the third Qualified Appraiser shall deem reasonably appropriate. The Fair Market Rental Value conclusion and report of such third Qualified Appraiser shall be conclusive as to the Fair Market Rental Value.

(v) Until the Fair Market Rental Value is determined, UMCMC shall continue to pay the Quarterly Rent in accordance with the terms of this Lease. If after the new Quarterly Rent is determined UMCMC has overpaid or underpaid the Quarterly Rent, as the case may be, UMCMC shall pay the underpayment or LSU shall refund the excess (or apply such

excess as a credit against the Rent payment(s) next due), in each case without interest, upon demand.

(vi) The fees of the initial two Qualified Appraisers shall be borne by the party hiring them, and the fee of the third Qualified Appraiser shall be borne equally by LSU and UMCMC.

**Section 3.6 Advance Rent.** UMCMC shall pay to LSU the following (collectively, the “**Advance Rent**”): (i) within \_\_\_ days of the execution of this Lease, \$110,000,000.00, which represents a prepayment of Interim Quarterly Rent for the Interim Facility and the future Rent payments for occupancy of the New Facility other than the Ambulatory Care Building and the Garage, which amount shall be considered a dollar-for-dollar credit toward Interim Quarterly Rent and future Rent payments amortized equally during the first forty-two (42) years of the Term; and (ii) \$143,000,000.00, on or before June 24, 2013 which represents all future Rent payments for construction and occupancy of the Ambulatory Care Building and Garage during the first forty (40) years of the New Facility Term.

**Section 3.7 Additional Rent.** In addition to the Advance Rent and the Quarterly Rent, UMCMC shall also pay any and all other charges or payments which UMCMC is or becomes obligated to pay pursuant to this Lease (the “**Additional Rent**”). (The Advance Rent, Quarterly Rent and Additional Rent may be referred to collectively herein as the “**Rent**”). Except as otherwise set forth herein, any Additional Rent owed to LSU shall be due within thirty (30) days after UMCMC’s receipt of the invoice with reasonable description and itemization of the charge from LSU.

**Section 3.8 Triple Net Lease.** This Lease is intended to be a triple net lease. UMCMC agrees that the Rent provided for herein shall be an absolute net return to LSU free and

clear of any expenses, charges, insurance or taxes whatsoever of any kind, character or nature; it being understood and agreed to by UMCMC that UMCMC shall bear responsibility during the Term for the payment of all costs and expenses associated with the management, operation, and maintenance of the Leased Premises, including without limitation all costs and expenses described in Article VII hereof. Except as expressly provided in Section 2.4(a) and Section 11.2, or as otherwise provided in the CEA, LSU will not be required to make any payment on UMCMC's behalf or for UMCMC's benefit under this Lease, or assume any monetary obligation of UMCMC under this Lease, or with respect to the Leased Premises.

**Section 3.9** **Off-set of Rent for Federal Program Recoupment Action.** In the event of a federal program recoupment action which results in a set-off of reimbursement due UMCMC as a result of an overpayment while LSU was responsible for the Hospital's Medicare and Medicaid Provider Numbers, the State will seek an immediate appropriation to reimburse UMCMC, and UMCMC will assign to LSU any rights to negotiate, contest, settle or otherwise resolve such recoupment action. Notwithstanding the foregoing, UMCMC shall have an immediate right of set-off against rent due under the Master Hospital Lease to compensate UMCMC in an amount consistent with the amount withheld under the recoupment action.

#### **ARTICLE IV. USE**

**Section 4.1** **Permitted Uses.** The Leased Premises are to be used and occupied by UMCMC solely for a hospital, medical business offices, medical staff offices, medical education staff offices, medical clinics and related or customary uses incidental thereto ("**Permitted Uses**"), and for no other purposes without the prior written consent of LSU. UMCMC will conduct its business in the Leased Premises in material compliance with all federal, state, local and parish



rules, laws, ordinances, and governmental regulations and orders, codes and decrees (herein “Law”).

**Section 4.2 Prohibited Uses.** In addition to the foregoing, UMCMC agrees not to occupy or use, or permit any portion of the Leased Premises to be occupied or used for any business or purpose that is unlawful, illegal, disreputable or reasonably considered to be ultra-hazardous. UMCMC will not use, occupy or permit the use or occupancy of the Leased Premises for any purpose which may be unreasonably dangerous to life, limb or property, or permit the maintenance of any public or private nuisance.

#### **ARTICLE V. SUBLETTING AND ASSIGNMENT**

**Section 5.1 No Assignment.** UMCMC may not, without the prior written consent of LSU, which consent shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, assign, in whole or in part this Lease or any interest therein; provided, UMCMC may, with prior written notice to LSU, but without the consent of LSU, assign its interest under this Lease to a nonprofit corporation, nonprofit limited liability company, nonprofit limited liability partnership, or other nonprofit legal entity wholly owned or controlled by UMCMC or LCMC, which has been officially designated by LSU as an LSU Affiliate (an “**LSU Affiliate**”), provided that in the case of such assignment, such assignee shall agree to assume in writing UMCMC’s obligations hereunder without release of UMCMC, all in form and substance reasonably approved by LSU.

**Section 5.2 No Subletting.** UMCMC may not, without the prior written consent of the LSU Director of Facilities or the successor or equivalent position or other person designated by the President of the LSU System (the “**LSU Director of Facilities**”), which consent may not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, sublease or grant

any other rights of use or occupancy of all or any portion of the Leased Premises; provided, however, UMCMC may, with written notice to LSU, but without the written consent of LSU or the LSU Director of Facilities, sublease portions of the Leased Premises to: (1) to a nonprofit corporation, nonprofit limited liability company, nonprofit limited liability partnership, or other nonprofit legal entity wholly owned or controlled by UMCMC or LCMC; (2) retail subtenants such as restaurants, drug stores, flower shops, newsstands, brace shops, and other subtenants which support the operations of the Hospital and which would be routinely housed in a hospital or medical clinic of similar scope and operations; (3) a third party with which (i) UMCMC or LCMC and (ii) LSU have an affiliation agreement relating to the healthcare, academic or research activities conducted in the Hospital, and (4) Tulane's School of Medicine. Any such sublease for which such prior written consent of the LSU Director of Facilities is not required pursuant to this Section 5.2 shall: (a) not exceed 10,000 square feet of useable rental space; (b) have a term not exceeding fifteen (15) years; and (c) further the mission of the Hospital as set forth in the CEA. Furthermore, the total space subleased and not requiring consent of the LSU Director of Facilities shall not exceed ten percent (10%) of each building. Any subleases not meeting the foregoing criteria shall be submitted to LSU for its prior review and approval, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. Any failure of LSU to respond within thirty (30) days of receipt of a written request shall be deemed consent. Under no circumstances may UMCMC sublease any space for any adult establishment including, but not limited to, adult bookstore, adult movie theater, adult novelty shop, tattoo shop, adult cabaret, liquor store or tobacco shop. The foregoing shall be exclusive of any sublease to LSU, or its affiliates, all of which subleases are hereby consented to. Furthermore, notwithstanding anything contained in this Lease to the contrary, UMCMC shall not enter into any sublease of all or part of

the Leased Premises with any physicians group or medical practice if such Sublease would be materially inconsistent with the Public Purpose as such term is defined in the CEA. Any sublease will contain a provision to the effect that if this Lease is terminated for any reason, the sublease, at LSU's sole option, shall (i) continue in full force and effect with LSU being automatically substituted for UMCMC as the lessor under such sublease, but with no liability of LSU for any obligations of UMCMC (or any permitted assignee) which arose before LSU exercised its option to continue the sublease, or (ii) be terminated without any liability to LSU or DOA. Further, any sublease will contain a provision restricting the sub-sublease or assignment of all or any part of such sublease, and furthermore, prior to the transfer of title to the New Facility from DOA to LSU, DOA's consent shall be required pursuant to this Section 5.2 in addition to any consent required by LSU, which DOA consent shall not be unreasonably withheld, unreasonably conditioned, or unreasonably delayed.

**Section 5.3 UMCMC Remains Liable.** In no event shall any assignment or subletting of all or any portion of the Leased Premises release UMCMC from any obligations under the Lease, unless such release shall be evidenced by LSU's express written agreement at the time of the assignment or subletting, which agreement may be withheld in LSU's sole discretion.

**Section 5.4 Leasehold Mortgage.** UMCMC shall have the right to mortgage its interest in the Lease and interest in the Leased Premises with the prior written consent of LSU, which consent will not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, and subject to terms and conditions reasonably acceptable to LSU. LSU agrees to review such request within sixty (60) days of UMCMC's request. LSU agrees that any third party obtaining a leasehold mortgage on UMCMC's interest in this Lease shall be entitled to commercially reasonable and customary protections with respect to this Lease, including without

limitation notices of any UMCMC default hereunder and opportunities to cure any such default within reasonable time periods.

**ARTICLE VI.  
IMPROVEMENTS AND ALTERATIONS BY UMCMC**

**Section 6.1 UMCMC Improvements and Alterations.**

(a) With the prior written approval of LSU and DOA, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed, and subject to the requirements of La. R.S. 17:3361, et seq., UMCMC may make such alterations and improvements to the Leased Premises as UMCMC may desire, at its own cost and expense. UMCMC shall furnish to LSU and DOA plans, drawings, specifications or other written or graphic descriptions reasonably acceptable to LSU and DOA (collectively, the “**Future Plans**”) for the alterations or improvements which UMCMC desires to make to the Leased Premises (the “**Improvements**”). Notwithstanding the foregoing, UMCMC shall not have to submit any plans and specifications with respect to the Ambulatory Care Building or the Garage. The Future Plans shall be subject to LSU’s and DOA’s approval, which will not be unreasonably conditioned, unreasonably delayed or unreasonably withheld, and will be deemed approved if neither LSU nor DOA responds to any request for approval within thirty (30) days of receipt of the Future Plans. Approval by LSU and DOA of any Future Plans and the Improvements shall not constitute any warranty by LSU or DOA to UMCMC of the adequacy of the design for UMCMC’s intended use of the Leased Premises. All work performed for or by UMCMC shall be free from defects in design and construction and shall be subject to and in accordance with all applicable federal, State, parish and city building and/or fire department codes and ordinances. Any required alterations performed in connection with such Improvements to meet said codes and ordinances shall be performed by UMCMC, or its assignee, at UMCMC’s expense. All

work shall be performed for or by UMCMC in a good and workmanlike manner, and UMCMC shall prosecute the same to completion with reasonable diligence. UMCMC shall complete all Improvements so as not to create any liens or encumbrances against the Leased Premises or any of LSU's property. Notwithstanding the foregoing, the Improvements costing less than \$125,000.00 shall not require prior consent of LSU and DOA; provided, however, UMCMC shall not artificially separate what would reasonably be considered to be one project in order to reduce the cost of the Improvements below \$125,000.00.

(b) Before the commencement of any work in excess of Two Million Dollars (\$2,000,000.00) for construction of the Improvements, UMCMC shall supply LSU with appropriate performance and payment bonds. These bonds are at UMCMC's expense and shall be issued in a form satisfactory to LSU and in such a manner as to protect LSU's interest in the Leased Premises. In the event UMCMC desires to commence any work having a value of more than \$500,000.00, but less than \$2,000,000, and UMCMC does not require or obtain performance and payment bonds, UMCMC shall establish an escrow account and deposit an amount equal to the value of the work to be performed so that sufficient funds are available to remove any liens that may be placed upon the Leased Premises as a result of the performance of the work, and such funds will be disbursed according to a schedule approved by LSU and which will provide for not less than a 10% hold back until the contractor has furnished a "clear lien certificate." UMCMC agrees to indemnify and defend LSU for any costs, including attorney fees, related to any claim that may relate to any work performed and/or for payment thereof.

**Section 6.2 Cost of UMCMC Improvements; Personal Property.**

(a) UMCMC shall be solely responsible for the costs of all Improvements to the Leased Premises undertaken by UMCMC pursuant to Section 6.1. On completion of the

Improvements, UMCMC shall provide to LSU a lien waiver from UMCMC's contractor covering the cost of work, materials and equipment supplied, done by the contractor and all material subcontractors and materialmen. All Improvements made to the Leased Premises by UMCMC, with LSU's consent, shall become the property of LSU at the termination of the Lease without any cost to LSU subject to any obligations of LSU and DOA and the State to reimburse UMCMC for the cost thereof as provided in Section 14.3 hereof or as otherwise provided in the CEA. If UMCMC makes the Improvements without LSU's and DOA's consent and such consent is required under this Lease, LSU shall have no obligation, notwithstanding anything in this Lease to the contrary, to reimburse UMCMC for the cost thereof, and LSU may, at its option, in addition to any other remedy available for such violation, by written notice to UMCMC require that UMCMC remove any such Improvements specified in such notice and return the Leased Premises to their condition prior to the installation of such unauthorized Improvements. If UMCMC fails to remove such Improvements and restore the Leased Premises to their original condition, UMCMC shall promptly reimburse LSU for any expense that LSU incurs in performing such removal.

(b) UMCMC shall pay the cost for all personal property, fixtures, equipment, furniture and other items of personal property which UMCMC may place in the Leased Premises including, but not limited to, unattached counters, shelving, showcases, chairs and unattached movable machinery, equipment and inventory (collectively, the "**Personal Property**"), and the Personal Property shall be and remain the property of UMCMC and may be removed by UMCMC at any time or times prior to the expiration of the Term; provided, however, that UMCMC shall repair any damage to the Leased Premises caused by such removal. Notwithstanding the foregoing, the Personal Property shall not include such movable and

personal property owned by LSU or equipment leased by UMCMC from LSU pursuant to that certain Equipment Lease of even date hereof (the “**Equipment Lease**”) or any future equipment lease.

**Section 6.3** **FPC Regulatory and Statutory Authority**. Nothing contained in this Article VI is intended to alter, negate or supersede FPC’s regulatory and statutory authority with respect to maintenance, repair and/or improvements to public buildings and property.

**ARTICLE VII.**  
**OPERATION, MAINTENANCE, REPAIR, SECURITY AND OTHER SERVICES**

**Section 7.1** **Operation**. UMCMC shall be responsible to procure and maintain all services and equipment necessary or required in order to adequately operate the Leased Premises in accordance with the Permitted Uses. UMCMC shall continuously operate the Interim Facility during the Interim Term (excluding the Transition Period) and the New Facility during the New Facility Term as a hospital and for the other Permitted Uses, and in accordance with all governmental regulations and the CEA. UMCMC shall procure and maintain all licenses permits and accreditation required for operation of a facility of the type of the Leased Premises, including without limitation those required by The Joint Commission or comparable accrediting agency.

**Section 7.2** **Maintenance and Repair**.

(a) UMCMC shall, at its sole cost and expense during the Interim Term, maintain the Interim Facility in the same condition as received from LSU and DOA (ordinary wear and tear and depreciation excepted), and UMCMC shall, at its sole cost and expense during the New Facility Term, maintain the New Facility as set forth herein, and in a condition consistent with the Environment of Care Standards of The Joint Commission, or any other applicable accreditation agency, as amended from time to time including, but not limited to, the CMS Standards for Accreditation as applicable to such buildings. Subject to DOA’s obligations

regarding defects in the New Facility under Section 2.4(c) hereof, UMCMC shall make and perform all maintenance, repairs, restorations, and replacements to the Leased Premises, including without limitation the heating, ventilating, air conditioning, mechanical, electrical, elevators, plumbing, fire, sprinkler and security systems, computer services, air and water pollution control and waste disposal facilities, roof, structural walls, sewerage lines, including any septic tank and effluent disposal system that may be necessary, and foundations, fixtures, equipment, and appurtenances to the Leased Premises as and when needed to maintain them in such condition (ordinary wear and tear and depreciation excepted), regardless of whether such maintenance and repairs are ordinary or extraordinary, routine or major, foreseeable or unforeseeable, or are at the fault of UMCMC, or some other party, except to the extent caused by LSU, DOA, the State or their respective employees, and subject to UMCMC's rights of recovery and reimbursement from the party responsible for such damages. The repairs, maintenance and in-kind replacements required to be made by UMCMC hereunder shall not require approval of LSU or FPC.

(b) In addition to LSU's rights pursuant to Article XIII hereof, if UMCMC fails to make and perform required maintenance and repairs within 60 days of receipt by UMCMC of LSU's notice that such maintenance and repairs are necessary, or if any such maintenance and repairs cannot reasonably be completed within such 60-day period, within any such longer period of time as may be reasonably required under the circumstances, LSU may (but shall not be obligated to) make or cause to be made such maintenance and repairs and LSU shall be entitled to collect the same from UMCMC as Additional Rental due hereunder within 30 days of written demand by LSU.



(c) Except as expressly provided in Section 7.2(a) above, it is understood and agreed that LSU shall have no obligation to incur any expense of any kind or character in connection with the maintenance, repair, restoration or replacement of the Leased Premises during the Term. LSU shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Leased Premises, or maintain the Leased Premises in any respect whatsoever, whether at the expense of LSU, UMCMC, or otherwise.

(d) Subject to delivery of the New Facility in accordance with the Construction Contract Documents, UMCMC agrees that the Leased Premises shall comply with the requirements of Title 40, Part V, of the Louisiana Revised Statutes, "EQUAL ACCESS TO GOVERNMENTAL AND PUBLIC FACILITIES FOR PHYSICALLY HANDICAPPED," more specifically, sections La. R.S. 40:1731 through 40:1744, and any new or modified requirements imposed to make the Leased Premises accessible to persons with disabilities as would be applicable to LSU or to an agency of the State of Louisiana.

(e) Subject to delivery of the New Facility in accordance with the Construction Contract Documents, UMCMC further agrees to make, at its own expense, all changes and additions to the Leased Premises required by reason of any Law, including the furnishing of required sanitary facilities and fire protection facilities, and UMCMC shall furnish and maintain all fire extinguishers and other equipment or devices necessary to comply with any order of the Louisiana State Fire Marshal; provided however, that in the event of any significant changes or structural alterations to the Leased Premises, the written consent of LSU and DOA must be obtained prior to the commencement of any work in accordance with Section 6.1 hereof. In such event, LSU's and DOA's consent shall not be unreasonably withheld, unreasonably

conditioned or unreasonably delayed. A delay beyond thirty (30) days by LSU or DOA shall constitute its consent. UMCMC shall further be responsible for all costs associated with any required periodic inspections and servicing of fire extinguishers and other equipment or devices, or any required licenses or permits applicable to the Leased Premises and operation of the Interim Facility and the New Facility, respectively. At its sole cost and expense, UMCMC agrees to comply with any order issued during the Term by the State Fire Marshal's Office and FPC within the timeframe mandated by those Offices, subject to any appeal rights UMCMC may have. Failure to do so will constitute a UMCMC Event of Default as provided in Article XIII hereof; provided, however, that UMCMC shall have no responsibility for compliance with such orders and failure to comply will not constitute a UMCMC Event of Default, if such noncompliance results from the failure of the Construction Contract Documents to comply with applicable Law at the time construction of the New Facility is completed.

(f) Subject to delivery of the New Facility in accordance with the Construction Contract Documents and the obligations of DOA to pursue construction claims pursuant to Section 2.4 above, UMCMC accepts the Leased Premises, including the New Facility, in "as is" condition, and as to the Interim Facility, the current condition or state in which the Interim Facility exists at the effective date of this Lease, without representation or warranty, express or implied, in fact or in Law, oral or written, by LSU. UMCMC, to the extent allowed by Law, hereby acknowledges it has inspected the Interim Facility, is satisfied with the condition of the Interim Facility, and assumes and agrees to accept all risk and responsibility for any and all defects, infirmities, and conditions in the Interim Facility and that the Interim Facility is fit for its intended purposes.

(g) UMCMC further agrees to do at its own expense, painting and/or other coatings, pressure washing and waterproofing of the exterior of the Leased Premises as necessary to maintain the Leased Premises in a neat, clean, safe, sanitary and habitable condition. UMCMC further agrees to do painting, papering, and tinting of the interior of the Leased Premises and all hallways and corridors associated with the Leased Premises, as the need may arise from time to time.

(h) Subject to delivery of the New Facility in accordance with the Construction Contract Documents, UMCMC shall have the sole responsibility of all maintenance and repairs to all operational building equipment at the time of occupancy, including but not limited to boilers, elevators, HVAC, fire panels, locks, security system and the public address system, and shall ensure that all building equipment is properly maintained and continues in an operable condition. UMCMC shall be responsible for all routine preventative maintenance and repairs on all such operational equipment, including but not limited to, the HVAC systems, provided, that any such routine preventive maintenance and repairs shall be performed in accordance with manufacturer recommended schedules and be performed by an authorized maintenance/repair contractor. UMCMC shall be responsible for ensuring that all necessary certification is maintained on any and all such equipment and machinery, including, but not limited to, certification required by the State Fire Marshal and DHH.

(i) UMCMC shall comply in all material respects with the standards outlined in **Exhibit "C"** hereto.

(j) Nothing contained in this Section 7.2 is intended to alter, negate or supersede FPC's regulatory and statutory authority with respect to maintenance, repair and/or improvements to public buildings and property.

**Section 7.3 Security and Other Services.** UMCMC shall provide or cause to be provided all security service, custodial service, janitorial service, medical waste disposal, trash disposal, pest control services and all other services necessary for the proper upkeep and maintenance of the Leased Premises as required herein. UMCMC acknowledges that LSU has made no representation or warranty with respect to systems and/or procedures for the security of the Leased Premises, any persons occupying, using or entering the Leased Premises, or any equipment, finishing, or contents of the Leased Premises. It is the sole responsibility of UMCMC to provide for the security of persons on or entering the Leased Premises and/or property located at the Leased Premises, in accordance with reasonable and prudent business practices utilized for similar facilities.

**ARTICLE VIII.  
UTILITIES**

UMCMC shall arrange and pay for the furnishing of all utilities which are used or consumed in or upon or in connection with the Leased Premises during the Term, including without limitation water, gas, electricity, medical gases, sewerage, garbage, or trash removal, light, heat, cable, internet and telephone, power, and other utilities necessary for the operation of the Leased Premises (“**Utility Service**”), and all Utility Service shall be obtained in or transferred to UMCMC’s name. Such payments shall be made by UMCMC directly to the respective utility companies furnishing such Utility Services under such contract or contracts therefor as UMCMC may make. LSU shall have no responsibility to UMCMC for the quality or availability of Utility Service to the Leased Premises, or for the cost to procure Utility Service. LSU shall not be in default under this Lease or be liable to UMCMC or any other person for any direct, indirect or consequential damage, or otherwise, for any failure in supply of any Utility Service, heat, air conditioning, elevator service, cleaning service, lighting, security, or for surges

or interruptions of electricity. Subject to delivery of the New Facility in accordance with the Construction Contract Documents: (1) all telephone lines shall be installed and maintained at the expense of UMCMC; (2) UMCMC shall be responsible for providing adequate entrance cable and facilities into the Leased Premises to accommodate the telephone, computer and other electronic needs of the Leased Premises; and (3) UMCMC shall provide terminal and equipment space where buildings and fire codes require, and conduits of sufficient size to meet adequate telecommunication installation requirements.

## **Article IX. INSURANCE**

### **[UNDER DISCUSSION]**

**Section 9.1**     **UMCMC Responsibility for Insurance Coverage.** UMCMC shall secure and maintain or cause to be secured and maintained at its sole cost and expense:

(i)     A policy of comprehensive public liability insurance with respect to the Leased Premises and the operations related thereto, whether conducted on or off the Leased Premises, against liability for personal injury (including bodily injury and death) and property damage, of not less than \$5,000,000 in combined single limit liability coverage. Such comprehensive public liability insurance shall specifically include, but shall not be limited to, sprinkler leakage legal liability, water damage legal liability and motor vehicle liability for all owned and non-owned vehicles, including rented or leased vehicles.

(ii)     A policy insuring against demolition, pile or any precarious work.

(iii)     Boiler and machinery insurance coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed on the Leased Premises, in an amount not less than \$5,000,000 with deductible provisions not exceeding \$100,000 per accident.

(iv)     Workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure employers against liability for compensation under the Labor Code of the State of Louisiana, or any act hereafter enacted as an amendment thereto or in lieu thereof, such worker's compensation insurance to cover all persons employed by the State or any agency thereof in connection with the Leased Premises and to cover full liability for compensation under any such act aforesaid.

(v)     Pursuant to the provisions of La. R.S. 40:1299.39 or 40:1299.41, et seq., medical malpractice liability insurance insuring claims arising out of malpractice or negligence of the Hospital at the Leased Premises in an amount not less than \$1,000,000 or

\$100,000, as the case may be; provided, however, the coverage will be increased to limits reasonably acceptable to LSU and UMCMC if Louisiana law limiting the amount of such Claims is repealed or amended to raise the limits on such Claims.

**Section 9.2 ORM Insurance.**

(a) LSU and DOA shall cause DOA's Office of Risk Management ("ORM") to provide coverage for the Leased Premises against such insurable perils as, under good insurance practice, from time to time are insured for properties of similar character and location, and UMCMC shall reimburse LSU for the cost of such coverage within fifteen (15) days of UMCMC's receipt of ORM's invoice to LSU therefore. In addition to the cost of ORM's invoice, UMCMC shall pay to LSU a \_\_\_% administrative fee computed on the ORM premium amount in order to reimburse LSU for its administrative cost. Both the reimbursement of the ORM premium and the \_\_\_% administrative fee shall be paid directly to LSU separate from any lease payments, and may be placed by LSU in a restricted account to fund the costs administered during the insurance program. Pursuant to the Equipment Lease, such coverage shall not include coverage for the equipment, and UMCMC shall separately insure the equipment in accordance with the provisions of the Equipment Lease.

(b) UMCMC shall be responsible for administering the current ORM required facility safety program ILH shall be responsible for the development of the ORM required safety program in consultation with LSU and ORM for the New Facility. Furthermore, UMCMC shall comply with all ORM requirements and regulations required for LSU to obtain and maintain ORM coverage from ORM on the Interim Facility and on the New Facility.

(c) UMCMC shall be responsible for payment of any deductible equal to \$1,000 plus a percentage of the State's Self Insurance Retention attributable to the facility at risk, said percentage to be determined by ORM.

**Section 9.3 Additional Requirements.**

(a) UMCMC shall obtain commercial insurance coverage or programs of self-insurance in order to comply with the insurance required to be maintained by UMCMC under this Article IX. All insurance policies required of UMCMC in this Article and all renewals of such insurance shall be issued by companies authorized to transact business in the State, and rated at least A- Class VIII by Best's Insurance Reports (property liability) or as approved by LSU. All insurance policies provided by UMCMC shall expressly provide that the policies shall not be canceled or altered without 30 days' prior written notice to LSU; and shall, to the extent obtainable, provide that no act or omission of UMCMC which would otherwise result in forfeiture or reduction of the insurance will affect or limit the obligation of the insurance company to pay the amount of any loss sustained. UMCMC may satisfy its obligation under this Section by appropriate endorsements of its blanket or excess insurance policies.

(b) All policies of insurance UMCMC maintains according to this Lease (other than any policy of worker's compensation insurance) will name LSU and such other LSU related persons or entities as LSU specifies from time to time as additional insureds, and LSU shall also be named as a loss payee on any property damage insurance. Original or copies of original policies (together with copies of the endorsements naming LSU, and any related persons or entities specified by LSU, as additional insureds) and evidence of the payment of all premiums of such policies will be delivered to LSU upon occupancy of the Leased Premises and from time to time at least 30 days prior to the expiration of the term of each policy. All public liability, property damage liability, and casualty policies maintained by UMCMC shall be written as primary policies, not contributing with and not in excess of coverage that LSU may carry, if any.

(c) Any program of self-insurance by UMCMC shall be a commercially reasonable program of self-insurance coupled with an excess insurance coverage complying with this Section 9.3.

**Section 9.4 Condemnation, Casualty and Other Damage.** In the event of risk of loss or decrease in the enjoyment and beneficial use of the Leased Premises due to any damage or destruction thereof by acts of God, fire, flood, natural disaster, the elements, casualties, thefts, riots, civil strife, lockout, war, nuclear explosion, terrorist attack or otherwise (collectively “**Casualty**”); or in consequence of any foreclosures, attachments, levies or executions not arising out of acts of UMCMC, or by the taking of all or any portion of the Leased Premises by condemnation, expropriation, or eminent domain proceedings (collectively, “**Expropriation**”), the Rent shall be reduced equitably until the Leased Premises are restored.

**Section 9.5 Restoration Obligations.** UMCMC shall have no obligation to repair, restore or replace the Interim Facility in the event of a Casualty. If all or any portion of the New Facility is damaged or destroyed by a Casualty after the New Facility Commencement Date, DOA shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair, restoration, or replacement thereof, at DOA’s sole cost and expense, subject to the provisions of Section 9.6 below. DOA may opt to demolish the damaged or destroyed buildings and construct new replacement buildings or other improvements under the procedures described above in Article VI.

**Section 9.6 Application of Insurance Proceeds.** The proceeds of any insurance, and the full amount of any insurance deductible received on account of any damage or destruction of all or any portion of the Leased Premises shall be delivered to DOA and held by DOA in a special interest bearing escrow account to be established upon receipt of any such funds and shall be



made available for, and to the extent necessary be applied to, such repair, restoration and replacement. Any amounts so held by DOA, together with accrued interest thereon, shall be disbursed to pay the costs of restoration, replacement and repair of the Leased Premises with respect to which they are held. In no event shall LSU be responsible for the adequacy of the plans and specifications or construction contract relating to the replacement, restoration, or repair of the Leased Premises, or for any improper use of moneys disbursed under this Section. Any additional funds needed by DOA to accomplish repairs, restoration and replacement shall be paid and provided by UMCMC (to the extent of the funds paid by UMCMC pursuant to Section 9.2(c)) and DOA. Any proceeds remaining on deposit with DOA following completion of the repairs, restoration or replacement of the Leased Premises shall be paid to LSU.

In the event DOA is unable to repair, restore or replace the Leased Premises for any reason, all insurance proceeds received or payable as a result of such Casualty shall be paid to DOA, and shall be retained by DOA for use by LSU, and this Lease shall terminate, subject to the provisions of Section 14.3 hereof and the CEA. If this Lease is not terminated as provided in this Section 9.6, then the Rent shall be equitably abated while the Leased Premises are being replaced, restored or repaired. In the event that the Federal Emergency Management Agency (FEMA) provides funds to the State that are used for the repair, restoration, or replacement of the Leased Premises pursuant to any program under the Stafford Act and such repairs, restoration, or replacement are being or have been used to repair, restore, or replace the Leased Premises, the State shall have discretion to appropriate the funds in any manner not inconsistent with its obligations under the Stafford Act.

**Section 9.7    Compensation Award.** If the entire Leased Premises shall be taken by Expropriation, this Lease shall terminate as of the date of such taking. If any part of the Leased

Premises shall be taken by Expropriation, rendering the remaining portion unsuitable for the business of UMCMC, UMCMC shall have the option to terminate the Lease. If the Lease is not terminated as provided in this Section 9.7, then the Rent shall be abated for the balance of the Term remaining in proportion to the area so taken, unless DOA and LSU, at their sole option, restore the remaining portion of the Leased Premises to a complete architectural unit of substantially like quality and character as existed prior to such taking or conveyance. Notwithstanding anything to the contrary contained herein, both UMCMC and LSU shall share in all compensation awarded or paid upon a total or partial taking of the Leased Premises based upon their respective interests in the Leased Premises, after taking into consideration any Rent abatement. UMCMC shall also have the right to receive and shall be paid a portion of the award to the extent of the unamortized cost of the Improvements, UMCMC leasehold improvements and prepaid Rent under Section 3.6, except to the extent reimbursed pursuant to Section 14.3. UMCMC shall provide all evidence and documentation to support such a claim at its sole cost and expense. If a separate award can be made to UMCMC, UMCMC shall have the right to enter a separate claim against the condemning authority, in which event UMCMC shall not participate in LSU's award. In any event, LSU shall be obligated to make the payments required by Section 14.3 upon termination of this Lease pursuant to this Article IX.

**ARTICLE X.  
HAZARDOUS MATERIALS**

**Section 10.1 Hazardous Materials.**

(a) Subject to the terms of Section 10.1(k) below, UMCMC shall comply with all Laws relating to the use or occupation of the Leased Premises, including, but not limited to the Asbestos Hazardous Emergency Response Act (AHERA, 15 USC § 2641, et seq.).

(b) UMCMC shall not allow, cause or permit any Hazardous Materials (as defined below) to be generated, maintained, processed, produced, manufactured, used, treated, released, stored, or disposed of in or about the Leased Premises by UMCMC or its officers, directors, employees, agents, invitees or sub-lessees, other than those Hazardous Materials usually and customarily generated, maintained, processed, produced, manufactured, used, treated, released, stored or disposed of in a hospital, medical office or clinic, as long as such materials are properly, safely, and lawfully stored and used by UMCMC and the quantity of such materials does not equal or exceed a “reportable quantity” as defined in 40 CFR §§ 302 and 305, and as may be amended, and so long as such Hazardous Materials are generated, maintained, processed, produced, manufactured, used, treated, released, stored or disposed of in compliance with all Laws applicable thereto. In no event shall UMCMC cause or permit the deposit, release, or discharge of any Hazardous Materials to the soil or groundwater of or, in the case of the New Facility, under the Leased Premises.

(c) LSU shall have the right to require that UMCMC engage, at its own expense, a contractor to remediate or dispose of all Hazardous Materials used, stored, generated or disposed of by UMCMC or its agents, contractors or subcontractors in the Leased Premises in accordance with Law. For purposes of this Lease, “**Hazardous Material**” means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, any so-called “**Superfund**” or “**Superlien**” law, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., or any other Law regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as may now or at

any time in the future be in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

(d) UMCMC shall promptly notify LSU in writing, if UMCMC has or acquires notice or actual knowledge that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Leased Premises during the Term except as allowed by Law. UMCMC shall immediately notify LSU, and provide copies upon receipt of, all complaints, claims, citations, demands, inquiries, reports, or notices relating to the condition of the Leased Premises or the failure of the Leased Premises to comply with all Laws during the Term. UMCMC shall promptly deliver to LSU copies of all notices, reports, correspondence and submissions made by UMCMC to the United States Environmental Protection Agency (EPA), the United States Occupational Safety and Health Administration (OSHA), the Louisiana Department of Environmental Quality (DEQ), DHH, or any other Governmental Authority that requires submission of any information concerning environmental matters or hazardous waste or substances pursuant to all Laws.

(e) UMCMC agrees to indemnify, defend (with counsel reasonably acceptable to LSU at UMCMC's sole cost) and hold LSU, its board members, officers and employees harmless from and against all environmental liabilities and costs, liabilities and obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against LSU or any of them in connection with or arising from or out of:

(i) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement of UMCMC contained or referenced in this Article;

(ii) any violation by UMCMC of any Law that is the subject of this Article; or

(iii) any negligence, gross negligence, or intentional acts or omissions by UMCMC relating to the handling, transportation, storage, or use of any Hazardous Materials.

(f) Nothing herein shall require UMCMC to indemnify, defend and hold harmless LSU, its board members, officers or employees for any environmental liability arising from any Hazardous Materials which were present on, in or under the Leased Premises prior to the execution of this Lease.

(g) To the extent authorized by Law, LSU agrees to indemnify, defend (with counsel reasonably acceptable to UMCMC at LSU's sole cost) and hold UMCMC, its board members, officers and employees harmless from and against all environmental liabilities and costs, liabilities and obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against UMCMC or any of them in connection with or arising from or out of:

(i) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement by LSU contained or referenced to in this Article;

(ii) any violation by LSU of any Law that is the subject of this Article;  
or

(iii) any negligence, gross negligence, or intentional acts or omissions by LSU relating to the handling, transportation, storage, or use of any Hazardous Materials.

(h) Nothing herein shall require UMCMC to indemnify, defend and hold harmless DOA, its employees, contractors, or agents for any environmental liability arising from

any Hazardous Materials which were present on, in or under the Leased Premises prior to the execution of this Lease.

(i) To the extent authorized by Law, DOA agrees to indemnify, defend (with counsel reasonably acceptable to UMCMC at DOA's sole cost) and hold UMCMC, its board members, officers and employees harmless from and against all environmental liabilities and costs, liabilities and obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against UMCMC or any of them in connection with or arising from or out of:

(i) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement by DOA contained or referenced to in this Article;

(ii) any violation by DOA of any Law that is the subject of this Article; or

(iii) any negligence, gross negligence, or intentional acts or omissions by DOA relating to the handling, transportation, storage, or use of any Hazardous Materials.

(j) The provisions of this Section will be in addition to any and all obligations and liabilities UMCMC may have to LSU and DOA, or LSU and DOA may have to UMCMC pursuant to other provisions of this Lease, and will survive expiration or earlier termination of this Lease.

(k) Notwithstanding the foregoing provisions of this Section 10.1: (i) UMCMC shall have no obligation to remove or remediate any Hazardous Materials contained in, on or under the Interim Facility and LSU shall be solely responsible therefor upon return of the Interim Facility to it at the expiration of the Interim Term, unless caused by or contributed to by

UMCMC, and (ii) UMCMC's responsibility for Hazardous Materials with respect to the New Facility shall be limited to the time period following the New Facility Commencement Date.

**Article XI.**  
**INDEMNIFICATION**

**Section 11.1 Additional UMCMC Indemnification.** UMCMC shall fully indemnify, defend and hold harmless LSU and its board members, officers, and employees from and against all losses, claims, damages, liabilities, penalties, obligations and expenses, including, without limitation, costs for counsel, when incurred, incidental to, caused by, connected with, relating to, arising out of, or based upon, directly or indirectly, UMCMC's use of, and/or the activities on, the Leased Premises by UMCMC, its board members, officers, and employees. UMCMC shall further indemnify, defend and hold harmless LSU and its respective officers, directors and employees from any and all claims, demands, litigation or governmental action involving the presence or suspected presence of Hazardous Materials on or in the Leased Premises (other than those present on, in or under the Leased Premises prior to the execution of this Lease or on, in or under the New Facility prior to the New Facility Commencement Date) and any violation of any Law, in each case solely to the extent due to the acts of UMCMC, its agents and employees, occurring after the Commencement Date.

All the foregoing indemnification provisions shall apply to Permitted Uses, as well as uses that are not permitted under this Lease.

Notwithstanding any provision to the contrary contained in this Lease, LSU acknowledges that UMCMC's obligation to indemnify and hold LSU harmless under this Article shall not extend to any loss to the extent arising out of the grossly negligent or willful misconduct of LSU or any of its officers or employees for which LSU is vicariously liable.

**Section 11.2 LSU's Indemnification.** To the extent authorized by Law, LSU will indemnify, defend and hold harmless UCMCMC, and its respective officers, directors and employees from and against any claims, liabilities, damages, costs, penalties, forfeitures, losses, obligations or expenses resulting from any injury, loss or damage to persons or property arising out of the grossly negligent or willful misconduct of LSU and its board members, officers and employees.

**Section 11.3 DOA's Indemnification.** To the extent authorized by Law, DOA will indemnify, defend and hold harmless UCMCMC, and its officers, directors and employees from and against any claims, liabilities, damages, costs, penalties, forfeitures, losses, obligations or expenses resulting from any injury, loss or damage to persons or property arising out of the grossly negligent or willful misconduct of DOA, its officers and employees.

**Section 11.4 Defense and Indemnification Procedures.**

(a) Promptly after receipt by a party entitled to indemnity under this Lease (an "**Indemnified Person**") of notice of the assertion of any claim by a third party (a "**Third-Party Claim**"), whether or not involving any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any governmental body or arbitrator (a "**Proceeding**"), such Indemnified Person shall give notice to the party obligated to indemnify pursuant hereto (an "**Indemnifying Person**") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the



defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant hereto of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, no compromise or settlement of such Third-Party Claim may be effected by the Indemnifying Person without the Indemnified Person's written consent unless (A) there is no finding or admission of any violation of a any applicable Law or any violation of the rights of any person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claim effected without its written consent.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification under this Lease, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Lease or any compromise or settlement effected without its written consent (which may not be unreasonably withheld).

(d) With respect to any Third-Party Claim subject to indemnification under this Article: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other person fully informed of the status of such Third-Party Claim and any related Proceeding at all stages thereof where such person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(e) With respect to any Third-Party Claim subject to indemnification under this Article, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all **Confidential Information** as defined in the CEA and the attorney-client and work-product privileges. In connection therewith, each party agrees that, to the extent allowed by law: (i) it will use its commercially reasonable efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the

defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

(f) A claim for indemnification for any matter not involving a **Third-Party Claim** may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

## **ARTICLE XII. TAXES, FEES AND LICENSES**

**Section 12.1 Payment of Taxes.** UMCMC shall collect and pay to the appropriate collecting authorities all federal, state and local taxes and fees, which may not or may hereafter be levied on the Leased Premises, UMCMC Improvements, or the business conducted by UMCMC in the Leased Premises.

**Section 12.2 Licenses.** UMCMC shall maintain in effect all federal, state and local licenses and permits required for the operation of the Hospital in the Leased Premises.

## **ARTICLE XIII. DEFAULT BY UMCMC; TERMINATION; OTHER REMEDIES**

**Section 13.1 Default.** Each of the following shall be an Event of Default by UMCMC (herein "**UMCMC Event of Default**") under the terms of this Lease:

(a) Failure by UMCMC to pay Rent to LSU on the date on which payment is due under this Lease, and this failure shall not be cured within ten (10) days after said Rent is due.

(b) Failure by UMCMC to continually operate, prior to the Transition Period, the Interim Facility and, after the Transition Period, the New Facility as a hospital and for one or more of the Permitted Uses.

(c) UMCMC's use of the Leased Premises for any use that is not one of the Permitted Uses.

(d) Any material representation or warranty made by UMCMC in this Lease shall be false or misleading on the date it was made.

(e) Engaging in, or allowing its employees, contractors, subcontractors, permittees, invitees or agents to engage in unlawful activities in the Leased Premises and failing to take prompt action to stop said illegal activities after obtaining knowledge thereof.

(f) Failure to comply with any order issued by the State Fire Marshal's Office, other state or federal agency, or FPC as the building official within the timeframe mandated by such office, except to the extent UMCMC is appealing such order in any manner permitted by applicable Law.

(g) Failure to obtain and maintain all insurance as required under this Lease (other than that to be provided by ORM pursuant to Section 9.1 hereof), and/or to furnish evidence thereof and/or evidence of payment thereof to LSU and to ORM.

(h) Failure to obtain and maintain any material permits, licenses, or certification required by any federal or state agency or this Lease, if such failure would have a material adverse effect on the operation of the Leased Premises as a hospital.

(i) Failure to maintain the Leased Premises in accordance with this Lease.

(j) A court order for relief in any involuntary case commenced against UMCMC, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, and said order is not vacated within 120 days, or the entry of a decree or order by a court having jurisdiction appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of, or for UMCMC or a substantial part of the properties of UMCMC or order winding up or liquidation of the affairs of UMCMC, and the continuance of any such decree or order unstayed and in effect for 120 consecutive days.

(k) Commencement by UMCMC of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted.

(l) Voluntary dissolution of UMCMC.

(m) Failure to comply with the material terms of this Lease.

**Section 13.2 Termination; Other Remedies.**

(a) Except as otherwise provided herein, LSU may, but shall not be obligated to, terminate this Lease upon the occurrence of any of the following UMCMC Events of Default:

(i) Failure by UMCMC to pay Rent to LSU on the date on which payment is due under this Lease, and this failure shall not be cured within ten (10) days after said Rent is due;

(ii) Failure by UMCMC to continually operate, prior to the Transition Period, the Interim Facility and, after the Transition Period, the New Facility as a hospital and for one or more of the Permitted Uses;

(iii) UMCMC's use of the Leased Premises for any use that is not one of the Permitted Uses;

(iv) A court order for relief in any involuntary case commenced against UMCMC, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, and said order is not vacated within 120 days, or the entry of a decree or order by a court having jurisdiction appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of, or for UMCMC or a substantial part of the properties of UMCMC or order winding up or liquidation of the affairs of UMCMC, and the continuance of any such decree or order unstayed and in effect for 120 consecutive days; or

(v) Commencement by UMCMC of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted;

provided that UMCMC is given, in writing, notice specifying UMCMC's failure and UMCMC fails to correct the alleged failure within thirty (30) Business Days (a "Business Day" being any day except a Saturday, Sunday or other day on which the LSU System Office is closed) following UMCMC's receipt of the notice specifying the failure; or UMCMC fails to correct the alleged failure within such longer period of time as may be reasonably required to cure if

UMCMC begins to cure this failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure:

(b) Notwithstanding the foregoing, in the event this Lease is terminated by LSU, pursuant to this Section 13.2(a) prior to the expiration of the Term, the CEA shall control with respect to the rights of the Parties resulting from such termination.

(c) Except as set forth in Section 13.2(a) above, LSU may, but shall not be obligated to, exercise any remedy provided by applicable Law, other than termination of this Lease, upon the occurrence of a UMCMC Event of Default, provided that UMCMC is given, in writing, notice specifying UMCMC's failure and UMCMC fails to correct the alleged failure within thirty (30) Business Days following UMCMC's receipt of the notice specifying the failure; or UMCMC fails to correct the alleged failure within such longer period of time as may be reasonably required to cure if UMCMC begins to cure this failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

**Section 13.3 Force Majeure.** UMCMC shall not be deemed to be in default or otherwise responsible for delays or failures in performance resulting from events of Force Majeure.

**ARTICLE XIV.  
DEFAULT BY LSU OR DOA; TERMINATION; OTHER REMEDIES**

**Section 14.1 LSU Default.** A default by LSU (herein "**LSU Event of Default**") will occur under this Lease if LSU fails to perform any of its obligations under this Lease, and such failure is not cured within thirty (30) Business Days after LSU's receipt of written notice from UMCMC of this failure; however, no LSU Event of Default will occur if LSU begins to cure this

failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

**Section 14.2 DOA Default.** A default by DOA (herein “**DOA Event of Default**”) will occur under this Lease if DOA or the State fails to perform any of its obligations under this Lease, and such failure is not cured within thirty (30) Business Days after DOA’s receipt of written notice from UMCMC of this failure; however, no DOA Event of Default will occur if DOA begins to cure this failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

**Section 14.3 Termination; Other Remedies.**

(a) Except as otherwise provided herein, UMCMC may, but shall not be obligated to, terminate this Lease upon the occurrence of one or more of the following LSU Events of Default or DOA Events of Default:

(i) Default by LSU and/or DOA of the warranty of peaceful possession to the extent given in Section 2.4, or

(ii) Failure to achieve the New Facilities Commencement Date;

provided that LSU or DOA, as applicable, is given, in writing, notice specifying such failure and LSU or DOA, as applicable, fails to correct the alleged failure within thirty (30) Business Days following its receipt of the notice specifying the failure; or LSU or DOA, as applicable, fails to correct the alleged failure within such longer period of time as may be reasonably required to cure if LSU or DOA, as applicable, begins to cure this failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

(b) Except as otherwise provided Section 14.3(a) above, UMCMC may, but shall not be obligated to, exercise any remedy provided by applicable Law, other than termination of this Lease, upon the occurrence of a LSU Event of Default or a DOA Event of Default, provided that LSU or DOA, as applicable, is given, in writing, notice specifying such failure and LSU or DOA, as applicable, fails to correct the alleged failure within thirty (30) Business Days following its receipt of the notice specifying the failure; or LSU or DOA, as applicable, fails to correct the alleged failure within such longer period of time as may be reasonably required to cure if LSU or DOA, as applicable, begins to cure this failure within thirty (30) Business Days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

(c) Notwithstanding the foregoing, in the event this Lease is terminated prior to the expiration of the Term solely for a LSU Event of Default and/or a DOA Event of Default as set forth in Section 14.3(a) above, the CEA shall control with respect to the rights of the Parties resulting from such termination.

**Section 14.4 Force Majeure.** Neither LSU nor DOA shall be deemed to be in default or otherwise responsible for delays or failures in performance resulting from an event of Force Majeure.

#### **ARTICLE XV. NOTICES**

Any and all notices required or appropriate under this Lease shall be in writing and shall be sent by (a) personal delivery; (b) recognized overnight delivery service with proof of delivery; or (c) registered or certified United States mail, postage prepared, receipt requested, to the following addresses:

**LSU:**

**UMCMC:**



Board of Supervisors of Louisiana State  
University and Agricultural and  
Mechanical College  
3810 West Lakeshore Drive  
Baton Rouge, Louisiana 70808  
Attn: President of LSU System

**With a copy to:**

LSU System Office  
3810 West Lakeshore Drive  
Baton Rouge, Louisiana 70808  
Attn: Vice President of Health Affairs

**With a copy to:**

Taylor, Porter, Brooks & Phillips, L.L.P.  
Attn: LSU Health Care Partner  
451 Florida St., 8<sup>th</sup> Floor  
Baton Rouge, Louisiana 70801

Louisiana Children's Medical Center  
200 Henry Clay Avenue  
New Orleans, Louisiana 70118  
Attn: Steve Worley  
Ricardo Guevara

**With a copy to:**

Louisiana Children's Medical Center  
200 Henry Clay Avenue  
New Orleans, Louisiana 70118  
Attn: General Counsel

**With a copy to:**

Foley & Lardner LLP  
Attn: Mark Waxman  
111 Huntington Avenue  
Suite 2500  
Boston, Massachusetts 02199

**With a copy to:**

Kantrow, Spaht, Weaver & Blitzer  
(APLC)  
Attn: Lee C. Kantrow, Esq.  
445 North Blvd., Ste. 300  
Baton Rouge, Louisiana 70802

**DOA:**

Division of Administration  
Commissioner of Administration  
Office of Facility Planning and Control  
Division of Administration  
Claiborne Building  
1201 North Third Street  
Baton Rouge, Louisiana 70801

Any such notice or communication shall be deemed to have been given either at the time of personal delivery, subject to verification of service or acknowledgement of receipt, one (1) Business Day after deposit with a nationally recognized overnight delivery service, or three (3) days after mailing via United States Certified Mail, return receipt requested.

Each party shall immediately inform all other parties, in writing and in accordance with this Section, of any changes in personnel or address for the purpose of sending required notices.

**ARTICLE XVI.  
MISCELLANEOUS**

**Section 16.1 LSU's Right to Enter Property.** LSU reserves the right to enter the Leased Premises at any time to inspect the property, as long as LSU's inspection does not unreasonably interfere with the operation of UMCMC business or violate any privacy or confidentiality obligations owed by UMCMC to its patients or other persons. LSU shall provide UMCMC with reasonable advance notice of its intent to inspect the Leased Premises, unless notice is impossible or impractical. UMCMC shall have the right to have a representative accompany LSU during such entry and inspection. UMCMC shall not deny LSU reasonable access to the Leased Premises as permitted hereby.

**Section 16.2 Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties. It is understood and agreed that no provision contained herein nor any actions of the parties hereto creates a relationship other than the relationship between LSU and UMCMC as lessor and lessee and as described in the CEA. In no event shall the officers, directors, employees or agents of UMCMC or its affiliates be liable personally for any of the obligations of UMCMC hereunder.

**Section 16.3 Waiver.** The parties agree that a party's failure to insist on strict performance of any term or condition of this Lease shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the non-conforming performance knows of the nature of the performance and fails to object to it. No waiver or breach shall affect or alter this Lease but each of the terms of this Lease shall continue in full force and effect with respect to

any other then existing or subsequent breach thereof. No waiver of any default hereunder by a party shall be implied from any omission by such party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

**Section 16.4 Severability and Reformation.** . If any term, provision, covenant or condition of this Lease is held unenforceable or invalid for any reason and not susceptible to reformation due to a change in applicable Law or regulation, the remaining portions or provisions shall continue in full force and effect, unless the effect of such severance would be to substantially alter the Lease or obligations of the parties, in which case the Lease may be immediately terminated.

**Section 16.5 Recordation of Lease.** UMCMC may, at its election, record an extract of this Lease in the Office of the Parish Recorder of the Parish of Orleans. The Extract of Lease agreement shall be in a form approved by LSU, which approval shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed. UMCMC shall provide LSU and DOA with a certified copy of the recorded Extract of Lease. Recordation of the Extract of Lease shall be at UMCMC expense.

**Section 16.6 Successors and Assigns.** This Lease shall be binding on and will inure to the benefit of the parties to this Lease and their respective successors and assigns, provided any such assignment was made in a manner consistent with the terms of this Lease.

**Section 16.7 Counterparts.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together will constitute only one

agreement. For purposes hereof, facsimile and electronically scanned pdf copies hereof and facsimile and electronically scanned pdf signatures hereof shall be authorized and deemed effective.

**Section 16.8 Entire Agreement.** This Lease, which includes the Recitals and the Exhibits attached hereto, all of which are incorporated herein and made a part hereof, constitutes the entire agreement of the parties with respect to the subject matter hereof, and all terms and conditions agreed upon among the parties with respect to the subject matter hereof are contained herein. No verbal commitments, except those reduced to writing in this Lease, have any binding effect. Any amendments to this Lease must be reduced to writing and signed by all parties.

**Section 16.9 Choice of Law.** This Lease shall be construed under and in accordance with the Laws of the State of Louisiana, and, in the event of a court proceeding, any such proceeding shall be filed in the Louisiana Nineteenth Judicial District Court.

**Section 16.10 Authorized Representatives of the Parties.** In any instance in which the approval or consent of a party is required, it shall be given on behalf of LSU by the President of the LSU System or his successor or designee, on behalf of UMCMC by \_\_\_\_\_, and on behalf of DOA by the Commissioner of Administration. Except as otherwise specifically set forth in this Lease, any required consent from any party hereto shall not be unreasonably conditioned, unreasonably delayed or unreasonably withheld.

**Section 16.11 Waiver of Lessor's Lien and Privilege.** In the event UMCMC requests that LSU waive or subordinate its lessor's lien and privilege under Louisiana law, LSU shall not unreasonably withhold, unreasonably condition or unreasonably delay its consent to such request. Any failure of LSU to respond within thirty (30) days of receipt of such a written request shall be deemed consent.

**Section 16.12 Force Majeure.** For purposes of this Lease, the term “**Force Majeure**” shall include strike, lockout, earthquake, hurricane, flood, fire, or other acts of God or nature, war, rebellion, terror, civil disorders, laws, regulations, acts of civil or military authorities (including the denial or cancellation of any export or other necessary license), unavailability of materials, carriers or communications facilities, and any other causes beyond the reasonable control of the party whose performance is affected. The parties shall use all reasonable efforts to minimize the consequences of Force Majeure.

**Section 16.13 Right to Purchase Equipment and Inventory Upon Termination.** LSU shall have the right to purchase UMCMC’s then-owned equipment and inventory used in the Leased Premises upon termination of this Lease at fair market value as reasonably agreed upon by the parties. In the event LSU elects to exercise such option, LSU shall give UMCMC notice of such election not less than sixty (60) days prior to the termination date of the **Wind Down Period** (as defined in the CEA). Failure of LSU to timely provide such notice, the parties to agree upon the fair market value, or LSU to pay the agreed upon fair market value prior to the termination of the Lease, shall be deemed a waiver of the right to purchase and UMCMC may remove the same. This right to purchase shall not be applicable to any equipment, inventory or other movables subject to security interests now or hereafter granted by UMCMC. Upon termination of this Lease and the waiver of the right to purchase, UMCMC shall have the right to remove all equipment and other movables owned or leased by it (other than equipment and inventory leased by LSU to UMCMC) so long as the removal occurs within thirty (30) days of termination of this Lease.

**Section 16.14 Survival.** The provisions of Sections 2.4(a), 6.1(b), 6.2(a), 6.2(b), 13.2, 14.3, 16.13 and 16.16 and of Articles X and XI shall survive termination of this Lease and shall

continue until the obligations of DOA, LSU and UMCMC thereunder, as the case may be, are fully performed.

**Section 16.15 Estoppel Certificate.** Each of UMCMC, LSU and DOA shall at any time and from time to time, upon not less than fifteen (15) days' prior written request by any party hereto, execute, acknowledge and deliver to such other party, its respective mortgagee, purchaser, or any other third party designated by such party, to the extent factually accurate, a statement in writing in the form of **Exhibit "D"** attached hereto and made a part hereof. Each of UMCMC and LSU further agrees to certify to any prospective purchaser or mortgagee any other reasonable information specifically requested by such prospective purchaser or mortgagee.

**Section 16.16 Funding Requirement.** Notwithstanding anything to the contrary contained in this Lease, all State, Division and LSU obligations under this Lease to make payments of any kind in a future year, shall be subject to appropriation by the Louisiana Legislature of sufficient funds therefor and the availability of funds following Legislative appropriation; provided, however, and notwithstanding anything to the contrary contained herein or in the CEA, any and all obligations of any party pursuant to this Lease to refund prepaid Rent to UMCMC or to refund the unamortized cost of Improvements to UMCMC shall be subject to, and contingent upon, appropriation by the Louisiana Legislature of sufficient funds specifically and expressly appropriated for refunding of such sums to UMCMC (the "UMCMC Appropriation"), and any such obligation by any obligor is limited only to the portion of said UMCMC Appropriation which said obligor receives. In the event that UMCMC is due a refund of prepaid Rent, or the unamortized cost of Improvements, pursuant to the provisions of this Lease, the State, the Division and LSU agree to make good faith best efforts to seek specific appropriation for such refund by the Louisiana Legislature each year until paid in full, and the

Division and/or LSU shall include in one or more of their annual budget requests, a request for the appropriation of funds for the purpose of making such refund of prepaid Rent or the unamortized cost of Improvements to UMCMC pursuant to this Lease. UMCMC may pursue all legal remedies available under applicable laws to enforce the obligations of LSU and DOA hereunder. Furthermore, the obligations of UMCMC are not subject to appropriation by the Louisiana Legislature of sufficient funds therefor.

**Section 16.17 New Facility Equipment.** Certain equipment owned by LSU shall be installed in or constitute a part of the New Facility as part of the construction budget for the New Facility (the “New Facility Equipment”). UMCMC and LSU shall amend the Equipment Lease before the New Facility Commencement Date to add the New Facility Equipment thereto.

**ARTICLE XVII.  
INTERVENTION**

NOW HEREIN ENTERS LCMC to individually and in solido with UMCMC guarantee the full and timely payment and performance of all of UMCMC’s obligations under this Lease. Upon its withdrawal as sole member of UMCMC pursuant to the Member Substitution Agreement, LCMC’s guarantee under this intervention for obligations of UMCMC accruing thereafter shall terminate.

[The Remainder of this Page is Intentionally Left Blank;  
Signatures are on the Following Page.]

[Signature Page for Master Hospital Lease]

This Master Hospital Lease, by and between Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, University Medical Center Management Corporation, and the State of Louisiana, through the Division of Administration, is executed in multiple originals.

**IN WITNESS WHEREOF**, the parties hereto have signed their names on effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013, in the presence of the undersigned competent witnesses:

**WITNESSES:**

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. William L. Jenkins, Interim President  
Louisiana State University System

Printed Name: \_\_\_\_\_

**WITNESSES:**

**UNIVERSITY MEDICAL CENTER  
MANAGEMENT CORPORATION**

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**WITNESSES:**

**STATE OF LOUISIANA, THROUGH THE  
DIVISION OF ADMINISTRATION**

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kristy Nichols, Commissioner

Printed Name: \_\_\_\_\_



[Signature Page for Master Hospital Lease]

**IN WITNESS WHEREOF**, the parties hereto have signed their names on this \_\_\_\_ day  
of \_\_\_\_\_, 2013, in the presence of the undersigned competent witnesses:

**WITNESSES:**

**INTERVENOR/GUARANTOR**

**LOUISIANA CHILDREN'S MEDICAL  
CENTER**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Worley, President and Chief Executive  
Officer

DRAFT

**EXHIBIT "A"**  
**LEASED PREMISES –INTERIM FACILITY**

DRAFT

**EXHIBIT "B"**  
**LEASED PREMISES – NEW FACILITY**

The New Facility consists of the following buildings: the “**In Patient Towers**”, the “**Diagnostic & Treatment Building**”, the “**Utility Building**”, the “**Ambulatory Care Building**” and the “**Garage**”, all as shown on the attached **Exhibit "B-1"**, which buildings are or will be located on portions of the following described immovable property:

Blocks 433 through 438, 466 through 471, and 520 through 522 (the “**BLOCKS**”), of the City of New Orleans, located in Township 12 South, Range 11 East, Orleans Parish, Louisiana, as shown on **Exhibit "B-2"**, generally bounded on its northerly side by Canal Street, on its southerly side by Tulane Avenue, on its westerly side by S. Galvez Street, and on its easterly side by S. Claiborne Avenue, and any and all rights LSU and/or the State may have over portions of Cleveland Avenue, Palmyra Avenue, Banks Street, S. Derbigny Street, S. Roman Street, S. Prieur Street, and S. Johnson Street; located between the above **BLOCKS**; LESS AND EXCEPT any property located in Block 468 owned by Cox Communications and LESS AND EXCEPT S. Derbigny Street and Cleveland Avenue adjacent to Block 435.

It is agreed that neither LSU nor the State warrants title to the above immovable property.

**It is further expressly agreed and acknowledged that UMCMC is leasing only the New Facility (the buildings) and is not leasing any of the land under and/or adjacent to the New Facility.**

**APPROVED:**

**STATE OF LOUISIANA, THROUGH  
THE DIVISION OF ADMINISTRATION**

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

By: \_\_\_\_\_  
Kristy Nichols, Commissioner

By: \_\_\_\_\_  
Dr. William L. Jenkins, Interim President  
Louisiana State University System

**UNIVERSITY MEDICAL CENTER  
MANAGEMENT CORPORATION**

By: \_\_\_\_\_

**EXHIBIT "B-1"**  
**[INSERT SITE PLAN SHOWING LOCATION**

**OF IN PATIENT TOWERS, DIAGNOSTIC & TREATMENT BUILDING, THE  
UTILITY BUILDING, THE AMBULATORY CARE BUILDING AND THE GARAGE]**

DRAFT

**EXHIBIT "B-2"**  
**[INSERT MAP OF BLOCKS (BLOCKS 433 THROUGH 438, 466 THROUGH 471, AND  
520 THROUGH 522)]**

DRAFT

**EXHIBIT "C"**  
**SERVICE STANDARDS, BUILDING**

DRAFT

**EXHIBIT "D"  
FORM OF ESTOPPEL CERTIFICATE**

DRAFT

Approval of the Cooperative Endeavor Agreement among University Hospital and Clinics, Inc., Lafayette General Health System, Inc., the LSU Board of Supervisors, and others relating to the operation of University Medical Center in Lafayette, Louisiana

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College that William L. Jenkins, Interim President of the Louisiana State University System, or his designee, is authorized on behalf of and in the name of the LSU Board of Supervisors to execute the Cooperative Endeavor Agreement, by and among University Hospital and Clinics, Inc., Lafayette General Health System, Inc., Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, State of Louisiana through the Division of Administration, and the Louisiana Department of Health and Hospitals, substantially in the form attached hereto.

**BE IT FURTHER RESOLVED** that William L. Jenkins, Interim President of the LSU System, or his designee, is hereby authorized by and empowered for and on behalf of and in the name of the LSU Board of Supervisors, in consultation with its legal counsel, to modify and execute said Cooperative Endeavor Agreement and any related documents necessary or desirable to accomplish and implement the purposes of the Cooperative Endeavor Agreement that he deems in the best interest of the Board of Supervisors, including, but not limited to, immovable property leases and subleases, equipment leases and sales of various movable property, all such related documents to be in such form and content and for such price and/or consideration as he, in his sole discretion, deems appropriate, and to also authorize William L Jenkins, Interim President of the LSU System to execute all such leases, subleases, equipment leases and sales of various movable property and all other related documents.

**(Copy of Cooperative Endeavor Agreement on file in the Office of the LSU Board of Supervisors)**



**EXECUTIVE SUMMARY**  
**COOPERATIVE ENDEAVOR AGREEMENT**  
**UNIVERSITY MEDICAL CENTER - LAFAYETTE**

1. The Parties. The Cooperative Endeavor Agreement (“CEA”) regarding University Medical Center in Lafayette is being entered into by and between: (1) the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College (“LSU”), (2) Lafayette General Health System, Inc., a Louisiana nonprofit corporation (“LGHS”), (3) University Hospital and Clinics, Inc., a Louisiana nonprofit corporation (“UHC”), (4) the State of Louisiana through the Division of Administration (the “DOA”), and (5) the State of Louisiana through the Department of Health and Hospitals (“DHH”). LGHS currently operates Lafayette General Medical Center and will be the sole member of the newly-created UHC.

2. The Contemplated Transactions. The parties will enter into a series of transactions in which (i) LSU will lease the University Medical Center in Lafayette, Louisiana, together with all furniture, fixtures and equipment used in connection with hospital operations, to UHC, (2) UHC will assume responsibility for operating the hospital in accordance with and subject to the terms and conditions of the CEA, (3) UHC will purchase from LSU the consumable inventory necessary for the continued operations of the hospital; (iv) UHC and LGHS will commit to supporting LSU’s academic, clinical and research missions.

3. Support of the Public Purpose. Pursuant to the CEA, UHC and LGHS commit to upholding the public purpose obligations imposed on LSU by (1) fulfilling the State’s historical mission of assuring access to safety net services to all citizens of the State, including its medically indigent, high risk Medicaid and Louisiana indigent populations, (2) focusing on and supporting the core services and key service lines necessary to assure high quality medical education training and access to safety net services, and (3) serving as a site for graduate medical education, capable of competing in the health care marketplace. Additionally, UHC and LGHS contractually agree that they cannot close the hospital or its emergency room or reduce services offered by the hospital below certain minimums without Legislative approval, as required by La. R.S. 17:1519.3.

4. The Term. The initial term is ten years and renews automatically in one-year increments. The renewal terms are structured such that if either part ever desires to stop renewing, there will be at least a five-year window left on the term to allow the parties an orderly transition of hospital services back to LSU.

5. Funding. UHC/LGHS will lease the hospital facility, a related clinic site, and all furnishings, fixtures, and equipment from LSU pursuant to a Lease. The rental amounts will be set in accordance with appraisals acceptable to the parties. Approximate rental amounts will be provided to the Board at its meeting on April 17, 2013.

6. Attachments.

Cooperative Endeavor Agreement

Lease Agreement

**COOPERATIVE ENDEAVOR AGREEMENT**

**BY AND AMONG**

**UNIVERSITY HOSPITAL AND CLINICS, INC.;**

**LAFAYETTE GENERAL HEALTH SYSTEM, INC.;**

**BOARD OF SUPERVISORS OF  
LOUISIANA STATE UNIVERSITY  
AND AGRICULTURAL AND MECHANICAL COLLEGE;**

**THE STATE OF LOUISIANA  
THROUGH THE DIVISION OF ADMINISTRATION;  
AND**

**THE LOUISIANA DEPARTMENT OF HEALTH & HOSPITALS.**

**DATED \_\_\_\_\_, 2013**

## COOPERATIVE ENDEAVOR AGREEMENT

**THIS COOPERATIVE ENDEAVOR AGREEMENT** ("CEA" or "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date"), by and among Lafayette General Health System, Inc., a Louisiana nonprofit corporation ("LGHS"), University Hospital and Clinics, Inc., a Louisiana nonprofit corporation ("UHC"), Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU"), and State of Louisiana, Division of Administration (the "DOA"). The LOUISIANA DEPARTMENT OF HEALTH & HOSPITALS ("DHH") joins in execution of this Agreement solely for purposes of consenting and agreeing to the terms set forth in Sections \_\_\_\_\_. LGHS, UHC, LSU, DOA, and DHH are referred to together as the "Parties," and each, a "Party." Capitalized terms shall have the meanings set forth on Appendix 1.

### RECITALS

WHEREAS, the State of Louisiana (the "State"), through public and private educational institutions, facilities and health providers, have long endeavored to create and maintain a system of medical education and training of the highest quality while also providing the highest quality of health care services to all citizens of the State;

WHEREAS, it is a collective goal of the Parties to enhance the stability and competitiveness of Louisiana's medical education and training programs so that Louisiana is positioned to continue to attract the most talented faculty, students, residents and other medical professionals;

WHEREAS, a highly competitive academic and training environment furthers the additional goal of the Parties to leverage the research capabilities of Louisiana's public and private educational institutions, facilities and health providers;

WHEREAS, sustainable partnerships among health providers and LSU are necessary to optimize the medical training resources available in Louisiana and to ensure that sufficient numbers of qualified health care professionals exist to address the current and future healthcare needs of the State;

WHEREAS, Louisiana has traditionally relied on a state-wide public hospital system, most recently owned and operated by LSU pursuant to constitutional and statutory authority, to (i) provide health care to the State's uninsured and high-risk Medicaid populations, as well as prisoner care, and (ii) serve as the primary training sites for LSU's medical education programs;

WHEREAS, the state-wide public hospital system is financially unsustainable, compromising LSU's and the State's ability to provide medical education opportunities, a full range of clinical services to all Louisiana citizens, including the uninsured and Medicaid high-risk populations, and promote clinical research and other advances in health care;

WHEREAS, Louisiana's health care reform effort has focused on ways to remodel the delivery of care through partnerships and cooperative efforts between the public and private sectors;

WHEREAS, LSU owns the hospital building and related facilities (the "Facility") in which LSU operates the hospital known as University Medical Center in Lafayette, Louisiana, having a Medicare Provider Number 190006 (the "Hospital");

WHEREAS, the mission of the Hospital is to serve the community, the State and the region, and its public and private academic institutions, as a site for graduate medical education

to enrich the State's health care workforce, committed to the State's historical mission of providing care to the State's vulnerable populations, in which all Parties are aligned in their focus on key clinical service lines as the means to provide the patient-centered, data-driven, evidence-based health care required for a sustainable business model in the 21st century as the State and country undergo health care reform;

WHEREAS, LGHS has extensive experience in nonprofit hospital operations and finances, ongoing academic relationships with LSU, and is committed to the charitable clinical, teaching and research missions in the communities it serves;

WHEREAS, LGHS is the sole member of UHC and is committed to capitalizing and funding UHC's operations as provided in this Agreement;

WHEREAS, to maintain the viability of Hospital operations, its current range of patient care services and programs, and protect and enhance the Hospital's vital role in the community, the Parties desire to immediately bring LGHS's financial, operational and relationship and other expertise and resources to the Hospital for the mutual benefit of the State and LSU by entering into a series of transactions in which (i) UHC will assume responsibility for Hospital operations in accordance with and subject to the terms and conditions of this CEA, (ii) LSU will lease UHC the Facility and all furniture, fixtures and equipment used in connection with Hospital operations to UHC; (iii) UHC will purchase consumable inventory necessary for the continued operations of the Hospital; (iv) UHC and LGHS will commit to supporting LSU's academic, clinical and research missions in accordance with this CEA (collectively, the "Contemplated Transactions");

WHEREAS, among other things, this CEA and the Contemplated Transactions will afford LGHS and its Affiliates the opportunity to extend their management abilities and mission to additional hospital facilities serving the Lafayette, Evangeline, Acadia, St. Landry, Jefferson

Davis, Vermilion, Iberia, St. Mary, and St. Martin Parishes (collectively, the "Greater Acadiana Region"), access and support a robust clinic infrastructure, create innovative health care delivery systems (such as accountable care organizations), and facilitate greater clinical integration across a broader base of providers in the Greater Acadiana Region, all of which will serve to expand and diversify the LGHS system to better serve its patient population and the patient population of the Greater Acadiana Region;

WHEREAS, among other things, this CEA and the Contemplated Transactions will: (i) stabilize and enhance the medical education and training experiences and opportunities available to LSU students and residents, as well as students and residents of other educational institutions; (ii) optimize the training resources to build Louisiana's health care workforce and further the health care enterprise in the State; (iii) based on available and reasonable means of financing, provide better access to a full range of clinical care services to the uninsured and high risk Medicaid populations; (iv) attract private and publicly financed third party payments in order to compete in the health care marketplace; and (v) promote better health care for Louisiana citizens through an evidence-based, outcomes driven integrated delivery system focused on high quality, cost-effective health care;

WHEREAS, LGHS is willing and desires to provide, either directly or through its Affiliate, UHC or other Affiliates, the financial resources, operational expertise, and other necessary resources and to take steps to ensure that the Hospital continues to: (i) serve as a safety-net hospital, and play a central role in providing healthcare services to the uninsured and high-risk Medicaid populations; (ii) provide Louisiana, whether through UHC or another LGHS Affiliate, services that might not otherwise be available in the community; (iii) preserve the quality of medical education in Louisiana through medical training partnerships and academic

affiliations with LSU; and (iv) prevent the major reductions currently contemplated for the Hospital and their devastating effects on LSU's academic programs in the health sciences and patient access to clinical care;

WHEREAS, Hospital is a Major Teaching Hospital in the State of Louisiana, housing at least \_\_\_\_\_ ( ) graduate medical education positions (also referred to herein as "Residency Positions"), and is currently the primary site at which LSU provides medical care to patients in the Greater Acadiana Region as required by Louisiana law;

WHEREAS, CMS provides, pursuant to the rules at 42 C.F.R. §§ 413.75 - 413.79 and 42 C.F.R. § 412.105, for direct graduate medical education ("DGME") payments and indirect medical education ("IME") reimbursement, to compensate Hospital for certain costs associated with the Residency Positions at Hospital;

WHEREAS, those DGME and IME payment rules establish "caps" on the number of residency positions that are reimbursable but allow the caps (the "Residency Caps") to be shared among and/or affiliated to other hospitals under certain circumstances;

WHEREAS, in order for LSU to continue to effectively provide the LSU GME Programs, LSU desires to transfer certain Residency Caps to UHC and/or its affiliate, Lafayette General Medical Center ("LGMC");

WHEREAS, the Parties recognize that UHC's ownership of the operations and management of the Hospital will include the commitment and the assumption of significant financial and operational investments by UHC and its Affiliates, and UHC and its Affiliates desire to assure sustainable reimbursement levels commensurate with such investments;

WHEREAS, it will be necessary for the Hospital to be operated in a manner consistent with the best practices of private, non-profit institutions, and it must function responsibly as an independent entity;

WHEREAS, the Parties recognize the importance of and desire to ensure the continued provision of charitable care at the Hospital to the extent it is funded by DHH or otherwise required by law;

WHEREAS, the State, through DOA and DHH, will exercise best efforts to fund the cost of the services provided to the uninsured, subject to funding by the State Legislature, which they will take reasonable steps to obtain;

WHEREAS, the Louisiana Constitution in Article VII, Section 14(C) permits the State and its political subdivisions or political corporations to engage in cooperative endeavors with any public or private association, corporation or individual;

WHEREAS, the Parties desire to enter into this CEA, as well as related agreements, to facilitate and advance the goals recited herein;

WHEREAS, in addition to this CEA and the Exhibits hereto, LSU and UHC will enter into a Master Collaborative Agreement to address ancillary matters related to the Contemplated Transactions (the "MCA");

WHEREAS, the Parties recognize this CEA shall be subject to presentation and review by, and any required approval of, the Louisiana Legislature's Joint Legislative Committee on the Budget in accordance with law;

WHEREAS, the Parties intend the Contemplated Transactions will reduce the need for State General Funds expenditures below those previously contemplated;



NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I.**  
**STATEMENT OF PUBLIC PURPOSE**

Section 1.1 Public Purpose. In accordance with Article 7, Section 14(c) of the Constitution of the State of Louisiana, the Parties enter into this Cooperative Endeavor Agreement for the public purpose of creating an integrated health care delivery system in which the Parties continuously work in collaboration and are committed and aligned in their actions and activities, in accordance with a sustainable business model, to serve the State and its citizens: (i) as a site for graduate medical education, capable of competing in the health care marketplace, with the goal of enriching the State's health care workforce and their training experience; (ii) in fulfilling the State's historical mission of assuring access to Safety Net Services to all citizens of the State, including its Medically Indigent, high risk Medicaid and prisoner populations, and (iii) by focusing on and supporting the Core Services and Key Service Lines necessary to assure high quality medical education training and access to Safety Net Services.

Section 1.2 Monitoring. LSU shall designate an individual (the "Contract Monitor") to be responsible for monitoring compliance with this Agreement in accordance with Executive Order BJ 08-29. The Contract Monitor shall implement a plan that includes regular data collection, review, and reporting, consistent with the terms of this Agreement which will provide for accountability to the public purpose as set forth in this Article I. The Contract Monitor shall regularly report such findings to the LSU Vice President for Health Care.

**ARTICLE II.**  
**MEDICAL EDUCATION AND RESEARCH SUPPORT**

Section 2.1 Academic Affiliation with LSU. Recognizing the special character of a teaching hospital, including the vital role the Hospital plays in medical education, research and patient care, and the vital role LSU plays and will play in the Hospital's viability, and the interdependence between the Hospital and LSU, UHC and LSU will enter into an Academic Affiliation Agreement ("AAA") that sets forth the terms and conditions upon which UHC and LSU specifically agree and will collaborate to strengthen LSU, the Hospital and their respective programs. The AAA will provide that (i) LSU maintains ultimate authority over its academic programs, policies and procedures as they directly relate to the LSU faculty, residents and students, and (ii) UHC maintains ultimate authority over the business, management, policies, operations and assets of the Hospital.

(a) Academic Autonomy. Subject to the terms of the AAA, LSU will retain discretion to determine how to develop and where to place its research and education programs, including their clinical components. The LSU Board, administration and various academic deans will retain authority over educational policy, curriculum design, educational program leadership, research policy, academic appointments and all other academic policy matters. The AAA shall not impinge on LSU's academic integrity and independence; provided, however, that the AAA shall provide that UHC, LGHS, or LGMC, as applicable, reserve the right to require LSU to withdraw or remove LSU faculty or students from the Hospital or LGMC if, in the reasonable determination of UHC, LGHS, or LGMC, as applicable, the LSU faculty or student: (i) fails to act in a professional manner; (ii) displays conduct that is disruptive, unprofessional, or harassing, including, but not limited to, conduct which is sexual in content or orientation; (iii)

practices in a manner that interferes with the orderly and efficient rendering of services by UHC or LGMC or by other practitioners of UHC or LGMC; (iv) fails to work cooperatively with others at UHC or LGMC; (v) fails to conform to the applicable policies, guidelines and regulations of UHC or LGMC; or (vi) any other events set forth in the AAA.

(b) Research Support. The AAA will address a method for determining Hospital support for LSU's research activities, including, without limitation, infrastructure support for funded research grants, access to data, Institutional Review Board (IRB) support, and, potentially, upon agreement of UHC or LGMC, Hospital funding of LSU faculty research.

(c) Intellectual Property. The AAA will include provisions to address the ownership and use of intellectual property between UHC and LSU.

(d) Residency Positions. LSU shall take such actions necessary to dedicate a minimum of 87.45 full time equivalent residency positions (the "Collaborative Residency Positions") to be affiliated with UHC or LGMC and will allocate not less than 67.13 full-time equivalent Residency Caps with such Collaborative Residency Positions. From the pool of Collaborative Residency Positions and Residency Caps affiliated to UHC or LGMC as set forth in the preceding sentence, LSU shall assign a sufficient number of Collaborative Residency Positions to LGMC in the LSU GME Programs identified on Schedule 2.1 to enable LGMC to achieve and maintain status as a Major Teaching Hospital and a corresponding number of Residency Caps shall be allocated to LGMC. LSU shall take the actions necessary to cause the Residency Caps associated with the Collaborative Residency Positions to be assigned or transferred, as applicable, to UHC

and/or LGMC such that UHC and/or LGMC, as applicable, will be entitled to Medicare DGME and IME payments for such Collaborative Residency Positions, as more specifically agreed upon in the AAA. The Parties will use their best efforts to collaboratively develop and grow the LSU GME Programs to result in nationally recognized GME Programs and a center of excellence for clinical education of residents and fellows. Subject to the other terms and conditions of this Agreement, LSU will transfer or assign the Residency Caps and Collaborative Residency Positions to UHC and/or LGMC no later than the GME Program Start Date.

### **ARTICLE III.** **COMMITMENTS TO PATIENT CARE**

Section 3.1 Care for the Medically Indigent and Uninsured. Recognizing (i) the State's historical commitment to providing free or reduced cost health care to the uninsured and Medically Indigent populations, and (ii) LSU's mission of providing access to high quality medical care for all patients, including the Medically Indigent and uninsured populations, within available financing and approved budgets, and (iii) the need to support LSU's education and training mission, UHC agrees, subject to its receipt of the Required Funding as provided in Article VII, to provide free or reduced cost health care to Medically Indigent and uninsured patients of the Hospital in accordance with UHC's Charity Care Policy attached as Exhibit 3.1. The UHC Charity Care Policy is consistent in all material respects with LSU Policy Number 2525-11, the current policy for determining eligibility for free or reduced cost health care services at the Hospital, and shall not be amended without the mutual agreement of the Parties.

Section 3.2 Care for High-Risk Medicaid Patients. Recognizing LSU's traditional role as a high-volume provider of health care services to patients covered by Medicaid, particularly medically complex and otherwise high-risk Medicaid patients, UHC and LSU will assure that the

Core Safety Net Services and Key Services Lines as described in this Article III are available to high-risk Medicaid patients in accordance with the terms of this CEA.

Section 3.3 Department of Corrections. Subject to its receipt of Required Funding as provided in Article VII, UHC and LSU will provide inpatient and outpatient hospital services and professional services to patients in the custody of the Louisiana Department of Corrections ("DOC") and housed within the Greater Acadiana Region. To the extent such services are needed and which require funding above and beyond that provided for in Article VII, UHC will not be required to provide prisoner health care services except to the extent provided in an agreement between UHC and DOC. UHC will use commercially reasonable efforts to provide that telemedicine capability is available to LSU in accordance with Section 3.6 for use in providing cost-effective care to DOC patients.

Section 3.4 Core Safety Net Services. The Parties acknowledge and agree that the services identified on Exhibit 3.4 are core safety net services ("Core Safety Net Services") currently being provided to the Greater Acadiana Region and the region through the Hospital, and that UHC will continue to provide the Core Safety Net Services through the Hospital on and after the Commencement Date, subject to the terms of this CEA, including receipt of the Required Funding. Except for reasons of (i) UHC's inability to reasonably obtain qualified professional staff through LSU or other resources, or (ii) a lack of Required Funding, UHC will not unilaterally discontinue any Core Safety Net Service currently provided at or through the Hospital. Notwithstanding the foregoing, the Core Safety Net Services, and Exhibit 3.4, may be amended in the future to add or delete a Core Safety Net Service by mutual agreement of LSU and UHC based on community need, patient access, cost, available resources and other relevant considerations.

Section 3.5 Key Service Lines. The parties acknowledge and agree that the clinical service lines identified on Exhibit 3.5 ("Key Service Lines") are critical not only to comprehensive patient care, but also to the Hospital's mission of providing robust medical education and clinical research experiences. LSU and UHC agree that, subject to UHC's receipt of the Required Funding, the Hospital will offer a baseline of services in the Key Service Lines at least at the level and scope provided at the Facility on the Effective Date as agreed upon by UHC and LSU ("Key Service Baseline"), and UHC will work collaboratively with LSU to grow the Key Service Lines above the Key Service Baseline, provided there is funding and/or a financially sustainable payer mix sufficient to support such growth. UHC will not eliminate or substantially reduce a Key Service Line below the Key Service Baseline without first consulting LSU and engaging in the Collaborative Process, taking into account medical education needs, services available at other LGHS facilities, community needs, and other relevant factors.

Section 3.6 Telemedicine. UHC will maintain the infrastructure, such as nursing support, space, and scheduling, of telemedicine services provided at the Facility in order to continue providing cost-effective care to DOC patients as provided in Section 3.3, as well as other patients in remote locations, and will take reasonable steps to sustain and improve the Hospital's telemedicine program. LSU will provide the physician support and UHC, subject to receipt of the Required Funding, will provide the infrastructure support, necessary to maintain the Hospital's telemedicine program at least at the level provided as of the Commencement Date. LSU and UHC will collaborate to grow the Hospital's telemedicine program, provided that a sustainable business model can be created and subject to UHC's receipt of the Required Funding, to serve patients in remote locations.

Section 3.7 Closure; Reduction of Services. Except as otherwise provided in this Agreement, UHC will not close the Hospital or the Hospital's emergency room unless such closure is approved by the Louisiana Legislature. UHC will not reduce health care services provided by the Hospital in any manner which (i) would cause the Hospital's expenditures to be reduced on an annualized basis by greater than thirty-five percent (35%) of the previous fiscal year actual spending level; or (ii) if UHC reduces services at the Hospital by greater than fifteen percent (15%) in any one year, subject to its receipt of the Required Funding, UHC will not reduce services at the Hospital by more than fifteen percent (15%) in any year for the next three (3) years unless such reduction is approved by the Louisiana Legislature.

**ARTICLE IV.**  
**FACILITIES AND EQUIPMENT**

Section 4.1 UHC Lease of Facility. Contemporaneous with and subject to the terms and conditions of this CEA, LSU and UHC shall enter into that certain Master Hospital Lease Agreement by and between LSU and UHC ("Master Hospital Lease"), attached as Exhibit 4.1. Under the Master Hospital Lease, LSU agrees to take all the necessary actions required to transfer possession of the Facility to UHC. The Master Hospital Lease shall include all property set forth in the Master Hospital Lease (the "Leased Premises"), including all furniture, fixtures, and equipment contained in the Leased Premises, but it shall not include any liens, claims, security interests, charges, privileges, pledges, mortgages, deeds of trust or encumbrances, except as may be further described in the Master Hospital Lease. Without limiting the foregoing, the Master Hospital Lease will also provide for the following:

- (a) Rental Payments. The rental payments paid by UHC for the Facility ("Rent") represent fair market value, as set forth in the Master Hospital Lease LSU.

(b) LGHS Guarantee. Payment of Rent by UHC to LSU will be guaranteed by LGHS in accordance with the Master Hospital Lease.

(c) Master Hospital Lease Term, Renewal Options. The Master Hospital Lease shall provide for a term of ten (10) years with options for UHC to renew the term.

**ARTICLE V.**  
**CONSUMABLES AND INVENTORY**

Section 5.1 Purchase of Inventory. All usable inventories of supplies, drugs, food, and other disposables that are necessary for the operation of the Hospital and that are on hand at the Facility as of the Commencement Date, will be transferred to UHC for fair market value pursuant to the terms and conditions set forth in the Master Collaborative Agreement.

**ARTICLE VI.**  
**HOSPITAL EMPLOYEES**

Section 6.1 Employee Matters.

(a) Termination of Employment by LSU. Subsequent to the execution of this CEA by all Parties, LSU will file a layoff plan (the "Layoff Plan") with the Louisiana Civil Service Commission that will provide for LSU's Hospital employees ("LSU Personnel") to be laid off as LSU employees, subject to the approval of the Civil Service Commission, as of 11:59 p.m. on the day before the Commencement Date.

(b) Offers of Employment. All LSU Personnel may apply to UHC for employment, and UHC may, in its discretion, offer employment to LSU Personnel. At any time prior to the Commencement Date, UHC may communicate with any of the LSU Personnel currently employed in the operation of the Hospital to the extent necessary to allow LSU Personnel to apply for employment, to offer employment, and to otherwise reasonably permit UHC to satisfy its obligations under this Section. LSU shall further



permit UHC to access and communicate with any and all LSU Personnel regarding the continued operations of the Hospital as necessary and in order to ensure an effective transition of operations of the Hospital to UHC.

(c) UHC Terms and Conditions of Employment. All LSU Personnel offered employment by UHC shall be hired for job classifications and job descriptions established by UHC and in accordance with pay scales and compensation amounts established by UHC, and shall be employed subject to terms and conditions established by UHC.

(d) Employee Assistance. Following the extension of any offers by UHC to LSU Personnel, but prior to the Commencement Date, LSU shall arrange for the Louisiana Workforce Commission (“LWC”) to host a job fair at the Facility. UHC, as well as other public and private sector employers, may conduct on-site interviews at the job fair. LSU may arrange for Louisiana Rehabilitation Services within the LWC to participate in the job fair and provide individual assistance and guidance to employees in response to the implications of an impending layoff. Other agencies or entities that may participate in the job fair include (i) the LaChip program within DHH to inform and offer assistance and services to LSU Personnel that may qualify; (ii) the Louisiana State Employees Retirement System; and (iii) banking institutions and credit unions. LSU will provide LSU Personnel with a “Frequently Asked Questions” document regarding the civil service process, retirement benefits and health benefits. UHC shall establish a reasonable means through which LSU Personnel may apply for positions at UHC.

(e) LSU Wages, other Compensation and Employee Benefits. LSU shall retain all liabilities and obligations in respect of past, present and future employees of

LSU, including but not limited to LSU Personnel, for wages and other compensation, under any LSU Benefit Plans and under applicable Laws. Without limiting the generality of the foregoing, UHC shall have no liability or obligation whatsoever under any LSU Benefit Plans and/or for any wages and other compensation that may be due to LSU Personnel including any past, present and future employees of LSU.

(f) Employee Information. Subject to applicable legal restrictions, UHC and LSU shall provide each other, in a timely manner, with any information which the other may reasonably request with respect to (i) any LSU Personnel or, after the Commencement Date, any Person employed by UHC who formerly was an employee of LSU, (ii) his or her employment with and compensation from LSU or UHC, or (iii) rights or benefits under any employee plan or any personnel policy of LSU.

## **ARTICLE VII. REQUIRED FUNDING**

Section 7.1 Required Program Funding.

(a) Initial LGHS Supplemental Payment for Increased Medicaid and UCC Care. DHH will make a supplemental Medicaid payment to LGHS of \$26,803,000 for the period October 1, 2012 through the Commencement Date. DHH will make the payment within ten (10) days of execution of this Agreement.

(b) Ongoing Funding. The State, through DHH, shall pay to UHC and LGMC amounts for each State fiscal year the following (collectively the "Required Funding"), as adjusted each year:

(i) to LGMC, the Annual Supplemental Payment;

(ii) to UHC, payments equaling 100% of the costs incurred by UHC for the provision of health care services for such State fiscal year to Hospital's Medicaid and self-pay/uninsured patients (the "UHC UCC");

(iii) to LGMC, any Efficiency Bonus due pursuant to Section 7.1(d).

The methodology for determining the amounts due under item (ii) above shall be as set forth in subsection (c) below. Notwithstanding the foregoing, the aggregate amounts paid during for a State fiscal Year pursuant to items (ii) and (iii) above shall not exceed the Maximum Funding Commitment for such State fiscal year. If DHH, LGHS, UHC and LSU implement any coordinated care network or other managed care payment arrangement, such arrangement shall provide that LGHS and UHC will receive the Required Funding as described in this Agreement for the goods, services and actions provided by or through LGHS as part of such managed care payment arrangement.

So long as the assumptions of DHH and LGHS in determining the Required Funding, including utilization, payor sources and anticipated patient volume, remain the same, LGHS and DHH will continue to use the Required Funding in determining the amounts to be paid to LGHS for services provided under this Agreement. If such assumptions change, LGHS or DHH may request that the Required Funding be modified. In that case, such party will provide the other party and LSU with written notice (a "Funding Adjustment Notice") of such request, which notice shall include an explanation of why such party has determined the Required Funding is not applicable and describe the adjustments to the methodology it proposes. DHH and LGHS shall engage in good faith negotiations for a period of fifteen (15) Business Days in an attempt to agree on any

proposed adjustments of the Required Funding. If DHH and LGHS agree on the adjustments to the Required Funding, such adjusted funding shall constitute the Required Funding. If DHH and LGHS do not agree on any proposed adjustments to the Required Funding within such fifteen (15) Business Day period, either of DHH or LGHS will be entitled to immediately provide a notice of nonrenewal of the Term to the other party and to LSU, in which case this Agreement will automatically terminate upon the expiration of the then-applicable Term without any further renewals, subject to the Wind Down Period. During the remainder of the Term, the Required Funding in place immediately before the Funding Adjustment Notice shall continue to apply.

(c) Methodology for Determining UHC UCC and Medicaid Payments. With respect to determining the UHC UCC, LGHS and the DHH agree the worksheet set forth on Exhibit 7.1(c) demonstrates an agreed application of accounting rules and cost calculations in determining the UHC UCC, which calculations are based on estimates, payment sources and cost reporting rules existing on the Effective Date (the "Cost Analysis Worksheet"). So long as the assumptions, payment sources and cost reporting rules of the Cost Analysis Worksheet remain the same, LGHS and DHH will continue to use the Cost Analysis Worksheet in determining the UHC UCC for the period in question. LGHS or DHH may request that the methodology for determining UHC UCC be modified. In that case, such party will provide the other party and LSU with written notice (a "Methodology Adjustment Notice") of such request, which notice shall include an explanation of why such party has determined the Cost Analysis Worksheet is not applicable and describe the adjustments to the methodology it proposes. DHH and LGHS shall engage in good faith negotiations for a period of fifteen (15) Business Days in an

attempt to agree on any proposed adjustments of the methodology. If DHH and LGHS agree on the adjustments to the methodology, such adjusted methodology shall constitute the Cost Analysis Worksheet and shall apply in determining the Required Funding. If DHH and LGHS do not agree on any proposed adjustments to the methodology within such fifteen (15) Business Day period, either of DHH or LGHS will be entitled to immediately provide a notice of nonrenewal of the Term to the other party and to LSU, in which case this Agreement will automatically terminate upon the expiration of the then-applicable Term without any further renewals, subject to the Wind Down Period set forth in Section 14.9. During the remainder of the Term the UHC UCC shall be determined and paid in accordance with the Cost Analysis Worksheet in place immediately before the Methodology Adjustment Notice.

(d) Efficiency Bonus. The Parties further acknowledge and agree that expense management of Hospital is critical to the efficient and effective delivery of services to the patients at Hospital, as well as to enhance the long-term financial viability of Hospital and LGHS. Therefore, in order to provide for an appropriate incentive to LGHS to effectively manage expenses at Hospital, the parties agree that as expenses are reduced and thus State General Fund ("SGF") savings are realized, DHH shall use a portion of the savings in SGFs to fund an additional supplemental payments to LGMC (the "Efficiency Bonus") accordance with the methodology set forth in Exhibit 7.1(d)(i) and using the worksheet attached as Exhibit 7.1(d)(ii), provided, that in no event will the Efficiency Bonus for a State fiscal year exceed the Bonus Cap.

(e) Payment Methodology. DHH shall satisfy its annual funding obligations under this Agreement by making the following payments:

(i) A Medicaid inpatient per diem rate to UHC of \$1,770 and a Medicaid outpatient rate equal to the rate or determined using the same methodology as in place for LSU for the Hospital's operations as of January 1, 2013;

(ii) Uncompensated care payments to UHC during such State fiscal year equal to the difference between UHC UCC and the payments made for such State fiscal year under item (i) above;

(iii) A supplemental payment to PARNTER in an amount equal to the payment required by Section 7.1(b)(i); and

(iv) A supplemental payment to PARNTER in an amount equal to the payment required by Section 7.1(b)(iii).

(f) Payment Timing.

(i) Payments pursuant to Section 7.1(e)(i) shall be made in DHH's normal course of paying Medicaid claims for UHC.

(ii) Payments pursuant to Section 7.1(e)(ii) shall be made as follows: 80% of the estimated amount under that Section for the then current State fiscal year shall be paid no later than October 1, and 20% of the estimated amount under that Section for the then current State fiscal year shall be paid no later than April, with actual amounts reconciled upon completion and filing of UHC's cost report for such year, with any amount due by DHH or due from UHC paid within thirty (30) calendar days after filing of such cost report.

(iii) Payments pursuant to Section 7.1(e)(iii) for each State fiscal year shall be paid by DHH on August 1st of such State fiscal year.

(iv) Payments pursuant to Section 7.1(e)(iv) for each State fiscal year shall be paid by DHH within thirty (30) calendar days of the completion and filing of the cost report for the year with respect to which the Efficiency Bonus relates.

Section 7.2 Disputes Regarding Cost Calculations; Notice and Review. If DHH disagrees with the costs submitted by LGHS for payments due under Section 7.1, DHH shall prepare its calculations of the Required Funding (the "DHH Funding Calculations") and provide a copy of such calculations to LSU and LGHS. LGHS will have fifteen (15) Business Days to review the DHH Funding Calculations. If LGHS disagrees with the DHH Funding Calculations, it shall provide written notice to DHH and LSU of its objection within three (3) Business Days of the end of the fifteen (15) Business Day review period, which notice shall include a copy of LGHS's calculations of the Required Funding (the "LGHS Funding Calculations"). If LGHS agrees with the DHH Funding Calculations, the DHH Funding Calculations shall constitute the Required Funding for the period in question.

(a) Good Faith Negotiations. If LGHS timely delivers its notice of objection as provided in subsection (b) above, LGHS and DHH will diligently work in good faith for a period of fifteen (15) Business Days to resolve the disputed amounts in the DHH Funding Calculations and the LGHS Funding Calculations. Final determination of acceptable solutions pursuant to such good faith negotiations, if any, will reside with the LGHS CEO and the Secretary of the Louisiana Department of Health & Hospitals. If LGHS and DHH do not resolve such objections within such ten (10) Business Day period, the determination of Required Funding shall be submitted to an Academic Health System CPA as provided in subsection (d) below.

(b) Independent Review. If LGHS and DHH are not able to resolve the disputed amounts in the DHH Funding Calculations and the LGHS Funding Calculations, such disputed amounts shall be submitted to an independent third party certified public accountant. Such certified public accountant must be nationally recognized and possess significant experience in the review and analysis of the financial and reimbursement operations of hospital systems and academic medical centers and may not have been engaged by LGHS, LSU or DHH during the two (2) year period prior to delivery of the objection notice by LGHS described in subsection (b) above (an "Academic Health System CPA"). LGHS and DHH shall select a mutually agreeable Academic Health System CPA meeting the requirements described above. If LGHS and DHH cannot agree on an Academic Health System CPA within five (5) Business Days of expiration of the fifteen (15) Business Day negotiation period in subsection (b), each of LGHS and DHH shall within the last three (3) Business Days of the expiration of the negotiation period designate a certified public accountant (who will not be required to meet the experience requirements above) and those certified public accountants shall within three (3) Business Days select a mutually agreeable Academic Health System CPA. Each of LGHS and DHH shall be entitled to engage, at its own expense, any other professionals or advisors to assist in preparing or analyzing material to be presented to the Academic Health System CPA. The Academic Health System CPA so selected shall review the DHH Funding Calculations and the LGHS Funding Calculations and render a written report to LGHS, LSU and DHH within thirty (30) calendar days of being engaged as to his or her conclusion as to what portion of the disputed amounts should be included in the Required Funding, determined by applying the applicable methodology under Section 7.1. Such



determination shall be conclusive as to how to treat the disputed amounts in determining the Required Funding. If the report of the Academic Health System CPA verifies or validates the DHH Funding Calculations, the cost of the Academic Health System CPA will be borne by LGHS. If the report of the Academic Health System CPA verifies or validates the LGHS Funding Calculations, the cost of the Academic Health System CPA will be borne by DHH. Otherwise, the cost shall be shared equally by LGHS and DHH. LGHS and DHH shall provide LSU and the Academic Health System CPA their calculations, determinations, work papers and similar supporting materials to assist the Academic Health System CPA in reaching a conclusion.

Section 7.3 Rulemaking. Subject to CMS approval, DHH will submit a State Plan Amendment, and promulgate a conforming rule, that will obligate itself to make supplemental Medicaid payments to LGMC equal to the Annual Supplemental Payment.

Section 7.4 Access to Books and Records. LGHS shall provide reasonable access to the books, records and other financial information for purposes of and to the extent necessary to performing its functions for the Collaborative, and to the extent required by law. Except as otherwise provided by applicable Legal Requirements, any such access shall be given on the condition that any information received or reviewed shall be considered confidential information subject to the terms and conditions of Section 17.5.

Section 7.5 Request for Appropriations.

(a) Obligations Conditioned on Appropriations; Notice of Expected Event of Inadequate Funding. Payment obligations under this Agreement may be subject to appropriation by the Legislature of sufficient funds and the availability of funds following such Legislative appropriation. If DHH becomes aware of circumstances that

lead it to conclude that LGHS is unlikely to receive the Required Funding without additional legislative appropriations, DHH shall immediately notify the Parties of such conclusion and the amounts by which DHH expects payments to the Party expected to experience the event of Inadequate Funding will fall short of the Required Funding.

(b) Commissioner's Required Efforts. The State, through the Commissioner of the Division of Administration, covenants to (i) include in DHH's annual budget request a request for the appropriation of funds necessary to pay to LGHS for the State's next fiscal year the Required Funding for such period, and (ii) use its best efforts to get such budget amounts approved and funded by the Legislature. If the funds necessary to satisfy the Proposed Annual Budget are appropriated, the State agrees to provide such funding to the appropriate Party for the intended purpose and use of such funds under this Agreement.

(c) DHH's Required Efforts. DHH covenants to (i) include in its annual budget a request for the appropriation of funds necessary to pay to LGHS for the State's next fiscal year the Required Funding for such period, (ii) use its best efforts to get such budget amounts approved and funded by the Legislature and if such funds are appropriated, to provide such funding to the appropriate Party for the intended purpose and use of such funds under this Agreement, and (iii) if the funds necessary to prevent satisfy DHH's payment obligations under this Agreement are not specifically identified as such and appropriated to DHH by the Legislature, use its best efforts to allocate and pay such amounts to LGHS and LSU, as the case may be, from all appropriate funds available to DHH.

(d) LSU's Required Efforts; Appropriation Contingency. LSU covenants to use its best efforts to support LGHS, the Commissioner and DHH in their efforts to

obtain the LGHS Proposed Budget, the Proposed Annual Budget, and the funding necessary to pay to LGHS for the State's next fiscal year the Required Funding for such period. In the event no funds or insufficient funds are appropriated or otherwise available for payment in any fiscal year of the State of Louisiana in order for LSU to fulfill its obligations hereunder during the next succeeding fiscal year, and the LSU Board at a regularly scheduled or special meeting determines that no funds or insufficient funds are appropriated and will thereafter become available in any fiscal year of the State of Louisiana for LSU to fulfill its obligations hereunder during the next succeeding fiscal year, LSU will immediately give written notice to the Parties that a non-appropriation has occurred.

**ARTICLE VIII.**  
**MASTER COLLABORATIVE AGREEMENT**

Section 8.1 In General. Subsequent to the execution and consistent with the terms of this CEA, but prior to the Commencement Date, LSU, UHC and LGHS will enter into a Master Collaborative Agreement ("MCA") to address key operational issues related to the transition of the Hospital from LSU to UHC in accordance with this CEA. The MCA shall address, without limitation, the mutually agreeable terms, conditions under which:

(a) Provider Numbers. UHC shall accept the Hospital's (i) Medicare Provider Agreement and corresponding provider number 190006, and (ii) Medicaid Provider Agreement and corresponding provider number \_\_\_\_\_;

(b) Professional Services. UHC shall contract with LSU to obtain the services of LSU physicians and related services as determined necessary by UHC to provide patient care in the Hospital and its provider-based outpatient clinics as required by this Agreement;

(c) Accountable Care Services. UHC shall contract with LSU for data warehouse, disease management and related health care effectiveness services designed to improve quality and patient outcomes, and reduce to cost of health care services, particularly among the uninsured and high risk Medicaid populations;

(d) Medical Staff. The Hospital's current medical staff will be credentialed and/or recredentialed by UHC's governing body upon transition of the Hospital to UHC; and

(e) Transition Support Services. UHC shall contract with LSU for certain support services during a transition period, including, without limitation, certain information technology, billing and collections, and other support and maintenance services.

**ARTICLE IX.**  
**LSU REPRESENTATIONS AND WARRANTIES**

LSU represents and warrants that the statements contained in this Article are correct and complete as of the date of this CEA.

Section 9.1 Organization and Standing. LSU is a public constitutional corporation organized under the laws of Louisiana. LSU is validly existing and in good standing under the laws of Louisiana .

Section 9.2 Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of LSU, enforceable against it in accordance with its terms, and, upon the execution and delivery by LSU of any document or agreement to be executed in connection with this Agreement, each other agreement will constitute the legal, valid and binding obligation of LSU, enforceable against it in accordance with its terms. LSU's Board of Supervisors has

authorized the execution and delivery of this Agreement and such other documents to which it is a party and the performance of all of LSU's obligations hereunder and thereunder. A copy of the authorizing consent resolution or meeting minutes as certified by LSU's board secretary is attached as Exhibit 9.2(a).

(b) To LSU's knowledge, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions hereby will, directly or indirectly (with or without notice or lapse of time):

(i) Breach any resolution adopted by LSU's Board of Supervisors;

(ii) Give any Governmental Body or other person the right to any successful remedy or relief under any Legal Requirement to which LSU may be subject;

(iii) Contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body applicable to LSU; the right to revoke, withdraw, suspend, cancel, terminate or modify any Governmental Authorization held by LSU.

(iv) Cause UHC or LGHS to become subject to, or to become liable for the payment of any Liability of LSU; or

(v) To LSU's Knowledge, result in the LSU GME Programs violating any rules, policies, procedures or accreditation requirements of ACGME or otherwise result in (A) the LSU GME Programs ceasing to be accredited by ACGME, (B) the LSU GME Programs ceasing to be funded by DOA, or (C) LSU

ceasing to comply with or satisfy any CMS reimbursement requirements or regulations applicable to the LSU GME Programs.

(c) LSU warrants that it will not take any action, fail to take any action, enter into any agreement or consummate any transaction that would prevent LSU from performing the Contemplated Transactions or performing its obligations under this Agreement or any agreement delivered in connection with this Agreement or otherwise materially and adversely affect the Hospital or the LSU GME Programs without the prior written consent of an authorized representative of UHC.

Section 9.3 Employee Benefits. To LSU's Knowledge, all of its Benefit Plans, to the extent that they would meet the definition of employee benefit plans under Section 3(2) of ERISA and employee health or welfare benefit plans as defined in Section 3(1) of ERISA, qualify as governmental plans as defined and provided by Sections 4(b)(1) and 3(32) of ERISA, and all Benefit Plans have been administered in accordance with applicable law in all material respects, to the extent such Benefit Plans are established and administered by LSU. To LSU's Knowledge, no event has occurred that would result in, and consummation of the Contemplated Transactions shall not result in, UHC incurring any Liability for any Benefit Plan of LSU or to any employee of LSU with respect to such Benefit Plan of LSU, to the extent such plans are established and subject to administration by LSU. LSU has and will comply with all of the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") with respect to all of its employees, including but not limited to the LSU Personnel, before and after the Commencement Date.

Section 9.4 Validity. All corporate actions of LSU necessary for the execution, delivery, and performance of this Agreement and the performance of the Contemplated

Transactions and requiring board approvals have been taken pursuant to proper and valid board approval. The execution and delivery of this Agreement and all other documents executed in connection herewith by LSU and the consummation of the transactions contemplated hereby will not result in the creation of any lien, charge, or encumbrance of any kind or the acceleration of any indebtedness or other obligation of UHC and are not and will not be prohibited by, do not and will not materially violate or conflict with any provision of, and do not and will not constitute a default under or a breach of the Articles of Incorporation or Bylaws of LSU, nor will it have a Materially Adverse Effect upon any contract, lease, agreement, indenture, mortgage, pledge, lease, sublease, option or commitment to which LSU is a party or by which LSU is bound, or any assignment, permit, license, approval or other commitment to which LSU is a party or by which LSU is bound.

Section 9.5 Closing Cost Reports. LSU has previously provided to UHC and LGHS true and correct copies of the Hospital's cost reports for its last three fiscal years for all insurance programs, including Medicare and Medicaid. The cost reports are complete and accurate for the periods indicated. All liabilities and contractual adjustments of LSU, the Hospital and the Leased Premises under any third party payor or reimbursement programs have been properly reflected and adequately reserved for in the financial statements of the Hospital. Neither LSU nor the Hospital has received any notice of any offsets against future reimbursement. There are to LSU's knowledge no pending appeals, adjustments, challenges, audits, litigation, notices of intent to reopen or open cost reports with respect to the Medicare or Medicaid programs. Neither LSU nor the Hospital has received any notice of any violation of federal or state fraud and abuse or self-referral laws nor is LSU aware of any such violations in connection with the operations of the Hospital.

Section 9.6 Medical Staff. LSU has heretofore provided to UHC and LGHS true, correct and complete copies of the bylaws and rules and regulations of the medical staff of the Hospital. There are no pending or, to the best of LSU's knowledge, threatened disputes with applicants, staff members or health professional affiliates.

Section 9.7 Other Approvals. To LSU's knowledge, except as otherwise set forth in Schedule 12.4 of the LSU Disclosure Schedules, the only remaining review, consents, approvals, qualifications, orders or authorizations of, or filings with, any governmental authority, including any court or other governmental third party, required in connection with LSU's valid execution, delivery, and performance of this Agreement, and the consummation of any transaction contemplated by this Agreement, are with the Louisiana Legislature Joint Legislative Committee on the Budget, and the Louisiana Office of Contractual Review or the Commissioner's designee pursuant to Executive Order BJ 08-29.

Section 9.8 Compliance with Legal Requirements. To LSU's Knowledge, LSU Personnel have operated the Hospital and the LSU GME Programs in compliance with all Legal Requirements, including Health Care Laws. To LSU's Knowledge, in connection with LSU's operation of the Hospital and LSU GME Programs, neither (i) LSU nor any LSU Personnel has received or made any payment or any remuneration whatsoever to induce or encourage the referral of patients or the purchase of goods and/or services as prohibited under any state law or Health Care Law, nor (ii) has any Governmental Body or third-party payer formally alleged in writing or LSU received any notice of any violation of any Health Care Law within the last seven (7) years.

(a) Permits, Licenses and Accreditation. The Hospital has all permits and licenses and other governmental authorizations required by all Legal Requirements and is



not in violation of any of said permitting or licensing requirements. The Hospital is owned and duly licensed by the State and operated by LSU as a general acute care hospital. LSU has all permits and licenses necessary for the proper operation of the Hospital and LSU GME Programs, including a valid Medicare provider number. The LSU GME Programs are accredited by ACGME and, to LSU's Knowledge, are in compliance with the ACGME requirements necessary for accredited GME Programs.

(b) Medicare/Medicaid Participation. The Hospital and all LSU Personnel who are medical providers are participating in or otherwise authorized to receive reimbursement from Medicare and Medicaid. All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned, and, to LSU's Knowledge, no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such third-party payer program. No LSU Personnel is an Excluded Provider.

(c) Joint Commission. The Facility is duly accredited with no material contingencies by the Joint Commission ("JC"). LSU has made available to LGHS copies of the most recent JC accreditation survey report and deficiency list for the Facility, together with Facility's most recent statement of deficiencies and plan of correction. Except as set forth on Schedule 9.4(c), Facility has not received written notice of any threatened, pending or likely revocation, early termination, suspension or limitation of any such accreditation.

(d) Fraud and Abuse. To LSU's Knowledge, neither the Hospital nor LSU Personnel has engaged in any activities which are prohibited under any Health Care Law, or the regulations promulgated thereunder pursuant to such statutes, or related state or local statutes or regulations, or which are prohibited by rules of professional conduct, including the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or representation of a fact for use in determining rights to any benefit or payment; (iii) knowingly and willingly concealing any event affecting the initial or continued right to receive any benefit or payment with intent to fraudulently secure such benefit or payment in an amount or quantity greater than that which is due or which is authorized; or (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid or (2) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid. LSU is not a party to any Corporate Integrity Agreement or similar settlement, compliance or oversight agreement with any Governmental Body relating to LSU's services provided at the Hospital.

Section 9.9 Legal Proceedings; Orders. There is no Order to which LSU is subject that would limit or affect LSU's ability to enter into this Agreement or consummate the

Contemplated Transactions. Except as set forth on Schedule 9.5, there is no Proceeding pending, or to LSU's Knowledge threatened against, or affecting the Hospital, LSU GME Programs, or any LSU Personnel.

Section 9.10 Insurance; Malpractice. All clinical LSU Personnel have been continuously insured for professional malpractice claims during the lesser of (i) the last three (3) years, or (ii) the period during which such LSU Personnel have been authorized to provide professional medical services on behalf of LSU. All clinical LSU Personnel are "qualified state health care providers" as defined in LA R.S. 40:1299.39, et seq., and are thus named insureds covered under DOA's professional liability insurance administered through the Office of Risk Management. To LSU's Knowledge, no LSU Personnel is in default with respect to any provision contained in any policy covering the professional acts of such LSU Personnel and none of them has failed to give any notice or present any claim under any such policy in a due and timely fashion. LSU has maintained in effect and continues to maintain in effect such other policies of insurance as are customary for an academic medical center of size and scope of the operations of LSU, with such limits and other terms of coverage as are commercially reasonable for an academic medical center similar in size and scope to LSU.

Section 9.11 Taxes.

(a) With respect to the Hospital, LSU has, to its Knowledge, filed, all federal, state, county and local tax returns it is required to file, including, without limitation, income, sales, single business, payroll, premium, withholding, informational, real estate, school and, personal property tax returns, required to be filed and, such returns have been duly prepared and filed and were true, correct, and complete. All taxes due by reason of the operations conducted by LSU with respect to the Hospital have, to LSU's Knowledge,

been paid, including, without limitation, all taxes which the LSU is obligated to withhold from accounts owing to employees, creditors, and third parties. There is no tax lien, whether imposed by any federal, state, county or local taxing authority outstanding against the assets, properties or businesses of LSU as they relate to the Hospital. Other than regular property assessments, there is to LSU's knowledge no pending examination or proceeding by any authority or agency relating to the assessment or collection of any such taxes, interest, or penalties thereon, nor to LSU's Knowledge do there exist any facts that would provide a basis for any such assessment. With respect to the Hospital, LSU has not filed any consent or agreement to extend the period for assessment or collection of any such taxes.

(b) The Hospital is exempt from Federal income tax pursuant to and the Hospital is a "hospital" within the meaning of Section 170(b)(1)(A)(iii) of the IRC. LSU is not aware of any proceeding, pending or threatened, or of any existing circumstances, which could reasonably be anticipated to result in the loss or revocation of any of the aforementioned exemptions held by LSU or the imposition of tax liability which would have a material adverse effect on the business and operations of the Hospital.

Section 9.12 Full Disclosure. No representation or warranty made by LSU in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

Section 9.13 Breach. Any damages payable by LSU as a result of a breach of any representation or warranty contained in this Article IX shall be subject to appropriation by the Louisiana Legislature of sufficient funds specifically and expressly appropriated therefor and the availability of funds following Legislative appropriation as set forth in Section 17.22 below.

**ARTICLE X.**  
**DOA AND DHH REPRESENTATIONS AND WARRANTIES**

The State of Louisiana, through the DOA and DHH, each represent and warrant that the statements contained in this Article X are correct and complete as of the date hereof.

Section 10.1 Organization and Standing. DOA and DHH are executive branch departments of the State of Louisiana, validly existing under the laws of Louisiana, with full power and authority to perform their obligations under this CEA.

Section 10.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of the State of Louisiana, through DOA and DHH, enforceable against them in accordance with its terms. Upon the execution and delivery by DOA and DHH of any document or agreement to be executed in connection with this Agreement, each other agreement will constitute the legal, valid and binding obligation of the State, through DOA and DHH, enforceable in accordance with its terms. DOA and DHH, through their lawfully designated agency or department heads, have the power and authority to execute and deliver this Agreement and such other documents to which it is a party and to perform its obligations under this Agreement and such other documents, subject only to oversight by the Legislature and the Legislative Auditor.

(b) To DOA's and DHH's Knowledge, neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions hereby will, directly or indirectly (with or without notice or lapse of time):

(i) Breach any provision of any statutory or regulatory authority which defines the powers and duties of DOA and DHH;

(ii) To DHH's or DOA's Knowledge, give any Governmental Body or other person the right to any successful remedy or relief under any Legal Requirement to which DHH or DOA may be subject;

(iii) Contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body applicable to DHH or DOA; the right to revoke, withdraw, suspend, cancel, terminate or modify any Governmental Authorization held by UHC;

(iv) Cause UHC or LGHS to become subject to, or to become liable for the payment of, any Liability of DHH or DOA; or

(v) DHH and DOA each warrant that it will not take any action, fail to take any action, enter into any agreement or consummate any transaction that would prevent DHH or DOA from performing the Contemplated Transactions or performing its obligations under this Agreement or any agreement delivered in connection with this Agreement or otherwise have a Material Adverse Effect on the Hospital without the prior written consent of an authorized representative of UHC.

Section 10.3 Employee Benefits. No event has occurred that would result in, and consummation of the Contemplated Transactions shall not result in, UHC incurring any Liability for any Benefit Plan of the State incurred through DHH or DOA or to any employee of DHH or DOA with respect to such Benefit Plans.

Section 10.4 Legal Proceedings; Orders. To DOA's and DHH's Knowledge, there is no Order to which the State, through DOA or DHH is subject that would limit or affect DOA's or

DHH's ability to enter into this Agreement or consummate the Contemplated Transactions, other than Executive Order BJ 08-29.

Section 10.5 Other Approvals. Except as set forth in Schedule 10.5 of the DHH/DOA Disclosure Schedules, no consents, approvals, qualifications, orders or authorizations of, or filings with, any governmental authority, including any court or other governmental third party, are required in connection with its valid execution, delivery, or performance of this Agreement, or the consummation of any transaction contemplated by this Agreement.

Section 10.6 Full Disclosure. No representation or warranty made by DHH or DOA in this Agreement contains or will contain any untrue statement of fact or omission of fact necessary to make the statements contained herein or therein not misleading.

**ARTICLE XI.**  
**UHC REPRESENTATIONS AND WARRANTIES**

UHC represents and warrants that the statements contained in this Article XI are correct and complete as of the date hereof.

Section 11.1 Organization and Good Standing. UHC is a nonprofit Louisiana corporation. UHC is validly existing and in good standing under the laws of the State of Louisiana, with full power and authority to perform all its obligations under this Agreement.

Section 11.2 Enforceability; Authority; No Conflict. Subject to the approvals set forth on Schedule 11.2:

(a) This Agreement constitutes the legal, valid and binding obligation of UHC, enforceable against it in accordance with its terms. Upon the execution and delivery by UHC of any document or agreement to be executed in connection with this Agreement, each other agreement will constitute the legal, valid and binding obligation of UHC, enforceable against it in accordance with its terms. UHC has the corporate right,

power and authority to execute and deliver this Agreement and such other documents to which it is a party and to perform its obligations under this Agreement and such other documents, and such action has been duly authorized by all necessary action by UHC's Board of Trustees and Member. A copy of the authorizing consent resolution or certified meeting minutes is attached as Exhibit 11.2(a).

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) Breach (A) any provision of any of the Governing Documents of UHC or (B) any resolution adopted by UHC's Board of Trustees

(ii) Breach or give any Governmental Body or other Person the right to challenge the actions contemplated by this Agreement or to exercise any remedy or obtain any relief under any Legal Requirement to which UHC may be subject; or

(iii) Contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by UHC.

(c) UHC warrants that it will not take any action, fail to take any action, enter into any agreement or consummate any transaction that would adversely affect in a material way or prevent UHC from performing its obligations under this Agreement or otherwise materially and adversely affect the LSU GME Programs without the prior written consent of an authorized representative of LSU.



Section 11.3 Validity. All corporate actions of UHC necessary for the execution, delivery, and performance of this Agreement and the performance of the Contemplated Transactions and requiring board approvals have been taken pursuant to proper and valid board approval. This Agreement has been, and all documents to be delivered by UHC shall be, duly executed and shall constitute the lawful, valid and binding obligations of UHC, enforceable in accordance with their respective terms subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally. The execution and delivery of this Agreement and all other documents executed in connection herewith by UHC and the consummation of the transactions contemplated hereby will not result in the creation of any lien, charge, or encumbrance of any kind or the acceleration of any indebtedness or other obligation of UHC and are not and will not be prohibited by, do not and will not materially violate or conflict with any provision of, and do not and will not constitute a default under or a breach of (i) the Articles of Incorporation or Bylaws of UHC, (ii) any judgment, decree, order, regulation or rule of any court or regulatory authority, or (iii) any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority or arbitration tribunal to which UHC is subject, nor will it have a Materially Adverse Effect upon (iv) any contract, lease, agreement, indenture, mortgage, pledge, lease, sublease, option or commitment to which UHC is a party or by which UHC is bound, or (v) any assignment, permit, license, approval or other commitment to which UHC is a party or by which UHC is bound.

Section 11.4 Other Approvals. To UHC's knowledge, except as set forth in Schedule UHC11.4, no consents, approvals, qualifications, orders or authorizations of, or filings with, any governmental authority, including any court or other governmental third party, are required in

connection with their valid execution, delivery, or performance of this Agreement, or the consummation of any transaction contemplated by this Agreement.

Section 11.5 Compliance with Legal Requirements. To UHC's Knowledge, UHC has operated and shall operate in compliance with all Legal Requirements, including Health Care Laws. To UHC's Knowledge, UHC has not received or made any payment or any remuneration whatsoever to induce or encourage the referral of patients or the purchase of goods and/or services as prohibited under any state law or Health Care Law, nor has any Governmental Body or third-party payer formally alleged in writing any violation of Health Care Law by UHC or any UHC Personnel within the last seven (7) years. Without limiting the generality of the foregoing:

(a) Permits and Licenses. UHC has or shall have at the time such services are performed all permits and licenses and other Governmental Authorizations required by all Legal Requirements for the operation of UHC and is not in violation of any of said permitting or licensing requirements.

(b) Medicare/Medicaid Participation. Neither UHC nor any director, officer, employee, or agent of UHC is an Excluded Provider.

(c) Fraud and Abuse. To UHC's Knowledge, neither UHC nor any UHC Personnel has engaged in any activities which are prohibited under any Health Care Law, or the regulations promulgated thereunder pursuant to such statutes, or related state or local statutes or regulations, or which are prohibited by rules of professional conduct, including the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a fact in any application for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or representation of a fact for use in determining rights to any benefit or payment; (iii)

knowingly and willingly concealing any event affecting the initial or continued right to receive any benefit or payment with intent to fraudulently secure such benefit or payment in an amount or quantity greater than that which is due or which is authorized; or (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe, or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or Medicaid or (2) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid. UHC is not a party to any Corporate Integrity Agreement or similar settlement, compliance or oversight agreement with any Governmental Body.

Section 11.6 Legal Proceedings; Orders. There is no Order to which UHC is subject that would limit or affect UHC's ability to enter into this Agreement or consummate the actions contemplated by this Agreement. Except as set forth on Schedule 12.4, there is no Proceeding pending, or to UHC's Knowledge threatened against, or affecting the Hospital, LSU GME Programs, or any LSU, UHC, or LGHS Personnel.

Section 11.7 Insurance. In addition to the policies of insurance required under the Master Lease, UHC will maintain such other policies of insurance as are customary for a company of similar size and scope of the operations of UHC, with such limits and other terms of coverage as are commercially reasonable for companies similar in size and scope to UHC. As set forth in the Professional Services Agreements between LSU and UHC, the Office of Risk

Management shall provide medical malpractice coverage for health care providers contracted by UHC through LSU. Such coverage shall include, without limitation, participation as a qualified health care provider in the Louisiana Patients' Compensation Fund.

Section 11.8 Full Disclosure. No representation or warranty made by UHC in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

## **ARTICLE XII.**

### **LGHS REPRESENTATIONS AND WARRANTIES**

LGHS represents and warrants that the statements contained in this Article XII are complete and correct as of the date hereof.

Section 12.1 Organization and Standing. LGHS is a duly organized not-for-profit corporation in Louisiana and is validly existing and in good standing in the State of Louisiana with full power to perform all of its obligations under this Agreement.

Section 12.2 Authority to Enter into Agreement; Consent. LGHS has all corporate right, power, legal capacity and authority to enter into and perform its respective obligations under this Agreement. No approvals or consents of any persons are necessary for the execution, delivery and performance of this Agreement by LGHS, except those that have been obtained or will be obtained prior to the close of each of the Contemplated Transactions. The execution and delivery of the Agreement by LGHS, and the performance by LGHS of all of its obligations hereunder, have been duly authorized by all necessary corporate action. The Agreement is a valid obligation of LGHS, enforceable against LGHS in accordance with its terms.

Section 12.3 Validity. All corporate actions of LGHS necessary for the execution, delivery, and performance of this Agreement and the performance of the Contemplated Transactions and requiring board approvals have been taken pursuant to proper and valid board

approval. This Agreement has been, and all documents to be delivered by LGHS shall be, duly executed and shall constitute the lawful, valid and binding obligations of LGHS, enforceable in accordance with their respective terms subject as to enforcement of remedies to the discretion of courts in awarding equitable relief and to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the rights of creditors generally. The execution and delivery of this Agreement and all other documents executed in connection herewith by LGHS and the consummation of the transactions contemplated hereby will not result in the creation of any lien, charge, or encumbrance of any kind or the acceleration of any indebtedness or other obligation of LGHS and are not and will not be prohibited by, do not and will not materially violate or conflict with any provision of, and do not and will not constitute a default under or a breach of (i) the Articles of Incorporation or Bylaws of LGHS, (ii) any judgment, decree, order, regulation or rule of any court or regulatory authority, or (iii) any law, statute, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental authority or arbitration tribunal to which LGHS is subject, nor will it have a Materially Adverse Effect upon (iv) any contract, lease, agreement, indenture, mortgage, pledge, lease, sublease, option or commitment to which LGHS is a party or by which LGHS is bound, or (v) any assignment, permit, license, approval or other commitment to which LGHS is a party or by which LGHS is bound.

Section 12.4 Consolidated Financial Statements. LGHS has furnished to LSU (i) LGHS's audited consolidated financial statements for the three (3) most recent fiscal years and the balance sheet and the related statements of income, and changes in financial position of LGHS for the three (3) most recent fiscal years with available reports thereon from an independent certified public accounting firm, (the "Audited Financial Statements") including any management letters regarding the operations of LGHS with respect to such fiscal year, and (ii)

unaudited interim financial statements for the monthly periods from the close of the most recently completed fiscal year through \_\_\_\_\_, or if LGHS prepares unaudited interim financial statements on a quarterly basis, for the last quarter which ended no more than ninety (90) calendar days prior to the date of execution of this Agreement, and shall furnish such unaudited interim financial statements for the monthly or quarterly periods, respectively, through the month or quarter ending immediately prior to the Commencement Date (collectively referred to as the “Unaudited Financial Statements”) (the Audited Financial Statements and the System Financial Statements are sometimes referred to herein collectively as the “Financial Statements”). The Financial Statements have been prepared in accordance with generally accepted accounting principles (“GAAP”) consistently applied (except, in the case of the Unaudited Financial Statements, for the absence of footnotes and year end adjustments), reflect all liabilities of LGHS, including all contingent liabilities, and fairly present the financial position of LGHS and the results of operations and changes in financial position as of the dates and for the periods specified. Except as set forth in the Financial Statements, LGHS has not incurred any liability other than in the ordinary course of business. Since the date of the most recent Audited Financial Statements, LGHS has not incurred any liabilities other than in the ordinary course of business and consistent with past practice.

Section 12.5 Other Approvals. To LGHS’s knowledge, except as set forth in Schedule 12.4, no consents, approvals, qualifications, orders or authorizations of, or filings with, any governmental authority, including any court or other governmental third party, are required in connection with their valid execution, delivery, or performance of this Agreement, or the consummation of any transaction contemplated by this Agreement.

Section 12.6 Full Disclosure. No representation or warranty made by LGHS in this Agreement contains or will contain any untrue statement of fact or omits or will omit to state a fact necessary to make the statements contained herein or therein not misleading.

**ARTICLE XIII.**  
**ADDITIONAL COVENANTS OF THE PARTIES**

Section 13.1 Third Party Consents and Approvals. The Parties will use their best efforts to obtain the Third Party Consents and Approvals set forth on Schedule 13.1.

Section 13.2 Further Acts and Assurances. The Parties shall, at any time and from time to time at and after the execution of this Agreement, upon request of another Party, take any and all steps reasonably necessary to consummate the Contemplated Transactions, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to consummate the Contemplated Transactions.

Section 13.3 Additional Covenants of UHC. UHC covenants that at or prior to the time for UHC's performance:

(a) Consents. All consents, approvals, Order or authorizations of, or registrations, declarations or filings with any Person required in connection with the execution, delivery or performance hereof shall have been obtained or made and shall be in full force and effect, in each case in form and substance reasonably satisfactory to UHC.

(b) No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Contemplated Transactions shall have been issued by any Governmental Body.

(c) Satisfaction of LGHS Covenants. All covenants of LGHS as set forth in Section 13.4 shall have been satisfied or waived.

Section 13.4 Additional Covenants of LGHS. LGHS covenants at or prior to the time for LGHS's performance:

(a) Consents. All consents, approvals, Order or authorizations of, or registrations, declarations or filings with any Person required in connection with the execution, delivery or performance hereof shall have been obtained or made and shall be in full force and effect, in each case in form and substance reasonably satisfactory to LGHS.

(b) No Restraints. No temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Contemplated Transactions shall have been issued by any Governmental Body.

Section 13.5 Additional Covenants of LSU.

(a) Consents. LSU covenants that at or prior to the time for LSU's performance, all consents, approvals, Order or authorizations of, or registrations, declarations or filings with any Person required in connection with the execution, delivery or performance hereof shall have been obtained or made and shall be in full force and effect, in each case in form and substance reasonably satisfactory to LSU.

(b) No Restraints. LSU covenants that at or prior to the time for LSU's performance, no temporary restraining order, preliminary or permanent injunction or other Order preventing the consummation of the Contemplated Transactions shall have been issued by any Governmental Body.



(c) Hospital Operations. From the Effective Date of this Agreement until the earlier of the Commencement Date or the termination of this Agreement, LSU shall, and shall cause Hospital to: (i) conduct the Hospital's operations in the ordinary course; and (ii) use commercially reasonable efforts to maintain in all material respects the assets, properties and business organizations and current relationships and goodwill with their respective customers, suppliers and payors of Hospital and Facility.

(d) Preservation of Property. From the Effective Date of this Agreement until the earlier of the Commencement Date or the termination of this Agreement, LSU shall not permit Hospital or Facility to:

(i) permit or allow any of the assets or properties of Facility to become subjected to any Encumbrance, other than that will be released at or prior to the Commencement Date; or

(ii) sell, transfer, lease, sublease, license or otherwise dispose of any material properties or assets (real, personal or mixed, including intangible property) of Facility, other than in the ordinary course of businesses.

(e) Licenses. From the Effective Date of this Agreement until the earlier of the Commencement Date or the termination of this Agreement, LSU shall take all action reasonably within its power and necessary to cause Hospital to continue to maintain its current hospital license and provider status, including without limitation its Provider Numbers, and will use its best efforts to preserve or cause Hospital to preserve at all times during the Term the Residency Caps and Collaborative Residency Positions, all in accordance with CMS and ACGME requirements. Any transfer, discontinuation, restriction, modification or other change in the rights and obligations associated with the

Facility license, other than as required by or as a result of this Agreement, or any other event or transaction resulting in any party other than LSU operating or controlling the Facility or its operations, must be approved in writing by the LGHS CEO prior to the time of such event.

(f) Access to Hospital. Prior to the Commencement Date, LGHS shall have had access to the Hospital and Facility to fully complete its due diligence review of all Facility agreements and inspections of the Facility with respect to the physical condition thereof by LGHS and/or by agents or contractors selected by LGHS and shall have to LGHS's satisfaction and in LGHS's sole discretion effectively transitioned or contracted to engage upon the Commencement Date, sufficient services, supplies, and personnel for the continued operations of the Facility.

**ARTICLE XIV.**  
**TERM; TERMINATION; DISPUTE RESOLUTION**

Section 14.1 Term. Unless earlier terminated as provided herein, the Term of this Agreement shall begin on the Effective Date and continue for ten (10) years (the "Initial Term"). Beginning on the expiration of the fifth (5th) year of the Initial Term and continuing on each annual anniversary date thereafter, (each an "Extension Date"), the then-remaining portion of the Initial Term shall automatically be extended for an additional one (1) year period so that after the fifth (5th) year of the Initial Term, the Term of this Agreement shall be a Rolling Five-Year Term; provided, however, that the extension provision of this sentence shall no longer apply if LSU or UHC provides the other Party written notice at least one hundred-eighty (180) calendar days prior to an Extension Date that such Party does not intend to extend the Term of the Agreement.

Section 14.2 Early Termination. This Agreement shall terminate prior to the expiration of the Term only in accordance with this Section 14.2. Except as otherwise provided in this

Agreement, any early termination of this CEA shall be subject to the Wind Down Period provided in Section 14.9. Subject to the foregoing, this CEA may terminate prior to the expiration of the Term (i) upon the mutual agreement of all Parties, (ii) if the Contemplated Transactions have not occurred by June 30, 2013, pursuant to Section 14.6, or (iii) subject to Parties' good faith participation in the process set forth in Section 14.4 for addressing the following events (each, a "Potential Terminating Breach"):

(a) Any Party's actions or inactions are contrary to, or not substantially in accordance with the Public Purpose as provided for in Article I.

(b) Termination of the Master Hospital Lease.

(c) There is filed by or against any Party a petition or complaint with respect to its own financial condition under any state, federal or other bankruptcy (including without limitation a petition for reorganization, arrangement or extension of debts), or under any other similar or insolvency laws providing for the relief of debtors which petition or complaint (if involuntary) shall not be dismissed for more than sixty (60) calendar days from the date of filing.

(d) A receiver, director, conservator or liquidator is appointed for any Party or all or a substantial part of its respective assets, or any Party shall have been adjudicated bankrupt, insolvent or in need of any relief provided to debtors by any court.

(e) Any Party shall have ceased its business or operations.

(f) Any Party shall have liquidated and or dissolved.

(g) LSU, LGHS, or UHC is excluded from Medicare or Medicaid.

(h) As determined by a court of competent jurisdiction pursuant to a final, binding, non-appealing judgment, there is a change in (or a new interpretation of) the law

or lack of necessary Governmental Authorization or other governmental approval, whether statutory, regulatory or other position or rule set forth by a Governmental Body, agency, accreditation organization, or similar body, that materially and adversely affects the fundamental relationship of the Parties, and the Parties are unable to agree, following the process in Section 14.4, on terms to amend the CEA or otherwise address the consequences of the change in or new interpretation of the law. If the Parties agree that a change in laws or interpretation thereof has occurred and are unable to reach a new agreement or otherwise address the consequences of the change in or new interpretation of the law, no Party shall be liable or responsible for any damages suffered by any other Party as a result of a termination pursuant to this subsection.

(i) Failure of any LSU GME Program to maintain ACGME accreditation as a result of action or inaction of LSU or failure of LSU to remain accredited by ACGME as a Sponsoring Institution.

(j) Termination of the AAA.

(k) Without the consent of LSU, the merger, consolidation, sale or transfer all or substantially all of UHC's assets, or admission of a new member, or the sale of all or a portion of LGHS's ownership interest, or the entering into any joint venture or other partnership arrangement by UHC.

(l) A material breach of this Agreement by any Party hereto that is not cured pursuant to Section 14.4.

Section 14.3 Other Breaches. All other Breaches shall be Non-Terminating Breaches.

Section 14.4 Process for Addressing Potential Non-Terminating Breaches. This Agreement may only be terminated as set forth in Section \_\_\_\_\_. The remedies available to a Party if there is a Potential Non-Terminating Breach shall be as follows:

(a) Notice and Cure Period. A Party asserting a Potential Non-Terminating Breach shall provide the other Party written notice of such breach, which notice shall include a detailed description of the basis for such Breach and a description of what would be satisfactory to the non-Breaching Party to remedy such asserted breach. The Breaching Party shall be entitled to a Cure Period to cure the alleged Breach. If the Breaching Party takes the actions described in the notice as to what would satisfy the non-Breaching Party to cure the Breach, the Breach shall be deemed cured. However, such actions shall not be the sole means of curing such a Breach and the Breaching Party shall be entitled to cure the Breach in any other way resulting in a cure of such Breach.

(b) Consultative Process. If such Potential Non-Terminating Breach is not cured within the Cure Period, the Parties shall engage in the "Consultative Process" for a period of thirty (30) calendar days to attempt to resolve the Potential Non-Terminating Breach.

(c) Right to Legal Remedies for Non-Terminating Breaches; No Termination Right. If such dispute involving a Non-Terminating Breach is not resolved pursuant to the Consultative Process, the Party alleging a Non-Terminating Breach shall be entitled to such remedies as are available at law, including damages. Neither Party shall have the right to terminate this Agreement for a Non-Terminating Breach except by authority of a final order of a court of competent jurisdiction after all rights of appeal have been exhausted.

Section 14.5 Process for Addressing Potential Terminating Breaches. The remedies available to a Party if there is a Potential Terminating Breach shall be as follows:

(a) Notice and Cure Period. A Party asserting a Potential Terminating Breach shall provide the other Party written notice of such Breach, which notice shall include a detailed description of the basis for such Breach and the non-Breaching Party's requirements to remedy such asserted Breach. The Party asserted to have Breached the Agreement shall be entitled to a Cure Period to cure the asserted Breach.

(b) Consultative Process. If such Potential Terminating Breach is not cured within the Cure Period, the Parties shall for a period of fifteen (15) Business Days engage in the Consultative Process to attempt to resolve the dispute.

(c) Executive Level Negotiations. If an alleged Potential Terminating Breach is not resolved in the Consultative Process, LSU's Vice President for Health Care and LGHS's Chief Executive Officer, or his or her designee, shall discuss and negotiate in good faith for thirty (30) calendar days to attempt to resolve the issue.

(d) Termination Right. If the dispute regarding the asserted Potential Terminating Breach is not resolved pursuant to the procedures in this Section set forth above, the non-breaching Party may declare its intent to terminate this Agreement by delivery of written notice of such intent to the other Party (the "Termination Notice") and the Parties shall begin the Wind Down Period as provided in Section 14.9; provided, however, that termination for Inadequate Funding shall follow the process set forth in Section 14.6. Such right of termination shall be in addition to any other remedies which the non-breaching Party may have at law, including damages.

Section 14.6 Termination Right for Inadequate Funding. If UHC fails to receive the Required Funding, this Agreement shall automatically terminate after completion of the process set forth in Section 14.9 4. However, the Wind Down Period shall begin on the date the Required Funding is due but unpaid to UHC, provided that during such Wind Down Period the State, through DHH, continues to pay UHC the Required Funding accruing during such Wind Down Period (collectively the “Wind Down Payments”). Notwithstanding the foregoing, the State shall have a Cure Period beginning on the first day of the Wind Down Period described above in which to pay all Required Funding accrued to but not yet paid to UHC. If such payment is made within such Cure Period, the Wind Down Period described above shall cease, this Agreement shall not terminate and the Parties shall continue the collaborative pursuant to the terms of this Agreement. If UHC fails to receive such Wind Down Payments during the Wind Down Period, UHC shall provide written notice to LSU and DHH and this Agreement will automatically terminate two (2) Business Days thereafter.

Section 14.7 Notice of Force Majeure. In the event of a failure or anticipated failure by any Party to perform its obligations hereunder caused by Force Majeure, such Party shall provide notice to the other Parties as soon as possible under the circumstance and in any event within thirty (30) calendar days of the occurrence of such Force Majeure event causing such failure or anticipated failure. A Party’s failure to perform due to a Force Majeure shall not constitute a Breach.

Section 14.8 Effects of Termination.

(a) In General. Subject to the applicable Wind Down Period in Section 14.9, the following shall apply consistent with the applicable wind down period:

(i) Each Party shall surrender possession, and deliver to another Party, all property belonging to the other Party, update and complete all files, records and charts and cooperate with each other as may be necessary to insure uninterrupted treatment of patients;

(ii) Each Party shall cooperate in the defense of any claims or suits for acts or omissions occurring during the term of this Agreement.

(iii) UHC shall vacate facilities owned by LSU.

(iv) The Master Hospital Lease shall terminate.

(v) Ownership of the Hospital's Medicare Provider Number shall be transferred to LSU.

Section 14.9 Wind Down Period. Termination of this Agreement allowed under Article XIV shall be subject to a period of at least six (6) months during which the Parties will transition Hospital operations in an orderly fashion to assure the Public Purpose continues to be satisfied (the "Wind Down Period"); however, if during that six-month period, LSU does not receive an emergency appropriation of funds sufficient to operate the Hospital, the Wind Down Period shall be extended until such time as the Louisiana Legislature concludes the first legislative session following the commencement of the Wind Down Period. The Wind Down Period shall begin on the Wind Down Commencement Date and end on the six-month anniversary of the Wind Down Commencement Date, unless terminated earlier for Inadequate Funding pursuant to the provisions contained in Section 15. 6, or unless extended to allow for an appropriation of funds to LSU at the next legislative session following the Wind Down Commencement Date. During the Wind Down Period, LSU, UHC and LGHS will establish a committee consisting of at least six (6) people, consisting of two (2) members appointed by LSU, two (2) members appointed by



LGHS, one (1) member appointed by DHH, and one (1) member appointed by DOA. The committee shall coordinate and oversee the transition of Hospital operations. To the extent necessary and applicable, the Parties will continue to comply with the terms and conditions of this Agreement during the Wind Down Period.

**ARTICLE XV.**  
**REMEDIES**

Section 15.1 Remedies Cumulative. The Parties expressly agree that this CEA may only be terminated as provided in Article XIV, and for no other reason. Subject to the foregoing, all rights and remedies of any Party provided for in this CEA shall be construed and held to be cumulative, and no single right or remedy shall be exclusive of any other which is consistent with the former. Any Party shall have the right to pursue any or all of the rights or remedies set forth herein, as well as any other consistent remedy or relief which may be available at law or in equity, but which is not set forth herein. No waiver by any Party of a Breach of any of the covenants, conditions or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding Breach of the same or of any other covenant, condition or restriction herein contained. The failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of future Breaches of such covenant or option. A receipt by any Party of payment by any other Party with knowledge of the Breach of any covenant hereof shall not be deemed a waiver of such Breach. No waiver, change, modification or discharge by any Party of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Parties.

**ARTICLE XVI.**  
**INSURANCE AND INDEMNIFICATION**

Section 16.1 Insurance. In addition to the policies of insurance required under the Lease (University Medical Center Lafayette), the Professional Services Agreement, and any other documents required in connection herewith, including, without limitation, participation as a qualified health care provider in the Louisiana Patients' Compensation Fund, LGHS and UHC will maintain such other policies of insurance as are customary for a company of similar size and scope of the operations of LGHS and UHC, with such limits and other terms of coverage as are commercially reasonable for companies similar in size and scope to LGHS and UHC.

Section 16.2 Indemnification.

(a) Survival. All representations, warranties, covenants and obligations in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the consummation of the Contemplated Transactions and the termination of this Agreement.

(b) Indemnification. Each Party will indemnify the other Party in accordance with Paragraphs (c) through (e) of this Section 16.2.

(c) Time Limitations.

(i) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, LSU will have liability (for indemnification or otherwise) and will indemnify LGHS and UHC for all costs, expenses, losses, damages, fines, penalties, forfeitures or liabilities (including, without limitation, interest which may be imposed by a court in connection therewith), court costs, litigation expenses, reasonable attorneys' and paralegals' fees and accounting fees (collectively, the "Damages") incurred by UHC or LGHS

as a result of (A) a Breach of any representation or warranty by LSU or in any other certificate, document, agreement, writing or instrument delivered by LSU pursuant to this Agreement, (B) the actions or failure to act by LSU Personnel, (C) any Breach of any covenant or obligation of LSU in this Agreement or in any other certificate, document, agreement, writing or instrument delivered by LSU pursuant to this Agreement, (D) any Damages arising out of the ownership or operation of the Hospital or its assets prior to the Commencement Date, (E) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of LSU, and (F) any Employee Plan established or maintained by LSU; provided however, that LSU's obligation under item (A) above shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the Commencement Date, UHC or LGHS notifies LSU of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UHC or LGHS.

(ii) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, the State, through DOA, will have liability (for indemnification or otherwise) for and will indemnify LGHS and UHC for all Damages incurred by UHC or LGHS as a result of (A) a Breach of any representation or warranty by DOA, and (B) any Breach of any covenant or obligation of DOA, in this Agreement or in any other certificate, document, agreement, writing or instrument delivered by DOA pursuant to this Agreement,

provided however, that DOA's obligation under item (A) above shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the Commencement Date, UHC or LGHS notifies the Commissioner of DOA of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UHC or LGHS.

(iii) To the extent permitted by applicable law, and except as otherwise provided in this Agreement, DHH will have liability (for indemnification or otherwise) for and will indemnify LGHS and UHC for all Damages incurred by UHC or LGHS as a result of (A) a Breach of any representation or warranty by DHH, and (B) any Breach of any covenant or obligation of DHH in this Agreement or in any other certificate, document, agreement, writing or instrument delivered by DHH pursuant to this Agreement, provided however, that DHH's obligation under item (A) above shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the Commencement Date, UHC or LGHS notifies the Secretary of DHH of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by UHC or LGHS.

(iv) Except as otherwise provided in this Agreement, UHC will have liability (for indemnification or otherwise) for all Damages incurred by LSU, DOA or DHH as a result of (A) a Breach of any representation or warranty by UHC, (B) the actions or failure to act by the employees or agents of UHC, (D)

any Breach of any covenant or obligation of UHC in this Agreement or in any other certificate, document, agreement, writing or instrument delivered by UHC pursuant to this Agreement, (D) any Damages arising out of the ownership or operation of the Hospital or its assets after the Commencement Date, (E) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of UHC, and (F) any Employee Plan established or maintained by UHC; provided however, that UHC's obligation under item (A) above shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the termination of this Agreement, LSU, DOA or DHH notifies UHC of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by LSU, DOA or DHH.

(v) Except as otherwise provided in this Agreement, LGHS will have liability (for indemnification or otherwise) for all Damages incurred by LSU, DOA or DHH as a result of (A) a Breach of any representation or warranty by LGHS, (B) any Breach of any covenant or obligation of LGHS in this Agreement or in any other certificate, document, agreement, writing or instrument delivered by LGHS pursuant to this Agreement, (C) the actions or failure to act by the employees or agents of LGHS, (D) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect. 2101(a)(6), caused by any action of LGHS, and (E) any Employee Plan established or maintained by LGHS; provided

however, that LGHS's obligation under item (A) above shall only apply if, other than with respect to a Breach resulting from fraud, in which case a claim may be made at any time, on or before the third (3rd) anniversary of the termination of this Agreement, LSU, DOA or DHH notifies UHCLGHS of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by LSU, DOA or DHH.

(d) Third-Party Claims.

(i) Promptly after receipt by a Person entitled to indemnity under this Agreement (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(ii) If an Indemnified Person gives notice to the Indemnifying Person pursuant hereto of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified

Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, no compromise or settlement of such Third-Party Claim may be affected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of a Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its consent.

(iii) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the

exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(iv) With respect to any Third-Party Claim subject to indemnification under this Article: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the Parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(v) With respect to any Third-Party Claim subject to indemnification under this Article, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each Party agrees that, to the extent allowed by law: (i) it will use its commercially reasonable efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any Party hereto and counsel responsible for or



participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

(e) Other Claims. A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

## **ARTICLE XVII. GENERAL PROVISIONS**

Section 17.1 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes the other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;
- (e) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive

amendment, modification, codification, replacement or reenactment of such section or other provision;

(f) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(h) "or" is used in the inclusive sense of "and/or";

(i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding";

(j) references to "day," rather than the defined term "Business Day," shall mean a calendar day; and

(k) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

Section 17.2 Legal Representation of the Parties. This Agreement was negotiated by the signatories hereto with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any signatory hereto shall not apply to any construction or interpretation hereof.

Section 17.3 Expenses. Except as otherwise provided in this Agreement, each Party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its representatives. If this Agreement is

terminated, the obligation of each Party to pay its own fees and expenses will be subject to any rights of such Party arising from a Breach of this Agreement by another Party.

Section 17.4 Public Announcements. Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as the Parties shall mutually determine.

Section 17.5 Confidential Information.

(a) Restricted Use of Confidential Information. Subject to subsection (h) below, except as otherwise required by any Legal Requirement, each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information to the extent allowed by law (i) shall be kept confidential by the Receiving Party; (ii) shall not be used for any reason or purpose other than to evaluate and consummate the Contemplated Transactions; and (iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of LSU with respect to Confidential Information of LSU or the LGHS CEO with respect to Confidential Information of LGHS, or the UHC CEO with respect to the Confidential Information of UHC. Each of LGHS, UHC and LSU shall disclose the Confidential Information of the other party only to its representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by LSU or LGHS or UHC, as the case may be, of the obligations of this Article with respect to such information. Each of LSU, LGHS and UHC shall (i) enforce the terms of this Article as to its respective representatives; (ii) take such action to the extent necessary to cause its

representatives to comply with the terms and conditions of this Article; and (iii) be responsible and liable for any Breach of the provisions of this Article by it or its representatives.

(b) Exceptions. Section 17.5 does not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates (i) was, is or becomes generally available to the public other than as a result of a Breach of this Article or the Confidentiality Agreement by the Receiving Party or its representatives; (ii) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party; or (iii) was, is or becomes available to the Receiving Party on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure.

(c) Legal Proceedings. Subject to subsection (h) below, if a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article. In the absence of a protective order or other remedy, the Receiving Party may disclose that portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded

by any Person to whom any Confidential Information is so disclosed. The provisions of this Section do not apply to any Proceedings among the Parties to this Agreement.

(d) Return or Destruction of Confidential Information. Except as required by any Legal Requirement, if this Agreement is terminated, each Receiving Party shall, to the extent allowed by law, (i) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material; (ii) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of the Disclosing Party, destroy all such Confidential Information; and (iii) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

(e) Attorney-Client Privilege. The Disclosing Party is not waiving, and will not be deemed to have waived or diminished, any of its attorney work product protections, attorney-client privileges or similar protections and privileges as a result of disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party, regardless of whether the Disclosing Party has asserted, or is or may be entitled to assert, such privileges and protections. The Parties (i) share a common legal and commercial interest in all of the Disclosing Party's Confidential Information that is subject to such privileges and protections; (ii) are or may become joint defendants in Proceedings to which the

Disclosing Party's Confidential Information covered by such protections and privileges relates; (iii) intend that such privileges and protections remain intact should either party become subject to any actual or threatened Proceeding to which the Disclosing Party's Confidential Information covered by such protections and privileges relates; and (iv) intend that after the consummation of the Contemplated Transactions the Receiving Party shall have the right to assert such protections and privileges. No Receiving Party shall admit, claim or contend, in Proceedings involving either Party or otherwise, that any Disclosing Party waived any of its attorney work-product protections, attorney-client privileges or similar protections and privileges with respect to any information, documents or other material not disclosed to a Receiving Party due to the Disclosing Party disclosing its Confidential Information (including Confidential Information related to pending or threatened litigation) to the Receiving Party.

(f) Trade Secret Protection. Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article to the extent included within the definition. In the case of trade secrets, each Party hereby waives any requirement that the other Party submit proof of the economic value of any trade secret or post a bond or other security.

(g) HIPAA Override. Notwithstanding anything to the contrary in this Agreement, any Confidential Information which constitutes "protected health information" as defined in HIPAA shall be maintained by the Parties in accordance with

the provisions of HIPAA and the Health Information and Technology Act ("HITECH Act") and the rules and regulations promulgated thereunder, and such provisions, rules and regulations shall take precedence over any other provisions of this Agreement governing Confidential Information to the extent there is a conflict between the terms of this Agreement and such provisions, rules and regulations of HIPAA and each Party will act in accordance therewith.

(h) Public Records Request. The financial and other records created by, for or otherwise belonging to LGHS or UHC shall remain in the possession, custody and control of LGHS and UHC, respectively, regardless of whether, or the method by which, LSU reviews and/or audits such records in connection with the rights and obligations of this Agreement. LSU, LGHS and UHC consider records of LGHS to be proprietary to LGHS, and records of UHC to be proprietary of UHC, and, to the extent that LGHS or UHC makes any such records or documents available to LSU, such records shall be clearly marked as confidential and/or proprietary to indicate its or their position that such records or documents are not public records. To the extent a public records request is received by LSU pursuant to La. R.S. 44:1, et seq. (the "Public Records Act") which may include documents marked as confidential and/or proprietary to LGHS or UHC, LSU will use its best efforts to give notice to LGHS or UHC, as applicable, that LSU has received such a public records request prior to producing any documents considered to be proprietary to LGHS or UHC, and if such notice cannot be provided to LGHS or UHC before LSU is required to produce such documents, LSU shall provide notice to LGHS or UHC, as applicable, as soon thereafter as possible. In the event that LGHS or UHC objects to the production and believes that the records are not subject to production

pursuant to the Public Records Act, LGHS or UHC, as appropriate, will immediately so notify LSU in writing and take such action as LGHS or UHC deems necessary to protect the disclosure of such records. LGHS and UHC will defend, indemnify and hold harmless LSU and its employees, officers, attorneys and agents from and against any costs, expenses, liabilities, attorneys fees, losses, damages, fines and/or penalties resulting from or relating to LSU's failure to produce such documents in response to a public records request.

Section 17.6 Notices. Except as otherwise provided in this Agreement, any notice, payment, demand, request or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be duly given by the applicable Party if personally delivered to the applicable Party, or if sent certified or registered mail, at its address set forth below:

If to LSU:

Board of Supervisors of Louisiana State  
University  
and Agricultural and Mechanical College  
3810 West Lakeshore Drive  
Baton Rouge, LA 70808  
Attention: William L. Jenkins, President

With a copy to:

Taylor, Porter, Brooks & Phillips  
LLP  
8th Floor Chase Tower South  
451 Florida Street  
Baton Rouge, LA 70801  
Attention: Patrick D. Seiter, Esq.

If to DOA:

State of Louisiana, Division of  
Administration  
Claiborne Building, 7<sup>th</sup> Floor  
1201 N. Third Street  
Baton Rouge, LA 70802  
Attention: Commissioner

With a copy to:

State of Louisiana, Division of  
Administration  
P. O. Box 94004  
Baton Rouge, LA 70804-9004  
Attention: Elizabeth Baker Murrill,  
Esq.



If to DHH:

State of Louisiana, Department of Health  
and Hospitals  
628 N. Fourth Street  
P.O. Box 629  
Baton Rouge, Louisiana 70821-0629  
Attention: Secretary

If to UHC:

University Hospital and Clinics, Inc.  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

If to LGHS:

Lafayette General Health System, Inc.  
1214 Coolidge Street  
Lafayette LA 70505  
Attention: General Counsel

With a copy to:

State of Louisiana, Department of  
Health and Hospitals  
628 N. Fourth Street  
P.O. Box 629  
Baton Rouge, Louisiana 70821-0629  
Attention: Stephen Russo, Esq.

With a copy to:

Baker Donelson Bearman Caldwell  
& Berkowitz, PC  
Chase North Tower  
450 Laurel Street, 20<sup>th</sup> Floor  
Baton Rouge, LA 70801  
Attention: Dickie Patterson, Esq

and a copy to LGHS

With a copy to:

Baker Donelson Bearman Caldwell  
& Berkowitz, PC  
Chase North Tower  
450 Laurel Street, 20<sup>th</sup> Floor  
Baton Rouge, LA 70801  
Attention: Dickie Patterson, Esq.

or to such other address as such Party may from time to time specify by written notice to the other Parties.

Any such notice shall, for all purposes, be deemed to be given and received:

- (i) if by hand, when delivered;
- (ii) if given by nationally recognized and reputable overnight

delivery service, the business day on which the notice is actually received by the Party; or

(iii) if given by certified mail, return receipt requested, postage prepaid, three (3) Business Days after posted with the United States Postal Service.

Section 17.7 Jurisdiction; Service of Process. Any Proceeding arising out of or relating to this Agreement or any Contemplated Transaction may be brought in the Nineteenth Judicial District for the Parish of East Baton Rouge, Louisiana, or, if it can acquire jurisdiction, in the United States District Court for the Middle District of Louisiana; provided, however, that nothing herein is intended, nor shall it be deemed or interpreted, to waive any rights, privileges, or immunities available to any Party under the Eleventh Amendment. The Parties agree that any of them may file a copy of this Section with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum as set forth hereinabove. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

Section 17.8 Enforcement of Agreement; Legal Fees and Costs. Subject to the limitation on equitable or injunctive relief set forth in Section \_\_\_\_ and Section \_\_\_\_\_, each Party acknowledges and agrees that the other Parties would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by a Party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which a Party may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement, without posting any bond or other undertaking. In the event that either Party elects to incur legal

expenses to enforce or interpret any provision of this Agreement, the prevailing Party will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such Party shall be entitled.

Section 17.9 Entire Agreement and Modification. This Agreement supersedes all prior agreements, whether written or oral, among the Parties with respect to its subject matter and constitutes (along with the other documents and Exhibits delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by LSU, DOA, DHH, LGHS and UHC.

Section 17.10 Assignments, Successors and No Third-Party Rights. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section.

Section 17.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 17.12 Construction. The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," and "Sections" refer to the corresponding Articles and Sections of this Agreement.

Section 17.13 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 17.14 Governing Law. This Agreement will be governed by and construed under the laws of the State of Louisiana without regard to conflicts-of-laws principles that would require the application of any other law.

Section 17.15 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

Section 17.16 Compliance with Health Care Laws. This Agreement is intended to comply with all Health Care Laws and nothing herein is intended to require, nor shall the Agreement be construed or interpreted as requiring, directly or indirectly, explicitly or implicitly, any Party to take any action that would violate any Health Care Law.

Section 17.17 Access to Records. To the extent that the services provided under this Agreement are deemed by the Secretary of the Department of Health and Human Services, the U.S. Comptroller General, or the Secretary's or Comptroller's delegate, to be subject to the

provisions of Section 952 of Public Law 96-499, the Parties, until the expiration of four (4) years subsequent to the furnishing of services under this Agreement, shall make available, upon written request to the Secretary, the Comptroller, or any of their duly authorized representatives this Agreement, and the books, documents and records of the Parties that are necessary to certify the nature and extent of the charges to each Party. If any Party carries out any of its duties under the Agreement through a subcontract, with a value of \$10,000 or more over a twelve (12)-month period, with a related organization (as that term is defined with regard to a provider in 42 C.F.R. § 413.17(1)), such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization upon written request shall make available, to the Secretary, the Comptroller, or any of their duly authorized representatives the subcontract, and books, documents, and records of such organization that are necessary to verify the nature and extent of such costs. If any Party is requested to disclose any books, documents, or records relevant to this Agreement for the purpose of an audit or investigation relating directly to the provision of services under this Agreement, such Party shall notify the other Parties of the nature and scope of such request and shall make available to the other Parties, upon written request, all such books, documents, or records. This Section is included pursuant to and is governed by the requirements of federal law. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by the Parties or any of the Parties' representatives by virtue of this Agreement.

Section 17.18 Name and Trademark. Except as provided in this Agreement, no Party will use any other Party's name, symbol, or trademark in any marketing, advertising, or any other public communications without the prior written consent of such Party regarding the use of its name, symbol, or trademark.

Section 17.19 LGHS and UHC Not Intended to be Public Bodies. Nothing in this Agreement is intended, and it is not the intent of the Parties, DOA or DHH, to cause or result in LGHS or UHC being considered a public or quasi-public body, governmental authority or subdivision thereof, other public entity or otherwise subject to public inspection laws of the State, public audit or other disclosure procedures generally applicable to public bodies in the State.

Section 17.20 Discrimination Clause. UHC agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and UHC agrees to abide by the requirements of the Americans with Disabilities Act of 1990. UHC agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Section 17.21 Further Acts and Assurances. Each of the Parties shall, at any time and from time to time at and after the execution of this Agreement, upon reasonable request of another Party, take any and all steps reasonably necessary to consummate the Contemplated Transactions, and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to consummate the Contemplated Transactions.

Section 17.22 Appropriation of Funds. All DOA and LSU obligations under this Lease to make payments of any kind in future year, shall be subject to appropriation by the Louisiana Legislature of sufficient funds specifically and expressly appropriated therefor and the availability of funds following Legislative appropriation. DOA and LSU agree to make good faith best efforts to seek specific appropriation for such funds from the Louisiana Legislature, and DOA and LSU shall include in one or more of their annual budget requests, a request for the appropriation of funds for the purpose of making such payments pursuant to this Agreement. Notwithstanding the foregoing, this provision shall in no way limit LGHS's right to terminate this Agreement for lack of Required Funding pursuant to Section \_\_\_\_.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

<p>Witnesses:</p> <hr/> <hr/>	<p><b>BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, a public constitutional corporation of the State of Louisiana</b></p> <p>By: _____ William L. Jenkins, President of Louisiana State University System</p> <p>Date: _____</p> <p><b>STATE OF LOUISIANA, DEPARTMENT OF HEALTH AND HOSPITALS</b></p> <p>By: _____ Kristy Nichols, Commissioner</p> <p>Date: _____</p>
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<p>Witnesses:</p> <hr/> <hr/>	<p><b>LAFAYETTE GENERAL HEALTH SYSTEM, INC.</b></p> <p>By: _____</p> <p>Date: _____</p> <p><b>UNIVERSITY HOSPITAL AND CLINICS, INC.</b></p> <p>By: _____</p> <p>Date: _____</p>
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The undersigned joins in execution of this Agreement solely for purposes of consenting and agreeing to the terms set forth in Sections \_\_\_\_\_.

DHH Signature Block

## **APPENDIX I**

### **DEFINITIONS**

"Academic Affiliation Agreement" or "AAA" means the agreement between UHC and LSU setting forth terms and conditions upon which LSU and UHC will collaborate to strengthen LSU, the Hospital, the AMC, and their respective programs.

"Academic Medical Center" or "AMC" means the collaborative academic medical center operated by the University Medical Center Management Corporation.

"ACGME" means the Accreditation Council for Graduate Medical Education.

"Affiliate" means a Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another Person. "Control" (including the term "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of a Person, whether through membership in a non-profit corporation, appointment of the board of directors or board of supervisors, ownership of voting securities, by contract, as trustee or executor, or otherwise.

"Agreement" or "CEA" means this Cooperative Endeavor Agreement among the LSU, UHC, LGHS, DOA and DHH.

"Annual Supplemental Payment" means, for the State fiscal year beginning July 1, 2013, \$46,095,580. For each State fiscal year thereafter, the Annual Supplemental Payment shall be increased (and in no event decreased) and shall be equal to the sum of (i) the Annual Supplemental Payment previously in effect, and (ii) the product of such previous Annual Supplemental Payment multiplied the percentage by which the MCPI published for the last month of the immediately preceding State fiscal year shall have increased over the MCPI figure published for the month that is twelve months before such date, with such sum being the new Annual Supplemental Payment.

"Benefit Plans" means any pension, retirement, savings, disability, medical, hospital, surgical, dental, optical or other health plan (including such benefits that are provided through insurance or a health maintenance organization), life insurance (including any individual life insurance policy as to which LSU makes premium payments whether or not LSU is the owner, beneficiary or both of such policy) or other death benefit plan (including accidental, death insurance), profit sharing, present or deferred compensation, employment consulting, termination of employment, change-in-control, retention stock option, bonus or other incentive plan, excess benefit plan vacation benefit plan, holiday, sick pay, severance plan, "golden parachute", prepaid legal services, day care, employee assistance (referral) benefits, cafeteria plan, scholarship, or educational benefit, supplemental unemployment, expense reimbursement, medical service discount, any fringe benefits referenced in Section 132 of the Code or other employee benefit plan or arrangement (whether written or arising from custom) to which LSU is a party or by which LSU or any of the Hospitals (or any of its rights, properties or assets) is bound, or with

respect to which LSU has made payments, contributions or commitments or may otherwise have any liability (including any such plan or arrangement formerly maintained by LSU), but in either case, which provide benefits to one or more employees, former employees or non-employees service providers of LSU, including without limit Employees, or any of their respective dependents or beneficiaries.

"Bonus Cap" means \$4,000,000 for the State fiscal year ending June 30, 2014. For each State fiscal year thereafter, the Bonus Cap shall be increased by the sum of (i) the Bonus Cap previously in effect, and (ii) the product of such previous Bonus Cap multiplied the percentage by which the MCPI published for the last month of the immediately preceding State fiscal year shall have increased over the MCPI figure published for the month that is twelve months before such date, if there was an increase, and otherwise 1.0, with such sum being the new Bonus Cap.

"Breach" means any action, inaction, omission, or other act of a Party that results in that Party's failure to perform or comply with any covenant or obligation in or of this Agreement or any other document or agreement delivered pursuant to this Agreement, breach of, or any inaccuracy in, any representation or warranty in this Agreement or any other document or agreement delivered pursuant to this Agreement, or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other document or agreement delivered pursuant to this Agreement, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"Business Days" means Monday through Friday of each week, excluding legal holidays.

"CMS" means the Centers for Medicare/Medicaid Services (CMS), an agency of the U.S. Department of Health and Human Services.

"Code" or "IRC" means the Internal Revenue Code of 1986.

"Collaborative Residency Positions" shall have the meaning as set forth in Section 2.2.

"Commencement Date" means June 24, 2013, the date on which UHC assumes operation and management of the Hospital.

"Confidential Information" includes, to the extent allowed by law, any and all of the following information of any Party that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by any Party or its Representatives (collectively, a "Disclosing Party") to the other party or its Representatives (collectively, a "Receiving Party"):

- (i) all information that is a trade secret under applicable trade secret or other law;
- (ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing.

"Consultative Process" means an open, good faith dialogue among the appropriate individuals designated or identified by each Party on breaches, disputes or issues of concern to or affecting the transactions contemplated by the Agreement. Unless this Agreement provides that the Consultative Process is to proceed automatically, the Consultative Process shall commence upon receipt of written notice from the Party requesting the Consultative Process by the other Party.

"Contemplated Transactions" means a series of transactions involving the Parties to the CEA, including (i) UHC's lease of the Facility and furniture, fixtures, and equipment, (ii) the purchase of consumable inventory and accounts receivable; (iii) transition of the Hospital from LSU to UHC; and (iv) UHC's support academic, clinical and research missions of the AMC of the CEA.

"Core Safety Net Services" means those core health care services that are described in Article III, Section 3.4, and listed on Exhibit \_\_\_\_\_ of this Agreement.

"Cost Analysis Worksheet" is the funding worksheet attached as Exhibit \_\_\_\_\_ to this Agreement.

"Cure Period" means a \_\_\_\_\_ day period of time during which a Party may attempt to cure an asserted Breach.

"Damages" shall have the meaning set forth in Section 17.1(c).

"DHH Funding Calculations" means the calculations of the Required Program Funding prepared by DHH, as described in Article VII, Section 7.1(d)(ii).

"Disclosing Party" has the meaning set forth in the definition of "Confidential Information."

"DOA" means the State of Louisiana through the Louisiana Division of Administration.

"DOC" means the Louisiana Department of Public Safety and Corrections.

"Effective Date" means the date that this Cooperative Endeavor Agreement becomes effective and enforceable.

"Encumbrance" means any lien, claim, charge, security interest, mortgage, deed of trust, pledge, easement, option, limitation on use, conditional sale or other title retention agreement, defect in title or other restrictions of a similar nature.

"Equipment Lease" means the lease agreement among LSU and UHC for certain equipment necessary for UHC's operation of the Hospital.

"ERISA" means the Employee Retirement Income Security Act of 1974.

"Excluded Provider" means an individual or entity who or that is excluded from participating in any state or federal health care program pursuant to 42 U.S.C. § 1320a-7.

"Force Majeure" shall mean any(i) act of God, landslide, lightning, earthquake, hurricane, tornado, blizzard and other adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, blockade, insurrection, riot or civil disturbance; (ii) labor dispute or strike; or (iii) order or judgment of any governmental authority, if not the result of willful or negligent action of a Party, any of which results in loss, delay or inability of any party to perform the obligations hereunder.

"GME" means graduate medical education.

"GME Program" means graduate medical education programs generally.

"GME Program Start Date" shall mean \_\_\_\_\_, 2013.

"Governmental Authorization" means any consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Agencies" means any United States or Louisiana agency or instrumentality.

"Governmental Body" or "Governmental Bodies" means any:

nation, state, county, city, town, borough, village, district or other jurisdiction;

federal, state, local, municipal, foreign or other government;

governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);

multinational organization or body;

body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or

official of any of the foregoing.

"Health Care Laws" means all federal, state or local laws, statutes, codes, ordinances, regulation manuals or principles of common law relating to healthcare regulatory matters, including without limitation, (i) 42 U.S.C. §§ 1320a-, 7a and 7b, which are commonly referred to as the "Federal Anti-Kickback Statute"; (ii) 42 U.S.C. § 1395nn, which is commonly referred to as the "Stark Law"; (iii) 31 U.S.C. §§ 3729-3733, which is commonly referred to as the "Federal False Claims Act"; (iv) Titles XVIII and XIX of the Social Security Act, implementing regulations and program manuals; and (v) 42 U.S.C. §§ 1320d-1320d-8 and 42 C.F.R. §§ 160, 162 and 164, which is commonly referred to as HIPAA; (vi) 42 U.S.C. §§ 1395dd, et. seq., which is commonly referred to as the "Emergency Medical Treatment and Active Labor Act" (EMTALA).

"HIPAA" means the Health Information Protection and Portability Act of 1996, as amended.

"Historical Allocation" means the historical allocation of residency caps to the Hospital by LSU and Tulane, as defined in the MOU.

"HITECH Act" means the Health Information and Technology for Economic and Clinic Health Act, as amended.

"Hospital" means the patient care and business operations of University Medical Center in Lafayette, Louisiana, bearing Medicare Provider Number \_\_\_\_\_.

"Inadequate Funding" means funding by DHH to UHC or LGHS affiliates that is not sufficient to compensate UHC for the Medicaid and Indigent Care Services it provides.

"Inadequate Funding Breach" shall have the meaning as set forth in Section 14.6.

"Inadequate Funding Wind Down Period" shall have the meaning as set forth in Section 14.9.

"Inadequate Funding Wind Down Commencement Date" means the date on which the Inadequate Funding Wind Down Period commences. This date shall be the date on which Inadequate Funding Termination Notice is received by LSU, the State, and DHH.

"Indemnified Person" shall mean the Person entitled to indemnity under this Agreement.

"Indemnifying Person" means the Person obligated to indemnify another Party under this Agreement.

"Indigent Care Services" means health care services provided to persons whose annual income is below the federal poverty level.

"Facility" means the current facilities located in Lafayette, Louisiana in which the Hospital and its clinics are operating.

"Inventory Date" means the date that inventories are taken of supplies, drugs, food, and other disposables and consumables.

"IRC" means the Internal Revenue Code.

"Joint Commission" or "JC" means The Joint Commission responsible for accreditation of hospitals and other health care organizations.

"Key Service Baseline" means the baseline of services in the Key Service Lines provided by the Hospital on the Commencement Date as described in Article III, Section 3.5.

"DHH" means the Louisiana Department of Health and Hospitals.

"Key Service Lines" means those service lines described in Article III, Section 3.5 and listed on Exhibit \_\_\_\_\_.

"Knowledge" means an individual will be deemed to have Knowledge of a particular fact or other matter if:

- (i) that individual is actually aware of that fact or matter; or
- (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement.
- (iii) A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor or trustee of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter (as set forth in (i) and (ii) above), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that Person or individual.

"Layoff Plan" means the layoff plan filed by LSU with the Louisiana Civil Service Commission regarding the layoff of LSU Personnel.

"Leased Premises" means all property set forth in the Master Hospital Lease attached as Exhibit \_\_\_\_\_ of this Agreement.

"Legal Requirement" means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty, including without limitation Health Care Laws.

"Legislature" means the Senate and House of the Louisiana Legislature.

"Liability" means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"LSU" or "LSU Board of Supervisors" means the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

"LSU GME Program" means Graduate Medical Education programs that will be operated at the Hospital and are listed on Schedule \_\_\_\_\_ hereto.

"LSU Personnel" means the Hospital employees to be laid off as LSU employees as of the Commencement Date, subject to the approval of the Louisiana Civil Service Commission.

"Major Teaching Hospital" means a hospital that meets one of the following criteria:

(i) Be a major participant in at least four approved medical residency programs of which at least two of the programs shall be in medicine, surgery, obstetrics and gynecology, pediatrics, family practice, emergency medicine, or psychiatry; or

(ii) Maintain an intern and resident full-time equivalency of at least twenty filled positions with an approved medical residency program in family practice located more than one hundred fifty miles from the medical school accredited by the Liaison Committee on Medical Education.

"Master Collaboration Agreement" or "MCA" means the agreement among LSU, UHC, and LGHS addressing matters related to the Contemplated Transaction and involving ancillary agreements pertaining to same.

"Master Hospital Lease Agreement" means the lease agreement among LSU and UHC for the Facility and any other properties described in the lease agreement attached as Exhibit \_\_\_\_ of this Agreement.

"Material Adverse Effect" means \_\_\_\_\_.

"Maximum Funding Commitment" mean \$3,803,925 for the period between the Commencement Date and June 30, 2013, \$66,115,828 76,541,416 for the State fiscal year ending June 30, 2014, and \$69,115,73379,541,321. For each State fiscal year thereafter, the Maximum Funding Commitment shall be increased (and in no event decreased) and shall be equal to the sum of (i) the Maximum Funding Commitment previously in effect, and (ii) the product of such previous Maximum Funding Commitment multiplied the percentage by which the MCPI published for the last month of the immediately preceding State fiscal year shall have increased over the MCPI figure published for the month that is twelve months before such date, shall have increased over the MCPI figure published for the month that is twelve months before such date, if there was an increase, and otherwise 1.0, with such sum being the new Maximum Funding Commitment. For purposes of determining the Maximum Funding Commitment for the State fiscal year ending on June 30, 2015, the Maximum Funding Commitment previously in effect shall be deemed to have been \$69,115,733.

"MCPI" means the Consumer Price Index for Medical Care Services published by the United States Department of Labor, Bureau of Labor Statistics, in which 1982-1984 equals one hundred (100). If the MCPI is discontinued or revised during the term of this Agreement, such other governmental index or computation with which it is replaced shall be used in order to obtain



substantially the same result as would be obtained if the MCPI had not been discontinued or revised.

"Medically Indigent" means any person whose income is below two hundred percent of the federal poverty level and who is uninsured..

"Memorandum of Understanding" or "MOU" means the agreement dated August 2, 2009, as amended by agreement dated March 2, 2010, among LSU, UHC, LGHS, DOA and DHH in which it was contemplated that UHCUHC would assume the operations of the Hospital.

"Methodology Adjustment Notice" means written notice from one Party to another Party requesting modification of the Cost Analysis Worksheet or Shared Cost Savings Incentive Worksheet.

"Office of Academic Affairs" or "OAA" is an office located at UHC that has oversight of the management and administration of an AMC. The OAA will be led by UHC's Chief Academic Officer, who shall be a physician employed by UHC with experience and demonstrated capabilities in management and administration of an AMC.

"Office of Risk Management" means the Office of Risk Management within the DOA.

"Order" means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"LGHS" means Lafayette General Health System, Inc.

"Party" or "Parties" means LSU, UHC, LGHS, DOA and DHH.

"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Potential Terminating Breaches" means those asserted Breaches that may result in termination of the CEA if not cured pursuant to the process provided in Article XIV, Term and Termination.

"Proceeding" means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator. "Required Funding" means the level of funding described in Article VII.

"Provider Numbers" shall mean all numbers or other identifying designations issued or assigned to a provider for purposes of a provider agreement, reimbursement or other payment or claims processing, including without limitation provider numbers as designated for purposes of Medicare, Medicaid, CHAMPUS or other governmental or third party payer programs.

"Public Purpose" means the purpose the Parties seek to accomplish through this Cooperative Endeavor Agreement, specifically, to create an academic medical center in which the Parties

continuously work in collaboration and are committed and aligned in their actions and activities, in accordance with a sustainable business model, to serve the State: (i) as a site for graduate medical education, capable of competing in the health care marketplace, with the goal of enriching the State's health care workforce and their training experience; (ii) in fulfilling the State's historical mission of assuring access to Safety Net Services to all citizens of the State, including its Medically Indigent, high risk Medicaid and prisoner populations, and (iii) by focusing on and supporting the Core Services and Key Service Lines necessary to assure high quality medical education training and access to Safety Net Services.

"Receiving Party" has the meaning set forth in the definition of "Confidential Information."

"Residency Caps" has the meaning set forth in the recitals above.

"Residency Positions" has the meaning set forth in the recitals.

"Required Program Funding" means payments made by DHH to UHC or LGHS affiliates as described in Article VII, the Cost Analysis Worksheet attached as Exhibit \_\_\_\_, and the Shared Cost Savings Incentive Worksheet attached as Exhibit \_\_\_\_\_.

"RRC" means the Residency Review Committee.

"Safety Net Services" means health care services which are important to the health of the citizens of the State and to which they may not otherwise have access, including, without limitation, the Core Services, whether such lack of access is due to the financial resources available to the patient, lack of availability of the service through alternative providers in the community, or other reason.

"Shared Cost Savings Incentive Worksheet" means the funding worksheet attached as Exhibit \_\_\_\_ to this Agreement.

"State" means the State of Louisiana.

"Termination Notice" means written notice by a non-breaching Party to the other Parties of the non-breaching Party's intent to terminate this CEA.

"Third Party Claim" means any claim against any Indemnified Person by a third party, whether or not involving a Proceeding.

"Third Party Consents" means those consents or approvals needed from third parties as set forth on Schedule \_\_\_\_\_.

"UHC" means University Hospital and Clinics, Inc.

"UHC Charity Care Policy" means the policy attached as Exhibit \_\_\_\_ to this CEA.

"Wind Down Commencement Date" means Wind Down Commencement Date on which the Wind Down Period commences. This date shall be the date on which a written notice to terminate this Agreement is received by the non-terminating Party, provided however, that the

applicable Cure Period, Consultative Process and executive level discussions, as applicable or required, have ended without resolution.

"Wind Down Payments" means the Required Program Funding from DHH to UHC or a LGHS affiliate during the Wind Down Period.

"Wind Down Period" shall have the meaning as set forth in Section 14.9.

**Exhibit \_\_\_\_\_**

**CORE SAFETY NET SERVICES**

**[VERIFY AND DEFINE MORE PRECISELY]**

1. Emergency Room
2. HIV Outpatient Clinic
3. Oncology (outpatient infusion chemotherapy?)
4. Mental Health
5. Outpatient Pharmacy (340B and Patient Assistance Programs)

**Exhibit \_\_\_\_\_**

**KEY SERVICE LINES**

1. Cardiovascular (diagnostic only)
2. Neurological (excluding neurosurgery)
3. Musculoskeletal
4. Genito-Urinary
5. Women's Health
6. Digestive Disease
7. Infectious Disease

**LEASE  
(University Medical Center Lafayette)**

**STATE OF LOUISIANA**

**PARISH OF EAST BATON ROUGE**

**PARISH OF \_\_\_\_\_**

This contract of Lease ("Lease") is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between:

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE**, a public constitutional corporation of the State of Louisiana, represented herein by William L. Jenkins, Interim President of the Louisiana State University System, duly authorized by virtue of a Resolution of the Board of Supervisors, adopted March 27, 2013, a copy of which is attached hereto, with a mailing address of 3810 West Lakeshore Drive, Louisiana State University, Baton Rouge, Louisiana 70808 (Federal I.D. No. XX-XXX0848) (hereinafter referred to as "LSU" or "Lessor");

**DIVISION OF ADMINISTRATION** for the State of Louisiana, acting by and through the Commissioner of Administration (hereinafter referred to as "Division");

**THE STATE OF LOUISIANA ("State"), THROUGH THE DIVISION OF ADMINISTRATION**, herein represented and appearing through Kristy H. Nichols, Commissioner of Administration, Division of Administration, Office of the Governor, State of Louisiana, under the authority granted pursuant to La. R.S. 39:11 and other applicable law, whose mailing address is Post Office Box 94095, Baton Rouge, Louisiana 70804-9095, (herein referred to as "State"); and

**UNIVERSITY HOSPITAL AND CLINICS, INC.**, a Louisiana nonprofit corporation, represented herein by \_\_\_\_\_, its \_\_\_\_\_, duly authorized by virtue of a resolution adopted \_\_\_\_\_, 2013, a copy of which is attached hereto, with a mailing address of \_\_\_\_\_, Lafayette, Louisiana 70\_\_\_\_ (Federal I.D. No. XX-XXX\_\_\_\_) (hereinafter referred to as "Lessee"),

provides as follows:

**WITNESSETH**

**WHEREAS**, LESSEE is a major teaching hospital committed to developing medical and clinical professionals in the State of Louisiana in order to improve access to healthcare in its service area; and,

**WHEREAS**, LSU is a public constitutional corporation organized and existing under the laws of the State of Louisiana, and LSU's institutions, including its medical schools and hospitals, are under LSU's supervision and management pursuant to La. Const. Art. VIII, Section 7 and La. R.S. 17:3215; and,

**WHEREAS**, LESSEE and LSU support building a new model for the relationship between a major teaching hospital and a school of medicine and its teaching programs, and that this new model will provide physicians and patients with a new environment of care that optimizes the use of all resources; and,

**WHEREAS**, LSU, LESSEE, Lafayette General Health Systems, Inc., the Louisiana Department of Health and Hospitals and Division of Administration are parties to a Cooperative Endeavor Agreement dated \_\_\_\_\_, 2013 (as the same may be amended from time to time, the "CEA") through which LSU, LESSEE, the Louisiana Department of Health and Hospitals and Division of Administration will collaborate to develop and maintain nationally recognized graduate medical education programs; and,

**WHEREAS**, this Lease is an integral aspect of the CEA and furthers the above stated goals; and,

**WHEREAS**, it is a collective goal of the parties to this Lease to enhance the stability and competitiveness of Louisiana's medical education and training programs so that Louisiana is positioned to continue to attract the most talented faculty, students, residents and other medical professionals; and,

**WHEREAS**, Lessor is the owner of certain immovable property with all buildings and improvements thereon located at \_\_\_\_\_, Lafayette, Louisiana (the "Leased Premises"), the legal description of which is attached hereto as Exhibit "A"; and the equipment located in the Leased Premises and itemized on Exhibit "B" hereto (the "Equipment");

**WHEREAS**, the Leased Premises consists of approximately \_\_\_\_\_ square feet of hospital, medical office, clinic space, and ambulatory surgical space, which will be leased by Lessor to Lessee together with the Equipment for the purposes set forth herein; and,

**WHEREAS**, this Lease furthers the educational and public service missions of Lessor;

**NOW, THEREFORE**, in consideration of Lessor's obligation to lease the Leased Premises and Equipment, the rent to be paid by Lessee during the term of this Lease, and the mutual benefits accruing to the parties under this Lease and the CEA, the parties do enter into this Lease, on the following terms and conditions:

**ARTICLE I.  
LEASED PREMISES, EQUIPMENT AND TERM**

For the consideration and upon the terms and conditions hereinafter expressed, Lessor leases the Leased Premises and Equipment unto Lessee, here present and accepting the same, commencing on the Commencement Date (as defined below), for the Term (as defined below), unless otherwise terminated sooner in accordance with the terms and conditions set forth herein and in the CEA. The Term of this Lease shall begin on the Commencement Date (as hereinafter defined), and shall continue for ten (10) years (the "Initial Term" and together with all extensions, the "Term"). Beginning on the expiration of the fifth (5<sup>th</sup>) year of the Initial Term and continuing on each annual anniversary date thereafter, (each an "Extension Date"), the then-remaining portion of the Initial Term shall automatically be extended for an additional one (1) year period so that after the fifth (5<sup>th</sup>) year of the Initial Term, the Term of this Lease shall be a



Rolling Five-Year Term; provided, however, that the extension provision of this sentence shall no longer apply if LSU or Lessee provides the other party written notice at least one hundred-eighty (180) calendar days prior to an Extension Date that such party does not intend to extend the Term of this Lease. Furthermore, any termination of this Lease shall be subject to a Wind Down Period defined and set forth in the CEA.

For the purposes of this Lease, the "Commencement Date" shall mean the \_\_\_\_ day of \_\_\_\_\_, 2013, unless mutually extended by the parties by written consent, which consent shall not be unreasonably withheld.

## **ARTICLE II. RENT**

**Section 2.1 Leased Premises Quarterly Rent.** During the Term, the annual consideration for the Leased Premises (the "Leased Premises Rent") is the payment by Lessee to Lessor of a sum equal to **[UNDER DISCUSSION AND SUBJECT TO FINAL APPRAISALS]** [\$\_\_\_\_\_], payable in four (4) equal quarterly installments (the "Leased Premises Quarterly Rent") of [\$\_\_\_\_\_] each, with the first installment being due and payable on the Commencement Date, and the remaining installments being due and payable, respectively on the 1<sup>st</sup> day of each quarter thereafter (so that Leased Premises Quarterly Rent payments will be due no later than each January 1, April 1, July 1 and October 1 during the Term). In the event the Commencement Date should be a date other than the first day of a calendar quarter, the first Leased Premises Quarterly Rent payment shall be prorated to the end of that calendar quarter. In the event that the last day of the Term is a day other than the last day of a quarter, the last Leased Premises Quarterly Rent payment shall be prorated from the first day of that final quarter of the Term to the last day of the Term.

**Section 2.2 Equipment Quarterly Rent.** During the Term, the annual consideration for the lease of the Equipment (the “Equipment Rent”) is the payment by Lessee to Lessor of a sum equal to [UNDER DISCUSSION AND SUBJECT TO FINAL APPRAISALS] [\$\_\_\_\_\_], payable in four (4) equal quarterly installments (the “Equipment Quarterly Rent”) of \$\_\_\_\_\_ each, with the first installment being due and payable on the Commencement Date, and the remaining installments being due and payable, respectively on the 1<sup>st</sup> day of each quarter thereafter (so that Equipment Quarterly Rent payments will be due no later than each January 1, April 1, July 1 and October 1 during the Term). In the event the Commencement Date should be a date other than the first day of a calendar quarter, the first Equipment Quarterly Rent payment shall be prorated to the end of that calendar quarter. In the event that the last day of the Term is a day other than the last day of a quarter, the last Equipment Quarterly Rent payment shall be prorated from the first day of that final quarter of the Term to the last day of the Term.

**Section 2.3 Advance Rent.** No later than twenty (20) days following execution of this Lease, Lessee shall pre-pay to Lessor a portion of the Rent as follows: Leased Premises Quarterly Rent in the total amount of [UNDER DISCUSSION AND SUBJECT TO FINAL APPRAISALS] [\$\_\_\_\_\_] shall be prepaid by Lessee, which payment represents the full value of the Leased Premises Quarterly Rent payments for one (1) year of the Term. The prepayment shall be considered a payment of the entire Leased Premises Quarterly Rent due during the fifth (5<sup>th</sup>) year of the Initial Term, without regard to any future adjustment of rent pursuant to the CPI Index. If this Lease terminates for any reason, other than a Lessee Event of Default, before the end of the period with respect to which Lessee has prepaid Rent, then no later than six (6) months following the termination date, to the extent allowed by Law, and in

consideration of State's obligations pursuant to the CEA to assist in preserving LSU's medical education programs, to provide health care to the community and to seek to reduce the financial burden on the State of providing this assistance, the Division and Lessor will refund to Lessee all prepaid Rent attributable to the period after the date of termination of this Lease up to the total amount that was prepaid, to the extent such refund is funded by the State in accordance with Section 17.12 hereof; provided, however any obligation of the State to fund, and the Division and Lessor to refund, prepaid Rent shall be reduced on a dollar-for-dollar basis to the extent any State, Division and/or Lessor funds are expended to improve the Leased Premises subsequent to the Commencement Date of this Lease.

**Section 2.4 Additional Rent.** In addition to the Advance Rent and Quarterly Rent, the Lessee shall also pay any and all other charges or payments which Lessee is or becomes obligated to pay pursuant to this Lease (the "Additional Rent"). (The Advance Rent, Quarterly Rent and Additional Rent may be referred to collectively herein as the "Rent"). Except as otherwise set forth herein, any Additional Rent owed to Lessor shall be due within thirty (30) days after receipt of the invoice, with reasonable description and itemization of the charge, from Lessor.

**Section 2.5 Rent Payments.** All Rent is payable by Lessee to Lessor at the following address, until notified differently in writing by Lessor: P. O. Box 91308, Baton Rouge, Louisiana 70821.

**Section 2.6 Adjustments to Leased Premises Quarterly Rent Based on Consumer Price Index.**

(a) The Leased Premises Quarterly Rent shall be increased annually, effective as of each anniversary of the Commencement Date (each, an "Adjustment Date") during the Term by

an amount equal to the product obtained by multiplying the then current Leased Premises Quarterly Rent times the CPI Fraction. (For purposes of determining the "CPI Fraction", the numerator shall be the CPI in effect as of thirty (30) days prior to the Adjustment Date, and the denominator shall be the CPI in effect as of the date which was one (1) year and thirty (30) days prior to the Adjustment Date.)

(b) In no event shall the CPI adjustment to the Leased Premises Quarterly Rent increase by an amount greater than five (5%) percent for any calendar year during the Term of the Lease. In no event shall the Leased Premises Quarterly Rent decrease.

(c) "CPI" shall mean the Consumer Price Index – U.S. City Average For All Items For All Urban Consumers (1982-1984 = 100) (the "Index"), published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor, or if the current Index is no longer available, then the current equivalent of the Index.

**Section 2.7 Net Lease.** This Lease is intended to be a net lease, meaning that except for any Rent abatement rights specifically set forth in this Lease, the Rent provided for herein shall be paid to Lessor without deduction for any expenses, charges, insurance, taxes or set-offs whatsoever of any kind, character or nature; it being understood and agreed to by Lessee that as between Lessee and Lessor, Lessee shall bear responsibility for the payment of all costs and expenses associated with the management, operation, maintenance and capital renewal of the Leased Premises and Equipment, including without limitation all costs and expenses described in Article VI hereof. Under no circumstances will Lessor be required to make any payment on Lessee's behalf or for Lessee's benefit under this Lease, or assume any monetary obligation of Lessee or with respect to the Leased Premises and Equipment under this Lease.

**ARTICLE III.  
USE**

**Section 3.1** **Permitted Use.** The Leased Premises and Equipment shall be used and/or occupied by Lessee solely for a hospital, medical business offices, medical staff offices, medical education staff offices, medical clinics, outpatient pharmacy operations or any other medical, educational or hospital use or uses (including, without limitation, surgical, research and laboratory facilities) together with any uses that are accessory to any of the foregoing (“Permitted Use”), and for no other purposes without the prior written consent of Lessor. Lessee will conduct its business on the Leased Premises in compliance with all federal, state, local and parish rules, laws, ordinances, and governmental regulations, orders, codes and decrees (herein “Law”) and in accordance with the provisions of the CEA.

**ARTICLE IV.  
SUBLETTING AND ASSIGNMENT**

**Section 4.1** **No Assignment.** Lessee may not, without the prior written consent of Lessor, assign, mortgage or otherwise encumber in whole or in part this Lease or any interest therein; provided, Lessee may, with prior written notice to Lessor, but without the consent of Lessor, assign its interest as Lessee under this Lease to a non-profit corporation, limited liability company, limited liability partnership, or other non-profit legal entity wholly owned or controlled by Lessee, or to any non-profit entity that is a successor by merger to the Lessee or that acquires Lessee or all or substantially all of the assets of Lessee, provided that such assignee assumes Lessee’s obligations hereunder by operation of Law or agrees to assume in writing Lessee's obligations hereunder without release of Lessee, all in form and substance approved in writing by Lessor.

**Section 4.2** **No Subletting.** Lessee may not, without the prior written consent of Lessor, which consent shall not be unreasonably withheld, sublease all or any portion of the

Leased Premises and/or Equipment; provided, Lessee may, with prior written notice to Lessor, but without the consent of Lessor, sublease all or a portion of the Leased Premises and/or Equipment to a nonprofit corporation, limited liability company, limited liability partnership, or other nonprofit legal entity wholly owned or controlled by Lessee, or to any nonprofit entity that is a successor by merger to the Lessee or that acquires Lessee or all or substantially all of the assets of Lessee, provided that all such subleases shall be subject and subordinate to all of the terms and conditions of this Lease and the use of the Leased Premises and/or Equipment permitted under any such sublease shall be in accordance with the applicable terms and conditions of this Lease, and further provided that such sublessee assumes Lessee's obligations hereunder by operation of Law or agrees to assume in writing Lessee's obligations hereunder, all in form and substance approved in writing by Lessor.

**Section 4.3 Lessee Remains Liable.** In no event shall any assignment or subletting of all or any portion of the Leased Premises and/or Equipment release Lessee from any obligations under the Lease, unless such release shall be evidenced by Lessor's express written agreement at the time of the assignment or subletting, which agreement may be withheld in Lessor's sole discretion.

#### ARTICLE V. IMPROVEMENTS AND ALTERATIONS BY LESSEE

**Section 5.1 Lessee's Improvements and Alterations.** Lessee shall not make any Major Alteration (defined herein) to the Leased Premises without the prior written approval of Lessor and Division, which shall not be unreasonably withheld or delayed. In connection with any requested Major Alteration, Lessee shall submit to Lessor and Division an explanation of the work proposed to be carried out, in a level of detail required by Lessor and Division in their reasonable discretion, and including plans and specifications therefor unless the requirement of

such plans and specifications is waived in writing by Lessor and Division in their reasonable discretion. If neither Lessor nor Division has notified Lessee of Lessor's and Division's approval or denial of a request for consent to a Major Alteration within thirty (30) days after receipt of such information as is necessary to describe the Major Alteration in reasonable detail, Lessor and Division shall be deemed to have approved the request.

(a) A "Major Alteration" is any alteration or other change to the Leased Premises: (i) which is structural in nature; (ii) which would materially change the Leased Premises exterior appearance or structure limit line, (iii) which would materially change or affect the electrical, mechanical, heating, ventilating and air conditioning or utilities systems or routing servicing of the Leased Premises, or (v) which is estimated in good faith to cost in excess of \$125,000.00. Unless otherwise specifically provided herein, all alterations and improvements to the Leased Premises, including, but not limited to, Major Alterations, (collectively, "Improvements") shall be performed by Lessee, at no cost or expense to Lessor. All Improvements shall be made in accordance with La. R.S. 17:3361, et seq. Such Improvements shall not reduce the then fair market value of the Leased Premises, and shall not adversely impact the structural integrity of the Leased Premises. Approval by Lessor and/or Division of any Major Alterations shall not constitute any warranty by Lessor or Division to Lessee of the adequacy of the design for Lessee's intended use of the Leased Premises. All work performed for or by Lessee shall be subject to and in accordance with all federal, state, parish and city building and/or fire department codes and ordinances. Any required alterations performed in connection with such Improvements to meet said codes and ordinances shall be performed by Lessee, at Lessee's expense. All work shall be performed for or by Lessee in a good and workmanlike manner, and Lessee shall prosecute the same to completion with reasonable

diligence. Lessee shall complete all Improvements so as not to create any liens or encumbrances against the Leased Premises or Lessee's leasehold interest or any of Lessor's property, and Lessee shall furnish: (i) a clear lien certificate for any Major Improvements to the Leased Premises; or (ii) any other evidence thereof with respect to any Improvements to the Leased Premises which are not Major Improvements.

(b) Before the commencement of any work in excess of One Million Dollars (\$1,000,000.00) for construction of Improvements, Lessee shall supply Lessor with appropriate Performance and Payment Bonds. These bonds are at Lessee's expense and shall be issued in a form satisfactory to Lessor and in such a manner as to protect the Lessor's interest in the Leased Premises. Any requirement of this Section 5.1(c) may be waived with the consent of Lessor and Division.

**Section 5.2 Cost of Lessee's Improvements.** Lessee shall be solely responsible for the costs of all Improvements to the Leased Premises undertaken by Lessee pursuant to Section 5.1. Following completion of the Improvements, Lessee shall provide to Lessor a lien waiver from Lessee's contractor covering the cost of work, materials and equipment supplied by the contractor and all subcontractors and materialmen. All Improvements made to the Leased Premises by Lessee shall become and remain the property of Lessor at the termination of the Lease without any cost to Lessor. Notwithstanding the foregoing, if Lessee performs a Major Alteration without obtaining Lessor's and Division's consent (or deemed consent as set forth above), in addition to any other remedy available for such violation, Lessor may, at its option, by written notice to Lessee require that Lessee remove the Major Alteration specified in such notice and return the Leased Premises to their condition prior to the unauthorized performance of the Major Alteration. If Lessee fails to remove such a Major Alteration and restore the Leased



Premises to its original condition within sixty (60) days of the above-described written notice, or if such removal and restoration cannot be completed in sixty (60) days, and Lessee does not commence such removal and restoration within sixty (60) days and perform the removal and restoration diligently to completion, Lessee shall promptly reimburse, as Additional Rent, the Lessor for any expense that Lessor incurs in performing such removal and restoration. Lessee shall pay the cost for any additional personal property, fixtures, equipment, furniture and other unattached items of personal property which Lessee may place in the Leased Premises including, but not limited to, counters, shelving, showcases, chairs and other unattached movable machinery, equipment and inventory (collectively, "Personal Property"), and the Personal Property shall be and remain the property of Lessee and may be removed by Lessee at any time or times prior to the expiration of the Term; provided, however, that Lessee shall repair any damage to the Leased Premises and Equipment caused by such removal. Lessee's Personal Property shall not include the Equipment leased by Lessor to Lessee pursuant to this Lease.

**ARTICLE VI.**  
**OPERATION, MAINTENANCE, REPAIR, SECURITY AND OTHER SERVICES**

**Section 6.1** **Operation.** Lessee shall be responsible to procure and maintain all services and equipment necessary or required for its use of the Leased Premises and Equipment.

**Section 6.2** **Use.** Lessee shall procure and maintain all licenses, permits and accreditation (if any) required for its use of the Leased Premises and Equipment.

**Section 6.3** **Maintenance and Repair**

(a) Lessee shall, at its sole cost and expense during the Term, maintain the Leased Premises, including all fixtures located therein, and make and perform all maintenance, repairs, restorations, and replacements to the Leased Premises, including without limitation the heating, ventilating, air conditioning, mechanical, electrical, elevators, telephone, cable and other utility

lines, plumbing, fire, sprinkler and security systems, computer service, air and water pollution control and waste disposal facilities, roof, structural walls, sewer lines, including any septic tank and effluent disposal system that may be necessary, and foundations, fixtures, equipment, and appurtenances to the Leased Premises as and when needed to maintain them in as good a working condition and repair (ordinary wear and tear excepted) as existed as of the Commencement Date, regardless of whether such maintenance, repairs, restorations or replacements are ordinary or extraordinary, routine or major, foreseeable or unforeseeable, or are at the fault of Lessee, Lessor or some other party, and regardless of by whom such items were placed in the Leased Premises. All maintenance, repairs, restoration, or replacements shall be of a quality and class equal to or better than the quality and class presently located in the Leased Premises. If Lessee fails to commence such maintenance, repairs, restoration, or replacements, within 60 days of receipt of Lessor's notice that such maintenance repairs, restoration, or replacements are necessary (or within such longer period of time as may reasonably be required to commence such work), Lessor may (but shall not be obligated to) make or cause to be made such repairs, restoration, and replacements, at the expense of Lessee, and shall be entitled to collect the same from Lessee as Additional Rental due hereunder within 30 days of written demand by the Lessor.

(b) Lessee shall have full and sole responsibility for the condition, repair, maintenance and management of the Equipment; provided, however, that Lessee shall not owe any maintenance obligation under this Lease respecting any item of Equipment that is not in good working order as of the Commencement Date. Lessee shall provide written notice to LSU no later than thirty (30) days after the Commencement Date of this Lease of any specific items of Equipment that were not in good working order as of the Commencement Date. Lessee shall

maintain the Equipment and each and every portion thereof in good working order and condition and shall be solely responsible for all costs and expenses accrued or incurred in connection therewith. Lessor shall not be responsible for any repairs to or maintenance of the Equipment, whether ordinary or extraordinary, foreseen or unforeseen, structural or non-structural. Lessee shall maintain accurate records of all material work performed in furtherance of its obligations under this Article IV.

(c) It is understood and agreed that Lessor shall have no obligation to incur any expense of any kind or character in connection with the maintenance, repair, restoration or replacement of the Leased Premises and Equipment during the Term. Lessor shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Leased Premises and Equipment, or maintain the Leased Premises and Equipment in any respect whatsoever, whether at the expense of Lessor, Lessee, or otherwise.

(d) Lessee agrees that all Improvements to the Leased Premises constructed by the Lessee pursuant to this Lease shall comply with the requirements of Title 40, Part V, of the Louisiana Revised Statutes, "EQUAL ACCESS TO GOVERNMENTAL AND PUBLIC FACILITIES FOR PHYSICALLY HANDICAPPED," more specifically, sections La. R.S. 40:1731 through 40:1744, and any new or modified requirements imposed to make the Leased Premises accessible to persons with disabilities as would be applicable to LSU or to a state agency.

(e) Lessee further agrees to make, at its own expense, all changes and additions to the Leased Premises required by reason of any change in Law that occurs after the Commencement Date (subject to obtaining any Lessor approvals that may be required by this Lease), including

the furnishing of required sanitary facilities and fire protection facilities, and Lessee shall furnish and maintain all fire extinguishers and other equipment or devices necessary to comply with the order of the Louisiana State Fire Marshal; provided however, that in the event of any Major Alterations to the Leased Premises, the written consent of the Lessor must be obtained prior to the commencement of any work in accordance with Section 5.1 hereof. Lessee shall further be responsible for all costs associated with any required periodic inspections and servicing of fire extinguishers and other safety equipment or devices, or any licenses or permits required by the State Fire Marshal's office. At no expense to Lessor, Lessee agrees to comply with any order issued during the Term by the State Fire Marshal's Office within the timeframe mandated by that Office.

(f) Lessee accepts the Leased Premises in its "as is" condition, that being the condition or state in which the Leased Premises exist at the effective date of this Lease, without representation or warranty, express or implied, in fact or in Law, oral or written, by Lessor, except as set forth in Section 6.3(i) herein below. Lessor agrees to preserve all available warranties of workmanship related to the Leased Premises and agrees to exercise its rights with respect to all such warranties with reasonable diligence following receipt of written request from Lessee.

(g) Lessee further agrees to do at no expense to Lessor, painting of the exterior and interior as applicable and as necessary to maintain the Leased Premises in a neat, clean, safe, sanitary and habitable condition.

(h) Lessee shall have the sole responsibility of all maintenance and repairs to all equipment operational at the time of occupancy, to the extent needed for its use of the Leased Premises or to the extent necessary to preserve and protect the Leased Premises, including but

not limited to boilers, elevators, HVAC, fire panels, lock and security systems and the Public Address System, and shall ensure that all such equipment is properly maintained in clean, safe, and continues in an operable condition. Lessee shall be responsible for all routine preventative maintenance and repairs on all such operational equipment, including but not limited to, the HVAC systems, provided, that any such routine preventative maintenance and repairs shall be performed in accordance with manufacturer recommended schedules and be performed by an authorized maintenance/repair contractor. Lessee shall be responsible for ensuring that all necessary certification is maintained on any and all such equipment and machinery, including, but not limited to, certification required by the State Fire Marshal and the Department of Health and Hospitals.

(i) Furthermore, Lessee shall comply with the standard outlined in Exhibit “C” attached hereto. Lessee may propose alternative equivalent maintenance standards for approval by Lessor within forty-five (45) days of execution of this Lease. Lessor, to the best of its knowledge and belief, has maintained the Leased Premises in accordance with the standards set forth on Exhibit “C” hereto.

**Section 6.4 Security and Other Services.** Lessee shall provide or cause to be provided all security service, custodial service, janitorial service, medical waste disposal, trash disposal, pest control services and all other services necessary for the proper upkeep and maintenance of the Leased Premises. Lessee acknowledges that Lessor has made no representation or warranty with respect to systems and/or procedures for the security of the Leased Premises; any persons occupying, using or entering the Leased Premises; or any equipment, finishing, or contents of the Leased Premises. It is the sole responsibility of Lessee to provide for the security of persons on or entering the Leased Premises and/or property located at

the Leased Premises, in accordance with reasonable and prudent business practices utilized for similar facilities.

**ARTICLE VII.  
USE, MAINTENANCE AND REPAIRS OF EQUIPMENT**

**Section 7.1 Permitted Use.**

Subject to the terms and provisions hereof, Lessee may use the Equipment solely for a Permitted Use, and for no other purposes without the prior written consent of Lessor. Lessee's use of the Equipment shall comply at all times with all applicable laws, orders, ordinances, zoning ordinances, regulations, and statutes of any federal, state, parish, or municipal government now or hereafter in effect, including all environmental laws and regulations and further including all material orders, rules, and regulations of any regulatory, licensing, insurance underwriting or rating organization or other body exercising similar functions. Lessee shall not make any use of the Equipment which may make void or voidable any policy of insurance required to be maintained by Lessee pursuant to this Lease.

**Section 7.2 Operation.** Lessee shall provide all equipment, furnishings, supplies, facilities, services, and personnel required for the proper use, operation, and/or management of the Equipment in an economical and efficient manner, consistent with standards of operation and administration generally acceptable for facilities of comparable size and scope of operations.

**Section 7.3 Lost and Stolen Equipment.** Whenever Lessee has knowledge or reason to believe that any Equipment has been lost or stolen during the Term of this Lease, Lessee shall promptly notify LSU in writing and shall report such lost/stolen Equipment as required by law. Lessee shall promptly replace all lost and stolen Equipment with comparable items of substantially similar specification and value, which items shall be owned by LSU and shall be considered Equipment subject to this Lease, and Lessee shall be solely responsible for all costs

and expenses incurred in connection therewith; alternatively, and in lieu of replacing the lost/stolen Equipment, Lessee may pay to LSU the fair market value of said Equipment.

**Section 7.4 Damaged Equipment.** Whenever Lessee has knowledge or reason to believe that any Equipment has been damaged during the Term of this Lease, Lessee shall promptly notify LSU in writing and shall report such damaged Equipment as required by law. Lessee shall promptly repair all damaged Equipment to substantially the same condition thereof as existed prior to the event causing such damage, and Lessee shall be solely responsible for making all required repairs to damaged Equipment; alternatively, in lieu of repairing the damaged Equipment and in the event the damage is covered by Lessee's insurance and not subject to any deductible, Lessee may pay the insurance proceeds stemming from the damage to LSU, provided said proceeds are sufficient to fairly compensate LSU for the damage. Lessee may not dispose of any damaged Equipment except as set forth in this Article VII.

**Section 7.5 Relocation of Equipment.** Lessee shall be solely responsible for any costs or expenses of any kind incurred relocating Equipment (except for the cost of relocating Equipment returned to Lessor pursuant to Section 7.8 below).

**Section 7.6 Compliance with State Law.** Lessee shall assume all of the "Property Control" obligations for the Equipment set forth in Title 39 of the Louisiana Revised Statutes, Chapter 1, Part XI (La. R.S. 39:321 – 39:332), and in Title 34 of the Louisiana Administrative Code, Part VII (sections 101 – 901), including but not limited to:

- (i) The obligation to appoint a Property Manager as required by La. R.S. 39:322, and to post a faithful performance of duty bond as required by La. R.S. 39:330;
- (ii) The obligation to maintain property identification marks on the Equipment as required by La. R.S. 39:323;

(iii) The obligation to make a complete physical inventory of the Equipment once each fiscal year as required by La. R.S. 39:324 and Section 313 of Part VII of Title 34 of the Louisiana Administrative Code, and to make annual reports thereof to the Commissioner of Administration and the Legislative Auditor as required by La. R.S. 39:324 and 39:325;

(iv) The obligation to maintain a master file of the agency inventory of Equipment as required by La. R.S. 39:324, and to maintain a property location index which shall be used to keep track of the location of the Equipment as required by Section 311 of Part VII of Title 34 of the Louisiana Administrative Code;

(v) The obligation to submit property control transmittal forms to the Louisiana Property Assistance Agency on a monthly basis as required by Section 317 of Part VII of Title 34 of the Louisiana Administrative Code;

(vi) The obligation to report lost, stolen, damaged, or destroyed Equipment as required by La. R.S. 39:330 and Section 305 of Title 34 of the Louisiana Administrative Code;

(vii) The obligation to maintain for three years the records, reports, and other documentation required by Section 305 of Title 34 of the Louisiana Administrative Code;

(viii) The obligation to make all records and reports regarding the Equipment available for examination as required by La. R.S. 39:328, and to make the records and Equipment available for inspection and annual audit as required by La. R.S. 39:329.

**Section 7.7 Coordination Between Lessee and LSU.**

At the commencement of this Lease, and to assist Lessee in assuming and continuing the Property Control obligations for the Equipment, LSU shall make available to Lessee all of LSU's existing inventory schedules, property location indices, reports, records, and other documentation regarding the Equipment. LSU shall also assist Lessee in obtaining access to any online tracking



and reporting systems and other secure sites necessary for Lessee to perform its Property Control obligations.

LSU shall monitor Lessee's performance of its Property Control obligations to ensure compliance with law and shall cooperate with Lessee and provide reasonable advice and assistance to Lessee, at no additional cost to Lessee, when requested and when available.

Whenever Lessee is required by law to submit reports, records, inventories, or other documentation regarding the Equipment to the Commissioner of the Division of Administration of the State of Louisiana, the Louisiana Property Assistance Agency, or to any other governmental agency, Lessee shall contemporaneously supply a copy of said report / record / inventory to LSU at the LSU Health Care Services Division, 5429 Airline Highway, Baton Rouge, Louisiana, 70805, or at such other location as designated from time to time by LSU.

LSU, LSU Health Care Services Division, and their agents shall have the right to inspect the Equipment at any reasonable time following reasonable prior notice in a manner which does not unreasonably interfere with Lessee's use thereof.

**Section 7.8 Alienation of Equipment.**

Lessee shall not sell, alienate, convey, or otherwise transfer any Equipment to any person or entity other than LSU without the advance written approval of LSU. In the event that Equipment is sold / alienated / conveyed / transferred without LSU's advance written approval, such shall be null and void and without legal effect. In the event that Lessee needs to return a piece of equipment to LSU for any reason, Lessee shall provide written notice of same to LSU at the LSU Health Care Services Division, 5429 Airline Highway, Baton Rouge, Louisiana, 70805, or at such other location as designated from time to time by LSU. Said notice shall identify the Equipment by its description, tag number, and inventory number, shall state where the

Equipment is physically located at the time notice is given, and shall state where the Equipment may be retrieved by LSU. Lessee may store the Equipment off-site pending its retrieval by LSU, provided that Lessee shall be responsible for all costs and expenses incurred storing the Equipment, and provided further that Lessee shall report the relocation if and as required by law. Lessee shall take all reasonable steps to decommission the Equipment and prepare it for retrieval by LSU, specifically including but limited to Lessee removing any and all hazardous substances from the Equipment and disposing of same in accordance with law, and Lessee shall be responsible for all costs incurred in connection therewith. LSU shall have one hundred eighty (180) days after receipt of the aforementioned notice to take physical possession of the Equipment and to remove the Equipment from Lessee's facility, at which time all of Lessee's remaining obligations with respect to the Equipment shall cease, except that Lessee shall remain liable as set forth in this Lease for any claims, costs, causes of action, expenses, repairs, damages, and liabilities arising out of or incurred with respect to the Equipment during the Term prior to the time that LSU takes physical possession of the Equipment, and Lessee shall not be entitled to any diminution on Rent with respect thereto. LSU shall give reasonable prior notice to Lessee when it intends to take physical possession of the Equipment.

**Section 7.9 Taxes and Liens.** Lessee shall pay as they become due all taxes and assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Equipment. Lessee shall not allow any part of the Equipment to become and remain subjected to any mechanic's, laborer's or materialman's lien. Notwithstanding the foregoing, Lessee may at its own expense and in its own name contest any such item of tax, assessment, lien, or other governmental charge and, in the event of such contest, may permit the item so contested to remain unpaid during the

period of such contest and any appeal therefrom. LSU will cooperate to the extent reasonably necessary with Lessee in any such claim, defense, or contest.

**Section 7.10 Waiver and Disclaimer of Warranties.** Lessee accepts the Equipment in its "as is" and existing condition, without any warranty of any kind or nature, whether express or implied, contractual or statutory and whether as to the condition (patent or latent) or state of repair of the Equipment or the fitness of same for Lessee's purposes or for any other purpose whatsoever, except as otherwise specifically provided for herein.

**ARTICLE VIII.  
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**ARTICLE IX.  
UTILITIES**

Lessee shall arrange and pay for the furnishing of all utilities which are used or consumed in or upon or in connection with the Leased Premises and Equipment during the Term, including without limitation water, gas, electricity, medical gases, sewerage, garbage, or trash removal, light, heat, cable, internet and telephone, power, and other utilities necessary for the operation of the Leased Premises and Equipment ("Utility Service"), and all Utility Service shall be obtained in or transferred to Lessee's name as of the Commencement Date through the end of the Term. Such payments shall be made by Lessee directly to the respective utility companies furnishing such Utility Services under such contract or contracts therefor as Lessee may make. Lessor shall have no responsibility to Lessee for the quality or availability of Utility Service to the Leased Premises and Equipment, or for the cost to procure Utility Service. Lessor shall not be in default under this Lease or be liable to Lessee or any other person for any direct, indirect or consequential damage, or otherwise, for any failure in supply of any Utility Service by the provider of any Utility Service of heat, air conditioning, elevator service, cleaning service, lighting, security, or for surges or interruptions of electricity. All future telephone lines which

are an addition to those already present shall be installed at the expense of the Lessee. Lessee shall be responsible for providing entrance cable and facilities into the building(s) to the extent not in place as of the Commencement Date to accommodate the telephone, computer and other electronic needs of the Leased Premises and Equipment. Conduits of sufficient size to meet future or additional installation requirements of Lessee will be provided by Lessee.

## **ARTICLE X. INSURANCE**

**Section 10.1 Lessee Responsibility for Insurance Coverage.** Lessee shall secure and maintain or cause to be secured and maintained at its sole cost and expense:

(i) Special form (formerly known as “all risk”) property insurance, including loss or damage caused by fire, lightening, earthquake, collapse, sewer backup, vandalism and malicious mischief, flood and storm surge which insurance shall be in an amount not less than one hundred percent (100%) of the full replacement cost of the buildings and improvements on the Leased Premises and Equipment, without deduction for depreciation.

(ii) A policy of commercial general liability insurance with respect to the Leased Premises and Equipment and Lessee’s operations related thereto, whether conducted on or off the Leased Premises, against liability for personal injury (including bodily injury and death) and property damage caused by, attributed to, or incurred in connection in any manner with the lease, use, operation, management, maintenance, replacement or repair of the Leased Premises and/or the Equipment of not less than \$5,000,000 combined single limit per occurrence. Such comprehensive public liability insurance shall specifically include, but shall not be limited to, sprinkler leakage legal liability and water damage legal liability.

(iii) A policy of motor vehicle liability insurance for all owned and non-owned vehicles, including rented or leased vehicles with coverage of not less than \$5,000,000 combined single limit per occurrence.

(iv) With respect to work to construct Improvements undertaken by Lessee on the Leased Premises, a policy protecting Lessor against damage caused by demolition, pile or any precarious work, which requirement may be satisfied, at Lessee's option, as a part of a Builder's Risk policy provided by the contractor for a particular construction project.

(v) Boiler and machinery insurance coverage against loss or damage by explosion of steam boilers, pressure vessels and similar apparatus now or hereafter installed on the Leased Premises, in an amount not less than \$5,000,000 with deductible provisions reasonably acceptable to Lessor.

(vi) Workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure employers against liability for compensation under the Labor Code of the State of Louisiana, or any act hereafter enacted as an amendment thereto or in lieu thereof, sufficient to cover all persons employed by Lessee in connection with its use of the Leased Premises and Equipment.

(vii) Pursuant to the provisions of La. R.S. 40:1299.39, et seq., medical malpractice liability insurance insuring claims arising out of malpractice or negligence occurring at or related to the Leased Premises and Equipment in an amount not less than \$1,000,000; provided, however, the coverage will be increased to limits reasonably acceptable to Lessor and Lessee if Louisiana law limiting the amount of such Claims is repealed or amended to raise the limits on such Claims.

**Section 10.2 Additional Requirements.**

(a) All insurance required in this Section and all renewals of such insurance shall be issued by companies authorized to transact business in the State of Louisiana, and rated at least A- Class VIII by Best's Insurance Reports or as approved by Lessor (such approval not to be unreasonably withheld or delayed). All insurance policies provided by Lessee shall expressly provide that the policies shall not be canceled or materially altered without 30 days' prior written notice to Lessor. Lessee may satisfy its obligation under this Section by appropriate endorsements of its blanket or excess insurance policies.

(b) All policies of liability insurance Lessee maintains according to this Lease will name Lessor, its board members, officers, employees and agents, and such other persons or firms as Lessor reasonably specifies from time to time as additional insureds ("LSU Insured Parties"), and Lessor shall also be named as a loss payee on any property damage insurance.

(c) Lessor reserves the right to reasonably request copies of original policies (together with copies of the endorsements naming Lessor, and any others reasonably specified by Lessor, as additional insureds). Certificates of insurance and the declaration page for each policy shall be delivered to Lessor upon occupancy of the Leased Premises and, if requested by Lessor, from time to time at least 30 days prior to the expiration of the term of each policy. All insurance required hereby shall provide that any failure of Lessee to comply with reporting requirement of a policy required hereby shall not affect coverage provided to the LSU Insured Parties.

(d) All liability policies maintained by Lessee pursuant to this Lease shall be written as primary policies, not contributing with and not in excess of coverage that Lessor may carry, if any.

(e) All insurance required hereby shall provide that the insurance companies

issuing such required policies shall have no recourse against LSU for payment of premiums or for assessments under any form of the policies.

(f) The coverage required hereunder shall contain no special limitations on the scope of protection afforded to the LSU Insured Parties.

(g) All insurance required hereunder shall be occurrence coverage. Claims-made policies are not allowed.

(h) Any deductibles or self-insured retentions must be declared to Lessor. Lessee shall be responsible for deductibles and self-insured retentions.

**Section 10.3 Condemnation, Casualty and Other Damage.** The risk of loss or decrease in the enjoyment and beneficial use of the Leased Premises and Equipment due to any damage or destruction thereof by acts of God, fire, flood, natural disaster, the elements, casualties, thefts, riots, civil strife, lockout, war, nuclear explosion, terrorist attack or otherwise (collectively "Casualty"); or by the taking of all or any portion of the Leased Premises by condemnation, expropriation, or eminent domain proceedings (collectively "Expropriation") is expressly assumed by Lessee. None of the forgoing events shall entitle Lessee to any abatements, set-offs or counter claims with respect to payment of its Rent, or any other obligation hereunder, except as specifically set forth below. Notwithstanding anything else in this Lease to the contrary, Lessor is not obligated to restore, replace or repair any damage to the Leased Premises and/or Equipment or to Lessee's fixtures, furniture, equipment or other personal property or make any alterations, additions, or improvements to the Leased Premises and Equipment caused as a result of a Casualty.

**Section 10.4 Restoration Obligations.** If all or any portion of the Leased Premises or Equipment is damaged or destroyed by a Casualty, Lessee shall, as expeditiously as possible,

continuously and diligently prosecute or cause to be prosecuted the repair, restoration, or replacement thereof, at Lessee's sole cost and expense. Lessee may opt to demolish the damaged or destroyed buildings and construct new replacement buildings or other improvements under the procedures described above in Article V, and in accordance with La. R.S. 38:2212.2; provided, however, that Lessee shall obtain approval of the Lessor prior to demolishing any building that existed on the Leased Premises when the Lease commenced. Lessor shall not unreasonably withhold its consent to the demolition. Notwithstanding the foregoing, in the event of a Casualty that results in a loss in excess of fifty (50%) percent of the replacement value of the Leased Premises and/or Equipment and that has a material, adverse impact on Lessee's ability to operate the Leased Premises for the Permitted Use, Lessee may elect to terminate this Lease by providing written notice of such termination to Lessor no later than ninety (90) days following such Casualty, in which event Lessee shall have no obligation to restore or demolish the Leased Premises and Equipment, but Lessor shall be entitled to receipt of the proceeds of Lessee's property insurance coverage payable as a result of such Casualty; provided, however, if this Lease is terminated or expires by its terms prior to the termination or expiration of the term of the CEA, Lessee shall continue to provide, or cause to be provided, substantially similar services as Lessee had provided in the Leased Premises in accordance with the specific requirements set forth in the CEA.

In the event Lessee is unable to repair, restore or replace the Leased Premises and Equipment for any reason, all insurance proceeds received or payable as a result of such Casualty shall be paid to Lessor and shall be retained by Lessor.

**Section 10.5 Compensation Award.** If the entire Leased Premises shall be taken by Expropriation, this Lease shall terminate as of the date of such taking, in which event, Lessor



shall retain all compensation awarded or paid upon any such taking of the Leased Premises. If any part of the Leased Premises shall be taken by Expropriation, rendering the remaining portion unsuitable for the business of Lessee, Lessee shall have the option to terminate the Lease. If the Lease is not terminated as provided in this Section 10.5, then the Rent shall be abated for the balance of the Term remaining in proportion to the portion of the Leased Premises so taken, unless Lessor, at its sole option, restores the remaining portion of the Leased Premises to a complete architectural unit of substantially like quality and character as existed prior to such taking or conveyance. Notwithstanding anything to the contrary contained herein, all compensation awarded or paid upon a total or partial taking of the Leased Premises shall belong to and be the property of Lessor without any participation by Lessee, except that Lessee shall have the right to receive and shall be paid a portion of the award to the extent of the unamortized cost of Lessee's leasehold improvements. Lessee shall provide all evidence and documentation to support such allocation at its sole cost and expense. If a separate award can be made to Lessee, Lessee shall have the right to enter a separate claim against the condemning authority, in which event Lessee shall not participate in Lessor's award.

ARTICLE XI.  
HAZARDOUS MATERIALS

Section 11.1 Hazardous Materials.

(a) Subsequent to the effective date of this Lease, Lessee shall not allow, cause or permit any Hazardous Materials (as defined below) to be generated, maintained, processed, produced, manufactured, used, treated, released, stored, but not including materials existing in or about the Leased Premises prior to the effective date hereof, or disposed of in or about the Leased Premises by Lessee or its officers, directors, employees, agents, invitees or sub-lessees, other than those Hazardous Materials usually and customarily used for the Permitted

Use, as long as such materials are lawfully stored and used by Lessee and the quantity of such materials does not equal or exceed a "reportable quantity" as defined in 40 CFR §§ 302 and 305, and as may be amended, and so long as such Hazardous Materials are generated, maintained, processed, produced, manufactured, used, treated, released, stored or remediated or disposed of in compliance with all Laws applicable thereto. In no event shall Lessee cause the deposit, release, or discharge of any Hazardous Materials to the soil or groundwater of the Leased Premises in violation of applicable Law subsequent to the effective date of this Lease.

(b) In the event that Lessee causes any violation of applicable Law with regard to Hazardous Materials at the Leased Premises, Lessor shall have the right to reasonably require that Lessee engage, at Lessee's expense, a contractor to remediate or dispose of, in accordance with Law, all Hazardous Materials used, stored, generated or disposed of on the Leased Premises subsequent to the effective date hereof. For purposes of this Lease, 'Hazardous Material' means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., or any other Law regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as may now or at any time in the future be in effect, or any other hazardous, toxic or dangerous, waste, substance or material.

(c) Lessee shall promptly notify Lessor in writing, if Lessee has or acquires notice or knowledge that any Hazardous Material has been or is threatened to be released, discharged, disposed of, transported, or stored on, in, under, or from the Leased Premises in violation of the Law during the Term. Lessee shall promptly notify Lessor, and provide copies

following receipt of all written complaints, claims, citations, demands, inquiries, or notices relating to the violation or alleged violation at the Leased Premises during the Term of any Laws pertaining to Hazardous Materials. Lessee shall promptly deliver to Lessor copies of all notices, reports, correspondence and submissions made by Lessee to the United States Environmental Protection Agency (EPA), the United States Occupational Safety and Health Administration (OSHA), the Louisiana Department of Environmental Quality (DEQ), the Louisiana Department of Health and Hospitals (DHH), or any other Governmental Authority concerning the violation or alleged violation at the Leased Premises during the Term of any Laws pertaining to Hazardous Materials.

(d) Lessee agrees to indemnify, defend (with counsel reasonably acceptable to Lessor at Lessee's sole cost) and hold Lessor, its employees, contractors, and agents harmless from and against all environmental liabilities and costs, liabilities and obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages; however, Lessee shall not indemnify for consequential damages on claims brought by Lessor, or Lessor's employees), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against Lessor or any of them in connection with or arising from or out of Lessee's violation of any of its obligations set forth in Section 11.1(a) above.

(e) Lessee agrees to indemnify, defend (with counsel reasonably acceptable to Division at Lessee's sole cost) and hold Division and their employees, contractors, and agents harmless from and against all environmental liabilities and costs, liabilities and obligations,

penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages; however, Lessee shall not indemnify for consequential damages on claims brought by Division or Division's employees), disbursements or expenses of any kind (including attorneys' and experts' fees and fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against Division or any of them in connection with or arising from or out of Lessee's violation of any of its obligations set forth in Section 11.1(a) above.

(f) Nothing herein shall require Lessee to indemnify, defend and hold harmless the Lessor, its employees, contractors or agents for any environmental liability arising from any Hazardous Materials which were present on the Leased Premises prior to the execution of this Lease.

(g) The provisions of this Section will survive the expiration or earlier termination of this Lease for a period of five (5) years.

## ARTICLE XII. INDEMNIFICATION

Section 12.1 Lessee's Indemnification to Lessor. Lessee shall indemnify, defend and hold harmless Lessor and its board members, officers and employees, together with any of their respective successors and assigns (collectively, the "Lessor Indemnitees"), against any and all loss, cost, damage, liability or expense as incurred (including but not limited to actual attorneys' fees and legal costs) arising out of or related to any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death, or property damage sustained by such person or persons which arises out of, is occasioned by or is attributable to Lessee's use of, and/or activities on, the Leased Premises

and Equipment by Lessee, its officers, agents, employees, invitees, permittees, contractors, or subcontractors. Lessee shall further indemnify, defend and hold harmless the Lessor Indemnitees from any and all claims, demands, litigation or governmental action involving the presence or suspected presence of Hazardous Materials on or in the Leased Premises and any violation of any Law, but solely to the extent any of the foregoing is due to the acts of Lessee, its officers, agents, employees, invitees, permittees, contractors or subcontractors, occurring after the Commencement Date.

All the foregoing indemnification provisions shall apply to Permitted Uses, as well as uses that are not permitted under this Lease.

Notwithstanding any provision to the contrary contained in this Lease, Lessor acknowledges that the Lessee's obligation to indemnify and hold any Lessor Indemnitees harmless under this Article shall not extend to any loss, damages or other claims to the extent arising out of the negligence or willful misconduct of any Lessor Indemnitees.

Section 12.2 Lessee's Indemnification to Division. Lessee shall indemnify, defend and hold harmless Division and its officers and employees, together with any of their respective successors and assigns (collectively, the "Division Indemnitees"), against any and all loss, cost, damage, liability or expense as incurred (including but not limited to actual attorneys' fees and legal costs) arising out of or related to any claim, suit or judgment brought by or in favor of any person or persons for damage, loss or expense due to, but not limited to, bodily injury, including death, or property damage sustained by such person or persons which arises out of, is occasioned by or is attributable to Lessee's use of, and/or activities on, the Leased Premises and Equipment by Lessee, its officers, agents, employees, invitees, permittees, contractors, or subcontractors. Lessee shall further indemnify, defend and hold harmless the Division Indemnitees from any and

all claims, demands, litigation or governmental action involving the presence or suspected presence of Hazardous Materials on or in the Leased Premises and any violation of any Law, but solely to the extent any of the foregoing is due to the acts of Lessee, its officers, agents, employees, invitees, permittees, contractors or subcontractors, occurring after the Commencement Date.

All the foregoing indemnification provisions shall apply to Permitted Uses, as well as uses that are not permitted under this Lease.

Notwithstanding any provision to the contrary contained in this Lease, Division acknowledges that the Lessee's obligation to indemnify and hold any Division Indemnitees harmless under this Article shall not extend to any loss, damages or other claims to the extent arising out of the negligence or willful misconduct of any Division Indemnitees.

**Section 12.3 Lessor's Indemnification.** To the extent authorized by Law, Lessor will indemnify, defend and hold harmless Lessee and its officers, agents and employees, together with any of their respective successors and assigns, from and against any claims, liabilities, damages, costs, penalties, forfeitures, losses or expenses (including but not limited to actual attorneys' fees and legal costs) resulting from any injury, loss or damage to persons or property arising out of the negligence or willful misconduct of Lessor, its board members, officers or employees.

**Section 12.4 Division's Indemnification.** To the extent authorized by Law, Division will indemnify, defend and hold harmless Lessee and its officers, agents and employees, together with any of their respective successors and assigns, from and against any claims, liabilities, damages, costs, penalties, forfeitures, losses or expenses (including but not limited to actual attorneys' fees and legal costs) resulting from any injury, loss or damage to persons or property

arising out of the negligence or willful misconduct of Division, its board members, officers or employees.

**ARTICLE XIII.  
TAXES, FEES AND LICENSES**

**Section 13.1 Payment of Taxes.** Lessee shall collect (as applicable) and pay to the appropriate collecting authorities all federal, state and local taxes and fees, which accrue during the Term on or against or with respect to the Leased Premises, Lessee's Improvements, the Equipment or the business conducted by Lessee on the Leased Premises.

**Section 13.2 Licenses.** Lessee shall maintain in effect all federal, state and local licenses and permits required for the operation of the business conducted by Lessee on the Leased Premises.

**ARTICLE XIV.  
DEFAULT BY LESSEE**

**Section 14.1 Default.** Each of the following shall be an Event of Default by Lessee (herein "Lessee Event of Default") under the terms of this Lease:

(a) Failure by Lessee to pay Rent to Lessor on the date on which this payment is due under this Lease, and this failure shall not be cured within five (5) business days after said Rent is due; provided, however, that Lessor shall provide written notice and a five (5) business day right to cure for failure to pay rent, but Lessee shall only be entitled to one (1) late payment notice per year under this Section 14.1(a), and provided further that a Lessee Event of Default shall automatically occur if Lessee fails to pay Quarterly Rent to Lessor on the date on which payment is due under this Lease for a second time in any calendar year in which a written notice of late payment has been delivered, or deemed delivered, to Lessee under this Lease.

(b) Failure to obtain and maintain all insurance as required under this Lease and/or to furnish to Lessor evidence thereof and/or evidence of payment thereof, if the failure is not cured

within two (2) business days after delivery of written notice to Lessee of such violation.

(c) A court Order for relief in any involuntary case commenced against Lessee, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, and said Order is not vacated within 120 days, or the entry of a decree or order by a court having jurisdiction appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator, or other similar official of, or for Lessee or a substantial part of the properties of Lessee or order winding up or liquidation of the affairs of Lessee, and the continuance of any such decree or order unstayed and in effect for 120 consecutive days.

(d) Commencement by Lessee of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted.

(e) Failure to comply with any of the obligations of this Lease (other than payment of Rent or obtaining and maintaining insurance) if the failure is not cured within sixty (60) days after delivery of written notice to Lessee of such Lease violation or such longer period of time as may reasonably be required for Lessee to cure the violation, provided that Lessee pursues the cure of the violation with reasonable diligence..

In addition to any other remedies provided by Law and except as otherwise provided herein, Lessor may, but shall not be obligated to, terminate this Lease during the continuance of a Lessee Event of Default, provided that in addition to the notice and cure period set forth above, Lessee also is given, in writing, notice specifying Lessee's failure and Lessee fails to correct the alleged failure within thirty (30) days following receipt of such additional notice specifying the failure.



**ARTICLE XV.  
DEFAULT BY LESSOR**

**Section 15.1 Default.** A default by Lessor (herein “Lessor Event of Default”) will occur under this Lease if Lessor fails to perform any of its obligations or covenants under this Lease, and such failure is not cured within thirty (30) business days after Lessor’s receipt of written notice from Lessee of this failure; however, no Lessor Event of Default will occur if Lessor begins to cure this failure within thirty (30) business days after its receipt of this notice and continues this cure with reasonable diligence for such period as is reasonably necessary to cure the failure.

**ARTICLE XVI.  
NOTICES**

Any and all notice required or appropriate under this Lease shall be in writing and shall be sent by (a) personal delivery; (b) recognized overnight delivery service with proof of delivery; or (c) certified United States mail, postage prepared, receipt requested, to the following addresses:

Lessee: University Hospital and Clinics, Inc.

With a copy to:

Guarantor: Lafayette General Health System, Inc.

Lessor: Board of Supervisors of Louisiana State University  
and Agricultural and Mechanical College  
3810 West Lakeshore Drive  
Baton Rouge, Louisiana 70808  
Attn: Executive Vice President for Health Care

With a copy to: LSU System Office  
3810 West Lakeshore Drive

Baton Rouge, Louisiana 70808  
Attn: Executive Vice President for Health Care

**With a copy to:** Taylor, Porter, Brooks & Phillips, L.L.P.  
Attn: Nancy C. Dougherty  
451 Florida St., 8<sup>th</sup> Floor  
Baton Rouge, Louisiana 70801

**Division of  
Administration:** Commissioner of Administration  
Division of Administration  
Claiborne Building  
1201 North Third Street  
Baton Rouge, Louisiana 70801

**With a copy to:** Director  
Office of Facility Planning and Control  
Division of Administration  
Claiborne Building  
1201 North Third Street  
Baton Rouge, Louisiana 70801

**State of Louisiana:** Division of Administration  
Claiborne Building  
1201 North Third Street  
Baton Rouge, Louisiana 70801

Any such notice or communication shall be deemed to have been given either at the time of delivery, or on the business day on which delivery is refused.

Each party shall promptly inform all other parties in accordance with the Notice procedures set forth above of any changes in personnel or address for the purpose of sending required notices.

ARTICLE XVII.  
MISCELLANEOUS

Section 17.1 Lessor's Right to Enter Property. Lessor reserves the right to enter the Leased Premises at any time to inspect the property and Equipment, as long as Lessor's inspection does not unreasonably interfere with the operation of the proper function of the Lessee's business. Lessor shall attempt to provide Lessee with reasonable advance notice of its

intent to inspect the Leased Premises and Equipment, unless notice is impossible or impractical. Lessee shall have the right to have a representative accompany Lessor during such entry and inspection. Lessee shall not deny Lessor access to the Leased Premises or Equipment.

**Section 17.2 Relationship of Parties.** Nothing contained herein shall be deemed or construed by the parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties. It is understood and agreed that no provision contained herein nor any employees, agents, members or shareholders of the parties hereto creates a relationship other than the relationship between Lessor and Lessee as lessor and lessee or as described in the CEA. In no event shall Lessee's officers, directors, employees or agents be liable for any of the obligations of Lessee hereunder.

**Section 17.3 Waiver.** The Lessor and Lessee agree that either party's failure to insist on strict performance of any term or condition of this Lease shall not constitute a waiver of that term or condition, even if the party accepting or acquiescing in the non-conforming performance knows of the nature of the performance and fails to object to it. No waiver or breach shall affect or alter this Lease but each of the terms of this Lease shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. No waiver of any default hereunder by either party shall be implied from any omission by the non-defaulting party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver for the time and to the extent therein stated. One or more waivers shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

**Section 17.4 Lessor's Consent.** In any instance in which a party's consent or approval is required under this Lease, then, unless specifically stated otherwise in such provision, such party agrees not to unreasonably withhold, delay or condition such consent or approval.

**Section 17.5 Severability.** The provisions of this Lease are severable. Any terms and/or conditions that are deemed illegal, invalid or unenforceable shall not affect any other term or condition of the Lease or the CEA.

**Section 17.6 Recordation of Lease.** It shall be the responsibility of Lessee to prepare an extract of the Lease, which each party agrees to execute to record in the Office of the Parish Recorder of the Parish of Lafayette. The form of the Extract of Lease agreement shall require the approval of Lessor. Lessee shall provide Lessor with a certified copy of the recorded Extract of Lease. Recordation of the Extract of Lease shall be at Lessee's expense.

**Section 17.7 Successors and Assigns.** This Lease shall be binding on and will inure to the benefit of the parties to this Lease and their respective successors and assigns, provided any such assignment was made in a manner consistent with terms of this Lease.

**Section 17.8 Counterparts.** This Lease may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together will constitute only one agreement.

**Section 17.9 Entire Agreement.** This Lease, together with all exhibits attached hereto, sets forth the entire agreement of the parties with respect to the matters set forth herein, and no verbal commitments, except those reduced to writing in this Lease, have any binding effect. Any amendments to this Lease must be reduced to writing and signed by both parties.

**Section 17.10 Choice of Law.** This Lease shall be construed under and in accordance with the Laws of the State of Louisiana, and, in the event of a court proceeding, any such proceeding shall be filed in the Louisiana Nineteenth Judicial District Court.

**Section 17.11 Authorized Representatives of the Parties.** In any instance in which the approval or consent of a party is required, it shall be given on behalf of Lessor by the President of the LSU System or his successor or designee, and on behalf of Lessee by any duly authorized representative of Lessee.

**Section 17.12 Appropriation of Funds.** All State, Division and Lessor obligations under this Lease to make payments of any kind in a future fiscal year, shall be subject to appropriation by the Louisiana Legislature of sufficient funds therefor and the availability of funds following Legislative appropriation; provided, however, and notwithstanding anything to the contrary contained herein or in the CEA, any and all obligations of the Division and/or Lessor pursuant to Section 2.2 of this Lease to refund prepaid Rent shall be subject to, and contingent upon, appropriation by the Louisiana Legislature of sufficient funds specifically and expressly appropriated for refunding of such sums to Lessee (the "Lessee Appropriation"), and any such obligation by any obligor is limited only to the portion of said Lessee Appropriation which said obligor receives. In the event that Lessee is due a refund of prepaid Rent pursuant to the provisions of Section 2.3 and this Section 17.12, the State, the Division and Lessor agree to make good faith best efforts to seek specific appropriation for such refund by the Louisiana Legislature, and the Division and/or Lessor shall include in one or more of their annual budget requests, a request for the appropriation of funds for the purpose of making such refund of prepaid Rent to Lessee pursuant to this Lease.

**ARTICLE XVIII.  
LIMITED ASSUMPTION OF LIABILITIES**

**ARTICLE XIX.** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT LESSEE WILL NOT ASSUME NOR BE LIABLE FOR ANY LIABILITY, OBLIGATION, CLAIM AGAINST OR CONTRACT OF LESSOR OF ANY KIND OR NATURE, AT ANY TIME EXISTING OR ASSERTED, WHETHER OR NOT ACCRUED, WHETHER FIXED, CONTINGENT OR OTHERWISE, WHETHER KNOWN OR UNKNOWN, AND WHETHER OR NOT RECORDED ON THE BOOKS AND RECORDS OF LESSOR, ARISING OUT OF OR BY REASON OF THIS OR ANY OTHER TRANSACTION OR EVENT OCCURRING PRIOR TO THE COMMENCEMENT DATE. LESSOR AGREES TO SATISFY AND HOLD LESSEE HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES ARISING FROM OR RELATING TO THE OPERATION OF THE HOSPITAL FACILITY AT THE LEASED PREMISES AND THE EQUIPMENT LOCATED THEREIN (THE "HOSPITAL") PRIOR TO THE COMMENCEMENT DATE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL MEDICARE AND/OR MEDICAID LIABILITIES, AND LESSOR SHALL PROMPTLY REIMBURSE LESSEE FOR ANY AND ALL LOSSES SUSTAINED BY LESSEE AS A RESULT OF SUCH LIABILITIES.

**INTERVENTION**

Now herein enters University General Health System, Inc., a Louisiana non-profit corporation to individually and in solido with University Hospital and Clinics, Inc. guarantee the full and timely payment and performance of all of University Hospital and Clinics, Inc.'s obligations under this Lease.

[The Remainder of this Page is Intentionally Left Blank;  
Signatures are on the Following Page.]

[Signature Page for Lease (University Medical Center Lafayette)]

This Lease, by and among Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, the Division of Administration, the State of Louisiana and University Hospitals and Clinics, Inc., is executed in duplicate original counterparts.

**IN WITNESS WHEREOF**, the parties hereto have signed their names as of the \_\_\_\_ day of April, 2013, in the presence of the undersigned competent witnesses on the date set forth under their respective signatures:

WITNESSES:

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Dr. William L. Jenkins, Interim President  
Louisiana State University System

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES:

**DIVISION OF ADMINISTRATION  
STATE OF LOUISIANA**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kristy Nichols  
Commissioner of Administration

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES:

**STATE OF LOUISIANA, through DIVISION OF  
ADMINISTRATION**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Kristy Nichols  
Commissioner of Administration

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESSES:

**UNIVERSITY HOSPITAL AND CLINICS, INC.**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Its  
Date: \_\_\_\_\_

[Signature Page for Lease (University Medical Center Lafayette)]

WITNESSES:

**INTERVENOR/GUARANTOR:**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

**LAFAYETTE GENERAL HEALTH SYSTEM,  
INC.**

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Its

Date: \_\_\_\_\_



**Exhibit A**  
**EQUIPMENT**

**Exhibit B**  
**LEASED PREMISES**

All of Lessor's right, title and interest in and to the following described property:

Commencing at the intersection of the centerline of West Congress Street and the centerline of Bertrand Drive, thence proceed north 37° 45' 47" west a distance of 94.55 feet to the point of beginning; thence proceed north 30° 21' 47" west a distance of 1057.08 feet along the easterly right of way of Bertrand Drive to a point and corner; thence proceed north 56° 21' 48" east a distance of 812.75 feet along the northerly property line to a point and corner; thence proceed south 37° 51' 00" east a distance of 1038.14 feet along the easterly property line to a point and corner on the northerly right of way of West Congress Street; thence proceed south 52° 09' 00" west a distance of 616.76 feet along the northerly right of way of West Congress Street to a point and corner; thence proceed south 54° 26' 33" west a distance of 150.00 feet along the northerly right of way of West Congress to a point and corner; thence, proceed south 52° 09' 00" west a distance of 140.00 feet along the northerly right of way of West Congress Street to a point and corner; thence proceed north 81° 17' 01" west a distance of 60.57 feet along the northerly right of way of West Congress Street to the point of beginning.

Property description covering a tract of land, containing 942,421 square feet or 21.635 acres, belonging to the University of Southwestern Louisiana, located at the corner of Bertrand Drive and West Congress Street, in Section 63, Township 9 South, Range 4 East, City of Lafayette, Parish of Lafayette, State of Louisiana.

This transfer is made subject to a right of way by Lessor to the State of Louisiana, Department of Transportation and Development, Office of Highways, on, over, and across a certain parcel of land located within the above described property, designated on plans for State Project No. 828-38-03, FAP No. HHS-8160 (002), LEFT TURN LANES, BERTRAND DRIVE AT CONGRESS, LA. 3025, LAFAYETTE PARISH, prepared by F. Lee Jolly, REGISTERED LAND SURVEYOR, dated 11/20/78, a copy of which is on file in the office of the Department of Transportation and Development, Office of Highways, Baton Rouge, Louisiana, as Parcel No. 301, including four (4) Construction Servitudes designated Parcel Nos. 3-1-C-1, 3-1-C-2, 3-1-C-3, 3-1-C-4, all as more fully described and set forth in a right-of-way deed, dated April 27, 1979 and recorded in Book C, Entry No. 79-12421, of the records of Lafayette Parish, a copy of which is attached hereto and made a part hereof. LESS AND EXCEPT:

Commencing at the intersection of centerlines of Bertrand Drive and West Congress Street thence proceed North 37° 45' 47" West a distance of 94.55 feet to a point; thence proceed North 30° 21' 47" West along a line that becomes the Easterly right-of-way of Bertrand Drive a distance of 1057.08 feet to a point; thence proceed North 56° 21' 48" East along a fence line a distance of 251.10 feet to the point of beginning; thence proceed North 56° 21' 48" East along the fence line a distance of 150.41 feet to a point and corner; thence proceed South 37° 52' 13" East along an unmarked line a distance of 75.5 feet to a point and corner; thence proceed South 52° 7' 47" West along the Northwesterly outside edge of the

concrete curbing of a parking lot a distance of 150.0 feet to a point and corner; thence proceed North 37° 52' 13" West along an unmarked line a distance of 86.6 feet to the point of beginning. Property contains .279 acres more or less.

**Exhibit C**  
**SERVICE STANDARDS, BUILDING**

## CONSENT AGENDA

1. Request approval of an Exclusive License between the LSU Ag Center and ProGene Plant Research, LLC
2. Request approval of an Exclusive License between the LSU Ag Center and Terral Seed, Inc.
3. Recommendation for a Determination of Acceptable University Purpose for the construction of a Trees and Trails Restrooms at Burden Center
4. Request to approve a Tuition and Fee Framework for the Dual Enrollment Program at LSU System Institutions
5. Approve of LSUA's Mission Statement
6. Request approval of the Graduate Certificate in Materials Sciences and Engineering at LSU
7. Recommendation to enter into Right-of-Way Agreement with Entergy Gulf States, Inc. (Louisiana)



## REQUEST BY AGRICULTURAL CENTER FOR DETERMINATION OF ACCEPTABLE UNIVERSITY PURPOSE TREES AND TRAILS RESTROOMS BURDEN CENTER

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8.D.2(a) and (b) of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter".

D.2(a) The assignment, lease, transfer, encumbrance or sale of land, mineral rights, rights of ways, servitudes, or other immovable property owned or controlled by LSU. . .

### **1. Summary of the Matter**

The Agricultural Center requests that the LSU Board of Supervisors make a Determination of Acceptable University Purpose in accordance with Sections 6.3 and 6.4 of the Uniform Affiliation Agreement for the construction of the Trees and Trails Restrooms at the Burden Center to be partially or fully funded by cash and in-kind donations.

Trees and Trails (TNT) is approximately five miles of pedestrian, recreational, and educational trails located at Burden Center that was opened in October 2009. These trails provide a framework of nature experiences with interpretative rest stop areas and accommodate the need of the general public for access to a safe environment designed to promote exercise and fitness. A key part of TNT is docent-led Project Learning Tree (PLT), a program of the American Forest Foundation that engages teachers and students in environmental content that correlates to national and state standards in science, social studies, language arts, and math and strengthens their critical thinking, team building, and problem solving skills. In order to further develop this program, a trailhead restroom facility must be built to provide adequate restrooms for large groups of users.

The facility will be located adjacent to the Orangerie and the Pavilion at the Burden Center and will be in accordance with the Burden Master Plan. This proximity will allow the Orangerie and the Pavilion to be rented for evening functions that will generate income.

The facility will be approximately 1,500 square feet, with the capacity to accommodate approximately 100. The restroom will feature "green" technology and natural lighting. Thus, this facility and trail system will be used as a model for a sustainable, environmentally-friendly recreational and educational trails program.

It is anticipated that the restroom will be donated by the LSU Foundation to the LSU System once construction is completed.

### **2. Review of Business Plan**

This project will be partially or fully funded by cash and in-kind donations. The project, including design and contingency costs, is estimated to cost approximately \$350,000.

As the Restroom will primarily utilize natural lighting and ventilation, operating costs are expected to be minimal and will be funded by Burden's normal operating budget and offset by rental income from the neighboring Orangerie and Pavilion. The restrooms will have no fiscal impact on the LSU System.

### **3. Fiscal Impact**

Not applicable.

#### **4. Description of Competitive Process**

If the project is fully funded with cash and in-kind donations, a request for proposal process will be used to select a contractor with the best combination of qualifications and costs for this type project. If the project will be partially state funded, the normal competitive construction process will be followed.

#### **5. Review of Legal Documents to be Entered Into by LSU**

None

#### **6. Parties of Interest**

- LSU
- LSU Foundation

#### **7. Future Related Transactions**

- Property Lease to LSU Foundation
- Act of Donation from LSU Foundation

#### **8. Conflicts of Interest**

None

#### **ATTACHMENTS**

- Letter from Chancellor Richardson

#### **RECOMMENDATION**

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**“NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College that there is an acceptable university purpose, as provided for in the Uniform Affiliation Agreement, for construction of the Trees and Trails Trailhead Restrooms by the LSU Foundation at Burden Center, Baton Rouge, Louisiana.”



March 28, 2013

Dr. William L. Jenkins, Interim President  
LSU System  
3810 West Lakeshore Drive  
Baton Rouge, LA 70808

RE: Significant Board Matter  
Request for Determination of Acceptable University Purpose  
Trees and Trails Restrooms at Burden Center  
Baton Rouge, Louisiana

We are requesting that the Board of Supervisors make a Determination of Acceptable University Purpose in accordance with Sections 6.3 and 6.4 of the Uniform Affiliation Agreement for the construction of the Trees and Trails Restroom at Burden Center to be fully or partially funded by cash and in-kind donations. It is anticipated that the restroom facility will be donated by the LSU Foundation to the LSU System once construction is completed.

As this project is in support of the AgCenter and its mission, we enclose herewith our request for approval and ask that it be placed on the agenda of the next Board of Supervisors meeting.

I certify that, to the best of my knowledge, I have provided all necessary documentation and that the information contained therein is complete, accurate, and in compliance with Article VII, Section 8 of the Bylaws of the Board of Supervisors. I agree to cooperate in any issues related to this matter. Please let me know if any additional information is needed.

Sincerely,

William B. Richardson, Chancellor and  
Chalkley Family Endowed Chair

WBR:ksc

Attachments

xc: John Russin  
Danny Mahaffey  
Dale Frederick

RECEIVED

APR 01 2013

PROPERTY & FACILITIES

Office of the Chancellor

101 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-4161  
FAX: (225) 578-4143

Corporate Relations  
(225) 578-4238  
FAX: (225) 578-4143

Governmental Relations  
(225) 578-4967  
FAX: (225) 578-4143

Accounting Services  
103 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-4648  
FAX: (225) 578-0735

Ag Leadership  
102 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-3659  
FAX: (225) 578-4225

Communications  
128 Knapp Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-2263  
FAX: (225) 578-4524

Facilities Planning  
210 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-8731  
FAX: (225) 578-7351

Human Resource Management  
& Diversity  
103 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-2258  
FAX: (225) 578-8284

Information Technology  
118 Knapp Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-4020  
FAX: (225) 578-3629

International Programs  
Sugar Station Building  
South Stadium Road  
110 LSU Union Square  
LSU Box 16090  
Baton Rouge, LA 70803-0106  
(225) 578-6963  
FAX: (225) 578-6775

Sponsored Programs and  
Intellectual Property  
104 J. Norman Efferson Hall  
110 LSU Union Square  
Baton Rouge, LA 70803-0106  
(225) 578-6030





## Request to Approve a Tuition and Fee Framework for the Dual Enrollment Program at LSU System Institutions

To: Members of the Board of Supervisors

Date: April 17, 2013

Pursuant to paragraph D. of Article VII, Section 8 of the Board Bylaws, the following is provided:

### 1. Significant Board Matter

This matter is a "significant board matter" pursuant to the following provisions of Article VII, section 8 of the Bylaws:

D.1 Any matter having a significant fiscal (primary or secondary) or long term educational or policy impact on the System or any of its campuses or divisions.

### 2. Summary of the Matter

Dual enrollment is designed to prepare high school students for college or career by enrolling them in advanced, developmental, or work skills courses through which the students earn both college and high school credit. Advanced (general education) courses keep strong students academically challenged, giving them early exposure to college and an opportunity to earn college credit; developmental courses help students prepare for college and gain admission to four-year institutions; and work skills courses provide students with technical training toward industry-recognized certification in high-demand fields. These programs, collectively, encourage partnerships between postsecondary institutions and secondary schools and districts, strengthening the entire education system in the State.

In a response to House Concurrent Resolution 23 of the 2011 Regular Session of the Louisiana Legislature, the Board of Regents (BoR) noted that Louisiana high school students historically have enrolled in college courses at public postsecondary institutions whether or not they also received high school credit. However, enrollment numbers of these students remained relatively stable and low until the Louisiana Technical College began reporting high school student enrollment data to the BoR in 2003; and the State began providing funding for dual enrollment programs.

The State's two dual enrollment programs are the TOPS Tech Early Start program, created by Act 348 of the 2005 Regular Session of the Louisiana Legislature, and the Early Start Dual Enrollment program, created by the BoR in 2006 in conjunction with its work with the High School Redesign Commission. The BOR Early Start Dual Enrollment program was introduced as a pilot for the 2006-07 academic year and developed into a statewide program in the next academic year.

College courses offered through dual enrollment programs can be taught either on the high school or the college campus by qualified faculty. If taught on a high school campus by a high school teacher, the teacher is required to have the same credentials as faculty teaching on the college campus.

When the dual enrollment program was launched, The State provided each postsecondary institution \$100 per credit hour for up to three credit hours per semester (\$300 for a typical

three-semester hour course) to be applied to the student's tuition. The institution then exempted the balance of the student's cost, making the course effectively free to the student.

For the past two years, State funding for the Board of Regents' Early Start Dual Enrollment program has declined and all funding will be eliminated for the 2013-2014 academic year.

The State now proposes to focus its funding resources instead on the Department of Education's new Course Choice program. This program allows public school students who meet various criteria to enroll in various online or face-to-face courses at no cost to the student. LSU System institutions are planning to participate on a limited basis in the Course Choice program by offering eight three hour courses and two one hour lab courses.

Since the BoR Early Start Dual Enrollment program is not funded for FY 2013-2014, LSU, LSUA, LSUE and LSUS wish to continue to provide dual enrollment opportunities to students in school districts and high schools that do not meet the Course Choice criteria. As an effort to provide a uniform approach to pricing of dual enrollment programs, it is recommended that all LSU System campuses charge a flat rate of \$100 per credit hour for any dual enrollment programs negotiated with high schools or school districts (exclusive of the LSU Lab School). This published rate for the dual enrollment programs means no further tuition exemptions will be routinely necessary. In those limited circumstances, however, where an institution may find it appropriate to exempt a portion of the posted \$100 per credit hour rate, it is also recommended that the President be granted the authority to approve the exemption.

### 3. Fiscal Impact

In FY 2013-14, it is projected that a total of 3,190 public and private school students, and their high school teachers and administrators have interest in the campus' dual enrollment program. Assuming each student takes one three hour course, the estimated revenue generated System-wide under this program is \$755,000.

<b>Institution</b>	<b>Estimated Enrollment</b>	<b>Estimated Revenue</b>
LSU A&M	1,140	\$342,000
LSU Shreveport	1,000	\$300,000
LSU Alexandria	650	\$195,000
LSU Eunice	400	\$120,000
Total	3,190	\$755,000

### 4. Review of Documents Related to Referenced Matter

The proposed request has been reviewed by the System's Chief Financial Officer, the System's Chief Academic Officer, and appropriate campus officials.

#### ATTACHMENTS:

N/A

#### RECOMMENDATION(s)

The Staff recommends that the Board consider the resolution set forth below:

**WHEREAS**, the LSU System and its institutions are committed to serving the citizens of the State of Louisiana; and

**WHEREAS**, the LSU System and its institutions seek to strengthen their support of secondary education throughout the State; and

**WHEREAS**, the LSU System and its institutions seek to implement a sustainable and widely accessible dual enrollment program; and

**WHEREAS**, the LSU System institutions will continue to follow all eligibility criteria established under the Board of Regents Early Start Dual Enrollment Program; and

**WHEREAS**, the LSU System institutions will maintain: (1) written policy with eligibility criteria; (2) appropriate administrative coordination between LSU System institutions and the high schools; and (3) appropriate assessment procedures to ensure student learning.

**NOW THEREFORE, BE IT RESOLVED** that the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College does hereby authorize the institutions of the LSU System to provide dual enrollment courses at a flat rate of \$100 per credit hour; and

**BE IT FURTHER RESOLVED** that the Board of Supervisors of the Louisiana State University and Agricultural and Mechanical College does hereby authorize the President to approve, in limited circumstances, an exemption to the approved rate of \$100 per credit hour if it is deemed to be in the best interest of LSU.



## RECOMMENDATION TO ENTER INTO RIGHT-OF-WAY AGREEMENT WITH ENTERGY GULF STATES, INC. (LOUISIANA)

**To: Members of the Board of Supervisors**

**Date: April 17, 2013**

Pursuant to Article VII, Section 8, D.2(a) of the Bylaws of the Louisiana State University Board of Supervisors, this matter is a "significant board matter".

D.2(a) The assignment, lease, transfer, encumbrance or sale of land, mineral rights, rights-of-way, servitudes or other immovable property owned or controlled by LSU.

### **1. Summary of Matter**

It is recommended that the LSU Board of Supervisors enter into a Right-of-Way Agreement with Entergy Gulf States, Inc. (Louisiana) for a utility right-of-way at the LSU Innovation Park to provide electrical service to the Baton Rouge Speech & Hearing Foundation's, Emerge Center.

The Board of Supervisor approved a Ground Lease and Construction Agreement with the Baton Rouge Speech and Hearing Foundation at its April 27, 2012 meeting to construct said facility. The Right-of-Way is required for the installation of a utility pole on LSU's property to extend the power line over GSRI Road and provide service from that point to the building.

### **2. Review of Business Plan**

See copy of attached Proposal for LSU Participation in a Significant Joint Project dated December 23, 2011 and signed by Charles F. D'Agostino.

### **3. Fiscal Impact**

Not applicable.

### **4. Description of Competitive Process**

Not applicable

### **5. Review of Legal Documents**

Right-of-Way Instrument, Entergy Gulf States, Inc. (Louisiana)

### **6. Parties of Interest**

None

### **7. Related Transactions**

None

### **8. Conflicts of Interest**

None

**ATTACHMENTS:**

- Letter from Interim Vice Chancellor Kuhn
- Copy of Right-of-Way Instrument, Entergy Gulf States, Inc. (Louisiana)
- Copy of Preliminary Proposal for LSU Participation in a Significant Joint Venture
- Copy of Ground Lease and Construction Agreement with Baton Rouge Speech and Hearing Foundation [**Available on LSU System Website**]

**Recommendation**

It is recommended that the LSU Board of Supervisors adopt the following resolution:

**"NOW, THEREFORE, BE IT RESOLVED** that the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College does hereby approve Right-of-Way Agreement between Louisiana State University and Entergy Gulf States, Inc. (Louisiana) and authorizes the President, or his designate, to sign the agreement on behalf of the Board of Supervisors."

TO: William L. Jenkins  
Interim Chancellor & System President

DATE: April 9, 2013

FROM: Robert Kuhn, Interim Vice Chancellor and CFO  
Finance & Administrative Services

RE: Recommendation to Approve a Right-of-Way Agreement between Board of Supervisors and Entergy Gulf States, Inc. (Louisiana) for the Emerge Center at LSU Innovation Park

The Emerge Center project is under construction at LSU's Innovation Park and a right-of-way is required with Entergy Gulf States to install a utility pole on LSU's property to extend the utility line over GSRI Road to provide electrical service to the building.

The LSU System Office staff has reviewed the agreement and determined that the action requires Board of Supervisors approval pursuant to Article VII, Section 8, D.2(a). It is therefore requested that this item be submitted for placement on the agenda for the April Board of Supervisors meeting. The System Office staff has agreed to accept this request and place the item on the meeting agenda due to the possible delay in construction of the building if the item is withheld until the June meeting of the Board.

Attached are the supporting documents in support of this request.

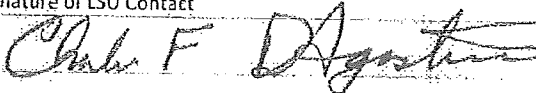
Attachments

**Institutional Approval -**

**Robert Kuhn for William L. Jenkins**

*Robert Kuhn for William L. Jenkins 4/9/13*

# Preliminary Proposal for LSU Participation in a Significant Joint Project

Collaborating Entity (company, government agency) Name & Address	LSU Contact & Title
Baton Rouge Speech & Hearing Foundation	Charles F. D'Agostino
Collaborator's Contact Persons Colleen Waguespack, Board President Melissa Juneau, Executive Director Robert Pettit, Capital Campaign Cabinet Member	LSU Contact Phone
Collaborator's Contact Phones 225-343-4232	225-578-7555
Collaborator's Contact Emails	LSU Contact Email
<a href="http://www.brshf.org">www.brshf.org</a>	cdag@LSU.edu
	Proposal Date
	December 23, 2011
	Signature of LSU Contact
	

## Section 1 – Project Summary

In the space provided on the form, provide concise information on each topic. Where indicated or helpful attach supplemental tables and other documents providing more detailed information.

1. Describe the project for involving LSU participation. Attach, on 8 1/2" x 11" paper, a more detailed explanation if additional space is required.

The Baton Rouge Speech and Hearing Foundation (BRSHF) is interested in leasing land at the LSU Innovation Park (located on LSU's South Campus) to construct a new facility for a proposed new, 25,000 + square foot facility to conduct the service of providing treatment, training, and assistance to citizens with speech and hearing challenges as well as to expand the Autism program. The entity is interested in leasing from the LSU Innovation Park 3.1 +/- acres of land to construct the facility and to have ample space for new Autism programs, parking, playgrounds, and outside educational areas. The Baton Rouge Speech and Hearing Foundation is also requesting a first right of refusal on an additional 2-3 acres adjacent to the property for future expansion. The entity projects construction costs to be approximately \$5,000,000 to \$6,000,000. BRSHF currently has a relationship with various colleges and departments at LSU. In addition, the entity currently works with faculty and employs approximately 30-40 LSU students monthly with an annual student payroll of \$127,000. BRSHF would like to enter into a land lease for 30-years with renewal options on an initial 3.1 acres with a first right of refusal on an adjacent tract of land measuring 2-3 acres.

The BR Speech and Hearing Foundation meets the covenants and restrictions and accepted uses of the LSU Innovation Park as established in the park documents. In addition, the entity would comply with the architectural covenants set forth in the master plan for the LSU Innovation Park.

LSU and the BRSHF have enjoyed a long-standing collaborative relationship, as the organization currently employs student workers and interns at the undergraduate, graduate, and PhD levels each semester. Students are given the opportunity to participate in work with patients dealing with a variety of challenges, including communications disorders, special education needs, psychology, occupational therapy, speech pathology, and audiology. In addition, BRSHF is working with faculty on research projects and are interested in co-submitting research proposals on Autism treatment and educational programs with LSU. The organization also allows LSU researchers to utilize data

collected over the last 20+ years in providing these services. In summary, the BRSHF mission is directly aligned with the goals and vision of the LSU Innovation Park.

2. **LSU Contributions** – Briefly describe commitments of LSU Institution resources anticipated. When significant resources are involved, a detailed schedule including estimated values, expected construction costs if any, and other information will be helpful. Please indicate which entities are responsible for the estimates of the institutional resources and whether an LSU contact or a collaborating entity contact provided the rationale for the estimates.

Resources	Value or Amount	Explanation
Construction or renovation of facilities	\$5-6 Million	All costs to be covered by the Baton Rouge Speech & Hearing Foundation with no costs to LSU
<input type="checkbox"/> Shared or dedicated use of facilities		LSU students, faculty, and researchers will work with the BRSHF staff on projects.
<input type="checkbox"/> Purchase or use of equipment		None
<input type="checkbox"/> Faculty time		None
<input type="checkbox"/> Physical Plant staff time		None
<input type="checkbox"/> Computing staff time		None
<input type="checkbox"/> Other staff time		None



<input type="checkbox"/> Other resources		
3. Identify sources for funding any anticipated LSU capital costs. Elaborate in detail in paragraph 7, below.		
<p>LSU will have infrastructure funding from other, non-LSU sources including current contract with Louisiana Economic Development (LED), to cover making the site ready for the client to build the facility. The current site project is fronting GSRI Avenue and has water, sewer, and all utilities at the site. Sites considered "shovel ready" with no LSU costs anticipated.</p>		
4. Identify sources for anticipated additional LSU operational costs. Elaborate in detail in paragraph 7, below.		
<p>Park grounds upkeep will be paid by common area fees paid by all park tenants. LSU currently covers these costs and no extra costs are anticipated by this project.</p>		
5. Many projects anticipate growth and expansion. Where this is appropriate provide strategic and market analysis demonstrating the basis for anticipating project success. In this analysis briefly describe the key predictions or variables which will likely determine the success of the project (attracting customers, patients or students, obtaining financing, hiring the right personnel, inventing a new technology, etc.). Where appropriate, attach a schedule detailing the key variables and identifying the basis for any predictions regarding anticipated use of resulting products or services by customers, patients, students, etc.		

The programs conducted by the BRSHF are anticipated to grow and create more opportunities for LSU students, faculty, and researchers. Any building expansion will be paid for by the BRSHF. The entity has requested a right of first refusal on the adjacent 2-3 acres for expansion and since LSU has in excess of 160 acres, this poses no impact or restraint on LSU and the LSU Innovation Park.

6. Financial Plan – Briefly describe the financial plan for the project, including expected revenues and expenses for at least the first 5 years. Attach a detailed financial *pro forma*. The *pro forma* should specifically identify the most significant expenses anticipated for the project, such as facility costs, leadership personnel, equipment costs, software, other operating costs, etc. and indicate the sources of funding and the distribution of revenue. In the event there are contingencies involved, regarding possible deficits or additional contributions to revenue or other financial risks, identify those risks and the cooperating entities responsible for covering any such contingencies or risks.

The Baton Rouge Speech and Hearing Foundation (BRSHF) will enter into a 30-year land lease with the LSU Innovation Park (Board of Supervisors) with renewal options. The entity will pay a land lease rate to LSU and be responsible for the construction, maintenance, upkeep, and operations of the building and site. The land lease is structured according to real estate values developed by the consultants of the park and real estate comparable data in the area. Due to the non-profit status of the BRSHF and the strong academic and research relationship with LSU, the lease payments are reduced in years 1 and 2 then accelerated in years 3-5 to conform lease value.

**Project Assumptions:**

- Area of land needed for the land lease: 3.10 acres
- First Right of Refusal on adjacent 2-3 acres for expansion at the initial lease rate for the 3.10 acres
- Square feet of land on initial lease: 135,036
- Value per acre: \$100,000
- Total value of land: \$310,000
- Value per square foot: \$2.30
- 30-year lease with two 20-year options with a rate increase every five (5) years at 3%, first 5-years as shown below due to concession for lower rate in first two years of construction.

Years	Increase per five years 3%
1-2	\$12,600
3-5	\$22,600
6-10	\$19,158
11-15	\$19,733
16-20	\$20,325
21-25	\$20,934
26-30	\$21,562
31-35 Option year	\$22,209
Payment over term of 30 years	\$601,562

## Section 2 – Corporate Information

For each of the cooperating entities other than LSU, provide the following information as appropriate. A Company refers to any legal entity, including corporations, partnerships, LLSs, not-for-profits, etc. If the entity has not yet been legally formed, provide the following information for the anticipated new entity. In the case of cooperation with a state or local government agency, only sections 1-3, 4, and 9 will apply.

1. Legal name of legal entity, as it appears in the records of the Secretary of State; or anticipated name of new entity.	
Baton Rouge Speech & Hearing Foundation	
2. Headquarters Address	3. Louisiana Address, if different
Baton Rouge Speech & Hearing Foundation 535 West Roosevelt Street Baton Rouge, LA 70802	
4. Owners – List the names of all individuals with a profit interest in the company (does not apply to publicly-traded corporations). Indicate the legal form of the company (i.e., corporation, non-profit corporation, partnership, LLC, etc.)	
Colleen Waguespack, President of the BRSHF Board Leslie Berg, Vice President Melissa Juneau, Executive Director Project leaders: Mark Rohr, Robert Pettit, Kevin Reilly, Sr., Christel Slaughter.	
A non-profit corporation, 501c3	
5. Management – List the names and titles of key management officers, such as CEO, CFO, etc.	
Melissa Juneau, Executive Director Colleen Waguespack, Board Chairman Melissa Mulkey, Immediate Past Chair	
6. Consultants – List the names of any individuals or companies being paid primarily to assist with, or whose compensation (in whole or part) is contingent upon, obtaining LSU or state participation in this project.	
none	

7. Board of Directors – List the names of the members of the board of directors of the company. Melissa Allen, Leslie Berg, Melissa Blake, Marvin Borgmeyer, Cynthia Bridges, David Clary, Vicki Crochet, Michael DePaul, Camilla Ford, Dr. Charlotte Hollman, Jake Mayo, Melissa Mulkey, Robert Pettit, Ryan Thibodeaux, Colleen Waguespack, Kevin Reilly Sr.
8. Legal Entity History and General Information – Briefly describe the history of the entity, including what industry it is in, when it was started, approximate number of current employees, etc. Non-profit founded in 1960 and Capital Area United Way partner
9. LSU Personnel Participation – List the names and titles of any LSU employee or known member of the LSU Board of Supervisors, and any member of the immediate family of any such employee or member of the Board (as defined in the Louisiana Code of Ethics, R.S. 42:1101 et seq.) who either: (1) has or is expected to obtain an ownership or other profit interest in the company, (2) has or is expected to make an investment in the company or this project, (3) is or is expected to become employed by, or a consultant to, the company, (3) is on or is expected to join the board of directors of the company, or (4) has or is expected to obtain any other substantial economic interest in the company or any aspect of this project. If no such individuals exist, simply answer "None."
- none

*I certify that I have exercised reasonable diligence to determine whether any LSU personnel or their immediate families have a financial interest in the company or this project, as described in the answer to question 9 above, and that the information contained in the answer to question 9 is true and accurate to the best of my knowledge. I agree that I will provide additional information to LSU promptly if the answer to question 9 should change, or if I discover that the answer provided was inaccurate. I understand this diligence is required by the Ethics Code.*

  
Signature & Date Charles F. D'Agostino

12/23/2011

Charles F. D'Agostino, Executive  
Director, Louisiana Business &  
Technology Center and LSU  
Innovation Park  
Printed Name & Title

### **Inspection Periods for Site Preparation**

In many real estate transactions, the buying/leasing entity will request an inspection period to investigate the site, complete architectural plans, confirm utility connections, obtain permits and perform due diligence on the site before closing on the property. The Baton Rouge Speech and Hearing Foundation (BRSHF) has requested that an inspection period be provided as part of the terms of the lease agreement.

As outlined in the agreement, the inspection period will commence on the effective date of the agreement and expire upon the parties' accomplishment of the objectives outlined below and the Foundation's commencement of construction, or upon the passage of twelve (12) months from the effective date of the agreement (whichever occurs first). During the inspection period, the parties will work in good faith and take reasonable actions to accomplish the following objectives:

- The Foundation will to the extent deemed necessary, at its sole expense, inspect the Property, arrange for all necessary surveys (if the Foundation wants additional survey work other than the boundary survey provided by the Board), soil borings, and other site investigations, review title to the Property, and perform other studies and, investigations deemed necessary by the Foundation.
- The Foundation will at its sole expense provide for the preparation of all design and supporting documentation for construction, including but not limited to the plans and specifications for work and the exterior architectural and site plans for the property and work, and obtain all necessary approvals for the plan, specifications, contracts, and other documents as required by the agreement.
- The Foundation will at its sole expense obtain all necessary permits, licenses, and other approvals from regulatory agencies or bodies necessary to commence construction.
- The Foundation will at its sole expense enter into a construction contract for the construction of the work and obtain the approval of the construction contract from the Board.
- The Foundation will secure funds from donations, financing, or otherwise sufficient means to pay for construction of the work.
- The Foundation will determine if all utilities are available at the property and sufficient for the Foundation's use.
- The parties will agree upon the precise location of the property and the Board will provide to the Foundation the boundary survey.
- The parties will satisfy all other conditions expressly provided for in the lease agreement, which are to be satisfied during the inspection period, or they may waive any such conditions at their discretion.

In summary, the Executive Director of the LSU Innovation Park does not believe the request by the Baton Rouge Speech and Hearing Foundation (BRSHF) will impact the LSU Innovation Park as the Park is in the initial stages of development. In addition, there are substantial managerial, policy, and development issues that will be resolved during this time period.

**GROUND LEASE AND CONSTRUCTION AGREEMENT WITH  
BATON ROUGE SPEECH AND HEARING FOUNDATION**

THIS GROUND LEASE AND CONSTRUCTION AGREEMENT WITH BATON ROUGE SPEECH AND HEARING FOUNDATION (the "Agreement") is entered into by and between

**BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE** (the "Board"), a public constitutional corporation organized and existing under the Constitution and laws of the State of Louisiana, domiciled in the Parish of East Baton Rouge, said State, appearing herein through John V. Lombardi, President of the Louisiana State University System, duly authorized and empowered by said Board,

and

**BATON ROUGE SPEECH AND HEARING FOUNDATION, INC.** (the "Foundation"), a nonprofit corporation organized and existing under the laws of the State of Louisiana, domiciled in the Parish of East Baton Rouge, said State, appearing herein through Colleen Waguespack, President of the Foundation, duly authorized and empowered by said Foundation,

to be effective as of the date on which the Agreement has been fully executed by both parties hereto as reflected on the signature page (the "Effective Date"), and provides as follows:

**WHEREAS**, the Foundation is a private nonprofit Louisiana corporation afforded status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose tax-exempt purpose includes but is not limited to providing treatment, training, and assistance to citizens with speech and hearing challenges, as well as Autism Spectrum Disorders and other developmental disabilities, and

**WHEREAS**, Louisiana Revised Statutes 17:3361 expressly authorizes the Board to lease property to a nonprofit corporation such as the Foundation for the purpose of constructing and renovating buildings, other structures, and improvements, and

**WHEREAS**, the Board is the owner of certain lands located on the South Campus of Louisiana State University on GSRI Road in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, and

**WHEREAS**, the Foundation desires to lease and to construct certain buildings and improvements on the aforementioned property at the Foundation's sole expense for the aforementioned purposes, all in accordance with plans and specifications to be approved by the Board or the President of the Louisiana State University System or his duly authorized designee (the "LSU System Representative") and pursuant to the Board's design standards and any applicable standards of the LSU South Campus and LSU Innovation Park, copies of which are attached hereto as Exhibit "C," and

**WHEREAS**, the Board desires to grant to the Foundation a ground lease and certain rights of use and access in order to facilitate the use of the property and construction of the aforementioned buildings and improvement by the Foundation, and

**WHEREAS**, having the Foundation's facility on Board property will further the mission of the Board by providing opportunities for collaborative research with LSU students and faculty members by providing employment and internship opportunities for students at the undergraduate, graduate, and doctoral levels in fields including communications disorders, special education, psychology, occupational therapy, speech pathology, and audiology, and by providing a long-term anchor tenant for the LSU Innovation Park, and

**WHEREAS**, the buildings and improvements to be constructed by the Foundation pursuant to the terms of this Agreement will be donated by the Foundation to the Board upon the expiration of and in accordance with the terms of this Agreement.



**NOW, THEREFORE,** in consideration of the mutual covenants, conditions and agreements which follow, the parties agree:

**ARTICLE I**  
**LEASE OF THE PROPERTY**

In consideration of the covenants, agreements, and conditions herein set forth, which the Foundation hereby agrees shall be kept and performed, the Board does hereby lease unto the Foundation, and the Foundation does hereby lease from the Board, certain property located on the LSU South Campus in the Parish of East Baton Rouge, State of Louisiana, approximately 3.1 acres in size, all as depicted and described in more detail as "Parcel #1" on the attached Exhibit "A" (the "Property"). The Property is located within that parcel of land known as LSU Innovation Park and owned by the Board (the "Development"). Within \_\_\_\_ days after the Effective Date of this Agreement, the Board shall provide the Foundation with a boundary survey of the Property, and the location of the Property shall be subject to the approval of the Board and the Foundation during the Inspection Period, as defined herein.

**ARTICLE II**  
**TERM**

Unless sooner terminated as herein provided, this Agreement shall be and continue in full force and effect for an initial term of thirty (30) years (the "Initial Term"), such Initial Term commencing on the Effective Date, with two (2) separate and successive options to renew the Agreement, (each a "Renewal Term"), with each such Renewal Term being for a period of twenty (20) additional and subsequent years (for a total possible Term of up to seventy (70) years). In the event and on each occasion that the Foundation desires to renew the Agreement for either Renewal Term as provided for above, then provided the Foundation is not then in default of this Agreement, the Foundation may exercise its right by providing written notice of same to the Board no later than sixty (60) days prior to the expiration of the then current Term. In the event that the Foundation fails to provide the Board with written notice within said sixty (60) day period, then the Board shall provide the Foundation with written notice of the expiration of this Agreement and the Foundation shall have an additional fifteen (15) days from the date of the Foundation's receipt of the Board's written notice to provide written notice to the Board of the Foundation's election to renew the Agreement for either Renewal Term. "Term" as used in this Agreement shall include the Initial Term and any exercised Renewal Term.

**ARTICLE III**  
**INSPECTION PERIOD**

3.1 Objectives During the Inspection Period. The "Inspection Period" shall commence on the Effective Date of this Agreement and shall expire upon the parties' accomplishment of the following objectives and the Foundation's commencement of construction, or upon the passage of twelve (12) months from the Effective Date of this Agreement, whichever occurs first, unless this Agreement is terminated per this Article III. During the Inspection Period, the parties to the extent provided for herein shall work in good faith and take all reasonable actions as reasonably necessary to accomplish the following objectives:

- a) The Foundation shall to the extent deemed necessary, at its sole expense, inspect the Property, arrange for all necessary surveys (if the Foundation wants additional survey work other than the boundary survey provided by the Board pursuant to Article I), soil borings, and other site investigations, review title to the Property, and perform other studies and, investigations deemed necessary by the Foundation.
- b) The Foundation shall at its sole expense provide for the preparation of all design and supporting documentation for the construction of the Work as defined herein below, including but not necessarily limited to the plans and specifications for the Work and the exterior architectural and site plans for the Property and Work, and to obtain all necessary approvals for such plan, specifications, contracts and other documents as required by this Agreement.
- c) The Foundation shall at its sole expense obtain all necessary permits, licenses, and other approvals from all regulatory agencies or bodies necessary to commence construction of the Work.
- d) The Foundation shall at its sole expense enter into a Construction Contract for the construction of the Work and obtain the approval of the Construction Contract from the Board, all as defined and set forth hereinbelow.
- e) The parties shall strive to reach an agreement regarding the subject matter addressed in Section 3.3 of this Agreement; provided, however, that the parties shall not be obligated to reach such an agreement.
- f) The Foundation shall secure funds from donations, financing, or otherwise sufficient means (as determined by the Foundation in its reasonable discretion) to pay for construction of the Work per this Agreement.
- g) The Foundation shall determine if all utilities are available at the Property and sufficient for the Foundation's use (as determined by the Foundation in its reasonable discretion).
- h) The parties shall agree upon the precise location of the Property and the Board

shall provide to the Foundation the boundary survey required in Article I.

- i) The parties shall satisfy all other conditions expressly provided for in this Agreement, which are to be satisfied during the Inspection Period, or they may waive any such conditions at their discretion.

3.2 Termination Rights During the Inspection Period. During the Inspection Period, the Foundation and the Board to the extent provided for herein shall work in good faith and take all actions reasonably necessary to accomplish the aforementioned objectives; however, each party shall also have the right to terminate this Agreement at any time during the Inspection Period by providing notice to the other pursuant to Article XII, in which event both parties shall be released from any further liability hereunder. In the event the parties are unable despite their best efforts to accomplish the aforementioned objectives during the Inspection Period, then each party shall have the right to declare this Agreement terminated by providing notice to the other pursuant to Article XII, in which event both parties shall be released from any further liability hereunder. If this Agreement is terminated during the Inspection Period, the Foundation shall deliver to the Board copies of all reports, studies and investigations as additional consideration for this Agreement.

3.3 Negotiations Regarding the Foundation's Current Facility. The Foundation currently owns property and buildings and improvements thereon located at 535 West Roosevelt Street, Baton Rouge, Louisiana, 70802. The Board and the Foundation agree that during the Inspection Period, to the extent allowed by law, they may but shall not be obligated to negotiate a separate transaction whereby the Foundation transfers the aforementioned property to the Board in exchange for a credit (based on the fair market value of the aforementioned property) against the rent obligation owed by the Foundation to the Board pursuant to this Agreement. In the event the parties reach such an agreement, they shall execute an Amendment to this Agreement to add the rent credit.

#### **ARTICLE IV** **CONSIDERATION**

4.1 In consideration of the Board leasing the Property, the Foundation agrees to pay the following scheduled amounts as annual rent; provided, however, that no rent shall be owed for the period covered by the Inspection Period, it being understood and agreed that the Board is receiving other good and valuable consideration during the Inspection Period by the Foundation entering into this Agreement with the Board and undertaking at the Foundation's significant cost and expense certain tasks as provided for in the Agreement. Upon completion of the Inspection Period, the entirety of the first annual rental payment shall be due on the first day of the first full calendar month following the expiration of the Inspection Period, and the entirety of each subsequent year's rent shall be due each subsequent year on the anniversary of the first annual rental payment (or first business day thereafter if such anniversary is not a regularly scheduled business day).

Years	Rent		Years	Rent
1-2	\$12,600		36-40	\$22,875
3-5	\$22,600		41-45	\$23,561
6-10	\$19,158		46-50	\$24,268
11-15	\$19,733		51-55	\$24,966
16-20	\$20,325		56-60	\$25,746
21-25	\$20,934		61-65	\$26,518
26-30	\$21,562		66-70	\$27,313
31-35	\$22,209			

4.2 In no event shall the Board charge the Foundation for any maintenance, taxes, insurance or any other expenses regarding the Development at any time during the first five (5) years after the expiration of the Inspection Period. After the expiration of five (5) years from the expiration of the Inspection Period, and once the Development is at least 50% occupied and open for business, then the Board shall be entitled to charge the Foundation its pro rata share of reasonable and customary maintenance expenses, real estate taxes, and general liability, property, and other insurance related solely to the common areas of the Development as charged to all other occupants in the Development to the extent described herein. The Foundation's pro rata share shall be limited to the total of the maintenance, real estate taxes, and general liability, property, and other insurance associated with the common areas located within the Development. The Foundation's pro rata share of said amounts shall be based upon a fraction, the numerator of which is the rentable area of the Property (3.1 acres) and the denominator of which is the greater of the possible rentable area in the Development if it were fully developed (184.89 acres, less a reasonable amount for common areas) or upon completion of the Development the actual rentable area within the Development. The Board shall bill the Foundation annually for its pro rata share of all such expenses complete with reasonable detail of the actual amount incurred and calculation of the Foundation's pro rata share. Common areas of the Development shall include only the portions of the Development, in existence from time to time, which are intended and available for the common and non-exclusive use of all occupants within the Development (as opposed to being available for the use of specific occupants) which includes but is not necessarily limited to private streets and alleys, landscaping, sidewalks, signage, lighting, utilities and the like for the common areas. Expenses shall exclude:

- (a) The cost of any initial improvements in the Development;
- (b) Wages, salaries and benefits of personnel to the extent they render services to the Development;
- (c) Costs of operating the Development management office (including reasonable rent);
- (d) Capital expenditures;
- (e) Any profit, overhead or management fees;

- (f) Expenses for which the Board is reimbursed or were caused by the Board's negligence or willful misconduct;
- (g) Expenses, taxes and insurance on leasable areas in the Development;
- (h) Professional fees;
- (i) Expenses attributable to a particular occupant of the Development.

4.3 The Board shall prepare complete and accurate books and records of the expenses billed to the Foundation under Section 4.2 above, in accordance with GAAP, consistently applied, and shall keep such books and records at offices in Baton Rouge, Louisiana, for at least twenty-four (24) months after delivery of the settlement statement to the Foundation. Within thirty (30) days after receipt of a settlement statement by the Foundation ("Review Period"), if the Foundation disputes the amount set forth in the settlement statement, the Foundation's employees or an independent representative retained by the Foundation, designated by the Foundation, may, after a reasonable time not to exceed thirty (30) days' prior written notice to the Board and at reasonable times, inspect the Board's records (pertaining solely to the Board's calculation of expenses for the immediately prior year billed to the Foundation under Section 4.2 above) at the Board's offices in Baton Rouge, Louisiana, provided that the Foundation is not then in default after expiration of all applicable cure periods and provided further that the Foundation and such representative shall, and each of them shall cause their respective agents and employees to, maintain all information contained in the Board's records in strict confidence. Notwithstanding anything to the contrary, in no event shall any audit be conducted on a contingency fee basis. Notwithstanding the foregoing, the Foundation shall only have the right to review the Board's records one (1) time during any twelve (12) month period. The Foundation's failure to provide the Board with notice that it elects to audit the amounts set forth in any settlement statement within the Review Period shall be deemed to be the Foundation's approval of such settlement statement and the Foundation, thereafter, waives the right or ability to dispute the amounts set forth in such settlement statement. If the Foundation's inspection of the Board's records per this Section 4.3 shows a discrepancy between the amount the Foundation was charged by the Board for its pro rata share of such expenses and the amount of the Foundation's pro rata share of such expenses as determined by the Foundation, then the Foundation shall provide the Board with written notice and the parties shall reasonably adjust the discrepancy by payment to the Board or refund to the Foundation, as appropriate, within thirty (30) days after the date of the Foundation's notice to the Board. In the event that the parties cannot reasonably agree on the adjustment, then either party may seek a judicial determination.

**ARTICLE V**  
**AGREEMENT TO CONSTRUCT BUILDINGS**  
**AND IMPROVEMENTS ON THE PROPERTY**

The Foundation does hereby agree at its sole expense to direct the preparation of the design and all supporting documentation for the construction of the improvements to the Property, and to construct certain buildings and improvements on the Property pursuant to said

design, all in accordance with plans, specifications, and exterior architectural and site plans approved by the LSU System Representative and/or the Board and pursuant to the Board's design standards and any applicable standards of the LSU South Campus and LSU Innovation Park, copies of which is attached hereto as Exhibit "C" (the "Work"). The Foundation further agrees to donate any and all of its interest in the Work to the Board upon expiration of this Agreement or in accordance with Section 13.2 hereof, and to execute all reasonably necessary paperwork to effectuate said donation. It is estimated that the total cost of the renovations and improvements, including the design thereof, will be approximately \$5,000,000 - \$6,000,000, all of which cost and expense shall be paid by the Foundation; however, should the final cost differ from said amount, it shall not affect any other terms of these Agreement, except that said amount may not be increased above \$7,000,000.00 or decreased below \$4,500,000.00 without the written consent of the LSU System Representative, subject to the requirements of Section 6.11 hereof. The Foundation shall own all Work during the Term of this Agreement.

## **ARTICLE VI** **CONSTRUCTION**

At its sole expense, the Foundation shall design and construct buildings and improvements on the Property in a good and workmanlike manner, in accordance with the following provisions:

6.1 Plans and Specifications; Change Orders. The Work to be performed by the Foundation pursuant to this Agreement is generally described on Exhibit "B" hereto, and no material deviation therefrom shall be implemented without the prior written consent of the LSU System Representative. During the Inspection Period and at least sixty (60) days prior to commencement of the Work, plans and specifications shall be delivered to the LSU System Representative for review. The LSU System Representative shall approve or disapprove, upon a commercially reasonable basis and upon compliance with all applicable standards of the Board, the LSU South Campus, and the LSU Innovation Park, such plans and specifications in writing within thirty (30) days of receipt thereof. Furthermore, the exterior architectural and site plans shall be presented to the Board for approval during the Inspection Period and prior to commencement of any portion of the Work on the Property. If any part of the plans, specifications, or exterior architectural and site plans are disapproved, then the Board shall with all reasonable diligence provide sufficient written reasons and justification that the Foundation can adequately work to address any deficiencies in the submission. No Change Orders to the Construction Contract (as defined herein) or changes to the plans, specifications, and/or exterior architectural and site plans which materially deviate therefrom shall be implemented without the prior written consent of the LSU System Representative. Any request for Change Orders to the Construction Contract (as defined herein) or changes to the plans, specifications, and/or exterior architectural and site plans shall be made to the LSU System Representative, who shall approve or disapprove, upon a commercially reasonable basis and upon compliance with all applicable design standards of the Board, the LSU South Campus, and the LSU Innovation Park, such request in writing within ten (10) business days of having received such request from the Foundation. If any Change Orders or changes to the plans, specifications, or exterior architectural and site plans are disapproved, then the Board shall with all reasonable diligence

provide sufficient written reasons and justification that the Foundation can adequately work to address any deficiencies in the submission. In the event that the LSU System Representative has not approved of the Foundation's plans and specifications during the Inspection Period, the Foundation may elect to terminate this Agreement per Section 3.2.

The LSU System Representative shall submit the plans and specifications for the Work to the Office of Facility Planning and Control ("OFPC"), which shall review the plans and specifications for the Work for the purpose of determining compliance with applicable building codes, space standards where appropriate, and standards assuring quality of construction. The plans and specifications for the Work shall be submitted to OFPC during the Inspection Period, and OFPC approval shall be obtained prior to commencement of construction. In the event that OFPC has not approved of the Foundation's plans and specifications during the Inspection Period, then either party may elect to terminate this Agreement per Section 3.2.

6.2 Commencement and Completion of the Work. Unless delayed by Force Majeure (defined as (a) any act of God, lightning, hurricane, tropical storm, tornado, and/or other adverse and inclement weather, fire, explosion, flood, act of a public enemy, war, insurrection, riot or civil disturbance, (b) any labor dispute, strike, work slow-down or work stoppage, (c) unreasonable delay or unavailability of materials needed for the Work, (d) unreasonable governmental delay, (e) unreasonable delay by the Board, or (f) any other similar cause or similar event beyond the reasonable control of the Foundation), the Foundation agrees to commence construction of the Work on the Property no later than one (1) year after the Effective Date of this Agreement, and shall make best efforts to complete the Work no later than (3) years after the Effective Date of this Agreement. Said Work shall not commence until the Board has approved the exterior architectural and site plans and the LSU System Representative has given his written approval to the plans and specifications and his written approval of the notice to commence. The commencement and completion dates set forth Agreement herein may be extended by a written change order issued by the Foundation and approved in writing by the LSU System Representative. Notwithstanding anything to the contrary provide for herein, in the event that the Foundation is delayed from meeting any deadline provided for in this Agreement as a result of any event of Force Majeure, then the time period provided to the Foundation shall be extended by the number of days that the Foundation is delayed by an event of Force Majeure.

6.3 Construction Contract. The Work shall be performed on behalf of the Foundation pursuant to one or more written contracts between the Foundation and a contractor or contractors (the "Construction Contract"). Where appropriate, the Construction Contract(s) and bond(s) shall be recorded properly with the Clerk of Court of East Baton Rouge Parish prior to commencement of the Work. The Foundation shall include in every Construction Contract a liquidated damages clause acceptable to the LSU System Representative. The Foundation shall not enter into any Construction Contract without the prior written approval of the LSU System Representative. The LSU System Representative shall approve or disapprove such Construction Contract within ten (10) business days of receipt of a copy of the Construction Contract from the Foundation. If the LSU System Representative shall disapprove the submission, the LSU System Representative shall provide sufficient written reasons and justification that the Foundation can adequately work to address any deficiencies in the submission. The Board and the Foundation hereby acknowledge the following, and to the extent practically and legally

possible, each Construction Contract and all subcontracts entered into by the general contractor(s) shall acknowledge expressly that the contractor and subcontractors have been informed of the following:

- a. The Work will be performed solely and exclusively for the Foundation.
- b. The Foundation is a separate legal entity from the Board, and the Foundation has no authority to obligate the Board to any extent whatsoever.
- c. Neither the Board nor the State of Louisiana shall be liable, directly or indirectly, for the payment of any sums whatsoever or for the performance of any other obligation whatsoever arising out of the Work performed pursuant to this Agreement; provided, however, that this provision shall not be deemed to limit the liability of the State Office of Risk Management under any policy or policies of insurance provided or issued to the Board, to the Foundation, or to any other entity.
- d. The Foundation has no ownership interest in the Property upon which the Work will be performed. Any renovations and improvements placed on the Property of the Board, including the Work, shall be owned by the Foundation during the Term of this Agreement and shall become owned by the Board upon termination or expiration of this Agreement as provided for herein. The Work shall not give rise to any rights against the Property or the Board.

6.4 The Foundation shall require that the contractor(s) provide a performance and labor and materials payment bond with a corporate surety authorized to do business in the State of Louisiana. Said bond shall be for the greater of the full amount of the contract price or for the amount of the guaranteed maximum price of the Work. Both the Foundation and the Board shall be obligees under the bond.

6.5 Rights Concerning the Property During Construction. To the extent necessary, the Foundation and its contractors shall have the right to occupy and use the Property, with reasonable ingress to and egress from the Property and as otherwise provided in Section 6.6 hereof, during the term of this Agreement. With the prior written consent of the LSU System Representative, the Foundation shall fence or block off in a safe and secure manner acceptable to the LSU System Representative that area of the Property necessary to perform the Work. The Foundation assumes all responsibility for the condition of the Property used by it during the term of this Agreement. The Foundation and its contractors shall maintain the Property and all buildings and improvements and thereon in a reasonably prudent manner at all times. The Foundation will take prudent care of the Property and return same to the Board upon expiration or termination of this Agreement in as good a condition as when received, as modified by construction of the Work, ordinary wear and tear excepted. The Foundation accepts the Property for the purposes herein outlined without any warranty of title or recourse whatsoever against the Board, except as otherwise specifically provided for in this Agreement.

6.6 Access over Adjoining Property During Construction. The Foundation shall be entitled to reasonable access to the Property over and across adjoining property owned by the



Board as is reasonably necessary in order for the Foundation to fulfill its obligations hereunder; provided, however, that the Board shall designate in advance during the Inspection Period specific adjoining property/properties that may be used by the Foundation pursuant to this paragraph. The Board shall be entitled to designate different comparable replacement adjoining properties to be used for access from time to time as circumstances dictate. The Foundation will not unreasonably interfere with the Board's use of such other property / properties.

6.7 Board/LSU Rules and Regulations; Code Compliance; Board Access During Construction. The Foundation agrees that it will comply with all Board regulations and policies with regard to all contractors and personnel entering the Property for purposes of renovation and improvement, which regulations and policies will be addressed at the pre-construction conference, and with all state and local laws and ordinances regulating its operations on the Property, and that Foundation will secure at its own expense all necessary permits, licenses and other approvals from all regulatory agencies or bodies necessary for the Work. The Foundation shall make these same requirements of its contractor(s) for the Work. The Foundation and its contractors shall design and construct the Work in accordance with all adopted current and applicable codes, rules, regulations, applicable laws, and applicable amendments thereto, including but not limited to the International Building Code, NCANSI-A117.1 (1986 or the edition current as of the Effective Date hereof), the most recent edition of the NFPA 101: Life Safety Code, the Americans with Disabilities Act, and all applicable local and state uniform building codes in effect as of the Effective Date hereof. The Work and the Property shall be subject to inspection by the LSU System Representative, who shall have access at all times to the Work and the Property for all purposes including but not limited to the right to review the Work to determine that it is being performed in compliance with approved plans and specifications and in a good and workmanlike manner. Furthermore, the LSU System Representative(s) shall at all times have access to the Property and the exercise of all rights provided for in this Agreement and by law.

6.8 Approvals. The Board shall not unreasonably withhold, condition, deny or delay any approval or consent required pursuant to this Agreement. Failure by the Board to approve or disapprove within a time limit set forth herein shall be deemed disapproval by the Board unless otherwise set forth herein.

6.9 Signage. Before erecting or placing any sign upon the Property, the Foundation shall submit the design specifications of such sign to the LSU System Representative for approval, which approval shall not be withheld if such signage is consistent with the Board's and the LSU South Campus' current signage policy or if such signage was included in the plans and specifications which have been approved by the LSU System Representative.

6.10 Acceptance of The Work. Prior to acceptance of the Work, the Foundation shall deliver the following to the LSU System Representative:

- a. All governmental reviews, acceptance letters, and associated appeals, including but not limited to the Office of the State Fire Marshall and the Department of Public Health, if applicable; and

b. A clear lien certificate as to the Work obtained from the East Baton Rouge Parish clerk's office, or evidence that any and all liens against the Property and the Work have been adequately bonded.

The Foundation will not accept the Work without the written approval of the LSU System Representative. The Foundation agrees to complete all warranty and punch list items within the first year following approval by the LSU System Representative of the acceptance of the Work. The Board reserves the right to refuse, itself or through the LSU System Representative, the acceptance of the Work unless the Foundation certifies in writing to the LSU System Representative that monies equal to the value of the punch list deficiencies have been withheld by the Foundation for payment to the contractor for completion of the punch list items and that such monies shall not be expended for any other purpose. Final payment shall not be made to the contractor until the LSU System Representative agrees in writing that the punch list items have been completed.

6.11 Funds for The Work. If the President of the LSU System so requests, prior to the commencement of the Work, the Foundation shall certify in writing to the LSU System Representative that the total amount of money needed to complete the Work has been collected and/or appropriate financing acquired by the Foundation and that such funds have been and will be dedicated to that use and will not be expended for any other purpose.

6.12 Clerk of the Works. If in the LSU System Representative's sole discretion it becomes necessary, the Foundation shall hire at its sole expense a Clerk of the Works for full-time supervision of the Work, which cost shall not exceed reasonable market rate for such services.

6.13 No Liens or Sale; Release of Recorded Liens. The Foundation shall not suffer or permit any liens to be enforced against the Property, the Work, or the Board by reason of a failure to pay for any work, labor, services, or materials supplied or claimed to have been supplied to the Foundation or to anyone through or under the Foundation related to the Work or the Property. If any such liens shall be recorded, the Foundation shall cause the same to be released of record, or in the alternative, if the Foundation in good faith desires to contest the same, the Foundation shall be privileged to do so, but in such case, the Foundation hereby agrees to indemnify and save the Board harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said lien, cause the same to be discharged and released prior to the execution of said judgment. Furthermore, at the LSU System Representative's request, the Foundation shall promptly deposit with the Recorder of Mortgages for East Baton Rouge Parish a bond guaranteeing payment of any such liens.

6.14 Financing or Sale of Property. Except as otherwise provided for in Article XV, the Foundation shall not agree to any financing arrangements with respect to the funding of the construction of the Work or any encumbrances on the Work or otherwise related to the Property without the prior written approval of the LSU System Representative. The Foundation shall not sell or transfer title to the Work or any improvements related to the Property without the prior written approval of the President of the LSU System.

6.15 Protection of Trees and Utility Lines. The Foundation and its contractor(s) will not remove or trim any trees located on or adjacent to the Property without the prior written consent of the LSU System Representative, which consent shall not be unreasonably withheld. During construction, the Foundation and its contractors will protect and guard all trees standing within 100 yards of the construction site for a distance of ten (10) feet from the drip line of each tree against vehicular traffic and other reasonably foreseeable hazards, and Foundation and its contractors will not store any construction materials within the protected areas. Any existing utility lines to surrounding buildings must be rerouted by the Foundation with the prior approval of the LSU System Representative in order that the Work not be placed over any existing utility lines.

## **ARTICLE VII**

### **USE, MAINTENANCE, AND REPAIRS**

7.1 Use. Subject to the terms and provisions hereof, the Foundation shall use the Property and the buildings and improvements thereon solely for housing a Treatment and Assessment Center to provide for its aforementioned purpose of providing treatment, training, and assistance to citizens with speech and hearing challenges, as well as Autism Spectrum Disorders and other developmental disabilities, and all reasonably related uses (the "Permitted Use"). The Foundation's use of the Property shall comply at all times with all applicable laws, orders, ordinances, zoning ordinances, regulations, and statutes of any federal, state, parish, or municipal government now or hereafter in effect, including all environmental laws and regulations. The Board represents and warrants that to the best of its knowledge there are no restrictions by zoning ordinance or otherwise restricting the Foundation's use of the Property as provided for in this Agreement.

7.2 Prohibited Uses. The Foundation shall not use the Property for the sale, distribution, storage, transportation, or handling of petroleum or synthetic products. The Foundation shall not make any use of the Property in violation of any applicable statutes, ordinances, regulations or laws and shall not permit any contamination or pollution on or about the Property or increase the fire or insurance hazard by any use thereof. Before beginning any work on the Property, the Foundation shall obtain any permits required by the State of Louisiana, the Parish of East Baton Rouge, the United States of America or any of their subdivisions, agencies or departments related to the sale, distribution, storage, transportation, or handling of petroleum or synthetic products. The Foundation shall not install or otherwise place storage tanks in or on the Property without the LSU System Representative's prior written consent, which, in addition to any other conditions required by the Board, shall be subject to the condition that any such tank shall be located on a concrete slab and shall be surrounded by a retaining wall that shall retain the products stored in the tanks in the event of any spill, discharge, leak, overflow, or other release.

7.3 Utilities. The Foundation shall be solely responsible for payment of all utilities related to the Property, including but not limited to charges for electricity, energy, light, heat, air conditioning, power, telephone, garbage, or other trash removal and disposal, water, and sewer user fees. All utilities will be billed directly to and in the name of the Foundation. Electrical

service is available on a pole across the street from the Property. Underground sewage and water lines are available along the length of GSRI Avenue. It shall be the responsibility of the Foundation to make all necessary arrangements to tap into these existing and other services. The Foundation shall be allowed to tie into all future utilities installed in the Development at its discretion and sole cost.

7.4 Operating Expenses. The Foundation shall pay all expenses, costs, premiums, and disbursements of any nature whatsoever accrued or incurred in connection with the ownership, lease, management, operation, maintenance, repair and insurance of the Property, including any and all improvements.

7.5 Maintenance and Repairs. The Foundation shall maintain the Property, the grounds, and all buildings and improvements thereon in good condition and make all necessary repairs to the improvements thereon to maintain them in the same or better condition as they were at the beginning of the Term and after completion of the Work, ordinary wear and tear excepted.

7.6 Access to Property. The Board shall provide to the Foundation ingress and access to the Property at all times. The Foundation shall at all times allow the Board ingress, egress, and access through and across the Property as necessary to access any adjoining property owned by the Board. Notwithstanding the foregoing, entry by the Board shall occur in such a manner as to not unreasonably interfere with the Foundation's use and enjoyment of the Property and to not jeopardize the security of the occupants of the Property.

7.7 Mineral Exploration and Production. Notwithstanding any other provision of this Agreement, the Board expressly reserves all mineral rights regarding the Property, including but in no way limited to the right, acting either directly or through its agents, contractors, and/or mineral lessees, to conduct mineral exploration and production activities below the Property by directional drilling. Notwithstanding said reservation of rights, the Board agrees that it shall not conduct any surface operations on the Property. The Foundation shall allow the Board, its employees, agents, and contractors to access the Property for and shall not in any way interfere with such operations. In the event that the Board, its agents, and/or contractors perform such operations on the Property, it shall do so in a manner that does not interfere with the Foundation's permitted use of the Property.

7.8 Waiver and Disclaimer of Warranties. Subject to the Foundation's right to terminate during the Inspection Period in Article III, the Foundation accepts the Property in its "as is" and existing condition, at the Foundation's sole risk and without any warranty of any kind or nature, whether express or implied, contractual or statutory and whether as to the condition (patent or latent) or state of repair of the Property or the fitness of same for the Foundation's purposes or for any other purpose whatsoever, except as may otherwise be specifically provided for herein. The Board warrants only against eviction, and all other warranties are expressly disclaimed by the Board and waived and renounced by the Foundation.

**ARTICLE VIII  
INSURANCE**

8.1 Required Insurance. Throughout the Term of this Agreement, the Foundation shall at all times maintain or cause to be maintained, with respect to the Property and all buildings and improvements thereon, insurance in the following types and amounts. Such insurance shall be with insurance companies duly licensed to do business in the State of Louisiana and, to the extent available on commercially reasonable terms, bearing a rate of A+:XV in the latest Best Casualty Insurance Reports.

TYPE	AMOUNT
Commercial General Liability Insurance for the following where the exposure exists: (a) premises-operations (b) broad form Lease liability (c) products/completed operations (d) use of Contractors and subcontractors (e) personal injury (bodily injury and death) (f) broad form property damage (g) explosion, collapse and underground property damage (h) independent Contractors (i) sprinkler leakage legal liability	Coverage in an amount not less than:  \$2,000,000.00 per occurrence;  \$5,000,000.00 General Aggregate; and  \$5,000,000.00 Products & Completed Operations Aggregate; less a commercially reasonable deductible. "Claims Made form is not acceptable.
Business Automobile Liability Insurance for bodily injury and property damage, covering owned, hired, rented, and leased automobiles.	Combined single limit of One Million Dollars (\$1,000,000.00) per occurrence.
Worker's Compensation & Employer's Liability Insurance.	Limits as required by the Labor Code of the State of Louisiana and Employer's Liability coverage. Employer's liability limit is to be \$1,000,000.00 when work is to be over.
Business Interruption Insurance covering loss of rents by reason or total or partial suspension of, or interruption in, the operation of Leased Premises caused by the damage thereof.	12 months guaranteed rental revenue.

Flood insurance, if applicable.	In amounts determined by LSU to be reasonable, but no more than the amount available under the National Flood Insurance Program.
Liquor liability insurance, if applicable	Limits of One Million (\$1,000,000.00) Dollars

8.2 Additional Insurance Requirements During the Work. Unless otherwise approved in writing by the LSU System Representative, during the Work, the Foundation shall maintain or require its contractor to maintain the following insurance in addition to the coverages provided by 6.1 above:

a. Builder's Risk Insurance. The Foundation or Contractor shall provide an "All Risk" builder's risk insurance policy, including but not limited to fire and extended coverage insurance including wind, earthquake, collapse, vandalism, malicious mischief, and theft including theft of materials whether or not attached to any structure, for not less than one hundred percent (100%) of the full replacement value of the Work, the Property, and all buildings and improvements located on the Property, to protect against any damage or loss during the Work. This policy shall be taken out prior to commencement of construction and discontinued upon final completion of all Punch List items to the satisfaction of the LSU System Representative. The coverage shall include the architect's and engineer's fees to provide plans, specifications and supervision of work for the repair and/or replacement of property damage following a loss during construction. Written evidence of such insurance shall be provided to the LSU System Representative prior to commencement of the Work. The policy shall include coverage for and shall run in favor of the Board, the Foundation, and Foundation's contractor(s) and any subcontractors as their interests may appear.

b. General Liability and Property Damage Insurance. The Foundation and its contractors, before commencing any Work, shall procure such comprehensive liability and property damage insurance, including, but not limited to Commercial General Liability, Personal and Advertising Injury Liability, Products and Completed Operations Liability and insurance for the operation of motor vehicles, which will cover, to the extent allowed by law, the Foundation's, the Board's, and the architect's legal liability (but not the architect's professional liability) arising out of the construction of the buildings and improvements performed by the Foundation or any of its contractors or subcontractors and by anyone directly or indirectly employed by any of them, for claims for damages for personal injury, including accidental death, as well as claims for property damage, including but not limited to damage to surrounding structures and buildings. Unless otherwise agreed to in writing by the Board, such policy or policies of insurance shall provide minimum liability limits of Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence and Five Million and 00/100 Dollars (\$5,000,000.00) general aggregate. The Foundation shall also require its contractors and subcontractors to have in full force and affect a policy of workers' compensation and employer's liability insurance before proceeding with the construction under this Agreement, which insurance

shall be in compliance with the Louisiana Workers Compensation Act. Employer's liability coverage shall be included with a minimum limit of \$500,000 per accident/per disease/per employee.

c. Architect's Design, Errors and Omissions. Upon execution of this Agreement, the Foundation shall provide to the Board evidence that the architect for the Work has procured architect's design, errors and omissions insurance coverage for the Work in an amount acceptable to the LSU System Representative.

d. Pollution Liability. Pollution Liability Insurance, including gradual release as well as sudden and accidental releases, shall be obtained by the Foundation and/or its contractors prior to commencement of the Work and shall include a minimum limit of not less than \$1,000,000.00 per claim.

8.3 Required Insurance Shall Be Primary. All insurance required hereby shall be primary as respects the Board and its board members, employees, agents, and volunteers. Any insurance or self-insurance maintained by the Louisiana Office of Risk Management and the Board shall be excess and noncontributory of Foundation or any contractors' insurance.

8.4 Failure to Comply With Reporting Requirements. Any failure of the Foundation or its contractor(s) to comply with reporting requirements of a policy required hereby shall not affect coverage provided to the Board and its board members, employees, agents, and volunteers.

8.5 Application of Multiple Policies. The Foundation's and/or any contractors' insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the policy limits.

8.6 No Release. Neither the acceptance of the completed Work nor the payment therefor shall release the Foundation or any contractor from the obligations of the insurance requirements or indemnification set forth herein.

8.7 No Recourse. The insurance companies issuing the required policies shall have no recourse against the Board for payment of premiums or for assessments under any form of the policies.

8.8 Excess Insurance. Excess umbrella insurance may be used to meet the minimum requirements for the general liability and automobile liability only.

8.9 Deductibles and SIR's. Any deductibles or self-insured retentions must be declared to and accepted by the LSU System Representative. The Foundation and/or its contractors shall be responsible for all deductibles and self-insured retentions.

8.10 No Special Limitations. The coverage required hereunder shall contain no special limitations on the scope of protection afforded to the Board and its board members, employees, agents, and volunteers.

8.11 Licensed Louisiana Insurers. All insurance shall be obtained through insurance companies duly licensed and authorized to do business in the State of Louisiana, and unless waived in writing by the LSU System Representative, which, to the extent available on commercially reasonable terms, bear a rating of A+:XV in the latest A. M. Best Co. ratings guide. If at any time an insurer issuing a policy hereunder does not meet the minimum A. M. Best Co. ratings, and such requirement has not been waived in writing by the President of the LSU System, the Foundation and/or contractor shall obtain a policy with an insurer that meets the A. M. Best Co. rating required and shall submit another Certificate of Insurance as required hereunder.

8.12 Occurrence Based Policies. All insurance required hereunder shall be occurrence coverage. Claims-made policies are not allowed.

8.13 Verification of Coverage. The Foundation shall furnish the LSU System Representative with Certificates of Insurance reflecting proof of coverage required hereunder. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the LSU System Representative before Work commences and upon any contract renewal thereafter. In addition to the certificates, the Foundation shall submit the declarations page and the cancellation provision endorsement for each insurance policy. The LSU System Representative reserves the right to request complete certified copies of all required insurance policies at any time. Said certificates and policies shall to the extent allowed by law provide at least a thirty (30) day written notification to the LSU System Representative prior to the cancellation thereof. Upon failure of the Foundation to furnish, deliver and maintain such insurance as provided herein, and expiration of the cure period in Section 13.1(c), this Agreement, at the election of the Board, may be suspended, discontinued or terminated; alternatively, the Board may, but shall not shall be obligated to, obtain said insurance on behalf of the Foundation at the Foundation's commercially reasonable cost and expense. Failure of the Foundation to purchase and/or maintain, either itself or through its contractor(s), any required insurance, shall not relieve the Foundation from any liability or indemnification hereunder.

8.14 Additional Insureds. The Foundation, the Board, and their board members, employees, and agents shall each be named as additional insureds on all policies required hereby.

## **ARTICLE IX** **DONATION OF WORK AND IMPROVEMENTS AND TITLE THERETO**

Upon the expiration of this Agreement, the Foundation shall donate the entirety of the Work, including all buildings and improvement constructed and/or located on the Property, to the Board. The parties agree to execute any and all documents necessary to effectuate the donation and the acceptance thereof by the Board and will record the donation and acceptance in the records of East Baton Rouge Parish. The Foundation shall own all Work during the Term of this Agreement.



**ARTICLE X**  
**OPTION AND RIGHT OF FIRST REFUSAL ON ADJOINING PROPERTY**

10.1 Option. For a period of two (2) years commencing on the expiration of the Inspection Period, the Foundation shall have the option to lease an additional adjoining tract comprising approximately 2.9 acres as depicted and described in more detail as "Parcel #2" on the attached Exhibit "A". The Board shall not lease Parcel #2 during this two-year period to anyone except the Foundation. The Foundation may exercise the option by providing written notice thereof within said two years as provided for in Article XII. In the event the Foundation timely exercises the option, the parties shall negotiate an amendment to this Agreement pertaining to Parcel #2 adding Parcel #2 to the "Property", on the same terms as contained herein, and at the same rental rate per acre as contained herein.

10.2 Right of First Refusal. In the event the Foundation declines to exercise the option during the first two (2) years of the Agreement as set forth in Section 10.1 above, the Board hereby grants a right of first refusal in favor of the Foundation as to Parcel #2 for the remainder of the Term or until extinguished as provided below. Pursuant to such right of first refusal, if the Board receives a good-faith offer from a bona fide third-party to lease Parcel #2 at no less than the then-current fair market value thereof or that is otherwise acceptable to the Board, then the Board shall notify the Foundation in writing of said offer as provided for in Article XII. The Foundation shall then have thirty (30) calendar days from receipt of said notice to notify the Board as set forth in Article XII whether it wishes to exercise its right of first refusal against Parcel #2. If the Foundation elects to exercise its right of first refusal, then the Board shall lease Parcel #2 to the Foundation by adding Parcel #2 to the "Property" on substantially the same terms as contained in the offer received from said third-party, including specifically but not limited to the same rental rate offered by said thirty-party, except that the Term shall be coterminous with the remaining Term of this Agreement (including all Renewal Terms). If the Foundation declines to exercise its right of first refusal, then the Foundation's right is extinguished as to that transaction and the Board may lease Parcel #2 to said third-party on substantially the same terms of the offer presented to the Foundation, including specifically the same rental rate, without any liability or continuing obligation owed to the Foundation; however, if the Board is unable to perfect a lease to said third-party on the terms of the offer presented to the Foundation regarding Parcel #2, then the Foundation's right of first refusal shall continue. Notwithstanding anything in this Agreement to the contrary, in the event that the Board leases Parcel #2 to the third party, thereby extinguishing the Foundation's right as to Parcel #2, then at that time, the Board shall designate as "Parcel #3" a different tract adjoining the Property and comprising approximately 2.9 acres (provided such a tract exists at that time), and the Board shall grant to the Foundation a right of refusal on Parcel #3 on the terms provided for in this Section 10.2.

**ARTICLE XI**  
**INDEMNIFICATION**

To the extent allowed by law, the Foundation agrees to defend, indemnify, and hold the Board and its board members, employees, agents and attorneys (the "Board Indemnitees"), harmless from and against any and all claims arising out of or in any way connected to the Foundation's use and occupancy of the Property and the performance of all of its rights, duties, and obligations set forth in this Agreement, specifically including but in no way limited to the construction of the Work, except to the extent such claims and any resulting damages were caused by the sole fault and/or negligence of the Board Indemnitees. Said obligation shall include but shall not necessarily be limited to defending the Board Indemnitees in any legal action against them, paying in full and satisfying any claims, demands, or judgments made or rendered against the Board Indemnitees, and reimbursing the Board Indemnitees for any legal expenses, including attorney fees and court costs, which may be incurred by them in defense of any claim or legal action arising hereunder; provided, however, that the Foundation's costs, expenses and indemnity payments incurred in fulfilling this indemnity and defense obligation shall be limited to insurance proceeds which are available for this purpose, but only if the Foundation has procured and kept in force the insurance required by this Agreement.

To the extent allowed by law, the Board agrees to defend, indemnify, and hold the Foundation and its board members, employees, agents and attorneys (the "Foundation Indemnitees"), harmless from and against any and all claims arising out of or in any way connected to the Board's actions at the Property and the performance of all of its rights, duties, and obligations set forth in this Agreement, except to the extent such claims and any resulting damages were caused by the sole fault and/or negligence of the Foundation Indemnitees. Said obligation shall include but shall not necessarily be limited to defending the Foundation Indemnitees in any legal action against them, paying in full and satisfying any claims, demands, or judgments made or rendered against the Foundation Indemnitees, and reimbursing the Foundation Indemnitees for any legal expenses, including attorney fees and court costs, which may be incurred by them in defense of any claim or legal action arising hereunder.

**ARTICLE XII**  
**NOTICES**

All notices, demands, and correspondence made necessary by or provided pursuant to this Agreement shall be in writing and shall be deemed to have been properly given, served and addressed, if and when (i) deposited in Federal Express (or any other national "next day" delivery service), or (ii) deposited in the United States mail via registered or certified mail, postage prepaid, return receipt requested, or (iii) sent via facsimile or email, if a copy is also sent the same day via (i) or (ii) above provided that if so sent, a copy thereof is received by the sending party from the receiving party-, directed as follows:

The Board:	Board of Supervisors of Louisiana State University and Agricultural and Mechanical College
------------	--

Attention: President of the LSU System  
3810 West Lakeshore Drive  
Baton Rouge, Louisiana

With copies to: Executive Director  
LSU Innovation Park  
8000 GSRI Avenue  
Baton Rouge, LA 70820

Vice Chancellor for Finance & Administrative Services and CFO  
Finance & Administrative Services  
330 Thomas Boyd Hall  
Baton Rouge, LA 70803

The Foundation, prior to the Foundation's occupancy of the Property:

5353 West Roosevelt St.  
Baton Rouge, LA 70802  
Attn: Executive Director

After the Foundation's occupancy of the Property:

The physical address of the Property.  
Attn: Executive Director

### **ARTICLE XIII**

#### **DEFAULT**

13.1 The Board may declare the Foundation to be in default upon one or more of the following events, any of which shall constitute a "Foundation Event of Default" hereunder:

a. Failure of the Foundation to complete the Work as set forth herein within three (3) years from the Effective Date of this Agreement, including any extended time period which has been mutually agreed in writing by the LSU System Representative and the Foundation, and as may be extended due to Force Majeure delays per Section 6.2, and which failure has continued for a period of sixty (60) days (or such additional reasonable time provided that the Foundation is diligently working to cure the delay, and is progressing in a reasonable fashion nearing substantial completion of the Work) after receipt of written notice from the LSU System Representative specifying such failure and requesting that it be remedied, or

b. A material deviation, unauthorized in writing by the LSU System Representative, from the plans and specifications for the Work approved by the LSU System Representative or from the exterior architectural and site plans approved by the Board, which has continued for a period of sixty (60) days (or longer period of time as

reasonably required in the event that the default cannot be reasonably cured within the deadline and the Foundation is diligently working to cure the default) after receipt of written notice from the LSU System Representative specifying such failure and requesting that it be remedied, or

c. Failure of the Foundation to observe or perform any other covenant, condition, or agreement upon its part to be observed or performed under this Agreement, specifically including but in no way limited to the Foundation's obligations under Articles IV and VIII of this Agreement, for a period of thirty (30) days (or longer period of time as reasonably required in the event that the default cannot be reasonably cured within the deadline and the Foundation is diligently working to cure the default) after receipt of written notice from the LSU System Representative specifying such failure and requesting that it be remedied, or

d. The taking by execution of the Work for the benefit of any person or entity other than the Board, or

e. A court of proper jurisdiction entering an order for relief in any involuntary case commenced against the Foundation, as debtor, under the Federal Bankruptcy Code, as now or hereafter constituted, or the entry of a decree or order by a court having jurisdiction in the premises appointing a custodian, receiver, liquidator, assignee, trustee, or other similar official of or for the Foundation or any substantial part of the properties of the Foundation or ordering the winding up or liquidation of the affairs of the Foundation, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days, or

f. The commencement by the Foundation of a voluntary case under the Federal Bankruptcy Code, as now or hereafter constituted, or the consent or acquiescence by the Foundation to the commencement of a case under such Code or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, or other similar official of or for the Foundation or any substantial part of the properties of the Foundation, or

g. The Foundation, after commencement of construction but prior to substantially completing the Work, abandons (with no intent to continue) construction for a period of thirty (30) consecutive days, excluding delays caused by Force Majeure, which continues for a period of fifteen (15) days after receipt of written notice from the LSU System Representative.

13.2 Whenever any Foundation Event of Default referred to in this section shall have occurred and be continuing beyond any specified cure period, then in addition to any other remedies herein or by law provided, the Board shall have the right to recover reasonable damages and, without any further demand or notice, to declare this Agreement terminated. In the event of such termination of this Agreement, the Foundation expressly waives any notice to vacate. Notwithstanding anything to the contrary set forth herein, in the event of termination of

this Agreement by the Board upon a Foundation Event of Default prior to approval by Board of final acceptance of the Work, the Board, at its sole option, shall have the right to accept full ownership of and title to the Work as well as all funds dedicated to complete the Work, and Foundation shall execute any and all documents necessary to effectuate same; provided, however, that the, Board, at its sole option, may require the Foundation to transfer its rights and obligations under this Agreement, as well as any funds the Foundation has dedicated to complete the Work, to another nonprofit corporation or entity which meets the requirements of La. R.S. 17:3390 and which is acceptable to the Board. Furthermore, in the event of the termination of this Agreement during the Work due to the default of the contractor, the Board may call on the surety under the performance bond to complete the Work, and the Board, at its sole option, shall either become the owner of all renovations and improvements made on or to the Property, or shall require the Foundation to transfer its rights and obligations under this Agreement and any funds the Foundation has dedicated to complete the Work to another nonprofit corporation or entity which meets the requirements of La. R.S. 17:3390 and which is acceptable to the Board.

#### **ARTICLE XIV BOARD DEFAULT**

The Foundation may declare the Board in default upon the failure of the Board to observe or perform any covenant, condition or agreement upon its part to be observed or performed under this Agreement for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied. If the default be continuing and the Board has not taken any action reasonably anticipated to cure such default, then in addition to any other remedies herein or by law or equity provided, the Foundation shall have the right to select any one or more of the following remedies, without further demand or notice: to declare this Agreement terminated, to require the Board to correct the specific failure, to be reimbursed the unamortized costs of all Work and other improvements made by the Foundation to the Property, and to recover reasonable damages suffered by the Foundation.

#### **ARTICLE XV MISCELLANEOUS**

15.1 Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto.

15.2 Attorney Fees. If either party is required to commence legal proceedings relating to this Agreement, the prevailing party to the extent allowed by law shall be entitled to receive reimbursement for its reasonable attorney fees and costs of suit from the non-prevailing party.

15.3 Louisiana Law to Apply. This Agreement shall be construed under and in accordance with the laws of the State of Louisiana, and the sole forum for all disputes arising out

of this Agreement shall be the Nineteenth Judicial District Court for the Parish of East Baton Rouge.

15.4 Non-Waiver. No waiver by the Board or the Foundation of a breach of any of the covenants, conditions, or restrictions of this Agreement shall constitute a waiver of any subsequent breach of any of the covenants, conditions, or restrictions of this Agreement. The failure of the Board or the Foundation to insist in any one or more cases upon the strict performance of any of the covenants of the Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment of any other covenant or option. No waiver, change, modification, or discharge by the Board or the Foundation of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the parties hereto.

15.5 Severability. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby.

15.6 Authorization. By execution of this Agreement, the Foundation and the Board each represent to the other that they are entities validly existing, duly constituted and in good standing under the laws of the jurisdiction in which they were formed and in which they presently conduct business; that all acts necessary to permit them to enter into and be bound by this Agreement have been taken and performed; and that the persons signing this Agreement on their behalf have due authorization to do so.

15.7 Name, Logo, or Marks. Neither party shall make use of the other party's name, logo, or marks without its prior written consent.

15.8 Amendments. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated on or subsequent to the date hereof and duly executed by the parties hereto.

15.9 Assignment and Sub-Letting. The Foundation shall not assign or sublease this Agreement or any part hereof without the prior written consent of the President of the LSU System, which shall not be unreasonably withheld, and any attempted assignment or sublease without such consent shall be null and void as to the Board.

15.10 Books, Records and Audit. The books, accounts and records of the Foundation which pertain directly to the Work shall be maintained at the principal office of the Foundation. The Board may at its option and at its own expense during customary business hours, conduct internal audits of the books, bank accounts, records and accounts of the Foundation and its contractor(s) to the extent necessary to verify compliance with this Agreement or insofar as said books, bank accounts, records and accounts directly relate to the Foundation's performance of its obligations under this Agreement until the date that the Foundation has completed and LSU has approved the acceptance of the Work. Audits may be made on either a continuous or periodic basis or both and may be conducted by employees of the Board, by independent auditors retained

by the Board to conduct such audit, by the Louisiana Legislative Auditor or by the Office of the Governor, Division of Administration, but any and all such audits shall be conducted without materially or unreasonably or unnecessarily interrupting or interfering with the normal conduct of business affairs of the Foundation.

15.11 Successors and Assigns. All of the covenants, agreements, terms and conditions to be observed and performed by the parties hereto shall be applicable to and binding upon their respective successors and assigns including any successor by merger or consolidation of the Board into another educational institution.

15.12 Notice of Lease. The Foundation agrees not to record this Agreement. The parties shall execute a Notice of Lease for recording in the records of East Baton Rouge Parish, meeting the requirements of LSA R.S. 9:2742, and the cost of recording will be borne by the Foundation.

15.13 LSU System Representative. In addition to any other individuals specifically authorized in writing by the President of the LSU System to act as the LSU System Representative, the General Counsel to the President and Board of Supervisors and/or the Assistant Vice President and University Architect are hereby authorized to act as an LSU System Representative.

15.14 Entire Agreement. This Agreement, including any exhibits attached hereto, contains the final and entire agreement between the parties hereto with respect to the Property and the Work, and contains all of the terms and conditions agreed upon with respect to the Property and the Work, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto; it being the intent of the parties that neither shall be bound by any term, condition, or representation not herein written.

15.15 Change in Circumstances of the Development. In the event that the Board or any related entity of LSU plan to no longer own the Development (including the Property) or the Property, then prior to change of ownership, the Board shall, to the extent allowed by law, offer to sell the Property to the Foundation at the then-fair market value of the Property (taking into consideration the Foundation's ownership of the Work for up to the seventy (70) year Term of this Agreement).

15.16 Subordination. Neither the Board nor any successors-in-interest to the Board's rights in and to this Agreement shall mortgage or otherwise encumber the Property without first obtaining a written agreement from the mortgagee that the mortgagee shall not disturb the Foundation's possession nor deprive the Foundation of any rights or increase the Foundation's obligations under this Agreement, and that the mortgage/encumbrance shall be subordinate to the Foundation's rights hereunder.

15.17 LSU Innovation Park Drive. The Board shall use its best efforts to secure the renaming of GSRI Avenue to LSU Innovation Park Drive as soon as reasonably possible during the Inspection Period.

15.18 Maintenance and Progress of Development. The Board shall at all times cause the Development to be maintained and operated in a first class manner consistent with similar educational/research properties in the Baton Rouge, Louisiana area and shall make available all common areas in the Development for the non-exclusive use of the Foundation, in common with other occupants of the Development. In the event that the Board shall fail to do so within the cure period provided for in Article XIII of this Agreement, then in addition to remedies provided for in Article XIII, the Foundation shall be entitled to cure the Board's default at the Board's cost and expense. The Board shall at all times use reasonable efforts to further the development and progress of the Development as an educational-research Property.

15.19 The Foundation's Property And Subordination of the Board's Privilege. Any personal property, equipment, furniture, inventory, trademarked items, signs and other movable trade fixtures installed in or on the Property by the Foundation (the "Foundation's Property"), shall remain the property of the Foundation and shall not be the property of the Board no matter how the same is affixed to the Property or used by the Foundation and regardless of whether same is subject to a valid perfected UCC security interest. The Board agrees that the Foundation shall have the right, at any time or from time to time, to remove the Foundation's Property from the Property, subject to the Foundation's obligation to continue using the Property for the Permitted Use, and provided that the Foundation shall not remove any of the HVAC mechanical equipment without the prior written approval of the LSU System Representative. The Foundation, at its expense, shall immediately repair any damage occasioned by the removal of the Foundation's Property. The Foundation shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon the Foundation's Property. From time to time, some or all of the Foundation's Property may be financed and subject to a valid perfected UCC security interest in favor of a secured creditor (the "Secured Party"). The Board hereby agrees to subordinate the Board's lessor's privilege to the rights of a Secured Party holding a valid perfected UCC security agreement with respect to the Foundation's Property and agrees, if confirmation of said subordination is requested by the Foundation or Secured Party, to promptly sign and deliver to any such Secured Party a subordination, in a commercially reasonable form, of any privilege the Board may have on the Foundation's Property ("the Board's Subordination").

15.20 Leasehold Mortgage. The Foundation may mortgage, collaterally assign or otherwise encumber any interest that The Foundation has in this Agreement or in the Work located on the Property ("Foundation Mortgage") as security for any indebtedness ("Debt") that is incurred for the purpose of constructing the Work in accordance with this Agreement or for the purpose of directly improving and/or enhancing the value of the Property and the Work. The Foundation has no authority to and shall not attempt to mortgage or encumber The Board's fee title to the Property. The Board shall reasonably cooperate with the Foundation on commercially reasonable terms regarding the Foundation's attempts to obtain financing regarding this Agreement and the Foundation's Work.

15.21 Representations and Warranties of the Parties. To induce the other party to execute, deliver and perform this Agreement, and without regard to any independent investigations made by the other party, each party represents and warrants to the other party on and as of the date of execution and delivery of this Agreement that it has full capacity, right,



power and authority to execute, deliver and perform this Agreement and all documents to be executed pursuant hereto, and all required actions and approvals therefor have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto are and shall be duly authorized to sign the same on that party's behalf and to bind that party thereto. This Agreement and all documents to be executed pursuant hereto by the parties are and shall be binding upon and enforceable against each party in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration of maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which each respective party is subject or by which each respective party is bound. Additionally, the Board represents and warrants as follows:

1. The Board owns the Property in fee simple, free of any liens, claims or encumbrances other than the title exceptions acceptable to the Foundation.
2. To the best of the Board's knowledge, there are no claims, causes of action or other litigation or proceedings pending or threatened in respect to the ownership, operation or environmental condition of the Property or any part thereof (including disputes with mortgagees, governmental authorities, utility companies, contractors, adjoining land owners or suppliers of goods or services), except for claims which are fully insured and as to which the insurer has accepted defense without reservation.
3. To the best of the Board's knowledge there are no violations of any health, safety, pollution, zoning or other laws, ordinances, rules or regulations with respect to the Property, which have not been heretofore entirely corrected.
4. To the best of the Board's knowledge, the Property is currently zoned to permit the development of the Property for the Foundation's use per this Agreement.
5. As long as the Foundation is not in default of this Agreement beyond any applicable cure period, the Foundation shall during the Term have lawful, quiet and peaceful possession and occupation of the Property and enjoy all the rights herein granted and otherwise by law to a lessee, without hindrance, objection or interference.

15.21 Force Majeure. If either party hereto is delayed or prevented from the performance of any act required hereunder or the satisfaction of any condition contained herein by reason of an act of Force Majeure, then upon notice to the other party the period for the performance of such act or the satisfaction of such condition shall be extended for a period equal to the period of such delay; provided, however, the party so delayed or prevented from performing shall make good faith efforts to remedy the cause of delay and to resume performance. Nothing in this Section shall excuse the Foundation from the prompt payment of any rental or other charges required of the Foundation hereunder.

*Signature page for Ground Lease And Construction Agreement  
With Baton Rouge Speech And Hearing Foundation*

IN WITNESS HEREOF, the parties hereto have executed this Agreement effective as of  
the Effective Date.

**WITNESSES:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**BOARD OF SUPERVISORS OF LOUISIANA  
STATE UNIVERSITY AND AGRICULTURAL  
AND MECHANICAL COLLEGE**

By: \_\_\_\_\_  
John V. Lombardi, President  
Louisiana State University System  
Date: \_\_\_\_\_

**WITNESSES:**

\_\_\_\_\_  
Name: \_\_\_\_\_  
Date: \_\_\_\_\_

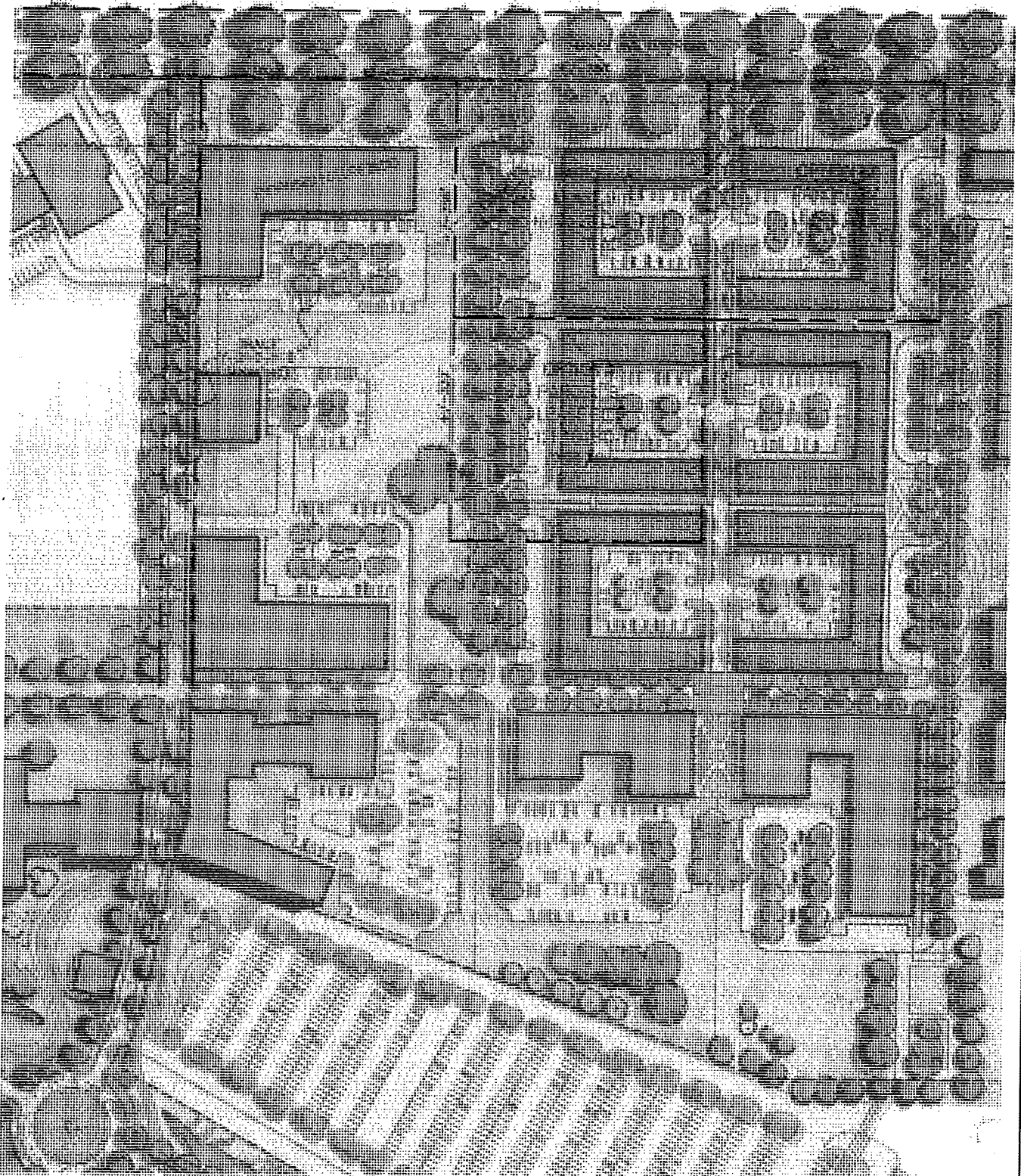
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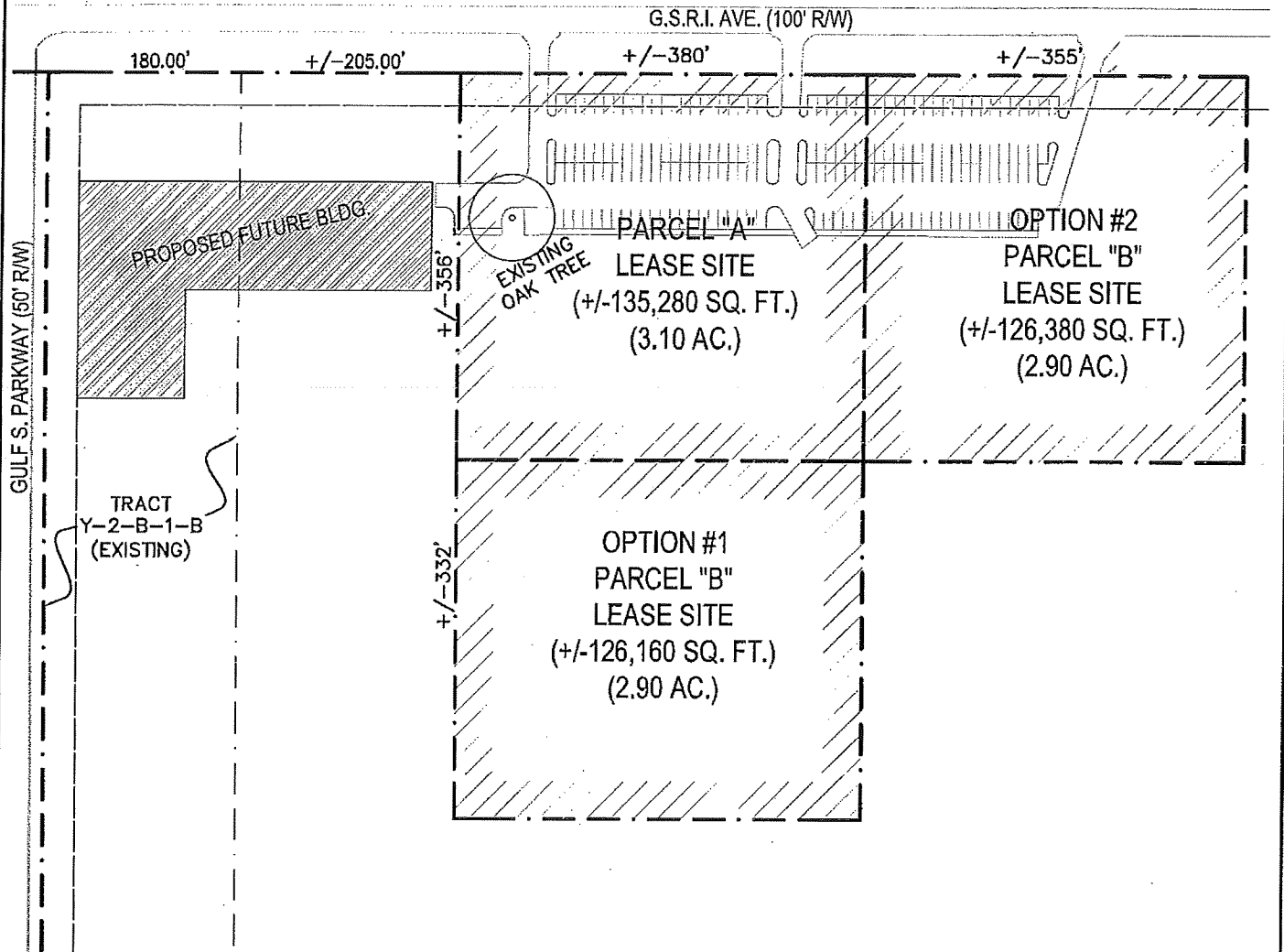
**BATON ROUGE SPEECH AND  
HEARING FOUNDATION**

By: \_\_\_\_\_  
Colleen Waguespack, President

Date: \_\_\_\_\_

Exhibit A  
2 pages





## **Exhibit B**

**Louisiana State University  
LSU Innovation Park  
Vision Statement  
Prepared by:  
Charles F. D'Agostino**

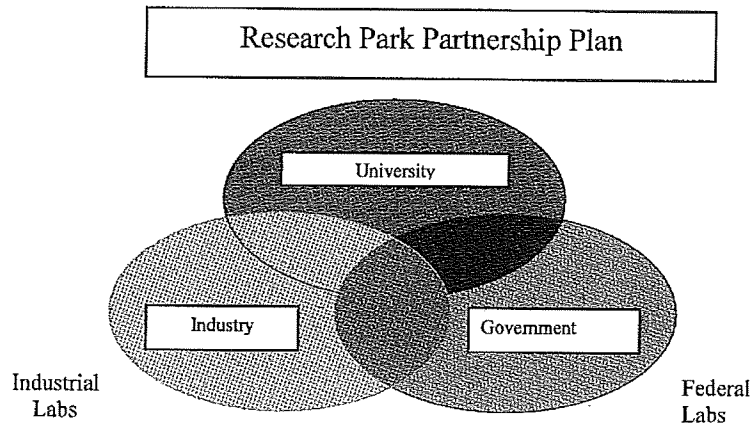
A university research park is defined by the Association of University Research Parks (AURP) as a property-based venture, which has:

- Master planned property and buildings designed primarily for private / public research and development facilities, high technology and science based companies and support services;
- A contractual, formal or operational relationship with one or more science / research institutions of higher education; and
- A role in promoting the university's research and development through industry partnerships, assisting in the growth of new ventures and promoting economic development.

The LSU Innovation Park is a physical place that creates a knowledge-based environment to sustain a research-based economy, both basic and applied, and a facility that provides physical and intellectual infrastructure that supports innovation, commercialization and collaboration. The LSU Innovation Park will become Baton Rouge and Louisiana's much needed economic development engine that will spur economic growth, job creation and wealth creation in the targeted technologies of the state of Louisiana and Louisiana State University.

The LSU Innovation Park meets these criteria by providing 140+ acres of land that can be developed into specialized research facilities in medical / biotechnology, information technology, computer sciences / electronics, software development, homeland security, disaster recovery management, agriculture, coastal resources, advanced materials / micro-machining, environmental sciences and other technologies. The Innovation Park, located five miles south of the LSU campus, provides an excellent location to translate academic research into scientific commercialization and application. The close proximity to campus makes it a desirable location for industry as well as academic researchers.

The Innovation Park will promote entrepreneurship and technology commercialization thereby expanding the Louisiana tax base, developing and retaining high quality jobs, and providing a place to expand intellectual capital of the university and the technology companies in Louisiana. Research Parks enrich the intellectual environment by assisting in the recruiting and retaining of high quality faculty, researchers and students and by attracting research funding to the state. Research Parks provide unique environments for the intersection of university, industry and government research and scientific knowledge.



In developing a mission statement, the AURP member organizations have used several recurring themes in developing their mission statement. These include economic development, collaborations, technology-based, entrepreneurial, and commercialization of technology. For example, the Purdue Research Foundation states, "A national leader in university-stimulated **economic development** and **entrepreneurship** in science and **technology commercialization**." Research Triangle Park, a very unique and non-replicable park, states its mission as "To promote **university, academic, industry and government collaborations** leading to the establishment and maintenance of research, scientific and **technology based facilities** within the Triangle and North Carolina, **creating quality jobs and opportunities for its citizens**."

The LSU Innovation Park could establish a mission similar to these above by focusing on university research, commercialization and economic development. In combining these components, I conceive the mission to be as such:

**Mission Statement**

**The LSU Innovation Park will utilize university research and technologies as the platform to partner with governmental agencies and private research entities in collaborations that will create economic opportunities and economic stimulus to the economy of the Greater Baton Rouge area and Louisiana.** The LSU Innovation Park will promote technology-based collaborations in areas of expertise including the targeted technologies outlined in the vision statement of the state of Louisiana and other technologies developed through the university and its industrial partners.

According to the AURP, there are over 4,450 companies operating in research parks, employing over 350,000 full-time employees and over 25,000 students and interns. The total impact of North American Parks exceeds \$31 billion.

Research Parks offer mutual benefits to universities, government and industry. These include:

### **Benefits for the University:**

- Research grants and sponsored research opportunities
- Development of solutions to “real world” problems
- Attraction of industry expertise
- Access to highly specialized equipment and resources
- Attraction of business and industry experts as adjunct faculty
- State of the art facilities and access to market trends (learning where industry is focusing)
- Opportunities for faculty consulting, recruiting, retention and joint venture research
- Internships / Co-op programs for students
- Career opportunities for students upon graduation

### **Benefits for Government & Industry**

- Access to state-of-the-art expensive equipment (i.e. CAMD, Queen Bee, CCT etc.)
- Sponsored research opportunities
- Faculty as consultants
- Students – under grad and graduate students
- Commercialization expertise – patenting, technology transfer and marketing
- Libraries, facilities, cultural and sporting events
- Outstanding and prestigious environment to work
- Campus like setting offering cross-fertilization and joint venture research and commercialization opportunities

The U.S. Congress, based on leadership from the AURP, passed the American Competitiveness Act 2006, which makes available funding for research parks. In addition, the US Department of Commerce – EDA and other federal, state and local entities have supported research park development nationally.



## Preliminary Information for LSU Participation in a Significant Joint Project

### Proposal Submission

LSU participation in a collaborative project with external entities for which no recognized alternative review process presently exists should provide the following information where applicable to the Chancellor (or equivalent) for review. This process serves to move initiatives for collaboration in economic development and other joint venture projects quickly and smoothly to a point of decision. Because the university's obligations under state and federal law and regulation are complex, it is critical to the success of these ventures that the campus identifies any complicating issues early so they can be resolved quickly and without unnecessary delays. Explicit information on the issues outlined below will greatly facilitate problem resolution and enhance the ability of LSU to be a dynamic and entrepreneurial participant in the state's economic development agenda. In recent experience, vague and imprecise information about significant projects have delayed approvals and created unnecessary difficulties in the process of negotiating a successful conclusion to important initiatives.

When chancellors (or equivalent) determine that the collaboration described below has been sufficiently developed and is likely to be in the best interests of the campus, they will endorse and transmit the following document to the System President at the earliest reasonable time. It is important that participants understand the requirements of Article VII, § 8.F.3 of the Board's Bylaws that no public announcement or formal or informal commitment to a proposed collaborative project should take place without the Chancellor's endorsement of the project, preparation of the following information, and prior consultation with the President.

### Proposal Development

The purpose of this document is to assist the campus in making its *preliminary* evaluations of proposals for LSU to participate in significant projects involving cooperation with private businesses, government agencies, non-profit entities, and other non-LSU entities. It should be completed by a designated LSU campus employee using information obtained from university participants in the collaboration and the proposing entity or agency, or independently where required. After initial completion, the campus should review this information in accordance with its own procedures. Final action is subject to the Board Bylaws and state law. The information requested in this document will serve to expedite consideration of such proposals.

It will likely assist the various participants in proposed joint projects to receive a copy of the **General Policy Statement for Participation in Significant Joint Projects**. Posting this document on campus and university websites will help ensure that everyone interested in developing joint venture has a clear understanding of how to move them quickly to full consideration and potential approval within the context of a public academic institution.

The campus-designated employee should begin the completion of this form at the earliest practical stage of discussions. Submitting the form will initiate discussions within the campus administration and with any affected departments to assure that the proposed project is consistent with institutional priorities and evaluate whether it should proceed to the development of a more formal proposal in accordance with campus and Board policies. This will allow for efficient screening of proposals, so that more time and resources can be directed to those project proposals with a greater chance of being accepted. It also avoids misunderstandings of what specific information is required to obtain further consideration. While it is the campus' responsibility to develop the information and complete the form, the potential joint project participants should be fully informed of the nature and quality of the information needed. Moreover, much of the information required for a successful proposal will come from the collaborating partners.

This form is to be used for transactions in which it is proposed that LSU (through a campus) will participate jointly with an outside agency, non-profit entity, or private business. This includes economic development



projects, some cooperative endeavor agreements, non-traditional financing arrangements to fund construction of LSU facilities, construction or lease of facilities which will be jointly occupied by LSU and outside entities, granting of utility right of ways and similar projects, whether directly through LSU or through an affiliated entity. *This form is not intended to substitute for already established review procedures used for such purposes as sponsored research grants, applications for research grants, the licensing of intellectual property, routine leases and capital improvement projects for internal LSU projects, proposals for academic affiliation, and similar matters of a more routine nature.*

Once the Chancellor determines that a proposal merits further and more detailed consideration, the campus will assign personnel to review the matter and participate, as appropriate, in developing it more fully as required by the Board Bylaws. A determination to proceed with developing the proposal more fully does not constitute provisional or final recommendation or approval of the project by the campus or the LSU Board. Approval of the project itself is subject to the requirements of the Bylaws and Regulations of the LSU Board of Supervisors and state law based upon a written recommendation from the Chancellor and a full review of the completed final proposal and a submission in accordance with Article VII of the Bylaws.

Information for this form should be included in the space provided. Where available and when appropriate, campus personnel can attach detailed schedules. If additional detail is not yet available when the campus first submits a preliminary proposal, the campus may add additional information later as part of the process of developing the proposal for subsequent review and consideration by the campus chancellor. Once campus chancellors determine that sufficient detail is available, they can submit the proposal to the president for review and consideration for placement on the Board agenda. In accordance with Board bylaws, the president will place the item on the agenda or, if appropriate, consult with Board leadership to determine if the item is ready for formal consideration.

This form has two sections to be completed. Section 1 outlines the information likely to be needed for a full project proposal; Section 2 provides a framework for information about the entities (companies, agencies, and individuals) key to the proposal. To comply with the state's Ethics Code, question 9 in Section 2 requires a certification regarding any participation by LSU personnel in the company or the project, and reminds LSU participants that the institution has a *continuing duty* to promptly notify LSU of any change in the LSU participants.

In some prospective joint ventures involving LSU and private enterprise, confidential proprietary information may be involved. While the university has clear obligations under state law to provide information to the public, under some relatively narrow circumstances, the university can maintain confidentiality about ongoing discussions related to certain transactions. However, even when information required for approval may need to be withheld from preliminary discussions, by the time a proposal is presented to the president for review and possible consideration by the Board, the information outlined below will almost certainly be required. For any issues related to confidentiality or appropriateness of information disclosure, campus participants should consult with the System office of General Counsel.