

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 8, 2015

SUBJECT: Wingate Lease

PRESENTER: Russ Burrell, County Attorney

ATTACHMENTS: Yes
1. Wingate Lease

SUMMARY OF REQUEST:

The construction of the Health Sciences Center is proceeding according to schedule. As part of the Five Party Agreement, Pardee Hospital and Wingate University (Wingate) will sign leases for the long term use of the facility. Wingate University will occupy the second floor of the building and share classroom space with Blue Ridge Community College on the third floor.

Staff negotiated the lease with Wingate's executive leadership team over the last four months. The total lease payment complies with budget projections for the Health Sciences Center project and is for a period of twenty years. It has been approved and signed by the Chairman of the Board of Trustees of Wingate University.

BOARD ACTION REQUESTED:

The board is requested to approve the lease with Wingate University, and authorize the Chairman to execute the lease.

Suggested Motion:

I move that the Board of Commissioners approve the proposed lease with Wingate University, and authorize the Chairman to execute the lease on behalf of the County.

LEASE
BETWEEN

COUNTY OF HENDERSON,
a body corporate and politic of North Carolina
("LANDLORD")

AND

WINGATE UNIVERSITY.
a North Carolina not for profit corporation
("TENANT")

_____, 2015

for space in the

HENDERSON COUNTY HEALTH SCIENCES EDUCATION CENTER

LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into on the ____ day of _____, 2015, between the **County of Henderson**, a body corporate and politic of the State of North Carolina, ("Landlord") and **Wingate University**, a non-profit corporation organized and existing under the laws of the State of North Carolina ("Tenant").

WITNESSETH:

In consideration of the mutual agreements of the parties herein, including the rentals agreed to be paid by Tenant to Landlord, Landlord leases to Tenant, and Tenant leases from Landlord the following described Premises upon the following terms and conditions:

1. **Definitions.** The following are definitions of some of the defined terms used in this Lease. The definition of other defined terms are found throughout this Lease.

A. "Building" shall mean the education and medical facility to be constructed on Henderson County tax parcel 1009121 (the "Land") located at the northeast corner of the intersection of Sixth Avenue West and North Oak Street in the City of Hendersonville, County of Henderson, State of North Carolina, to be known as the Henderson County Health Sciences Education Center.

B. "Base Rent": Base Rent will be paid in monthly installments, and shall be determined according to the following schedule, subject to the provisions of Section 5. hereof. For the purposes of this Section 1.B., "Lease Year" in the first year of this Lease Agreement shall mean the period commencing on the Commencement Date, and ending 4 April next following the Commencement Date, and thereafter shall be the twelve month period ending each 4 April.

PERIOD	BASE ANNUAL RENT
Commencement Date through 4 April 2018	\$453,237.00 (calculated at \$17.00 per square foot per year multiplied by the size of the premises stated below)
5 April 2018 through 4 April 2020	Previous Base Rent adjusted by the Index for the period beginning 4 April 2014 and ending 4 April 2018
5 April 2020 through 4 April 2022	Previous Base Rent adjusted by the Index for the period beginning on 5 April 2018 and ending 4 April 2020
5 April 2022 through 4 April 2024	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2020
5 April 2024 through 4 April 2026	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2022
5 April 2026 through 4 April 2028	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2024
5 April 2028 through 4 April 2030	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2026
5 April 2030 through 4 April 2032	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2028
5 April 2032 through 4 April 2034	Previous Base Rent adjusted by the Index for the two-year period beginning on 5 April 2030
5 April 2034 through Termination Date	Previous Base Rent adjusted by the Index for the two-

The Base Rent due for the first month during the Lease Term (hereinafter defined) shall be paid by Tenant to Landlord contemporaneously with Tenant's execution hereof.

C. "Commencement Date," "Lease Term" and "Termination Date" shall have the following meanings: The "Lease Term" or "Term" shall mean a period of two hundred forty (240) months commencing on the later to occur of (a) 1 July 2016 (the "Target Commencement Date") and (b) the first day of Tenant's semester following the date upon which Landlord's Work has been substantially completed as such date is determined pursuant to Section 3.A. hereof (the later to occur of such dates being defined as the "Commencement Date"), provided that in no event shall the Commencement Date occur before Tenant has had access to the Premises for a period of thirty (30) days for purposes of moving Tenant's furniture, fixtures and equipment into the Premises. The "Termination Date" shall, unless sooner terminated as provided herein, mean the last day of the Lease Term. Notwithstanding the foregoing, if the Termination Date, as determined herein, does not occur on the last day of a calendar month, the Lease Term shall be extended by the number of days necessary to cause the Termination Date to occur on the last day of the last calendar month of the Lease Term. Tenant shall pay Base Rent for such additional days at the same rate payable for the portion of the last calendar month immediately preceding such extension. The Commencement Date, Lease Term (including any extension pursuant to this subsection I.C.) and Termination Date shall be set forth in a Commencement Letter prepared by Landlord and executed by Tenant and Landlord in accordance with the provisions of Section 3.A. hereof.

D. "Premises" shall mean the space located on the second floor of the Building and to be rented to and by the Tenant hereunder, labeled as "Wingate" on Exhibit A to this Lease, including any fixtures, furnishings and equipment installed by Landlord as a part of the Landlord's Work.

E. "Rentable Area in the Premises" shall mean (i) the rentable area contained within the Premises as determined in accordance with the standards set forth in the 2006 edition of the Building Owners and Managers Association /American National Standards Institute "Standard Method for Measuring Floor Area in Office Buildings (the "BOMA Standard") plus (ii) one half of the rentable area of the classrooms, breakout rooms and lecture halls (collectively, the "Shared Classrooms") on the second and third floors of the Building labeled as "Shared" on Exhibit A hereto, to be used exclusively by Tenant and Blue Ridge Community College ("BRCC") during the Term. Tenant shall have the right to install classroom seating of its choice in Shared Classrooms 2000, 2027, 2023, 2015 and 3001 as depicted on Exhibit A. For purposes of the Lease it is agreed and stipulated by both Landlord and Tenant that the Rentable Area in the Premises is twenty-six thousand six hundred sixty-one (26,661) square feet.

F. The "Rentable Area in the Building" shall mean the rentable area contained within the Building as determined in accordance with the BOMA Standard and is estimated to be 94,852 square feet. The Rentable Area in the Building as set forth herein may be revised at Landlord's election if Landlord's architect determines such estimate to be inaccurate in any material degree after examination of the final as-built drawings of the Building.

G. "Permitted Use" shall mean use for general office, educational and/or other purposes exempt for Tenant under the tax exemption granted the Tenant pursuant to Section 501(c)(3) of

the Internal Revenue Code only, and no other use or purpose, and shall be subject to all the provisions of paragraph 4 (“Use”), below.

H. “Building Standard” shall mean the type, brand, quality and/or quantity of materials Landlord designates from time-to-time to be the minimum quality and/or quantity to be used in the Building or the exclusive type, grade, quality and/or quantity of material to be used in the Building.

I. “Business Day(s)” shall mean Mondays through Fridays exclusive of the normal business holidays of New Year's Day, Martin Luther King Day, Good Friday, Memorial Day, Independence Day, Thanksgiving Day, Christmas Eve and Christmas Day (“Holidays”). Landlord, from time to time during the Lease Term, shall have the right to designate additional Holidays upon the prior written consent of the Tenant.

J. “Common Areas” shall mean those areas located within the Building or on the Property used for corridors, elevator foyers, mail rooms, common restrooms, mechanical rooms, elevator mechanical rooms, property management office, janitorial closets, electrical and telephone closets, vending areas, and lobby areas (whether at ground level or otherwise), entrances, exits, sidewalks, skywalks, tunnels, driveways, parking areas and parking garages and landscaped areas and other similar facilities provided for the common use or benefit of tenants generally and/or the public.

K. “Default Rate” shall mean the lower of (i) the Prime Rate plus six percent (6%) or (ii) the Maximum Rate.

L. “Maximum Rate” shall mean the highest rate of interest from time-to-time permitted under applicable federal and state law.

M. “Index” shall mean the United States Department of Labor Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, U.S. City Average, All items, not seasonally adjusted, 1982–1984=100 reference base.

N. “Normal Operating Hours” for the Building shall mean 8:00 a.m. to 9:30 p.m. Mondays through Saturday, exclusive of Holidays.

O. “Prime Rate” shall mean the per annum interest rate announced by and quoted in the Wall Street Journal from time-to-time as the prime or base rate.

P. “Property” shall mean the Building and the parcel(s) of land on which it is located, other improvements located on such land, adjacent parcels of land that Landlord operates jointly with the Building, and other buildings and improvements located on such adjacent parcels of land.

Q. “Service Areas” shall mean those areas within the Building used for stairs, elevator shafts, flues, vents, stacks, pipe shafts and other vertical penetrations (but shall not include any such areas for the exclusive use of a particular tenant).

R. “Notice Addresses” shall mean the following addresses for Tenant and Landlord, respectively:

Tenant:

Wingate University
P.O. Box 159
Wingate, North Carolina 28174
Attention: Vice President for Business, Chief Financial Officer

with copy to: Wingate University
Campus Box 3063
Wingate, NC 28174
Attention: President

with copy to: McGuireWoods LLP
201 N. Tryon Street, Suite 3000
Charlotte, NC 28202
Attention: Harrison Marshall

Landlord:
County of Henderson
1 Historic Courthouse Square, Suite 1
Hendersonville, North Carolina 28792
Attn: Steve Wyatt

with a copy to:
County of Henderson
1 Historic Courthouse Square, Suite 5
Hendersonville, North Carolina 28792
Attn: Charles Russell Burrell

2. Lease Grant. Subject to and upon the terms herein set forth, Landlord leases to Tenant and Tenant leases from Landlord the Premises together with the right, in common with others, to use the Common Areas and the right, in common with BRCC, to use the Shared Classrooms.

3. Adjustment of Commencement Date/Possession.

A. For purposes of Section 1.C. above, the construction work to be performed by Landlord with respect to the Property ("Landlord's Work"), as set forth on Exhibit B attached hereto (as the same may be revised or updated in accordance herewith, the "Plans") shall be deemed substantially completed on the date that Landlord's Work has been performed (or would have been performed absent any Delays, as hereinafter defined), as evidenced by (i) certificate(s) of occupancy issued by the applicable governmental authority (the "Certificate(s) of Occupancy") and (ii) a certificate from Landlord's architect confirming that Landlord's Work has been substantially completed in accordance with the Plans (the "Architect's Certificate"); provided, however, that if Landlord shall be delayed in substantially completing the Landlord's Work as a result of the occurrence of any of the following delays of which Landlord has provided Tenant written notice within two (2) Business Days after the occurrence thereof (a "Delay"):

(1) Tenant's failure to furnish information requested by Landlord or to respond to any request by Landlord for any approval of information within any time period prescribed herein, or if no time period is prescribed, then within five (5) Business Days of such request; or

- (2) Tenant's insistence on materials, finishes or installations that have long lead times after having first been informed by Landlord that such materials, finishes or installations will cause a Delay; or
- (3) Changes in any plans and specifications requested or agreed to by Tenant; or
- (4) Any written request by Tenant that Landlord delay the completion of any of the Landlord's Work; or
- (6) Any breach or default by Tenant in the performance of Tenant's obligations under this Lease; or
- (7) Any delay resulting from Tenant's having taken possession of the Premises for any reason prior to substantial completion of the Landlord's Work; or
- (8) Any other delay caused by Tenant, its agents, employees or independent contractors;

then, for purposes of determining the Commencement Date, the date of substantial completion shall be deemed to be the day that said Landlord's Work would have been substantially completed absent any such Delay(s). The Landlord's Work shall be deemed to be substantially completed on the date that Landlord's Work has been performed (or would have been performed absent any Delay(s)), as evidenced by the Certificate(s) of Occupancy and the Architect's Certificate, notwithstanding the lack of completion of any details of construction, mechanical adjustment or any other matter, the noncompletion of which does not materially interfere with Tenant's use of the Premises. If the Commencement Date does not occur by August 15, 2016, as reasonably extended due to any Delay(s), then Landlord shall reimburse Tenant on demand for any costs incurred by Tenant – including, without limitation, holdover rent or damages – due to such delay in substantial completion. If the Commencement Date does not occur by January 1, 2017, as reasonably extended due to any Delay(s), then Tenant shall have the right to terminate this Lease by giving written notice to Landlord at any time prior to the substantial completion of Landlord's Work. Except as aforesaid, the adjustment of the Commencement Date and, accordingly, the postponement of Tenant's obligation to pay Base Rent and other sums due hereunder shall be Tenant's sole remedy and shall constitute full settlement of all claims that Tenant might otherwise have against Landlord by reason of the Premises not being ready for occupancy by Tenant on the Target Commencement Date.

If the date of the Commencement Date is materially delayed from the Target Commencement Date, then the Landlord may in its discretion offer other temporary premises to the Tenant for the period between the Target Commencement Date and the actual Commencement Date. If the Landlord exercises its discretion to so offer temporary premises to the Tenant, and the Tenant accepts the same, then the parties shall enter into a temporary lease with regard to the temporary premises.

When Landlord considers Landlord's Work to be substantially completed, Landlord will notify Tenant and within five (5) Business Days thereafter, the parties, together with representatives of the Construction Manager and the Architect, shall conduct a walk-through inspection of the Property and the Premises and identify in writing any incomplete items of the Landlord's Work as reasonably determined by Landlord and Tenant (the "Punchlist Items"), which Punchlist

Items Landlord shall remedy promptly, and in any event no later than thirty (30) days after such Punchlist Items are finally agreed upon.

Promptly after the determination of the Commencement Date, Landlord and Tenant shall enter into a letter agreement (the "Commencement Letter") in recordable form (which Tenant shall have the right to record in the local public registry at Tenant's expense) setting forth the Commencement Date, the Termination Date and any other dates that are affected by the adjustment of the Commencement Date.

Notwithstanding any other provision hereof, no delay in completion of the Landlord's Work (or other work to be performed by the Landlord or its contractors on the Building or the Property) which does not materially affect the use of the Premises, the Shared Classrooms or the Common Areas by the Tenant shall delay the Commencement Date.

B. Tenant and Landlord agree that Tenant shall have the right to have a representative present for all regularly scheduled construction meetings (involving the project architect, the construction manager, the contractor, the county and other tenants) regarding the Landlord's Work. Tenant and Landlord further agree that Tenant is aware of the scope and nature of the Landlord's Work, and that the Tenant has had and will continue to have substantial input into the nature, design, construction and completion of the Premises. Landlord shall not make any changes to the Plans for the Premises or the Shared Classrooms without the prior written consent of Tenant. Tenant and Landlord further agree that Tenant shall have the right to review and object to any change orders in the nature or scope of the Landlord's Work which, in the reasonable opinion of the Landlord's Architect, Clark-Nexsen Architecture & Engineering, would delay the completion of the Premises. Any such proposed change orders shall be submitted in writing to the Tenant's construction representative as set forth in Section 3.D. below, and Tenant shall if it so desires make objection to the same, which objection must be in writing and delivered to the Landlord's Architect within ten (10) Business Days of the date notice of such proposed change order is made to the Tenant.

C. By taking possession of the Premises, Tenant is deemed to have accepted the Premises and agreed that the Premises is in good order and satisfactory condition except for any Punchlist Items or any latent defects of which Tenant notifies Landlord within one (1) year after the Commencement Date. Landlord's Work shall be performed in a good and workmanlike manner, using new materials, in compliance with all applicable laws, ordinances, orders, rules, regulations, codes and legal requirements. Landlord makes no representation or warranty as to the suitability of the Premises or the Building for Tenant's use.

D. Landlord's and Tenant's representative(s) for coordination of construction and approval of change orders will be as follows, provided that either party may change its representative(s) upon written notice to the other:

Landlord's Representative:
Office:
Mobile:
Email:

Mr. John Mitchell
(828) 697-4819

(828) 553-2857
johnmitchell@hendersoncountync.org

Tenant's Representatives:

Mr. Scott Hunsucker, VP of Operations

Office: Wingate University
Mobile: (704) 233-8220
Email: (704) 233-8221
Scotth@Wingate.edu

and

Office: Mr. Cameron L. Jackson, Assistant VP
Mobile: for Graduate and Professional Programs
Email: Wingate University
(980) 359-1039 (419) 575-8957
c.jackson@wingate.edu

E. If Tenant takes possession of the Premises prior to the Commencement Date, such possession shall be subject to all the terms and conditions of the Lease and Tenant shall pay Base Rent to Landlord for each day of occupancy prior to the Commencement Date. Notwithstanding the foregoing, if Tenant, with Landlord's prior approval, takes possession of the Premises prior to the Commencement Date for the sole purpose of performing any Landlord-approved improvements therein or installing furniture, equipment or other personal property of Tenant, such possession shall be subject to all of the terms and conditions of the Lease, except that Tenant shall not be required to pay Base Rent with respect to the period of time prior to the Commencement Date during which Tenant performs such work. Nothing herein shall be construed as granting Tenant the right to take possession of the Premises prior to the Commencement Date, whether for construction, fixturing or any other purpose, without the prior consent of Landlord.

4. Use. The Premises shall be used for the Permitted Use and for no other purpose. Tenant agrees not to use or permit the use of the Premises for any purpose which is illegal, dangerous to life, limb or property or which, in Landlord's reasonable judgment, creates a nuisance or which would increase the cost of insurance coverage with respect to the Building. Tenant will conduct its business and control its agents, servants, employees, customers, licensees, and invitees in such a manner as not to interfere with, annoy or disturb other tenants or Landlord in the management of the Building and the Property. Tenant will maintain the Premises in a clean and healthful condition, and comply with all laws, ordinances, orders, rules and regulations of any governmental entity with reference to the use, condition, configuration or occupancy of the Premises, provided that Landlord shall be responsible for ensuring that the Premises and Property comply with all applicable laws, ordinances, orders, rules and regulations of government authorities (i) as of the Commencement Date, (ii) to the extent that any non-compliance with the same is caused by Landlord, its agents, employees, contractors, subcontractors or invitees or (iii) to the extent that any non-compliance with the same is caused by changes in applicable laws, ordinances, orders, rules and regulations of governmental authorities, or changes in interpretations thereof, following the Commencement Date. Tenant, within ten (10) days after the receipt thereof, shall provide Landlord with copies of any notices it receives with respect to a violation or alleged violation of any such laws, ordinances, orders, rules and regulations. Tenant, at its expense, will comply with all reasonable rules and regulations of the Building adopted and altered by Landlord from time-to-time and will cause all of its agents, employees, invitees and visitors to do so. All such changes to rules and regulations shall be sent by Landlord to Tenant in writing. During the Lease Term, Landlord will maintain the Common Areas in a clean and healthful condition and comply with all applicable laws, ordinances, orders, rules and regulations of governmental authorities with respect to the Common Areas.

Tenant expects that it will use and operate the Premises at all times during the Lease Term. Tenant represents that, except as is stated in this paragraph, during the Lease Term, the Premises will not be used other than for activities substantially related to Tenant's exempt purposes under Section 501(c)(3) of the Internal Revenue Code. Tenant does not know of any reason why the Premises will not be so used and operated in the absence of (1) supervening circumstances not now anticipated by Tenant, (2) adverse circumstances beyond the control of Tenant, or (3) obsolescence of such insubstantial parts or portions of the Premises as may occur as a result of normal use of the Premises. Notwithstanding the foregoing, Tenant will not change the use or operation of any portion of the Premises, or permit a third party to use or operate the Premises, during the Lease Term without prior written approval from the Landlord. Landlord agrees that such prior written approval will not be unreasonably withheld so long as any such third party is an exempt entity under Section 501(c)(3) of the Internal Revenue Code using the Premises in activities substantially related to its and Tenant's exempt purposes. Tenant acknowledges that it understands that the Landlord has (or will) financed or refinanced all or a portion of the Premises using federally tax-exempt debt obligations and that the use and operation of the Premises in a manner other than as described in this Section could jeopardize the tax-exempt status of such obligations, potentially resulting in significant financial and other consequences to the Landlord.

5. Base Rent.

A. Tenant covenants and agrees to pay to Landlord during the Lease Term, without any setoff or deduction except as otherwise expressly provided herein, the full amount of all Base Rent due hereunder and the full amount of all such other sums of money as shall become due under this Lease (including, without limitation, any charges for any other services, goods or materials furnished by Landlord at Tenant's written request and not otherwise required to be furnished by Landlord hereunder), all of which hereinafter may be collectively called "Rent." The Base Rent for each calendar year or portion thereof during the Lease Term, shall be due and payable in advance in monthly installments on or before the first day of each calendar month during the Lease Term and any extensions or renewals hereof (provided that the first such installment shall be due within ten (10) Business Days following the Commencement Date), and Tenant hereby agrees to pay such Base Rent to Landlord without demand. If the Lease Term commences on a day other than the first day of a month or terminates on a day other than the last day of a month, then the installments of Base Rent for such month or months shall be prorated, based on the number of days in such month. No payment by Tenant or receipt or acceptance by Landlord of a lesser amount than the correct installment of Rent due under this Lease shall be deemed to be other than a payment on account of the earliest Rent due hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other available remedy. The acceptance by Landlord of an installment of Rent on a date after the due date of such payment shall not be construed to be a waiver of Landlord's right to declare a default for any other late payment beyond the applicable notice and cure period. All amounts received by Landlord from Tenant hereunder shall be applied first to the earliest accrued and unpaid Rent then outstanding. Tenant's covenant to pay Rent shall be independent of every other covenant set forth in this Lease, except as expressly provided herein.

B. To the extent allowed by law, all installments of Rent not paid when due shall bear interest at the Default Rate from the date due until paid. In addition, if Tenant fails to pay any installment of Base Rent or any other item of Rent when due and payable hereunder, a "Late

Charge" equal to five percent (5%) of such unpaid amount will be due and payable immediately by Tenant to Landlord.

6. Security Deposit. There shall be no security deposit required.

7. Services to be Furnished by Landlord.

A. Landlord agrees to furnish Tenant the following services, in a manner consistent with such services provided to other first-class educational and/or medical office buildings in the Hendersonville market:

(1) Hot and cold water, and sewer, for use in the restrooms, laboratories and kitchen areas in the Premises and Shared Classrooms (and in any Common Areas on the floors on which the Premises and Shared Classrooms are located) 24 hours per day, 7 days per week.

(2) Central heat, ventilation and air conditioning in the Premises, Shared Classrooms and Common Areas, in season during Normal Operating Hours, at such temperatures and in such amounts as are considered by Landlord, in its reasonable judgment, to be standard for buildings of similar class, size, age and location, or as required by governmental authority. In the event that Tenant requires central heat, ventilation or air conditioning service at times other than Normal Operating Hours, such additional service shall be furnished only upon the written request of Tenant delivered to Landlord prior to 3:00 p.m. at least one Business Day in advance of the date for which such usage is requested. Tenant shall bear the entire cost of additional service as such costs are reasonably determined by Landlord from time-to-time, as additional Rent, within fifteen (15) Business Days after presentation of a reasonably detailed statement therefor by Landlord. Notwithstanding the foregoing, if Tenant provides written objections to the Landlord of the items included in such statement within such fifteen (15) Business Day period, then Landlord and Tenant shall endeavor in good faith to resolve such objections within fifteen (15) Business Days after delivery of Tenant's objection notice to Landlord, and if Landlord and Tenant are unable to resolve such objections within such period, Landlord and Tenant shall jointly select an independent HVAC engineer within ten (10) Business Days thereafter, which HVAC engineer shall resolve such dispute within fifteen (15) Business Days after his/her selection, and such decision shall be binding upon Landlord and Tenant. The fees of such HVAC engineer shall be paid equally by Landlord and Tenant.

(3) Maintenance, repair and cleaning of all Common Areas (including without limitation the Building structure and systems and snow and ice removal).

(4) Janitorial and cleaning service (including without limitation trash removal, recycling, cleaning white boards, vacuum classrooms and cleaning classroom desktops) in and about the Premises and Shared Classrooms on Business Days and Saturdays. Tenant shall not provide or use any other janitorial or cleaning services without Landlord's consent, not to be unreasonably withheld, conditioned or delayed, and then only subject to the supervision of Landlord and at Tenant's sole cost and responsibility and by a janitor, cleaning contractor or employees at all times reasonably satisfactory to Landlord.

(5) Electricity to the Premises, Shared Classrooms and Common Areas for the Permitted Use, 24 hours per day 7 days a week, in accordance with and subject to the terms and conditions of Section 11 of this Lease.

(6) Electric lamp, bulb and ballast replacement in the Premises, Shared Classrooms, Common Areas and Service Areas.

(7) Normal passenger elevator service (i.e., all passenger elevators are operating) in common with Landlord and other persons during Normal Operating Hours and normal freight elevator service in common with the Landlord and other persons during Normal Operating Hours. Such normal elevator service, passenger or freight, if furnished at other times, shall be optional with Landlord and shall never be deemed a continuing obligation. Landlord, however, shall provide limited passenger elevator service daily (i.e. at least one passenger elevator is operating) at all times when normal passenger elevator service is not provided.

(8) Access control to the Building during other than Normal Operating Hours shall be provided in such form as Landlord deems appropriate, provided that Tenant shall have access to the Premises 24 hours per day, 7 days per week. Landlord shall provide, at its sole cost and expense as a part of Landlord's Work, a means of entering the Premises on any day at any time as set forth in Exhibit B. Tenant shall cooperate fully in Landlord's efforts to maintain access control to the Building and shall follow all regulations promulgated by Landlord with respect thereto. Notwithstanding anything herein to the contrary Tenant expressly acknowledges and agrees that Landlord is not warranting the efficacy of any access personnel, service, procedures or equipment and that Tenant is not relying and shall not hereafter rely on any such personnel service, procedures or equipment. Landlord shall not be responsible or liable in any manner for failure of any access personnel, services, procedures or equipment to prevent, control, or apprehend anyone suspected of causing personal injury or damage in, on or around the Property.

(9) At all times during the Lease Term, Landlord shall provide, or cause to be provided, at least one hundred (100) unreserved parking spaces for the use of Tenant, its students, agents, employees, contractors and invitees. Such parking spaces shall be located within a radius of two hundred fifty (250) yards of the perimeter of the Building. Landlord agrees that no parking spaces located within such two hundred fifty (250) yard radius shall be designated for the use of any particular party during the Lease Term and that no such parking spaces shall be eliminated during the Lease Term, without the prior written consent of Tenant.

B. If Tenant requests of the Landlord any other utilities or building services in addition to those identified above, or any of the above utilities or building services in frequency, scope, quality or quantities substantially greater than the standards set forth above, then Landlord shall use reasonable efforts to attempt to furnish Tenant with such additional utilities or building services. Landlord may impose a reasonable charge for such additional utilities or building services, which shall be paid monthly by Tenant as additional Rent on the same day that the monthly installment of Base Rent is due.

C. Any interruption in the foregoing services, the restoration of which is in Landlord's reasonable control, that continues for longer than five (5) Business Days after notice to

Landlord, unless caused by fire or other casualty or by the negligence or willful misconduct of Tenant, its employees, agents or invitees, shall give Tenant the following rights in addition to any other rights provided in this Lease: (i) the right to a full abatement of Rent and other charges until full service has been restored, (ii) the right to complete such restoration and to offset the reasonable costs and expenses incurred against rentals thereafter coming due under this Lease, and (iii) if the interruption is not completely restored within ten (10) Business Days after the aforesaid notice to Landlord, Tenant shall have the right to terminate this Lease effective upon written notice to Landlord given at any time prior to complete restoration of service. Except as otherwise expressly provided herein, the failure by Landlord to any extent to furnish, or the interruption or termination of these defined services in whole or in part, resulting from adherence to laws, regulations and administrative orders, wear, use, repairs, improvements alterations or any causes beyond the reasonable control of Landlord shall not render Landlord liable in any respect nor be construed as a constructive eviction of Tenant, nor give rise to an abatement of Rent, nor relieve Tenant from the obligation to fulfill any covenant or agreement hereof. Should any of the equipment or machinery used in the provision of such services for any cause cease to function properly, Landlord shall use reasonable diligence to repair such equipment or machinery.

8. Leasehold Improvements/Tenant's Property and Services.

A. All fixtures, equipment, improvements and appurtenances attached to, or built into, the Premises at the commencement of or during the Lease Term, whether or not by, or at the expense of Tenant, which cannot be removed without structural damage to the Building or Premises ("Leasehold Improvements"), shall be and remain a part of the Premises; shall be the property of Landlord; and shall not be removed by Tenant except as expressly provided herein. All moveable partitions, trade fixtures (including without limitation fixed classroom seating), moveable equipment or furniture located in the Premises or Shared Classrooms and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building or Premises, and all personalty brought into the Premises or Shared Classrooms by Tenant ("Tenant's Property") shall be owned and insured by Tenant, shall remain the property of Tenant throughout the Term and upon the expiration or earlier termination of this Lease, and may be removed or replaced by Tenant at any time at Tenant's discretion and expense. Landlord may, nonetheless, at the time of Landlord's approval thereof in accordance with Section 10(B) below, require Tenant's removal, upon the expiration or termination of this Lease, of any Leasehold Improvements performed by or for the benefit of Tenant as are designated by Landlord, excluding Landlord's Work and any electronic, phone and data cabling (the "Required Removables") at Tenant's sole cost. In the event that Landlord so elects, Tenant shall remove such Required Removables within thirty (30) days after the expiration or earlier termination of this Lease or Tenant's right to possession. In addition to Tenant's obligation to remove the Required Removables, Tenant shall repair any damage caused by such removal and perform such other work as is reasonably necessary to restore the Premises to its condition prior to the installation and removal of such Required Removables. If Tenant fails to remove any specified Required Removables or to perform any required repairs and restoration within the time period specified above, Landlord, at Tenant's sole cost and expense, may remove the Required Removables (and repair any damage occasioned thereby) and dispose thereof or deliver the Required Removables to any other place of business of Tenant, or warehouse the same, and Tenant shall pay the cost of such removal, repair, delivery, or warehousing of the Required Removables within five (5) Business Days after demand from Landlord.

B. Tenant shall make arrangements directly with a telephone or other internet protocol company serving the Building for all telephone and internet service required by Tenant in the Premises and shall pay for all such service used or consumed in the Premises. Further, Tenant shall be responsible for keeping the interior non-structural portions of the Premises, and any other portions of the Premises required to be maintained by Tenant under this Lease, in good condition and repair.

9. Signage. Landlord shall provide and install, at Landlord's cost, Tenant's exterior building signage and monument signage, consistent with Tenant's branding standard, as more particularly set forth on Exhibit B attached hereto. If Tenant's branding standard changes during the Term, Tenant shall have the right to replace such signage with signage that is consistent with such new branding standard, at Tenant's cost. In addition, Landlord will list Tenant's name in the Building's directory, if any, located in the lobby of the Building.

10. Repairs and Alterations by Tenant.

A. Except to the extent such obligations are imposed upon Landlord hereunder, Tenant shall, at its sole cost and expense, maintain the Premises in good order, condition and repair throughout the entire Lease Term, ordinary wear and tear excepted. Tenant agrees to keep the areas visible from outside the Premises in a neat, clean and attractive condition at all times. Tenant shall be responsible for all repairs replacements and alterations in and to the Premises, Building and Property and the facilities and systems thereof, the need for which arises out of (1) Tenant's alterations, additions or improvements to the Premises, (2) the installation, removal, use or operation of Tenant's Property (as defined in Section 8. above), (3) the moving of Tenant's Property into or out of the Building, or (4) the act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees. All such repairs, replacements or alterations shall be performed in accordance with Section 10.B. below and the rules, policies and procedures reasonably enacted by Landlord from time to time for the performance of work in the Building. If Tenant fails to maintain the Premises in good order, condition and repair as required hereunder, Landlord shall give Tenant written notice to perform such acts as are reasonably required to so maintain the Premises. If within thirty (30) days after such written notice, Tenant fails to promptly commence such work and thereafter diligently pursue it to its completion, then Landlord may, at is option, make such repairs, and Tenant shall pay the cost thereof to Landlord on demand as additional Rent, together with an administration charge in an amount equal to ten percent (10%) of the cost of such repairs. Landlord shall, at its expense, keep and maintain in good repair and working order and make all repairs to and perform necessary maintenance upon: (a) all structural elements of the Building; (b) all mechanical (including HVAC and elevator), electrical, plumbing and life safety systems (both components of the same that serve solely the Premises and components of the same that serve both the Premises and other portion(s) of the Building in common); (c) the Building facilities common to all tenants including but not limited to, the ceilings, walls and floors in the Common Areas; and (d) the Shared Classrooms. In addition, Landlord shall be responsible for all repairs, replacements and alterations in and to the Premises, the Shared Classrooms and the Common Areas, the need for which arises out of the act, omission, misuse or negligence of Landlord, its agents, contractors, employees or invitees.

B. Within three (3) months following the expiration of the 5th, 10th and 15th Lease Years, Landlord shall, at its sole cost and expense, re-paint all walls, trim and doors within the Premises and Shared Classrooms, replace all carpeting within the Premises and Shared

Classrooms and replace all worn and/or obsolete fixtures within the Premises and Shared Classrooms.

C. Tenant shall have the right, at Tenant's sole cost and expense, to make any alterations, additions or improvements to the Premises without the prior consent of Landlord, provided that such alterations, additions or improvements (i) do not exceed Twenty Thousand Dollars (\$20,000) in cost for any calendar year, do not adversely affect the structural components or systems of the Building and are not visible from the exterior of the Building, or (ii) are required by law. Tenant shall not make or allow to be made any other alterations, additions or improvements to the Premises, without first obtaining the written consent of Landlord in each such instance, which consent may not be unreasonably refused, conditioned or delayed. Prior to commencing any such work and as a condition to obtaining Landlord's consent, Tenant must furnish Landlord with plans and specifications reasonably acceptable to Landlord; names and addresses of contractors reasonably acceptable to Landlord; copies of contracts; necessary permits and approvals; evidence of contractor's and subcontractor's insurance in accordance with Section 15. hereof; and a payment bond or other reasonable security, all in form and amount satisfactory to Landlord. Tenant shall be responsible for ensuring that all such persons procure and maintain insurance coverage against such risks, in such amounts and with such companies as Landlord may require, including, but not limited to, Builder's Risk and Worker's Compensation insurance. All such improvements, alterations or additions shall be constructed in a good and workmanlike manner using Building Standard materials or other new materials of equal or greater quantity. Landlord, to the extent reasonably necessary to avoid any disruption to the tenants and occupants of the Building, shall have the right to designate the time when any such alterations, additions and improvements may be performed and to otherwise designate reasonable rules, regulations and procedures for the performance of work in the Building. Upon completion, Tenant shall furnish "as-built" plans, contractor's affidavits and full and final waivers of lien and receipted bills covering all labor and materials. All improvements, alterations and additions shall comply with the insurance requirements, codes, ordinances, laws and regulations, including without limitation, the Americans with Disabilities Act. Tenant shall reimburse Landlord upon demand for all reasonable sums, if any, expended by Landlord for third party examination of the architectural, mechanical, electrical and plumbing plans for any alterations, additions or improvements. In addition, if Landlord so requests, Landlord shall be entitled to oversee the construction of any alterations, additions or improvements that may affect the structure of the Building or any of the mechanical, electrical, plumbing or life safety systems of the Building. In the event Landlord elects to oversee such work, Landlord shall be entitled to receive a fee for such oversight in an amount equal to five percent (5%) of the cost of such alterations, additions or improvements. Landlord's approval of Tenant's plans and specifications for any work performed for or on behalf of Tenant shall not be deemed to be representation by Landlord that such plans and specifications comply with applicable insurance requirements, building codes, ordinances, laws or regulations or that the alterations, additions and improvements constructed in accordance with such plans and specifications will be adequate for Tenant's use.

11. Use of Electrical Services by Tenant. All electricity used by Tenant in the Premises and Shared Classrooms shall be paid for through inclusion in Base Rent.

12. Entry by Landlord. Landlord or its authorized agents shall at any and all reasonable times, upon at least twenty-four (24) hours advance notice to Tenant (except in case of emergency posing imminent threat to life or property), have the right to enter the Premises with a Tenant escort to inspect the same, to show the Premises to prospective purchasers, lenders or tenants (but as to prospective tenants, only

during the last six (6) months of the Term), and to perform any repairs required of Landlord hereunder. Landlord shall remain liable to Tenant for any claim for inconvenience to or interference with Tenant's business, any loss of occupancy or use of the Premises, and any other loss occasioned thereby so long as such inconvenience or interference is material or unreasonable. Any access by Landlord or others shall be subject to such reasonable restrictions as Tenant may impose relative to security or to the preservation of confidential or proprietary items. Landlord shall take reasonable measures to avoid interruptions of classes held on the Premises by the Tenant.

13. Holding Over.

A. In the event of holding over by Tenant after the end of the Term, the hold over shall be as a tenant from month-to-month, terminable upon fifteen (15) days' written notice by either party to the other, and Tenant shall otherwise be subject to all the covenants and provisions of this Lease. Tenant shall pay Landlord, on demand, as monthly rent for the period of such hold over an amount equal to one hundred twenty-five percent (125%) of the Base Rent payable during the last month of the Term prior to the holdover. Notwithstanding the foregoing, Tenant shall not be liable for any amount of any consequential, punitive or exemplary damages in connection with this Lease suffered or incurred by Landlord, including any claim made by any succeeding tenant to the Premises, on account of such hold over by Tenant or any violation by Tenant of any other term or condition of this Lease during such hold over period.

B. Provided there is not an event of default by Tenant under this Lease beyond the applicable notice and cure period at the time of such notice or at the end of the Term, upon nine (9) months' prior written notice, Tenant shall have the right to hold over after the end of the Term for up to six (6) months, and Tenant shall pay Landlord, as monthly Base Rent for the period of such hold over, an amount equal to one hundred ten percent (110%) of the Base Rent payable during the last month of the Term prior to such hold over, and Tenant shall otherwise be subject to all the covenants and provisions of this Lease.

14. Surrendering the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises to Landlord in substantially the same broom clean condition that the Premises were in on the Commencement Date except for: (i) ordinary wear and tear; (ii) damage by the elements, fire, and other casualty; (iii) condemnation; and (iv) permitted Leasehold Improvements unless Landlord has required their removal hereunder. On surrender, Tenant shall remove from the Premises its personal property, trade fixtures, any Leasehold Improvements required to be removed hereunder, and repair any damage to the Premises or Building caused by such removal. Any items not removed by Tenant as required above within thirty (30) days after the expiration or earlier termination of this Lease shall be considered abandoned. Landlord may dispose of abandoned items as Landlord chooses and bill Tenant for the actual and reasonable cost of their removal and disposal, minus any revenues received by Landlord for their disposal.

15. Hazardous Substances. Tenant shall not use, store, generate or dispose of any Hazardous Substances (as defined below), or knowingly allow its employees, agents or invitees to do so, in, on, above or below any part of the Premises, Building or Property, except only reasonable quantities of normal and customary office supplies used in compliance with applicable laws, which Tenant shall remove at the end of the Term, or earlier if they pose a danger to persons or property. Tenant shall indemnify and hold Landlord harmless from all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, a decrease in the value of the Premises, Building, or Property, due to loss or restriction of rentable or usable space, any damages due to adverse impact on marketing of the space, and any and all sums paid for attorney's fees, consultant and expert fees) arising

during or after the Term as a result of a breach of this section by Tenant or as a result of the use, storage, generation or disposal of Hazardous Substances by Tenant, or Tenant's employees, agents or invitees in, on, above, or below any part of the Premises, Building or Property, whether permitted under this section or not. Landlord shall indemnify and hold Tenant harmless from all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including, without limitation, any and all sums paid for attorney's fees, consultant and expert fees) arising during or after the Term as a result of the use, storage, generation or disposal of Hazardous Substances by Landlord, or Landlord's employees, agents, contractors, subcontractors or invitees in, on, above, or below any part of the Premises, Building or Property. "Hazardous Substance" means any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any governmental body having jurisdiction over the same, and includes any and all materials or substances which are defined as "hazardous waste", "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local law. "Hazardous Substance" includes, but is not restricted to, asbestos, polychlorobiphenyls ("PCB's") and petroleum.

16. Insurance and Indemnity.

A. Landlord's Insurance. During the term of this Lease, or any renewal or extension thereof, Landlord shall keep the Building and the Common Areas insured against damage and destruction by fire and such other perils, in the amount of the full replacement value of the same, under a special "all-risk" extended coverage insurance policy. Landlord shall also maintain general liability insurance with respect to the Building and the Common Areas, covering bodily injury, including death, and property damage in the amount of at least Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit, and annual aggregate limit. Landlord is not obligated to insure fixtures or other property of Tenant.

B. Tenant's Insurance. Tenant shall keep in force, during the term of this Lease, or any renewal or extension thereof, workers compensation insurance as required by law, and commercial general liability insurance, with respect to the Premises, covering bodily injury, including death, and property damage, with such limits as may be reasonably requested by Landlord, but with minimum limits in the amount of at least Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit, and annual aggregate limit, with a contractual liability endorsement, which liability insurance shall name Landlord as additional insured and provide that prior to being canceled for any reason, Tenant's insurance company shall endeavor to provide Landlord with fifteen (15) days' notice of such cancellation. Landlord agrees not to request an increase in the above minimum limits of liability insurance during the initial Term. Tenant will also maintain, at its sole expense for the protection of Landlord and Tenant, primary automobile liability insurance with limits of not less than \$1,000,000 per occurrence covering owned, hired and non-owned vehicles used by Tenant, which shall also provide that prior to being canceled for any reason, Tenant's insurance company shall endeavor to provide Landlord with fifteen (15) days' notice of such cancellation. Tenant shall deposit with Landlord satisfactory evidence of the above coverages prior to occupancy of the Premises, and thereafter prior to expiration of any such coverages.

C. Insurance Criteria. Insurance policies required by this Lease shall: (1) be issued (a) pursuant to the North Carolina Association of County Commissioners Insurance Pool, or (b) by insurance companies licensed to do business in the state of North Carolina with general policyholder's ratings of at least A- and the financial rating of at least XI in the most current Best's Insurance Reports available on the Commencement Date. If the Best's ratings are changed or discontinued, the parties shall agree to an equivalent method of rating insurance companies. If the parties cannot agree they shall submit the dispute to arbitration; (2) (a) be a

portion of the Landlord's coverage through the aforesaid Insurance Pool, or (b) be primary policies - not as contributing with, or in excess of, the coverage that the other party may carry; (3) be permitted to be carried through a "blanket policy" or "umbrella" coverage; (4) be maintained during the entire Term and any extension Terms; and (5) have commercially reasonable deductibles (\$25,000.00 being agreed upon as a commercially reasonable deductible for the parties hereunder as of the date hereof).

D. Indemnification:

(1) Tenant's Indemnification. The Tenant agrees to indemnify, and hold harmless the Landlord and the agents and employees of Landlord from any claims or demands by or on behalf of any person, firm, corporation or other entity or party and any liability, loss, damage or expense, including reasonable attorneys' fees, suffered or incurred by Landlord, or Landlord's agents and employees, arising by reason of injury to any person, including death, or damage to property, occurring in, on, or about the Premises, Building or Property, occasioned in whole or in part by any negligent act or omission or willful misconduct on the part of the Tenant or any employee (whether or not acting within the scope of employment), agent, invitee, visitor, contractor, subcontractor, assignee or tenant of the Tenant, or by reason of nonperformance of any covenant in this Lease on the part of the Tenant, except, however, to the extent that such claims result from the negligent acts or omissions or willful misconduct of Landlord, or Landlord's employees, agents, invitees, contractors or subcontractors, or to the extent such claims result from the nonperformance of any covenant in this Lease on the part of Landlord. Tenant agrees to pay for all damage to any part of the Building or Property, caused by Tenant's misuse or neglect of said Premises, its apparatus or appurtenances. Landlord shall not be liable to Tenant for any damage by or from any act or omission of any other tenant or occupant of the Building or by any owner or occupant of adjoining or contiguous property.

(2) Landlord's Indemnification. Landlord agrees to indemnify, and hold harmless the Tenant, and the agents and employees of Tenant, from any claims or demands by or on behalf of any person, firm, corporation or other entity or party and any liability, loss, damage or expense, including reasonable attorneys' fees, suffered or incurred by Tenant, or Tenant's agents and employees, arising by reason of injury to any person, including death, or damage to property, occurring in, on, or about the Premises, Building or Property, occasioned in whole or in part by any negligent act or omission or willful misconduct on the part of the Landlord or any employee (whether or not acting within the scope of employment), agent, invitee, contractor, or subcontractor of the Landlord, or by reason of nonperformance of any covenant in this Lease on the part of the Landlord, except, however, to the extent that such claims result from the negligent acts or omissions or willful misconduct of Tenant, or Tenant's employees, agents, invitees, visitors, contractors, subcontractors, assignees or tenants, or to the extent such claims result from the nonperformance of any covenant in this Lease on the part of Tenant.

E. Tenant's Personal Property. Tenant shall insure its personal property and trade fixtures, installed or located by the Tenant in the Premises and Building with "all risks" insurance in an amount to cover the full replacement cost of the same, and all personal property, trade fixtures and Leasehold Improvements in the Premises, including that of Tenant, and Tenant's employees, agents, invitees and visitors, shall remain therein at Tenant's sole risk, and except to the extent that such loss or damage to such personal property is due to negligence or willful

misconduct of Landlord, its agents, employees or contractors and is not covered by the property insurance required to be carried by Tenant above or the self-insurance Tenant maintains in lieu thereof as provided below, Landlord shall not be liable for any damage to, or loss of such personal property, trade fixtures or Leasehold Improvements arising from fire or the leaking of the roof, or from the bursting, leaking, or overflowing of water, sewer or steam pipes or from any other cause whatsoever. Notwithstanding the foregoing, however, Tenant may self-insure the foregoing property insurance coverage, provided that such self-insurance shall be deemed insurance for all purposes under this Lease, and Tenant's waiver of claims against Landlord for loss or damage to the property of Tenant under Section 16.F shall apply to Tenant's self-insurance in the same manner as if Tenant actually carried such insurance with a third party carrier. Tenant's failure to carry the required property insurance shall be deemed to mean that Tenant has self-insured such coverage.

F. Waiver of Subrogation. Notwithstanding any language to the contrary herein, each party waives claims arising in any manner in its (the "Injured Party") favor and against the other party for loss or damage to Injured Party's property located within or constituting a part or all of the Building or the Property. This waiver applies only to the extent the loss or damage is covered by the Injured Party's insurance or the insurance the Injured Party is required to carry hereunder, whichever is greater, and shall apply to any self-insurance of Tenant under Section 16.E. The waiver also applies to each party's directors, officers, employees, members, partners, shareholders, and agents. The waiver does not apply to claims caused by a party's willful misconduct. Each party shall cause its property insurance to contain a standard waiver of subrogation endorsement or provisions providing for such waiver of subrogation.

17. Premises Damage:

A. Repair of Damage. If the Premises, the Building, or any portion thereof is destroyed or damaged by fire or other casualty, Landlord, within thirty (30) days after the date of such destruction or damage, must provide Tenant with a reasonable, written time estimate of (i) whether the damage or destruction constitutes fifty percent (50%) or more of the replacement cost of the Premises, and (ii) how long it will take to repair the destruction or damage. If the Premises is totally destroyed or substantially damaged (to the extent of fifty percent (50%) or more of the replacement cost or such that reasonable access to the Premises is not possible) by fire or other casualty, or if the Premises is damaged such that the necessary repairs and restoration could not be completed within one hundred twenty (120) days after the date of the casualty, then Tenant shall have the option to terminate this Lease by giving written notice to Landlord within thirty (30) days after the date of the casualty and, in such event, all rights and obligations under this Lease shall cease, effective as of the date of the casualty. If the Premises or the Building is partially damaged to the extent of less than fifty percent (50%) of the replacement cost, or if Tenant does not terminate this Lease in accordance with the foregoing, then Landlord shall proceed with diligence to repair and restore the Premises (including any fixtures, furnishings and equipment installed by Landlord as a part of the Landlord's Work and any Leasehold Improvements not required to be removed by Tenant) and the Building to substantially the same condition in which they existed prior to the casualty, exclusive of any improvements for which Tenant is responsible to insure under the terms of this Lease, and to obtain any necessary certificates of occupancy or similar permits necessary for Tenant's reoccupation. In no event shall Landlord have any obligation to restore the Premises if and to the extent Landlord's lender does not allow Landlord to apply all or substantially all of the insurance proceeds to repair of the Premises, and, in such case, Tenant shall have the right to terminate this Lease upon written notice to Landlord. Landlord shall use commercially

reasonable efforts to negotiate its loan documents with its current and future lenders such that all insurance proceeds will be made available to Landlord for repair of the Premises. Upon completion of Landlord's repair and restoration obligations, Tenant may restore any alterations or improvements made by Tenant to the Premises during the Term to substantially their condition preceding the casualty. Tenant shall be entitled to a fair and reasonable abatement of Rent from the date of the casualty until the earlier of: (i) the date that Landlord completes its repair and restoration obligations hereunder and Tenant completes its restoration of any alterations or improvements made by Tenant to the Premises during the Term, or (ii) ninety (90) days after Landlord completes its repair and restoration obligations hereunder. If Landlord fails to complete such repairs and restoration within one hundred eighty (180) days after the date of the casualty, then Tenant may at its option terminate this Lease, effective upon delivering written notice of termination to Landlord any time prior to Landlord's completion of such repairs or restoration, whereupon all rights and obligations under this Lease shall cease. In the event of termination of this Lease pursuant to this Article 17.A., then all Rent shall be apportioned and paid to the date of such damage.

B. **Casualty During Last Two Years.** If the Premises is damaged by fire or other casualty during the last two (2) years of the Term (as the same may be extended as provided hereunder) such that the necessary repairs and restoration could not be completed at least one hundred eighty (180) days prior to the expiration of the Term, then Landlord and the Tenant each shall have the option to terminate this Lease by giving written notice to the other party within thirty (30) days after the date of the casualty and, in such event, all rights and obligations under this Lease shall cease, effective as of the date of the casualty.

18. Default and Remedies:

A. **Tenant's Default.** Tenant shall be in default under this Lease if:

- (1) Tenant fails to pay Monthly Base Rent or any other sum due hereunder within ten (10) days after Tenant receives written notice from Landlord of such nonpayment by the due date;
- (2) Tenant fails to pay Monthly Base Rent by its due date, at any time during a calendar year in which Tenant has already received two notices of its failure to pay Monthly Base Rent, by its due date;
- (3) Tenant fails to perform any other Tenant obligation within a period of thirty (30) days or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure, after Tenant receives written notice from Landlord setting forth in reasonable detail the nature and extent of the failure and identifying the applicable Lease provision;
- (4) Tenant fails to vacate or stay any of the following within sixty (60) days after they occur:
 - (a) a petition in bankruptcy is filed by or against Tenant;
 - (b) Tenant is adjudicated as bankrupt or insolvent;

- (c) a receiver, trustee, or liquidator is appointed for all or a substantial part of Tenant's property; or
- (d) Tenant makes an assignment for the benefit of creditors.

B. Landlord's Remedies.

(1) Upon Tenant's default beyond the notice and cure periods set forth herein, Landlord shall have all remedies provided in this Lease, as well as in law or equity, including, without limitation, the right to end this Lease or Tenant's right to possession hereunder, in which case Tenant shall immediately vacate the Premises, with or without process of law, and if necessary, remove Tenant, with or without having ended the Lease, and alter locks and other security devices at the Premises, and Tenant waives any claim for damages by reason of Landlord's reentry, repossession, or alteration of locks or other security devices and for damages by reason of any legal process.

(2) Landlord's exercise of any of its remedies or its receipt of Tenant's keys shall not be considered an acceptance of surrender or a surrender of the Premises by Tenant, unless such surrender is agreed to in writing by Landlord.

(3) If Landlord ends this Lease or Tenant's right to possess the Premises hereunder, Tenant shall be liable to Landlord for Monthly Base Rent, and any other indebtedness of Tenant under the Lease, accrued to the date the Lease or Tenant's right to possession ends and thereafter scheduled during the remainder of the Term, reduced only by any sums Landlord receives by reletting the Premises during the scheduled term, provided, however, if Landlord relets the Premises during the remainder of the scheduled term, at a rental in excess of that provided for under this Lease, Tenant shall not be entitled to any such excess rental, and Tenant waives any claim thereto.

(4) Upon Tenant's default beyond the notice and cure periods set forth herein, Tenant shall also be liable for that part of the following sums paid by Landlord and attributable to that part of the term ended due to Tenant's default:

- (a) reasonable broker's fees incurred by Landlord for reletting part or all of the Premises prorated for the part of the reletting term ending concurrently with the scheduled term of this Lease;
- (b) the cost of removing and storing Tenant's property;
- (c) the cost required to complete any repairs required of Tenant hereunder; and
- (d) other necessary and reasonable expenses incurred by Landlord in enforcing its remedies.

(5) Upon Tenant's default beyond the notice and cure periods set forth herein, Landlord may sue and take any other action provided by law to collect the amounts due hereunder at any time, and from time to time, without waiving its rights to sue for and collect further amounts due from Tenant hereunder.

C. Partial Payment. In the event Landlord brings a summary ejectment or other legal proceeding against Tenant based on Tenant's default hereunder, Landlord may accept less than full payment of any monetary obligations then owing by Tenant to Landlord during the pendency of such proceeding without waiving its rights to prosecute its claim to completion, and Tenant acknowledges and agrees that Landlord may continue its proceeding notwithstanding such partial payment by Tenant, except only if Landlord agrees in writing to suspend the prosecution of its claim for a time certain, in which case if Tenant fails to pay its monetary obligations in full within such time certain, Landlord may thereupon continue the prosecution of its claim. Further, if Landlord terminates this Lease or Tenant's right to possession hereunder based on Tenant's default hereunder, Landlord may accept full payment or a portion of Tenant's monetary obligations hereunder without waiving its right to obtain possession of the Premises in summary ejectment or other legal proceeding, both parties acknowledging that the monetary obligations of Tenant are due to Landlord, notwithstanding Landlord's taking possession of the Premises, for the period up to the date Landlord obtains possession of the Premises and thereafter, subject, however, to Landlord's obligation to mitigate its damages by using reasonable efforts to relet the Premises subsequent to taking possession of the Premises.

D. Waiver. The waiver of the breach of any agreement herein by either party in any one instance shall not be deemed to be a waiver of such agreement or any subsequent breach of the same or any other agreement herein contained, and the acceptance of rent hereunder by Landlord subsequent to the breach of this Lease by Tenant shall not be deemed to be a waiver of such breach, other than the failure of Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such breach at the time of acceptance of such rent.

E. Landlord's Default.

(1) In the event Landlord shall default in the payment, when due, of any monetary obligations to be paid by Landlord hereunder (including any interest due hereunder) and fails to cure said default within ten (10) days after receipt of written notice thereof from Tenant; or if Landlord shall default in performing any of the covenants, terms or provisions of this Lease (other than the payment, when due, of any of Landlord's monetary obligations hereunder) and fails to cure such default within thirty (30) days after written notice thereof from Tenant; provided, however, that Tenant shall have no remedies for such default if the failure is not reasonably susceptible to cure within thirty (30) days so long as Landlord promptly commences the cure within such thirty (30) day period and diligently and continuously pursues it to completion as soon as reasonably possible; then, and in any of said events, Tenant, at its option may pursue any one or more of the following remedies, and any and all other rights accruing to Tenant by law or otherwise (including Tenant's self-help and set-off rights set forth in this Lease), without further notice of demand whatsoever:

(a) Tenant may perform Landlord's obligations under this Lease, and offset the reasonable out-of-pocket costs and expenses incurred by Tenant in doing so against Rent coming due under this Lease.

(b) If the Landlord default renders all or part of the Premises unsuitable for Tenant's use, Tenant shall be entitled a fair and reasonable Rent abatement during the time that all or part of the Premises are so rendered unsuitable, or Tenant may terminate this Lease and Tenant shall have no further obligation or liability under this Lease.

(c) Tenant may recover from Landlord any actual, reasonable damages resulting from the Landlord default.

(2) In addition to the remedies set forth in this Lease, Landlord and Tenant shall have the right to pursue any and all other remedies available at law or in equity, provided that in no event shall either party be liable for consequential, punitive or exemplary damages in connection with this Lease. All rights and remedies of Landlord and Tenant under this Lease or existing at law or in equity are cumulative, and the exercise of one or more rights or remedies shall not be taken to exclude or waive the right to the exercise of any other.

(3) Each party shall use commercially reasonable efforts to mitigate any damages incurred by such party in connection with the other party's default under this Lease.

F. **Eminent Risk.** Notwithstanding the notice and cure periods provided for in this Section 18., in the event that a party's default under this Lease poses a threat to life, health, or safety, the non-defaulting party shall have the right, without giving advance notice to the defaulting party or the opportunity to cure (although notice shall be provided to the defaulting party as promptly as is practicable under the circumstances), to perform the defaulting party's obligations under this Lease, and obtain from the defaulting party reimbursement upon demand for any reasonable costs and expenses incurred or, in the event of such emergency cure by Tenant, offset such costs and expenses against Rent thereafter coming due under this Lease.

G. **Survival.** The remedies provided in this Section 18., the indemnities given by each party hereto, and any other provisions of this Lease which by their nature would require the survival of the ending of this Lease, shall survive the ending of this Lease.

19. **Choice of Law:** It is the intention of the Parties to this Lease that the tenancy created by this Lease and the performance under this Lease, and all suits and special proceedings under this Lease, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the State of North Carolina, without regard to the jurisdiction in which any action or special proceeding may be instituted.

20. **Conflict with Laws of North Carolina:** If there is a conflict between any provision of this Lease and the laws of the State of North Carolina, the laws of the State of North Carolina will prevail and such provisions of the Lease will be amended or deleted as necessary in order to comply therewith.

21. **Amendment:** Any amendment or modification of this Lease or additional obligation assumed by either party to this Lease in connection with this Lease will only be binding if evidenced in writing signed by each party or an authorized representative of each party.

22. **Sublease or Assignment:** The Tenant will not assign this Lease, or sublet or grant any concession or license to use the Premises or any part of the Premises without the Landlord's prior written consent, not to be unreasonably withheld, conditioned or delayed. Any assignment, subletting, concession or license is subject to the provisions regarding the Use of the Premises contained in Section 4., herein, and subject to the rights of Henderson County Hospital Corporation ("HCHC") and BRCC under the "Five-Party Agreement" executed by the Landlord, the Tenant, HCHC, BRCC and the City of Hendersonville on April 4, 2014.

23. Non-waiver: No provision of this Lease will be deemed to have been waived by the Landlord unless a written waiver from the Landlord has first been obtained and, without limiting the generality of the foregoing, no acceptance of rent subsequent to any default and no condoning, excusing or overlooking by the Landlord on previous occasions of any default nor any earlier written waiver will be taken to operate as a waiver by the Landlord or in any way to defeat or affect the rights and remedies of the Landlord.

24. This Lease will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each party to this Lease.

25. All sums payable by the Tenant to the Landlord pursuant to any provision of this Lease will be recovered by the Landlord as Rent.

26. All Exhibits to this Lease are incorporated into and form an integral part of this Lease.

27. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Lease. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

28. This Lease may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.

29. This Lease and the "Five-Party Agreement" constitute the entire agreement between the Landlord and the Tenant with respect to the subject matter hereof. Any prior understanding or representation of any kind preceding the date of this Lease will not be binding on either party to this Lease except to the extent incorporated in this Lease or in the "Five-Party Agreement."

30. Condemnation.

A. If all or part of the Property is taken under any governmental law, ordinance or regulation, or by power of eminent domain, or by purchase in lieu thereof, and such taking adversely affects Tenant's use or enjoyment of the Premises in the reasonable opinion of Tenant, then Tenant shall have the option to terminate this Lease by giving written notice to Landlord within thirty (30) days after the date the condemning authority is given the right to possession (such date being the "date of taking" for purposes of this Section) and, in such event, all rights and obligations under this Lease shall cease, effective as of the date of the taking. If Tenant does not terminate this Lease in accordance with the foregoing, then Landlord shall proceed with diligence to make any repairs and alterations necessary to restore the Property to an architectural whole and make the Property suitable for Tenant's use. The Rent payable under this Lease from the date of the taking through the expiration of the Lease Term shall be equitably reduced based on the degree to which Tenant's use and enjoyment of the Property are impaired. If Landlord fails to complete such repairs or alterations within one hundred eighty (180) days after the date of the taking, then Tenant may at its option terminate this Lease, effective upon delivering written notice of termination to Landlord at any time prior to Landlord's completion of such repairs and alterations, whereupon all rights and obligations under this Lease shall cease.

B. All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) shall be the property of Landlord, and Tenant hereby assigns all of its interest in any such award to Landlord, provided, however, that Landlord shall have no interest in any award made for the

loss of Tenant's business, the taking of Tenant's fixtures or other property, Tenant's relocation expenses, or the value of Tenant's leasehold estate.

31. Subordination. Landlord represents and warrants to Tenant that there is no mortgage or deed of trust lien presently encumbering any portion of the Property. Tenant agrees that this Lease shall subordinate to any future first or junior mortgages and to any and all advances to be made thereunder and to the interest thereon and all renewals, replacements and extensions thereof provided the mortgagees named in said mortgages shall agree (i) to recognize this Lease in the event of foreclosure or deed in lieu of foreclosure if Tenant is not in default and (ii) not to disturb Tenant's possession or other rights under the Lease if Tenant is not in default (collectively the "Non-Disturbance Provisions"). In the event of any mortgagee electing to have this Lease be deemed a prior lien to its mortgage, then upon such mortgagee notifying Tenant to that effect, this Lease shall be deemed prior to the lien of said mortgage, whether this Lease is dated prior to or subsequent to the date of said mortgage. This provision shall be self-operative but in the event that any such mortgagee shall require that Tenant execute a commercially reasonable document evidencing such subordination and including the Non-Disturbance Provisions, Tenant shall sign an instrument to that effect within fifteen (15) days following a written request.

32. Notices. Any notice required or permitted to be given under this Lease shall be in writing and shall be delivered by (a) national overnight courier service, or (b) registered or certified United States mail, postage prepaid, return receipt requested, and addressed as set forth in Section 1.R., with documentation of the other party's receipt or refusal of the notice. Any such notice shall be deemed effective upon the other party's receipt or refusal of the notice. Each party shall have the right to modify its notice address under this Lease by notifying the other party of such revised address in the manner set forth in this Section.

33. Memorandum of Lease. Landlord and Tenant agree that this Lease shall not be recorded. However, Landlord agrees to execute and deliver to Tenant a memorandum of this Lease in recordable form as set forth on Exhibit C attached hereto and incorporated herein at the time this Lease is executed. Tenant shall have the right to record said memorandum in the local public registry at Tenant's expense.

34. Brokers. Landlord and Tenant each represent and warrant to the other that it has dealt with no broker to whom any brokerage commission or similar compensation is due in connection with this transaction. Each party agrees to indemnify the other against all claims for brokerage commission or other compensation for services rendered at its instance in connection with this transaction.

35. No Third Party Beneficiaries. The Lease does not and is not intended to confer any rights or remedies upon any party other than Landlord and Tenant.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the Parties to this Lease have duly affixed their signatures under hand and seal, or by a duly authorized officer under seal, the date stated above.

COUNTY OF HENDERSON

By: _____
THOMAS H. THOMPSON, Chairman
Board of Commissioners

Witness:

Clerk to the Board of Commissioners

WINGATE UNIVERSITY

By: T. Rhett Brown
T. RHETT BROWN
President

Attest:

Luther T. Moore
Luther T. Moore, Chairman,
Board of Trustees

Exhibit A

Premises and Shared Classrooms

[See attached.]

Exhibit B

Plans

1. Landlord shall construct the Premises and Building in accordance with construction drawings for 6th Ave Joint Health Education Center dated April 30, 2015, prepared by Clark Nexsen (CN No. 5199) and attached hereto, as the same may be revised or updated in accordance with this Lease.
2. Landlord shall provide and install a card, fob or other controlled access system for the Building to allow access after Normal Operating Hours. Landlord shall provide and install standard key locks on all interior doors to the Premises and Shared Classrooms.
3. Landlord shall provide and install data cabling and other information technology infrastructure required for Tenant's use of the Premises and Shared Classrooms.
4. Landlord shall install Tenant's building exterior and monument signage, with the total signage to be at the maximum allowed by applicable governmental regulations, with the portion of the signage allocated to Tenant to be not less than that allocated to BRCC and HCHC.
5. Landlord shall provide window tinting and/or blinds on all exterior windows of the Building.

[ATTACH CONSTRUCTION DRAWINGS]

Exhibit C

Memorandum of Lease

[See attached.]

Drawn by and return to:
Mayleng Watson
McGuireWoods LLP
201 N. Tryon St., Ste. 3000
Charlotte, NC 28202

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum of Lease") is made as of _____, 2015, between the County of Henderson ("Landlord") and Wingate University ("Tenant"), and is being executed to set forth certain terms and provisions of a certain Lease (as hereinafter defined).

1. The "Lease" is that certain Lease Agreement between Landlord and Tenant dated _____, 2015. All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Lease.

2. Landlord has leased to Tenant pursuant to the Lease the Premises consisting of the space located on the second floor of the Building labeled as "Wingate" on Exhibit A attached hereto, together with the right, in common with others, to use the Common Areas located within the Building or on the Property and the right, in common with Blue Ridge Community College, to use the classrooms, breakout rooms and lecture halls (collectively, the "Shared Classrooms") on the second and third floors of the Building labeled as "Shared" on Exhibit A attached hereto. At all times during the Lease Term, Landlord shall provide, or cause to be provided, at least one hundred (100) unreserved parking spaces for the use of Tenant, its students, agents, employees, contractors and invitees; such parking spaces shall be located within a radius of two hundred fifty (250) yards of the perimeter of the Building. "Building" means the education and medical facility to be constructed on Henderson County tax parcel 1009121 located at the northeast corner of the intersection of Sixth Avenue West and North Oak Street in the City of Hendersonville, County of Henderson, State of North Carolina, to be known as the Henderson County Health Sciences Education Center. "Property" means the Building and the parcel(s) of land on which it is located, other improvements located on such land, adjacent parcels of land that Landlord operates jointly with the Building, and other buildings and improvements located on such adjacent parcels of land.

3. The term of the Lease ("Lease Term") shall be two hundred forty (240) months commencing on the later to occur of (a) 1 July 2016 (the "Target Commencement Date") and (b) the first day of Tenant's semester following the date upon which Landlord's Work has been substantially completed as such date is determined pursuant to the Lease (the later to occur of such dates being defined as the "Commencement Date"), provided that in no event shall the Commencement Date occur before Tenant has had access to the Premises for a period of thirty (30) days for purposes of moving Tenant's furniture, fixtures and equipment into the Premises. The "Termination Date" shall, unless

sooner terminated as provided herein, mean the last day of the Lease Term. Notwithstanding the foregoing, if the Termination Date, as determined herein, does not occur on the last day of a calendar month, the Lease Term shall be extended by the number of days necessary to cause the Termination Date to occur on the last day of the last calendar month of the Lease Term.

4. This Memorandum of Lease describes only selected provisions of the Lease, and reference must be made to the text of the Lease for the full terms and conditions. This Memorandum of Lease shall not in any way amend or supersede the terms and conditions of the Lease.

[Signature page(s) follow.]

IN WITNESS WHEREOF, the Landlord and the Tenant have executed this Memorandum of Lease as of the date first written above.

TENANT:

Wingate University

By: T. Rhett Brown
T. Rhett Brown, President

STATE OF NORTH CAROLINA

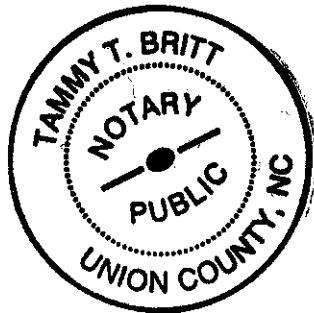
COUNTY OF UNION

On this 21st day of August, before me, a notary public in and for said State, personally appeared T. Rhett Brown, the President of Wingate University, who acknowledged to me that he executed the foregoing Memorandum of Lease on behalf of such university.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

Tammy T. Britt
Notary Public
Print Name: Tammy T. Britt
My Commission Expires: 10-29-2016

(Official Seal)



LANDLORD:

County of Henderson

By: _____
Thomas H. Thompson
Chairman of the Board of Commissioners

STATE OF NORTH CAROLINA

COUNTY OF _____

On this ____ day of _____, 2015, before me, a notary public in and for said State, personally appeared Thomas H. Thompson, the Chairman of the Board of Commissioners of the County of Henderson, who acknowledged that he executed the foregoing Memorandum of Lease on behalf of such county.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

Notary Public
Print Name: _____
My Commission Expires: _____

(Official Seal)

Exhibit A
to Memorandum of Lease

Premises and Shared Classrooms

[See attached.]