

AMENDMENT TO LEASE AGREEMENTS

THIS IS AN AMENDMENT TO LEASE AGREEMENTS, entered into on _____, 2013, between:

CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as "Lessor" or "City,"

and

FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES, as successor in interest by operation of law to the STATE OF FLORIDA, BOARD OF REGENTS, a public corporation of the State of Florida, acting on behalf of FLORIDA ATLANTIC UNIVERSITY, a member of the State University System of Florida, hereinafter referred to as "Lessee."

WHEREAS, pursuant to Resolution No. 13-____, adopted at its meeting of _____, 2013, the City Commission of City authorized the proper City officials to execute this Amendment to Lease Agreements; and

WHEREAS, Lessee leases certain property from Lessor at Fort Lauderdale Executive Airport as an institute for advanced professional study, under a Lease Agreement dated October 20, 1970 as assigned to Lessee by Florida Atlantic University Foundation, Inc. under an Assignment of Lease dated August 28, 1975 ("Lease Agreement"); and

WHEREAS, Lessee also leases certain adjacent property from Lessor at Fort Lauderdale Executive Airport for parking purposes associated with the Lease Agreement under a separate lease Agreement dated October 20, 1981, as amended by the First Amendment to Lease dated January 19, 1988 ("Parking Lease Agreement"); and

WHEREAS, hereinafter the Lease Agreement and Parking Lease Agreement shall collectively be known as the "Lease Agreements;" and

WHEREAS, the Lease Agreements expire on October 20, 2020; and

WHEREAS, pursuant to the terms of the Lease Agreements, Lessee was required to construct certain improvements on the leased premises; and

WHEREAS, pursuant to the terms of the Lease Agreements, upon expiration, ownership of all improvements and fixtures are the property of the Lessor; and

WHEREAS, due to the difficult economic climate facing higher education in Florida and other factors, Lessee is no longer operating an institute for advanced professional study on or about the property that is the subject of the Lease Agreements; and

WHEREAS, Lessor does not desire to acquire the improvements on the leased premises; and

WHEREAS, Lessee has requested Lessor agree to an early termination of the Lease Agreements in exchange for Lessee financing and completing the demolition and razing of the improvements on the leased premises; and

WHEREAS, the Lessor declares that amending the Lease Agreements is in the best interest of the City.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein.
2. Lessor and Lessee hereby agree that the Lease Agreements shall be terminated effective September 30, 2013 subject to the following conditions precedent:
 - (a) Lessee shall obtain all required permits to remove any hazardous substances from the property, obtain demolition permit(s) and take all other required actions to permit demolition of the buildings and all other vertical improvements, except fences, gates and general site lighting, on the leased premises more particularly described in the Lease Agreements ("Leased Premises"); and
 - (b) Lessee agrees to include in its contract with any selected contractor for the demolition ("Contractor") the requirement that the contractor(s) maintain at least the insurance requirements set forth on Exhibit "A", attached hereto and incorporated herein, and further agrees to provide Lessor, prior to commencement of demolition, Certificates of Insurance evidencing the contractor's compliance with this section.
 - (c) Lessee agrees to include in any contract it enters into with the Contractor a provision that Contractor shall indemnify and hold harmless the Lessor, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the acts or omissions of Contractor. This indemnification shall survive the term of the contract.
 - (d) Lessee agrees that prior to commencement of any demolition on the site, Lessee through its contractor shall deliver to Lessor one or more Payment and Performance Bond(s) naming the Lessor and Lessee as dual obligees in said bond as further detailed on Exhibit "A"; which Bond shall be in an amount at least equal to one hundred percent (100%) of the cost of contract.
 - (e) Lessee shall demolish and remove all parts of the building structure(s) and foundation(s) and the area disturbed by the demolition process shall be graded to be level with the surrounding area of the Leased Premises. Paved portions

of the property, general site lighting¹, fences and gates presently securing the premises shall not be demolished and/or removed. Lessee shall be responsible for removing all Lessee-identifying signage from the Leased Premises, including signage on gates or fences.

(f) Lessee shall be the permitting authority for the work to the fullest extent permitted by law. All permits associated with the demolition must obtain all required inspections and permits must be in closed status by September 30, 2013; and

(g) Lessee shall present evidence in the form of a certificate of completion by its Contractor and such other evidence as reasonably required by Lessor and accepted by Lessor's City Manager or designee, to confirm that all conditions in sections (a)-(f) above have been satisfied by September 30, 2013.

3. In the event Lessee does not satisfy the conditions in Section 2 above on or before September 30, 2013, the Lease Agreements shall continue under their current terms in full force and effect until such time as the conditions noted have been fully satisfied and accepted.

4. In all other respects, until such time as a termination has occurred as provided herein, the Lease Agreements are unchanged and remain in full force and effect in accordance with the terms thereof.

[This Space Intentionally Left Blank]
[Signature Pages Follow]

L:Airport/FAU/IAmendment to Lease Agreement 4-10-13

¹ While general site lighting shall not be removed, Lessor acknowledges that the electrical service for such lighting is routed through the building structure that is being removed. Any design or work needed to reconnect the electrical service after the building is removed shall be at the sole cost and discretion of the Lessor.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

LESSOR

WITNESSES:

CITY OF FORT LAUDERDALE,
a municipal corporation.

By _____
JOHN P. "JACK" SEILER, Mayor

Print Name

By _____
LEE R. FELDMAN, City Manager

Print Name

(SEAL)

ATTEST:

JONDA K. JOSEPH, City Clerk

Approved as to form:

Assistant City Attorney

LESSEE

LESSEE

WITNESSES:

Florida Atlantic University
Board of Trustees

By _____

Print Name _____

[Witness type or print name]

Title: _____

ATTEST:

[Witness type or print name]

Approve as to form and legality:

STATE OF _____:

COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013 by _____, as _____ of THE FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES. S/He is personally known to me or has produced _____ as identification and did not (did) take an oath.

(NOTARY SEAL)

Notary Public, State of Florida
Signature of Notary taking
Acknowledgment

Name of Notary Typed,
Printed or Stamped

My Commission Expires:

Commission Number

EXHIBIT "A"

BOND/INSURANCE REQUIREMENTS

Public Construction and Other Bonds: The Contractor shall furnish Public Construction or Performance and Payment Bonds ("Bond"), each in an amount at least equal to the contract price as security for the faithful performance and payment of all the Contractor's obligations under the contract documents. These Bonds shall remain in effect until at least one (1) year after the date of final payment, except as otherwise provided by law. All Bonds shall be furnished and provided by the surety and shall be in substantially the same form as prescribed by the contract documents and be executed by such sureties as (i) are licensed to conduct business in the State of Florida, and (ii) are named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department and (iii) otherwise meet the requirements set forth herein that apply to sureties. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

Disqualification of Surety: If the Surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Florida the Contractor shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to the City.

Insurance

Contractor shall provide and shall require all of its sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Umbrella / Excess Liability, as stated below. Such policy or policies shall be issued by companies authorized to do business in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The City is required to be named as additional insured on the Commercial General Liability insurance policy. BINDERS ARE

CAM 13-0430

Exhibit 1

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UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Contractor. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.

- B. The Contractor shall provide the City an original Certificate of Insurance for policies required. All certificates shall state that the City shall be given ten (10) days notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the City, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies shall not be affected by any other policy of insurance required of Lessee under the Lease Agreement or which the City may carry in its own name.
- C. Contractor shall as a condition precedent of this Amendment, furnish to the City of Fort Lauderdale, c/o Airport Manager, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301, Certificate(s) of Insurance upon execution of this Amendment, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

Commercial General Liability

- A. Limits of Liability:

Bodily Injury and Property Damage - Combined Single Limit

Each Occurrence	\$1,000,000
Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$1,000,000

B. Endorsements Required:

City of Fort Lauderdale included as an Additional Insured

Broad Form Contractual Liability

Waiver of Subrogation

Premises/Operations

Products/Completed Operations

Independent Contractors

Owners and Contractors Protective Liability

Contractors Pollution Liability

Business Automobile Liability

A. Limits of Liability:

Bodily Injury and Property Damage - Combined Single Limit

All Autos used in completing the contract

Including Hired, Borrowed or Non-Owned Autos

Any One Accident \$1,000,000

B. Endorsements Required:

Waiver of Subrogation

Workers' Compensation and Employer's Liability Insurance

Limits: Workers' Compensation – Per Florida Statute 440

Employers' Liability - \$500,000

Any firm performing work on behalf of the City of Fort Lauderdale must provide Workers' Compensation insurance. Exceptions and exemptions can only be made if they are in accordance with Florida Statute. For additional information contact the Department of Financial Services, Workers' Compensation Division at (850) 413-1601 or on the web at www.fldfs.com.

Contractor must be in compliance with all applicable State and Federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act or Jones Act.

Umbrella / Excess Liability: The Contractor shall provide umbrella / excess coverage with limits of no less than \$2,000,000 excess of Commercial General Liability, Automobile Liability and Employer's Liability.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The Contractor's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the City's Risk Manager. Any exclusions or provisions in the insurance maintained by the Contractor that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

Compliance with the foregoing requirements shall not relieve the Contractor or Lessee of their liability and obligation under this section.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the work pursuant to this Amendment. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the City shall:

- A. Suspend the Amendment until such time as the new or renewed certificates are received by the City.
- B. The City may, at its sole discretion, terminate the Amendment for cause and seek damages from the Lessee and Contractor in conjunction with the violation of the terms and conditions of the Amendment.