



Item: SP: A-1

STRATEGIC PLANNING COMMITTEE

Wednesday, February 20, 2008

SUBJECT: PROPOSED PINE JOG LEASE AGREEMENT BETWEEN FLORIDA ATLANTIC UNIVERSITY AND FLORIDA ATLANTIC UNIVERSITY FOUNDATION, INC.

PROPOSED COMMITTEE ACTION

The Florida Atlantic University Foundation requests that the Florida Atlantic University enter into a lease agreement for the use of the land at the Pine Jog Environmental Center run by the FAU College of Education. The purpose of the lease is to set forth the Foundation and University obligations regarding use of the land and structures, and to mitigate potential liability exposure to the Foundation.

BACKGROUND INFORMATION

Pine Jog, a 150 acre tract is located at the corner of Jog Road and Summit Boulevard in Palm Beach County. The Foundation acquired the land primarily through donations and deeded 15 acres to the University in 2006 so that the University could enter into an agreement with Palm Beach County, for the County to build an elementary school. It is expected that the elementary school will open this fall.

The Pine Jog Environmental Center, a unit of the College of Education, conducts all activities at the site. The Foundation does not control any facet of the operations, other than the funds donated for the support of the Center.

Because of the scope of operations at Pine Jog and the increasing activity due to the pending completion of the Palm Beach County elementary school, there are potential risks that the Foundation has been advised to mitigate. Since the College of Education is controlling the Pine Jog property and all activities occurring thereon, the Foundation is taking the step of requesting a lease between the University and the Foundation legally recognizing the University's role at Pine Jog.

IMPLEMENTATION PLAN/DATE

The lease will be signed as soon as both parties approve the terms of the lease.

FISCAL IMPLICATIONS

This lease obligates the University to obtain additional liability coverage on the buildings and land, the projected annual cost is approximately \$6,000. This expense will be paid by the University and reimbursed by the Foundation's Pine Jog fund.

Supporting Documentation: Proposed Lease

Presented by: Jack Ludin, Deputy General Counsel

Phone: 561-297-3007

Randy Talbot, V.P. Advancement

Phone: 561-297-3044

Glen Thomas, Executive Director of FAUS

Phone: 561-297-3977

LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made in Boca Raton, Palm Beach County, Florida, on this _____ day of _____, 2008, by and between FLORIDA ATLANTIC UNIVERSITY FOUNDATION, INC., a Florida not for profit corporation, whose post office address is 777 Glades Road, Boca Raton, FL 33431, hereinafter referred to as "LESSOR", and THE FLORIDA ATLANTIC UNIVERSITY BOARD OF TRUSTEES, a public body corporate of state of Florida, whose post office address is: 777 Glades Road, Boca Raton, FL 33431 hereinafter referred to as "LESSEE".

WHEREIN IT IS MUTUALLY AGREED, AS FOLLOWS:

ARTICLE 1. PREMISES.

The LESSOR for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the LESSEE, hereby leases to the LESSEE those certain parcels of land legally described on Exhibit A attached hereto and made a part hereof, together with all improvements and structures, and hereinafter referred to as "LEASED PREMISES". It has been explained to both parties the advantages of owners and lessee title insurance and both parties have declined to obtain same. The LESSEE is leasing the LEASED PREMISES in "AS IS" condition with no warranty express or implied of any kind, including warranty of title.

The LESSEE will use the LEASED PREMISES only in conformance with the restrictions, reservations and reverters currently in force on the LEASED PREMISES.

ARTICLE 2. TERM.

A. The term of this lease, hereinafter called the "LEASE TERM", shall be for a period of twenty-five (25) years (or until the term shall sooner cease under the provisions of this lease) to commence as set forth in Article 2B and to end at 12:00 Noon on a date twenty-five (25) years thereafter. The LESSEE shall have the options to renew this lease for two additional twenty-five (25) year terms provided the LESSEE is not then in default hereunder. This Agreement will automatically renew unless either party terminates as set forth within. Either party may terminate this lease upon 180 days prior written notice to the other party.

B. COMMENCEMENT DATE. The commencement date of the LEASE TERM shall be on _____, 2008.

C. POSSESSION. The LESSEE is entitled to possession of the premises from the date of the commencement of this Lease.

ARTICLE 3. RENT.

Section 3.01 Payment of Rent. LESSEE agrees to pay to LESSOR, without prior demand and without any setoff or deduction whatsoever, "rent" as hereinafter provided.

Section 3.02 Amount of Rent. The LESSEE agrees to pay to LESSOR as rent the sum of One Dollar (\$1.00) per year.

ARTICLE 4. LIENS

In the event that a lien is filed against the property as a result of any construction that may be initiated by the LESSEE with or without the authority of the LESSOR, then the LESSEE agrees to bond off the lien immediately upon the lien being filed, and to defend the LESSOR in any action to foreclose the lien. It is mutually agreed and understood that pursuant to Florida Statute 713.10 the interest of the LESSOR shall not be subject to any liens for improvements made by the LESSEE, and that this lease at the option of either party, may be recorded in the Office of the Clerk of the Circuit Court

of Palm Beach County, Florida. Lessee agrees to keep the property free and clear of all liens.

ARTICLE 5. SECURITY DEPOSIT

There is no security deposit.

ARTICLE 6. RULES

The LESSEE acknowledges that in order to have a well-run and well-coordinated leased premise certain rules and regulations with regard to parking, use of facilities, trash disposal, noise, offensive use of the premises and other matters are necessary. Accordingly, LESSEE covenants and agrees to comply with all reasonable regulations imposed by the LESSOR for the use of the leased premises.

ARTICLE 7. ASSIGNMENT AND SUBLETTING

The LESSEE shall not have the right to sublease any part of the leased premises without the LESSOR's consent.

ARTICLE 8. SUBORDINATION

LESSEE agrees that this lease is subject and subordinate to any mortgage and lease which may now or hereafter affect the real property of which the LEASED PREMISES forms a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagees. In confirmation of such subordination, LESSEE shall execute promptly any certificate that LESSOR may request.

ARTICLE 9. COMPLIANCE WITH GOVERNMENTAL REGULATIONS

LESSEE shall comply with all rules, regulations and requirements of any Federal, State, County or Municipal authority or governmental agency and with the final orders of the local Board of Fire Underwriters or similar organization affecting the LEASED PREMISES insofar as the same may relate to LESSEE'S use of said premises during the term hereof.

ARTICLE 10. ALTERATIONS

Neither party shall make alterations or improvements to the LEASED PREMISES without the others prior consent, which consent may not be unreasonably withheld. The LESSOR covenants and agrees with the LESSEE that the LESSEE may erect any signs on the Leased Premises of any kind or nature.

ARTICLE 11. MAINTENANCE.

All maintenance, repairs, upkeep, security, utilities, taxes, assessments and insurance payments shall be paid by the LESSEE. The intent of the parties is that the LESSEE shall have sole care, custody, and control of the LEASED PREMISES and the LESSOR shall have none of the care, custody, and control of the LEASED PREMISES such that all responsibility shall be that of the LESSEE and no responsibility shall be that of the LESSOR.

ARTICLE 12. PROHIBITED ACTS.

The LESSEE shall not do or permit to be done any act or thing upon the LEASED PREMISES:

1. which will invalidate or be in conflict with the provisions of the fire and extended coverage policies covering the LEASED PREMISES,

2. which will or might subject the LESSOR to any liability or responsibility for injury to any person or to any property by reason of any business or operation being carried out on in the LEASED PREMISES.

3. that violates any of the existing restrictions, reservations or revertsers currently on the LEASED PREMISES.

ARTICLE 13. INSURANCE

Compliance with the requirements of this paragraph shall not relieve LESSEE of its liability and obligations under this Agreement. The LESSEE covenants to provide on or before the commencement of the LEASE TERM and to keep in force during the LEASE TERM at LESSEE'S own cost and expense, a comprehensive general liability policy of insurance relating to the LEASED PREMISES and all improvements thereon, on an occurrence basis in the minimum amount of \$1,000,000 bodily injury, personal injury or death to any one person; \$1,000,000 bodily injury, personal injury or death to more than one person In addition, the LESSEE shall carry an umbrella policy in the amount of \$4,000,000 with the same terms and conditions. The carrier shall be a carrier reasonably satisfactory to the LESSOR in the name of, and for the benefit of the LESSOR, and its designees, and LESSEE agrees to deliver to LESSOR, at least fifteen (15) days prior to the time such insurance is first required to be carried by the LESSEE, and thereafter at least fifteen (15) days prior to the expiration of any such policy, either a duplicate original or a certificate and true copy of all policies procured by LESSEE in compliance with its obligations hereunder, together with evidence of payment therefore and including an endorsement which states that such insurance may not be canceled except upon ten (10) days written notice to the LESSOR, and the designee(s) of the LESSOR.

This lease is subject to the approval of the insurance underwriter.

LESSEE's Liability Insurance. Without waiving the right to sovereign immunity, LESSEE acknowledges that it is self-insured for commercial general liability and automobile liability in the amounts specified in Florida Statutes Section 768.28, as may be amended from time to time. LESSEE agrees to maintain or to be self-insured for worker's compensation and employer's liability insurance in accordance with Chapter 440, Florida Statutes, as may be amended from time to time. LESSEE agrees to provide LESSOR with an affidavit or certificate of insurance evidencing insurance, self-insurance and/or sovereign immunity status, which the parties agree to recognize as acceptable for the above-referenced coverage's. Compliance with the requirements of this paragraph shall not relieve LESSEE of its liability and obligations under this Agreement.

ARTICLE 14. CONDEMNATION

If all or substantially all of the LEASED PREMISES shall be taken by condemnation, this lease shall terminate as of the date of the vesting of title. If only part of the LEASED PREMISES shall be condemned, all rent shall be equitably apportioned. LESSEE shall make such repairs to the remaining portion of the LEASED PREMISES as are necessary to render same reasonably suitable for LESSEE'S use. This lease shall not terminate by reasons of any temporary taking of the LEASED PREMISES, and the LESSEE shall be entitled to the award for such temporary occupancy for the period of such use during the term of this lease.

The LESSOR shall be entitled to receive the entire award in any condemnation, including any award made for the value of the estate vested by this lease in the LESSEE, and the LESSEE hereby expressly assigns to the LESSOR all of its right, title and interest in and to any part of such award. Upon termination of the lease as in this Article provided, the obligation of the LESSOR and the LESSEE shall continue in full

force and effect to the date of the vesting of title and all rent shall be apportioned as of that date.

ARTICLE 15. LESSEE'S ADDITIONAL COVENANTS

(A) LESSEE shall, at its expense, comply with the requirements of all applicable laws, ordinances, rules, orders, and regulations of all governmental authorities at any time issued or in force and with any direction of any public officer, pursuant to law, which shall impose any violation, order or duty upon LESSOR or LESSEE with respect to the LEASED PREMISES, or the occupancy thereof. LESSEE may diligently and in good faith contest the validity or applicability of any such law or requirement, provided that (i) LESSOR shall not be subject to criminal penalties nor shall any part of the LEASED PREMISES be subjected to being condemned or vacated by reason of such contest, (ii) such noncompliance or contest shall not constitute or result in any violation of any fee or leasehold mortgage and (iii) LESSEE shall keep LESSOR advised at all times as to the status of such proceedings.

(B) LESSEE covenants that LESSEE'S employees, agents and licensees shall comply with the Rules and Regulations and such reasonable additional Rules and Regulations as LESSOR may hereafter adopt; provided, however, that in the case of any conflict between the provisions of this lease and any such Rules and Regulations, the provisions of this lease shall control.

(C) LESSEE shall, at any time and from time to time, upon request by the LESSOR, upon not less than five (5) days prior notice, execute, acknowledge and deliver to LESSOR or anyone LESSOR shall designate, a statement certifying (i) that this lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) the dates to which all rents have been paid, and (iii) whether or not, to the best knowledge

of the LESSEE, LESSOR is in default in performance of any of its obligations under this lease, and if so, stating each such default of which LESSEE has knowledge. LESSEE agrees that any such statement may be relied upon by others with whom LESSOR is dealing.

(D) If LESSEE shall default in the performance of its obligations under this lease, LESSOR, without thereby waiving such default, may perform the same at the expense of LESSEE, without notice in case of any emergency, and in any other case if such default continues after the expiration of five (5) business days from the date LESSOR notifies LESSEE of intention so to do. Bills for any expenses incurred by LESSOR in connection with any such performance by LESSOR, including reasonable counsel fees, shall be immediately due and payable.

(E) BIOHAZARDOUS WASTE. The LESSEE is solely responsible for the disposal of biohazardous waste at the LESSEE'S sole expense.

ARTICLE 16. SURRENDER AT END OF TERM

On or before the end of the LEASE TERM, LESSEE shall (a) quit and surrender the LEASED PREMISES as is.

ARTICLE 17. REMEDIES

This lease and the term and estate hereby granted are subject to the following limitations, that if: (a) LESSEE shall default in the payment of any installment of rent or of any additional rent on the date upon which same becomes due, and such default continues for three (3) days after the LESSOR has given the LESSEE a written notice specifying such default; or (b) LESSEE defaults with respect to any other of its obligations under this lease (other than a default referred to in paragraph (a) above) and if LESSEE fails to immediately take any and all action required to remedy such default

after seven (7) days written notice from the LESSOR specifying the nature of such default; or (c) LESSEE shall abandon the LEASED PREMISES (unless as a result of a casualty), whether the rent be paid or not, then in any such event specified in paragraphs (a), (b), and (c) above, the LESSOR may at any time terminate this Lease by written notice to the LESSEE or may repossess the LEASED PREMISES and remove any persons therefrom, by force or otherwise, without liability to the LESSOR of any kind whatsoever, and without terminating any of the LESSOR'S rights under this Lease or otherwise.

LESSOR'S remedies as specified in this lease are cumulative and are not intended to exclude any other remedies or means of redress to which the LESSOR may lawfully be entitled at any time, and LESSOR may invoke any remedy allowed by law or in equity as if specific remedies were not provided for in this Lease.

If this Lease is terminated or if LESSOR shall re-enter the LEASED PREMISES, LESSEE shall pay to the LESSOR as damages in addition to any rent then due, the sums equal to the rent which would have been payable by the LESSEE had no such termination or re-entry occurred, payable upon the due dates thereof specified in this Lease until the expiration of the LEASE TERM, provided, however, that if the LESSOR should relet the LEASED PREMISES or any part thereof during such period, the LESSOR shall credit against such sums mentioned in this paragraph the rentals as and when received by the LESSOR from such reletting less the cost of such reletting.

Suit or suits for the recovery of such damages may be brought by the LESSOR from time to time at its election and nothing contained herein shall be deemed to require the LESSOR to postpone suit until the date when the LEASE TERM would have expired but for any such termination or re-entry.

Nothing contained herein shall be construed to limit or preclude recovery by LESSOR against the LESSEE of any sums or damages to which, in addition to the

damages particularly provided above, the LESSOR may lawfully be entitled by reason of any default hereunder on the part of the LESSEE, or prejudice the right of the LESSOR to obtain damages in an amount equal to the maximum allowed by any statute or rule of law in effect at the time such damages are to be proved, whether or not such amount be greater or less than any of the sums referred to in this Article. The LESSOR shall be entitled to accelerate the rent in the event of a default.

ARTICLE 18. NON-WAIVER.

A Waiver by the LESSOR of any breach or breaches by the LESSEE of any one or more of the covenants or conditions of this lease shall not bar the enforcement or any other rights or remedies of the LESSOR for any subsequent breach of any such other covenants and conditions.

ARTICLE 19. USE AND LIMITATIONS.

The LESSEE agrees that he will not use or permit the LEASED PREMISES or any part thereof to be used for any illegal, disorderly, or improper purposes.

ARTICLE 20. INTERPRETATION.

The Article headings are for convenience only and do not define, limit or describe the contents. Words of any gender used in this lease shall be held to include any other gender, the words in a singular number shall be held to include the plural when the sense requires.

ARTICLE 21. MISCELLANEOUS.

A. LESSOR'S Right to Enter. Upon reasonable notice, LESSOR or its representatives shall have the right of reasonable access to or passage through the

LEASED PREMISES at any time during or outside of business hours, whether or not LESSEE is present. The exercise of any such right shall not give rise to any liability of LESSOR to LESSEE and shall not constitute an eviction of LESSEE in whole or in part and the rent shall in no way abate by reason thereof or by reason of loss or interruption of LESSEE'S business, or otherwise.

B. Inability to Perform. This lease and LESSEE'S rights and obligations under this lease shall in no way be effected, impaired or excused because LESSOR fails to fulfill its obligations under this lease, if such failure by LESSOR is the result of strike or labor trouble or any similar or dissimilar cause whatsoever beyond LESSOR'S reasonable control.

C. Entire Agreement. This lease contains the entire agreement between LESSOR and LESSEE.

D. Saving Provision. If any provision of this lease shall be adjudged invalid or unenforceable to any extent by any court, the remainder of this lease, or the application thereof to situations or persons other than to which it has been adjudged invalid or unenforceable, shall not be affected thereby.

E. Successors and Assigns. The covenants, agreements, conditions and provisions of this lease shall be binding upon and insure to the benefit of the LESSOR and the LESSEE and their respective heirs, distributees, executors, administrators, successors and permitted assigns, except that no assignment shall be effective except with the prior written consent of the LESSOR which may be unreasonably withheld.

F. Notice. The term "notice" as used in this lease includes any notice, consent, approval, advise, request, bill, demand or statement provided for in this lease or by any law or governmental regulation. Each notice by either LESSOR or LESSEE to the other shall be in writing and shall be deemed to have been duly given only when mailed in a postpaid envelope (registered or certified) addressed to LESSOR or LESSEE.

G. AS IS. The LESSEE is accepting the leased premises in "AS IS" condition and there are no warranties, express or implied, from the LESSOR with regard to the condition of the leased premises.

ARTICLE 22. VENUE AND LAW.

Venue for any action brought under this lease agreement shall only be in Palm Beach County, Florida, and this lease agreement shall be construed according to the laws of the State of Florida. The parties waive trial by jury.

IN WITNESS WHEREOF, the LESSOR and the LESSEE have duly executed this lease as of the day and year first above written, each acknowledging receipt of an executed copy hereof.

Signed in the presence of:

LESSOR:
FLORIDA ATLANTIC UNIVERSITY
FOUNDATION, INC., a Florida not for
profit corporation

by: _____
as: _____

LESSEE:
FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

by: _____
as: _____

LEGAL DESCRIPTION
Exhibit "A"

Lots 7, 8, 9, 14, and 16, and the South 250 feet Of Lots 11 and 12, Pine-Jog Subdivision, according to the map or plat thereof as recorded in Plat Book 23, Page(s) 245, Less and Except that portion for additional right-of-way for Jog Road contained in Right-of-Way Warranty Deeds recorded in O.R. Book 7251, Page 1540 (as to Lots 7, 8 and 9) and O.R. Book 7251, Page 1586 (as to Lot 11), Public Records of Palm Beach County, Florida,

And

Lots 15, 17, 18, 20, 21, 23 and 24, That portion of Lot 13 lying South of the Lake Worth Drainage District Canal, Pine-Jog Subdivision, according to the map or plat thereof as recorded in Plat Book 23, Page(s) 245, Public Records of Palm Beach County, Florida;

And

The Northeast quarter of the Northeast quarter of the Southeast quarter of Section 3, Township 44 South, Range 42 East, Less the North 64 feet thereof for Lake Worth Drainage District Canal L-5.

And

Lot 10, Pine-Jog Subdivision, according to the map or plat thereof as recorded in Plat Book 23, Page(s) 245, Public Records of Palm Beach County, Florida,

And

That portion of Lots 11 and 12, less the South 250 feet thereof, lying South of the Lake Worth Drainage District Canal, Pine-Jog Subdivision, according to the map or plat thereof as recorded in Plat Book 23, Page(s) 245, Less and Except that portion for additional right-of-way for Jog Road contained in Order of Taking recorded in O.R. Book 7125, Page 1655, and Amended Order of Taking recorded in O.R. Book 7663, Page 770, Together with a Perpetual Easement contained in said Amended Order of Taking, Public Records of Palm Beach County, Florida,

And

Lots 1, 2 and 6, inclusive, Lots 19, 22 and 25 through 28, inclusive, Pine-Jog Subdivision, according to the map or plat thereof as recorded in Plat Book 23, Page(s) 245, Public Records of Palm Beach County, Florida

And

The West 200 feet of the Southeast quarter of the Southeast quarter of the Southeast quarter of Section 3, Township 44 South, Range 42 East, Less the South 268.11 feet thereof. Together with a 30 foot easement adjacent to the eastern boundary line of the following described property: The West 200 feet of the South 268.11 feet of the Southeast quarter of the Southeast quarter of the Southeast quarter of Section 3, Township 44 South, Range 42 East, Less the right-of-way for Summit Boulevard.