



Item: VI. SP: A-2

Wednesday, June 25, 2008

SUBJECT: Ground Lease for the temporary expansion of St. Lucie County School Board's Marine Oceanographic Academy currently operating at the Harbor Branch Oceanographic Institute at FAU

PROPOSED BOARD ACTION

Approval of a Ground Lease permitting the St. Lucie County School Board ("SLCSB" or "School District") to temporarily expand their Marine Oceanographic Academy ("MOA") currently operating at the Harbor Branch Oceanographic Institute at FAU ("HBOI at FAU").

BACKGROUND INFORMATION

Beginning in 2007 (pre-HBOI at FAU), Harbor Branch Oceanographic Institution, Inc. ("HBOI Inc.") agreed to provide space in the two Johnson Education Center Annex buildings to the School District for the operation of the School District's Marine Oceanographic Academy high school. The classrooms in these two buildings allowed the MOA to accommodate 100 freshman students and associated staff for the 2007-08 school year. HBOI Inc. also agreed to provide the MOA with certain associated professional and technical services (i.e. lectures, laboratory services). The School District provides compensation to HBOI, Inc. (now to HBOI at FAU) for the provision of the professional and technical services as well as monthly rent for the facilities, which includes rent for the space (approx. 5,000 sf), electricity, and janitorial services. HBOI Inc. had also agreed to lease unimproved land to the School District for the 2008-09 school year in order to allow them to place a sufficient number of portable classrooms to accommodate the second year expansion of the MOA to freshman and sophomore classes of 100 each for a total of 200 students.

Specifically, for the 2008-09 expansion, the School District will continue to use the existing facilities in the Johnson Education Center Annex pursuant to a University Facilities Use Agreement. In addition, in order to accommodate the additional 100 students for the new class of MOA students, the School District desires to lease an adjacent parcel of approximately one acre of unimproved real property to create a temporary portable village. This temporary village will be comprised of eight (8) temporary portables. All costs and responsibilities associated with the Annex and the temporary facilities, including rent, installations, utilities, permitting and necessary utility connections, shall be borne by the School District. The School District shall further assume sole responsibility for compliance with all applicable legal requirements governing security and access to school grounds.

Looking forward, the School District desires to construct a permanent facility on the HBOI at FAU campus and establish a full four year high school academy. The School District and FAU administrators are currently evaluating this permanent expansion, which will be considered in connection with the HBOI at FAU campus master planning process. No action is being requested by the Board on the establishment of a permanent facility at this time. If and when it is determined that a permanent facility is to be considered, the matter will be brought to the Board for further review and consideration.

IMPLEMENTATION PLAN/DATE

The Ground Lease proposes a July 1, 2008 commencement date and is for a period of one year, ending on June 30, 2009. This commencement date is designed to allow the School District sufficient time to construct the temporary village and all necessary infrastructure for the 2008-09 school year this fall. Initial infrastructure investigations and preparations are already underway. The proposed Ground Lease was approved unanimously by the FAU Board of Trustees Strategic Planning Committee on June 11, 2008.

FISCAL IMPLICATIONS

The School District will pay rent and all costs associated with the MOA at both facilities, as well as assume responsibility and costs for all MOA operations and improvements. Implications to FAU will primarily lie in the areas of administrative and facilities oversight.

Supporting Documentation: Proposed Ground Lease

Presented by: Dr. Shirley Pomponi, Executive Director

Phone: 772-465-2400

GROUND LEASE AGREEMENT

This Ground Lease Agreement ("Agreement") is made and entered into as of this _____ day of _____, 2008, by and between the Florida Atlantic University Board of Trustees (the "University" or "Lessor") and the School Board of St. Lucie County, Florida the governing body of the School District of St. Lucie County, Florida (the "School District" or "Lessee").

WITNESSETH:

WHEREAS, the Harbor Branch Oceanographic Institute at FAU is a University-owned research institute located at 5600 US 1 North, Fort Pierce, Florida 34946 (the "Harbor Branch Campus"); and

WHEREAS, the Marine and Oceanographic Academy (the "MOA") is a high school operated by the School District in existing University facilities on the Harbor Branch Campus; and

WHEREAS, the School District desires to ground lease certain real property on the Harbor Branch Campus from the University in order to temporarily expand the capacity of the MOA on the Harbor Branch Campus;

WHEREAS, University desires to ground lease a portion of the real property within the Harbor Branch Campus to the School District in order to accommodate such temporary expansion, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the University and Lessee agree as follows:

1. **Premises**

In consideration of the rents, covenants and agreements contained in this Agreement, University ground leases to the School District and the School District ground leases from the University approximately one acre of real property located on the Harbor Branch Campus, as more particularly described in Exhibit A attached hereto (the "Premises").

2. **Use of Premises**

- A. The Premises shall be used by the School District solely for the operation of the MOA. Lessee must obtain the prior written approval of the University for any other use of the Premises. At Lessee's own expense, Lessee shall promptly comply with all requirements of University policies and procedures and of any local, state, or federal law or regulation required by Lessee's use of the Premises.
- B. Lessee shall not (i) use the Premises for any illegal purpose, nor for any purpose that is injurious to the health, safety, and welfare of the public or University community nor jeopardize the University's insurance coverage

of the Premises (ii) commit, or suffer to be committed, any waste in or on the Premises; or (iii) create or permit any nuisance in or on the Premises.

- C. Lessee accepts the demised Premises on an "as is" basis and University makes no representations or warranties about their condition or fitness or use for a particular purpose.
- D. This Agreement does not provide for Lessee's use of the University's equipment or furniture. Any use by Lessee of the University's personal property will be the subject of a separate agreement and may be subject to fees established by the University.
- E. No hazardous substances or materials shall be permitted on the Premises without the prior written consent of the University.
- F. Administrative matters for Lessee's personnel (i.e., terminations) shall not be conducted on the Premises.

3. Improvements

- A. The School District, at its sole cost and expense, may place up to eight (8) temporary portable facilities on the Premises in order to provide educational facilities for up to 100 additional MOA students (and associated staff) (the "Portables"). The size and location of such Portables on the Premises shall be as depicted on Exhibit B attached hereto ("Site Plan").
- B. Any construction, connection or installation of facilities, utilities or other infrastructure activities necessary for the operation of the Portables shall be the sole responsibility, cost and expense of the School District, including any site, storm water, construction or other necessary permitting associated therewith, and shall be as depicted on the Site Plan or as otherwise agreed upon in writing by the parties. All such work shall be conducted in a safe and responsible manner and shall not interfere with the operations of the University. Lessee shall be solely responsible for maintenance and repairs of any and all improvements made to the premises, shall ensure that all improvements are installed and maintained in a safe manner consistent with standards applicable to surrounding University facilities and improvements, and shall ensure that all uses and activities on the premises are consistent with the terms and conditions of this Agreement. To the extent possible, upon termination of this Agreement, the School District shall restore any property affected by such work to substantially the same or acceptable condition as immediately preceding.
- C. The School District shall be responsible, at its sole cost and expense, for ensuring that all construction, connection, or installation of facilities, utilities, or other infrastructure activities mutually agreed upon by the parties conform to all applicable legal, environmental and regulatory requirements, including without limitation the appropriate sections of the Florida Building Code, Florida Fire Prevention Code, and other applicable

building and life safety codes ("Codes"). As provided in Sections 1013.371 and 1013.38, Fla. Stat., the School District shall provide and shall be authorized and responsible for review of construction documents and for supervision and inspection of the work by its chief building official or inspector certified in accordance with Chapter 468, Fla. Stat., and by such other personnel as are necessary to administer and enforce the provisions of the applicable Codes.

- D. The School District shall be solely responsible for obtaining the appropriate certificates of occupancy for the Portables, as necessary and at its sole cost and expense.
- E. The School District may not make any additional improvements or alterations to the Premises without the prior written consent of the University. Any permanent improvements and alterations shall become a part of the Premises and shall become the property of the University free and clear of all liens and encumbrances.

4. Utilities and Other Services

- A. The University will have no obligation to provide utility connections to the Premises, but shall allow the Lessee to undertake such connections so long as consistent with the Site Plan and the terms of this Agreement. Connections to the University's existing utilities for all utility services desired by the School District in connection with the Premises and/or the Portables, including water, sewer, gas, telephone and electricity shall be the sole cost and responsibility of the School District. All such utilities, with the exception of water and sewer, shall be separately paid and metered by the Lessee. Water and sewer use shall be included in the rental payment set forth in Section 7A below. Lessee shall also pay to the University a one-time payment of \$15,000 for general utility impact costs, which payment shall be made with the first monthly rental payment set forth in Section 7A below.
- B. The Lessee acknowledges that the University may establish various fees and charges for the use of various facilities, equipment and services provided by the University and not leased to or specifically provided to the Lessee hereunder.

5. Maintenance and Repairs

The School District, at its sole cost and expense, shall maintain the Premises and any improvements, fencing or personal property thereon in reasonable and orderly condition and repair. The University shall not be required to supply any maintenance, repair or cleaning services to or for the Premises or the Portables, or to inspect the same. Any maintenance, repair or cleaning needs shall be the sole responsibility and cost of Lessee.

6. Term

The term of this Agreement shall commence on July 1, 2008 ("Effective Date") and continue for a term of one year ("Term").

7. Rentals and Payments

A. As annual rental for the lease of the Premises, the Lessee shall pay to the University, beginning on the Effective Date of this Agreement, rent of \$24,000, to be paid monthly in the amount of \$2,000, and on or before the 1st day of each month, to the offices of the University as set forth below.

B. The Lessee shall pay all rentals, fees and charges owed to University to:

Florida Atlantic University
Office of the Controller
777 Glades Road
Boca Raton, FL 33431

8. Transfer, Subletting and Assignment

Lessee shall not transfer, assign or sublease all or any part of the Premises. The Lessee shall not permit any use of the Premises other than as specified in this Agreement, nor may it transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of this Agreement. The Lessee shall not permit use of the Premises by any other entity or third party without the advanced written consent of the University.

9. Furniture

The Lessee is responsible for furnishing the Premises and/or the Portables. Upon termination of this Agreement the furnishings and equipment which were provided by the Lessee and are removable shall be the property of the Lessee.

10. Parking

Lessee shall comply with and shall ensure that its employees, contractors, agents and invitees comply with all parking rules and regulations of the University, including decal costs, at Lessee's expense. Only vehicles of employees and contractors of Lessee doing business at the MOA and Lessee's school buses shall be permitted on the Premises. Other vehicles of Lessee or Lessee's invitees, including parents of MOA students, will not be permitted on the Premises.

11. Security

The University agrees to provide security to the Premises in accordance with generally accepted University standards. If Lessee desires security beyond that provided by the University, it may do so with the advanced coordination of the University and at its sole expense. Lessee shall assume sole responsibility for

compliance with all applicable legal requirements governing security and access to school grounds. Only MOA students and Lessee's staff and contractors doing business at the MOA shall be permitted on the Premises. Lessee's staff shall accompany any MOA students entering or leaving the Premises other than on official Lessee school buses.

12. Inspection

Lessee shall permit the University, its agents and employees, with prior notice, except in the event of an emergency in which case no prior notice shall be required, to enter into and upon the Premises at all reasonable times for the purpose of inspecting the Premises. University shall make reasonable efforts not to disrupt Lessee's activities in conducting such inspections.

13. Regulations, Licenses and Permits

- A. The Lessee shall comply with all federal, state and local laws, rules and regulations, and the procedures and policies of the University, as the same may be amended from time to time, specifically including University's anti-harassment and anti-discrimination policies and regulations. If Lessee defaults in its obligation to comply with one or more of the foregoing, the University may deliver written notice of such default in the manner provided in Section 20. Lessee shall have a period of twenty (20) calendar days from receipt of such notice within which to correct the default. If the default is not corrected within such time, or within such additional time as may be granted by the University upon a showing that Lessee is proceeding in good faith to correct the default, the University may at its option terminate the Agreement. If, in the opinion of the University, violation of one or more of the foregoing laws, procedures or policies may cause a public hazard or nuisance, the University may demand the immediate correction of such violation or breach.
- B. The Lessee, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, maintaining on a current basis, and fully complying with, any and all permits, licenses and other governmental authorizations, however designated, as may be required, at any time throughout the entire term of this Agreement, by any federal, state, or governmental entity or any judicial body having jurisdiction over the Lessee or the Lessee's operations and activities, for any activity of the Lessee conducted on the Premises and for any and all operations conducted by the Lessee, including insuring that all legal requirements, permits and licenses necessary for or resulting, directly or indirectly, from the Lessee's operations and activities on the Premises have been obtained and are being fully complied with. The University shall, where deemed appropriate, give its full cooperation to the Lessee necessary to obtain and/or hasten the obtaining of any required permit or license.

14. Surrender of Premises

Upon termination of this Agreement, Lessee will at once surrender possession of the Premises to the University in as good condition as when first received,

normal wear and tear excepted, and remove all of Lessee's personal property therefrom, specifically including the Portables, within forty-five (45) days from the date of termination. Any personal property of the Lessee not removed in accordance with this Section may be removed by the University for storage at the cost of Lessee. Failure on the part of Lessee to reclaim its personal property within forty-five (45) days from the date of termination shall constitute a gratuitous transfer of title thereto to the University for whatever disposition is deemed to be in the best interest of the University. If the University does not accept such transfer, the University shall, at its discretion, remove, store, or dispose of such property at Lessee's expense.

15. Signage/Use of the University Name

- A. The design, construction and installation of Lessee's signage and advertising material are the sole responsibility of the Lessee. The design and installation of all signage and advertising material, of any type or kind, which is visible to the public on the exterior of the Premises shall be subject to the advance written approval of the University, which shall not be unreasonably withheld or delayed. Approval shall be contingent upon the signage/advertising complying with the University's overall signage program for the area in which the Premises are located. The obligation to place signage directing traffic to the Premises shall be the responsibility of the University. The quantity and location of signage will be within the University's sole discretion.
- B. Lessee shall not use the University's name or logos without the prior, written approval of the University. Lessee shall not state or imply endorsement of Lessee or of Lessee's activities by University.

16. Personal Property

Lessee may install and operate in and on the Premises such fixtures and personal property as is reasonably required for Lessee's permitted use of the Premises, in accordance with the Site Plan, or otherwise with the prior, express, written approval of the University. At the termination of this Agreement, such fixtures and personal property must be removed in accordance with the terms of this Agreement.

17. Insurance

- A. Lessee shall maintain at its own expense, without lapse or material change, for so long as it occupies the Premises, the following insurance: (i) Worker's Compensation coverage in accordance with applicable law and (ii) General Liability and Automobile Liability coverage with limits of One Hundred Thousand Dollars (\$100,000) per person and Two Hundred Thousand Dollars (\$200,000) per occurrence or such limits as may be established by the State of Florida. The University acknowledges that the Lessee may obtain the required insurance coverages through a self-insured governmental pool which meets the foregoing criteria.

- B. Lessee shall require all of its contractors conducting work on the Premises to maintain, at their own expense, the following insurance: (i) Worker's Compensation coverage in accordance with applicable law and (ii) General Liability and Automobile Liability coverage with limits of One Million Dollars (\$1,000,000) per person and Two Million Dollars (\$2,000,000) per occurrence. The liability policies shall name the Florida Atlantic University Board of Trustees and their employees, agents, contractors and volunteers as additional insureds. The School District shall provide evidence of such coverages to HBOI at FAU prior to the commencement of any work by each contractor.

18. Liability and Indemnification

Lessee agrees to conduct its activities in the Premises in a careful and safe manner. To the extent permitted by Florida law, Lessee hereby agrees to defend, indemnify and hold harmless the University and its respective trustees, officers, employees, volunteers, representatives, and agents (collectively "Releasees") from and against all any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, that may arise indirectly or directly from Lessee's breach of any term or condition of this Agreement or any act or omission in connection with Lessee's use of the Premises, whether caused by the Lessee's acts or omissions of the acts of omissions of the Lessee's employees, agents, contractors or invitees in connection with this Agreement. Nothing contained herein shall be construed or interpreted as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the State of Florida or its officers, employees, servants, agents, agencies, or public bodies corporate to be sued; or (3) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in section 768.28 of the Florida Statutes.

19. Waiver of Claims

Lessee expressly waives any and all claims for compensation or damage for any and all loss or damage sustained by it or by any person by reason of interruption of the air conditioning, electrical, plumbing systems or water supply, or for any loss or damage, including the prohibition of use of the Premises by Lessee or any person claiming under Lessee, resulting from any hurricane advisory warning or other acts of God, civil commotion, riots or labor strikes.

20. Notices

All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier service to the parties as follows:

University: Harbor Branch Oceanographic Institute at FAU
5600 US 1 North
Fort Pierce, Florida 34946
Attn: Associate Executive Director

With a copy to: Florida Atlantic University
777 Glades Road, ADM 367
Boca Raton, FL 33431
Attn: Office of the General Counsel

Lessee: The School District of St. Lucie County
4204 Okeechobee Road
Fort Pierce, FL 34947
Attention: Alan Gilbert, AIA

With a copy to: The School District of St. Lucie County
4202 Okeechobee Road
Fort Pierce, FL 34947
Attn: School Board Attorney

21. Default

If Lessee at any time is in default in the payment of rent, or any amount due to University, or in the performance of any of the material stipulations, terms, conditions, agreements or provisions of this Agreement, the University may deliver written notice of such default in the manner provided in Section 20. Lessee shall have a period of twenty (20) calendar days from receipt of such notice within which to correct the default. If the default is not corrected within such time, or within such additional time as may be granted by the University upon a showing that Lessee is proceeding in good faith to correct the default, the University may at its option terminate the Agreement.

22. Evacuation

The University reserves the right to require evacuation of the Premises when it is deemed necessary by the University for the safety of the University community or the Lessee.

23. Availability of Funding

The performance of the parties of any of their obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the Florida Legislature or otherwise lawfully expendable for the purpose of this Agreement. The party shall give notice to the other party of the non-availability of such funds when the party has knowledge.

24. Independent Contractor

The relationship of the Parties is that of independent contractors. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Neither party is authorized or empowered to act as agent for the other party for any purpose, and neither party shall be bound by the acts or conduct of the other party.

25. Severability

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

26. Entire Agreement

This Agreement expresses the entire understanding of the parties with reference to the subject matter hereof, and supersedes any prior or contemporaneous representations, understandings and agreements, whether oral or written.

27. Amendments

This Agreement may be amended only by express, written agreement of the parties executed by their authorized representatives.

28. Binding Effect

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successor and assigns. This provision shall not constitute a waiver of any conditions prohibiting assignment or subletting.

29. Waiver

The waiver by a party of any breach of any provision contained in this Agreement shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in a properly signed writing in order to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.

30. Access to Documents

The parties shall allow public access to all documents and other material subject to the provisions of Chapter 119, Florida Statutes, made or received in conjunction with this Agreement.

31. Governing Law

The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. The University, as an agency of the State of Florida, is entitled to the benefits of sovereign immunity, including immunities from taxation.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials.

THE SCHOOL DISTRICT OF
ST. LUCIE COUNTY

Signature

Name

Title

Date

FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

Signature

Name

Title

Date

Exhibit A

The Premises

LEGAL DESCRIPTION

THIS IS NOT A SURVEY

A PORTION OF LAND LYING IN SECTION 8, TOWNSHIP 34 SOUTH, RANGE 40 EAST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 8; THENCE S01°49'41"W ALONG THE WESTERLY LINE OF SAID QUARTER SECTION A DISTANCE OF 374.61 FEET TO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL:

THENCE S89°16'50"E A DISTANCE OF 134.41 FEET; THENCE S01°06'28"W A DISTANCE OF 281.27 FEET; THENCE N88°18'10"W A DISTANCE OF 106.12 FEET; THENCE N02°03'59"E A DISTANCE OF 72.43 FEET; THENCE N89°05'01"W A DISTANCE OF 48.89 FEET; THENCE N01°09'56"E A DISTANCE OF 207.04 FEET; THENCE S89°41'58"E A DISTANCE OF 19.18 FEET RETURNING TO THE POINT OF BEGINNING.

PARCEL CONTAINING 0.908 ACRES, MORE OR LESS.

PARCEL IS BOUNDED ON THE EAST BY A SEAWALL ON THE SOUTH BY OCEAN STUDIES DRIVE, ON THE WEST BY AN ASPHALT PARKING LOT AND ON THE NORTH BY A SERVICE ROAD SOUTH OF THE LINK BUILDING.

Description is based on information provided and no survey was made by this office.

REVISION: CHANGED AREA AND LEGAL DESCRIPTION GLM 5-21-08

NOT VALID WITHOUT SHEET 2 OF 2

Sheet 1 of 2

LEGAL DESCRIPTION LEASE PARCEL

Prepared For

SCHOOL BOARD OF ST. LUCIE COUNTY
MARINE & OCEANOGRAPHIC ACADEMY

File: 07-157 SD
Date: 5/08/08

Tech: AWR

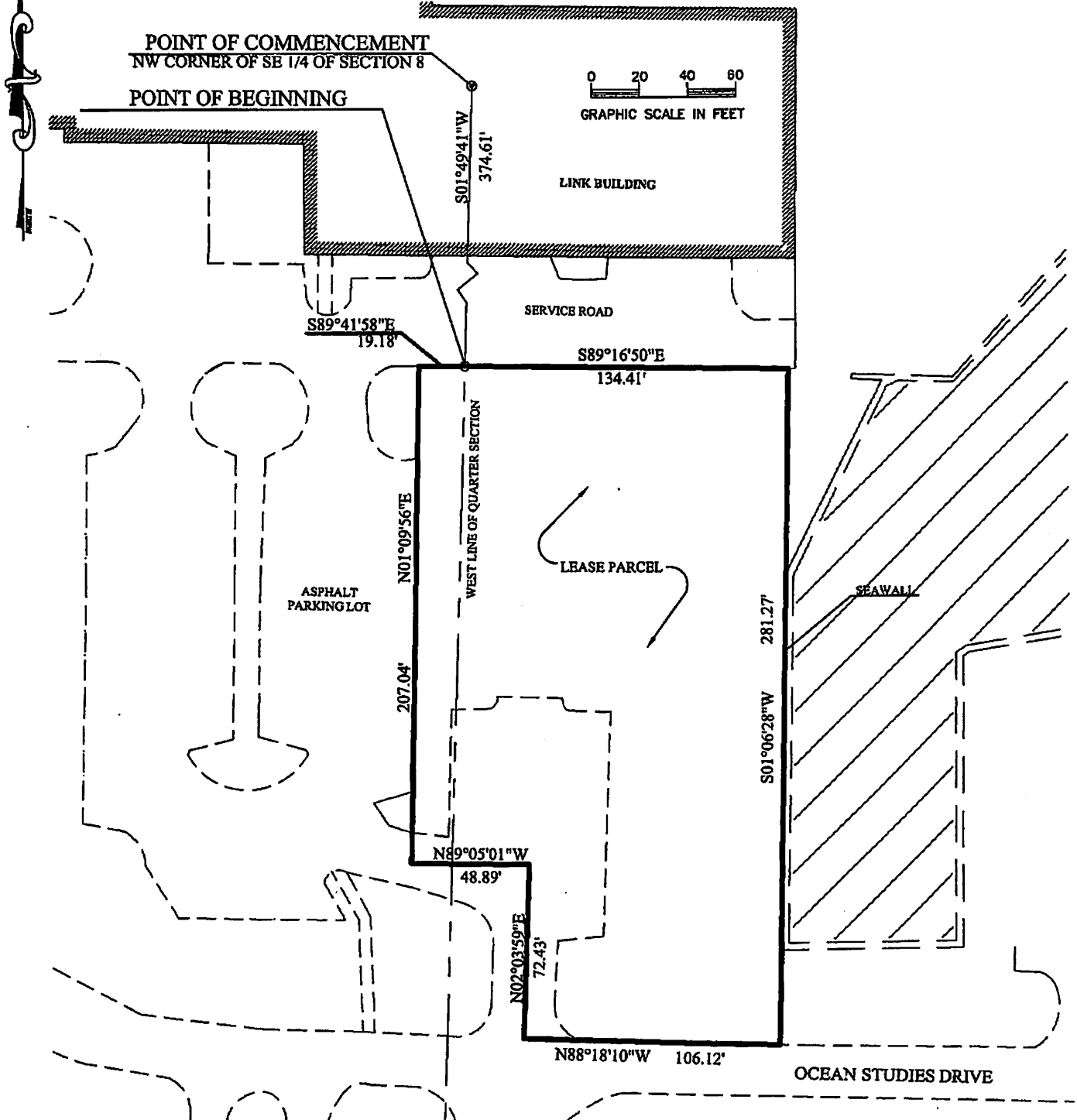


CONSULTING ENGINEERS
&
LAND SURVEYORS
2980 SOUTH 25th STREET
FORT PIERCE, FLORIDA 34982
(772) 484-3537

CERTIFICATE OF AUTHORIZATION NUMBER: 0000 4288

SKETCH OF DESCRIPTION

THIS IS NOT A SURVEY



BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 8 HAVING A BEARING OF S01°49'41\"W AND ALL OTHERS ARE RELATIVE THERETO.

NOT VALID WITHOUT SHEET 1 OF 2 Sheet 2 of 2

SKETCH OF DESCRIPTION LEASE PARCEL

Prepared For

SCHOOL BOARD OF ST. LUCIE COUNTY
MARINE & OCEANOGRAPHIC ACADEMY

File: 07-157 SD
Date: 5/08/08

Tech: AWR



CONSULTING ENGINEERS
&
LAND SURVEYORS
2980 SOUTH 25th STREET
FORT PIERCE, FLORIDA 34982
(772) 484-3537

CERTIFICATE OF AUTHORIZATION NUMBER: 0000 4286

Exhibit B

Site Plan

