



Item: VI.

Wednesday, August 19, 2009

SUBJECT: Termination of Ground Lease with Boca Raton Community Hospital

PROPOSED BOARD ACTION

Approve a Ground Lease Termination Agreement terminating the December 19, 2006 Ground Lease ("Ground Lease") between FAU and the Boca Raton Community Hospital ("BRCH").

BACKGROUND INFORMATION

On February 17, 2006, the University entered into a tri-partite affiliation agreement (the "Affiliation Agreement") with the University of Miami ("UM") and BRCH for the establishment of an academic medical center and a regional medical school campus on the FAU Boca Raton Campus. Under the Affiliation Agreement, UM and FAU were responsible for the development and delivery of a four-year medical education program. UM and FAU have met their obligations and a four-year regional campus of the UM medical education program is now fully operational on the Boca Raton campus, under the name of UMMSM@FAU.

Also under the Affiliation Agreement, BRCH had agreed to construct a replacement hospital facility on the FAU Boca Raton campus that would serve as the academic medical center for the UMMSM@FAU medical education program. On December 19, 2006, FAU and BRCH entered into a Ground Lease for the contemplated replacement facility.

Due to severe financial pressures, BRCH has previously informed FAU and UM that it would not be able to meet its obligations under the Affiliation Agreement and on January 21, 2009, this Board approved the termination of the Affiliation Agreement. The parties now desire to also terminate the Ground Lease with BRCH. FAU and UM otherwise continue work on a new bi-partite affiliation agreement for the continuation of the UMMSM@FAU program.

IMPLEMENTATION PLAN/DATE

Upon Board approval and execution by BRCH.

FISCAL IMPLICATIONS

None. No material construction efforts had been initiated.

Supporting Documentation: Proposed Ground Lease Termination Agreement

Presented by: David L. Kian,
Senior Vice President & General Counsel

GROUND LEASE TERMINATION AGREEMENT

THIS GROUND LEASE TERMINATION AGREEMENT (this “Termination Agreement”) is made as of the ____ day of _____, 2009, (the “Accelerated Termination Date”) by and between **Boca Raton Community Hospital, Inc.**, a Florida not for profit corporation (“**BRCH**”) and the **Florida Atlantic University Board of Trustees**, a Florida public body corporate (“**FAU**”).

RECITALS:

A. BRCH and FAU are parties to that Ground Lease dated and effective as of the 19th day of December, 2006 (the “Ground Lease”) pertaining to the lease of certain premises defined as the Master Lease Premises in the Ground Lease.

B. The Parties desire to clarify the respective rights and obligations of the parties under the Ground Lease by terminating the Ground Lease upon the terms, covenants, conditions and provisions hereinafter set forth.

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

1. Incorporation of Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference, as if set forth in their entirety.

2. Definitions. All terms used but not otherwise defined herein shall have the meanings set forth in the Ground Lease.

3. Termination of Ground Lease. The Parties hereby terminate the Ground Lease as of the Accelerated Termination Date. As of the Accelerated Termination Date, the Ground Lease shall be null and void and of no further force and effect, and, notwithstanding anything to the contrary in the Ground Lease, no Party shall have any further rights, liabilities or obligations thereunder, including without limitation, all rights, liabilities or obligations with respect to Section 1.6, Affirmative Joinder in Lessee’s Decision and Effort to Purchase; Section 7.1, Environmental Obligations; Section 7.2, Lessor’s Environmental Obligations; Section 8.1, Lessee Indemnification; Section 8.2, Lessor Indemnification; Section 13.16, Non-Compete Restriction; and Section 13.30, Purchase Option Agreement, each of which along with all other provisions of the Ground Lease shall be null and void and of no further force and effect. Each Party hereby releases the other Party and their respective trustees, officers and agents, from any and all claims and rights under the Ground Lease that such Party may have against the other Party or their respective trustees, officers and agents.

4. Waiver of Notice. The Parties waive any right to notice of termination set forth in the Ground Lease.

5. Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing, shall be delivered either in person, by overnight air courier, by certified, registered or express mail, or transmitted by confirmed facsimile followed by first class mail, postage prepaid, and shall be deemed to have been duly given and to have become effective (a) upon receipt if delivered in person or other electronic means, including by confirmed facsimile, arriving on any business day prior to 6:00 p.m. at the address of the addressee, or on the next succeeding business day if delivered on a non-business day or after 6:00 p.m. local time, (b) one business day after having been delivered to an air courier for overnight delivery or (c) three business days after having been deposited in the mails as certified, registered or express mail, return receipt requested, all fees prepaid, directed to the Parties or their assignees at the following addresses (or at such other address as shall be given in writing by a Party hereto):

If to BRCH, addressed to:

Boca Raton Community Hospital, Inc.
800 Meadows Road
Boca Raton, FL 33486
Attn: President and Chief Executive Officer

with a simultaneous copy (which shall not constitute notice) to counsel for BRCH:

Boca Raton Community Hospital, Inc.
800 Meadows Road
Boca Raton, FL 33486
Attn: General Counsel

If to FAU, addressed to:

President
Florida Atlantic University
Administration Building, Room 339
Boca Raton, FL 33431

with a simultaneous copy (which shall not constitute notice) to counsel for FAU:

General Counsel
Florida Atlantic University
Administration Building, Room 367
Boca Raton, FL 33431

6. Further Assurances. The Parties shall cooperate fully and in a timely manner and will use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, rules, and regulations to consummate and make effective the transactions contemplated under this Termination Agreement. From time to time, without further consideration, the Parties will, at their own

expense, execute and deliver, or cause to be executed and delivered, such documents as another party or any governmental entity with jurisdiction may reasonably request in order to carry out the purposes of this Termination Agreement. This Section shall survive the termination of the Ground Lease and the termination or expiration of this Termination Agreement.

7. Governing Law; Venue. The terms and provisions of this Termination Agreement shall be governed by and construed in accordance with laws of the State of Florida and venue for all disputes arising hereunder must be in state or federal courts having jurisdiction in Palm Beach County, Florida, and in no other jurisdiction.

8. Entire Agreement. This Termination Agreement constitutes the entire understanding and agreement of the parties hereto and supersede any prior written or oral agreement or notice pertaining to the subject matter hereof. The terms and provisions of this Termination Agreement shall not be construed more liberally in favor of, or more strictly against, any party.

9. Execution. This Termination Agreement may be executed in counterparts. Facsimile signatures shall be binding as original signatures.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have duly executed this Termination Agreement to be effective as of the day and year set forth above.

BOCA RATON COMMUNITY HOSPITAL, INC.

By: _____
Name: Jerry Fedele
Title: President and CEO
Date: _____

**FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES**

By: _____
Name: _____
Title: _____
Date: _____