



Item: SP: A-2

**Tuesday, June 4, 2019**

**SUBJECT:** Ground Lease Extension for the St. Lucie County School Board's Marine and Oceanographic Academy at the Harbor Branch Oceanographic Institute at FAU

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**PROPOSED BOARD ACTION**

Approve a five-year extension to an existing Ground Lease with the St. Lucie County School Board ("School District") for the operations of the School District's Marine and Oceanographic Academy ("MOA") currently operating at the Harbor Branch Oceanographic Institute at FAU ("FAU Harbor Branch"). The original Ground Lease was approved by this Board in 2009, as was a five-year renewal in 2014. Certain changes to the original Ground Lease and the 2009 Amendment are requested, as detailed below. The extended term would commence on July 1, 2019.

**BACKGROUND INFORMATION**

The MOA is an academic partnership between FAU Harbor Branch and the School District. The MOA is located on the FAU Harbor Branch campus, west of Dixie Highway, and is a satellite academy of Fort Pierce Westwood High School. Its students are selected from a diverse population of applicants from throughout the county. The MOA is a unique academic environment that integrates its core curriculum to focus on marine science at a working oceanographic research institution.

FAU Harbor Branch Marine Education staff work with the MOA faculty to develop the program. MOA students receive a customized integrated curriculum for enrichment in the field of marine and environmental studies. This curriculum blends all of the Florida and St. Lucie County curricular requirements with the best that the FAU Harbor Branch research and education community has to offer. MOA students take a full load of courses, including two science courses. FAU Harbor Branch provides 10-20% of the instruction in the science courses. Scientists, engineers, and educators teach through a combination of engaging, lecture, lab work, and hands-on experiences to provide an opportunity to broaden the experience of both MOA students and their teachers in marine science. Classes are taught at the highest level available including Advanced Placement and Dual Enrollment.

The MOA complements FAU's strategic plan and signature themes by increasing community engagement in St. Lucie County, supporting outreach activities related to marine and coastal issues, and training the next generation of ocean scientists and engineers. The MOA concept and programs could be expanded through FAU's geographical range as part of a STEM

(science, technology, engineering and math) initiative to improve scientific literacy at the high school level.

The School District desires to extend the Ground Lease for continued operations of the MOA. The School District would continue to retain sole responsibility for all costs and responsibilities associated with the MOA, including rent, utilities, and maintenance, as well as compliance with all applicable legal requirements governing security and access to school grounds. The cooperative academic relationship through which FAU Harbor Branch scientists provide professional and technical services to the MOA will continue to remain an integral part of the MOA curriculum.

The Administration and the School District propose making the following substantive modifications to the Ground Lease:

- Clarify the account number where the rent should be deposited; that TAG number is therefore included as a modification in this Amendment 2.
- Modify the parking limitations outlined in the Ground Lease so that a certain number of vehicles belonging to MOA students may be permitted.
- Remove Exhibit B – Academic Affiliation from the Ground Lease for this renewal term. FAU and the School District have been updating the terms related thereto on an annual basis outside of the Ground Lease, as a separate Partnership Agreement. Accordingly, the Exhibit B is no longer applicable, and so this Amendment 2 clarifies that the terms of the original Exhibit B are now to be agreed to by the parties in a separate, annual agreement.

#### **IMPLEMENTATION PLAN/DATE**

The lease extension would take effect on July 1, 2019.

#### **FISCAL IMPLICATIONS**

The original Ground Lease provided an initial annual rent that increased by three percent (3%) annually. Under the extension, the School District will continue to pay rent to FAU at the 3% annual escalator rate as noted in the original Ground Lease. As of July 1, 2019, annual rent shall be \$59,669.89. The School District shall also continue to pay for all costs associated with the MOA and retain all responsibility for MOA operations, maintenance, and security. The School District will also compensate FAU for the professional and technical services provided to the MOA by FAU Harbor Branch scientists.

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Supporting Documentation: Proposed Ground Lease Amendment 2  
Original 2009 Ground Lease and 2014 Amendment  
2018 – 2019 Partnership Agreement

Presented by: Mr. David Kian, Phone: (561) 297-3007  
Vice President and General Counsel

Dr. Daniel Flynn, Phone: (561) 297-0268  
Vice President for Research

## **AMENDMENT 2 TO GROUND LEASE**

This Amendment 2 to Ground Lease ("Amendment 2") dated as of the last date signed below by the parties, is by and between the Florida Atlantic University Board of Trustees ("University" or "Lessor") and The School Board of St. Lucie County, Florida, the governing body of the School District of St. Lucie County ("School District" or "Lessee").

WHEREAS, the University and the School District are parties to that certain Ground Lease Agreement dated March 18, 2009 ("Ground Lease"), pursuant to which the School District ground leases from the University certain property on the University's Harbor Branch campus for the operations of the School District's Marine and Oceanographic Academy;

WHEREAS, the parties amended the Ground Lease on or about June 20, 2014 (the "Amendment"), extending the Term for an additional five (5) years, commencing July 1, 2014, and ending on June 30, 2019;

WHEREAS, the parties desire to further amend the Ground Lease, pursuant to the terms and conditions set forth in this Amendment 2; and

WHEREAS, all capitalized terms not defined herein shall have their meanings as ascribed in the Ground Lease.

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

1. Section 6 of the Ground Lease ("Term") is further amended to extend the Term for an additional five (5) years, commencing July 1, 2019 and ending June 30, 2024.
2. Section 7.A ("Rentals and Payments") of the Ground Lease is further amended to provide for an annual rental amount of \$59,669.89, to be paid monthly in the amount of \$4,972.49 on the 1<sup>st</sup> day of each month of the Term, commencing on July 1, 2019. On each anniversary date of the Ground Lease, rent shall continue to increase by three percent (3%).
3. Section 7.B ("Rentals and Payments") of the Ground Lease shall be amended to add the account number to where funds should be deposited: "TAG000469."
4. Section 10.A. of the Ground Lease ("Parking & Access") is hereby replaced in its entirety and is replaced with the following language:
  - A. 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, parents, visitors, school buses serving MOA 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 will not be permitted on the Premises. However, a certain number of vehicles belonging to certain MOA students may be permitted on the Premises, as agreed to by the parties in writing.
5. Exhibit B of the Ground Lease ("Academic Affiliation") shall not apply for the Term

contemplated in this Amendment 2, as the terms thereof are covered by a separate contract entered into annually by the parties, specifically, as for the University, by its Division of Research. However, should such a separate contract not be entered into for any year of the Term contemplated in this Amendment 2, Exhibit B of the Ground Lease may be relied upon.

6. Except as specifically modified by this Amendment, all other provisions of the Ground Lease shall remain in full force and effect and shall be binding upon the parties in accordance with their terms.

IN WITNESS OF THE FOREGOING, the parties have signed this Amendment 2 as of the Effective Date.

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES

By: \_\_\_\_\_  
Name: Dr. John Kelly  
Title: President  
Date: \_\_\_\_\_

THE SCHOOL DISTRICT OF  
ST. LUCIE COUNTY

By: \_\_\_\_\_  
Name: Deborah Hawley  
Title: Chairman  
Date: \_\_\_\_\_

## **GROUND LEASE AGREEMENT**

This Ground Lease Agreement ("Agreement") is made and entered into as of this 18th day of March, 2009 ("Effective Date"), 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 on the Harbor Branch Campus, pursuant to a Ground Lease dated July 1, 2008 and a Facilities Use Agreement last executed July 29, 2008 ("Existing Agreements"); and

WHEREAS, the School District desires to ground lease an alternative portion of real property on the Harbor Branch Campus from the University in order to relocate and expand the capacity of the MOA on the Harbor Branch Campus;

WHEREAS, the University desires to ground lease an alternative portion of the real property within the Harbor Branch Campus to the School District in order to accommodate such expansion and relocation, 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 five (5) acres 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. The University acknowledges and agrees that Lessee's operation of an educational laboratory on the Premises will require the use of some hazardous substances. Lessee shall receive University approval prior to bringing hazardous substances on the Premises, which approval shall not be unreasonably withheld, delayed, or conditioned.
- F. Administrative matters for Lessee's personnel (i.e., terminations) shall not be conducted on the Premises.
- G. The use of the Premises by the School District is premised on the existence of an academic affiliation pertaining to the MOA between the University and the School District, as more specifically set forth on Exhibit B.

### 3. Improvements

- A. The School District, at its sole cost and expense, may place up to twenty-eight (28) portable-hybrid facilities on the Premises in order to provide educational facilities for up to 400 MOA students (and associated staff) (the "Portables-Hybrids"). The School District may begin placing Portables-Hybrids on the Premises as of the Effective Date of this Agreement. Additional Portables-Hybrids and/or students are subject to the prior written consent of the University. The projected size and location of such Portables-Hybrids on the Premises shall be as depicted on Exhibit C attached hereto ("Site Plan"). The size and/or location of the Portables-Hybrids may be adjusted within the Premises upon written approval of the University, which approval shall not be unreasonably withheld, delayed or conditioned.
- B. Any construction, connection or installation of facilities, utilities or other infrastructure activities necessary for the operation of the Portables-Hybrids (including, as needed, the installation of a generator for the existing lift station, modifications to the existing water plant, including additional potable water storage, and/or the addition of new water lines) 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, operation and repairs of any and all improvements made to the Premises, shall ensure that all improvements are installed, operated 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 and unless otherwise directed by the University, 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-Hybrids, 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.
- F. The School District shall provide the University with as-built drawings of all improvements made by the School District on the Premises.

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-Hybrids, including water, sewer, gas, 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 costs shall be paid by Lessee to the University on a monthly basis in addition to the rental payment set forth in Section 7A below; provided, however, that (i) the School District agrees to

have installed, at its sole cost and expense, a separate water meter for the Premises, and (ii) the School District acknowledges and agrees that water and sewer costs for the first year have been estimated at \$30 per student (\$750 per month for the first year, based on 300 students total) and shall be reconciled annually and adjusted appropriately to reasonably reflect the School District's fair share costs associated with water and sewer use on the Premises. Lessee shall also pay to the University its fair share costs of any impact fees or concurrency costs (expenses or costs that purport to defray the additional strain upon public infrastructure from a new facility, including extension or expansions of solid waste, drainage, potable water, parks and recreation, or transportation facilities) associated with MOA operations on the Premises, which payment shall be due thirty (30) days after receipt of an invoice from the University specifying the impact fees or concurrency costs due and owing. Potable water and sanitary sewer service to the Premises shall be accessible from distribution points existing as of the Effective Date. The School District, at its sole cost and expense, shall be responsible for extending and/or expanding the distribution system as needed for MOA operations at the Premises.

- B. Telephone and data connections and janitorial and waste services shall be the sole cost and responsibility of the School District and shall be established or contracted for independent of FAU infrastructure and existing connections or services.
- C. 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-Hybrids, 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, 2009 ("Commencement Date") and continue for a term of five years, ending on June 30, 2014 ("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 Commencement Date of this Agreement, rent of \$44,400, to be paid monthly in the amount of \$3,700, and on or before the 1<sup>st</sup> day of each month, to the offices of the University as set forth below. On each anniversary date of this Agreement, rent shall increase by three percent (3%).



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-Hybrids. 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 & Access

A. 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, parents, visitors, 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 MOA students, will not be permitted on the Premises.

B. Access to the Premises shall be as depicted on the Site Plan. New curb cuts or access points for the Premises shall be the sole cost and responsibility of the School District and subject to the prior approval of the University, which approval shall not be unreasonably withheld, delayed or conditioned.

11. Security

Lessee shall assume sole responsibility and cost for compliance with all applicable legal requirements governing security and access to school grounds. Lessee acknowledges and agrees that the University shall not be responsible for providing, and that Lessee will not rely upon the University for, police and emergency response services for the Premises. The Lessee shall coordinate with the University with respect to the provision of all such services such that the University is reasonably satisfied with how such services shall be provided. In the event the University is required to or agrees to provide any such services, the Lessee agrees to be responsible for any and all costs associated with the University's provision of such services to Lessee. Only MOA students, parents,

visitors, and Lessee's staff and contractors doing business at the MOA shall be permitted on the Premises.

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, which may be found at <http://www.fau.edu/policies/index.php>, 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-Hybrids upon request of the

University, within sixty (60) 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 sixty (60) 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, not including utility fixtures desired to remain by mutual agreement, 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

Judi Miller  
Signature  
Judi Miller  
Name  
SLCSB Chair  
Title  
2/24/09  
Date

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES

[Signature]  
Signature  
FRANK T. BROGAN  
Name  
PRESIDENT  
Title  
3/4/09  
Date

[Signature] 3.3.09  
APPROVED AS TO FORM  
AND LEGALITY  
General Counsel  
Florida Atlantic University

Exhibit A

The Premises

LEGAL DESCRIPTION

A parcel of land lying in Section 8, Township 34 South, Range 40 East, St. Lucie County, Florida, being more particularly described as follows;

Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of said Section 8, as per Official Records Book 2922, Page 222, Public Records of St. Lucie County, Florida; thence N89°57'08"E a distance of 888.17 feet; thence N24°37'16"W a distance of 358.00 feet; thence N89°57'08"E a distance of 300.00 feet; thence N13°22'50"W a distance of 295.51 feet; thence N24°15'25"W a distance of 179.85 feet; thence N04°48'35"W a distance of 97.88 feet; thence N20°53'49"W a distance of 83.10 feet; thence N07°52'17"E a distance of 67.10 feet to the POINT OF BEGINNING of the following described parcel;

Thence continue N07°52'17"E a distance of 64.53 feet; thence N05°28'43"W a distance of 83.80 feet; thence N22°17'45"W a distance of 117.21 feet; thence N19°07'20"W, as referenced to a survey prepared by HSBS, Project No. 07-026C, dated December 05, 2007, a distance of 245.23 feet; thence N81°12'01"E a distance of 167.39 feet; thence S60°58'13"E a distance of 55.20 feet to the intersection with a non tangent curve concave to the north, having a radius of 75.77 feet, the chord of which bears S84°02'27"E; thence easterly along the arc of said curve, a distance of 61.12 feet through a central angle of 46°13'06"; thence N70°32'38"E a distance of 157.94 feet; thence N71°35'58"E a distance of 117.36 feet to the West right-of-way line of Old Dixie Road (a 30.00 foot wide right-of-way); thence Southeasterly along the right-of-way of said Old Dixie Road the following 4 courses and distances; thence S17°39'24"E a distance of 71.93 feet; thence S18°30'56"E a distance of 100.02 feet; thence continue S18°30'56"E a distance of 100.02 feet; thence S19°05'18"E a distance of 84.41 feet; thence S66°03'41"W a distance of 571.24 feet to the POINT OF BEGINNING.

Containing 4.985 acres, more or less.

NOTE 1: This is not a sketch of survey, but only a graphic depiction of the description shown hereon. there has been no field work, viewing of the subject property or monuments set in connection with the preparation of the information shown hereon.

NOTE 2: Lands shown hereon were not abstracted for right-of-way and/or easements of record.

NOTE 3: There appears to be a scrivener's error on the abovementioned description in Official Records Book 2922, Page 222. This description uses the correct bearing to create a proper closure.

*Jas A. Fowler*

2/12/09

Sheet 1 of 2

P:\Proj-2007\07-157 Harbor Branch (FAU-SLCSS)\SURVEY DWG\07-157\set\setbook-etc.dwg, 2/12/2009 1:32:15 PM

DESCRIPTION  
OF  
SCHOOL SITE

File: 07-157s&  
school-site.dwg  
Date: 2-12-2009

Tech: GLM

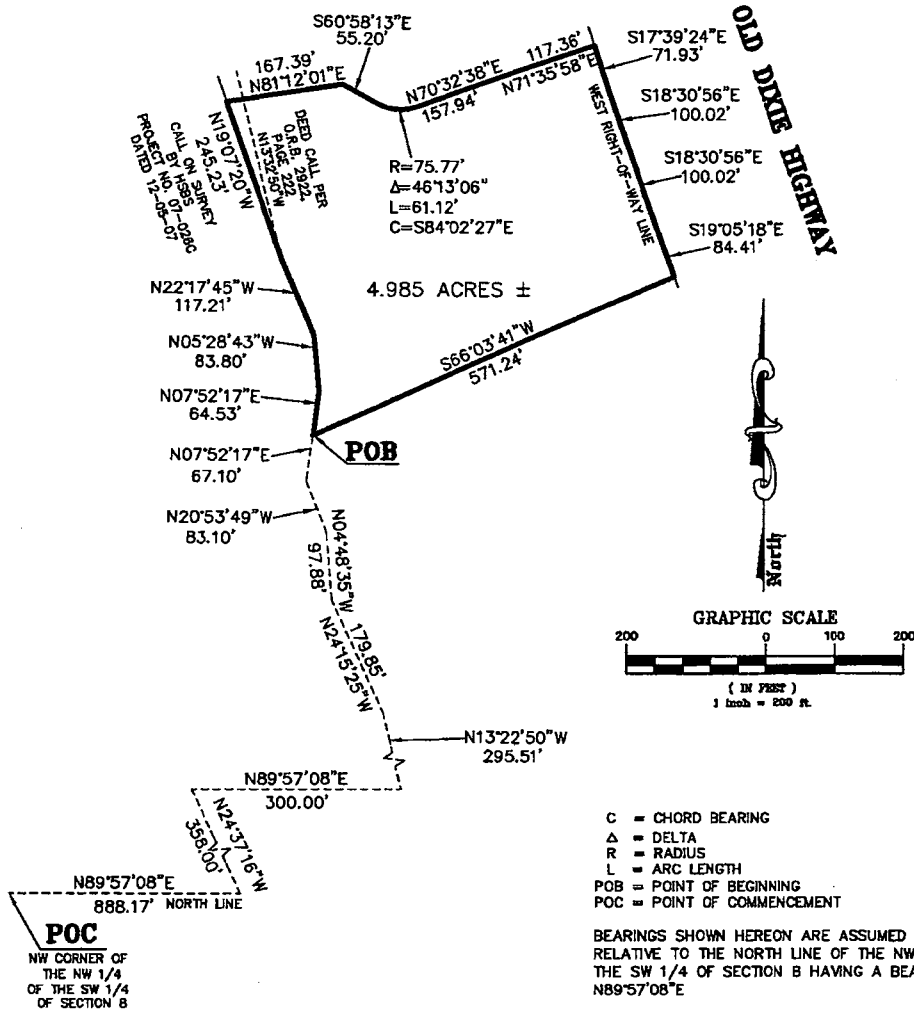


CULPEPPER & TERPENING, INC  
CONSULTING ENGINEERS | LAND SURVEYORS  
2980 SOUTH 25th STREET  
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PHONE 772-464-3537 FAX 772-464-9497  
www.ct-eng.com  
STATE OF FLORIDA CERTIFICATION No. LB 4286



# SKETCH TO ACCOMPANY LEGAL DESCRIPTION

THIS IS NOT A SURVEY



- C = CHORD BEARING
- Δ = DELTA
- R = RADIUS
- L = ARC LENGTH
- POB = POINT OF BEGINNING
- POC = POINT OF COMMENCEMENT

BEARINGS SHOWN HEREON ARE ASSUMED AND RELATIVE TO THE NORTH LINE OF THE NW 1/4 OF THE SW 1/4 OF SECTION B HAVING A BEARING OF N89°57'08"E

Sheet 2 of 2

P:\P\04-2007\07-167 Harbor Branch (FALLS) SURVEY DWG\SURV07-157\66d-school-site.dwg, 2/12/2009 12:11:18 PM

**SKETCH OF DESCRIPTION**  
OF  
**SCHOOL SITE**

File: 07-157e&  
school-site.dwg  
Date: 2-12-2009  
Tech: GLM

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## Exhibit B

### Academic Affiliation

**HBOI at FAU** will provide services to the MOA, including but not limited to the following:

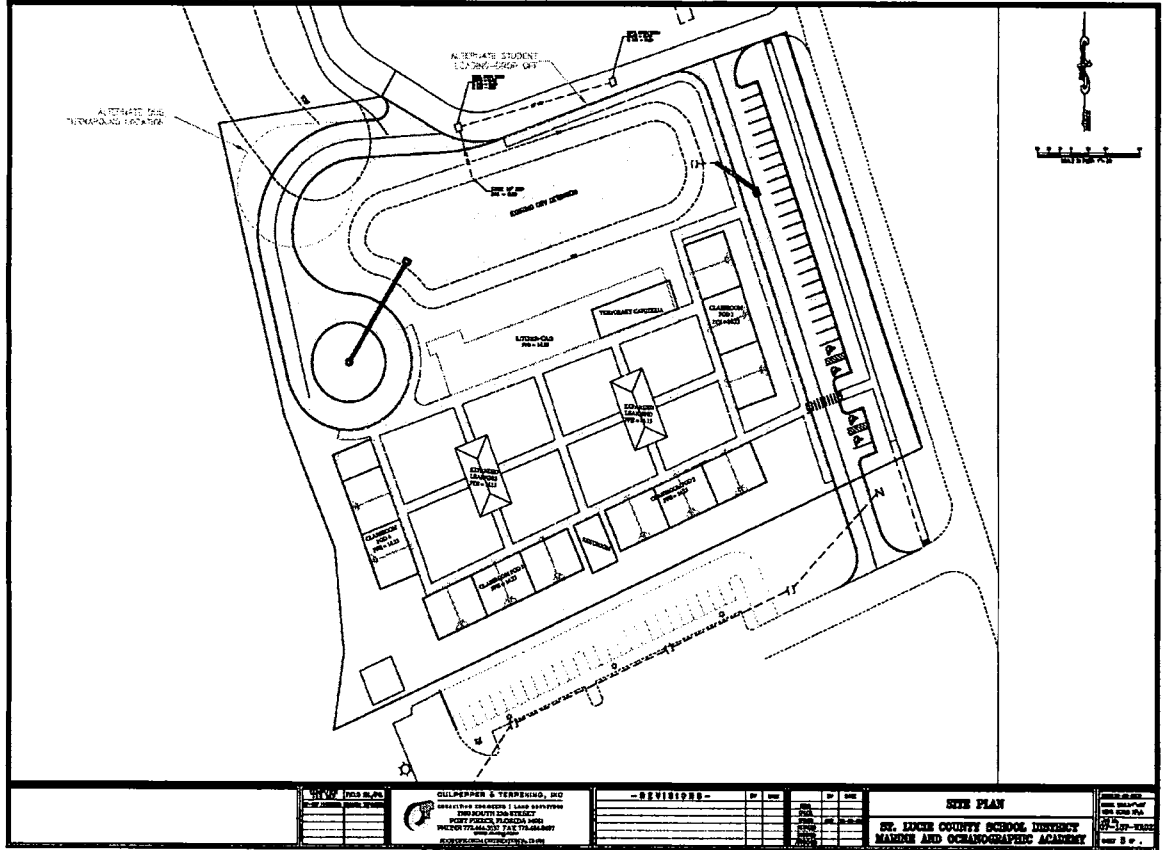
- Professional and technical services (20% of the contact time for each science course). These may include lectures by scientists, laboratory direction and supervision, mentoring, and/or field instruction. Included will be the use of HBOI at FAU education laboratory equipment and pontoon boats or other research vessels where appropriate. One hour of scientist preparation time and one hour of “restoration” time will be allowed for each hour of contact.
- For this contact time, HBOI at FAU will provide use of classroom, auditorium, laboratory, or field space for MOA students to include contact time spent with scientists and pre-/post-time spent with MOA instructors (including dual enrollment instructors) or HBOI at FAU laboratory assistants.
- HBOI at FAU will provide appropriate materials and supplies to students and teachers for HBOI at FAU interactions.
- Use of auditorium space for MOA-related activities, as mutually agreed to each year and scheduled, subject to availability, through HBOI at FAU Marine Education.
- Access to the Indian River Lagoon to conduct field and water activities as part of the jointly-approved MOA science curriculum.
- Use of the HBOI at FAU research library, subject to HBOI at FAU library rules. Student use to be supervised by MOA staff.
- Consultant time with HBOI at FAU education and scientific staff to design appropriate lessons for MOA curriculum and HBOI at FAU participation in a minimum of two Oversight Committee meetings per year with the School District.
- Invoices for payment will be sent by HBOI at FAU to the School District Office of Curriculum and School Improvement twice each semester.

**St. Lucie County School District** responsibilities:

- Prompt payment to HBOI at FAU (within 30 days of invoice) of fees for the services described above, the rate based on HBOI at FAU’s cost to deliver its part of the program, and determined by mutual agreement on or before June 30<sup>th</sup> each year
- Teacher supervision of students at all times
- School and district support of all coordination and evaluation efforts
- Attendance at oversight committee and lesson design meetings as requested
- Security clearances as may be required by the School District for all applicable HBOI at FAU personnel
- Arranging transportation for MOA student activity on the eastern portion of the HBOI at FAU campus
- Obtaining parent/guardian releases for MOA student activity on the HBOI at FAU campus

# Exhibit C

## Site Plan



**AMENDMENT TO GROUND LEASE**

This Amendment to Ground Lease ("Amendment") dated as of \_\_\_\_\_, 2014 is by and between the Florida Atlantic University Board of Trustees ("University" or "Lessor") and The School Board of St. Lucie County, Florida, the governing body of the School District of St. Lucie County ("School District" or "Lessee").

WHEREAS, the University and the School District are parties to that certain Ground Lease Agreement dated March 18, 2009 ("Ground Lease"), pursuant to which the School District ground leases from the University certain property on the University's Harbor Branch campus for the operations of the School District's Marine and Oceanographic Academy; and

WHEREAS, the parties desire to amend the Ground Lease, pursuant to the terms and conditions set forth in this Amendment; and

WHEREAS, all capitalized terms not defined herein shall have their meanings as ascribed in the Agreement.


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

1. Section 6 of the Ground Lease is amended to extend the Term for an additional five (5) years, commencing July 1, 2014 and ending June 30, 2019.
2. Section 7 of the Ground Lease is amended to provide for an annual rental amount of \$51,471.84, to be paid monthly in the amount of \$4,289.32 on the 1<sup>st</sup> day of each month of the Term, commencing on July 1, 2014. On each anniversary date of the Ground Lease, rent shall continue to increase by three percent (3%).
3. Section 2.G. of the Ground Lease is amended to add the following sentence: "Each year of the Ground Lease, the parties shall mutually agree upon updates to the services and contact hours provided by the University as set forth in Exhibit B for the upcoming year.
4. Except as specifically modified by this Amendment, all other provisions of the Ground Lease shall remain in full force and effect and shall be binding upon the parties in accordance with their terms.

IN WITNESS OF THE FOREGOING, the parties have signed this Amendment effective as of the date first set forth above.

FLORIDA ATLANTIC UNIVERSITY  
BOARD OF TRUSTEES

THE SCHOOL DISTRICT OF  
ST. LUCIE COUNTY

By:   
Name: Dr. John Kelly  
Title: President  
Date: 6/20/14

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Marine Oceanographic Academy (MOA): A Science and Education Partnership Agreement  
St. Lucie County School District (SLCSD) and  
FAU Board of Trustees on behalf of Harbor Branch Oceanographic Institute (HBOI/FAU)  
(2018-2019)**

Agreed upon roles in the partnership:

**HBOI/FAU will provide the following services to the MOA:**

- Professional and technical services as follows:

<b>Courses</b>	<b># of sections</b>	<b>% of Course Contact Time</b>	<b># of Contact Hours/Student</b>
<b>Freshman Year</b>			
Biology 1	3	15%	20.25
Environmental Science	2	15%	20.25
AICE Marine Science 1	5	15%	20.25
<b>Sophomore Year</b>			
Biology 1	2	15%	20.25
Marine Science 2	2	15%	20.25
<b>Junior Year</b>			
Chemistry	3	15%	20.25
Physics 1	2	15%	20.25
<b>Senior Year</b>			
AICE Environmental Management	2	15%	20.25
Physics 2	1	10%	13.5

Each MOA section can accommodate up to 25 students each. These services may include lectures by scientists, laboratory direction and supervision, mentoring, and/or field instruction. One hour of scientist preparation time and one hour of "restoration" time will be allowed for each hour of contact.

- For this contact time, HBOI/FAU will provide use of classroom, auditorium, laboratory, or field space for MOA students to include contact time spent with scientists and pre-/post-time spent with MOA instructors HBOI/FAU laboratory assistants.
- Consultant time with HBOI/FAU education and scientific staff to design appropriate lessons for MOA curriculum
- HBOI/FAU participation in a minimum of two Oversight Committee meetings per year with SLCSD.
- HBOI/FAU will provide that appropriate materials and supplies for all experiences are available to students and teachers.
- Use of the HBOI/FAU research library, subject to HBOI/FAU library rules. Student use to be supervised by MOA staff.
- Access by MOA instructors and students to the Indian River Lagoon to conduct field and water activities as part of their jointly approved MOA science curriculum.

- Classes conducted by dual enrollment instructors for MOA will be afforded the same access to auditorium, library, laboratories, and field space, as is provided for MOA instructors.
- Invoice for payment will be sent to Dr. Helen Wild (SLCSD), twice each semester.
- Period of Performance: August 1, 2018 to July 31, 2019

**St. Lucie County School District will provide:**

- Prompt payment of an annual rate of \$235,620 (\$58,905 for each of 4 payments) to HBOI/FAU (within 30 days of invoice) of fees for the services described above and does not include tuition payments for FAU courses taught under a separate Dual Enrollment Articulation Agreement. Payment will be made once the SLCSD has agreed that service has been satisfactorily completed.
- Teacher supervision of students at all times.
- Transportation to the Johnson Education Center for all MOA student activities conducted by HBOI/FAU.
- Obtaining parent/guardian releases for MOA student activity on the HBOI/FAU campus.
- School and district support of all coordination and evaluation efforts.
- Attendance at oversight committee and lesson design meetings as requested.
- Security clearances as may be required by the School District for all applicable HBOI/FAU personnel.
- Cooperation in efforts to secure additional funding for expansion of the program.

Approved by St. Lucie County School District:

Dr. Donna Mills

Title: Chair

Date: 9/18/18

Approved 8-14-2018

Approved by Florida Atlantic University  
Board of Trustees:

Nancy Thomas

Title: Associate Director

Date: 8/14/2018