

**A RESOLUTION APPROVING THE DEVELOPMENT OF A RESEARCH FACILITY AND ENTERING INTO A GROUND LEASE AGREEMENT WITH RYAN COMPANIES USA, INC., OR AN AFFILIATE; AUTHORIZING ENTERING INTO AN AFFILIATION AGREEMENT WITH INTERNATIONAL FLAVORS AND FRAGRANCES INC.; REQUESTING THE FLORIDA BOARD OF GOVERNORS TO APPROVE THE PROJECT AND APPROVE THE TERMS OF THE GROUND LEASE AGREEMENT AND THE AFFILIATION AGREEMENT; PROVIDING AN EFFECTIVE DATE.**

WHEREAS, The Florida Polytechnic University Board of Trustees (the "Board"), the governing body of the Florida Polytechnic University (the "University") is authorized and empowered pursuant to Section 1013.171 (1), Florida Statutes and the University's policies to lease its land for the purpose of having erected thereon facilities and accommodations necessary and desirable to serve the educational needs and purposes of the University; and

WHEREAS, the Board finds that a need exists to develop research facilities on campus to expand and develop research activities for the University's students and faculty; and

WHEREAS, the facility is to be located on Lot S8 of the Lakeland campus and is consistent with the Board's 2015-2025 Master Plan Update (amended May 25, 2021) (the "Master Plan"); and

WHEREAS, the Board conducted a publically announced competitive selection process as required pursuant to Section 1013.171 (4), Florida statutes and issued ITN #21-001 on November 12, 2020 for the development of an on-campus research facility (the "Project"); and

WHEREAS, the Board received one proposal in response to the ITN which was submitted by International Flavors and Fragrances Inc. ("IFF") and Ryan Companies USA, Inc. ("Ryan") pursuant to which Ryan would design, build, finance and maintain a 30,000 to 33,000 square foot building on land to be ground leased to Ryan by the Board that Ryan would in turn sublease the building to IFF pursuant to a sublease agreement with Ryan; and

WHEREAS, IFF will enter into an affiliation agreement (the "Affiliation Agreement") with the University pursuant to which both the University and IFF will pursue joint research activities; and

WHEREAS, the Board has negotiated the terms and provisions of a Ground Lease Agreement attached hereto as item (a) of Appendix A and the Senior Vice President has reviewed the Ground Lease Agreement in accordance with the Board's Real Property Policy; and

WHEREAS, the Board has negotiated the terms and provisions of an Affiliation Agreement attached hereto as item (b) of Appendix A and the Senior Vice President has reviewed the Affiliation Agreement; and

WHEREAS, the Board will have no financial obligations to IFF or Ryan under the Ground Lease Agreement nor will the Board have any interest in the Project or related facilities until termination of the Ground Lease Agreement; and

**BE IT RESOLVED BY THE UNIVERSITY OF FLORIDA POLYTECHNIC BOARD OF TRUSTEES:**

**Section 1.** The Board hereby finds that the Project is necessary and desirable to be erected on its main campus in Lakeland and is consistent with the University's Master Plan and it is desirable to develop research facilities on campus. The Board hereby approves the development of the Project, as more particularly described herein, the Affiliation Agreement, and the Ground Lease Agreement with Ryan, or an entity providing the capital necessary to design, build, finance, manage, operate and maintain the Project that will be sublease to IFF and requests the Florida Board of Governors (the "Board of Governors") to approve the Project, the terms of the Ground Lease Agreement and the Affiliation Agreement.

**Section 2.** The Project is consistent with the objectives contained in the Campus Master Plan including Goal 1A, Objective 1A.1 that generally provides as a goal of the University to provide enhanced support facilities for research and development, including expanding on campus opportunities to accommodate and expand research activities for the University.

**Section 3.** The Board hereby finds that development of the Project and entering into the Affiliation Agreement (i) is consistent with the goals contained in the Board's 2018-2023 Strategic Plan including Goal 1 to produce well educated and highly skilled global citizens through our continuing commitment to students' success; Goal 4 to use sound financial management to establish a strong and sustainable economic advancement which requires enhancing the physical infrastructure of the campus thorough fiscally responsible investments; Goal 11 to conduct applied research to strengthen University impact; and Goal 12 to develop an extended campus to support University growth by developing an aggressive capital growth plan for building out the campus using combinations of Public-Private Partnerships (P3s) and leased spaces in surrounding areas. and (ii) complies with the requirements of University policy FPU-8.005 Real Property Leasing.

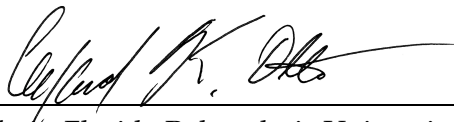
**Section 4.** The project is consistent with "Key Initiatives & Investments" as stated in the Florida Polytechnic University 2021 Accountability Plan and with the 2025 Board of Governors' Excellence Goal to increase undergraduate participation in research and the Productivity Goal to increase research activities and attract more research funding from external sources including federal and private sources. Construction of the Project is expected to begin following entering into the Ground Lease Agreement and is expected to be completed in mid-2023.

**Section 5.** The University President, the authorized representatives of the University and the members of the Board are hereby authorized to take all actions and steps, to execute all instruments, documents, and contracts, and to take all other actions as they may deem necessary or desirable, in connection with the Project and this resolution, including the execution and delivery of a Ground Lease Agreement and the Affiliation Agreement. The University's President or the President's designee is authorized to execute and deliver the Ground Lease Agreement and the Affiliation Agreement in final forms acceptable to the President, or the President's designee, General Counsel and Bryant Miller Olive P.A., the University's Special Counsel.

**Section 6.** In making the determination to approve the Project and the terms of the Ground Lease Agreement, the Board has reviewed the information attached as Appendix A and finds that the Project, the Ground Lease Agreement and the Affiliation Agreement are in compliance with the University's Campus Master Plan and applicable law.

**Section 7.** This Resolution shall take effect immediately upon its adoption.

Adopted this 25th day of May, 2021.



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Chair, Florida Polytechnic University Board of Trustees (SIGNATURE)

Clifford K. Otto

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Chair, Florida Polytechnic University Board of Trustees (PRINT)

May 27, 2021

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DATE

## Appendix A

The following documents have been reviewed by the Board prior to the execution of this Resolution:

- (a) the Ground Lease Agreement agreed to in all material respects by Ryan;
- (b) the Affiliation Agreement agreed to in all material respects by IFF;
- (c) the depiction of the Project location on the Campus Master Plan Map, along with preliminary Project renderings and proposed floor plan; and
- (d) the letter of Bryant Miller Olive P.A., University Special Counsel, describing the rights and remedies to be available to the University upon a default of the Ground Lease Agreement by Ryan or the Affiliation Agreement with IFF.

**GROUND LEASE AGREEMENT**

LANDLORD: THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES, a  
public body corporate of the State of Florida

TENANT: RYAN COMPANIES US, INC.

SITE: FLORIDA POLYTECHNIC UNIVERSITY CAMPUS

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Exhibit A Legal Description of Land  
Exhibit B Permitted Title Encumbrances  
Exhibit C Memo of Ground Lease  
Exhibit D Form of IP License Agreement  
Exhibit E Site Plan  
Exhibit F [Reserved]  
Exhibit G Legal Description of Outfall Easement  
Exhibit H Form of Release  
Exhibit I Construction Timeline  
Exhibit J Depiction of Staging Area  
Exhibit K Mobilization Plan  
Exhibit L University Design Standards

## **GROUND LEASE AGREEMENT**

**THIS GROUND LEASE AGREEMENT** ("Lease") is made and entered into as of \_\_\_\_\_, 2021 (the "Effective Date"), between RYAN COMPANIES US, INC. ("Tenant") and THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES, a public body corporate of the State of Florida and an institution of higher education ("Landlord"); with reference to the following facts:

- A. Landlord is the fee simple owner of certain land in Lakeland, Florida upon which is located the main campus of Florida Polytechnic University (the "Florida Poly Campus").
- B. Landlord is authorized to enter into this Lease pursuant to the provisions of Section 1013.171(1), Florida Statutes and Florida Board of Governors Public-Private Partnership (P3) Guidelines.
- C. Landlord's institutional missions include teaching, research, and service at Florida Polytechnic University ("Florida Poly").
- D. The availability of on-campus state of the art research facilities is an objective of Landlord in entering into this Lease and related agreements.
- E. Landlord, in an effort to use its resources in an efficient and effective manner, has determined that it is in the Landlord's best interest to pursue an arrangement whereby a qualified private entity shall provide planning, financial analysis, private financing, design, construction, operation and management of a research facility at the Florida Poly Campus.
- F. Landlord issued Florida Poly ITN No. 21-001 including the above terms, and Landlord selected the team of International Flavors & Fragrances, Inc. ("IFF") and Tenant after they submitted their best and final offer.
- G. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Land in accordance with the terms and conditions of this Lease, for the purpose of Tenant constructing, operating and subleasing to Subtenant an approximately 33,000 square foot building and on-site improvements specifically related thereto with the intention that the building be used by Subtenant for the purpose of promoting scientific research and development in affiliation with and related to the research and educational activities of Landlord (collectively, the "Project").
- H. Tenant has entered into this Lease on the condition Tenant will in turn enter into a sublease with IFF.
- I. IFF will contemporaneously with entering into the Sublease enter into the Affiliation Agreement with Landlord describing the relationship between IFF and Landlord.

NOW, THEREFORE, good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Landlord and Tenant agree as follows:

In consideration of the mutual agreements contained in this Lease, Landlord leases to Tenant that certain real property located in the City of Lakeland, Polk County, Florida, and being more particularly described on **Exhibit A** attached hereto and by this reference and incorporated herein (the "Land"). Tenant shall construct the Improvements on the Land and may make alterations, replacements, modifications or additions thereto in accordance with the terms of this Lease which Improvements shall be and remain the property of Tenant during the term of this Lease and thereafter revert to Landlord. The Land and the Improvements are hereinafter collectively referred to as the "Property".

The Land is leased hereunder subject only to the encumbrances comprising the Permitted Title Encumbrances (as hereinafter defined).



This Lease is made upon the following terms and conditions:

1. DEFINITIONS AND BASIC TERMS.

1.01 Defined Terms. In addition to any other terms whose definitions are fixed and defined by this Lease, each of the following defined terms, when used in this Lease with an initial capital letter, shall have the meaning ascribed to them in this Article 1:

- a. *Affiliate* - means, with respect to any Person; (a) any other Person that, directly or indirectly, through one or more intermediaries, Controls, is controlled by or is under common control with such Person, (b) any successor to such Person by merger, consolidation or reorganization, (c) any purchaser of all or substantially all of the assets of such Person as a going concern, or (d) an entity which directly or indirectly acquires all, substantially all or a controlling interest of the stock, shares or other equity interests of such Person, whether in connection with a public offering, a private sale thereof or otherwise.
- b. *Affiliation Agreement* – shall initially mean that certain affiliation agreement dated on or about the date hereof by and between IFF and the Landlord, and shall also include any comparable future agreement entered into by and between any future Subtenant and Landlord outlining the affiliation between such future Subtenant and the Landlord related to joint research and development activities between such parties.
- c. *Approval Period* – means the time period beginning the day immediately following the last day of the Inspection Period, and ending two hundred seventy (270) days thereafter, as may be extended in accordance with Paragraph 23.02, entitled "Approval Period."
- d. *Breakage Costs* - means any exit fees, deferred financing fees, defeasance costs, prepayment premiums or penalties, make-whole payments or other prepayment amounts, including payments owed or receivable in connection with the early termination of interest rate hedging arrangements, as the case may be, that Tenant must pay under any Funding Agreement or otherwise as a result of (x) the prepayment, redemption, or acceleration of the maturity of any Project Debt or (y) the termination, in whole or in part, of any interest rate swaps or commitments to lend or provide Project Debt.
- e. *Business Days* - wherever used in this Lease, the term "business day" or "business days" shall not include Saturday, Sunday, any days that are federal holidays, or the days between (and including) Christmas Day and New Year's Day.
- f. *Board of Governors* – means the Florida Board of Governors of the State University System.
- g. *Commencement Date* – means the date that is the earlier of (i) the date Subtenant commences regular business operations from the entire Property, or (ii) sixty (60) days after issuance of a temporary certificate of occupancy allowing Subtenant to install its trade fixtures and personal property.
- h. *Conditions Precedent* - shall have the meaning ascribed thereto in Paragraph 17.05(a).
- i. *Contractor* - means \_\_\_\_\_.

- j. *Control* - (including, with its correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of a Person.
- k. *Convenience Termination Date*- shall have the meaning ascribed thereto in Article 30.
- l. *CPI* – means the unadjusted Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items (1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor.
- m. *Effective Date* - shall have the meaning ascribed in the first paragraph of this Lease.
- n. *Florida Poly* - shall mean Florida Polytechnic University.
- o. *Florida Poly Campus*-shall mean the main Florida Poly campus located in Lakeland, Florida.
- p. *Force Majeure* - shall have the meaning ascribed thereto in Paragraph 26.15, entitled "Force Majeure."
- q. *Funding Agreement* - means: (a) any loan agreement, funding agreement, account maintenance or control agreement, intercreditor agreement, subordination agreement, trust indenture, hedging agreement, swap agreement, credit insurance policy, guaranty, indemnity agreement, reimbursement agreement, or other agreement by, with or in favor of any Lender pertaining to or evidencing Project Debt, other than Security Documents; (b) any note, bond or other negotiable or non-negotiable instrument evidencing the indebtedness of Tenant for Project Debt; and (c) any amendment, supplement, extension, renewal, refinancing, variation or waiver of any of the foregoing agreements or instruments.
- r. *GAAP* means accounting principles generally accepted in the United States of America, applied on a consistent basis.
- s. *Good Industry Practice* - means those means, methods, techniques, practices and procedures generally considered industry standard in the design, development, construction, operation, maintenance, sustainability, repair, rehabilitation, replacement and renovation of buildings, structures, facilities, systems and improvements comparable in size, use and function to the Improvements in the Lakeland, Florida area.
- t. *Governmental Approvals* – means all zoning, land use, site plan, and operational approvals from all governmental and quasi-governmental entities having jurisdiction over the Property (including Landlord), and all consents and approvals from governmental and non-governmental persons or entities, which are necessary or desirable for the development and operation of the Property for Tenant's intended use, including, but not limited to: demolition permits, building and development permits, site development permits, curb cut permits, authorization and permits, site plan approvals, water and sanitary sewer tap permits, stormwater approvals, and utility permits and approvals.

- u. *Hazardous Materials* – means any and all toxic, radioactive, or hazardous substances, chemicals, materials or pollutants, of any kind or nature, which are regulated, governed, restricted or prohibited by any Law currently in existence or hereafter enacted or rendered, and shall include (without limitation), all oil, gasoline, and petroleum-based substances.
- v. *IFF Sublease* – means the Sublease Agreement entered into with IFF contemporaneously with this Lease.
- w. *Improvement Documents* – shall have the meaning as set forth in Paragraph 19.02.
- x. *Improvements* – means all buildings, structures or other improvements constructed or to be constructed on the Land by Tenant, including, without limitation, all buildings, site lighting, stormwater control structures and retention, utilities and other site development improvements, or any alterations, replacements, modifications or additions thereto made by Tenant in accordance with the terms of this Lease. For purposes of Article 19, entitled "Surrender", Improvements shall not include Tenant's or any Subtenant's trade fixtures, equipment, inventory, and any other personal property of any nature that may have been installed on the Property by or on behalf of Tenant or any Subtenant.
- y. *Inspection Period* – means the time period beginning on the Effective Date and ending one hundred twenty (120) days thereafter, as more specifically described in Paragraph 25.01.
- z. *Land* - means the real property subleased to Tenant pursuant to this Lease, as more particularly described on **Exhibit A** attached hereto.
- aa. *Laws* - means any order, writ, injunction, decree, judgment, law, ordinance, decision, principle of common law, ruling that has the force of law or any treaty, constitution, statute, code, rule or regulation of any governmental authority, applicable to the Property or Tenant.
- bb. *Leasehold Mortgage* - means any indenture, mortgage, deed of trust or other security agreement or arrangement securing the repayment of Project Debt and encumbering Tenant's leasehold interest in the Land and interest in the Improvements, in each case that satisfies all of the conditions in Paragraph 28.2.
- cc. *Leasehold Mortgagee* - means the holder or beneficiary of a Leasehold Mortgage.
- dd. *Lender* - means each bank, trust company or other financial institution, noteholder or any other holder of a beneficial interest in a Security Document, including any financial guarantor, which is a provider of Project Debt or any guaranty or credit enhancement in respect thereof, and any participating parties, trustees and agents together with their respective successors and assigns.
- ee. *Lease Year*- means each twelve (12) month period commencing as of the Commencement Date of the Term of this Lease and each annual anniversary of the Commencement Date occurring thereafter during the Term or any Term Extension.
- ff. *Legal Requirements* – means requirements, limitation, restrictions and conditions of Laws by governmental authorities, including Florida Poly rules, regulations and standards relating to the design and construction of improvements, buildings, structures and other installations on the Florida Poly Campus in effect at the time of

construction of the initial Improvements and provided to Tenant by Landlord, or as are applicable to any subsequent Improvements, whether or not presently contemplated, that are applicable to the Property or the uses conducted on the Property by Tenant.

- gg. *Maintenance Schedule* - means the schedule for asset management services for the Term of this Lease, as may be updated annually by Tenant and approved by Landlord. The initial Maintenance Schedule shall be prepared by the Tenant and delivered to Landlord within 60 days following final completion of the initial Improvements.
- hh. *Outfall Easement* - shall have the meaning ascribed thereto in Paragraph 15.02 (d).
- ii. *Outfall Improvements* - shall have the meaning ascribed thereto in Paragraph 15.02(d)
- jj. *Outside Completion Date* – shall mean March 1, 2024.
- kk. *Permitted Title Encumbrances* – means all easements, rights-of-way, covenants, agreements, encumbrances, restrictions and other matters affecting the Land which are identified on **Exhibit B** attached hereto and made a part hereof as it may be amended.
- ll. *Person* - means any individual, corporation, partnership, joint venture, business trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or any governmental authority.
- mm. *Prohibited Person* means any Person:
  - (a) that has failed to comply with all federal, state and local laws, statutes and ordinances (including the USA PATRIOT Act) and as a result such Person or any of its directors, officers or senior management has been charged with, convicted of, pleaded guilty to, or entered into a settlement in compromise of, a felony, fraud or securities violations or other crime of moral turpitude within ten (10) years before the date of measurement, provided, if a Person (other than an individual) qualifies as a Prohibited Person solely because it or one of its directors, officers or senior management has been charged with, convicted of, pleaded guilty to, or entered into a settlement in compromise of, a felony, fraud or securities violations or other crime of moral turpitude within ten (10) years before the date of measurement, then such Person (other than an individual), as applicable, shall not be deemed a Prohibited Person if such charge would not constitute a material adverse event with respect to such Person (other than an individual), as applicable, if convicted thereof;
  - (b) that is an organized crime figure or has a director, officer or senior management personnel who is an organized crime figure;
  - (c) that is on the list of Specially Designated Nationals and Blocked Persons under any other U.S. Department of Treasury’s Office of Foreign Assets Control regulation or executive order (“OFAC”) and/or with whom Landlord is restricted from doing business with under OFAC or has a director, officer or senior management personnel that meets such criteria;
  - (d) that is organized in, or a citizen of, a country that is subject to any of the following or has a director, officer or senior management personnel who meets

such criteria: (i) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (ii) the International Emergency Economic Powers Act of 1976, 50 U.S.C. § 1701, et seq., as amended; and (iii) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405, as amended,

(e) that is blocked or subject to blocking pursuant to Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), or is otherwise associated with any such Person in any manner violative of such executive order or that has a director, officer or senior management personnel who is so blocked or subject to blocking;

(f) that is entitled to sovereign immunity, including any foreign or domestic government or governmental agency or representative, unless such sovereign immunity has been irrevocably, unconditionally and effectively waived in writing in form and substance reasonably satisfactory to Landlord and an opinion of legal counsel in form reasonably acceptable to Landlord shall be delivered to Landlord from a firm reasonably acceptable to Landlord that such waiver is irrevocable, unconditional and effective; or

(g) that is an affiliate of any of the persons described in clauses (a) or (b) of this definition.

nn. *Project* - shall have the meaning ascribed thereto in Recital G.

oo. *Project Debt* - means indebtedness (including mezzanine and subordinated indebtedness) for funds borrowed or for the value of goods or services rendered or received, or any refinancing indebtedness in connection thereto, the repayment of which is secured by one or more Security Documents. Project Debt includes principal (including accreted principal), accrued interest (including capitalized interest), customary and reasonable lender, agent, trustee and monoline fees, costs and expenses payable to Lenders with respect thereto, premiums or reimbursement obligations with respect to any insurance or financial guaranty with respect thereto, all payment obligations under any hedging agreements with respect thereto, including (without double counting) current pay and accreting swaps, lease financing obligations, and Breakage Costs.

pp. *Property* - means, collectively, the Land and the Improvements.

qq. *Qualified Property Manager* means a Person that (i) has (or can reasonably be expected to be able to obtain) all necessary Governmental Approvals necessary in connection with the operation or management of the Project and (ii) together with its Affiliates that are not Prohibited Persons, has not less than five (5) years' experience in property management and controls, owns and/or manages, together with its Affiliates, not less than ten (10) properties of a type, quality and size similar to the Improvements, totaling in the aggregate no less than 3,000,000 square feet, unless otherwise approved in writing by the Landlord. Notwithstanding the foregoing, Tenant and its Affiliates shall be deemed a Qualified Property Manager for the purposes hereof.

rr. *Qualified Purchaser* - means a Person that satisfies the following requirements:

(i) such purchaser is a Qualified Sponsor or is controlled (directly or indirectly) by a Qualified Sponsor; and (ii) if not itself a Qualified Sponsor, a Qualified Sponsor owns (directly or indirectly), in the aggregate, at least ten percent (10%) of the ownership interests in such purchaser. No direct or indirect owner in a Qualified Purchaser may be a Prohibited Person. Notwithstanding the foregoing and for the avoidance of doubt, any Leasehold Mortgagee, and/or any designee, nominee or transferee at the foreclosure of the Leasehold Mortgage and security interests thereunder or any transfer in lieu of foreclosure under the Security Documents arising out of an event of default by Tenant under any Funding Agreements, shall constitute a Qualified Purchaser. Notwithstanding the foregoing, each of Tenant, IFF, any Subtenant entering into an Affiliation Agreement with Landlord, and their respective Affiliates, shall be deemed a Qualified Purchaser for the purposes hereof.

- ss. *Qualified Sponsor* - means any Person that (i) is not a Prohibited Person; (ii) has tangible net worth in accordance with GAAP of not less than fifty million dollars (\$50,000,000.00) (exclusive of the value of the Lease) subject to escalation every ten (10) years based on increases in the CPI, commencing with the ten (10) year anniversary of the Effective Date; (iii) together with its Affiliates that are not Prohibited Persons, has not less than five (5) years' experience in property management and controls, owns and/or manages, together with its Affiliates, not less than ten (10) properties of a type, quality and size similar to the Improvements, totaling in the aggregate no less than 3,000,000 square feet, unless otherwise approved in writing by the Landlord (provided, however, notwithstanding the foregoing, this clause (iii) shall be deemed satisfied in the event that such Person engages Tenant or any of Tenant's Affiliates or another Qualified Property Manager as property manager for the Property); (iv) is not, and/or is not controlled by, in Landlord's reasonable determination, a Person who has been convicted of a felony in any state or federal court involving fraud, embezzlement, or other financial crime; (v) is not, and/or is not controlled by, a Person who has been previously adversely involved in a lawsuit (or any arbitration in lieu of a lawsuit) with Landlord or any Affiliate of Landlord concerning any matter, unless otherwise approved in writing by the Landlord; and (vi) is reasonably and in good faith determined by Landlord to have a professional reputation that is not contrary to the educational and research mission of Landlord.
- tt. *Qualified Subtenant* – means any Subtenant entering into a sublease with Tenant for the purpose of promoting scientific research and development or otherwise supporting the educational mission of Landlord. The parties acknowledge and agree that for the purposes of this Paragraph 1.01.tt, "the purpose of promoting scientific research and development or otherwise supporting the educational mission of Landlord" shall be broadly construed.
- uu. *Rent*- shall have the meaning ascribed thereto in Paragraph 3.01, entitled "Rent."
- vv. *Security Documents* - means any mortgage, deed of trust, pledge, lien, security agreement, indenture, trust agreement, hypothecation, assignment, collateral assignment, financing statement under the Uniform Commercial Code of any jurisdiction, security instrument or other charge or encumbrance of any kind, including any lease in the nature of a security instrument, given to any Lender as

security for Project Debt or Tenant's obligations pertaining to Project Debt and encumbering Tenant's interest in the Lease or its property.

ww. *Site Plan* - means the site plan attached hereto as **Exhibit E**. The Site Plan is incorporated herein only for the purposes specifically stated in this Lease and does not otherwise affect the terms and conditions set forth herein.

xx. *Subtenant* – means IFF and its successors and assigns, and/or any other subtenant under a sublease with Tenant for all or a portion of the Improvements (any such sublease being subject to Landlord's approval in accordance with the terms and conditions of this Lease).

yy. *Subtenant Costs* – shall mean the costs to relocate and replace the Subtenant's facilities at another location of equivalent size. Such costs shall include, but not be limited to, the replacement costs of Subtenant's trade fixtures, furnishings, equipment and personal property (with respect to personal property, only if the right is exercised within the first 10 years of the term), the costs to relocate or terminate employees due to the relocation (other than within 10 miles of the Florida Poly Campus), the difference in base rent on a per square foot basis for the balance of the remaining term under the IFF Sublease plus (if the termination is exercised after year 15 of the Lease) one extension option, brokerage costs, all "soft" costs for the design, permitting and construction of the relocation space, including but not limited to, architect, engineering, legal fees and other professional services, the difference between the cost of any of Subtenant's improvements and any improvement allowance available at the new location for equivalent improvements as in the Project, miscellaneous business expenses such as letterhead, and a 3% administrative fee of the "hard construction costs" for Subtenant's management of the relocation and construction of its premises at the relocation site. [Under review by University]

zz. *Taxes*- shall have the meaning ascribed thereto in Paragraph 8.01.

aaa. *Term* – shall have the meaning ascribed thereto in Paragraph 2.01.

bbb. *Timeline* - shall have the meaning ascribed thereto in Paragraph 16.02(d).

ccc. *University Design Standards* - means all applicable, published design, engineering and construction standards, codes and regulations set forth in **Exhibit L** attached hereto.

1.02 Rules of Interpretation. The headings of Articles and Paragraphs in this Lease are provided for convenience of reference only and will not affect the construction, meaning or interpretation of this Lease. All references to "Articles," "Paragraphs," or "Exhibits" refer to the corresponding Articles, Paragraphs or Exhibits of or to this Lease. All Exhibits to this Lease are hereby incorporated by reference. All words used in this Lease will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "include," "includes" and "including" shall be interpreted to mean "including without limitation." Unless otherwise stated, any reference to a person or entity, whether or not a party, includes its permitted successors and permitted assigns and, in the case of any governmental authority, any entity succeeding to its functions and capacities. Other grammatical forms of defined words or phrases have corresponding meanings. A reference to a writing includes any mode of representing or reproducing words, figures or

symbols in a lasting and visible form. Unless otherwise provided, a reference to a specific time of day for the performance of an obligation is a reference to the time in the place where that obligation is to be performed. A reference to a document, law, code, rule, regulation, contract or agreement, including this Lease, includes a reference to that document, code, rule, regulation, contract or agreement as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof. If any payment, act, matter or thing hereunder would occur on a day that is not a business day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next succeeding business day. The words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Lease as a whole and not to any particular provision of this Lease. The parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Lease and, unless expressly provided otherwise in this Lease, (a) where this Lease requires the consent, approval, or similar action by a party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this Lease gives a party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

## 2. TERM; USE AND OPERATION.

2.01 Term. This Lease shall be in force and effect from the Effective Date for a term ("Term") commencing on the Commencement Date and ending on the last day of the three hundred sixtieth (360th) full calendar month succeeding the Commencement Date. The Term of this Lease is subject to extension as provided in Paragraph 2.02(c) below.

### 2.02 Landlord Rights Upon Expiration or Termination of Sublease with IFF.

- a. In the event that IFF fails to timely exercise either of its two (2) five (5) year options to extend the initial twenty (20) year term of the IFF Sublease (subject to, and in accordance with, the applicable terms and provisions of the IFF Sublease, and provided that Tenant and IFF have not otherwise agreed in writing to extend the term of the IFF Sublease), then Tenant shall promptly notify Landlord ("Non-Renewal Notice") that IFF has not exercised the applicable extension option, and in such in event, Landlord shall have the option, to be exercised, if at all, by written notice to Tenant ("Landlord's Option Notice") delivered no later than the date that is six (6) months following the date of receipt by Landlord of the Non-Renewal Notice to either (i) terminate this Lease and purchase the Improvements from Tenant as contemplated in Paragraph 2.02(b) below, or (ii) sublease the entirety of the Property from Tenant as contemplated in Paragraph 2.02(c) below.
- b. In the event that Tenant delivers a Non-Renewal Notice to Landlord and thereafter Landlord timely delivers to Tenant Landlord's Option Notice to terminate this Lease and purchase the Improvements pursuant to clause (i) of Paragraph 2.02(a) above, then, notwithstanding anything herein to the contrary, the Term of this Lease shall terminate conterminously with the term of the IFF Sublease, Landlord shall pay to Tenant the Early Termination Purchase Price (as hereinafter defined; which Early Termination Purchase Price shall not be construed as a penalty) no later than the applicable early termination date, and thereafter the parties shall have no further obligations or liabilities under this Lease, except to the extent the same expressly survive the expiration or termination of the Term. For the purposes of this Lease, the "Early Termination



Purchase Price” shall mean a sum equal to \$5,000,000.00 for any early termination of this Lease effective on or before the last day of the two hundred fortieth (240th) full calendar month following the Commencement Date (such date being referred to herein as the “Initial IFF Sublease Expiration Date”); provided, however upon each annual anniversary of the Initial IFF Sublease Expiration Date, the Early Termination Purchase Price shall [decrease] by \_\_\_ percent (\_\_\_%) (e.g., for any applicable early termination of this Lease effective as of the last day of the three hundredth (300th) full calendar month following the Commencement Date, the Early Termination Purchase Price shall be \$\_\_\_\_\_, for any applicable early termination of this Lease effective as of the last day of the three hundred sixtieth (360th) full calendar month following the Commencement Date, the Early Termination Purchase Price shall be \$\_\_\_\_\_, etc.). [University believes purchase price should decrease as term shortens and value of ground lease decreases and the building ages.]

- c. In the event that Tenant delivers a Non-Renewal Notice to Landlord and Landlord thereafter timely delivers to Tenant Landlord’s Option Notice to sublease the entirety of the Property from Tenant pursuant to clause (ii) of Paragraph 2.02(a) above, then the parties shall act in good faith to enter into a commercially reasonable sublease agreement within sixty (60) days following Tenant's receipt of such Landlord’s Option Notice, subject to the following terms:
- (i) The initial term of Landlord's sublease shall be five (5) years commencing immediately upon the expiration of the IFF Sublease.
  - (ii) In addition, in the event that Landlord's initial five (5) term referenced in Paragraph 2.02(c)(i) above expires on the last day of the three hundredth (300th) full calendar month following the Commencement Date, then Landlord shall have the option, to be exercised (if at all) by written notice delivered to Tenant no later than twelve (12) months prior to the expiration of such initial five (5) year sublease term, to either (A) terminate this Lease effective as of the expiration of the such initial five (5) year sublease term and purchase the Improvements from Tenant for the Early Termination Purchase Price (such sum to be payable no later than the applicable early termination date), and thereafter the parties shall have no further obligations or liabilities under this Lease, except to the extent the same expressly survive the expiration or termination of the Term, or (B) extend the then-current sublease term for the full remainder of the Term of this Lease, such that the sublease term and the Term of this Lease shall expire conterminously.
  - (iii) Landlord shall pay to Tenant, as base rent under the sublease, monthly installments (payable on the first day of each month) of “Landlord Sublease Base Rent” in accordance with the following schedule (for the avoidance of doubt, the parties acknowledge that the following schedule may include periods of time that are not actually part of Landlord's sublease term, and in such event, Landlord shall have no obligation to pay Landlord Sublease Base Rent to Tenant for any such period described in the schedule below to the extent that Landlord's sublease term is not actually in effect during such period):

<u>Period</u>	<u>Monthly Landlord Sublease Base Rent</u>
First Day of 241st Full Calendar Month of Term - Last Day of 252nd Full Calendar Month of Term	\$100,000.00
First Day of 253rd Full Calendar Month of Term - Last Day of 264th Full Calendar Month of Term	\$102,000.00
First Day of 265th Full Calendar Month of Term - Last Day of 276th Full Calendar Month of Term	\$104,040.00
First Day of 277th Full Calendar Month of Term - Last Day of 288th Full Calendar Month of Term	\$106,120.80
First Day of 289th Full Calendar Month of Term - Last Day of 300th Full Calendar Month of Term	\$108,243.22
First Day of 301st Full Calendar Month of Term - Last Day of 312nd Full Calendar Month of Term	\$110,408.08
First Day of 313th Full Calendar Month of Term - Last Day of 324th Full Calendar Month of Term	\$112,616.24
First Day of 325th Full Calendar Month of Term - Last Day of 336th Full Calendar Month of Term	\$114,868.57
First Day of 337th Full Calendar Month of Term - Last Day of 348th Full Calendar Month of Term	\$117,165.94
First Day of 349th Full Calendar Month of Term - Last Day of 360th Full Calendar Month of Term	\$119,509.26

(iv) In addition to Landlord's obligation to pay Landlord Sublease Base Rent, the sublease shall be absolute triple net, it being understood that all costs and expenses (other than depreciation, interest on and amortization of any debt incurred by Tenant, and any costs incurred by Landlord in financing or refinancing the Property) and all other obligations relating to the Property and the appurtenances thereto and the use and occupancy thereof, shall be paid and performed by Landlord alone.

(v) In the event that, despite the good faith efforts of Landlord and Tenant, the parties fail to enter into such sublease agreement within such sixty (60) day period, then Landlord shall be deemed to have rescinded Landlord's Option Notice and thereafter Tenant shall be free to market the Property to prospective third-party Subtenants.

d. In the event that Tenant delivers any Non-Renewal Notice to Landlord:

(i) If Landlord thereafter fails to timely exercise both Landlord's right to terminate this Lease and purchase the Improvements pursuant to clause (i) of Paragraph 2.02(a) above, and Landlord's right to sublease the Improvements pursuant to

clause (ii) of Paragraph 2.02(a) above; or

- (ii) If Landlord exercises its initial option to sublease the Improvements pursuant to clause (ii) of Paragraph 2.02(a) above, but thereafter prior to the expiration of the initial five (5) year sublease Term, Landlord fails to timely exercise any option of Landlord to terminate the Lease and purchase the improvements, or otherwise extend the term of Landlord's sublease for the remainder of the Term of this Lease, in any case in accordance with the terms and provisions of Paragraph 2.02(c)(ii) above;

then in any such event, notwithstanding anything herein to the contrary, the Term of this Lease shall automatically be deemed extended for an additional period of ten (10) years, such that the Term of this Lease shall expire on the last day of the four hundred eightieth (480th) full calendar month succeeding the Commencement Date.

- 2.03 Use and Operation. Subject to by applicable zoning Laws, permits, and licenses, Tenant shall be permitted to use the Land and Improvements solely and exclusively for: site investigation, relocation and installation of utilities; construction, equipping, operation, maintenance, repair, life cycle repair and replacement, and renovation of facilities, equipment and systems, and other elements included in the Improvements; and subleasing the Property (subject to the terms and provisions of this Lease, including, Article 13 below).
- 2.04 Signs. Tenant shall be permitted to install any and all signage related to Subtenant or Subtenant's business on the Property (at no expense to Landlord). Permitted signage shall include, but not be limited to, a monument sign on the Property and any directional way-finding signage throughout the Florida Poly Campus. All pylon/monument and directional signage is subject to Landlord's reasonable approval (such approval not to be unreasonably withheld, conditioned or delayed) and, if required by Landlord, shall include the Florida Poly name and/or logo on the signage alongside (but not as part of) the Subtenant name and logo (but not Subtenant's façade signage, which shall include only Subtenant's name and logos, at Tenant's discretion). Landlord shall grant Subtenant a license to use Florida Poly's name and/or logo for this specific and limited purpose, in the form of attached **Exhibit D**.
- 2.05 Rules and Regulations. Tenant shall comply and shall cause Subtenant to comply with and cause all Tenant contractors and other persons within Tenant's control to comply with all rules, regulations and standards, as may be now or hereinafter adopted or amended, which are applicable to the Florida Poly Campus generally, on a non-discriminatory and reasonable manner, which includes those implemented by Landlord, the Board of Governors, and/or the State of Florida; provided: (i) such rules and regulations do not affect Subtenant's business operations from the Property, and (ii) do not require Tenant or Subtenant to bear any additional expenditure or cost.
- 2.06 Tenant's Parking. Landlord agrees to provide an exclusive right to Tenant to lease fifty (50) spaces in the parking lot most immediately adjacent to the Improvements for use by Tenant, IFF, any subsequent Subtenant and their respective employees, guests and invitees and such persons shall have unlimited use of the parking spaces on a twenty-four (24) hours basis at the standard annual reserved parking rate then-charged to students and employees of Florida Poly for comparable parking spaces at such parking lot (the "Parking Fee"). Tenant shall have the right to enforce parking within the parking area by any means available, including but limited to, establishing parking rules requirements, posting signage, and towing of unauthorized vehicles. The Tenant shall

pay, or cause the Subtenant to pay, the Parking Fee on the Commencement Date and each annual anniversary of the Commencement Date thereafter.

3. RENT: NET LEASE.

3.01 Rent. In consideration of Tenant undertaking the financing, construction, and maintenance of the Improvements and Subtenant's undertaking to enter into the Affiliation Agreement, Tenant shall pay Landlord rent for the Land ("Rent") in the amount of \$1.00 per year payable in advance on the Effective Date (except as expressly set forth below to the contrary). Tenant shall submit Rent to Landlord at the address specified in Article 22 of this Lease, entitled "Notices" or such account or other address as Landlord may designate by notice to Tenant. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated or other amount owed to Landlord shall be deemed to be received other than on account of the earliest stipulated Rent or other amount due. No endorsement or statement on any check or any letter accompanying or transmitting any check or payment as Rent or amount due shall be deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such Rent or amount due and any other amounts due or pursue any other remedy provided for in this Lease or available at law or in equity. Notwithstanding the foregoing:

- a. In the event that Tenant fails to achieve substantial completion of the initial Improvements on or before the Outside Completion Date, then such delay shall not be deemed a default under this Lease; provided, however, to the extent that such delay is not caused by any Force Majeure, casualty or condemnation events, or by any acts or omissions of Landlord or IFF or any of their respective agents, employees, Affiliates and/or contractors, then Rent under this Lease shall be increased to an amount equal to \$2,127 per day commencing on the date immediately following the Outside Completion Date (such date being subject to extension for any of the aforementioned delays not caused by Tenant) and ending of the date that substantial completion of the initial Improvements is actually achieved;
- b. In the event the IFF Sublease expires or is terminated prior the expiration of the Term of this Lease, if thereafter Tenant enters into a sublease with a Subtenant (subject to Article 13 below) that fails to enter into an Affiliation Agreement with Landlord (other than a sublease to Landlord or any of its Affiliates), then effective as of the commencement date of such sublease and during the applicable sublease term thereof, Rent under this Lease shall be increased to the Market Rental Rate (as hereinafter defined), payable to Landlord in advance in monthly installments; and
- c. In the event the IFF Sublease expires or is terminated prior the expiration of the Term of this Lease, if thereafter Tenant fails to enter into any sublease with any Subtenant such that Tenant's leasehold under this Lease is not encumbered by any sublease for a period of more than one (1) year, for any reason other than Force Majeure, casualty, condemnation or a planned closure for repair, remodeling and/or replacement of any of the Improvements, then commencing immediately upon the expiration of such one (1) year period and continuing until such time that Tenant again enters into an effective sublease encumbering its leasehold hereunder

(subject to Article 13 below), then Rent under this Lease shall be increased to the Market Rental Rate, payable to Landlord in advance in monthly installments (and for the avoidance of doubt, Tenant shall not be deemed in default of this Lease).

3.02 Market Rental Rate. “Market Rental Rate” shall mean the then fair market annual rent for the ground leasehold of the Land for the remainder of the Term, taking into account all relevant factors. Landlord shall deliver Landlord’s notice of the Market Rental Rate to Tenant within ten (10) days of Tenant’s request therefor, and Landlord and Tenant shall thereafter negotiate to come to an agreement regarding the Market Rental Rate. If the parties are unable to agree on the Market Rental Rate within thirty (30) days following Landlord’s delivery of notice of its initial proposal of the Market Rental Rate, then the Market Rental Rate shall be determined by appraisal as provided below (the “Appraisal Method”), or alternatively, Tenant, at its sole option, may withdraw any applicable request to sublease the Property, as may be applicable. Provided that Tenant does not withdraw any applicable request to sublease the Property in accordance with the preceding sentence, Landlord and Tenant shall attempt to agree on a single broker (the “First Appraiser”) who shall be licensed in the State of Florida and shall have at least five (5) years’ experience ground leasing land in Polk County, Florida reasonably comparable to the Land. If Landlord and Tenant shall fail to agree on the choice of the First Appraiser within ten (10) days after demand by either party, then each of Landlord and Tenant shall select a broker within five (5) days after the expiration of the prior ten (10) day period. If either Landlord or Tenant shall fail to appoint a broker, then the broker appointed by the appointing party shall select the second broker within (5) days after the expiration of the applicable (5) day period referred to above. The two (2) brokers thus selected shall select, within five (5) days after their appointment, a third broker (the “Third Appraiser”). Any broker appointed or selected hereunder shall be licensed in the State of Florida and shall have at least five (5) years’ experience ground leasing land in Polk County, Florida reasonably comparable to the Land. If the parties elect to use the Appraisal Method, the Market Rental Rate for the applicable remainder of the Term shall be determined by the First Appraiser or the Third Appraiser, as applicable, based upon customary and usual appraisal techniques of expert brokers as of the date of determination. As use herein, the term “Final Arbiter” means the First Appraiser or, if selected, the Third Appraiser. Each of Landlord and Tenant shall submit to the Final Arbiter its detailed analysis of its proposed Market Rental Rate. The Final Arbiter shall request in writing that Landlord and Tenant provide any supplemental information that may be necessary for the Final Arbiter to render a decision regarding the Market Rental Rate. The Final Arbiter shall hold a hearing, upon not less than ten (10) days written notice to Landlord and Tenant, and not later than fifteen (15) days following selection of the Final Arbiter, at which Landlord and Tenant shall have the opportunity to explain and justify the Market Rental Rate proposed by each party. Any party not attending such hearing shall have waived its right to defend its proposal at a hearing. The Final Arbiter shall prepare a written report of his or her determination of the Market Rental Rate and deliver a copy to Landlord and a copy to Tenant within thirty (30) days of the selection or appointment of the Final Arbiter. The Final Arbiter shall select the Market Rental Rate proposed by either Landlord or Tenant and shall not be entitled to choose any other Market Rental Rate or to make a determination based upon the average of the Market Rental Rates proposed by Landlord and Tenant. The determination of the Final Arbiter shall be final and binding upon the parties. If the Appraisal Method is used to determine the Market Rental Rate, then the reasonable fees and expenses of the brokers involved in the process, including the fees and expenses of the Final

Arbiter, shall be shared equally by Landlord and Tenant.

3.03 Net Lease. This Lease is a "net" lease. The parties acknowledge and agree that Landlord would not enter into this Lease if the Rent described in this Lease were not absolutely net to Landlord or if Landlord were to incur any liability whatsoever, foreseen or unforeseen, with respect to the Property or any portion thereof, including the Land and Improvements, or Tenant's exercise of any other of its rights under this Lease. Accordingly, except as may be provided in this Lease to the contrary, Tenant shall pay all expenses, costs, Taxes, fees and charges of any nature whatsoever arising in connection with or attributable to the Property or the Improvements, including without limitation, the Property, during the Term of this Lease or in any manner whatsoever arising as a result of Tenant's exercise of, or Landlord's grant of, the rights described in this Lease, including, without limitation, all fees of Tenant's consultants, ad valorem real estate taxes, utility costs and expenses, costs of design, construction, operation, maintenance, repair, replacement and renovation of the Improvements, Tenant's accounting and attorney's fees, costs of any financing obtained by Tenant, costs of any leasehold title insurance policy obtained by Tenant, utility charges and surety bond and insurance premiums, and Tenant shall pay and be responsible for all costs, expenses, obligations, liabilities and acts necessary to and for the proper use, operation, maintenance, care and occupancy of the Property.

#### 4. REPRESENTATIONS AND WARRANTIES.

Subject to satisfaction of conditions precedent and obtaining Governmental Approvals relating to design, construction and operation of the Improvements, the parties make these representations and warranties.

4.01 Authority and Obligations of the Parties. To induce the other party to enter into this Lease, each party represents and warrants to the other that it has the right and authority to enter in this Lease and perform all of its obligations hereunder without obtaining any consents from any public or private parties except as contemplated herein. This Lease constitutes a legal, valid, and binding obligation upon such party, which is enforceable against it in accordance with its terms, subject as to enforceability, to bankruptcy, insolvency, and other laws of general applicability relating to or affecting creditors' rights generally and to general equity principles. Neither the execution nor delivery of this Lease, nor the consummation of the transaction contemplated hereby, will conflict with or result in a breach under any agreement or instrument by which such party is bound, and will not constitute a violation of any applicable Law to which such party is subject.

#### 4.02 Title to the Improvements and Land.

a. Landlord does not hereby make any representation, warranty, covenant or guaranty regarding title, right or interest in the Land to Tenant; provided, however, that Landlord does warrant and guaranty title, right and interest in and to the leasehold estate created by this Lease in favor of Tenant. Tenant shall not encumber the fee ownership of the Property held by the Landlord, but Tenant shall have the right to encumber the leasehold estate that Tenant holds and Tenant's Improvements. Tenant acknowledges that prior to the Commencement Date it will have performed whatever due diligence is required regarding title, condition and value of the Land and the suitability of the Land for the design, construction, management, operation, use, maintenance, and repair of the Improvements, and Tenant will obtain, at its discretion, a title insurance policy or other protection concerning Tenant's leasehold interest provided in this Lease.

- b. This Lease is subject to Permitted Title Encumbrances, Florida Poly rules, regulations and standards (subject to Paragraph 2.05 above) and the easements, agreements, instruments and documents that are executed or imposed from time to time after the date of execution of this Lease and communicated in writing to Tenant and Subtenant, as long as such future matters do not materially impair Tenant's rights under this Lease to construct, operate and maintain the Improvements for the permitted use; or otherwise materially increase any of the obligations of Tenant hereunder, and provided: (i) such rules, regulations and standards, and the easements, agreements, instruments and documents that are executed or imposed from time to time after the date of execution of this Lease do not affect Subtenant's business operations from the Property, (ii) do not require Tenant or Subtenant to bear any material expenditure or cost.

5. "AS IS" CONDITION; ALTERATION, REPAIR, MAINTENANCE OF IMPROVEMENTS.

- 5.01 As Is Condition. Tenant acknowledges and agrees that the Land shall be leased by Landlord to Tenant on the Commencement Date in an "as is" condition, and that, except as specifically set forth in this Lease, Landlord makes absolutely no representations or warranties and undertakes no indemnity or guaranty whatsoever with respect to the Land or the condition thereof.
- 5.02 Alteration, Repair, and Maintenance of Improvements. Tenant, at its sole expense and in its sole discretion, may make replacements, alterations, additions and improvements to the Improvements; provided such activity is done in a good and workmanlike manner in accordance with this Lease, including requirements hereof governing the original design and construction of the Improvements, and all applicable Laws, Legal Requirements, Governmental Approvals and the then-current design, engineering and construction standards and requirements of Landlord. The Improvements shall be and remain the property of Tenant during the term of this Lease and shall revert to Landlord at the expiration or earlier termination hereof, subject to Tenant's right to make alterations to the Improvements as allowed under this Lease. ***[OPEN: CONFIRM WHERE LAND IS AS COMPARED TO ENVELOPE OF BUILDING & INCORPORATE LANDLORD'S OBLIGATIONS RELATED TO LANDSCAPING AS APPLICABLE]***
- 5.03 Renovation or Remodel of Improvements. Subject to compliance with the requirements of Article 16, Tenant may renovate or remodel the Improvements now or hereafter erected on the Land so long as Tenant continues to pay Landlord the Rent required under this Lease.
- 5.04 Title to and Removal of Trade Fixtures. All trade fixtures, equipment, and personal property of any nature which may be installed or placed in or upon the Property by Tenant shall remain the property of Tenant. Tenant shall have the right, at any time during the Term, and at the end of the Term, pursuant to Article 19, to remove such trade fixtures, equipment, and personal property from the Property; provided, however, Tenant shall promptly repair any damage caused by such removal. Tenant may assign, lien, encumber, mortgage or create a security interest in or upon its trade fixtures, equipment, or other personal property in the Property without the consent of Landlord. To the extent Landlord may have a lien on or security interest in the trade fixtures, equipment, or other personal property of Tenant, pursuant to this Lease, by Law or otherwise, Landlord hereby subordinates such lien or security interest to any lender of Tenant subject to notice from Tenant of the identity of such Lender; provided that such subordination shall not waive, release or otherwise affect any

unsecured claim Landlord may have against Tenant or affect Landlord's rights, interests and remedies under this Lease. Upon the request of Tenant, Landlord agrees to provide Tenant, within ten (10) days of such request, a written subordination in form reasonably satisfactory to Tenant and any lender of Tenant evidencing Landlord's subordination of any rights it has or may have in Tenant's trade fixtures, equipment, and other personal property. If Landlord unreasonably fails to execute such subordination of rights, any lender of Tenant may enforce the provisions of this Paragraph 5.04 as a third-party beneficiary hereof.

## 6. COMPLIANCE WITH LAWS AND AGREEMENTS; HAZARDOUS MATERIALS.

6.01 Compliance with Laws. During the Term of this Lease, Tenant shall comply and shall cause Subtenant to comply with and cause the Property to be in compliance with all Laws and Legal Requirements; provided, however, in no event shall Tenant be responsible for the presence of any Hazardous Materials existing on the Property as of the Effective Date. During the Term of this Lease, Tenant is responsible for any violations of applicable Laws or Governmental Approvals at or relating to the Improvements and the payment of all fines, penalties, sanctions, assessments, and other costs, expenses or fees, including reasonable attorney's fees (unless such violation is the direct result of actions or omissions of Landlord, or Landlord's employees, contractors, agents or representatives). If Tenant becomes aware of any such violations, the presence of Hazardous Materials in violation of Laws or other circumstance or condition which presents a reasonably foreseeable risk of injury or harm to persons or damage to property on the Property, it shall promptly notify Landlord in writing. Tenant shall prepare and submit to Landlord a remedial plan to address any such violation or condition and prevent the re-occurrence of similar violations. To the extent that Tenant through its actions or the actions of its employees or contractors (acting within the scope of their employment or contract) causes Hazardous Materials to be placed or released on, under or within the Property in violation of applicable environmental Laws or causes damage to natural resources, Tenant shall be fully responsible and liable for clean-up and remedial work at its costs and expense and payment of all penalties, fines, sanctions or assessments relating thereto.

### 6.02 Hazardous Materials.

- a. Landlord's Representation and Warranty. Landlord represents and warrants to Tenant as of the Effective Date that to its actual knowledge, Landlord: (i) has not used, discharged, dumped, spilled, or stored any Hazardous Materials on or about the Land in violation of Law which would have a material adverse effect on the use of the Land by Tenant hereunder, (ii) has received no notice of any Hazardous Materials on or about the Land in violation of applicable Law, or (iii) there does not exist on or about the Land any Hazardous Materials in violation of applicable Laws which would have an material adverse effect on the use of the Land by Tenant hereunder. During the Term, Landlord shall have an ongoing obligation to disclose to Tenant any and all information which Landlord has regarding any Hazardous Materials affecting the Property, and without limitation, Seller shall promptly deliver to Tenant copies of any environmental reports that it currently has or later obtains with respect to the Property
- b. Use, Storage and Sale of Hazardous Materials. Tenant, or its employees, agents, licensees, contractors or Subtenants shall not use, generate, manufacture, refine, treat, process, produce, store, deposit, handle, transport, release, or dispose of Hazardous Materials in, on or about the Property, in violation of any federal, state or local laws



currently in existence or during the Term enacted or rendered including United States export compliance regimes (including International Trade in Arms Regulations, Office of Foreign Assets Control, and Export Administration Regulations). Notwithstanding the foregoing, Tenant may use normal quantities of Hazardous Materials customarily used in the conduct of Tenant's (or any Subtenant of Tenant's) business, provided that Tenant's activities at or about the Improvements and the handling by Tenant of all Hazardous Materials shall comply at all times with all applicable Laws. Tenant shall at Tenant's expense promptly take all actions required by any governmental agency or entity in connection with or as a result of the Handling by Tenant of Hazardous Materials at or about the Improvements, including inspection and testing, performing all cleanup, removal and remediation work required with respect to those Hazardous Materials, complying with all closure requirements and post-closure monitoring, and filing all required reports or plans.

- c. Notice by Tenant. Tenant shall promptly notify Landlord of any actual or alleged release of Hazardous Materials or violation of any environmental or export compliance Laws relating to the Improvements or the Property or the release or suspected release of Hazardous Materials in, under or about the Improvements or the Property potentially in violation of environmental Laws or applicable Governmental Approvals, and Tenant shall promptly deliver to Landlord a copy of any notices, filings or permits sent or received by Tenant, or on behalf of Tenant, with respect to any of the foregoing events, occurrences, conditions or circumstances. In connection with the investigation, clean-up, removal, remediation, resolution or other disposition of any claims regarding actual or alleged release of Hazardous Materials, in no event is Tenant entitled to agree to any lesser clean-up standard than is required by applicable Law or to any limitation on use of the Land or Improvements that would be binding on Landlord, the Board of Governors or the State of Florida without Landlord's consent in its sole and absolute discretion.
- d. Indemnification by Tenant. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect, and hold Landlord, its employees, agents, attorneys, officers, successors and assigns, free and harmless from and against any and all claims, actions, causes of action, liabilities, penalties, forfeitures, damages, losses or expenses (including, without limitation, reasonable attorneys' fees and costs through litigation and all appeals or other review proceedings) or death of or injury to any person or damage to any property or natural resources whatsoever, arising from or caused in whole or in part, directly or indirectly by any "Tenant Contamination" (defined as any contamination of the Property by Hazardous Materials during the Term where such contamination is caused by the act or omission of Tenant). Tenant's obligations hereunder shall include, without limitation, and whether foreseeable or unforeseeable, all fines, penalties, contributions and all costs of any required or necessary repair, clean-up or detoxification or decontamination of the Land, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith.
- e. Landlord Costs. Landlord shall bear the cost, expenses and fees, and liabilities, penalties, forfeitures, damages, losses or expenses arising out of the death of or injury to any person or damage to any property whatsoever, to the extent caused in whole or in part, directly or indirectly by "Landlord Contamination" (defined as any contamination of the

Property by Hazardous Materials which existed on or under the Land as of the Effective Date or were released on or under the Land during the Term where the existence of such contamination was not caused by any Tenant Contamination). Landlord shall, only to the extent caused by Landlord Contamination, bear the costs of any required or necessary repair, clean-up or detoxification or decontamination of the Land and repairs to the Improvements, and the preparation and implementation of any closure, remedial action or other required plans in connection therewith.

6.03 Survival and Duration of Obligations. All representations, warranties, obligations and indemnities made or given under this Article 6 shall survive the expiration or earlier termination of this Lease for a period of seven (7) years.

## 7. MECHANICS' LIENS.

7.01 No Liens. Tenant will not create or permit to be created or to remain, and will promptly discharge, at its sole cost and expense, any lien, encumbrance or charge upon the Property, any part thereof or upon Tenant's leasehold interest, which arises out of the use or occupancy of the Property by Tenant or by reason of any labor or materials furnished or claimed to have been furnished to Tenant or by reason of any construction, addition, alteration or repair of any part of the Property. If any such lien is filed against the Property, within sixty (60) days after Tenant's receipt of written notice of the filing thereof, Tenant shall cause such lien or claim to be released or discharged with respect to the Property by payment or bonding. Notwithstanding anything to the contrary set forth in this Lease, in no event shall the interest of Landlord in all or any part of the Property be subject to any construction, mechanics', materialmen's, laborers' or other statutory or common law lien for improvements or work made or done by or at the instance of Tenant, whether or not the same shall be made or done with the consent of Landlord or by agreement between Tenant and Landlord. Pursuant to Florida Statutes §713.10, all persons dealing with or contracting with Tenant or any contractor of Tenant are hereby put on notice of the foregoing provision. Tenant and Landlord agree to execute a Memorandum of Lease, in the form of Exhibit C attached hereto and by this reference incorporated herein, to be recorded in the public records of the county in which the Land is situated for the purpose of giving constructive notice of the provisions of this Paragraph 7.01.

7.02 Contests. Tenant shall not be required, nor shall Landlord have the right, to pay, discharge, or remove any charges, liens or encumbrances, or to comply with any Legal Requirements not governing health, safety, security, privacy or Hazardous Materials, so long as Tenant contests the existence, amount or validity of the matter in question by appropriate proceedings. This right of Tenant to withhold performances while proceedings are pending shall apply only if Tenant's proceedings effectively prevent any sale, forfeiture or loss of the Improvements or Landlord's rights under this Lease. Landlord shall not be required to join in any contest by Tenant pursuant to this Paragraph 7.02 unless applicable laws then in effect require that the proceeding be brought by or in the name of the Landlord. In such event, subject to reasonable assurances from Tenant, Landlord shall join the proceedings or permit them to be brought in its name; however, Landlord will not be subjected to any liability and attorney's fees for the payment of any costs, expenses or attorney's fees in connection with any contest or proceedings and Tenant shall indemnify Landlord against and save Landlord harmless from any of such costs, expenses and attorney's fees.

## 8. TAXES, ASSESSMENTS AND OTHER CHARGES.

8.01 Taxes, Assessments and Other Charges. Tenant shall pay, prior to delinquency, all taxes, assessments, levies, fees, fines, penalties and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which are during the Term, hereof, imposed or levied upon or assessed against the Property, or any portion thereof, including the Land and any Improvements now or hereafter located on the Land (the "Taxes"). Sales and use Taxes shall be paid by Tenant on the Rent and any other amounts payable by Tenant, pursuant to Paragraph 26.18 hereof.

8.02 Contest. Tenant shall have the right at its own cost and expense to initiate and prosecute in good faith any proceedings permitted by law for the purpose of obtaining an abatement or of otherwise contesting the validity or amount of any Taxes, provided Tenant's exercise of the foregoing right does not subject Landlord to any penalties or affect Landlord's interest in the Land. If required by Law, Tenant may take such action in the name of Landlord who will cooperate with Tenant at Tenant's cost to such extent as Tenant may reasonably require. If the tax proceedings result in a reduction of Taxes during the Term of this Lease, whether or not the proceeding are brought by Landlord or Tenant, any refund shall be the property of Tenant. Landlord will not be subjected to any liability for the payment of any costs, expenses or attorney's fees in connection with any contest or proceedings and Tenant shall indemnify Landlord against and save Landlord harmless from any of such costs and expenses, including without limitation, attorney's fees and costs.

8.03 Proration. To the extent Landlord is obligated to pay Taxes, all real estate taxes and assessments which are due and payable in the first year of the Term of this Lease or within one (1) year after the expiration of the Term of this Lease shall be prorated as of the Commencement Date or the date of expiration of the Term, whichever is applicable, on the basis of the fiscal year with respect to which such taxes or assessment are assessed and based on the maximum discount permitted by law. If any payments are made based on estimated tax bills, the parties agree to submit a final accounting based on the final tax bill and if one party paid more than its pro rata share, then the other party shall reimburse the other party within thirty (30) days after receipt of written notice and proper documentation from the other party. Tenant shall be responsible for and shall pay the portion of such taxes relating to the period beginning with the Commencement Date through and including the date of expiration of the Term and during any holdover. Landlord and Tenant shall use reasonable efforts to cause any tax bills to be sent directly to Tenant but if such bills are sent to Landlord, Landlord shall promptly present to Tenant copies of all tax bills received.

## 9. UTILITIES.

Tenant at its sole cost and expense shall obtain and promptly pay for installation of facilities and all utility, communication and other services furnished to or consumed on the Property, including, but not limited to, electricity, cable, gas, water, sewer, stormwater, heat, cooling, telephone, janitorial, garbage collection, and all charges related to any of these services, including any tap-in, connection or impact fees. Tenant shall have the right, at its option, to repair and restore utility service to the Property as Tenant may deem necessary to reasonably conduct its business on the Property consistent with the permitted use of the Land. Landlord shall cooperate with Tenant, at Tenant's expense, in all applications for utility service; and Landlord agrees to grant to utility providers and/or to Tenant, as may be applicable, any easements reasonably required for providing utility services required for Tenant's use of the Land and the Improvements. Tenant shall deliver written requests to Landlord, together with a legal description of any requested easement, and provide sufficient advance notice of the nature, scope and duration of any easements required for the use of the Land

and the Improvements. Landlord will receive and process Tenant's requests for the grant of easements and invoice Tenant for all fees, costs and expenses related thereto in accordance with Landlord's then-current standards, processes and procedures for such matters. Such easements granted by Landlord shall be non-exclusive. Each easement shall (a) not materially impair the value, functionality, safety or remaining useful life of the Florida Poly Campus, any portion thereof, or any improvements, buildings and structures thereon, or materially increase the costs to operate, insure, maintain and repair of the foregoing; (b) be reasonably necessary for the use of the Land and the Improvements as permitted by this Lease; (c) not cause any part of the Florida Poly Campus, the Land or the Improvements to fail to comply with the requirements of applicable Laws, Governmental Authorizations or Florida Poly rules, regulations or standards; and (d) be permitted by and subject to all recorded easements and other restrictions, encumbrances and agreements affecting the Land. Landlord shall have the right to change the locations of any such easements, as it sees fit in its reasonable discretion, as long as such changes do not materially impair (provided that any reduction in quality or quantity of utility service shall be deemed material) Tenant's ability to construct, operate and maintain the Improvements for the permitted uses hereunder; provided, however, any costs and expenses arising from changing any such easements at Landlord's request shall be the sole responsibility of Landlord. No such easement granted to Tenant hereunder shall extend beyond the Term of this Lease. To the extent that any utilities specifically serving the Improvements are connected to general utility systems serving the Florida Poly Campus, Landlord, at Landlord's sole cost and expense, shall maintain such general utility systems in good working order and condition up to the applicable points of connection with the Improvements. Notwithstanding anything herein to the contrary, Tenant, at Tenant's sole cost and expense, shall cause all necessary public or private water, electric, sanitary sewer, storm sewer and data and telecommunications utilities to be stubbed to the Property. Without limiting the foregoing, in addition to the utility easements described above, Landlord agrees from time to time, as may be reasonably required, to grant to Tenant, any applicable utility provider and/or their respective contractors, temporary construction easements reasonably required to install any applicable utility improvements and/or to stub the same to the Property, such temporary construction easements to be in in locations reasonably approved by Landlord.

#### 10. INDEMNIFICATION AND PROPERTY DAMAGE.

10.01 Tenant's Indemnification. Except to the extent caused by the negligence or more culpable misconduct or omissions of Landlord or Landlord's employees, agents or contractors, Tenant shall defend all actions against Landlord, and any trustee officer, director, employee, agent or representative of Landlord (collectively the "Landlord Indemnified Parties"), with respect to, and shall pay, protect, indemnify, and save harmless Landlord and the other Landlord Indemnified Parties against, any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) of any nature arising from (i) injury to or death of any person, or damage to or loss of property, on the Property or connected with the use, condition or occupancy of the Property or the design, construction and operation of the Improvements; (ii) infringement or misappropriation of intellectual property of third parties; (iii) liens by contractors, vendors or other persons providing any labor, services, equipment, materials or supplies in connection with the construction, operation, maintenance or repair of the improvements; (iv) violations of applicable Laws, Legal Requirements or Governmental Approvals; or (v) any breach of any representation, warranty, covenants, obligation or agreement or violation by Tenant of this Lease.

10.02 Landlord's Obligations. Subject to all immunities (including sovereign immunity), exemptions, rights, privileges, defenses, affirmative defenses and limitations on liability at law or otherwise in favor of or benefitting Landlord, Landlord shall be responsible for claims, demands, liabilities, losses, damages, costs and expenses of third parties for injury

to or death or damage or loss of property on the Land solely to the extent caused by the negligence or fault of Landlord, or Landlord's employees or contractors.

10.03 Survival. All of the provisions of this Article 10 shall survive the termination or expiration of this Lease for a period of seven (7) years.

## 11. INSURANCE REQUIREMENTS.

Tenant shall procure and maintain the following insurance policies and coverages and Tenant shall require its contractor to procure and maintain the following insurance coverages throughout the course of site preparation and construction and shall require all subcontractors providing services in relation to this Lease to carry any and all insurance coverage that adequately covers each subcontractor's exposure based on the type of services each will provide. All policies shall be with insurance companies authorized to do business in the State of Florida and meeting the requirements for insurance companies set forth in this Lease. Tenant agrees to furnish a current Certificate(s) of Insurance to Landlord prior to commencement of construction and at the later written request of Landlord as evidence that the following coverages remain in effect:

11.01 General Liability Insurance. Throughout the Term of this Lease, Tenant, at its sole cost and expense, shall maintain general liability insurance against liability occasioned by any accident, injury (including death) or damage suffered or occurring on or about the Property by reason of Tenant's use and occupancy of the Property. The liability policy shall be for the minimum of \$1,000,000.00 combined single limit coverage for property damage and bodily injury to any one person and general aggregate limits of \$3,000,000.00 per accident. Tenant shall cause all architects and contractors to obtain and maintain insurance policies consistent with Florida Poly rules, regulations, standards and requirements. Landlord does not represent that coverage and limits specified herein will necessarily be adequate to cover the liability of Tenant or its contractor or subcontractors, and the absence of a demand for any type of insurance policy or insurance condition, or for higher coverage limits shall not be construed as a waiver of Tenant's obligation to carry and maintain the appropriate types of insurances at limits that are appropriate to the liability exposure associated with this Lease. Landlord, and the Florida Board of Governors shall be Additional Insureds or Loss Payees on all applicable policies of insurance maintained by Tenant (but not Tenant's architects or contractors) hereunder.

### a. Construction Period Insurance:

- (i) Builders Risk Insurance. Completed value form in amount of protection of not less than 100% of the completed value of the Improvements covering "all risk" perils of loss that includes Windstorm and Flood as covered causes of loss.
- (ii) Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be obtained in accordance with Chapter 440 Florida Statutes with the prescribed limits of liability for all employees who will be working at the construction site whether working for any contractor or any subcontractor.
- (iii) Commercial Liability Insurance. Commercial General Liability including Property products/completed operations, contractual and explosion, collapse and underground (XCU) coverages where required by the risks. The limits of liability must be at least \$2,000,000.00 each occurrence, \$5,000,000.00 annual aggregate for bodily injury and property damage liability. The limit may include

umbrella or excess liability insurance.

- (iv) Comprehensive Automobile Liability Insurance. All owned, hired, leased or non-owned vehicles used in connection with the construction of the Improvements. Policy limits shall be at least combined single limit of \$2,000,000 each accident, for bodily injury and property damage liability. This limit may include umbrella or excess liability insurance.
- (v) Professional Liability Insurance. With respect to design and engineering services for the construction of the Improvements, \$5,000,000 per claim and aggregate liability limit will be provided by Contractor. Policies written on a claim made form shall continue for five (5) years following the completion of the performance or the attempted performance of the provisions of this Lease relating to the construction of the Improvements. If the coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the effective date or coinciding with the effective date of this agreement the Contractor must purchase extended reporting coverage for a minimum of five (5) years following the completion of the performance or the attempted performance of the construction provisions of this Lease.

b. After construction of the Improvements and during the Term, Tenant shall obtain and maintain the following insurance policies and coverages:

- (i) Commercial Property Insurance (Building & Personal Property). The Improvements shall be insured against loss by fire, lightning, windstorm, flood, sinkhole, vandalism, malicious mischief and other hazards customarily insured by extended coverage, all risk (now known as causes of loss-special form) coverage for their full replacement value, which shall be adjusted from time to time to reflect current replacement value.
- (ii) Worker's Compensation and Employer's Liability Insurance. Worker's Compensation insurance shall be obtained in accordance with Chapter 440 Florida Statutes with the prescribed limits of liability for all employees who will be working on the Property whether working for Tenant, Contractor or any subcontractor.
- (iii) Commercial General Liability Insurance. Commercial general liability insurance including property, products, completed operations and contractual liability. Limits of coverage shall be at least \$5,000,000.00 each occurrence limit for bodily injury and property damage liability. The limit may include umbrella or excess liability insurance.
- (iv) Comprehensive Automobile Liability Insurances. All owned, hired, leased or non-owned vehicles used by Tenant shall be covered. Policy limits shall be at least \$1,000,000 each accident combined single limit for bodily injury and property damage liability.

11.02 Casualty Insurance. Tenant, at its sole cost and expense, shall keep special form property insurance and all other coverage necessary to insure against all losses to all Improvements located on the Property caused by damage or destruction by flood, fire, windstorm and all other insurable risks. All policies of insurance provided for herein shall be issued by insurance companies authorized to do business in the State of Florida

and with general policy holder's rating of not less than A- and a financial rating of not less than Class VIII as rated in the most current available "Best's" insurance reports. If available, all policies of insurance required hereby must contain a provision that the company writing said policy will endeavor to give to Landlord thirty (30) days' notice in writing in advance of any cancellation or lapse of coverage. Tenant shall carry such additional insurance which may be required to meet any requirements of applicable Laws. In addition, the liability insurance requirements under this Article 11 shall be reviewed by Landlord and Tenant every five (5) years for the purpose of reducing or increasing (in consultation with their respective insurance advisors) the minimum limits of such insurance to limits which shall be reasonable and customary for similar facilities of like size and operation in accordance with generally accepted insurance industry standards. The replacement value of the buildings and other insurable improvements of the Property shall be re-evaluated from time to time (but no more frequently than once every five (5) years) at the request of either Landlord or Tenant.

11.03 Requirements. All insurance maintained by Tenant pursuant to this Article 11 shall provide that (i) the rights of the insured(s) to receive and collect the proceeds thereof shall not be diminished because of any additional insurance carried by Landlord or Tenant on its own account, (ii) all losses shall be payable notwithstanding any act or negligence of Landlord or Tenant which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding the occupation of the Property for purposes more hazardous than permitted by the terms of such policy; (iii) be written with insurance companies authorized to do business in Florida; and (iv) be written on an occurrence basis with the exception of Professional Liability coverage.

11.04 Certificates. Tenant shall cause the insurance carrier or its authorized representatives to issue to Landlord copies of the certificates evidencing the existence in full force and effect the policies required under this Article 11. Upon request by Landlord delivered not less than thirty (30) days prior to the expiration of any policy of insurance, Tenant shall deliver to Landlord, not less than fifteen (15) days prior to the expiration of such policy of insurance, a certificate evidencing renewal or replacement of such policy of insurance effective no later than the expiration date of the current policy.

11.05 Waiver. To the extent permitted by law and to the extent that insurance is in force and collectible, Landlord and Tenant each hereby release and waive all right each of them would have against the other, by any of subrogation or otherwise, arising from or caused by any hazard covered by insurance on the Property. Tenant shall obtain such release and waiver from each insurance company issuing the policies required under this Lease with the exception of Professional Liability coverage.

## 12. CONDEMNATION AND CASUALTY.

### 12.01 Casualty.

- a. If the Improvements shall be damaged or rendered wholly or partially untenable by fire or other casualty during the Term of this Lease, Rent shall not abate during such period, whether the Property is tenantable or not, subject, however, to the right of the parties to terminate this Lease as provided in 12.01(b) below.
- b. In case of any damage or destruction by fire or other casualty, including without limitation, natural disasters, (i) if a Casualty occurs within eighteen (18) months prior to the expiration

of the then current Term which results in damage to the Improvements with a cost to repair in excess of twenty-five percent (25%) of the then current fair market value of the Project, then Tenant may terminate this Lease by notice to Landlord on the date for termination specified in such notice, and (ii) if the damage shall be so extensive that repairs cannot, in the opinion of Tenant's contractor, reasonably be completed within two hundred seventy (270) days from the date of the casualty, then Tenant may elect to terminate the Lease as of the date of such casualty by written notice delivered to Landlord. In the event of termination, the insurance proceeds payable in connection with the damage or destruction of the Improvements shall be paid in the order set forth below: (i) first, to Tenant to the extent necessary to demolish the damaged Improvements and leave the Land clean and free of debris; (ii) second, to Tenant for the interest of Tenant in the Improvements; and, (iii) third, to the extent proceeds remain, to Landlord for Landlord's residual interest in the Improvements. Upon this termination, regardless of the amount of proceeds available, Tenant shall satisfy and cause to be released any liens or other encumbrances placed or suffered to be placed on Tenant's interest in the Property.

#### 12.02 Condemnation.

- a. If any governmental authority, utility, or other entity having the power of eminent domain acquires all or a portion of the Property by the exercise of such power, or by voluntary conveyance in lieu of the exercise of such power, and as a consequence thereof: (i) the whole or any part of the Improvements shall be taken; or (ii) portions of the Property shall be divided or separated in any manner from other portions of the Property, and as a result any of the Improvements become untenable; or (iii) any portion of the Property shall be taken and as a result of such taking the Improvements become untenable; and, in any such case, Tenant determines in its reasonable discretion that such condemnation or conveyance will have a material adverse impact on the ability of Tenant to conduct its business at the Property or its Subtenants to conduct their business from the Improvements; then, within thirty (30) days after the date on which Tenant receives written notice that such condemnation or conveyance has occurred, Tenant shall have the right to terminate this Lease by written notice to Landlord which termination shall be effective as of the date such governmental authority, utility, or other entity having the power of eminent domain takes actual possession of such portion of the Improvements or the Property so condemned or conveyed.
- b. If any part of the Improvements shall be taken by any governmental authority, utility, or other entity under the power of eminent domain, or by voluntary conveyance in lieu of the exercise of such power, and Tenant shall not have the right to terminate this Lease, or having such right elects to continue in possession, this Lease shall continue and there shall be no abatement of the Rent; and Tenant, at its own expense, may restore the Improvements to tenable condition, similar in physical appearance to that which existed immediately prior to the taking, pursuant to plans and specifications approved by Landlord, which approval shall not be unreasonably, conditioned, or delayed.
- c. Landlord shall be entitled to an award based on the taking of or injury to its interest in the Land and residual interest in the Improvements if any, provided such award does not reduce Tenant's award for its Improvements. Tenant shall be entitled to claim an award for loss of business, depreciation of fixtures and equipment, loss or damage to inventory, fixtures and equipment, removal and reinstallation costs and moving expenses and Landlord shall not be entitled to any portion of such award, or to make a claim therefor. In addition, if Tenant shall have made, at its



own expense, leasehold improvements, material alterations, or structural changes and repairs to the Improvements or paid for all or a portion of the cost of constructing the Improvements, Tenant, and not Landlord, shall be entitled to the award if, as and only to the extent received from such condemning authority, whether to Landlord or Tenant, for an amount equal to the unamortized balance of Tenant's original cost of such leasehold improvements, alterations, changes, repairs, and construction (including, but not limited to, the Improvements). Such unamortized costs shall be referred to as Tenant's "Book Value". The Book Value shall be determined as of the date such governmental authority, utility, or other entity having the power of eminent domain takes actual possession of such portion of the Improvements or the Land so condemned or conveyed and shall be computed using a thirty (30) year amortization period. The thirty (30) year amortization period shall be deemed to begin as of the Commencement Date of this Lease or date such improvements were placed into service if such date is after the Commencement Date. In the event Landlord actually receives an award belonging to Tenant and fails to pay said sums to Tenant within thirty (30) days following written demand by Tenant, together with supporting documentation showing the calculation of the amount of the award received by Landlord from such condemning authority, said amount may be set off and deducted by Tenant from the next or any succeeding installment payments of Rent or any other amounts due and payable hereunder by Tenant to Landlord.

#### 13. ASSIGNMENT AND SUBLETTING.

Tenant may, without further consent from Landlord, assign, sublease or transfer Tenant's interest in this Lease and/or the Improvements (or any element or component thereof) to any Affiliate of Tenant, or to any Qualified Purchaser. Additionally, Landlord acknowledges that Tenant and IFF have entered into the IFF Sublease contemporaneously with the execution of this Lease, and Landlord consents to the same. Except as set forth above in this Article 13, Tenant shall not sublease the Property to any Subtenant (other than to IFF or to any of IFF's Affiliates) without the prior consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed to the extent that Tenant proposes a sublease to a Qualified Subtenant; provided, however, Tenant acknowledges that Landlord may condition its consent to any proposed sublease upon Landlord entering into an Affiliate Agreement with the proposed Subtenant. Notwithstanding the foregoing, Landlord agrees to use commercially reasonable efforts in good faith to enter into an Affiliation Agreement with any Qualified Subtenant proposed by Tenant. Any assignment or transfer in breach or violation hereof shall be null and void. The foregoing shall not prevent Subtenant from entering into sub-subleases or licenses with vendors who operate within the Improvements to provide goods and/or services as part of Subtenant's standard business operations. An assignment or transfer by Tenant shall not relieve, release or discharge it from any obligation or liability hereunder.

#### 14. REPAIR AND REHABILITATION; FACILITIES CONDITION REPORT.

Upon substantial completion of the initial Improvements based on the final plans and specifications, Tenant will develop and implement the Maintenance Schedule for the performance of asset management services for the Improvements. The Maintenance Schedule shall be prepared and implemented consistent with Good Industry Practice and describe the useful life of the major systems, fixtures and structural components of the Improvements (specifically excluding, however, any information technology systems), and the projected nature, scope and timing of foreseeable future maintenance and capital replacements throughout the Term of this Lease with respect to the Improvements consistent with the provisions of Section 16.01 (d). The Maintenance Schedule shall be

amended from time to time by Tenant, as reasonably necessary.

During the fifteenth (15th) full year of the Term, and again during the twenty-fifth (25th) and thirty-fifth (35th) full years of the Term, as may be applicable, Tenant will, as an operating expense, cause a comprehensive facilities condition assessment report to be performed with respect to the Improvements by an independent engineer reasonably agreed upon by Tenant and Landlord. The cost of each facilities condition assessment report shall be paid by Tenant unless Landlord has requested any report in addition to the scheduled reports identified above, in which event such additional report shall be at Landlord's cost and expense. The Landlord and Tenant will reasonably determine the nature and scope of services, the schedule and deliverables to be provided by the independent engineer in connection with the preparation of any comprehensive facilities condition assessment report. Following receipt and review of any such comprehensive facilities condition assessment report, Landlord and Tenant shall reasonably determine the budget for the implementation of any remedial action reasonably required to address any defects, non-compliances, or deficiencies identified by the independent engineer with respect to the Improvements or any component thereof, as may be necessary to bring the Improvements into accordance with the requirements of this Lease; provided, however, notwithstanding anything herein to the contrary, in no event shall Tenant be obligated to address any defects, non-compliances, or deficiencies identified in any applicable comprehensive facilities condition assessment report to the extent that the same (a) are otherwise scheduled to be addressed during the immediately following twelve (12) month period pursuant to the Maintenance Schedule, or (b) are reasonably deemed to be non-essential items (meaning that such items do not impact life safety, security, code compliance or essential building functionality). Except as otherwise provided above, Tenant shall, at its cost and expense, promptly fund and perform any work reasonably necessary to remedy any defects, non-compliances, or deficiencies identified in any applicable comprehensive facilities condition assessment report (it being agreed that Tenant shall commence any such work within thirty (30) days after the date recommended in the applicable report, or otherwise by the date as may be agreed upon by Landlord and Tenant).

## 15. ACCESS; EASEMENTS.

Without limiting any of the utility-related easements granted to Tenant pursuant to Article 9 above, Landlord grants to Tenant the easements described below, which Landlord acknowledges and agrees are necessary for Tenant's development and use of the Project.

15.01 Permanent Easement. The Landlord hereby grants to Tenant for the duration of the Term of this Lease, for the use of Tenant, its Subtenants, invitees, licensees, suppliers, customers, employees, and successors and assigns, a perpetual nonexclusive easement, benefiting the Land, upon, over, across and through the land constituting the Florida Poly Campus for the purpose of providing pedestrian and vehicular ingress, egress and access between, from and to the Land.

15.02 Stormwater Easements. The following easements shall be granted by Landlord to Tenant for the uses set forth below, for the duration of the Term.

- a. Landlord hereby grants and conveys to Tenant, for the benefit of Tenant and the Land, a perpetual nonexclusive easement for constructing, maintaining and utilizing any Improvements reasonably necessary to discharge stormwater from the Land to the point

of outfall into the public stormwater system and/or retention area generally serving the Florida Poly Campus (or the applicable portion thereof; such stormwater system and/or retention areas are referred to herein the "Outfall Improvements"), within the area legally described on **Exhibit G** attached hereto (the "Outfall Easement"). Tenant shall, at Tenant's expense, be responsible for the design and construction of any applicable Improvements necessary to make such connection from the Land to the Outfall Improvements within the Outfall Easement.

- b. Landlord shall inspect, repair and maintain the Outfall Improvements within the Outfall Easement as required to assure the proper function of the Outfall Improvements. In the event that Landlord shall fail or refuse to make any required repairs to the Outfall Improvements within thirty (30) days after Landlord's receipt of written notice from Tenant (provided that Landlord shall have such additional time as may be reasonably necessary to make such repair, provided that Landlord commences to cure such default within such thirty (30) day period and actively and diligently in good faith prosecutes such cure to completion), then Tenant may make such repairs to the Outfall Improvements, and Landlord shall reimburse Tenant for Tenant's reasonable, third-party, out-of-pocket costs and expenses in taking such action within thirty (30) days after receiving an invoice from Tenant setting forth such costs and expenses.

## 16. PROJECT DESIGN; CONSTRUCTION.

### 16.01 Project Design.

The following paragraphs shall be applicable to the original design and construction of the Improvements and any substantial repair, rehabilitation, replacement or renovation of the Improvements.

- a. Tenant shall select and contract with (or may use its in-house) architects, engineers, and other design personnel to perform design services and produce design and construction plans, drawings, specifications and documents necessary for the construction of the Improvements. Such persons shall have experience, expertise, training and applicable licenses, certifications and registrations necessary for the design work performed by them. All design work will be performed by an architect or firm of architects licensed by the State of Florida. The cost of all professional engineering, surveying, design, and architectural services required by Tenant to prepare construction plans, drawings and specifications and oversee construction of the Improvements in accordance with the plans and specifications will be paid by Tenant.
- b. The design of the exterior portions of the Improvements (and only the exterior portions of the improvements) will be subject to approval by Landlord (such approval not to be unreasonably withheld, conditioned or delayed) and will include exterior features that consider the attractiveness of the Improvements. Tenant shall provide its exterior design plans and specifications to Landlord for review. The exterior Improvements shall comply with the Florida Poly Campus Master Plan goals, and objectives. Tenant shall provide the final design and plans for the exterior portion of the Improvements. If Landlord does not notify Tenant in writing within ten (10) business days of any changes Landlord desires to be made to Tenant's exterior plans and specifications, then Tenant shall deliver a second notice to Landlord requesting Landlord's approval. If Landlord does not notify Tenant in writing within five (5) business days of any changes Landlord desires to be made to the exterior plans and specifications after such second

notice has been sent to Landlord, then, Landlord shall be deemed to have approved the exterior plans and specifications. The parties shall follow the foregoing procedures for approving changes and modifications to the plans and specifications until the same are finally approved by Landlord and Tenant.

- c. If the Improvements are built in substantial conformance to the plans approved (or deemed approved) by Landlord, then such Improvements shall be deemed to comply with applicable building codes, University Design Standards and regulations. Tenant agrees to comply with Landlord's exterior design standards in the design and construction of the exterior Improvements. Notwithstanding anything herein to the contrary, once Landlord has approved (or is deemed to have approved) Tenant's design and plans for the Improvements, as long as Tenant constructs the Improvements in accordance with such design and plans, Tenant shall not be in default under this Lease if any of the Improvements are not LEED certified. The University will review, and approve plans and specifications in accordance with the University Design Standards and the 50 year building lifecycle. Any modifications made to the plans and specifications following the Landlord's review and approval should be submitted to the Landlord for approval, in the form of a substitution request.
- d. The parties acknowledge and agree that the major systems, fixtures and structural components of the Improvements shall be designed (subject to Tenant's compliance with the Maintenance Schedule) with an expected building lifecycle of at least 50 years from the Commencement Date. Notwithstanding anything herein to the contrary, once Landlord has approved Tenant's design and plans and specifications for the Improvements, as long as Tenant constructs the Improvements in accordance with such design and plans and specifications, and provided that Tenant maintains the same substantially in accordance with the Maintenance Schedule, then such Improvements, as so constructed and maintained, shall be deemed in compliance with the aforementioned 50 year useful life requirement.

#### 16.02 Construction.

- a. All construction work for the Improvements will be performed by contractors selected by Tenant who are licensed by the State of Florida and that execute a construction contract with Tenant.
- b. Landlord shall reserve for the Property, and shall assign to Tenant, the necessary entitlements to allow Tenant to construct the Improvements.
- c. Prior to commencement of construction work on the Land, Tenant shall cause its contractor to deliver to Landlord a waiver and release in the form of attached **Exhibit H** to this Lease.
- d. Tenant will commence initial site preparation of the Land and construction of the Improvements within ninety (90) days of receipt of all required Governmental Approvals (as set forth in Paragraph 25.03 below) and will endeavor to complete construction in accordance with the timeline to be agreed upon and attached as **Exhibit I** to this Lease (the "Timeline"), subject to any contingencies, Force Majeure and obtaining required permits. Prior to commencement of work on the Land Tenant shall deliver to Landlord documentation substantiating satisfaction of conditions precedent, insurance, waivers, releases and others required by this Lease for the commencement

of such work. If COVID-19 remains an epidemic at the time of execution of this Lease, the Timeline should account for the epidemic's impact on operations to the extent possible.

- e. No duties, obligations or responsibilities are or shall be imposed upon Landlord to monitor, inspect or test any work, service or activity by Tenant or its contractors relating to the design, construction, maintenance, repair or alteration of any Improvement. Except as expressly provided herein to the contrary, Landlord has no duty, obligation or responsibility to Tenant hereunder to perform maintenance or make any repairs whatsoever to the Improvements.
- f. Tenant shall take all reasonable action and precaution to avoid and minimize disruption to traffic, parking and activities on the Florida Poly Campus during performance of construction work relating to the Improvements. Landlord shall provide, for use by Tenant and Contractor and their employees and subcontractors, access to the Designated Staging Area depicted on **Exhibit J** to allow for access, storage, laydown and staging in connection with the construction, furnishing and equipping of the Improvements and hereby grants to the Tenant and Contractor and their employees and subcontractors a temporary license on, over, across, and through such portions of the Campus as are described in the Mobilization Plans attached as **Exhibit K** for the development and construction of the Improvements, for pedestrian and vehicular access, ingress and egress and for construction activities in connection with the construction of the Improvements, which rights and license shall expire automatically upon the earlier to occur of (A) the Commencement Date or (B) the final completion of the Improvements. Landlord shall cooperate with Tenant and Contractor to identify any adjustments to such area or areas promptly after the date hereof. During the course of the work, Tenant shall cause all personnel performing work on or making deliveries or pick-ups at the Property to park trucks and vehicles solely on the Land or in a Designated Staging Area. All tools, equipment, supplies, materials and other items used in the performance of the work shall be stored on the Land or the Designated Staging Area at Tenant's cost and risk. Tenant shall also cooperate and coordinate with Landlord to minimize any interference with the use and enjoyment of areas of the Florida Poly Campus adjacent to or in the vicinity of the Land. Tenant shall promptly pay for any and all damage done to any building, structure, roadway, sidewalk, curb, parking area or landscaping on the Florida Poly Campus as a result of Tenant's activities on the Land or relating to the Improvements, and repair and restore all portions of the Florida Poly Campus damaged to a condition equal to or superior to the condition that existed immediately prior to the commencement of the construction work. Tenant shall notify the Contractor that all construction workers on site are to be courteous and respectful to students and faculty of Landlord. Tenant and Tenant's contractors and subcontractors, and their contractors, employees, or agents must follow all Florida Poly rules, regulations, and policies including smoking on campus and any protocols regarding COVID-19.

#### 16.03 Coordination with other Florida Poly Projects.

- a. All design and construction work and activities by Tenant and its contractors and subcontractors relating to the Improvements shall be performed in a good and workmanlike manner and using new materials in accordance with (i) all applicable Laws and Governmental Authorizations; (ii) the Florida Poly rules, regulations (iii)

University Design Standards, (iv) the Permitted Title Encumbrances; (v) the approved constructions plans and specifications; and (vi) Good Industry Practice. Tenant shall cooperate and shall cause its contractors to cooperate and coordinate with Landlord and any contractor engaged by Landlord in connection with other construction work at locations near the Land. Such cooperation shall potentially include the location of areas for parking, laydown and staging routes for access and egress to the project site, the alignment, capacity and installation of certain utility, stormwater and other infrastructure to support the Improvements and the other projects. The Timeline shall include detail regarding activities and work which require interfacing and coordinating with Landlord and its contractors. Tenant shall promptly notify Landlord in the event of the occurrence of any occurrence or circumstance reasonably likely to adversely impact the performance of work in accordance with the Timeline. Reclaimed materials may be used with express written permission of the Landlord.

- b. In order to facilitate the coordination of other work on the Florida Poly Campus, Tenant shall provide access, information and documents reasonably requested by Landlord to enable Landlord to monitor the performance and progress of the development and construction of the Improvements. Any access or provision of information or documents shall not in any way delay Tenants construction, maintenance or operation of the Improvements. Additionally, Landlord acknowledges and agrees that: (i) any access by Landlord, or Landlord's consultants, employees or contractors shall be at such parties' own risk; and (ii) while on the Land, Landlord shall abide by any construction safety program of Tenant required for compliance with all local, state, and federal laws, rules, and regulations, including OSHA and NIOSH requirements.

## 17. DEFAULTS; REMEDIES; LANDLORD TERMINATION RIGHT.

17.01 Tenant Default. Any one or more of the following events shall constitute an "Event of Default" under this Lease:

- a. Tenant fails to pay when due Rent, or any other amount to be paid under this Lease by Tenant, and the failure continues for ten (10) business days after receipt by Tenant of written notice from Landlord;
- b. Tenant gives Landlord any report or other information that is knowingly and materially false or misleading, and which false or misleading information causes a material adverse effect to Landlord;
- c. Tenant ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Tenant's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Tenant consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets; or
- d. Tenant fails, within sixty (60) days after the commencement of any proceedings against Tenant seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, to have such

proceedings dismissed, or Tenant fails, within sixty (60) days after an appointment, without Tenant's consent or acquiescence, of any trustee, receiver or liquidator for Tenant or for all or any substantial part of Tenant's assets, to have such appointment vacated; or

- e. Tenant fails to fulfill any of the other covenants, agreements or obligations of the Lease, and such default continues for more than thirty (30) days after written notice but if the nature of such default is such that it cannot be cured within the thirty (30) day period, an Event of Default will not be deemed to have occurred if Tenant commences to cure within such thirty (30) day period and diligently proceeds to complete its cure as soon as reasonably possible.

17.02 Landlord Remedies. If an Event of Default is not cured within the applicable cure period as stated in Paragraph 17.01, provided that Lessor has obtained a final, nonappealable adjudication of the claimed Event of Default, then upon the expiration of sixty (60) days following such adjudication, Landlord's remedies shall include the following remedies, subject to the provisions of Article 28 hereof related to the rights of any Leasehold Mortgagee: **[NOTE: ADDITIONAL LANGUAGE REQUIRED BY TENANT'S CAPITAL PARTNER]** (i) the right, at its option, then or at any time while the Event of Default continues to give a written notice specifying a date on which this Lease shall terminate, and on that date, subject to any provisions of this Lease relating to the survival of Tenant's obligations, this Lease shall terminate and Landlord may re-enter and take complete and peaceful possession of the Property and, with process of law, remove all persons and all furniture, fixtures, equipment and other personal property located on the Property and owned or leased from third parties by Tenant, in which event Tenant shall peacefully and quietly yield up and surrender the Property to Landlord or (ii) the right, at Landlord's option, then or at any time while the Event of Default continues, subject to applicable Law, to enter the Property and re-let the same for Tenant's account. No notice from Landlord under this Lease will constitute an election by Landlord to terminate this Lease unless the notice specifically says so. Landlord may, in addition to other remedies hereunder or at Law, (w) commence proceedings against Tenant for damages and collect all sums or amounts with respect to which Tenant may then be in default and are accrued up to the date of termination of this Lease (including amounts due under the provisions which survive such termination, if Landlord elects to terminate the Lease); (x) commence proceedings against Tenant under the provisions of this Lease for holdover obligations of Tenant, if any; (y) bring an action for specific performance, including to require Tenant to document the conveyance and transfer set forth in this Lease; or (z) exercise any other right or remedy available at law or in equity.

17.03 Landlord Default. If Landlord shall (i) fail to observe or perform any provision of this Lease and such failure shall continue for thirty (30) days after notice to Landlord of such failure, then a Landlord Event of Default shall exist under this Lease; provided, however, that in the case of any such failure that cannot with diligence be cured within such thirty (30) day period (expressly excluding any failure to pay money under this Lease), if Landlord shall commence promptly to cure the same and thereafter prosecute the curing thereof with diligence to completion, the time within which such failure may be cured shall be extended for such period as is necessary to complete the curing thereof with diligence but in no event longer than 180 days.

#### 17.04 Tenant Remedies.

- a. If a Landlord Event of Default has occurred, Tenant shall have the following remedies: (i) terminate this Lease by delivering notice to Landlord, and upon the date set forth in such notice, this Lease shall terminate on such date as fully and completely and with the same effect as if such date were the date set herein for the expiration of the Term all obligations of Landlord and Tenant hereunder shall terminate, except for those that expressly survive termination, including surrender of the Property and Rent shall be apportioned as of such date and Landlord shall promptly refund to Tenant any Rent previously paid that is allocable to the period subsequent to such termination; (ii) cure such Landlord Event of Default for the account of Landlord, without waiving any claim for direct damages incurred by Tenant by virtue of such Event of Default, and any amount reasonably paid by Tenant in so doing shall be deemed paid or incurred for the account of Landlord, and Landlord agrees to reimburse Tenant such amount thereof within sixty (60) days following Tenant's written demand with detailed substantiations of all amounts; or (iii) enforce Landlord's obligations hereunder by (a) an action for specific performance; (b) an action for injunctive relief; (c) an action for mandamus; and/or (d) an action for declaratory judgment. Tenant may remedy any Landlord failure to perform prior to the expiration of the period within which Landlord may cure such failure if in its notice to Landlord of the Landlord Event of Default Tenant described that the cure of such failure prior to the expiration of said cure period is reasonably necessary to protect the Property or to prevent injury to persons, or to permit Tenant to conduct its usual business operations on the Property; provided, however, Tenant shall notify Landlord of its intention to commence to cure such failure during the cure period and set forth therein Tenant's good faith estimate of the cost, expense and fees and time required for the cure. Nothing in this Article 17 shall be deemed to modify, amend or limit other Tenant remedies that expressly are provided in this Lease, including, without limitation, all termination, reimbursement and offset rights.
- b. Except as provided in Paragraph 10.02 above, Landlord is not and shall not be liable for any claims for damage to the Property or damage to property or injuries to persons in, on or about the Property or elsewhere occurring during the Term. This limitation on liability shall apply without limitation to claims by Tenant, its lenders, affiliates, contractors, agents and representatives and its and their employees, agents, invitees, licensees, customers, guests, or related entities and successors or permitted assigns. Furthermore in no event shall Landlord or Tenant have any liability to other party or any of its lenders, affiliates, contractors, agents and representatives and its and their employees, agents, invitees, licensees, customers, guests, or related entities and successors or permitted assigns, on account of any consequential, incidental, special, punitive, exemplary or any other indirect damages, whether in contract, tort (including negligence and strict liability) or under any other legal or equitable principles whatsoever, or for any loss of profits, opportunity, reputation or revenue.

#### 18. HOLDING OVER.

If Tenant remains in possession of the Property or any part thereof after the expiration or termination of the Term without any agreement in writing between Landlord and Tenant with respect thereto, then Tenant shall be deemed a tenant from month to month, and in addition to Landlord's other rights and remedies hereunder and Tenant's obligations, Tenant shall be subject to payment in advance for each month or part thereof that Tenant holds over, of an amount equal to \$200,000.



## 19. SURRENDER.

19.01 Surrender. At the expiration or earlier termination of the Term of this Lease, without notice, demand or action by Landlord (subject to the right of Landlord to require Tenant to demolish the Improvements pursuant to Paragraph 19.03 below, as may be applicable), Tenant shall yield the Property to Landlord in the condition required by Article 14 above and the Maintenance Schedule, reasonable wear and tear and damage by casualty and/or condemnation excepted, and the Improvements shall become the sole property of Landlord without any compensation to Tenant (except as otherwise may be expressly contemplated herein, including, without limitation, any requirement for Landlord to pay the Early Termination Purchase Price, as may be applicable), free and clear of any right, title, interest, claim or demand of Tenant or of anyone claiming through or under Tenant. Notwithstanding anything herein to the contrary, Tenant shall have the right, at any time during the Term, and up to thirty (30) days after the expiration or earlier termination of this Lease, to remove any or all of Tenant's and/or any Subtenant's trade fixtures, equipment, and property from the Property. Tenant shall repair any damage which may result to the Property from such removal, normal wear and tear excepted. If Tenant fails to remove any of those items, subject to applicable Laws, the items shall be deemed abandoned and shall at the election of Landlord in its sole discretion be the property of Landlord. On or before the expiration or termination of this Lease, Tenant shall cause any mortgages, deeds of trust, liens or encumbrances created by, through or under Tenant to be fully released and discharged. Subject to abandonment by Tenant more than thirty (30) days after the expiration or earlier termination of the Term, all trade fixtures, equipment, leasehold improvements and property of any nature which may be installed or placed in or upon the Property by Tenant shall remain the property of Tenant.

19.02 Improvement Documents. Upon the expiration or the earlier termination of this Lease, Tenant shall provide to Landlord (unless Landlord exercises the right to require Tenant to demolish the Improvements pursuant to Paragraph 19.03 below, as may be applicable) copies of the design plans, as-builts, drawings and reports related to the Improvements to the extent the same are within the possession of Tenant (the "Improvement Documents"), and Tenant hereby authorizes Landlord's use of same for the sole purpose of the further use and maintenance of the Improvements, but for no other use whatsoever; provided however, Landlord acknowledges and agrees that Tenant does not make, and specifically disclaims, any representation, warranty, covenant or agreement of any kind or character regarding any aspect of the Improvement Documents furnished to Landlord by Tenant, including without limitation, the accuracy, completeness, compliance with Laws, or fitness for any particular purpose, of the Improvement Documents. Landlord further acknowledges and agrees that any Improvement Documents provided by Tenant are for Landlord's convenience only, that Landlord has no right to rely on the Improvement Documents or their accuracy, completeness or compliance, and by acceptance of the Improvement Documents Landlord expressly waives any and all claims or causes of action that it may have with regard to the reliance on, or use of, the Improvement Documents. To the extent reasonably required and at no cost or liability to Tenant, Tenant shall execute any instruments reasonably required to document the transfer and assignment of the Improvement Documents to Landlord or its designee.

19.03 Option to Demolish. Notwithstanding anything herein to the contrary, in the event that

Tenant fails to maintain the Improvements in accordance with Article 14 above and the Maintenance Schedule, and if the reasonable estimated cost to bring the maintenance of the Improvements into compliance with Article 14 above and the Maintenance Schedule would be greater than the reasonable estimated cost to demolish the Improvements and remove all debris resulting therefrom (the "Demolition Costs"), then Landlord, as its sole remedy, may elect, by written notice to Tenant delivered no later than the expiration or earlier termination of the Term, (i) to require Tenant to demolish the Improvements and remove all debris resulting therefrom at Tenant's cost or (ii) to require Tenant to pay Landlord the amount equal to the Demolition Costs, and in such event, Tenant shall be relieved of any responsibility to so demolish and remove the Improvements.

## 20. TERMS SPECIFIC TO LANDLORD.

- 20.01 Release. Prior to the commencement of any construction on the Land, Tenant's general or design/build contractor and all contractors, subcontractors and vendors contracted to provide services, products or supplies the value of which exceeds \$25,000 must deliver to Landlord a Waiver and Release, in the form of **Exhibit H** to this Lease.
- 20.02 Tenant's Personalty. Tenant shall store its Personalty in the Property and Tenant shall occupy and use the Property at its own risk. Landlord and the Florida Board of Governors shall not be responsible or liable at any time and Tenant expressly releases them from any loss or damage to Tenant's Personalty. Tenant shall give prompt notice to Landlord in case of fire or accidents on the Property causing material damage thereto.
- 20.03 ADA. Tenant shall indemnify, defend (with counsel reasonably acceptable to Landlord) and hold Landlord harmless from and against any and all loss, cost, damage or claim arising during the Term out the failure of any portion of the Improvements to comply with all requirements (including, but not limited to, applicable terms of the Americans With Disabilities Act of 1990 (the "ADA"), as modified and supplemented from time to time) which shall impose any violation, order or duty upon Landlord or Tenant arising from, or in connection with, the Improvements, the Property, Tenant's occupancy, use or manner of use of any portion of the Property or the Improvements (including, without limitation, any occupancy, use or manner of use that constitutes a "place of public accommodation" under the ADA), or any installations in the Property, Improvements, or required by reason of a breach of any of Tenant's covenants or agreements under this Lease, whether or not such requirements shall now be in effect or hereafter enacted or issued. Tenant's indemnification obligation hereunder shall not extend to the gross negligence or willful misconduct or intentional violation of any applicable laws by Landlord or its employees, trustees, and agents.
- 20.04 Board of Governors' Consent. This Lease is subject to and conditioned upon the initial written consent of Board of Governors. If Landlord determines that a material change in the terms of this Lease has occurred after the form of this Lease that was reviewed by the Board of Governors' the Tenant acknowledges that this Lease is subject to re-approval by the Board of Governors.
- 20.05 OFAC. Without limiting the general requirements under this Lease for the parties to comply with applicable laws, to the extent applicable to each party and/or its operations, each party shall comply with all (i) regulations promulgated by the Office of Foreign Assets Control, Department of the Treasury which are applicable to Tenant or any occupant of the Property, (ii) the International Emergency Economic Powers

Act, 50 U.S.C. Section 1701 et seq., (iii) the Trading with the Enemy Act, 50 U.S.C. App. I et seq., and (iv) the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism.

20.06 Sovereign Immunity. This Lease does not affect the immunities, exemptions and limitations of liability of Landlord under Florida Statute 768.28 and other Applicable Laws of the State of Florida. Nothing in this Lease shall be deemed to affect the rights, privileges and immunities afforded Landlord, the Board of Governors, and the State of Florida by law. Nothing herein shall be construed consent by Landlord to be sued by third parties in any manner arising out of this Lease or as consent of the State of Florida to be sued or named, joined or added as a party to any proceeding and no such consent is granted except as expressly provided by Florida Statutes or case law. Notwithstanding anything herein to the contrary, Landlord expressly consents to Tenant enforcing against Landlord the obligations of Landlord under this Lease pursuant to (a) an action for specific performance; (b) an action for injunctive relief; (c) an action for mandamus; and/or (d) an action for declaratory judgment.

21. QUIET ENJOYMENT AND TITLE.

Provided no Event of Default has occurred under this Lease, Tenant shall, during the Term, freely, peaceably, and quietly occupy and enjoy possession of the Property, together with the rights, privileges, easements, and appurtenances herein demised, without molestation or hindrance, lawful or otherwise.

22. NOTICES.

22.01 Notices.

a. Notices and Payments. All payments of Rent or other amounts payable hereunder shall be delivered to the party entitled thereto at the addresses hereinafter set forth. Whenever notice is required or permitted in this Lease, it shall be in writing and shall be deemed to be properly given upon receipt or refusal on a business day or next business day after delivery if sent by U.S. Postal Service, postage prepaid, by certified or registered mail, return receipt requested, or if personally delivered by hand or sent by nationally recognized overnight courier service. For purposes of this Article 22, delivery of a payment or notice to an address from which the recipient has moved but failed to notify the other party of modification of such address as hereinafter provided shall be deemed to constitute refusal of such payment or notice by the intended recipient. All payments and notices required or permitted in this Lease shall be delivered to the party entitled thereto at the following addresses:

Landlord:

Address

Officer With a copy to:

OGC

Tenant:

The foregoing addresses may be modified by delivery of written notice of such modification to the party entitled thereto, which written notice shall be delivered and deemed effective as set forth herein.

22.02 Reserved.

23. INSPECTION PERIOD; APPROVAL PERIOD.

23.01 Inspection Period. Tenant shall have a period of one hundred twenty (120) days, beginning on the Effective Date, within which to satisfy itself, in Tenant's sole discretion (for any reason or no reason), that the Property is suitable for Tenant's intended use (the "Inspection Period").

Commencing as of the Effective Date, Tenant shall have access to the Land to perform such testing, evaluation, and inspection of the Land as Tenant deems necessary to evaluate the Land for its use for the Improvements, including, but not limited to geotechnical review, sampling and analysis, environmental testing, and site work engineering. If during the Inspection Period Tenant determines that the Land is not suitable or feasible for the Improvements, Tenant shall have the right to terminate this Lease provided such notice is delivered to Landlord prior to the expiration of the Inspection Period, and this Lease shall thereafter be of no further force or effect. With respect to any acts or omissions, during the Inspection Period, Tenant shall indemnify Landlord for any claims, liability or damages arising from Tenant's inspections on the Land, and if Tenant elects to terminate this Lease, Tenant shall at its cost restore the Land to substantially the same condition as it was in as of the beginning of the Inspection Period.

If Tenant, prior to the expiration of the Inspection Period, is satisfied as to the condition and suitability of the Property, Tenant shall send written notice to Landlord that the Inspection Period has ended as of a date certain and that date shall be the end of the Inspection Period. If Tenant fails to send such notice prior to the expiration of the Inspection Period or send notice of its election to terminate this Lease, then the Inspection Period shall be deemed to have expired.

23.02 Approval Period.

a. Following the Inspection Period, Tenant shall have an additional two hundred seventy (270) days to obtain, in Tenant's satisfaction and at Tenant's sole cost and expense, the necessary Governmental Approvals (including permits and approvals required from Landlord, and Landlord's approval of Tenant's design and plans as described in Article 16 above) for Tenant's intended use of the Property (collectively, the "Approvals"). Landlord shall cooperate with Tenant (at no cost to Landlord) in the application for any Government Approvals that require Landlord's consent or approval. If despite its reasonable efforts Tenant has not obtained all Approvals by the end of the Permitting and Approval Period, the Permitting and Approval Period shall be extended for two (2) periods of thirty (30) days each. If Tenant has not obtained all Approvals by the end of the extended Approval Period, either party may elect to not proceed with the transaction contemplated by this Lease, in which event either party may terminate this Lease by notifying the other party in writing on or before the expiration of the extended Permitting Approval Period, and upon such notice the parties shall be released from all further obligations under this Lease. At Tenant's costs, to the extent that Tenant is

required to obtain Governmental Approvals from governmental authorities and agencies other than Landlord, Landlord shall cooperate with, and reasonably support, Tenant in obtaining any building and development permits, curb cut permits, site plan approvals, and water and sanitary sewer tap permits or such other permits, licenses, or approvals as may be necessary for the development of the Improvements.

- b. With respect to Landlord's review and consideration of applications for Governmental Approvals and review and approval of the any design or construction plans, specifications or documents prepared by or for Tenant in connection with the construction, operation, maintenance and repair of the Improvements and review of their compliance with applicable building codes and any required inspections of the Improvements (including, state fire marshal inspections), Tenant shall reimburse Landlord within thirty (30) days after written notice for the reasonable actual, documented, out-of-pocket costs incurred by Landlord from (a) costs and administrative fees incurred related to building compliance and inspections; and (b) fees and expenses of a third party vendor retained by Landlord for such review and approval, including approval of building permits and monthly inspections. The parties agree that in connection with the original design and construction of the Improvements, Tenant shall pay Landlord sixty thousand dollars (\$60,000) for the ordinary course of conduct of processing applications for permits and Governmental Approvals issued by Landlord and making inspections required under applicable Florida Poly rules, regulations, policies, and standards.

23.03 No Guarantees. Tenant acknowledges that it will conduct due diligence with respect to the costs, risks, and uncertainties of developing, constructing, operating and maintaining the Improvements and its own evaluation of the demand for, and the financial prospects of the Improvements without reliance on any statement, description or information provided by Florida Poly. Florida Poly makes no representation, warranty, or other undertaking with respect to enrollment size of undergraduates or graduate students or regarding the size of the faculty body.

## 24. CONTINGENCIES.

24.01 Contingencies. The lease of the Land under this Lease shall be contingent upon satisfaction of the following conditions:

- a. Testing/Inspections. Satisfaction by Tenant of the condition and suitability of the Property based on tests and inspections conducted pursuant to Article 23.
- b. Title Commitment/Permitted Title Encumbrances/Policy. Tenant may obtain a current title report, or leasehold title commitment (either the title report or the title commitment hereinafter the "Title Commitment") and copies of all title exception documents indicated thereon, for Tenant's review. Prior to the end of the Inspection Period, Landlord and Tenant shall agree to the Permitted Title Encumbrances to be listed on **Exhibit B** based on the current title report and survey. If Landlord and Tenant do not agree on the Permitted Title Encumbrances prior to the end of the Inspection Period, either party shall have the right to terminate this Lease at any time thereafter until such time as Landlord and Tenant reach agreement. Tenant may, at its sole cost and expense, obtain a leasehold owner's title policy regarding

the Property.

- c. Survey. During the Inspection Period, Tenant, at Tenant's sole cost and expense, shall obtain a survey of the Land, certified to Landlord, Tenant, and Tenant's title insurer, and showing any and all improvements located within the Property, if any, and all easement areas appurtenant thereto. Tenant may also require the surveyor to certify: (i) that the survey is an accurate survey of all of the real property legally described thereon; (ii) that the survey properly and accurately indicates and locates any improvements which are shown thereon; (iii) that the survey was prepared under the direct supervision and control of the surveyor from an actual survey made of the real property legally described thereon; (iv) that there are no encroachments either across property lines or zoning restrictions lines in effect as of the date of the survey other than as shown thereon; (v) that the survey properly designates and locates all visible or recorded, easements as shown on the Title Commitment; (vi) all established building and setback lines or restrictions of record (as disclosed by the Title Commitment), established by law, or known to the surveyor after inquiry are accurately indicated and located thereon; (vii) the location and existence of property for drainage, ingress or egress, or any other purpose except as is shown thereon; (viii) that utility services for electricity, water, sewer and telephone either enter the Land through adjoining public streets, or, if they pass through or are located on private land, do so in accordance with easements inuring to the owner of the property which are shown thereon; (ix) that ingress and egress to the Land is provided by [\_\_\_\_\_], upon which the property abuts, the same being paved and dedicated right-of-way maintained by Landlord, and [Polk County, Florida], respectively; (x) that the property is located in Flood Zone "\_\_\_" in accordance with the Federal Emergency Management Agency Flood Insurance Rate Map; and (xi) that the survey meets the requirements of the Minimum Technical Standards set forth by the Florida Board of Professional Land Surveyors in the Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.
- d. Prior to the end of the Inspection Period, Landlord and Tenant shall agree to the legal description to be listed on **Exhibit A** based on the legal description shown on the survey and the supporting documents provided with the current title report.
- e. Memorandum of Lease. Landlord shall execute a Memorandum of Lease in the form attached hereto as **Exhibit C** at the end of the Inspection Period and deliver same to Tenant. As of the Commencement Date, Tenant may, at its option and sole cost, record the Memorandum of Lease in the public records of Polk County, Florida.
- f. Delivery of Documents. All original documents referenced in Article 24 shall be delivered by the parties as of the Commencement Date.

24.02 Failure to Satisfy Contingencies. If the contingencies set forth in this Article 24 are not satisfied in accordance with the terms hereof, Tenant may notify Landlord in writing prior to the expiration of the Inspection Period of its election to terminate this Lease and upon giving such notice, this Lease shall be null and void and each party released and relieved of all liability under this Lease, except as specifically provided herein.

## 25. PRORATIONS.

25.01 Proration; Security Deposits; Escrow Accounts. To the extent applicable and except as

otherwise provided herein, as of the Commencement Date, all Taxes and expenses shall be prorated between the Landlord and Tenant and shall include all Rent and expenses due monthly and annually.

25.02 Impact Fees. Tenant shall be responsible for all impact fees for the Improvements.

25.03 Landlord Cooperation. Landlord shall reasonably cooperate with Tenant with regard to coordination of construction activities and upon request by Tenant. Landlord shall execute all instruments necessary to facilitate such coordination of construction activities, including but not limited to applications for licenses and permits from applicable governmental authorities other than Landlord, provided Landlord shall not incur any obligation, liability, expense, cost or obligation in respect thereto.

## 26. MISCELLANEOUS.

26.01 Entire Agreement. This Lease and the Exhibits attached hereto and thereto contain all the agreements of the parties with respect to the subject matter herein. There have been no representations made by either party or understandings made between the parties express or implied with respect to the subject matter hereof other than those set forth in this Lease and the Exhibits attached hereto. This Lease (including the attached Exhibits) may not be modified except by a written instrument duly executed by the parties hereto. The parties have had an opportunity negotiate this Lease and to consult with counsel; accordingly, the rule of interpretation known as “construction against the drafter” will not apply to this Lease or the Exhibits.

26.02 Waiver. Failure by either party to enforce any of the provisions hereof for any length of time shall not be deemed a waiver of its rights set forth in this Lease. Such a waiver may be made only by an instrument in writing signed by the party sought to be charged with the waiver.

26.03 Severability. If any covenant or provision of this Lease is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity of the remaining covenants and provisions, it being the intention of the parties that this Lease be so construed as to render enforceable that portion of this Lease unaffected by such holding. The contractual provisions shall be deemed severable.

26.04 Counterparts. This Lease and any amendment made in accordance with the terms hereof may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

26.05 Successors. It is agreed that the respective rights and obligations hereunder shall inure to, and be binding upon, the respective heirs, devisees, legal and personal representatives, assigns, grantees and successors in interest of Landlord, and shall inure to, and be binding upon the permitted assigns and successors in interest of Tenant.

26.06 No Third-Party Beneficiary. Except as otherwise expressly set forth in this Lease, the parties agree that no individual and/or entity is intended to have, nor shall any individual and/or entity be deemed to have, any rights, benefits, privileges, causes of action, rights of action or remedies as a third-party beneficiary to or under this Lease or otherwise.

26.07 Business Day. Should any due date hereunder fall on a Saturday, Sunday or legal holiday in the State of Florida, then such date shall be deemed timely if given on the first business day following such Saturday, Sunday or legal holiday.

- 26.08 Governing Law and Venue. This Lease shall be governed by the laws of the State of Florida without regard to its conflict of laws provision. The exclusive venue for any lawsuits, actions or proceedings arising in connection with this Lease shall be the state courts of Polk County, Florida. For thirty (30) days prior to commencement of a lawsuit, the parties shall attempt to amicably resolve the dispute.
- 26.09 Gender. Feminine, neuter and masculine pronouns, and the plural and the singular, shall be construed to be and shall be interchangeable in any place or places in which the context may require such interchange.
- 26.10 Authority. The execution and performance of this Lease by each party has been duly authorized by all applicable laws and regulations and all necessary corporate action, and this Lease constitutes the valid and binding obligation of such party, enforceable in accordance with its terms.
- 26.11 Appropriations. Landlord's performance of its obligations and covenants under this Lease shall be subject to the appropriation of funds sufficient for such purpose. Landlord shall be relieved of such obligations and covenants if funds are not appropriated and available to Landlord. Landlord shall provide Tenant notice of the non-availability of funds necessary for Landlord to perform and comply with its obligations and covenants under this Lease promptly after Landlord has actual knowledge thereof.
- 26.12 No Pledge. Tenant acknowledges and agrees that it has no right, power or authority under this Lease or otherwise to pledge the credit of the Landlord, the Board of Governors, the State of Florida or any subdivision or agency thereof or other governmental authority, or to obligate the Landlord, the Board of Governors, the State of Florida or any subdivision or agency thereof or any other governmental authority as a guarantor, indemnitor, surety or insurer of the Tenant's under this Lease or other agreement in any way arising out of, relating to or in connection with the Property or the Improvements. Tenant further acknowledges and agrees that this Lease does not constitute a pledge or the credit of the Landlord, the Board of Governors, the State of Florida or any subdivision or agency thereof or of any other governmental authority.
- 26.13 Captions. The captions of this Lease are for convenience only, are not a part of this Lease, and do not in any way limit or amplify the terms and provisions hereof.
- 26.14 Radon Gas. Pursuant to Section 404.056, Florida Statutes, Landlord is required to notify Tenant of the following: "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health department."
- 26.15 Force Majeure. Except as otherwise expressly set forth in this Lease, if either party hereto shall be delayed or hindered in, or prevented from, the performance of any act (other than the payment of money) required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, adverse weather conditions (including but not limited to tropical storms and hurricanes), epidemic, war or other reasons of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease (all of such reasons or causes referred to in this Lease as "Force Majeure"), then



- performance of such acts shall be excused for the period of the delay, and the period within which the performance of such act may be required hereunder shall be extended by a period equivalent to the period of such delay. In the event of a Force Majeure, Tenant shall use reasonable efforts to reduce material negative impacts to Florida Poly's students, such as blocking pathways, or causing undue amounts of during critical time periods (such as after business hours or during weeks allocated for final exams (which dates are provided by Florida Poly). The exclusive relief for a Force Majeure event will be receipt of an extension of the schedule for the performance of such act required hereunder by a period equivalent to the period of such delay.
- 26.16 Rights Cumulative. Unless expressly provided to the contrary in this Lease, each and every one of the rights, remedies, and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.
- 26.17 Time is of the Essence. Time is of the essence of this Lease.
- 26.18 Sales Tax. Tenant agrees to pay any Florida sales and use tax levied upon the Rent and other amounts payable by Tenant under this Lease.
- 26.19 Brokers. Landlord and Tenant warrant to each other that they have not dealt with brokers in connection with this Lease and that no brokers are entitled to any commissions as it relates to this Lease, other than Tenant's broker which will be paid by Tenant pursuant to separate agreement. Tenant hereby indemnifies the other against, and agrees to defend and hold the Landlord harmless from, any and all claims for any real estate commissions or similar fees arising out of or in any way connected with any claimed agency relationship with the indemnitor relating to the transaction contemplated by this Lease.
- 26.20 No Joint Venture or Partnership. Landlord and Tenant hereby acknowledge and agree that the relationship between the parties hereto is that of landlord and tenant, and that nothing contained in this Lease shall be deemed or construed as creating the relationship of principal and agent, or of partnership, or of a joint venture between Landlord and Tenant in respect to the Land or the Improvements.

## 27. LANDLORD'S AND TENANT'S MARKS.

- 27.01 Landlord's Marks. Tenant shall not use the name of Landlord or any of its symbols, logos, trademarks or other representations of those of its affiliated organizations ("Landlord's Marks") without the express written consent of Landlord and the applicable affiliated organization(s). Tenant shall not, during the Term of this Lease, change the name of the Project if such new name would include use of any Landlord's Marks, without the express written consent of Landlord, which consent may be granted or withheld in Landlord's sole and absolute discretion. Upon the expiration of, or earlier termination of, this Lease, Landlord may require that the name of the Project be changed to remove Landlord's Marks.
- 27.02 Tenant's Marks. Landlord shall not use the name of Tenant or any of its symbols, logos, trademarks or other representations of those of its affiliated organizations ("Tenant's Marks") without the express written consent of Tenant and the applicable affiliated organization(s). Landlord shall not, during the Term, change the name of the Project if such new name would include use of any Tenant's Marks, without the express written consent of Tenant, which consent may be granted or withheld in Tenant's sole and absolute discretion. Upon the expiration or early termination of this Lease, Tenant may require that the name of the Project be changed to remove Tenant's Marks.

## 28. LEASEHOLD ENCUMBRANCES

28.01 Leasehold Encumbrances. During the Term, subject to the terms of this Lease, Tenant has the right to pledge, hypothecate or otherwise encumber from time to time its leasehold interest under this Lease as security for one or more Funding Agreements the proceeds of which are used for the purpose of funding the performance and satisfaction by Tenant of its obligations under this Lease. Except to the extent expressly agreed to in writing by Landlord, no such Funding Agreement or any extension, renewal, re-financing or replacement thereof obtained by or on behalf of Tenant shall impose any obligation or liability whatsoever on Landlord or attach to, encumber or otherwise affect Landlord's interest in the fee simple interest in the Land or the Florida Poly Campus. The sole recourse of any Leasehold Mortgagee shall be against Tenant and Tenant's interest in the Improvements and Tenant's leasehold interest under this Lease. The underlying fee simple title to the Land and Landlord's reversionary interest in the Improvements shall not be mortgaged or encumbered by Tenant. All loans secured by Tenant's interest in the Improvements and this Lease shall be paid in full, and any Leasehold Mortgage shall be cancelled, released and discharged before the expiration or earlier termination of the Term.

28.02 Secured Party. If, from time to time, Tenant shall either encumber the leasehold estate created by this Lease and/or Tenant's interest in the Improvements with a Leasehold Mortgage and if the Leasehold Mortgagee delivers to Landlord an executed counterpart of such Leasehold Mortgage, together with each assignment thereof certified by such Leasehold Mortgage to be true, together with written notice specifying the name and address of such holder and the pertinent recording data with respect to such Leasehold Mortgage, if applicable, Landlord agrees that, anything in this Lease to the contrary notwithstanding, from and after the date of receipt by Landlord of such notice and for the term (duration) of such Leasehold Mortgage the following provisions shall apply:

a. Consent to Amendment. Except as provided below, there shall be no cancellation, surrender or modification of this Lease by Landlord or Tenant without the prior written consent of any Leasehold Mortgagee.

b. Notices to Secured Parties. Landlord, upon sending Tenant any notice of an Event of Default, breach of a covenant or failure to perform, or termination of this Lease, shall send a copy of such notice to any Leasehold Mortgagee who has provided notice to Landlord thereof. In the event Landlord sends Tenant any such notice, the Leasehold Mortgagee shall then have the same period commencing after a copy of such notice is received by it (which period be contemporaneous with cure efforts by Tenant) as is given to Tenant hereunder, plus an additional forty-five (45) days thereafter (the "Extended Cure Period"), to remedy such failure, and Landlord and Tenant shall accept performances by or at the direction of any Leasehold Mortgagee as if it had been done by Tenant. If such failure or breach is remediable but not within such Extended Cure Period, then the Leasehold Mortgagee shall have such additional time as may be necessary to remedy the said failure or breach in question, provided that, (x) the Leasehold Mortgagee commences the remedying of such failure or breach no later than within the Extended Cure Period and thereafter proceeds with all due diligence to complete the remedying of such failure or breach, and (y) such additional time beyond the Extended Cure Period shall not exceed another forty-five (45) days. Any notice required to be given to any Leasehold Mortgagee hereunder shall be posted in the United States mail, postage prepaid, certified, return receipt requested or sent by recognized overnight courier or delivery service and addressed to the

Leasehold Mortgagee at the address and to the attention of the person designated by such Leasehold Mortgagee by notice to Landlord to receive copies of such notices. Except with respect to the right of Landlord to temporarily step-in and cure any breach, default or delay or failure in performance by Tenant, inspect the Improvements and Tenant's books and records, Landlord shall not exercise any other rights or remedies granted to it under this Lease following an Event of Default by Tenant under this Lease which would interfere with Leasehold Mortgagee's efforts to remedy an Event of Default until the expiration of all notice and cure periods in favor of Leasehold Mortgagee as set forth in this Paragraph 28, to the extent applicable; provided that Leasehold Mortgagee commences effort to remedy such Event of Default no later than within the Extended Cure Period or commences effort to obtain possession of the Improvements, if necessary, and Leasehold Mortgagee diligently pursues such remedy or effort to obtain possession, as applicable.

c. Limitation Upon Termination Rights of Landlord. If Landlord elects to terminate this Lease or re-enter upon the occurrence of an Event of Default, the Leasehold Mortgagee shall also have the right to postpone and extend the date of termination or re-entry as fixed by the provisions of this Lease for a period of not more than twelve (12) months from the expiration of the applicable cure period specified in Paragraph 17.01, provided that the Leasehold Mortgagee (i) shall forthwith take steps necessary to acquire Tenant's interest and estate in this Lease by foreclosure of its Leasehold Mortgage, or otherwise, and shall prosecute such action to completion with due diligence and thereafter upon obtaining such possession or control, as applicable, commence the curing of the Event of Default with due diligence; or (ii) if applicable, shall cause Tenant to provide Landlord with a remedial plan acceptable to Landlord setting forth in reasonable detail how the Leasehold Mortgagee shall cure the Event of Default and thereafter perform Tenant's obligations, covenants and agreements under this Lease. If at the end of the twelve (12) month period, the Leasehold Mortgagee is actively engaged in steps to acquire or sell Tenant's leasehold interest in this Lease and the Improvements or to replace the management of the Improvements, the time for Leasehold Mortgagee to comply with the provisions of this Paragraph 28.2(c) shall be extended for such period as shall be reasonably necessary to complete the acquisition or sale or the remedial plan with reasonable diligence and continuity.

d. Assignment. Landlord agrees that in the event of any foreclosure under any Leasehold Mortgage, either by judicial proceedings or under power of sale contained therein or transfer made in lieu of foreclosure (collectively, a "Leasehold Mortgage Transfer"), all right, title and interest encumbered by such Leasehold Mortgage may, without the consent of Landlord, be assigned to and vested in the purchaser at such foreclosure sale or transferee of a transfer made in lieu of foreclosure, provided that such purchaser is a Qualified Purchaser subject and subordinate, however, to the rights, title and interests of Landlord; and, notwithstanding that Landlord's consent to said assignment shall not have been obtained, any such assignee shall be vested by virtue of such assignment with any and all rights of the party whose estate was encumbered by such Leasehold Mortgage as though Landlord had consented thereto; provided, however, with respect to any continuing Event of Defaults which are susceptible of being cured, the assignee or purchaser at such foreclosure sale, in addition to being a Qualified Tenant, shall be required to provide a remedial plan that sets out in reasonable detail such party's plan, schedule and budget to cure the Event of Default which caused the foreclosure and to perform Tenant's obligations, covenants and agreements under this Lease accruing after the date on which such assignee or purchaser obtains Tenant's leasehold interest in the Improvements and to

execute an instrument in form and substance reasonably acceptable to Landlord assuming Tenant's obligations, covenants and agreements to Landlord under this Lease. Any continuing Events of Default which are not susceptible of being cured by such assignee or purchaser shall, as to such assignee or purchaser, be deemed waived by Landlord upon the assignee or purchaser obtaining Tenant's leasehold interest in the Improvements under this Paragraph 28.2(d), subject to the full reservation by Landlord of all claims, rights and remedies which Landlord may have against any other Person relating thereto.

e. Secured Party Leases. Landlord agrees that in the event of a termination of this Lease or re-entry without termination by reason of any Event of Default, and subject to the rights herein granted to Leasehold Mortgagee, the Leasehold Mortgagee shall have the option, but not the obligation, to enter into a ground lease agreement directly with Landlord on the same terms and conditions for the remainder of the Lease Term (a "Secured Party Lease"); provided:

(i) the Leasehold Mortgagee shall enter into a Secured Party Lease within the required period specified in Paragraph 28.2(c) and all rights and interests of the Tenant shall vest in the Leasehold Mortgagee from the date of the execution of the Secured Party Lease to the fullest extent as if the Lease was never terminated in the first place;

(ii) the Leasehold Mortgagee shall pay, perform and observe all obligations, covenants and agreements contained in the Secured Party Lease on Tenant's part to be paid and performed during such period of time commencing with the date of the execution of the Secured Party Lease and terminating upon the abandonment or surrender of possession of the Improvements under, or the assignment of, the Secured Party Lease;

(iii) the Leasehold Mortgagee, as the tenant under the Secured Party Lease, shall have the same right, title and interest in and to the Improvements and the right to use the Improvements as Tenant had under this Lease, subject to the terms and conditions of this Lease.

f. Agreement Between Landlord and Secured Party. Landlord, upon reasonable written request by Leasehold Mortgagee, shall execute, acknowledge, and deliver to Leasehold Mortgagee an agreement (including any estoppel, subordination and non-disturbance agreement and/or direct agreement, as the case may be), in form reasonably satisfactory to the Leasehold Mortgagee and Landlord, by and among Landlord, Tenant, and the Leasehold Mortgagee (provided the same has been previously executed by Tenant and Leasehold Mortgagee) agreeing to the provisions of Article 28.

g. Limitation on Liability of Secured Party. Notwithstanding any other provision of this Lease, Landlord agrees that any Leasehold Mortgagee permitted under this Lease shall in no manner or respect solely as a result of such status be (i) liable or responsible for any of Tenant's obligations or covenants under this Lease (nor shall any rights of such Leasehold Mortgagee be contingent on the Tenant's satisfaction of such obligations or covenants); or (ii) required to cure any Event of Default, provided; however, that if such Leasehold Mortgagee becomes the owner of the leasehold estate created hereunder or becomes the tenant under a Secured Party Lease, then such Leasehold Mortgagee shall be responsible and liable for all obligations and covenants accruing during the period of time that the Leasehold Mortgagee is the owner of such leasehold estate or tenant under a Secured Party Lease, or obtains management or control of Tenant, as applicable. Notwithstanding the foregoing, the liability of a Leasehold Mortgagee with respect to its

obligations under this Lease or any Secured Party Lease shall be “non-recourse” except with regard to gross negligence or willful misconduct by Leasehold Mortgagee or Person in its control (as determined in a final non-appealable decision of a court of competent jurisdiction) and, accordingly, Landlord’s source of satisfaction of such obligations from the Leasehold Mortgagee shall be limited to Landlord’s rights, all of which can be exercised by Landlord, to terminate this Lease as provided herein and execution upon, receipt and collection of and/or enforcement of all rights of Landlord or Tenant under or with respect to the Improvements, reserves, accounts, accounts, any insurance policy or surety bond or other payment or performance security proceeds and Landlord shall not seek to obtain payment through any judicial process or otherwise from such Leasehold Mortgagee or from any assets of such Leasehold Mortgagee other than the Improvements, reserves, accounts, insurance policy or surety bond or other payment or performance security proceeds and the Tenant’s interest in the Improvements, the rents, issues and surplus related thereto, any insurance proceeds arising therefrom.

h. Notice to Landlord. Tenant shall cause each Leasehold Mortgagee to provide Landlord notice of the occurrence of an event of default or other event, occurrence or circumstance under the related Leasehold Mortgage for which such Leasehold Mortgagee has commenced to exercise its remedies related thereto. For the avoidance of doubt, any foreclosure of a Leasehold Mortgage or any sale thereunder, whether by judicial proceedings or otherwise, or any conveyance of the leasehold estate created hereby from Tenant to Leasehold Mortgagee by virtue or in lieu of foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of Landlord or constitute a breach of any provision of or a default under this Lease.

29. TENANT TERMINATION OPTION.

Notwithstanding anything herein to the contrary, Tenant may terminate this Lease at any time upon written notice to Landlord, provided that Tenant's interest in this Lease and the Improvements shall not be encumbered by any debt as of the effective date of such early termination.

30. LANDLORD'S RIGHT TO TERMINATE "FOR CONVENIENCE".

- a. If Landlord reasonably and in good faith by a vote of a majority of the members of its Board of Trustees (or other governing body if a change from a Board of Trustees) determines that the use of the Property for the operation of a research laboratory is detrimental to Landlord's use of the Florida Poly Campus to further its mission as an institution for higher learning, then Landlord may, at its option, elect to terminate this Lease by delivering written notice of such election to Tenant at least two (2) years prior to the effective date of termination (the date that is two (2) years after Tenant's receipt of Landlord's written notice hereinafter referred to as the "Convenience Termination Date"). As of the Convenience Termination Date, this Lease shall be deemed terminated and of no further force or effect, except as otherwise expressly set forth herein, subject to the terms, conditions and requirements of this Article 30. Landlord acknowledges and agrees that in order for Tenant to meet its obligations under this Lease and Subtenant to meet its obligations under the Affiliation Agreement, (a) Tenant must, in reliance upon its rights under this Lease make a substantial investment in designing, permitting, developing, constructing and fixturing the Improvements, (b) Subtenant must make a substantial investment in hiring and training employees whose jobs are located at the Property, (c) Subtenant must make a substantial

investment in marketing, developing and operating its business at the Property; and Landlord further acknowledges and agrees that if Landlord terminates this Lease pursuant to this Article 30, Tenant may lose the benefit of its substantial investment in and to the Property; and Subtenant may (x) incur significant expense due to relocating employees and other employee matters; (y) lose the benefit of its investment in marketing, developing and operating its business from the Property; and (z) suffer loss in profits during the time Tenant is unable to operate within the market area, if any. Therefore, Landlord acknowledges and agrees that Landlord's right to terminate this Lease (and the termination of this Lease) as set forth herein is expressly and strictly conditioned upon the following (the "Conditions Precedent"):

- i. Landlord paying to Tenant, at least one (1) year prior to the Convenience Termination Date, an amount equal to the sum of the following amounts:
    - A. the Early Termination Purchase Price in effect as of the Convenience Termination Date; plus
    - B. [all rentals payable to Tenant in accordance with any sublease (or any similar agreement) then encumbering Tenant's leasehold interest under this Lease from the date immediately following the Convenience Termination Date through the scheduled expiration date of such sublease; plus]
    - C. [an amount equal to the value of Tenant's remaining leasehold interest in the Land (or any applicable portion thereof) for any period prior to the later of the Convenience Termination Date or the Initial IFF Sublease Expiration Date, to the extent that during such period the Land (or any applicable portion thereof) is not encumbered by a sublease, as may be applicable. Tenant's remaining leasehold interest in the Land shall be determined by an appraiser reasonably acceptable to Landlord and Tenant. If Landlord and Tenant are not able to agree on an appraiser, then each shall appoint an appraiser, and the value of Tenant's remaining leasehold interest shall be the average of the two appraisals; provided, however, if the two appraisals vary by more than ten percent (10%), the two appraisers shall appoint a third appraiser, and the value of Tenant's remaining leasehold interest shall be the average of the two closest values of the three appraisals; plus]
    - D. any prepayment penalties, breakage fees and/or similar costs and expenses incurred (or scheduled to be incurred) by Tenant on account of Tenant's prepayment of any loan under any Funding Agreement and/or the early release of any Leasehold Mortgage, including, without limitation, any reasonable attorneys' fees incurred by Tenant in connection with the same.
  - ii. Landlord paying to Subtenant, [at least one (1) year prior] to the Convenience Termination Date, an amount equal to the Subtenant's Costs. In the event of a dispute between the Landlord and Subtenant relating to the determination of Subtenant Costs, such dispute shall be referred to the dispute resolution process set forth in this Lease.
- b. Upon the failure of Landlord to satisfy each and all of the Conditions Precedent, provided that

such failure with respect to any Condition Precedent is subject to dispute resolution hereunder, at Tenant's option, Landlord's notice of termination shall be null and void, and this Lease shall remain in full force and effect for the remainder of the Term. Notwithstanding the foregoing, in the event that Tenant does not elect to deem Landlord's notice of termination null and void in accordance with the foregoing, then this Lease shall expire upon the Convenience Termination Date and Landlord's obligation to comply with the Conditions Precedent shall survive such termination of this Lease.

LANDLORD:

The Florida Polytechnic University  
Board of Trustees, a public body corporate

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

TENANT:

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

Approved as to form and legality:

BY: \_\_\_\_\_  
Florida Poly Attorney

DATE: \_\_\_\_\_

Approved by University Board of Trustees

President on behalf of the  
University Board of Trustees

BY: \_\_\_\_\_  
Dr. Randy Avent

DATE: \_\_\_\_\_



**EXHIBIT "A"**

LEGAL DESCRIPTION OF THE LAND

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**EXHIBIT "B"**

PERMITTED TITLE ENCUMBRANCES

*(End of Exhibit B)*

**EXHIBIT "C"**

MEMORANDUM OF LEASE

*(End of Exhibit C)*



“EXHIBIT "D"”

[FORM OF INTELLECTUAL PROPERTY LICENSE AGREEMENT]

**INTELLECTUAL PROPERTY LICENSE AGREEMENT**

This INTELLECTUAL PROPERTY LICENSE AGREEMENT (the "Agreement"), is made and entered into by and between FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES, a public body corporate of the State of Florida ("Florida Poly") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("Respondent"), with reference to the following facts:

1. Respondent is a party to that certain Sublease Agreement dated \_\_\_\_\_ (the "Lease"), whereby Respondent subleases certain land and improvements from Ryan Companies USA, Inc. from Florida Poly.
2. Paragraph 2.04 of the Lease provides for Respondent to include Florida Poly's name or logos on certain signage; and requires that the parties enter into this Agreement.
3. Florida Poly now desires to grant a license to Respondent for Respondent's use of Florida Poly's intellectual property as set forth in this Agreement.

NOW, THEREFORE, for the mutual consideration set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as set forth below.

4. License. Florida Poly hereby grants to Respondent a revocable, nonexclusive, non-transferable, worldwide license and right to use the intellectual property of Florida Poly as described in Exhibit A attached hereto and made a part hereof ("USP Intellectual Property"). Respondent shall use the Florida Poly Intellectual Property only under the terms and conditions described in this Agreement.
5. Ownership of Rights. The parties acknowledge and agree that:
  - a. The Florida Poly Intellectual Property, is the property of Florida Poly, and not Respondent.
  - b. The Florida Poly Intellectual Property shall only be used in the manner described in the "Permitted Uses" section of Exhibit A.
6. Agreement Personal. The benefit of this Agreement shall be personal to Respondent, which shall not, without the prior written consent of Florida Poly, assign the same, nor part with any of its rights or obligations hereunder, nor grant or purport to grant any sublicense in respect of the Florida Poly Intellectual Property. Any such purported assignment shall be void.
7. Term and Termination. The license granted under this Agreement shall remain in full force and effect from the date of this Agreement until terminated in accordance with this Section.

- a. Termination Upon Default. If Respondent is in material breach of one or more of its obligations under this Agreement, Florida Poly may, as its sole remedy, terminate all the rights granted by it hereunder upon thirty (30) days written notice to Respondent. Upon termination pursuant to this Subsection (a), Respondent, at Respondent's expense, shall remove the Florida Poly Intellectual Property from Respondent's signs, and such other property of Respondent upon which the Florida Poly Intellectual Property has been affixed in reliance upon this Agreement.
  - b. Termination Absent Default. Florida Poly may unilaterally terminate the license under this Agreement by giving at least sixty (60) days written notice to Respondent. If Florida Poly unilaterally terminates the license granted under this Agreement pursuant to this Section (b), Florida Poly shall reimburse Respondent for all costs associated with removing the Florida Poly Intellectual Property from Respondent's signs, and such other property of Respondent upon which the Florida Poly Intellectual Property has been affixed in reliance upon this Agreement, within thirty (30) days of receipt of Respondent's request therefor.
  - c. Effect of Termination. Immediately after the expiration or termination of the license and rights granted under this Agreement (and the time periods described in (a) and (b) above), Respondent agrees to cease and discontinue completely and permanently all future use of the Respondent Intellectual Property. Upon termination of the license under this Agreement, pursuant to either Subsection (a) or (b) above, the parties acknowledge and agree that Respondent's obligation to incorporate Florida Poly's name and/or logo (or any other Florida Poly Intellectual Property) pursuant to Paragraph 2.04 of the Lease shall terminate and be of no further force or effect.
8. Miscellaneous Provisions.

- a. Notices. All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted if transmitted by telecopy, electronic telephone line facsimile transmission or other similar electronic or digital transmission method; the day after it is sent, if sent by recognized expedited delivery service; and five days after it is sent, if mailed, first class mail, postage prepaid. In each case, notice shall be sent to:

If to Respondent:

Respondent

Attention:.....

With copy to:

General Counsel

If to Florida Poly:

Officer With copy to:

Office of General Counsel

or to such other address as either party may have specified in writing to the other using the procedures specified above in this Section.

- b. Assignment. This Agreement may not be assigned, in whole or in part, by either party without the written consent of the other provided, however, that Respondent shall be entitled to assign this Agreement in the event of a merger, a transfer of substantially all assets, or a similar reorganization.
- c. Waiver. The waiver by either party of a breach of any provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof or the waiver of any breach of any other provision of this Agreement.
- d. Amendment. This Agreement may only be amended by an instrument in writing signed by both of the parties hereto.
- e. Choice of Law; Venue. This Agreement shall be construed in accordance with the laws of the State of Florida and venue of any legal proceedings shall be in Polk County, Florida.
- f. Survival. Florida Poly's obligation to reimburse Respondent under Subsection 7(b) above shall survive termination of this Agreement until such reimbursement is made. The provisions of Subsection 4(c) above shall survive the expiration or earlier termination of this Agreement.

EXHIBIT "E"  
SITE PLAN



EXHIBIT “F”  
[RESERVED]

EXHIBIT "G"  
LEGAL DESCRIPTION FOR OUTFALL EASEMENT

EXHIBIT "H"  
FORM OF CONTRACTOR RELEASE

EXHIBIT "I"  
CONSTRUCTION TIMELINE

EXHIBIT J  
STAGING AREA

EXHIBIT K  
MOBILIZATION PLAN

EXHIBIT W  
UNIVERSITY DESIGN STANDARDS

**AFFILIATION AGREEMENT**

**BETWEEN**

**THE FLORIDA POLYTECHNIC UNIVERSITY  
BOARD OF TRUSTEES**

**AND**

**INTERNATIONAL FLAVORS AND FRAGRANCES INC.**



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**AFFILIATION AGREEMENT**

This **AFFILIATION AGREEMENT** (this *“Agreement”*) is made and entered into as of \_\_\_\_\_, 2021, between **THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate of the State of Florida (the *“University”*) and **INTERNATIONAL FLAVORS AND FRAGRANCES INC.**, a \_\_\_ corporation (together with its successors and assigns, *“IFF”*). The University and IFF are each referred to herein as a *“Party”* and together, the *“Parties.”*

**RECITALS:**

**WHEREAS**, the University solicited competitive offers to form a public-private partnership to construct and operate a research facility on the University campus (Invitation to Negotiate 21-001, the *“ITN”*);

**WHEREAS**, in response to the ITN, IFF submitted an offer in conjunction with Ryan Companies US, Inc. (*“Ryan”*);

**WHEREAS**, the University has decided to accept the Ryan/IFF offer in accordance with the terms of the ITN;

**WHEREAS**, documentation of the public-private partnership between the University and Ryan/IFF requires a series of agreements, including this Agreement;

**WHEREAS**, to document the public-private partnership between the University and Ryan/IFF, the University and Ryan have entered into that certain Ground Lease Agreement dated as of the date hereof (the *“Ground Lease”*), wherein the University has leased the Project Site, as defined in the Ground Lease, to Ryan and Ryan has agreed to develop, improve, and use the Project Site in accordance with terms set forth therein;

WHEREAS, IFF intends to sub-lease from Ryan for the purpose of developing the Project, as described in the Ground Lease;

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be bound hereby, the Parties agree as follows:

## ARTICLE I DEFINITIONS

**Section 1.1 Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meaning as set forth in the Ground Lease. The following capitalized terms have the meanings assigned to them in this Article I:

*“Agreement”* has the meaning set forth in the first paragraph.

*“Dispute”* has the meaning set forth in Section 6.18.

*“Ground Lease”* has the meaning set forth in the Recitals.

*“IFF”* has the meaning set forth in the first paragraph.

*“IFF Default”* has the meaning set forth in Section 5.2(a).

*“Party”* or *“Parties”* have the respective meaning set forth in the Recitals.

*“Term”* has the meaning set forth in Article III.

*“University”* has the meaning set forth in the preamble.

*“University Default”* has the meaning set forth in 5.1(a).

## ARTICLE II INTERPRETATION

The headings of Articles and Sections in this Agreement are provided for convenience of reference only and will not affect the construction, meaning or interpretation of this Agreement. All references to “Articles,” “Sections,” or “Exhibits” refer to the corresponding Articles, Sections or Exhibits of or to this Agreement. All exhibits, schedules and attachments to this Agreement are hereby incorporated by reference. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words “include,” “includes” and “including” shall be interpreted to mean “including without limitation.” Unless otherwise stated, any reference to a Person, whether or not a Party, includes its permitted successors and permitted assigns and, in the case of any Government Authority, any Person succeeding to its functions and capacities. Other grammatical forms of defined words or phrases have corresponding meanings. A reference to a writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form, including

electronic. Unless otherwise provided, a reference to a specific time of day for the performance of an obligation is a reference to the time in the place where that obligation is to be performed. A reference to a document, law, code, contract or agreement, including this Agreement, includes a reference to that document, code, contract or agreement as novated, amended, modified, revised, supplemented, replaced or restated from time to time in accordance with the relevant provisions thereof. If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next succeeding Business Day. The words "hereof," "herein" and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular article, section or provision of this Agreement.

### **ARTICLE III TERM**

**Section 3.1 Term.** This Agreement commences on the date hereof and is coterminous with IFF's occupancy of the Project as a Subtenant as defined in the Ground Lease, unless earlier terminated as provided herein or therein (the "*Term*"). The initial Term may only be amended, extended, or renewed by an amendment to this Agreement made in accordance with the terms hereof except as otherwise expressly set forth herein.

### **ARTICLE IV COOPERATIVE PROVISIONS**

**Section 4.1 Background.**

The Parties seek to engage in mutually beneficial collaboration throughout the term of this Agreement in relation to the operation of a research facility by IFF.

IFF is a Fortune 500 company seeking to conduct industry-leading research and development that drives innovation in the specialty chemicals and ingredients markets. Through the development of the Project, IFF seeks to centralize its citrus-related research and development activity at the University and develop an innovative ecosystem that pushes the citrus industry in new directions.

The University is a public research institution of the State University System of Florida with a mission to educate students emphasizing Science, Technology, Engineering, and Mathematics (STEM) in an innovative, technology-rich, and interdisciplinary learning environment.

In IFF, the University has identified a partner that will further its mission of serving students and industry through excellence in education, discovery, and application of engineering and applied sciences. IFF's needs align with the University's vision to produce highly desirable graduates and new technology solutions. In particular, the University will collaborate with IFF

to offer students real-world problem solving, work experience, and applied research opportunities.

#### **Section 4.2      Required Outcomes of the Partnership.**

The Parties aspire to achieve the following outcomes through this partnership, with the overarching goals of 1) enhancing the University's ability to deliver on its vision to be a premier STEM university and 2) establish collaborations between IFF and the University that support industry innovation:

- a. Create internship and employment opportunities for University students and graduates;
- b. Fill talent pipeline and technical knowledge gaps in the citrus industry;
- c. Engage in collaborative or sponsored research with University faculty and staff;
- d. Enhance IFF's citrus industry innovation and research and development efforts; and,
- e. Enhance the academic programming of the University.

#### **Section 4.3      Activities in Support of Partnership Outcomes.**

In order to achieve the partnership outcomes identified in Section 4.1, the Parties agree to carry out the following activities as appropriate throughout the term of the Agreement:

- a. At the outset of this Agreement, University and IFF stakeholders will meet to discuss in detail the academic programs, research capabilities, and skillsets present at the University. These stakeholders will identify where University capacities align with IFF's strategic direction.
- b. IFF and the University will establish and maintain working relationships between the appropriate offices or departments, including:
  - IFF Human Resources and the University Career Development Office
  - IFF [ ] and the University Office of Research Services
  - IFF [ ] and the Director of Industry Engagement and Capstone Projects
- c. IFF will establish a defined internship program at the Project similar to those it has established through partnerships with other universities, with the objective of hosting internships and supporting co-op programs for University students with interest and ability aligned with IFF initiatives.
- d. IFF will communicate relevant employment opportunities in a timely manner.
- e. The University will assist IFF in recruiting for open positions using systems and resources designated for that purpose.

- f. In its recruiting efforts, IFF will consider University graduates to be preferred candidates for employment, with the objective of hiring graduates from the University such as meet the needs of IFF.
- g. IFF will work with the University to identify Capstone projects and assign researchers to support student research as appropriate.
- h.
- i. University faculty and IFF staff and researchers will engage with each other through appropriate venues, such as industry roundtables, conferences, campus events, etc.
- j. The University will facilitate connections between IFF researchers and the appropriate University schools/departments.
- k. IFF will consider University proposals for adjunct teaching positions and facilitate its researchers filling such positions when mutual interest is expressed.
- l. IFF and applicable University departments will reciprocally communicate research priorities and strategic initiatives and work to identify opportunities for collaboration.
- m. IFF will consider proposals for sponsored/funded research from University faculty and graduate students and fund projects in alignment with its budget and research and development priorities.
- n. Applicable University faculty/departments will consider IFF proposals for collaborative research projects.
- o. IFF will consider monetary contributions to scholarships, fellowships, academic programs, or the University endowment in the absence of opportunity to otherwise advance the partnership outcomes through research, academic, or career avenues in a given year.
- p. When called upon by the University, IFF will make a representative available and any relevant documentation to support the University's institutional or programmatic accreditations as they pertain to this partnership.

#### **Section 4.4     Spirit of Partnership.**

The Parties will accomplish the intended outcomes defined above through collaboration and a collective appreciation for each Partner's unique perspective and organizational focus. While this Agreement is intended to formalize the operating relationship between the Parties and guide both the collective and individual efforts of each Party, there will likely be situations where the Agreement does not define or speak to a clear way forward. In these instances, the Parties agree to interact with each other in good faith to work through any unforeseen or unique situations – letting the spirit of this document guide the group's collective decision making. Restated, if a situation arises that is not specifically referenced in this Agreement, the Parties agree

to determine the best course of action that aligns with each Party's shared responsibility to achieve the *Required Outcomes of the Partnership* detailed above and reflects the intent of this Agreement.

#### **Section 4.5      Framework of Interaction.**

The Parties will create an Advisory Committee (the "Advisory Committee") to oversee the partnership between IFF and the University, and coordinate between each Party's relevant departments. The Advisory Committee will be comprised of six individuals, including three appointed by the President of the University and three appointed by IFF.

Other designated representatives of the Parties may participate in the recurring meetings of the Advisory Committee; however, this six-person committee shall be responsible for setting priorities for each upcoming year, facilitating joint review of strategic decisions regarding the partnership, and attempting to resolve such disputes as arise during the term of this agreement.

The Advisory Committee will meet no less than semi-annually in April and September of each year to review the state of the partnership, track progress toward implementing partnership initiatives, and develop plans for collaboration in the upcoming budget year. Semi-annual meetings will be held in alignment with the budget development cycles of the respective Parties, and may occur in different months should the fiscal year of either Party change.

Additionally, the Parties shall each designate a Staff Liaison to facilitate the joint implementation of partnership initiatives and serve as an identifiable point of contact for partnership inquiries.

On an annual basis, the Staff Liaisons for IFF and the University will collaboratively develop a summary report identifying the ways in which the Parties have fulfilled the stated partnership outcomes over the previous year. University members of the of the Advisory Committee will be responsible for reporting on the status of the partnership to University leadership, the University's Board of Trustees, and the State University System Board of Governors as needed.

For the avoidance of doubt, the Advisory Committee and Staff Liaison positions are meant to encourage wide-ranging collaboration between employees of IFF and the University, and are not intended to replace additional interactions between the Parties outside this structure.

#### **Section 4.6      Annual Reporting.**

In March of each year, the Staff Liaisons for the Parties shall provide an annual report to the University regarding the partnerships overall performance in fulfilling the identified partnership outcomes. At minimum, the report should include the following information:

- a. Hires from the University for internship, co-op, and employment opportunities
- b. Sponsored research projects funded

- c. Collaborative research projects
- d. Joint presentations
- e. Capstone projects supported
- f. Planned activity for the upcoming year
- g. Other relevant activities

## ARTICLE V COMMUNICATIONS AND BRANDING

### Section 5.1 Promotion and Representation of Partnership.

The Parties shall work together to develop visual or written content describing and promoting the partnership established under this Agreement. Neither Party shall print, publish or distribute such content without the advance prior written approval of the other Party. Each Party shall own the title, copywrite, ownership, and other rights in any such materials as are produced solely by or for that Party. Joint communications efforts are encouraged to the extent they serve the mutual interest of the Parties. The Parties jointly will have exclusive rights to print, publish, copy, or distribute content that is produced by or for both Parties.

### Section 5.2 Trademarks.

Neither Party shall use the respective trademarks, symbols, logos, or other representations of IFF (“IFF Marks”) or the University (“University Marks”), for purposes of representing or promoting the affiliation of the Parties as described in this Agreement without the prior written approval of the other Party.

The University Marks shall remain exclusively the intellectual property of the University and the IFF Marks shall remain exclusively the intellectual property of IFF; nothing in this Agreement shall be interpreted to construe a transfer of ownership or of rights other than those described above. Each Party agrees to comply with the brand standards of the other Party as described in Exhibit A when utilizing the IFF Marks or University Marks.

## ARTICLE VI DEFAULT AND REMEDIES

### Section 6.1 University Default.

(a) University Default. University shall be in default hereunder upon the occurrence of any of the following (each, a “*University Default*”): (i) except as expressly provided otherwise in any of the other subsections of this Section 5.1(a), University fails or refuses to perform any of its material obligations hereunder within thirty (30) days after written notice from IFF; provided, however, that if such breach or default is of a nature that it cannot reasonably be cured within such thirty (30) day period, then University shall have such time as is reasonably required to cure such breach or default; provided that the period to cure such breach or default shall not exceed



one hundred twenty (120) days and, provided further, that University commences the cure within such thirty (30) day period following notice thereof and continues thereafter to diligently pursue completion of such cure; (ii) there is a bankruptcy, dissolution or liquidation of University or (iii) University engages in fraud, misappropriation, embezzlement or in any willful misconduct.

(b) IFF Remedies. Upon the occurrence and during the continuance of a University Default, IFF shall be entitled to exercise any one or more or all of the following remedies: (i) bring an action for specific performance commensurate with the action breached; or (ii) exercise any other right or remedy available at law or in equity.

### **Section 6.2 IFF Default.**

(a) IFF Default. IFF shall be in default hereunder upon the occurrence of any of the following (each, a "*IFF Default*"): (i) except as expressly provided otherwise in any of the other subsections of this Section 5.2(a), IFF fails or refuses to perform any of its material obligations hereunder within thirty (30) days after written notice from University; provided, however, that if such breach or default is of a nature that it cannot reasonably be cured within such thirty (30) day period, then IFF shall have such time as is reasonably required to cure such breach or default; provided that the period to cure such breach or default shall not exceed one hundred twenty (120) days and, provided further, that IFF commences the cure within such thirty (30) day period following notice thereof and continues thereafter to diligently pursue completion of such cure; or (ii) there is a bankruptcy, dissolution or liquidation of IFF or (iii) IFF engages in fraud, misappropriation, embezzlement or in any willful misconduct.

(b) University Remedies. Upon the occurrence and during the continuance of an IFF Default, University shall be entitled to exercise any one or more or all of the following remedies: (i) bring an action for specific performance commensurate with the action breached; or (ii) exercise any other right or remedy available at law or in equity.

### **Section 6.3 Waiver.**

The waiver of any right or remedy arising from a breach of an obligation or covenant or failure of performance shall not constitute a waiver of any right or remedy arising from either a subsequent default of the same obligation or covenant or by breach or failure of any other obligation or covenant. Acceptance by either Party of any payment made by the other Party shall not be a waiver of the right of the recipient to contest whether or not the full amount due shall have been paid, nor a waiver of any other rights or remedies hereunder. Failure by either Party to complain of any action, non-action, non-compliance, breach, default, or Event of Default of the other Party shall not be a waiver of any rights hereunder.

### **Section 6.4 Specific Performance.**

The Parties recognize that irreparable injury will result from a breach of any provision of this Agreement and that money damages will be inadequate to fully remedy the injury. Accordingly, in the event of a breach beyond any applicable cure periods(s) of one or more of the

provisions of this Agreement, any Party who may be injured (in addition to any other remedies that may be available to that Party) shall be entitled to one or more preliminary or permanent orders (a) restraining and enjoining any act that would constitute a breach or (b) compelling the performance of any obligation that, if not performed, would constitute a breach.

**Section 6.5 Consequential Damages.**

Neither IFF nor the University shall be liable to the other Party for any lost profits or special, incidental, punitive, exemplary, or consequential damages in connection with this Agreement.

**Section 6.6 Indemnification and Property Damage.**

(a) IFF's Indemnification. Except to the extent caused by the negligence or more culpable misconduct or omissions of University or University's employees, agents or contractors, IFF shall defend all actions against University, and any trustee officer, director, employee, agent or representative of University (collectively the "University Indemnified Parties"), with respect to, and shall pay, protect, indemnify, and save harmless University and the other University Indemnified Parties against, any and all claims, demands, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) of any nature arising from (i) injury to or death of any person, or damage to or loss of property, on the Property or connected with the use, condition or occupancy of the Property or the design, construction and operation of the Improvements; (ii) infringement or misappropriation of intellectual property of third parties; (iii) liens by contractors, vendors or other persons providing any labor, services, equipment, materials or supplies in connection with the construction, operation, maintenance or repair of the improvements; (iv) violations of applicable Laws, Legal Requirements or Governmental Approvals; or (v) any breach of any representation, warranty, covenants, obligation or agreement or violation by IFF of this Lease.

(b) University's Obligations. Subject to all immunities (including sovereign immunity), exemptions, rights, privileges, defenses, affirmative defenses and limitations on liability at law or otherwise in favor of or benefitting University, University shall be responsible for claims, demands, liabilities, losses, damages, costs and expenses of third parties for injury to or death or damage or loss of property on the Land solely to the extent caused by the negligence or fault of University, or University's employees or contractors.

(c) Survival. All of the provisions of this Section 5.6 shall survive the termination or expiration of this Agreement for a period of seven (7) years.

**ARTICLE VII  
MISCELLANEOUS**

**Section 7.1 Entire Agreement; Modification.**

This Agreement together with the Ground Lease constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior and contemporaneous

agreements and understandings of the Parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement shall affect, or shall be effective to interpret, change, or restrict, the express provisions of this Agreement. No amendment, change, or modification of this Agreement shall be valid unless it shall be in writing and signed by duly authorized representatives of the University and IFF. A waiver of a right shall only be enforceable if made in writing by the Party to be bound thereby.

**Section 7.2 Headings.**

The Article and Section headings in this Agreement are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

**Section 7.3 Governing Law.**

This Agreement is governed by the laws of the State of Florida, without regard to choice of law provisions, and applicable federal laws.

**Section 7.4 Third Party Beneficiaries.**

Except as expressly set forth to the contrary in this Agreement, each of the parties agree that no individual and/or entity is intended to have, nor shall such individual and/or entity be deemed to have, any rights or remedies as a third party beneficiary to, or under, this Agreement or otherwise and each of the parties acknowledge and agree that any benefit conferred to any such individual and/or entity is, and shall be deemed for all purposes to be, merely incidental. Notwithstanding the foregoing, the Trustee shall be and is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any right, remedy or claim conferred, given or granted hereunder to IFF.

**Section 7.5 Binding Effect.**

This Agreement and all of its terms and provisions shall be binding upon, and shall inure to the benefit of, the Parties and their successors and permitted assigns.

**Section 7.6 Notices.** All notices, demands, requests and communications hereunder to IFF or to the University shall be made in accordance with Article 22 of the Ground Lease.

**Section 7.7 Severability.**

If any provision of this Agreement shall be declared or found to be illegal, invalid, unenforceable, or void, in whole or in part, then the Parties shall be relieved of their respective obligations arising under such provision, but only to the extent that it shall be illegal, invalid, unenforceable, or void, it being the intent and agreement of the Parties that this Agreement shall be deemed amended by modifying the provision to the extent necessary to make it legal, valid, and enforceable while preserving its intent or, if that shall not be possible, by substituting therefor another provision that shall be legal, valid and enforceable and shall achieve the same objectives.

**Section 7.8 Performance.**

Time is of the essence in the performance of all duties, covenants, and obligations hereunder.

**Section 7.9 Relationship of Parties.**

Nothing contained herein or in any instrument relating hereto shall be construed as creating a partnership, joint venture, or association between the University and IFF or between the University and any other party, or cause the University to be responsible in any way for debts or obligations of IFF or any other party. IFF will be responsible for the hiring, training, supervision, management, promotion, and terms of employment of all persons employed by it.

**Section 7.10 Survival.**

Any provisions that by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement shall, in fact, survive.

**Section 7.11 Successors and Assigns.**

IFF may not directly or indirectly assign or transfer, or permit the direct or indirect assignment or transfer of, this Agreement, any rights or benefits under this Agreement except with respect to a transfer to a Qualified Affiliate or a Qualified Purchaser as provided by Article 15 of the Ground Lease; provided that IFF may collaterally assign its rights under this Agreement to the Leasehold Mortgagee as security for loan issued to finance of the Project.

**Section 7.12 Limitation of Recourse; No Liens.**

(a) There shall be no liability under this Agreement of, or any recourse under this Agreement to, any official, officer, director, member, shareholder, partner, employee, or agent of either Party. This Agreement shall not create an interest in real property and it shall not be recorded in the public records of any jurisdiction.

**Section 7.13 Holidays.**

Whenever any time limit or date provided herein shall fall on a day that is not a Business Day, then that date shall be extended to the next Business Day.

**Section 7.14 Counterparts.**

This Agreement may be executed in counterparts with the same effect as if all Parties had signed the same document. All counterparts shall be construed together and constitute the same instrument. In making proof of this Agreement, it shall not be necessary to account for more than one counterpart executed by the Party against whom enforcement shall be sought.

**Section 7.15 Waiver of Jury Trial.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE PROJECT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

**Section 7.16 Dispute Resolution.** Other than with respect to a breach of Section 5.5 or a dispute under Section 4.3 (a) hereof, the Parties shall utilize the following process for the resolution of any claim, dispute or disagreement (each a “*Dispute*”) hereunder.

7.16.1 Direct Communication. Management-level representatives of the Parties shall meet in an attempt to resolve any Dispute within twenty (20) days after one Party sends notice to the other Party of the existence of such Dispute. If such management representatives of each Party are unable to resolve the Dispute within such twenty (20) days after the initial notice the Parties shall have the right to refer the Dispute to mediation.

7.16.2 Mediation. If the Dispute cannot be resolved through direct communication and meetings of representatives of the Parties as provided in paragraph (a) immediately above, either Party may request appointment of a neutral mediator with demonstrated subject matter expertise and experience mutually agreeable to the Parties. Both Parties shall participate in the mediation proceedings and conferences convened by a mediator until earlier of resolution of the Dispute and twenty (20) days after the first mediation proceeding with the mediator. The mediator’s fee shall be divided equally between the Parties. The mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by University and IFF; however, the mediator’s recommendations concerning any such dispute are advisory only. The mediator’s recommendations shall be based on the pertinent provisions of this Agreement, and the facts and circumstances involved in the dispute.

7.16.3 Litigation. If University and IFF cannot reach an agreement resolving the dispute pursuant to the process set forth in Sections 6.18.2, if applicable, University and IFF shall have the right to pursue litigation. In no event shall the existence of litigation of any controversy or the settlement thereof in and of itself delay the performance of obligations under this Agreement.

7.16.4 Venue. The sole and exclusive venue for resolution of any dispute, claim or controversy arising out of or relating to this Agreement shall be the state courts located in Polk County, Florida.

7.16.5 Status Quo. The alternate dispute resolution process set forth in Sections 6.18.1 and 6.18.2 shall not preclude a Party from seeking injunctive relief, including specific performance, in order to maintain the status quo during the pendency of a Dispute resolution proceeding.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Affiliation Agreement as of the date and year first above written.

**UNIVERSITY:**

**THE FLORIDA POLYTECHNIC UNIVERSITY BOARD OF TRUSTEES**, a public body corporate of the State of Florida

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IFF:**

**International Flavors and Fragrances Inc.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## **Exhibit A**

### **Brand Standards**

University Brand Standards are found at the following URL:

[https://mk0floridapolyrvphbf.kinstacdn.com/wp-content/uploads/2019\\_FLPolyBrandManual.pdf](https://mk0floridapolyrvphbf.kinstacdn.com/wp-content/uploads/2019_FLPolyBrandManual.pdf)

IFF Brand Standards are found at the following URL:

<https://brandsense.iff.com/site/login>

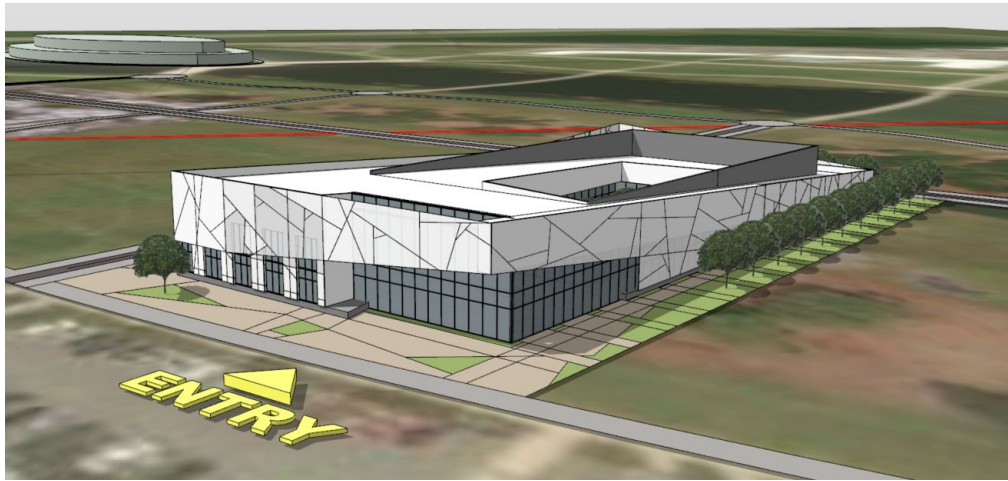


**Florida Polytechnic University  
ITN #21-001 P3 Construct and Operate a Research Facility  
Depiction of Project Location and Preliminary Renderings**

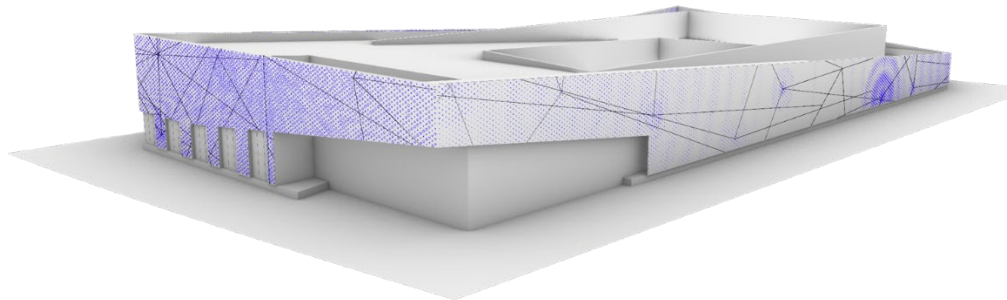
*Figure 1. Project Location on Campus Master Plan Map*



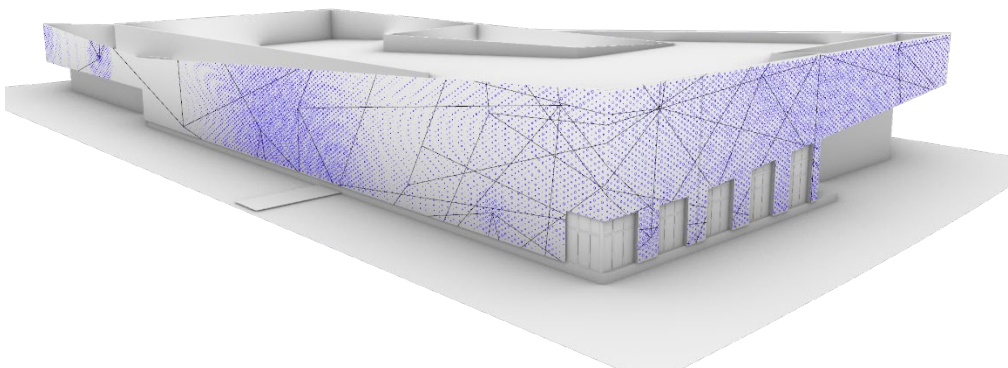
**Figure 2. Preliminary Exterior Rendering**



**Figure 3. Preliminary Exterior Rendering with Color Design, Front Right Orientation**



**Figure 4. Preliminary Exterior Rendering with Color Design, Front Left Orientation**



**MEMORANDUM**

TO: The Florida Polytechnic University Board of Trustees

FROM: Ken Artin

DATE: May 20, 2021

RE: Analysis of Management of Risk under Proposed Agreements related to Research Facility Project

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The University has asked for a memorandum describing the provisions that are to be contained in the Ground Lease Agreement (the "Ground Lease Agreement") between the University and the Ryan Companies USA, Inc., or its successors or assigns ("Ryan") and the Affiliation Agreement (the "Affiliation Agreement") between the University and International Flavors and Fragrances Inc. ("IFF") which is the proposing team of companies selected by the University pursuant to ITN #21-001 related to the development of a research facility on the campus of the University (the "Project"). The Ground Lease Agreement and the Affiliation Agreement are sometimes referred to as the "Agreements." We have reviewed the requirements of the ITN, participated in the negotiations between Ryan and IFF and have prepared the drafts of the Ground Lease Agreement and the Affiliation Agreement. While no agreement can be drafted to eliminate all risk, the provisions of the Agreements we have prepared have attempted to place the University in a neutral position with respect to most of the risks associated with the development, management and maintenance of the Project. Meaning, if Ryan runs into financial difficulty either building the Project or operating the Project after it has been constructed, the risk is borne by the investors in /or lender to Ryan or IFF as the subtenant of the building. The University is not required to contribute any funds towards construction or operation of the Project. IFF, under the terms of the sublease with Ryan is obligated to pay Ryan amounts sufficient to pay its lenders or investors. In addition, the sublease is a triple net lease meaning any and all costs of related to occupancy of the building are borne by IFF.

**During Construction**

One of the risks in the construction of any project is having enough money to complete the project. There are several risks that exist. The developer could incur cost over runs, or could

simply misuse the funds and fail to complete the project. The University is protected in two ways if the building is not completed by March 1, 2024, which is one year after the scheduled completion date Ryan is obligated to pay daily liquidated damages until the building is complete. So the university is assured that the building will ultimately be completed. Ryan's failure to pay the liquidated damages is an event of default under the Ground Lease Agreement and subject to the lender's right to step in and cure, the Ground Lease Agreement could be terminated. If the Ground Lease Agreement is terminated, the investors or lenders rights are terminated and they will lose the opportunity to have access to the lease payments from IFF from which they expected to be repaid.

### **During Operation**

Once the Project has been completed and is being operated, the sublease with IFF is for an initial term of twenty years and two five-year extensions. If IFF should terminate their sublease early or fail to renew in the final ten years of the Ground Lease Agreement, Ryan is obligated to find and sublease the Project to a Qualified Subtenant generally defined to mean any subtenant entering into a sublease with Ryan for the purpose of promoting scientific research and development or otherwise supporting the educational mission of the University. In addition, the University has the authority to approve the new subtenant based on the wiliness of the subtenant to enter into an affiliation agreement similar to the Affiliation Agreement with IFF. The University is protected in that it will always have a partner occupying the building with an affiliation agreement which is the primary goal of the ITN #21-001.

Finally, if the sublease with IFF terminates prior to the expiration of the ground lease term, and the University has not exercised either of its options to purchase the building or lease the building as provided in the Ground Lease Agreement, the rent payable under the Ground Lease Agreement steps up to market rate rent if the building is not released within 12 months. This provides an incentive to Ryan to keep the building occupied by a Qualified Subtenant.

### **Specific Ground Lease Agreement Defaults and Remedy Provisions**

The Ground Lease Agreement provides for the following specific Events of Default:

- a. Ryan fails to pay when due Rent, or any other amount to be paid under this Lease by Ryan, and the failure continues for ten (10) business days after receipt by Ryan of written notice from University;
- b. Ryan gives University any report or other information that is knowingly and materially false or misleading, and which false or misleading information causes a material adverse effect to University;
- c. Ryan ceases doing business as a going concern; makes an assignment for the benefit of creditors; is adjudicated an insolvent, files a petition (or files an answer admitting

the material allegations of a petition) seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights; all or substantially all of Ryan's assets are subject to judicial seizure or attachment and are not released within thirty (30) days, or Ryan consents to or acquiesces in the appointment of a trustee, receiver or liquidator for Ryan or for all or any substantial part of Ryan's assets; or

- d. Ryan fails, within sixty (60) days after the commencement of any proceedings against Ryan seeking relief under any state or federal bankruptcy or other statute, law or regulation affecting creditors' rights, to have such proceedings dismissed, or Ryan fails, within sixty (60) days after an appointment, without Ryan's consent or acquiescence, of any trustee, receiver or liquidator for Ryan or for all or any substantial part of Ryan's assets, to have such appointment vacated; or
- e. Ryan fails to fulfill any of the other covenants, agreements or obligations of the Lease, and such default continues for more than thirty (30) days after written notice but if the nature of such default is such that it cannot be cured within the thirty (30) day period, an Event of Default will not be deemed to have occurred if Ryan commences to cure within such thirty (30) day period and diligently proceeds to complete its cure as soon as reasonably possible.

The Ground Lease Agreement also provides that if an Event of Default is not cured within the applicable cure period as stated in the Ground Lease Agreement, then remedies available to the University include the following, subject to the rights of any leasehold mortgagee to step in and cure;

- a. the right, at its option, then or at any time while the Event of Default continues to give a written notice specifying a date on which this Lease shall terminate, and on that date, subject to any provisions of the Lease relating to the survival of Ryan's obligations, the Lease shall terminate and University may re-enter and take complete and peaceful possession of the Property and, with process of law, remove all persons and all furniture, fixtures, equipment and other personal property located on the Property and owned or leased from third parties by Ryan, in which event Ryan shall peacefully and quietly yield up and surrender the Property to University; or
- b. the right, at University's option, then or at any time while the Event of Default continues, subject to applicable Law, to enter the Property and re-let the same for Ryan's account; or
- c. University may, in addition to other remedies specified in the Ground Lease Agreement or at Law, (w) commence proceedings against Ryan for damages and collect all sums or amounts with respect to which Ryan may then be in default and

are accrued up to the date of termination of the Lease (including amounts due under the provisions which survive such termination, if University elects to terminate the Lease); (x) commence proceedings against Ryan under the provisions of the Lease for holdover obligations of Ryan, if any; (y) bring an action for specific performance, including to require Ryan to document the conveyance and transfer set forth in this Lease; or (z) exercise any other right or remedy available at law or in equity.