



**Administrative Services & General Counsel
Memorandum**

**Phone: 850 484-1500
Fax: 850-484-1591**

September 10, 2018

TO: Dr. Edward Meadows, President

FROM: Mr. Thomas J. Gilliam, Jr., VP of Administrative Services and General Counsel

SUBJECT: General Counsel Agenda for September 2018 District Board of Trustees Meeting

ACTION ITEMS

1. Lease Agreement between PSC and the PSC Foundation, Inc. for portions of buildings 97 and 98 and all of building 99 to be used as athletic dormitories.

THIS LEASE AGREEMENT is made and entered into to be effective as of the **1st day of August, 2018**, by and between **THE DISTRICT BOARD OF TRUSTEES OF PENSACOLA STATE COLLEGE, FLORIDA**, hereinafter referred to as "Lessor" and **PENSACOLA STATE COLLEGE FOUNDATION, INC.**, a Florida non-profit corporation and a direct support organization of Pensacola State College under Section 1004.70, Florida Statutes, hereinafter referred to as "Lessee".

FOR AND IN CONSIDERATION of the mutual benefits to be derived by the parties hereto from this Lease, the mutual promises contained herein and other good and valuable considerations, Lessor and Lessee do hereby covenant and agree each with the other as follows:

1. **Lease.** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor those portions of Buildings 97 and 98, and all of Building 99, together with the parking areas adjacent to the aforesaid buildings, located on Lessor's campus located at 1000 College Boulevard, Pensacola, Florida, which premises are identified on the attached Exhibit "A" as the "Leased Premises." Lessor also grants to Lessee, its employees, agents, licensees and invitees, a non-exclusive easement over and across the driveways connecting the Leased Premises to College Boulevard for access to the Leased Premises.
2. **Termination of Prior Lease.** The prior lease to the Leased Premises executed between Lessor and Lessee on October 22, 1994, and all subsequent amendments thereto, are hereby terminated in their entirety and replaced by this Lease Agreement.
3. **Term.** This Lease shall commence on the effective date set forth above and shall continue through July 31, 2019. Lessee shall have the option of renewing the Lease annually for up to twenty (20) additional terms of one (1) year each commencing on August 1, 2019. The rent to be paid by Lessee to Lessor for the Leased Premises during each renewal term shall be negotiated between Lessor and Lessee. Lessee shall give Lessor notice of its intent to renew the Lease at least sixty (60) days prior to expiration of the then current term and during the aforesaid sixty (60) day period, Lessor and Lessee shall re-negotiate the rent to be paid during the ensuing renewal period.
4. **Use of Leased Premises.** Lessee shall use and operate the Leased Premises as apartments for students of Pensacola State College on athletic scholarships and for coaches or counselors assigned by the College to supervise and counsel said students and for no other use or purpose without the prior written consent of Lessor.

Rental. During the initial term of this Lease, Lessee shall pay Lessor rent in the amount of **Three Thousand Seven Hundred Fourteen Dollars (\$3,714.00)** a month for the Leased Premises, plus any sales tax required to be paid on the rent. As stated hereinabove, if Lessee exercises its option to renew the Lease, the rental rate to be paid by Lessee to Lessor shall be subject to negotiation between the parties. All rental income will be used exclusively as described in paragraph 4. At the termination of this lease, any unused net income will be remitted to Lessor.

5. **Utilities.** Lessor shall provide all required utility services to the Leased Premises and pay the charges incurred for those services. A portion of the rental income to be received by Lessor shall cover the expenses incurred in providing the utility services.

6. **Maintenance, Repairs and Grounds.**

a. **Structure.** Lessor shall, at Lessor's own expense, maintain the roof, foundation and the structural soundness of the exterior walls of the Premises in good repair. Lessor shall also maintain, and keep in good repair, the underground utility and sewer pipes outside the exterior walls of the building on the Premises. The term "walls" as used herein shall not include windows, glass or doors.

b. **Repairs and Maintenance.** Lessee shall, at Lessee's own expense, keep and maintain all parts of the Premises (except those for which Landlord is expressly responsible under the terms of this Lease) in good condition, promptly making all necessary repairs and replacements, including, but not limited to, windows, glass, doors, door locks, interior walls and finish work, floors and floor covering, downspouts, gutters, HVAC systems, plumbing systems, electrical systems, fixtures, window blinds, smoke detectors, fire alarms, furniture, appliances, interior termite and pest extermination, and regular removal of trash and debris.

c. **Grounds.** Lessee shall be responsible for the cleanliness of the Leased Premises, including the grounds and parking lot. Lessor shall keep the shrubs on the property trimmed and shall mow the grass as needed.

7. **Taxes and Assessments.** The parties do not contemplate that any real estate taxes will be assessed against the Leased Premises, the contents of the buildings, or on the use of the Leased Premises; however, if any such taxes are assessed or levied against the Leased Premises, Lessee shall pay all such taxes when due, levied or assessed against the Leased Premises, and shall hold Lessor free and harmless from the imposition of any such taxes.

8. **Indemnification.** Lessor shall not be liable to Lessee or its licensees, invitees, agents or employees or to any other person for any injury or damage to its, his or their persons or property by any cause whatsoever, including, but not limited to water, rain, sleet, fire, storm, negligence and accidents, breakage, stoppage, or leaks of gas, water, heating, sewer pipes, boilers, wiring or plumbing or any other defect in on or about the Leased Premises. Lessee will indemnify, defend and save Lessor harmless from and against all liability, damage or expense caused by or growing out of any injury or damage to persons or property upon the Leased Premises, including any attorneys' fees and costs incurred by Lessor as a result thereof.

9. **Liability Insurance.** Lessee shall procure and maintain in force at its expense during the initial term of this Lease and any renewals hereof, general liability insurance adequate to protect against liability for damage claimed through use of or arising out of accidents occurring in or about the Leased

Premises, in a minimum amount of \$300,000.00 for each person injured, \$1,000,000.00 for any one occurrence and \$50,000.00 for property damage.

10. **Condemnation.** In the event of any taking or condemnation of any of the Leased Premises, the Lessor shall have the option to repair, replace, restore or reconstruct the Leased Premises to substantially its condition immediately prior to such event or to a condition of at least equivalent value, regardless of whether the amount of the award or compensation for damages recovered on account of such taking or condemnation shall be sufficient to pay the cost thereof, provided that the Lessor shall have a period of sixty (60) days after such taking in which to make a decision as to whether to repair, replace, restore or reconstruct the Leased Premises.

The Net Proceeds from any condemnation award with respect to the Leased Premises shall be either (i) applied to pay for the cost of making repairs, restorations, reconstructions or replacements, or to reimburse the Lessor or the Lessee, as appropriate, for payment therefor or (ii) if Lessor elects not to repair or restore the Leased Premises, paid over to Lessor. Lessee may pursue any business losses that it sustains directly against the condemning authority.

11. **Assignment.** Lessee shall not assign the Lease in whole or in part, provided that this provision shall not be construed as prohibiting Lessee from renting apartments to students, coaches and counselors of the College as contemplated under the terms of this Lease.

12. **Quiet Possession.** Lessor covenants with Lessee that it has full right and authority to lease the premises and Lessee shall enjoy quiet possession of the Leased Premises and shall not be evicted nor disturbed in possession of the Leased Premises so long as Lessee complies with the terms of this Lease Agreement.

13. **Compliance With Rules and Regulations.** The parties hereto agree and understand this Agreement is subject to any and all laws, ordinances, rules and regulations applicable thereto, and the parties agree to abide by and comply with all such laws, ordinances, rules and regulations.

14. **Notices.** Any notice or demand to be given or that may be given under this Lease shall be in writing and shall be (a) delivered by hand with the recipient providing a written receipt, or (b) delivered through the United States Mail postage prepaid, certified, return receipt requested, addressed to the parties as follows:

IF TO LESSEE:

Pensacola State College Foundation, Inc.
1000 College Boulevard, Building 17
Pensacola, Florida 32504
Attn: Executive Director

IF TO LESSOR:

Pensacola State College
1000 College Boulevard
Pensacola, Florida 32504
Attn: President

15. **Default.** The happening of any one or more of the following listed events, hereinafter referred to as "event of default" shall constitute a breach of this Lease on the part of Lessee:

- (a) The vacation or abandonment for more than 10 days of the Leased Premises by Lessee.
- (b) The failure of Lessee to pay any rent under this Lease Agreement promptly on or before the date that such rent is due and payable.
- (c) A failure by Lessee to observe and perform any other provision of this Lease to be observed or performed by Lessee, where such failure continues for fifteen (15) days after written notice thereof by Lessor or Lessee; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such fifteen (15) day period, Lessee shall not be deemed to be in default if Lessee shall within such period commence such cure and thereafter diligently and continuously prosecute the same to completion; or
- (d) The filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation of the Leased Premises, Lessee's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all its property or of the Leased Premises, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as a bankrupt or insolvent, or any assignment by Lessee for the benefit of its creditors, or the entry assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction as having been filed in good faith of a petition applicable to Lessee in any proceeding for its reorganization instituted under the provisions of the general bankruptcy act, as amended, or under any similar act which may be hereafter enacted.

Upon the happening of any event of default, Lessor, if it shall elect, may

- (a) Collect each installment of Rent hereunder as and when the same becomes due and payable.
- (b) Accelerate rents for the remainder of the term, to be reduced by their present value at the time of acceleration and to be further reduced by any amount collected by Lessor for the Leased Premises during the remainder of said term, or
- (c) Lessor, or any other person by its order, may re-enter the Premises by any lawful means and may either elect to terminate this Lease or if Lessor desires, not terminate the Lease but terminate the right to possession and occupancy and relet the Leased Premises to any person, firm or corporation, as the agent of Lessee or otherwise for whatever reasonable rent it shall obtain, applying the avails of such letting first to the payment of such expenses as Lessor may incur in the re-entering and reletting of same, and then to the payment of rent due hereunder and the fulfillment of Lessee's covenants, and in case of any deficiency, Lessee shall remain liable therefor. If Lessor elects to terminate Lessee's right to possession and occupancy of the Premises, Lessor shall make a diligent effort to relet the Leased Premises in a timely manner for a reasonable rate of rent.

The remedies, rights, and privileges of Lessor in case of default of Lessee as enumerated hereinabove shall not be exclusive, and, in addition thereto, Lessor may also exercise and enforce all rights in law and in equity which it may otherwise have as a result of said default.

16. **Surrender.** Upon the expiration of the term of this Lease or any renewal, or if this Lease is terminated by Lessor after default by Lessee, Lessee agrees to peaceably deliver up the Leased Premises to Lessor in good condition and repair, ordinary wear and tear excepted.

17. **Access to Lease Premises.** Lessor shall have the right to enter upon the Leased Premises from time to time to inspect the condition and occupancy thereof; however, its right shall be exercised in a manner so as not to interfere unreasonably with Lessee's use and enjoyment of the Leased Premises.

18. **Miscellaneous.** This Lease shall not be modified except by written agreement signed by the parties and shall be construed in accordance with the laws of the State of Florida. Time is of the essence of this Agreement.

The failure of Lessor to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Lease, or any of the rules and regulations herein or hereafter adopted by Lessor, shall not prevent a subsequent act or omission, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Lessor of the Rent hereunder with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived by Lessor, unless such waiver be in writing signed by Lessor. No act or thing done by Lessor or Lessor's agent during the Term shall be deemed an acceptance of a surrender of the Leased Premises and no agreement to accept such surrender shall be valid unless in writing signed by Lessor.

If any of the provisions of this Lease shall be held to be invalid, illegal or unenforceable for any reason, such circumstance shall not affect any other provision. This Lease shall be construed as if such invalid, illegal or unenforceable provision had never been herein.

IN WITNESS WHEREOF, Lessor and Lessee have caused these presents to be executed to be effective as of the day and year first above written.

Witnesses:

**THE DISTRICT BOARD OF TRUSTEES OF
PENSACOLA STATE COLLEGE, FLORIDA**

Print: _____

By: _____

C. EDWARD MEADOWS
President of the College

Print: _____

Witnesses:

**PENSACOLA STATE COLLEGE
FOUNDATION, INC.**

Print: _____

By: _____

President

Print: _____

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

THE FOREGOING INSTRUMENT was acknowledged before me this ___ day of _____, 2018, by **C. EDWARD MEADOWS**, as President of Pensacola State College acting for and on behalf of **THE DISTRICT BOARD OF TRUSTEES OF PENSACOLA STATE COLLEGE, FLORIDA**, a corporate body under the laws of the State of Florida, who is personally known to me and who did not take an oath.

Notary Public

Print _____

My Commission Expires: _____

**STATE OF FLORIDA
COUNTY OF ESCAMBIA**

THE FOREGOING INSTRUMENT was acknowledged before me this ___ day of _____, 2018, by _____, as President of **PENSACOLA STATE COLLEGE FOUNDATION, INC.**, a Florida non-profit corporation, for and on behalf of said corporation, who is personally known to me and who did not taken an oath.

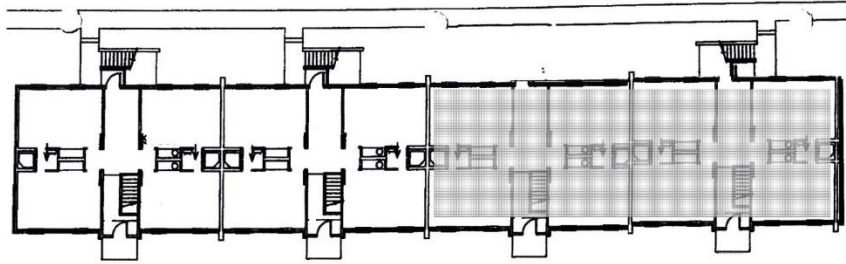
Notary Public

Print _____

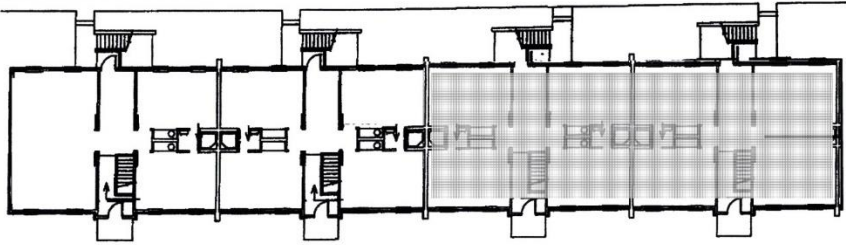
My Commission Expires: _____

EXHIBIT "A"



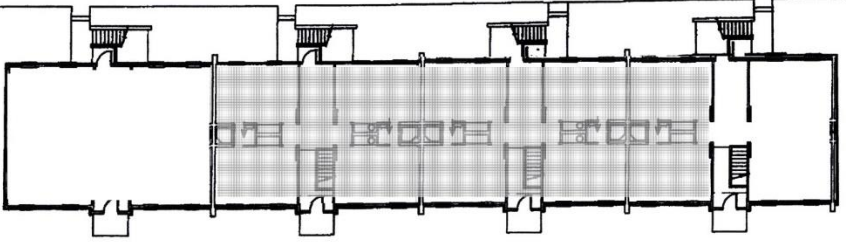


Second Floor Plan



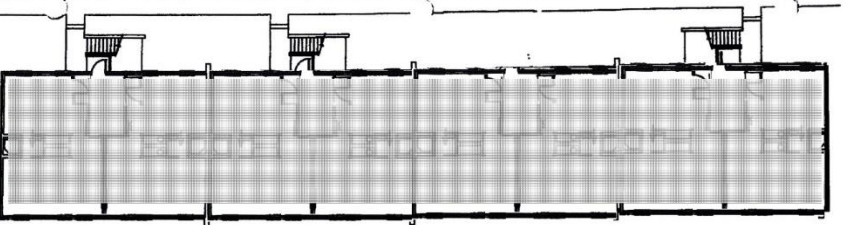
First Floor Plan

PENSACOLA CAMPUS
 SITE NO. 1
 FACILITY NO. 97

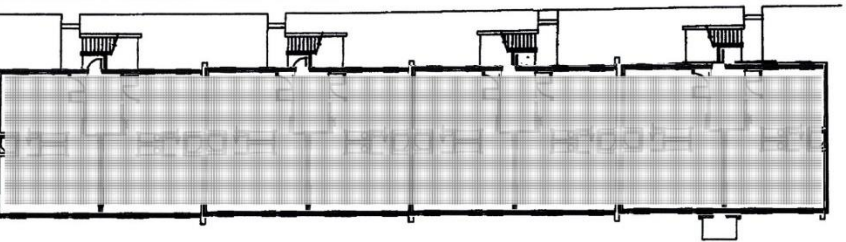


First Floor Plan

PENSACOLA CAMPUS
 SITE NO. 1
 FACILITY NO. 98



Second Floor Plan



First Floor Plan

PENSACOLA CAMPUS
 SITE NO. 1
 FACILITY NO. 99

