

# TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers  
**FROM/PHONE:** Christopher Wallace, Budget and Finance Director/797-1050  
**SUBJECT:** Resolution

**TITLE OF AGENDA ITEM:**

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A PERCENTAGE LEASE AGREEMENT FOR AN AQUACULTURE FACILITY BETWEEN THE TOWN OF DAVIE AND NOVA SOUTHEASTERN UNIVERSITY

**REPORT IN BRIEF:**

As requested by the Town Council, the Town will phase out its management agreement with NSU and replace it with a percentage lease of the property to NSU.

**PREVIOUS ACTIONS:**

The Town Council previously approved a management agreement with NSU to operate the aquaculture facility. At a workshop, the Town Council desired to continue the Town's relationship with NSU, but to replace the management agreement with a lease based upon the income or revenue of the property.

**CONCURRENCES:**

not applicable

**FISCAL IMPACT:**

Has request been budgeted? not applicable - revenue to the Town

**RECOMMENDATION(S):**

Motion to recommend approval

**Attachment(s):**

Resolution, Percentage Lease Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A PERCENTAGE LEASE AGREEMENT FOR AN AQUACULTURE FACILITY BETWEEN THE TOWN OF DAVIE AND NOVA SOUTHEASTERN UNIVERSITY

WHEREAS, the Town has previously entered into a management lease agreement with Nova Southeastern University (NSU) which provided for operations of an aquaculture facility owned by the Town; and

WHEREAS, the Town Council has previously requested that the Town amend its relationship with NSU to allow NSU to lease the property from the Town and pay a percentage of the income or revenue derived from the property; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council hereby approves the Percentage Lease Agreement with Nova Southeastern University (attached).

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2001

LEASE

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2001 by and between the Town of Davie, Florida, a municipal corporation (hereinafter referred to as Landlord) and Nova Southeastern University, Inc., a Florida not for profit corporation (hereinafter referred to as "Tenant").

WITNESSETH:

1. **BACKGROUND.** Landlord was engaged in the business of aquaculture on the premises which are the subject of this Lease, and Tenant operated the business on behalf of Landlord pursuant to a Management Agreement between the parties dated November 15, 1996. Landlord and Tenant have decided to terminate their business relationship as delineated in their written agreement and to enter into this Lease in lieu thereof. Consequently, the Management Agreement between the Landlord and Tenant is null and void and no longer in force and effect.

2. **LEASED PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain real property described in Exhibit A attached hereto and made a part hereof, together with all improvements, furniture and fixtures thereon (the Premises).

3. **TERM.** The term of this Lease shall be five (5) years, commencing on \_\_\_\_\_ and expiring on \_\_\_\_\_. Tenant shall have the option to renew this Lease for an additional three (3) year term by providing written notice of renewal at least sixty (60) days prior to the expiration of the initial five (5) year term.

4. **RENT PAYMENTS.**

A. **Base Rent.** Tenant shall not pay any base rent (Base Rent) to Landlord during the first year of the term. During the second and third years of the term, Tenant shall pay to Landlord Base Rent of Ten Thousand Dollars (\$10,000) annually, payable monthly in advance on the first day of each and every month. Monthly payments shall be Eight Hundred Thirty Three Dollars & 33/100 (\$833.33).

B. **Percentage Rent.** As additional consideration for its Lease of the Premises, Tenant shall pay to Landlord for each year of the term of this Lease three percent (3%) of the gross sales from its business operations for such year. The term gross sales shall mean the gross revenue obtained from its business operations on the Premises (excluding all revenue derived from the conduct of seminars, workshops, research, and other educational activities). Payment shall be made within thirty (30) days after the expiration of each year of the term, accompanied by a statement of the revenue and expenses for such year. Within thirty (30) days after receipt of the annual statement, Landlord shall have the right to review Tenants books and records relating to Tenants business operations on the Premises for the prior year. Such review shall take place at Tenants offices during normal business hours and upon reasonable notice provided to Landlord. The parties shall promptly adjust any underpayment or overpayment found as a result of Landlords review and Tenants verification of the same.

5. **TAXES ON TENANT PAYMENTS.** Tenant covenants and agrees to pay to Landlord with respect to each payment required to be made by Tenant hereunder, any sales, use, excise, or other tax (excluding any income tax that may be payable by Landlord as a result of its receipt of any such payments) imposed or levied against each such payment by any governmental authority, regardless of whether such tax is imposed on Landlord or Tenant, unless Tenant is exempt from the payment of the same and provides Landlord with evidence of such exemption.

6. **REAL ESTATE TAXES AND ASSESSMENTS.** Tenant shall not be obligated to pay any real estate taxes or general or special assessments that may be imposed upon or against the Premises. If any governmental authority determines that the Premises is subject to real estate taxes wholly or partially as a result of the existence of this Lease, then, at Tenants option, this Lease shall terminate by Tenant providing written notice of termination to Landlord or Tenant may pay such tax. If Tenant terminates this Agreement as a result of such imposition of real estate taxes, then Tenant shall be obligated to pay the tax imposed only for the year in which the Lease is terminated, provided that upon the effective date of termination the time has already expired for Landlord to obtain an exemption from real estate taxes for such year.

7. **PERSONAL PROPERTY TAXES AND LICENSE FEES.** Tenant shall be responsible to pay to the appropriate governmental authorities, before delinquency, any applicable personal property or other taxes levied or imposed against any of the furniture, furnishings, trade fixtures, machinery, equipment, apparatus and other personal property brought on the Premises by Tenant, unless Tenant is exempt from the payment of the same. Tenant also shall pay to the appropriate governmental authorities all applicable license, permit and other fees required to be paid in connection with Tenant's use of the Premises and its business operations conducted thereon.

8. **USE OF THE PREMISES.** Tenant shall use the Premises only for the operation of an aquaculture research and education complex, which shall include the raising and selling of aquatic plants and animals and hydroponics. As in the past, Tenant intends to bring to the Premises students from various schools in the community to view Tenants business operations and learn about aquaculture. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed.

9. **COMPLIANCE WITH LAWS AND PERMITS.** Except as otherwise provided for herein, Tenant covenants and agrees, at its cost and expense, to comply with any and all present and future laws, ordinances, regulations, and rules of any federal, state, county, municipal or other governmental authority relating to Tenant's use of the Premises and its business operations conducted thereon. Tenant shall maintain all required permits with respect to its business operations.

10. **UTILITIES.** Subject to adjustment as provided for below in this Section, Tenant shall pay to Landlord the sum of Ten Thousand Five Hundred Dollars (\$10,500) per year for the cost of utilities serving the Premises. Tenant shall make these payments quarter-annually in the amount of Two Thousand Six Hundred Twenty Five Dollars (\$2,625) for each quarter. At the expiration of each year of the Lease term, if Landlord is able to segregate the utility bills for the Premises from Landlords other utility bills, Landlord shall provide to Tenant a statement of the cost of the utilities for the prior year and supporting documentation with respect to the same. If the statement indicates that utility costs for the year were less than the amount paid by Tenant, then Landlord shall pay to Tenant the difference within thirty (30) days thereof. If the statement indicates that utility costs for the year were more than the amount paid by Tenant, then Tenant shall pay to Landlord the difference within thirty (30) days thereof.

Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service to the Premises, except to the extent such disruption or interruption was brought about by the acts or omissions of Landlord, its agents, employees or contractors. During the term of this Lease, Landlord shall (i) maintain its current provision of emergency power services (one electricity generator on-site and one electricity generator off-site), and (ii) maintain such emergency equipment in good working condition, and in connection therewith, repair and replace the same.

11. **ALTERATIONS AND TENANT IMPROVEMENTS.**

A. **Tenant Initial Improvements.** Tenant shall make the following improvements to the Premises:

<u>Improvement</u>	<u>Estimated Cost</u>
Cleaning Tank	\$5,500
Shade Houses (3)	\$6,500
Harvester	\$6,000
Tank Improvements	\$15,000
Raceways (6)	\$36,000
Pumps/Plumbing/Elec.	\$51,000
Shade Houses (2)	\$30,000
Classroom (modular or remodeling)	\$30,000

Tenant shall commence making these improvements as soon as reasonably possible after the execution of this Lease by both parties, but in no event later than October 1, 2001.

B. **Future Alterations and Improvements.** Tenant may make further structural alterations and improvements to the Premises in excess of Ten Thousand Dollars (\$10,000) with Landlords prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant may make non-structural alterations to the Premises without Landlords consent.

C. **Work Performed.** All of Tenants installation work shall be performed at Tenants sole cost and expense, in a good and workman like manner, and in compliance with all applicable laws, codes, rules, and regulations. Tenant shall obtain all required permits in connection with such installation.

12. **REPAIRS AND MAINTENANCE.**

A. **Landlords Obligations.** Landlord shall maintain in good condition and repair, at its cost and expense, all preexisting improvements on the Premises at the time this Lease commences. Further, Landlord shall maintain in good condition and repair the systems serving the Premises including, without limitation, the mechanical, plumbing, electrical, sanitary, heating and ventilation and air conditioning, fire alarm, and sprinkler systems. Landlord shall also maintain in good condition all vacant portions of the Premises. Landlords repair obligations shall include the replacement of items where reasonably necessary. With respect to the performance of its maintenance and repair obligations, Landlord shall use all reasonable efforts not to interfere with Tenants business operations.

B. **Tenants Obligations.** Tenant shall maintain in good condition and repair, at its cost and expense, all improvements on the Premises made by Tenant including, without limitation, those set forth in Subsection 11 A above. Tenant shall also maintain the grass and landscaping.

13. **LIEN PROHIBITION.** The interest of Landlord in the Premises shall not be subject to any construction liens for improvements made or other work done by or on behalf of Tenant. Tenant shall indemnify and hold Landlord harmless from and against any damage, loss, cost or expense of any nature (including, without limitation, reasonable attorneys fees) incurred by Landlord as a result of any such claim of lien.

14. **INSURANCE.**

A. **Fire and Extended Coverage Insurance.** Tenant, at its cost and expense, shall insure all of Tenant's improvements against damage by fire and other hazards included within a "special cause of loss form", or any generally accepted substitute therefore, for the replacement cost thereof, less any applicable deductible. Landlord, at its cost and expense, shall insure all of Landlords improvements (including utility systems and personal property) on the Premises at the time the Lease commences against damage by fire and other hazards included within a "special cause of loss form", or any generally accepted substitute therefore, for the replacement cost thereof, less any applicable deductible.

B. **Tenant's Commercial General Liability.** Tenant shall maintain commercial general liability insurance in an amount no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Tenant's commercial general liability insurer shall be a licensed carrier admitted to do business in the State of Florida. Landlord shall be named as an additional insured. Tenant shall deliver to Landlord a certificate of insurance evidencing such coverage.

C. **Landlords Commercial General Liability Insurance.** Landlord shall maintain commercial general liability insurance in an amount no less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate. Landlords commercial general liability insurer shall be a licensed carrier admitted to do business in the State of Florida. Landlord shall deliver to Tenant a certificate of insurance evidencing such coverage.

15. **INDEMNIFICATION.** To the extent not specifically disallowed by law, each party shall indemnify, defend, and hold the other party harmless from any claim action, liability, loss, damage, cost or expense (including, without limitation, reasonable attorneys fees) asserted against or incurred by the party to be indemnified relating to personal injury, death or property damage, arising out of the negligent or other wrongful acts or omissions of the indemnifying party. In connection with any such claim or action, the indemnifying party shall have the option to defend the party to be indemnified by counsel reasonably satisfactory to the party to be indemnified.

16. **DAMAGE OR DESTRUCTION.**

A. **Notice.** In the event of a fire or other casualty causing any damage to or destroying all or part of the Premises, Tenant shall give prompt notice to Landlord of the same.

B. **No Duty to Repair or Restore.** Tenant shall have no duty to repair or restore in the event of any damage or destruction. Tenant shall notify Landlord whether it intends to repair or restore the Premises within sixty (60) days after any damage or destruction. In the event Tenant chooses to repair or restore, Landlord shall provide to Tenant the insurance proceeds it receives as a result of the damage or destruction, to enable Tenant to repair or restore Landlords improvements on the Premises at the commencement of the Lease term, including Landlords utility systems and personal property. With respect to such repair or restoration of Landlords improvements, Tenant shall not be required to expend any monies other than the insurance proceeds and other funds it receives from Landlord. Tenant shall use reasonable efforts to complete any repair or restoration work it undertakes as soon as reasonably possible.

C. **Tenants Right to Terminate.** If Tenant does not elect to repair or restore, then Tenant may terminate this Lease by written notice to Landlord.

D. **Abatement of Rent and Utility Payments.** During the period that Tenant is unable to use all or part of the Premises as a result of the damage or destruction, the Base Rent Percentage Rent, and the amount for utilities payable by Tenant to Landlord shall abate in an equitable manner taking into account Tenants inability to use the Premises for the purposes intended.

17. **EMINENT DOMAIN.**

A. **Condemnation.** If at any time during the term of this Lease all or any part of the Premises shall be taken under the power of eminent domain by any public, quasi-public, private or other authority, then, if Tenant is unable to use the balance of the Premises for its business purposes as determined by Tenant in its reasonable discretion, this Lease shall thereupon terminate by notice from Tenant to Landlord, as of the date that title vests in such condemning authority. All Base Rent, Percentage Rent, and all other obligations due from Tenant hereunder shall be paid and/or performed up to the date that title vests in the condemning authority. After the date that title so vests, Tenant shall have no claim against Landlord.

B. **Landlord's Damages.** In the event of any taking in connection with the exercise of the power of eminent domain as hereinbefore provided, Landlord shall receive the full amount of monies paid by the condemning authority, less any amount of the award which can be attributed to Tenants improvements, which amount shall belong to Tenant.

C. **Tenant's Damages.** Tenant shall have the right, in a separate claim against the condemning authority if allowed by law, to claim from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right without reduction of any amount due Landlord.

D. **Voluntary Conveyance or Sale.** For purposes of this Section 17, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, or while condemnation proceedings are pending or thereafter, shall be deemed a taking under the power of eminent domain.

18. **SUBORDINATION AND ATTORNMENT.**

A. **Subordination.** This Lease, and all rights of Tenant hereunder, shall be subject and subordinate to the lien of any and all mortgages entered into by Landlord which may now or hereafter encumber all or any part of the Premises, together with all renewals, modifications, amendments, consolidations, replacements and extensions thereof and advances made with respect thereto, provided that as a condition to such subordination, any mortgagee agrees in writing not to disturb Tenants possession unless Tenant is in default hereunder after applicable cure periods. This subordination shall be self-operative and no further instrument of subordination shall be required for its operation. Landlord shall provide, and Tenant covenants and agrees to promptly execute, acknowledge and deliver to Landlord a Subordination, Non-Disturbance and Attornment Agreement in customary form reasonably satisfactory to Tenant. Landlord represents and warrants to Tenant that there are presently no mortgages on the Premises.

B. **Attornment.** In the event that any mortgagee of Landlord takes over the Premises or is the successor to Landlord's interest in this Lease, then as long as such mortgagee agrees not to disturb Tenants possession as provided for in Subsection 18A above, Tenant shall attorn to such mortgagee and shall recognize such mortgagee as Landlord hereunder.

19. **ASSIGNMENT AND SUBLETTING.**

A. **Consent Required for Assignment or Subletting.** Except as provided for in Subsection 19C below, Tenant may not assign this Lease or any part of its interest in this Lease, or sublet any portion of the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Any such assignment or subletting, done involuntarily or by operation of law, shall be deemed a prohibited assignment or subletting under this Section 19.

B. **Conditions to any Assignment or Subletting.** Tenant shall notify Landlord of any proposed assignment or subletting, and shall provide to Landlord all information reasonably requested by Landlord with respect to the same. Any permitted assignment or sublease shall contain a provision to the effect that the assignee or subtenant assumes and agrees to perform and observe all of the terms, agreements, covenants, and conditions to be performed and observed by Tenant under this Lease. No permitted assignment or subletting shall constitute a novation or a release of any claim that Landlord may then have against Tenant hereunder. The consent by Landlord to any assignment or subletting shall not negate the necessity for obtaining Landlord's consent for any further assignment or subletting. With respect to any permitted assignment or subletting, Tenant shall deliver to Landlord a copy of the fully executed assignment or sublease. Any assignee or subtenant shall use the Premises only for the purposes set forth herein.

C. **Permitted Assignment Without Consent.** Without Landlords prior written consent, but with notice to Landlord, Tenant may assign its interest in this Lease to any parent, subsidiary or affiliate, to any purchaser or other transferee of all or substantially all of its assets, or to any entity with whom Tenant merges or consolidates.

20. **TENANT'S DEFAULT.**

A. **Events of Default.** The occurrence of any one of the following shall be deemed a default by Tenant under this Lease:

(i) Tenant failing to make any payment to Landlord hereunder within ten (10) days after Tenant receives written notice that such payment is past due.

(ii) The neglect or failure of Tenant to perform or observe any term, agreement, covenant or condition contained in this Lease on Tenant's part to be performed or observed, which is not remedied by Tenant within thirty (30) days after Landlord shall have given Tenant written notice specifying such neglect or failure. The aforementioned thirty (30) day period shall be extended for the time reasonably necessary to cure such neglect or failure (but no more than an additional thirty (30) days), if the cure could not be accomplished during such thirty (30) day period after Tenant exercised due diligence in its attempt to effectuate the same, and Tenant continues its efforts with due diligence until the cure is achieved.

21. **LANDLORD'S DEFAULT.** The neglect or failure of Landlord to perform or observe any term, agreement, covenant or condition contained in this Lease on Landlord's part to be performed or observed which is not remedied by Landlord within thirty (30) days after Tenant shall have given Landlord written notice specifying such neglect or failure, shall be an event of default by Landlord under this Lease. The aforementioned thirty (30) day period shall be extended for the time reasonably necessary to cure such neglect or failure (but no more than an additional thirty (30) days), if the cure could not be accomplished during such thirty (30) day period after Landlord exercised due diligence in its attempt to effectuate the same, and Landlord continues its efforts with due diligence until the cure is achieved. If Tenant is not able to fully operate its business as a result of a default by Landlord hereunder, then the Base Rent, Percentage Rent, and utility payments shall abate in an equitable manner, which abatement shall commence at the time of Landlords act or omission, and not upon the expiration of the cure period.

22. **REMEDIES UPON DEFAULT.** Upon a default which is not cured within the applicable grace period, the non-defaulting party shall have all remedies against the defaulting party available at law or in equity including, without limitation, the right to terminate this Lease.
23. **SIGNS.** To the maximum extent permitted by law, Tenant shall be permitted to place any signs containing its name on the outside of or on the Premises.
24. **INSPECTION AND ENTRY BY LANDLORD.** Landlord and its employees and agents shall have the right, at Landlord's option, at all times to enter upon any part of the Premises for (i) inspection, (ii) showing the Premises to a prospective mortgagee or purchaser, or (iii) making any repairs, replacements, alterations, additions or improvements to any part of the Premises that Landlord deems necessary, but which do not affect or materially interfere with Tenants business operations.
25. **SURRENDER.** On the last day of the term of this Lease, or upon the earlier termination of this Lease, Tenant shall quit and surrender to Landlord the Premises in good condition and repair, ordinary wear and tear and casualty excepted. Tenant, at its option, may leave on the Premises all or part of the improvements it made or may remove the same.
26. **FORCE MAJEURE.** Neither Landlord nor Tenant shall be liable for any delay in the performance of, or its inability to perform, its obligations under this Lease by reason of war or other national or local emergency, labor troubles, scarcity of materials or supplies, acts of God, or any other cause, similar or dissimilar, beyond their reasonable control.
27. **QUIET ENJOYMENT.** Landlord represents to Tenant that upon Tenant's payment of the Base Rent and Percentage Rent due from Tenant to Landlord hereunder, and upon Tenant's observance and performance of all the other terms, agreements, covenants and conditions herein contained, Tenant shall peacefully and quietly hold and enjoy the Premises during the Term, subject nevertheless to the terms, agreements, covenants and conditions of this Lease.
28. **HOLDOVER TENANCY.** If Tenant shall hold over after the expiration of the term of the Lease, then Tenant shall be deemed to occupy the Premises as a tenant at sufferance, subject to all of the terms, agreements, covenants, and conditions of this Lease, except that the monthly Base Rent shall be one hundred fifty percent (150%) of the monthly Base Rent payable at the expiration of the term. Such occupancy by Tenant shall not limit in any manner Landlord's right to possession of the Premises or any other right of Landlord hereunder.
29. **RELATIONSHIP.** The relationship of the parties herein is solely that of landlord and tenant. Landlord is not, in any way or for any purpose, a partner or joint venturer of Tenant, nor does anything in this Lease confer upon Landlord any interest in Tenant or its business.
30. **TERMINATION.** Tenant may terminate this Lease at any time without cause y providing sixty (60) days prior written notice of termination to Landlord.
31. **ENVIRONMENTAL INSPECTIONS.** Prior to the commencement of the term of this Lease, Landlord shall have Phase 1" and Phase 2" environmental assessments done for the Premises by a licensed environmental professional or company, and shall promptly provide copies of the reports to Tenant. Landlord shall promptly take all required action to correct any environmental problems or conditions set forth in such reports.
32. **MISCELLANEOUS PROVISIONS.**
- A. **Entire Agreement and Modification.** This Lease contains all of the agreements, covenants, conditions, promises and understandings made by and between Landlord and Tenant, and may only be altered, changed or modified by an agreement in writing signed by all the parties or their respective successors or permitted assigns.
- B. **Law Governing and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Florida. Venue with respect to any action instituted relating in any way to this Lease shall lie exclusively in Broward County, Florida.
- C. **Notices.** Any and all notices, consents, or demands, required or given under this Lease shall be in

writing and shall be deemed given and received (i) when personally delivered and a receipt obtained, (ii) on the date noted as the date received, refused, or uncollected if sent by certified mail or registered mail, postage prepaid and return receipt requested, or (iii) the earlier of receipt or two (2) business days after acceptance for delivery by a nationally recognized overnight delivery service (e.g., Federal Express), at the following addresses:

If to Tenant:

Nova Southeastern University, Inc.  
3301 College Avenue  
Fort Lauderdale, Florida 33314  
Attention: Executive VP for Administration

If to Landlord:

Town of Davie

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Attention:

Landlord and Tenant each reserve the right to change the address at which notices are to be sent, and such change shall be provided in the manner required for the giving of notice under this Subsection 32.C.

D. **Binding on Successors.** This Lease, and all of the terms, agreements, covenants, and conditions contained herein, shall be binding upon and shall inure to the benefit of the respective successors and assigns of Landlord and Tenant.

E. **Brokerage.** Landlord and Tenant each represent to the other that it has not dealt with any broker in connection with the execution and delivery of this Lease and that the other party shall not be required to pay any commission whatsoever with regard to this Lease resulting from the actions of the party making such representation. Landlord and Tenant each agree to indemnify and hold each other harmless from and against any and all losses, costs, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorney's fees), resulting from a breach by the indemnifying party of the foregoing representations.

F. **Headings.** The headings, section and subsection numbers of this Lease are inserted for convenience only, and shall have no affect upon the meaning of any of the provisions herein.

G. **Partial Invalidity.** If any provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be found to be invalid or unenforceable by the entry of a final judgment from a court of competent jurisdiction, then, in that event, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

H. **Time Periods.** All time periods specified in this Lease shall be deemed to be calendar days unless specifically stated otherwise; provided, however, that if the last day of any particular calendar day period is a Saturday, Sunday or legal holiday, then the time period shall be deemed to extend to the next business day.

I. **Waiver of Jury Trial.** Landlord and Tenant hereby knowingly and voluntarily waive any right they may have to a trial by jury in regard to any claim or counterclaim brought by either against the other.

J. **Accord and Satisfaction.** No receipt and retention by Landlord of any payment tendered by Tenant in connection with this Lease shall give rise to or support or constitute an accord or satisfaction, or a compromise or other settlement, notwithstanding any accompanying statement, instruction or other assertion to the contrary (whether by notation on a check or in a transmittal letter or otherwise), unless Landlord expressly agrees to an accord and satisfaction, or a compromise or other settlement, in a separate writing duly executed by Landlord. Landlord will be entitled to treat any such payments, notwithstanding any contrary instructions or statements from Tenant, as being received on account of any past due item or items of Base Rent, Percentage Rent or utility payments, in such amounts and applied in such order as Landlord may determine in its sole discretion.

K. **Estoppel Certificates.** Each party, within ten (10) business days after receipt of a written request from the other party, shall execute and deliver to the other party, in a form reasonably required if applicable, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications, the date through which Base Rent and Percentage Rent have been paid, and such additional facts within the requested party's knowledge as may be reasonably required by the requesting party.

L. **Attorneys Fees and Costs.** In the event that either party institutes litigation to enforce its rights under this Lease, then the non-prevailing party shall pay to the prevailing party all costs and reasonable attorneys fees incurred by the prevailing party in connection therewith and through appellate and post-judgment proceedings.

M. **Waiver.** The waiver by Landlord or Tenant of any breach of or default under any term, agreement, covenant or condition in this Lease shall not be deemed a waiver of any subsequent breach of or default under the same or any other term, agreement, covenant or condition herein contained.

N. **Sale by Landlord.** Landlord reserves the right at any time to sell the Premises, and, in connection with any such sale, assign this Lease to the purchaser. Upon such sale and assignment to and assumption by a purchaser, Landlord shall be released from all further obligations under this Lease. Tenant agrees to attorn to such purchaser, and to recognize such party as successor Landlord under this Lease.

O. **Hazardous Waste.** Tenant shall keep the Premises or cause the Premises to be kept, free of "Hazardous Wastes" as hereinafter defined. In connection therewith, Tenant shall neither cause nor permit (i) the Premises to be used to generate, manufacture, treat, store, handle, dispose, produce or process Hazardous Wastes, or (ii) a release of Hazardous Wastes onto the Premises or from the Premises onto other property owned by Landlord or third parties. Tenant shall promptly give to Landlord copies of all notices of violations which it receives from any authority. The term "Hazardous Waste" includes, without limitation, any hazardous or toxic materials, wastes or substances or related materials defined in any federal, state, or local law, regulation, rule, or ordinance. Tenant shall indemnify, defend, and hold Landlord harmless from any claim, action, liability, loss, damage, cost or expense (including, without limitation, reasonable attorneys fees) incurred by or asserted against Landlord with respect to any such Hazardous Waste.

Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Lease, Tenant shall not be liable or responsible for any Hazardous Waste that may be on, under or about the Premises at the time of the commencement of this Lease. In connection therewith, Landlord shall indemnify, defend, and hold Tenant harmless from any claim, action, liability, loss, damage, cost or expense (including, without limitation, reasonable attorneys fees) incurred by or asserted against Tenant with respect to any such preexisting Hazardous Waste.

P. **Radon Gas.** 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 unit.

Q. **Survival.** Upon the expiration or earlier termination of this Lease, neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this Lease and except for such obligations as by their nature or under the circumstances can only be performed after such expiration or earlier termination.

R. **No Third Party Beneficiary.** The provisions of this Lease are for the exclusive benefit of the parties hereto and not for the benefit of any third party, nor shall this Lease be deemed to have conferred any rights, express or implied, upon any third party except as otherwise specifically provided for herein.

S. **Gender and Number.** All terms and words used in this Lease, regardless of the number or gender used, shall be deemed to include any other gender or number as the context or use thereof may require or permit.

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the date first written above.

Signed, sealed and delivered  
in the presence of:

**LANDLORD:**

TOWN OF DAVIE, a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT**

NOVA SOUTHEASTERN UNIVERSITY, INC., a  
Florida not for profit corporation

By: \_\_\_\_\_  
Print Name: George L. Hanbury, II  
Title: Executive VP for Administration

EXHIBIT A - LEGAL DESCRIPTION