

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

Case No.: 2014 CA 002626

FSU ATO HOUSE CORPORATION, a Florida
nonprofit corporation

Plaintiff,

vs.

THE FLORIDA STATE UNIVERSITY
FOUNDATION, INC., a Florida nonprofit
corporation, and LEON COUNTY
EDUCATIONAL FACILITIES AUTHORITY, a
public body established by Leon County,

Defendants.

FULL AND FINAL SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by (i) Plaintiff, FSU ATO House Corporation, a Florida corporation the address of which for purposes of notice hereunder is c/o Skip Smith, P.O. Box 10133, Tallahassee, FL 32301, and (ii) Defendant Leon County Educational Facilities Authority, the address of which for purposes of notice hereunder is P.O. Box 11154, Tallahassee, Florida 32302, with a copy to Terrell C. Madigan, Esq., General Counsel, P.O. Box 10321, Tallahassee, Florida 32302.

**A.
DEFINITIONS**

(i) "The Authority" shall mean The Leon County Educational Facilities Authority, a public body corporate and politic created in 1990 by resolution of the Leon County Board of County Commissioners under the Higher Educational Facilities Authorities Law, chapter 243, part I, Florida Statutes, and specifically section 243.21, Florida Statutes.

(ii) "Derivative Claimants" shall mean any person or entity acting by, through, or under a party (including by reason of marriage or family relationships, any such person), or any of the Entities of a party.

(iii) "Entities" of a party shall mean those persons and/or entities (whether now in

existence or not), and which are or were formerly owned or controlled, in whole or in part, directly or indirectly, by a party to this Agreement, or any Derivative Claimant, and their respective entities, employers, employes, directors, shareholders, officers, assigns, predecessors, successors, attorneys, representatives or agent of such persons and/or entities.

(iv) "Lawsuit" shall mean the above-entitled and numbered cause, pertaining to among other things Plaintiff's leasehold interest as sub-sublessee of the Authority under the "Sub-Sublease Agreement," as hereinafter defined.

(v) "Representatives" of a person or entity shall mean and include all of that person's or entity's past or present principals, agents, servants, employees, attorneys, consultants, experts, partners (both general and/or limited), equity participants, officers, directors, shareholders, parent companies, subsidiaries, affiliates, predecessors, successors, assigns, estates, beneficiaries, heirs, devisees, legatees, trustees, and personal representatives.

(vi) "Settlement Agreement" shall mean this Full and Final Settlement Agreement by and between the parties hereto.

(vii) "Sub-Sublease Agreement" shall mean that certain Housing Corporation Sub-Sublease Agreement dated December 11, 2003, between Plaintiff, as sub-sublessee, and Defendant, as sub-lessor, which instrument is recorded in Book 3287, page 600, Public Records of Leon County, Florida and a copy of which instrument is attached hereto as Exhibit "A."

B.

CONTRACTUAL RECITALS AND STATEMENT OF PURPOSE

WHEREAS, Plaintiff has initiated the above-described Lawsuit against Defendants, alleging various causes of action; and

WHEREAS, Defendants have denied, and continue to deny, all such allegations by Plaintiff, FSU ATO House Corporation; and

WHEREAS, this Settlement Agreement, and the execution hereof, does not, and is not intended to be, construed to be, or is an admission of any fault or wrongdoing by or on behalf of Plaintiff or Defendants, all such claims having been expressly denied heretofore, and the parties continue to deny the same; and

WHEREAS, all provisions of this Settlement Agreement are contractual in nature, and not mere recitals only; and

WHEREAS, the purpose of this Settlement Agreement is to set forth and embody a negotiated compromise, settlement, and release, as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein

contained, and the incorporation of the above Recitals, the parties hereto agree as follows:

C.

PERSONS AND ENTITIES BOUND BY THIS SETTLEMENT AGREEMENT

1. Each party understands and agrees that by execution hereof, the terms of this Settlement Agreement are binding upon the party and upon all representatives, successors and assigns of such party.

2. Each party represents and warrants that such party has approved of all of the terms, conditions and covenants of this Settlement Agreement and that such party has authority to enter into this Settlement Agreement.

D.

NO OUTSTANDING CLAIMS

1. Each party represents that it has no awareness of the existence of any actual or potential claim, demand, suit, cause of action, charge or grievance possessed by such party against the other party, which is not subject to and fully released by this Settlement Agreement, except for matters as may be expressly excluded in this Settlement Agreement, that concerns or relates in any way, directly or indirectly, to the Lawsuit.

2. Each party represents that it has not assigned, authorized or transferred (in any way, whether directly or indirectly) any claims, demands, suits, causes of action, charges, or grievances of any kind or character, which such party had or may have had against the other party prior to and including the Effective Date. Each party represents that it does not have or own any part of any actual or potential claim, demand, suit, cause of action, charge, or grievance of any kind or character against any other party to this Settlement Agreement which is not subject to and released by this Settlement Agreement.

E.

CONSIDERATION

1. Leon County Educational Facilities Authority shall pay to FSU ATO House Corporation the total sum of Two Hundred Thirty-five Thousand and No/100 Dollars (\$235,000.00), to be remitted as follows: Within thirty (30) days after the approval, execution, and delivery of this Agreement by the Authority and Plaintiff, the Authority shall deliver to counsel for Plaintiff (i) the form of Promissory Note attached hereto as Exhibit "B," duly executed (the "Note"); (ii) the form of Leasehold Mortgage and Security Agreement and Fixture Filing attached hereto as Exhibit "C" duly executed (the "Mortgage"); and (iii) the form of Assignment of Leases and Rents attached hereto as Exhibit "D" duly executed (the "Assignment of Rents") to counsel for Plaintiff. The Mortgage and the Assignment of Rents will be subject to all covenants, reservations, restrictions, and easements of record, including a Declaration of Covenants, Conditions, and Restrictions, relating to Lease Area #11, to be recorded by the Authority before the Mortgage and the Assignment of Rents are recorded, substantially in the

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form of that attached hereto as Exhibit "E" duly executed (the "Declaration of Covenants").

2. The parties further agree to perform and fulfill the following nonmonetary terms (herein, the "Nonmonetary Terms") contemplated by this Settlement Agreement:

(i) This Settlement Agreement is contingent upon the execution and delivery, by counsel for all parties to the Lawsuit, of a notice of joint voluntary dismissal with prejudice, which notice shall affirm an agreement among all parties to the Lawsuit that each party shall bear its own attorneys' fees and costs and which notice upon filing shall operate as a dismissal of the Lawsuit with prejudice against all parties, including Defendant The Florida State University Foundation, Inc.;

(ii) Upon Plaintiff's receipt of the Promissory Note, Plaintiff shall file the said joint notice of voluntary dismissal with prejudice;

(iii) Upon the Authority's delivery of the duly issued Promissory Note to counsel for Plaintiff, Plaintiff shall forthwith deliver to the Authority a Notice of Termination and Cancellation of Sub-Sublease in form substantially the same as that attached as Exhibit "F" hereto for recording in the public records, which instrument shall serve as confirmation that Plaintiff has been released from any further obligation under the Sub-Sublease.

3. Payment of the sums due under this Settlement Agreement is expressly conditioned upon (a) the execution of this Settlement Agreement, and (b) dismissal of the Lawsuit with prejudice.

4. Upon the dismissal of the Lawsuit with prejudice as provided above, the Authority shall be deemed to have released Plaintiff from any and all claims for unpaid common area maintenance fees through the date of such dismissal.

5. In consideration of the total sum payable as provided above and in further consideration of the mutual agreements, conditions, representations, warranties, recitals, covenants and statements of intention contained in this Settlement Agreement, FSU ATO House Corporation accepts said sum in full settlement, compromise and release of all claims as arising out of or in connection with the Lawsuit, including, but not limited to, (i) all claims for breach of contract, breach of contract, and unjust enrichment, and (ii) all claims, known and unknown, that were brought or could have been brought in the Lawsuit against the Defendants arising out of the facts alleged in the Lawsuit.

6. Each party to this Agreement shall bear its own costs and attorneys fees in connection with the Lawsuit.

7. Plaintiff shall bear all documentary stamp taxes, intangible taxes, and recording costs, associated with the instruments to be given and received pursuant to this Settlement Agreement.

F.
INUREMENT

It is understood and agreed that this Settlement Agreement shall inure to the benefit of FSU ATO House Corporation, the Authority, and Defendant THE FLORIDA STATE UNIVERSITY FOUNDATION, INC. No other person or entity is intended to benefit by or be deemed a third-party beneficiary of this Settlement Agreement.

G.
EXPRESS DENIAL OF LIABILITIES

Plaintiff, FSU ATO House Corporation, and Defendant Leon County Educational Facilities Authority, and/or their representatives, understand and agree that no payment made nor released pursuant to the terms of the Settlement Agreement, or other consideration given shall be intended to be, nor shall be construed to be, an admission of liability and any and all such liability is expressly denied.

H.
MISCELLANEOUS


The recitals stated at the beginning of this document are incorporated into and made a part of this Agreement. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes any and all prior letters, agreements, and memoranda of understanding. This Agreement may not be amended, and no obligation hereunder shall be deemed waived, except by a writing signed by the party against whom enforcement of the modification is sought. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. Time is of the essence of this Agreement. If any provision in this Agreement is held by a court of competent jurisdiction or arbitrator to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. The provisions of this Agreement shall bind and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer on any person other than the parties hereto, or their respective successors or permitted assigns, any rights, remedies, obligations, or liability under or by reason of this Agreement. The various headings and titles used herein are for convenience only and shall not affect the interpretation of any of the provision hereof. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular number shall include the plural, and vice versa. The parties hereby acknowledge that this document is a product of intense negotiation between the parties and agree that any interpretation hereof shall not be construed against the drafter hereof. This Agreement may be executed in counterparts, all of which when taken together shall be deemed a fully executed original. A legible facsimile or electronic (including "pdf") copy of this Agreement, and any signatures thereon, shall be considered for all purposes as an original. Each party hereby agrees to execute all such further instruments and documents

and to take all such further action as the other party may reasonably request in order to give effect to the provisions and purposes of this Agreement. This Agreement shall be governed by the laws of the State of Florida, without reference to conflict of laws principles. Each party consents to personal jurisdiction and venue, for any action involving any controversy or claim arising out of or relating to this Agreement, in the Circuit or County Court in and for Leon County, Florida, and agrees that any such action shall be brought and maintained exclusively in such Court. EACH PARTY WAIVES THE RIGHT TO JURY TRIAL with respect to any controversy or claim arising out of or relating to this Agreement. If any legal action shall be instituted to interpret or enforce the terms or conditions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees, including those incurred on appeal. All representations, warranties, and indemnifications made in this Agreement, and all terms and provisions hereof intended to be observed and performed after the expiration or termination hereof, shall survive such expiration and termination and continue, thereafter, in full force and effect.

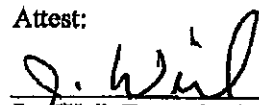
1.
EXECUTION AND EFFECTIVE DATE

The parties hereto have executed this Full and Final Settlement Agreement on the dates set forth under their respective names, to be effective as of the 17th day of the month of November 2015.

**LEON COUNTY EDUCATIONAL
FACILITIES AUTHORITY**

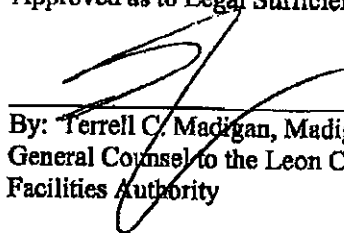

By: Lori Billberry, Chair

Attest:

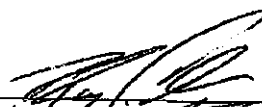

Joe Weil, Executive Director & Secretary
Leon County Educational Facilities Authority

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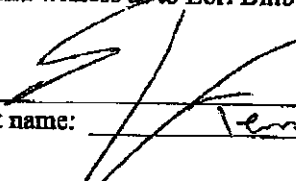
Approved as to Legal Sufficiency:


By: Terrell C. Madigan, Madigan Law Firm, P.A.
General Counsel to the Leon County Educational
Facilities Authority

First witness as to Lori Billberry:


Print name: Roy Allen

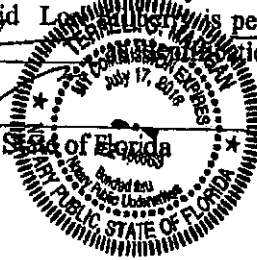
Second witness as to Lori Billberry:


Print name: Terrell C. Madigan

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 17th day of March, 2015, by Lori Billberry, as Chair of the Leon County Educational Facilities Authority, on behalf of the Authority. The said Lori Billberry is personally known to me or has produced _____.


Notary Public - State of Florida



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FSU ATO HOUSE CORPORATION

[Signature]
By FRED MAGLIONE, as its PRESIDENT

12/4/15
Date

[Signature]

Witness

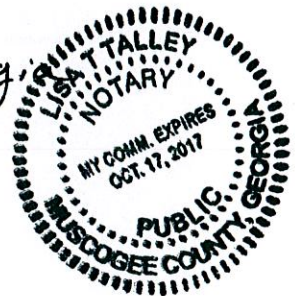
[Signature]

Witness

STATE OF Georgia
COUNTY OF Muscogee

The foregoing instrument was acknowledged before me this 4 day of December, 2015, by Fred Maglione, as President of FSU ATO House Corporation, a Florida corporation, on behalf of said corporation. The said Fred Maglione is personally known to me or has produced drivers license as identification.

[Signature]
Notary Public - State of Florida Georgia



- Exhibit "A": Sub-Sublease Agreement
- Exhibit "B": Form of Promissory Note
- Exhibit "C": Form of Leasehold Mortgage and Security Agreement and Fixture Filing
- Exhibit "D": Form of Assignment of Leases and Rents
- Exhibit "E": Form of Declaration of Covenants, Conditions, and Restrictions
- Exhibit "F": Form of Notice of Termination and Cancellation of Sub-Sublease

[Handwritten mark]

This instrument prepared by:
Kimberly L. King, Esq.,
of King & Wood, P.A.
Terrell C. Madigan, Esq.,
of Madigan Law Firm, P.L.

When recorded return to:
Madigan Law Firm, P.L.
Post Office Box 10321
Tallahassee, FL 32302

NOTICE OF TERMINATION AND CANCELLATION OF SUB-SUBLEASE

THE UNDERSIGNED, who are the parties to that certain Housing Corporation Sub-Sublease Agreement between the Leon County Educational Facilities Authority (the "Authority"), as sub-lessor, and FSUATO House Corporation ("Corporation"), as sub-lessees, dated December 11, 2003, and recorded in Book 3287, Page 600, Public Records of Leon County, Florida (the "Sub-Sublease Agreement"), hereby acknowledge and give notice that the said Sub-Sublease Agreement has been terminated and cancelled, and that the Corporation's interest in the real property that was subject to the Sub-Sublease Agreement has been surrendered to the Authority.

IN WITNESS WHEREOF, the parties caused this instrument to be executed by their duly authorized representatives.

LEON COUNTY EDUCATIONAL
FACILITIES AUTHORITY

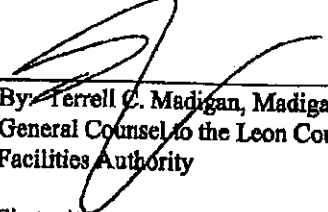

By: Lori Billberry, Chair

Attest:

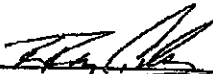

Joe Weil, Executive Director & Secretary
Leon County Educational Facilities Authority



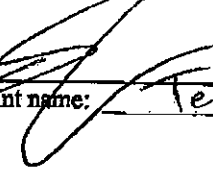
Approved as to Legal Sufficiency:


By: Terrell C. Madigan, Madigan Law Firm, P.A.
General Counsel to the Leon County Educational
Facilities Authority

First witness as to Lori Billberry:

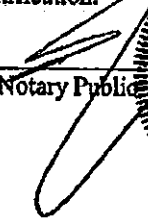
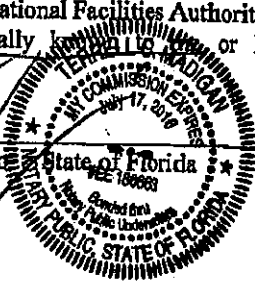

Print name: K. Ray Allen

Second witness as to Lori Billberry:


Print name: Terrell C. Madigan

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 18th day of November
2015, by Lori Billberry, as Chair of the Leon County Educational Facilities Authority, on behalf of
the Authority. The said Lori Billberry is personally known to me or has produced
_____ as identification.


Notary Public, State of Florida


FSU ATO HOUSE CORPORATION,
a Florida Not for Profit Corporation

[Signature]
By FRED MAGLIONE, as its PRESIDENT

Date

Laura E. Williams

Witness

[Signature]

Witness

STATE OF Georgia
COUNTY OF Muscogee

The foregoing instrument was acknowledged before me this 4 day of December, 2015, by Fred Maglione, as President of FSU ATO House Corporation, a Florida not for profit corporation, on behalf of said corporation. The said Fred Maglione is personally known to me or has produced drivers license as identification.

[Signature]
Notary Public - State of ~~Florida~~ Georgia



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