

## LEASE AGREEMENT

This Lease made this 28<sup>th</sup> day of July, 2003, by and between the **City of Coral Gables** (hereinafter referred to as "Lessor"), and the **University of Miami** (hereinafter referred to as "Lessee").

### WITNESSETH:

**WHEREAS**, Lessor owns and controls Municipal Parking Lot 42 consisting of two hundred and forty (240) spaces, and Municipal Parking Lot 43, consisting of eighty-six (86) spaces, located along Ponce de Leon Boulevard, Coral Gables, Florida (collectively referred to as the "Lots");

**WHEREAS**, Lessee wishes to lease the Lots from Lessor for the term and in the manner more particularly set forth below.

**NOW, THEREFORE**, for and in consideration of the foregoing premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

#### 1. Leased Premises.

Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the Lots, as more particularly described on Exhibit "A" attached hereto and made a part hereof. Lessee shall take the Lots in "as-is" condition.

Lessee agrees, that notwithstanding anything to the contrary herein, the users currently parking in the Lots shall be permitted to continue their use of the Lots and Lessor shall retain the revenue from such users. Lessor shall retain the right to lease up to the current level of permit holders (49) on an on-going basis to any such monthly permit holders as they see fit. A list of the current users is attached hereto as Exhibit "B", which list shall be updated by Lessor annually. Lessor shall not, however, permit any additional users of the Lots.

#### 2. Term, Termination and Renewal.

**2.1 Term.** The term of this Lease (the "Initial Term") shall commence on September 1, 2003 and expire on August 31, 2004. Thereafter, upon mutual agreement of the parties at the end of the Initial Term, this Agreement shall renew automatically on an annual basis, unless terminated by either party, upon at least sixty (60) days notice to the other party, prior to the end of a then-current term.

**2.2 Termination by Default.** Lessor may, by written notice to Lessee, terminate the whole or any part of this Agreement if, in the judgment of Lessor's City Manager:

- a) Lessee has materially breached any portion of this Agreement, which breach is not cured within thirty (30) days following Lessor's notice of such breach;

- b) Lessee fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement, which failure is not cured within thirty (30) days following Lessor's notice of such failure;
- c) The occurrence of a monetary default which is not cured within ten (10) days following the Lessor's notice of default;
- d) Lessee has assigned or delegated its duties or subcontracted any performance of this Agreement without prior written consent by Lessor;
- e) Making changes to the name, structure, control or entity of Lessee's corporate status by way of transferring stock in the amount of five percent (5%) or greater, without the prior consent of Lessor's City Commission;
- f) The insolvency of Lessee. Lessee shall be deemed insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Lessee is insolvent within the meaning of such laws;
- g) There has been a filing of a voluntary or involuntary petition regarding Lessee under the Federal Bankruptcy Code;
- h) There has been the appointment of a Receiver or Trustee for Lessee;
- i) There has been an execution by Lessee of a general assignment for the benefit of creditors.

If, after Lessor has given notice of termination under the provisions hereunder, it is determined by Lessor that Lessee was not in default under these provisions, or that the default was excusable under these provisions, the rights and obligations of the parties shall be the same as if the notice of termination has been issued pursuant to Paragraph 2.4 below (Termination for Convenience).

The rights and remedies of City provided in this Paragraph 2.2 are non-exclusive and cumulative.

**2.3 Termination for Convenience.** This Agreement may be terminated when such action is deemed by Lessor to be in its best interest. Termination shall be effected by delivery to Lessee of a notice of termination specifying the extent to which performance of this Agreement is terminated and the date upon which such termination becomes effective, which date shall be no less than thirty (30) days after the notice is sent.

**2.4 Termination by Lessee.** This Agreement may be terminated by Lessee upon thirty (30) days prior written notice to the Lessor in the event of substantial failure by Lessor to perform in accordance with the terms of the Agreement through no fault of Lessee.



### 3. Rent.

3.1 Throughout the Initial Term, and any renewals thereof (unless otherwise adjusted pursuant to paragraph 3.2 below), Lessee shall pay to Lessor rent for the Lots in the amount of fifty thousand dollars (\$50,000.00) annually, which sum shall be payable to Lessor in equal consecutive monthly installments of four thousand one hundred sixty-seven dollars (\$4,167.00) each (the "Rent"). Lessee represents to Lessor that it is exempt from sales tax and Lessee shall provide Lessor with its certificate of exemption prior to execution of this Lease.

3.2 Commencing after the Initial Term of this Lease, in the event that the rate for monthly parking permits issued by Lessor is increased by Lessor's City Commission, the Rent payable hereunder shall be correspondingly increased by the percentage of the increase over the present monthly parking permit rate. By way of example, if an increase in the monthly parking permit rate to \$80.00 is approved by Lessor's City Commission, which is an approximately 14.5% increase over the present \$70.00 monthly rate, the Rent payable by Lessee would be correspondingly increased by 14.5% over the current Rent as set forth herein. Lessor shall provide Lessee with at least thirty (30) days' prior notice of any said rent increase.

3.3 All payments of Rent, including any adjustments thereto, shall be made by check payable, and mailed or delivered to, Lessor, c/o PARKING DIRECTOR, 2801 SALZEDO ST. CORAL GABLES, FL 33134 or to such other person and at such other place as Lessor may, from time to time, by written notice designate.

3.4 If any rental due under the terms of this Lease is not paid within ten (10) days of the date it is due and payable, Lessee agrees to pay a late charge of \$100.00 and thereafter, interest at the rate of one percent (1%) per month shall accrue against the delinquent payment(s) until the same is paid. Acceptance of a late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount or prevent Lessor from exercising any of the other rights and remedies available to Lessor at law or under this Lease.

### 4. Use.

4.1 Lessee shall use, occupy and enforce the Lots for parking for University of Miami use only, which shall include parking for events held at the Mark Light Baseball Stadium and the Convocation Center, and for no other purpose whatsoever without Lessor's prior written consent. Lessee shall be responsible for obtaining any and all permits and/or licenses pertaining to Lessee's use of the Premises.

4.2 In consideration of this Lease, Lessee agrees to provide space in either Lot 42 or Lot 43 for the use or storage of the Coral Gables Trolley, provided such use or storage does not unreasonably prevent Lessee from using that Lot and subject to the mutual agreement of the parties as to the location of such storage or use. Lessor shall be fully responsible for any expense related to the storage of or use by the Trolley of the Lots, including but not limited to, securing such storage and liability insurance.

4.3 Lessee shall comply with all applicable laws, ordinances (including zoning

ordinances and land use requirements), rules, regulations and orders of all federal, state and local governments and any other public or quasi-public authority having jurisdiction over the Lots or the business activities conducted thereon, including particularly, but without limitation, those concerning the use, occupancy and condition of the Lots.

4.4 Lessee shall not commit, or suffer to be committed, any waste or damage on or to the Lots, nor use or occupy the Lots, or permit the Lots to be used or occupied, contrary to any statute, rule, order, ordinance, requirement, regulation or recorded restriction applicable thereto, or in any manner which would violate any certificate or occupancy affecting the same, or which would cause structural injury to the improvements, or cause the value or usefulness of the Lots or any part thereof to diminish, or which would constitute a public or private nuisance or waste.

5. **Care of the Premises.**

Lessee shall take good care of the Lots, shall use the same in a careful and prudent manner and shall at all times keep the Lots, including outside walkways and areas, in a neat, clean and sanitary condition, free of debris. Upon expiration of this Lease, or its termination in any manner, Lessee shall deliver the Lots to Lessor in as good condition as the same shall be at the commencement of this Lease, loss by fire or other casualty and ordinary wear and tear being the only exceptions.

6. **Maintenance and Repairs.**

Lessee shall be responsible for all maintenance of and repairs to the Lots, at its sole expense, except for any repairs necessitated by the negligence of Lessor, its agents or employees. All such maintenance and repairs by Lessee shall be effected in compliance with all applicable laws.

7. **Condition of the Lots.**

Lessee agrees to install additional lighting in the Lots, at its expense, subject to the prior approval of Lessor. Lessor agrees to remove, all existing meters (head and mechanism) prior to delivery of possession to Lessee, from the lots.

8. **Alterations and Improvements.**

8.1 Lessee shall not make or cause to be made any alterations, additions, or improvements or to make any substantial changes to the Lots without first obtaining Lessor's written approval and consent, which consent shall not be unreasonably withheld or delayed. Lessee shall present to the Lessor detailed plans and specifications for any work at the time approval is sought. In the event Lessee fails to comply with the provisions of this Section 8, Lessor shall have the right, in addition to all other remedies granted Lessor herein or at law to cause the immediate removal of the same at Lessee's expense, which cost shall be due and payable immediately by Lessee upon presentation of a bill therefor.

8.2 All alterations, additions, and improvements erected or made by Lessee to the Lots



in accordance with the terms of this Lease shall be deemed to be a part of the Lots and shall remain upon and be surrendered with the Lots upon the termination of this Lease and shall become the property of Lessor. Lessee shall fully repair damage of any kind or character to the Lots occasioned by the removal of any equipment, and shall leave the Lots in a good, and broom clean condition upon surrender.

**9. Signage.**

Lessee shall be permitted to install and maintain its standard identification signage on the Lots, subject to Lessor's prior written approval of such signage, which approval shall not be unreasonably withheld or delayed.

**10. Liens; Subordination.**

**10.1** Lessee shall not do any act which shall in any way encumber the interest of Lessor in and to the Lots, nor shall the interest or estate of Lessor in the Lots be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Lessee. Any claim to, or lien upon, the Lots arising from any act or omission of Lessee shall accrue only against the leasehold estate of Lessee and shall be subject and subordinate to the paramount title and rights of Lessor in and to the Lots.

**10.2** Lessee does not have the right nor shall it permit the Lots to become subject to any mechanics', laborers' or materialmens' lien on account of labor or material furnished to Lessee or claimed to have been furnished to Lessee in connection with work of any character performed or claimed to have been performed on the Lots by, or at the direction or sufferance of, Lessee and any persons supplying such labor or material shall be placed on notice by Lessee of this provision to this Lease. If any lien is filed against the Lots as a result of additions, alterations, repairs, installations or improvement made or claimed to have been made by Lessee or anyone through or under Lessee, or any other work or act of Lessee, Lessee shall discharge the same within ten (10) days after written notice of the filing thereof. If Lessee fails to so discharge by payment, bond or court order any such lien, Lessor, at its option, in addition to all other rights and remedies herein provided, may bond said lien or claim (or pay off said lien or claim if it cannot be bonded) for the account of Lessee without inquiring into the validity thereof, and all sums so advanced by Lessor shall be paid by Lessee as additional rent on demand.

**11. Inspection.**

Lessee agrees to permit Lessor, or Lessor's agents, to enter upon the Lots at any reasonable time during normal business hours for the purpose of making reasonable inspections, repairs, alterations or improvements.

**12. Insurance.**

**12.1** Without limiting Lessee's indemnification of Lessor, and during the term of this Agreement, Lessee shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to Lessor and shall

be primary to and not contributing with any other insurance maintained by Lessor. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables  
405 Biltmore Way  
Coral Gables, FL 33134  
Attn: City Manager  
cc: City Attorney  
Purchasing Director

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement, and shall contain the express condition that Lessor is to be given written notice by certified mail at least thirty (30) days in advance of any modification or termination of insurance.

**12.2** Upon Lessee occupying the Premises and throughout the Initial Term and any renewal thereof, Lessee shall, at its sole cost and expense, maintain the following insurance: i) general public liability insurance on a comprehensive basis, with a combined single limit amount of not less than \$1,000,000.00 in primary coverage and \$3,000,000.00 in excess liability coverage for injury to one person in one accident, occurrence or casualty, or for injuries to more than one person in one accident, occurrence or casualty; ii) fire and extended coverage insurance for the full replacement cost of all Lessee's personal property and tenant improvements; and iii) worker's compensation insurance as required by Florida Statutes, Chapter 440.

**12.3** All insurance policies and surety bonds required under this Lease shall be issued by companies authorized to do business under the laws of the State of Florida, and the financial rating of the insurance company insuring Lessee's interest should be at least twelve (12) in accordance with the Best rating guide on a scale of one (1) through fifteen (15).

**12.4** Lessee shall furnish evidence of insurance to Lessor within thirty (30) days of execution of this Lease, which evidence shall clearly indicate that Lessee has obtained insurance in the type, amount and classification as required for strict compliance with this Section 12.3 and naming Lessor as an additional insured. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to Lessor. Lessor reserves the right to reasonably amend the insurance requirements herein at any time or from time to time by the issuance of prior reasonable notice, in writing, to Lessee.

**12.5** Lessee shall provide or cause its contractor to provide Builder's Risk Insurance during any construction required in connection with the Lots. Lessee shall carry insurance on the improvements made to the Lots in the name of Lessor and in an amount not less than their full insurable value. Lessee shall also provide its own insurance against any damage to Lessee's fixtures, equipment, or other personal property of Lessee, or any other party.

### **13. Audits.**

**13.1** Lessee shall maintain accurate and complete financial records of its activities and



operations relating to this Agreement in accordance with generally accepted accounting principles. Lessee shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. Lessee shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Lessee agrees that Lessor, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All financial records, timecards and other employment records, and proprietary data and information shall be kept and maintained by Lessee and made available to Lessor during the terms of this Agreement and for a period of three (3) years thereafter unless Lessor's written permission is given to dispose of any such material prior to such time. All such materials shall be maintained by Lessee at a location in Miami-Dade County, Florida, provided that if any such material is located outside Miami-Dade County, then, at Lessor's option Lessee shall pay Lessor for travel, per diem, and other costs incurred by Lessor to examine, audit, excerpt, copy or transcribe such material at such other location. Lessor shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal working business hours at the Lessee's place of business.

In the event that an audit is conducted by Lessee specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by Lessee, then Lessee shall file a copy of the audit report with Lessor's Auditor within thirty (30) days of Lessee's receipt thereof, unless otherwise provided by applicable Federal or State law. Lessee shall make a reasonable effort to maintain the confidentiality of such audit report(s).

Failure on the part of Lessee to comply with the provisions of this Paragraph 13 shall constitute a material breach upon which Lessor may terminate or suspend this Agreement.

**13.2** If, at any time during or after the term of this Agreement, representatives of Lessor conduct an audit of Lessee regarding the work performed under this Agreement, and if such audit finds that Lessor's dollar liability for any such work is less than payments made by Lessor to Lessee, then the difference shall be either repaid by Lessee to Lessor by cash payment upon demand or, at the sole option of Lessor, deducted from any amounts due to Lessee from Lessor. If such audit finds that Lessor's dollar liability for such work is more than the payments made by Lessor to Lessee, then the difference shall be paid to Lessee by cash payment.

#### **14. Indemnification.**

**14.1** Lessee shall indemnify and save Lessor harmless from and against any and all claims, demands, suits, actions, damages, liability and expense, including reasonable attorneys' fees, for or in connection with any accident, injury or damage whatsoever caused to any person or property arising directly out of the Lessee's tenancy hereunder, or occurring in, on or about the Lots and arising directly from any action or omission of Lessee, its agents, contractors, employees, servants, or subtenant.

**14.2** To the extent permitted by law, Lessor shall indemnify and save Lessee harmless from and against any and all claims, demands, suits, actions, damages, liability and expense, including reasonable attorneys' fees, arising out of the negligence of Lessor, its agents, or

employees, in the performance of this Lease or in connection with the Lots.

**15. Condemnation.**

In the event that the Lots or any part thereof is taken for any public or quasi-public use by condemnation or by right of eminent domain, or purchase in avoidance or settlement of a condemnation of eminent domain proceeding, Lessor and Lessee agree as follows:

(i) If all of the Lots or such a part of the Lots is taken so as to render the Lots unsuitable for the business of Lessee, then this Lease shall be terminated, and rent shall abate as of the date of taking.

(ii) In the event of a partial taking which does not render the Lots unsuitable for the business of Lessee, a fair and just proportion of the rent shall abate as of the date of taking, and Lessor shall have the option either to continue this Lease (in which event Lessor shall proceed to repair the damage to the Lots caused by such partial taking), or to cancel this Lease as of the date of taking, with rent abating as of that date. Lessor shall notify Lessee within thirty (30) days after a taking as to which option Lessor elects. Lessor shall not be liable to Lessee in the event any force majeure delays completion of repairs.

(iii) Lessor and Lessee shall each be entitled to receive such sums as may be awarded by the court in relation to a taking, or if the award is not apportioned by the court, each shall be entitled to receive such sum as negotiated by it with the condemner.

**16. Limitation of Liability.**

Notwithstanding anything to the contrary contained in this Lease, in the event of any default or breach by Lessor, Lessee shall look solely to the interest of Lessor (or any successor of Lessor) in the Lots for the collection of any judgment (or any other judicial procedures requiring the payment of money by Lessor) and no other property or assets of Lessor shall be subject to levy, execution or other procedures for satisfaction of Lessee's remedies.

**17. Quiet Enjoyment.**

Provided Lessee is not in default of this Lease, Lessee shall peaceably and quietly hold and enjoy the Lots for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully or equitably claiming by, through or under the Lessor, subject nevertheless, to the terms and conditions of this Lease.

**18. Default.**

18.1 Lessee agrees that any one or more of the following events shall be considered events of default by Lessee under this Lease: (i) Lessee shall be adjudged an involuntary bankrupt, or a decree or order approving, as properly filed, a petition or answer filed against Lessee asking reorganization of Lessee under the federal bankruptcy laws as now or hereafter amended, or under the laws of any state, shall be entered, and any such decree or judgment or order shall not have been



vacated or set aside within sixty (60) days from the date of the entry or granting thereof; or (ii) Lessee shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the federal bankruptcy laws as now or hereafter amended, or Lessee shall institute any proceedings or give its consent to the institution of any proceedings for any relief of Lessee under any bankruptcy or insolvency laws or under laws relating to the relief of debtors, readjustment or indebtedness, reorganization, arrangements, composition or extension; or (iii) Lessee shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee or any of the property of Lessee; or (iv) the Lots are levied upon by any revenue officer or similar officer as a result of an act or omission of Lessee; or (v) a decree or order appointing a receiver of the property of Lessee shall be made and such decree or order shall not have been vacated or set aside within sixty (60) days from the date of entry of granting thereof; or (vi) Lessee shall have abandoned the Lots or vacated the same during the Lease Term hereof except if Lessee continues to pay Rent, the same shall not be considered a default; or (vii) Lessee shall default in any payment of rent or in any other payment required to be made by Lessee hereunder when due as herein provided and such default shall continue for ten (10) days after notice thereof in writing to Lessee; or (viii) Lessee shall default in keeping, observing or performing any of the other covenants or agreements herein contained to be kept, observed and performed by Lessee.

**18.2** Upon the occurrence of any one or more of the foregoing events of default, Lessor shall give written notice to Lessee of such default. Upon receipt of such notice, Lessee shall have thirty (30) days to cure any non-monetary default and ten (10) days to cure a monetary default provided, however, that with respect to any default which cannot be reasonably cured within said relevant time period, Lessee shall have additional time necessary to cure the default so long as Lessee commences to cure within ten (10) days from Lessor's notice, and continues to prosecute diligently the curing thereof. If Lessee shall have failed to comply or remedy such default within the applicable cure period, or within the additional time granted to cure such default, Lessee may, at its election, terminate this Lease. Upon termination of the Lease, or upon termination of the Lessee's right to possession without termination of the Lease, Lessee shall surrender possession and vacate the Lots immediately and deliver possession thereof to Lessor. Upon termination of the Lease, as provided herein, Lessor shall be entitled to recover as damages, all Rent and other sums due and payable by Tenant on the date of termination, plus: (i) an amount equal to the value of the Rent and other sums provided herein to be paid by Lessee for the balance of the stated term hereof, less the fair rental value of the Lots for the balance of the stated term (taking into account the time and expenses necessary to obtain a replacement tenant or tenants, including expenses hereinafter described relating to recovery of the Lots, preparation for reletting and reletting itself); and (ii) Lessor's cost of performing any other covenants to be performed by the Lessee. If Lessor elects to terminate Lessee's right to possession only without terminating the Lease, Lessor may, at Lessor's option, enter onto the Lots, remove Lessee's signs and other evidences of tenancy, and take hold and possession thereof as hereinabove provided, without such entry and possession terminating the Lease or releasing Lessee, in whole or in part, from Lessee's obligations to pay the Rent hereunder for the full term or from any other of its obligations under this Lease. Lessor may, but shall be under no obligation so to do, relet all or any part of the Lots for such rent and upon such terms as shall be satisfactory to Lessor (including the right to relet the Lots for a term greater or lesser than that remaining under the Lease Term, and the right to relet the Lots as a part of a larger area, and the right to change the character or use made of the Lots). If Lessor does not relet the Lots, Lessee shall



pay to Lessee, on demand, damages equal to the amount of the Rent, and other sums provided herein to be paid by Lessee for the remainder of the Lease Term.

**18.3** No delay or omission of Lessor to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein. No waiver of any breach of any of the covenants of this Lease shall be construed, taken or held to be a waiver of any other breach, or as a waiver, acquiescence in or consent to any further or succeeding breach of the same covenant. The acceptance by Lessor of any payment of Rent or other charges hereunder after the termination by Lessor of this Lease or of Lessee's right to possession hereunder, shall not, in the absence of agreement in writing to the contrary by Lessor, be deemed to restore this Lease or Lessee's right to possession hereunder, as the case may be, but shall be construed as a payment on account, and not in satisfaction of damages due from Lessee to Lessor.

**18.4** Lessor may, but shall not be obligated to, and without waiving any claim for breach of this Lease, cure any default by Lessee specifically including, but not by way of limitation, Lessee's failure to obtain insurance or make repairs, provided Lessee has been given a reasonable opportunity to cure, and, whenever Lessor so elects, all costs and expenses paid by Lessor in curing such default, including without limitation, reasonable attorney's fees and costs, shall be so much Additional Rent due on the next rent date after such payment together with interest (except in the case of said attorney's fees) at the highest rate permitted by law, from the date of the advance to the date of repayment by Lessee to Lessor. Lessor shall not be responsible to Lessee for any loss or damage resulting in any manner by reason of its undertaking any acts in accordance with this Section 18.4.

## **19. Assignment and Subletting.**

**19.1** Lessee shall not, without Lessor's prior written consent, which consent shall not (a) assign, convey, mortgage or encumber this Lease or any interest under it; (b) allow any transfer thereof or any lien upon Lessee's interest by operation of law; (c) sublet the Lots or any part thereof; or (d) permit the use or occupancy, whether by license, concession or otherwise, of the Lots or any part thereof by anyone other than Lessee, provided that Lessee shall be permitted to assign, sublet or transfer this Lease or any interest hereunder to a subsidiary or affiliate of Lessee.

**19.2** Lessor agrees not to unreasonably withhold or delay its consent to an assignment of this Lease or a subletting by Lessee of all or any portion of the Premises, provided that: (a) no assignment or subletting will relieve Lessee of any of its primary obligations or liabilities under this Lease, and Lessee and any assignee of this Lease will be jointly and severally responsible to Lessor with respect to all obligations and liabilities under this Lease; (b) no breach or default on Lessee's part exists at the time of the consent request and at the effective assignment or subletting date; (c) the Assignee has the financial ability necessary to take Lessee's place, with such financial ability to be determined in Lessor's sole discretion; and (e) any assignment or subletting will be expressly subject to all terms and conditions of this Lease.

**19.3** Lessee shall pay Lessor's costs and expenses associated with incurring, maintaining and/or servicing any assignment or sublease.



**20. Force Majeure.**

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of hurricanes, floods, strikes, lock-outs, labor troubles, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of any such act shall be extended for a period of such delay. The provisions of this paragraph shall not operate to excuse Lessee from the prompt payment of any rent or any other payments required by the terms of this Lease.

**21. Notices.**

All notices to or demands upon either party desired or required to be given under any of the provisions hereof shall be in writing. Any notices submitted or required by this Lease shall be delivered by hand, overnight mail by an authorized overnight mail carrier or sent by registered or certified mail and addressed to the parties as follows:

To Lessee:     Alan J. Fish  
                  Associate Vice President for Business Services  
                  1507 Levante Avenue, Suite 327  
                  Coral Gables, FL 33124

To Lessor:     City of Coral Gables  
                  405 Biltmore Way  
                  Coral Gables, FL 33134  
                  Attn: City Manager  
                       City Attorney

or to such other address as either party may designate in writing. Notices are deemed delivered upon receipt.

**22. Recordation.** Lessee shall be permitted to record a memorandum of this Lease in the public records, at its sole election and sale expense.

**23. Modification.**

This Agreement may not be amended or modified unless in writing and signed by both parties.

**24. Compliance with Laws.**

**24.1** In performance of the services, Lessee will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards. It shall be the responsibility of Lessee to obtain and maintain, at no cost to Lessor, any and all license and permits required to complete the services provided pursuant to this Agreement.

**24.2** Conflict of Interest. Lessee covenants that no person employed by Lessee who exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with Lessor. Lessee further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of Lessee or its employees must be disclosed in writing to City.

**24.3** Lessee is aware of the conflict of interest code of the City of Coral Gables, the Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.

**25. Federal and State Taxes.**

Lessee is exempt from Federal Tax and State Sales and Use Taxes. Upon request, Lessee will provide an exemption certificate to Lessor.

**26. Miscellaneous.**

**26.1** This Lease shall be governed by the laws of the State of Florida and venue and jurisdiction for all proceedings related to this Lease shall be the courts of Miami-Dade County, Florida.

**26.2** Lessor has made no warranties or representations with respect to the Lots except to the extent set forth herein.

**26.3** All of the covenants, terms, conditions and undertakings contained in this Lease shall extend and shall inure to the benefit of and be binding upon the parties hereto and their administrators, successors and assigns as if they were in every case specifically named. Nothing herein contained shall be construed to grant or confer upon any person or persons, firm, corporation or governmental authority, other than the parties hereto, their administrators, successors and assigns, any right, claim or privilege by virtue of any covenant, term, condition or undertaking contained in this Lease.

**26.4** This Lease contains the entire agreement between Lessor and Lessee with respect to the Lots and supersedes all prior agreements, understandings or negotiations, written or oral, with respect thereto. No modification of this Lease shall be valid unless in writing and signed by both parties.

**26.5** The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

**26.6** Time is of the essence with respect to all the terms, provisions, covenants and conditions of this Lease.

**26.7** No remedy available to Lessor hereunder shall be exclusive but shall wherever



legally permissible be cumulative with all other remedies available at law or equity.

**26.8** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**26.9** Nothing contained herein shall be deemed or construed as creating a relationship of partnership, principal/agent, or of joint venture by the parties hereto, it being understood, and agreed that the parties hereto are independent contractors and the only relationship between the two is as landlord/tenant.

**26.10** If either party hereto brings any action to enforce rights under this Lease, whether judicial, administrative, or otherwise, the prevailing party in that action shall be entitled to recover from the losing party all collection and court costs incurred, including reasonable attorneys' fees.

**27. Effective Date.**

Submission of this Lease for examination does not constitute an offer, right of first refusal, reservation of or option for the Lots. This Lease shall only become effective when executed by both parties hereto. The effective date of execution of the Lease shall be upon the date of signature of the last party hereto.

*Thyllis Whitman*  
\_\_\_\_\_  
Witness  
*[Signature]*  
\_\_\_\_\_  
Witness

**ATTEST:**  
*Walter J. Foeman*  
\_\_\_\_\_  
Walter J. Foeman  
City Clerk  
Date: *4/28/03*  
\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**LESSEE:**

**UNIVERSITY OF MIAMI**

By: *[Signature]*  
\_\_\_\_\_  
Alan J. Fish  
Associate Vice President for Business  
Services

Date: *7/22/03*  
\_\_\_\_\_

**LESSOR:**

**CITY OF CORAL GABLES**

By: *[Signature]*  
\_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

wp\real\cityofcoralgablesredlinedaccepted.agr

**APPROVED AS TO FORM**  
*[Signature]*  
\_\_\_\_\_  
**ELIZABETH M. HERNANDEZ**  
**CITY ATTORNEY**