

OSCEOLA COUNTY LAND LEASE



July 16, 2013

TO: BOARD OF TRUSTEES
of Valencia College

FROM: SANFORD C. SHUGART
President

RE: Amended Lease Agreement with Valencia College Foundation for Osceola Campus Land

The Valencia College Foundation owns the land upon which the Osceola Campus has been constructed. The Lease has been amended to update references and other language, eliminate obsolete language, and reflect current operational practices.

Term: Sixty (60) years, 7/1/2013 – 6/30/2072.

Rent: One Dollar (\$1.00) per year.

Buildings: College owns all improvements. College is responsible for all improvements, utilities, maintenance, repairs and liability/property insurance.

RECOMMENDED ACTION:

The President recommends that the District Board of Trustees of Valencia College authorizes the College to enter into the Amended Lease Agreement as proposed.

President

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (the "**Lease**"), is made effective as of the 1st day of July, 2012 between **VALENCIA COLLEGE FOUNDATION, INC.**, a non-profit corporation and direct-support organization existing under the laws of Florida (the "**Landlord**") and the **DISTRICT BOARD OF TRUSTEES OF VALENCIA COLLEGE, FLORIDA**, a political subdivision of the State of Florida (the "**Tenant**") (collectively, the "**Parties**").

WITNESSETH:

WHEREAS, Landlord is the fee simple owner of certain real property located in Osceola County, Florida, consisting of 100 acres of land, more particularly described as:

Lot 2, VALENCIA PARK, according to the Plat thereof as recorded in Plat Book 7, Page 101, of the Public Records of Osceola County, Florida (the "**Property**" or the "**Premises**"); and

WHEREAS, Tenant is the owner of all improvements, structures and related facilities existing on the Property (collectively, the "**Improvements**"); and

WHEREAS, Landlord is a direct-support organization established pursuant to Section 1004.71, Florida Statutes, and has authority under such statute to own, receive, hold, invest, and administer property and to make expenditures to, or for the benefit Tenant; and Landlord has purchased the Property for the benefit of the Tenant; and

WHEREAS, Landlord desires to lease the Property to Tenant and Tenant wishes to lease the Property from Landlord for the express purpose of constructing, maintaining and operating a Florida College System Institution, as defined in Section 1000.21(bb), Florida Statutes, and ancillary operations on the Property; and

WHEREAS, the Parties desire to enter into a lease agreement defining their rights, duties, obligations and liabilities regarding the Property; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The above recitals are true and correct and incorporated herein by this reference.

2. **TERM.**

(a) Landlord agrees to lease to Tenant the Property for a term of sixty (60) years commencing on the 1st of July, 2012, and ending on the 30th day of June, 2072 (the "**Term**"), subject to: (i) covenants, conditions, restrictions, easements, reservations, rights, rights

of way and others and interests of third persons of record and (ii) applicable zoning and building restrictions and governmental regulations now or hereafter affecting the Property.

(b) So long as Tenant shall not be in default under the terms of this Lease, Tenant shall have the option to extend the Term of this Lease (i) for ten (10) years upon written notice to Landlord of Tenant's intention to extend the Lease at least sixty (60) days prior to the expiration of the Term or; (ii) at such times during the Term of the Lease as Tenant has completed plans and specifications for the construction of additional improvements upon the Property, thus allowing Tenant to remain in compliance with Section 1013.16, Florida Statutes, which requires a lease of real property by a college to be for a period of not less than forty (40) years or the life expectancy of the permanent facilities constructed thereon, whichever is longer. Tenant shall exercise this option, if at all, by notifying Landlord in writing of its intention to extend the Term of the Lease, whereupon if Tenant is not in default, Landlord and Tenant shall enter into an amendment to the Lease, within ten (10) days of Landlord's receipt of such notice, extending the Term of the Lease for the appropriate time period to allow Tenant to comply with the requirement outlined above upon the same terms and conditions as this Lease.

3. **RENT.** Tenant shall pay to the Landlord annual Rent (the "**Rent**") at the rate of One Dollar (\$1.00) per annum. Payment of Rent shall be made in advance, and shall be paid annually on July 1 of each year commencing July 1, 2012. The amount of annual Rent shall be periodically reviewed by the Parties.

4. **USE OF PREMISES AND QUIET ENJOYMENT.**

(a) Tenant, upon performance of the terms and conditions of this Lease shall have the peaceable and quiet use, occupancy and possession of the Premises without let, hindrance, eviction, molestation or interruption for the purpose of using the same for educational, and related office and administrative purposes.

(b) Tenant covenants and agrees to use the Property for the construction, maintenance and operation of an educational facility, and activities associated with such educational facility all of which shall be in conformance with the deed restrictions set forth in that certain Warranty Deed from the City of Kissimmee to Valencia Community College Foundation, Inc., recorded in Official Records Book 1093, Page 2318, of the Public Records of Osceola County, Florida, and Tenant further covenants not to use or maintain any part of the Property in any unlawful or dangerous manner or for any unlawful purpose. Tenant, at Tenant's expense, shall promptly comply with any and all applicable laws, ordinances, orders and regulations of any and all municipal, county, state, federal or other governmental authorities that may pertain or apply to Tenant's occupancy or use of the Property existing now or hereafter. Tenant shall not create or maintain any nuisance on the Property and shall not do any act tending to injure the Property. Tenant shall not assign this Lease nor sublet the Property or any portion thereof without the prior written consent of Landlord, which consent shall not be unreasonably withheld.

(c) No improvement shall be undertaken or made until Tenant shall have procured, so far at the same may be required by law from time to time, all required permits, authorizations, reports and/or other necessary action of all governmental agencies and departments of governmental agencies and subdivisions having jurisdiction. Landlord shall join, but without expense to Landlord, in the application for such permits or authorization whenever such action by it is required by law or governmental authority. Landlord hereby constitutes Tenant its agent authorizing Tenant to sign any and all applications or other documents which may be necessary for any construction, demolition or reconstruction of improvements on the Property for the purpose of developing the Property.

5. INSURANCE.

(a) Liability Insurance. During the Term of this Lease, Tenant shall keep in full force and effect at Tenant's sole expense a policy or policies of general liability coverage insuring Tenant with respect to claims, suits or proceedings brought against Tenant during the Term of this Lease arising solely by reason of personal injury(ies), including death, suffered or alleged to have been suffered by person(s) other than employees of Tenant and Landlord injured in the scope of their employment, and/or by reason of damage to or destruction of property or loss of use theory. Sovereign immunity is not waived and the limits of sovereign immunity as set forth in Section 768.28, Florida Statutes, are expressly preserved in claims, suits or proceedings governed thereby. The limits of liability for any claim, suit or proceeding not governed by Section 768.28, Florida Statutes, shall in no event be greater than the limit of coverage established by the Florida College Risk Management Consortium (Consortium) Plan Document for Florida Colleges then in effect. Tenant shall be allowed a commercially reasonable deductible on such insurance. Tenant shall name Landlord as a loss payee, or an additional insured if permitted by the Consortium, and will furnish Landlord with certificates or other acceptable evidence that all such insurance is in effect during the Term.

(b) Property Insurance. At all times during the Term of this Lease, Tenant shall keep in full force and effect at Tenant's sole expense, a policy or policies covering property damage to all improvements constructed from time to time on the Property, and associated real property, and any personal property owned by the Tenant (collectively, the "**Insured Property**"). Coverage shall extend to insure for risks of physical loss or damage occurring (including fire, extended coverage, hurricane, and windstorm damage) during the Term of this Lease. Upon request, Tenant shall furnish Landlord with certificates or other acceptable evidence that all such insurance, covering real and personal property loss or damage, is in effect. Landlord shall have no responsibility for such Tenant's insurance nor shall Landlord be liable for any damage to or destruction of Tenant's personal property.

6. UTILITIES. Tenant shall pay for any and all required installation and other charges incurred in Tenant's use of utilities, including, but not limited to, those for electricity, water, gas, garbage collection, sewer, telephone service and similar utilities and charges.

7. **INTENTIONALLY LEFT BLANK.**

8. **TAXES AND ASSESSMENTS.** Tenant shall pay all applicable real estate taxes, assessments for improvements and other charges which lawfully may be imposed by any governmental body against the Property or improvements constructed thereon. Tenant may defer paying any such tax or assessment so long as the validity of the amount thereof is being contested with the governmental body in good faith.

9. **MAINTENANCE AND REPAIRS.** Tenant stipulates that during the Term of this Lease and any renewal or extension thereof, at its sole expense, keep and maintain the Property and all buildings, appurtenances, and improvements thereon and thereof, the air conditioning and heating systems, and the exterior pavings, sidewalks, parking spaces, open areas, and grounds in good order, condition, and repair, reasonable wear and tear and damage by accidental fire or other casualty excepted, and Tenant shall not commit or suffer to be committed any waste upon or to the Property. Tenant shall keep the Property in a neat and orderly condition. All maintenance and repairs performed by Tenant shall be performed in accordance with the State Requirements for Educational Facilities.

10. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS.** Tenant may at any time during the Term, at its own expense, make any alterations, additions or improvements in and to the Premises. Alterations shall be performed in a workmanlike manner and in accordance with applicable laws including, without limitation, the state's requirements for educational facilities. Tenant has examined the Property and accepts the Property in its "as is" condition.

11. **COMPLIANCE WITH LAW.** Tenant shall at all times during the Term promptly comply with all applicable lawful requirements of any public authority imposed by reason of Tenant's occupancy. Landlord shall promptly comply with any such requirements if they are not made necessary by reason of Tenant's occupancy. Compliance shall not be required of either Party under the terms of this Section so long as the validity thereof is contested by the affected Party in good faith.

12. **INDEMNITY.**

(a) **By Landlord.** Landlord shall defend, indemnify and hold Tenant harmless of and from any and all losses, damages, claims, costs and expenses including reasonable attorneys' fees for pre-trial, trial, appellate and administrative proceedings arising out of any claim asserted by any person against Tenant for loss of or damage or injury to person or property caused by any negligent or wrongful act or omission of Landlord.

(b) **By Tenant.** The Parties recognize and acknowledge that Tenant is a political subdivision of the State of Florida. Tenant does not have authority to waive the state's immunity by contract. Sovereign immunity is within the sole province of the Florida legislature. Tenant shall be liable for its own wrongful acts or negligence pursuant to the statutory limits of Section 768.28, Florida Statutes. Within the limits of its statutory and legal liability as a political subdivision of the State of Florida, and if and to the extent allowed by law, Tenant acknowledges and agrees to indemnify, defend, and hold Landlord harmless from and against liabilities, claims,

losses and expenses, including attorneys' fees, which are caused by the negligent or wrongful act or omission of any employee of the Tenant while acting within the scope of the employee's office or employment. Nothing herein shall be construed as consent by Tenant, as a political subdivision of the State of Florida, to be sued by third parties in any matter arising out of any contract. Landlord will not be responsible for money or personal property of any kind lost or stolen on the Property nor for damage to Tenant's personal property caused by a casualty to the Property or any Improvements thereon.

13. **CASUALTY.** If the Property or Improvements upon the Property shall be destroyed or damaged by any casualty, Tenant shall have the right, but not the obligation, to either (i) restore, repair or rebuild the Improvements or other improvements on the Property, or (ii) terminate this Lease and retain the proceeds of those insurance policies described in Section 5 above whereupon this Lease shall be of no further force and effect.

As used herein "casualty" means fire, flood, storm or other act of God, regardless of whether reasonably foreseeable; riot, civil commotion, war, or other act of a public enemy; theft, vandalism or other criminal or tortious act of a third party; or structural failure from any cause. Landlord shall not be responsible for money or personal property of any kind lost or stolen on the Property nor for damage to Tenant's property caused by a casualty to the Property.

14. **CONDEMNATION.** If a part or all of the Property and Improvements is to be taken or condemned, compensation awarded upon such condemnation shall be paid as follows:

(a) Landlord shall receive such portion of the condemnation proceeds as shall equal the fair market value of the Property (excluding any Improvements) so taken, plus consequential damages, if any, to the portion of the Property not so taken. The Property shall be valued as if vacant, unimproved and unencumbered by this Lease.

(b) Tenant shall be entitled to receive the balance of the condemnation

15. **MORTGAGE, ASSIGNMENT AND SUBLETTING.** Landlord agrees that so long as this Lease is in effect Landlord shall not mortgage all or any portion of the Property without the prior written approval of Tenant. Tenant shall not, without the prior written consent of the Landlord, which shall not be unreasonably withheld or delayed, assign this Lease or any interest hereunder and shall not, without the prior written consent of the Landlord, which shall not be unreasonably withheld or delayed, sublet the Premises or any part thereof or permit the use of the Premises by any party other than the Tenant.

16. **DEFAULT.** If Tenant shall default in the payment of Rent herein reserved, and fails to cure said default within thirty (30) days after written notice thereof from Landlord, or if Tenant defaults in the performance of any of the terms or provisions of this Lease other than the provision requiring the payment of Rent and fails to cure such default within thirty (30) days after written notice thereof from Landlord, then Landlord, at its option, may unless such termination or other action is prohibited by law at once terminate this Lease by written notice to Tenant, reenter the Premises, re-possess itself, remove all persons and effects from the Premises and pursue such remedies as may be available to it under Florida law. Notwithstanding anything

in this Lease to the contrary, if Tenant cannot reasonably cure a default within thirty (30) days, Tenant shall have the right to cure it as long as it begins to cure within thirty (30) days and continually works to complete the cure within a reasonable period of time. If the Landlord shall default in the performance of any of the terms or provisions of this Lease and fails to cure such default within thirty (30) days after written notice thereof from Tenant, then Tenant, at its option, may terminate this Lease by written notice to Landlord. Notwithstanding anything in this Lease to the contrary, if Landlord cannot reasonably cure a default within thirty (30) days, Landlord shall have the right to cure it as long as it begins to cure within thirty (30) days and continually works to complete the cure within a reasonable period of time. If the default is not cured by Landlord within a reasonable period of time, Tenant may terminate this Lease as set forth herein, or may cure said default itself and shall be entitled to receive reimbursement from Landlord of all reasonable, third-party costs thereof including a reasonable attorney's fee.

17. **LANDLORD WAIVER OF LIEN RIGHTS.** Landlord hereby waives any and all rights that it may now or hereafter have to any lien and/or security interest in any personal property of Tenant, including, without limitation, goods, inventory, equipment, fixtures, and all other tangible and intangible personal property owned by Tenant and all insurance proceeds of or relating to any of the foregoing, and all proceeds therefrom, including, without limitation, Landlord's statutory landlord's lien.

18. **RIGHTS CUMULATIVE.** The rights of the Parties under this Lease shall be cumulative and the failure of either party to exercise any power of enforcement of this Lease or any right to insist upon strict compliance shall not constitute a waiver of that party's right to demand exact compliance with the terms hereof.

19. **TIME IS OF THE ESSENCE.** It is understood and agreed between the Parties hereto that time is of the essence of this Lease and applies to all terms and conditions contained herein.

20. **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.

21. **NOTICE.** Any notice or demand required under this Lease or by law shall be in writing and shall be deemed delivered and effective three (3) days after having been sent by hand delivery, sent by commercial overnight delivery service, or mailed by U. S. mail, certified or registered return receipt requested and addressed to the Parties at the addresses set forth below. Such addresses may be changed by written notice to the other party. Counsel for the Parties set forth herein may deliver or receive notice on behalf of the Parties.

Tenant	Landlord
President	President
Valencia College	Valencia College Foundation, Inc.
P.O. Box 3028	P.O. Box 3028
Orlando, Florida 32802	Orlando, Florida 32802

Nothing herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

22. **COVENANTS RUNNING WITH THE LAND.** All covenants, conditions, provisions and obligations contained herein or implied by law are covenants running with the land and shall attach, bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, assigns and legal representatives except as otherwise provided herein.

23. **BROKERAGE.** The Parties each represent and warrant to each other that neither has employed a broker in connection with this transaction. In the event there is a claim against either party hereto with respect to any broker whatsoever other than as set forth in this paragraph, the party whose action gives rise to the claim for commission shall indemnify the other party against any liability, damage, cost or fee in connection with such claim, including, without limitation, attorneys' fees and costs.

24. **EXECUTION OF COUNTERPARTS.** This Lease may be executed in any number of counterparts, each one of which shall be deemed to be an original and all of which taken together shall be deemed to be one and the same instrument.

25. **ENTIRE AGREEMENT AND WAIVER.** This Lease contains the entire agreement of the Parties hereto as of the date hereof and shall be binding upon and inure to the benefit of the Parties, their successors, assigns and personal representatives. No waiver of any covenant or condition of this Lease by either party shall be deemed to imply or constitute a further waiver of same or of any other covenant or condition of this Lease. No modification, amendment, release, discharge or waiver of any provisions hereof shall be of any force, effect or value unless in writing signed by the party to be charged.

26. **SEVERABILITY.** If any clause or provision of this Lease shall be invalid or void for any reason, such invalid or void clause or provisions shall not affect the whole of this instrument but the balance of the provisions hereof shall remain in full force and effect in a manner that would most closely include the intent of the offending provision and not be invalid or void.

27. **COVENANTS.** All covenants, conditions, provisions and obligations contained herein or implied by law shall attach, bind and inure to the benefit of Landlord and Tenant and their respective heirs, successors, assigns and legal representatives except as otherwise provided herein.

28. **HEADINGS.** The headings contained in this Lease are for the convenience of reference only and shall in no manner limit or otherwise affect or be used in the construction of any of the terms or provisions hereof.

29. **GOVERNING LAW.** This Lease shall be construed both as to meaning and effect under the laws of the State of Florida. This Lease is expressly made subject to those laws contained in Florida Statutes Title XLVIII K-20 Education Code, and the Florida State Board of Education Administrative Rules Chapter 6A-14 insofar as the rights, powers, privileges, immunities and limitations shall apply to the Tenant.

30. **THIRD PARTY OBLIGATIONS.** This Lease is made solely for the benefit of the Landlord and Tenant named herein, and is not intended to create third party beneficiaries. IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their names on the day and year appearing below their respective signatures.

WITNESSES:

(Witness #1 Signature)

(Witness #2 Signature)

WITNESSES:

(Witness #1 Signature)

Witness #2 Signature)

TENANT:

**DISTRICT BOARD OF TRUSTEES OF
VALENCIA COLLEGE, FLORIDA**

By: _____
President

Date: _____

LANDLORD:

**VALENCIA COLLEGE
FOUNDATION, INC.**

By: _____
President

Date: _____