

**FIRST AMENDMENT  
to the  
LEASE AGREEMENT**

This First Amendment to the Lease Agreement ("First Amendment") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 by and between City of Mesa, a municipal corporation ("Landlord"), and Wilkes University, a not-for-profit Pennsylvania Corporation ("Tenant"). Landlord and Tenant are sometimes referred to in this First Amendment collectively as the "Parties," or individually as a "Party."

**RECITALS**

A. Landlord and Tenant entered into that certain Lease Agreement dated December 11, 2012, (the "Lease Agreement") for a portion of the premises commonly known as Mesa Center of Higher Education located at 245 West 2<sup>nd</sup> Street, Mesa, Arizona 85201, and that is defined in the Lease Agreement as the "Premises."

B. Due to slower than expected student enrollment, Tenant desires to modify the Lease Agreement to adjust the minimum monthly Premises Rent to better reflect the enrollment.

C. Landlord is willing to adjust the minimum monthly Premises Rent to further assist Tenant's start up so long as Tenant is not in default and so long as Tenant does not provide a notice to opt to terminate this Lease under Section 30 of the Lease Agreement.

D. Landlord and Tenant agree to a reduction in the minimum monthly Premises rent subject to the terms and conditions as provided in this First Amendment.

**AGREEMENT**

IN CONSIDERATION of the foregoing recitals and representations and the mutual covenants and agreements and conditions in this First Amendment, the Parties agree as follows:

1. Definitions. All capitalized words and phrases used in this First Amendment shall have the same meanings as set forth in the Lease Agreement, unless a different definition is set forth in this First Amendment.

2. Reduction in Minimum Monthly Premises Rent Subject to Terms. The Parties agree to reduce the minimum monthly Premises Rent for rent Years 2 through 5, inclusive, such that the amended monthly minimum rent for Years 2 and 3 will be at the minimum set for Year 1 (*i.e.*, \$3,624.89 a month) and the amended minimum monthly rent for Years 4 and 5 will be the minimum set originally for Year 2 (*i.e.*, \$9,437.39 a month); provided, however, this amended minimum rent reduction is only so long as Tenant is not in default and Tenant does not provide a notice to opt to terminate the Lease Agreement under Section 30 of the Lease Agreement; and further provided that if Tenant opts to terminate the Lease Agreement under Section 30 or the Lease Agreement is terminated because of a default of Tenant, Tenant shall pay an amount equal to the total amount of the rental reduction Tenant received under this First Amendment as liquidated damages and in addition to the breakage damages due under Section 30. Accordingly, the Parties agree to amend Section 4 by adding the following new subsections to the Lease Agreement:

4.1.1 Amended Minimum Monthly Premises Rent Reduction and Repayment if Lease is Terminated. So long as Tenant is not in default under this Lease and Tenant does not opt to terminate this Lease under Section 30, the minimum monthly Premises Rent for Years 2 through 5 will be the following "Amended Minimum Monthly Premises Rent":

A. Year Two. \$3,624.89 (plus applicable tax)

- B. Year Three. \$3,624.89 (plus applicable tax)
- C. Year Four. \$9,437.39 (plus applicable tax)
- D. Year Five. \$9,437.39 (plus applicable tax)

Tenant shall pay the Premises Rent on a month-to-month basis with this Amended Minimum Monthly Premises Rent being retroactively effective as of August 1, 2014. Tenant acknowledges and agrees that if Tenant's actual usage of the Building is greater than minimums set forth in the attached **Exhibit C-1**, the actual Premises Rent will be greater than the Amended Minimum Monthly Premises Rent based on the formulae set forth in **Exhibit C-1**. If the actual usage of the Building is greater than the minimums, the Premises Rent will be upwardly adjusted, on a semester-by-semester basis, according to actual usage according to **Exhibit C-1**; and there shall be no downward adjustments of the Premises Rent nor shall the Premises Rent ever be below the Amended Minimum Monthly Premises Rent.

4.1.1.1 If Tenant provides a notice to opt to terminate this Lease under Section 30 or if Tenant is in default (i.e., an Event of Default under Section 12), the minimum monthly Premises Rent shall be, immediately upon giving such Section 30 notice or upon the Event of Default (as applicable) and for the remainder of the Term, the Minimum Premises Rent as set forth in Section 4.1 (and shall NOT be the Amended Minimum Monthly Premises Rent set forth in Section 4.1.1).

4.1.1.2 Further, if Tenant provides a notice to opt to terminate this Lease under Section 30, the following shall also apply:

- (i.) The Breakage Liquidated Damages due under Section 30 shall be based on Exhibit C and the minimums set forth in Section 4.1 (and shall NOT be based on Section 4.1.1 or Exhibit C-1).
- (ii.) Tenant shall pay as "Additional Liquidated Damages" an amount equal to the total rental reduction Tenant received under this First Amendment. More specifically, Tenant shall pay as Additional Liquidated Damages the difference between the Premises Rent that Landlord would have been entitled to receive under the original minimum monthly Premises Rent set forth in Section 4.1 and the actual Premises Rent received subsequent to and under this First Amendment (calculated from August 1, 2014 to the date of Tenant's notice to terminate under Section 30). The Additional Liquidated Damages shall be paid in two equal cash installments, with the first installment due when Tenant give written notice to terminate under Section 30 and the second installment due on or before the Proposed Termination Date. The Additional Liquidated Damages is in addition to, and does not reduce, the Breakage Liquidated Damages due under Section 30. Tenant acknowledges and agrees that the Additional Liquidated Damages and Breakage Liquidated Damages are appropriate liquidated damages for Landlord to be able to partially recover Landlord's renovation of the Building for Tenant, that the liquidated damages are not a penalty, and that the Additional Liquidated Damages is a material term of this First Amendment without which Landlord would not have entered into this First Amendment.

3. Enrollment Strategic Plan. Tenant agrees that it will continue to use good faith efforts to attract and increase student enrollment. Within thirty days of executing this First Amendment, Tenant will develop and provide to Landlord a written copy of its enrollment strategic plan that outlines the methods, plans, and goals to increase student enrollment and will provide copies of any updates to the plan in a timely manner.

4. Severability. In the event any term or provision of this First Amendment is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and this First Amendment shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

5. Governing Law, Venue, and Jurisdiction. This First Amendment shall be governed by the laws of Arizona. A Party shall bring any action related to a dispute arising out of this First Amendment or the Agreement in a court of appropriate venue and jurisdiction in Maricopa County, State of Arizona.

6. Statutory Notice Requirement. The Parties acknowledge that this First Amendment and the Lease Agreement are subject to cancellation by Mesa pursuant to the provisions of A.R.S. § 38-511.
7. Incorporation of Recitals. The recitals set forth herein are acknowledged by the Parties to be true and correct and are incorporated herein by this reference.
8. Merger. The Lease Agreement as amended by this First Amendment shall remain the same in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Lease Agreement as of the date written above.

LANDLORD:

THE CITY OF MESA,  
A municipal corporation

TENANT:

WILKES UNIVERSITY  
A Not-For-Profit Pennsylvania Corporation

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Christopher J. Brady  
City Manager

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Loren Prescott  
V.P. Finance & General Counsel

Exhibit C-1

Amended Minimum Monthly Rent and Additional Rent Calculation Formulae  
(see following pages)