Florida Gulf Coast University Board of Trustees
September 18, 2012

SUBJECT: Ratification of Settlement Related to David Lounsbury (United Faculty of Florida, Florida Gulf Coast University Chapter v. Florida Gulf Coast University)

PROPOSED BOARD ACTION
Ratification of a proposed Settlement Agreement involving the resolution of the arbitration issues related to David Lounsbury. The Settlement Agreement also encompasses additional tort claims made by Lounsbury. Consequently, the settlement made with Lounsbury is global in nature.

BACKGROUND INFORMATION
In May 2010 the Arbitrator rendered an Award on behalf of Dr. Lounsbury which, in part, provided that he be reinstated to his former position with the University, and receive back pay. During the University’s appeal of the Arbitrator’s Award, Dr. Lounsbury sent a Notice to the State, alleging additional tort claims to be pursued in State court. The Board of Trustees engaged in several Executive Sessions to discuss strategy and potential settlement. This Agenda item is to ratify the actions taken by University administration and outside counsel to settle all outstanding matters related to David Lounsbury and his employment relationship with Florida Gulf Coast University.

Supporting Documentation Included: Settlement Agreement with David Lounsbury

Prepared by: General Counsel Vee Leonard

Legal Review by: N/A

Submitted by: General Counsel Vee Leonard
SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("this Agreement"), is entered into by and between Florida Gulf Coast University Board of Trustees ("the University"), United Faculty of Florida, Florida Gulf Coast University Chapter ("UFF"), and David Lounsbury, individually and on behalf of his heirs, executives, administrators, legal representatives and assigns (collectively referred to as "Lounsbury").

WHEREAS, on January 13 and 14, 2010, Lounsbury and the University arbitrated grievances filed by Lounsbury relating to his suspension and termination from the University;

WHEREAS, on May 3, 2010, the Arbitrator rendered an Award on behalf of Lounsbury which in part, provided that Lounsbury be reinstated to his former position with the University and that Lounsbury be paid an unspecified amount of back pay;

WHEREAS, the Award was confirmed in the Circuit Court of the 20th Judicial Circuit in and for Lee County, Florida, of Florida on February 22, 2012;

WHEREAS, the Court has withheld entry of final judgment pending arbitration of the amount of back pay owed to Lounsbury;

WHEREAS, Lounsbury has also threatened, by way of correspondence dated October 28, 2011 from attorney James Boatman, certain state tort claims against the University;

WHEREAS, the University denies the allegations raised in the October 28, 2011 correspondence and continues to deny that it violated the Collective Bargaining Agreement with regard to Lounsbury’s suspension and termination;

WHEREAS, in order to avoid the time and expense of attending another arbitration over the damages awarded to Lounsbury, the parties met and resolved the outstanding claims; and accordingly, the parties desire to fully and completely resolve and settle any and all claims, known and unknown, which Lounsbury had, has or may have against the University;

THEREFORE, in consideration of the promises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. UFF agrees to dismiss, with prejudice, the current action against the University to confirm the Award styled United Faculty of Florida, Florida Gulf Coast University Chapter v. Florida Gulf Coast University, Case No. 10-CA-002438.

2. Lounsbury agrees not to file any additional lawsuits, charges or complaints against the University regarding the “Released Claims,” as defined below.

3. The Parties have negotiated a settlement of the damages awarded by the Arbitrator and a resolution to the threatened tort claims as follows:

Initials:

Lounsbury
University
UFF
The University agrees to pay to Lounsbury the total amount of Two Hundred Seventy-Five Thousand Dollars and Zero Cents ($275,000.00) to be paid in separate installments as follows:

(a) One Hundred Thousand Dollars and Zero Cents ($100,000.00) minus applicable withholdings. This amount shall be paid no later than December 31, 2012;

(b) Thirty-Seven Thousand Five Hundred Dollars and Zero Cents ($37,500.00). This amount shall be paid no later than December 31, 2012; and

(c) One Hundred Thirty-Seven Thousand Five Hundred Dollars and Zero Cents ($137,500.00). This amount shall be paid no later than August 31, 2013.

4. The parties agree that the aforementioned payments shall constitute full and complete payment for any and all damages of whatever kind and nature which Lounsbury has, claims to have or may in the future claim to have against the University. Lounsbury agrees to indemnify, defend and hold the University harmless from any tax liability, including interest or penalties, in the event there are any claims raised by the IRS relating to the aforementioned payment, and shall also indemnify and hold harmless as to any attorneys’ fees, expenses, or liens for such amount.

5. Lounsbury warrants that he is not a Medicare beneficiary as of the date of this release. Because Lounsbury is not a Medicare recipient as of the date of this release, no conditional payments have been made by Medicare. Lounsbury will indemnify, defend and hold Released Parties harmless from any and all claims, liens, Medicare conditional payments and rights to payment, known or unknown. If any governmental entity, or anyone acting on behalf of such governmental entity, seeks damages including multiple damages by such governmental entity, relating to Lounsbury’s alleged injuries, claims or lawsuit, Lounsbury will defend and indemnify Released Parties and hold Released Parties harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys’ fees sought by such entities.

6. The University shall convert Lounsbury’s separation from the University from a termination to a resignation with an effective date of June 29, 2009. Lounsbury shall have an opportunity to prepare a resignation letter which shall be placed in his University personnel file.

7. Each party shall be responsible for payment of their own attorneys’ fees and costs.

8. In consideration of the provisions, promises, terms and conditions of this Agreement, Lounsbury UNCONDITIONALLY, FULLY AND FINALLY RELEASE AND FOREVER DISCHARGES, the University and its agents, employees, representatives, trustees, officers and insurers, including Chartis, Inc. and all of its parent, subsidiary and affiliated entities and Division of Risk Management and all of its parent, subsidiary and affiliated entities, from any and all lawsuits, claims, rights, damages, debts, obligations, liabilities, and causes of action, of any and every kind, nature, and character whatsoever, whether known or unknown, which he has, had, or may in the future claim to have based on any act or omission concerning any matter,
cause, or thing arising prior to the date of his execution of this Agreement (all of the foregoing are hereinafter referred to collectively as the "Released Claims").

9. The Released Claims include, but are not limited to, those directly or indirectly arising out of, or in any way pertaining to, claims arising under Title VII of the Civil Rights Act of 1964; 42 U.S.C. §§ 1981, 1983, 1985, 1986; the Fair Labor Standards Act; the Americans with Disabilities Act; the Sarbanes-Oxley Act; the Florida Civil Rights Act; the Florida Public and Private Sector Whistleblower Acts; the Family and Medical Leave Act; the Age Discrimination in Employment Act; the Older Workers Benefits Protection Act; the Fair Credit Reporting Act; the United States Constitution; the Florida Constitution; Section 440.205 of the Florida Statutes; or any other federal, state or local law, ordinance, regulation, custom, rule or policy; or any cause of action in common law, including but not limited to actions in contract or tort, including any intentional torts; or any claim based upon or related to any instrument, agreement, or document entered into by or between the parties.

10. The Released Claims shall be deemed to include a full and complete release by Lounsbury of any and all claims against the University's present and past affiliates, officials, University commissioners, agents, principals, insurers, relatives, representatives, attorneys and employees.

11. Lounsbury agrees not to apply for, solicit, seek or otherwise attempt to obtain or accept employment with or to provide services to the University. Lounsbury further agrees that the University shall not be under any obligation to employ or contract with his. He further agrees that should any application be made by his, the University shall not have any obligation to process that application or to hire his and that the failure to process the application or to hire his shall not constitute a violation of any local, state or federal law.

12. Nothing in this Agreement shall be construed as an admission of wrongdoing by Lounsbury or the University.

13. This Agreement shall be construed and governed in accordance with the laws of Florida.

14. No ambiguity in this Agreement shall be construed against any party based upon a claim that the party drafted the ambiguous language.

15. This Agreement may only be modified, altered or rescinded pursuant to a subsequent written Agreement, signed by both parties.

16. Lounsbury acknowledges that he has entered into this Agreement voluntarily and on his own free will; that he fully understands all the terms of the Agreement; and that he has had sufficient and reasonable time to review the Agreement. Lounsbury acknowledges that he has been advised to consult an attorney prior to signing this Agreement. Lounsbury understands that whether or not he consults with an attorney is his decision. In this respect, Lounsbury is represented by counsel and is satisfied that his counsel has explained to his all of his options in connection with this Agreement and the above-referenced claims.

Initials: 

Lounsbury

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17. This Agreement constitutes the complete understanding between Lounsbury and the University. Lounsbury acknowledges and declares that no other contract, promise or inducement has been made, whether oral or written regarding these claims. This Agreement shall supersede any and all other Agreements, whether oral or written, made prior to the date of execution herein.

18. If any provision of this Agreement is found invalid, or incapable of being enforced by reason of any law, rule or public policy, all other provisions shall, nevertheless, remain in full force and effect, and no provision herein shall be dependent upon any other provision.

19. This Agreement may be executed simultaneously in several counterparts by one or more of the Parties, each of which shall be deemed an original and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart of this Agreement. This Agreement may be executed by signatures sent or received via facsimile and such signatures shall be deemed valid and enforceable in making proof of this Agreement.

20. The parties acknowledge that this Agreement shall not take effect and shall not be enforceable, either in whole or in part and no payments will be due hereunder unless and until the University’s Board of Trustees approves this Agreement.

21. Lounsbury acknowledges that he is offered the opportunity to take up to twenty-one (21) days to consider this Agreement. Additionally, Lounsbury understands that he may revoke this Agreement within seven (7) calendar days of his signing it. To be effective, a revocation must be in writing and received by Mike Pierro by facsimile transmission at (813) 253-2006 no later than 4:30 p.m. on the seventh calendar day following Lounsbury’s execution of the Agreement. Proof of fax transmission as required herein shall be deemed sufficient to demonstrate receipt by Mike Pierro. Lounsbury understands that if he revokes this Agreement it will not be effective or enforceable in any respect and he will not be entitled to the payments set forth in the Agreement and he will be deemed not to have satisfied his obligation to execute a general release per the terms of the mediated settlement.

This Agreement, consisting of five (5) pages, including a signature page, is freely and voluntarily entered into by the parties. The parties acknowledge that they have read this Agreement and that they understand the words, terms, conditions and legal significance of this Agreement.

Date

David Lounsbury

For Florida Gulf Coast University Board of Trustees,

Date