Subject: Ratification of Agreement between Miromar and Florida Gulf Coast University

PROPOSED BOARD ACTION

Accept and ratify the Agreement approved by University Administration and Miromar's Owner

BACKGROUND INFORMATION

University Administrators met several times with representatives of Miromar to address concerns raised by Miromar regarding Florida Gulf Coast University’s 2010 Campus Master Plan. Additionally, after several mediation conferences, the University and Miromar were able to reach agreement on the issues of concern and importance to both parties. The resulting Agreement represents resolution of two (2) matters of litigation, which will be voluntarily dismissed with prejudice upon ratification of the aforementioned Agreement.

Supporting Documentation Included: 1) Executive Summary, and 2) Agreement with Exhibits A, B and C

Prepared by: Vice President for Administrative Services and Finance Steve Magiera, and Vice President and General Counsel Vee Leonard

Legal Review by: Vice President and General Counsel Vee Leonard (January 2, 2013)

Submitted by: Vice President for Administrative Services and Finance Steve Magiera, and Vice President and General Counsel Vee Leonard
EXECUTIVE SUMMARY

In April 2012, the Florida Gulf Coast University Board of Trustees approved the 2010-2020 Campus Master Plan ("2010 CMP"). Shortly thereafter Miromar protested the 2010 CMP, alleging incompatibility with Miromar by the University, filing an administrative action under Chapter 1013, Florida Statutes. On July 30, 2013, Miromar filed a lawsuit in Circuit Court, alleging issues related to the University's 2005 Campus Master Plan.

After numerous meetings with planners for both the University and Miromar, as well as several mediation conferences, the University and Miromar were able to reach agreement on issues of concern and importance to both parties. The Agreement and its exhibits memorialize the terms and conditions of the agreement. Once the Agreement has been ratified, both the administrative action and the Circuit Court action will be voluntarily dismissed with prejudice.
AGREEMENT

THIS AGREEMENT is entered into this ___ day of January, 2013, by and between FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a public body corporate of the State of Florida ("FGCU"), and MIROMAR LAKES, LLC ("MIROMAR"), a Florida limited liability company, by and through Miromar Development Corporation, its managing member.

WITNESSETH

WHEREAS, MIROMAR and FGCU have participated in mediation and negotiated in good faith to resolve all outstanding issues relating to the development of their respective properties, including the issues raised in administrative litigation filed by MIROMAR (Case No. 12-1620) and in circuit court litigation filed by MIROMAR (Case No. 12- CA 002244); and

WHEREAS, MIROMAR and FGCU desire to memorialize and ratify the agreements reached during mediation; and

WHEREAS, coordination and cooperation between the two parties will facilitate the orderly and proper development of the Miromar Lakes DRI and the FGCU campus.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, the sufficiency of which is acknowledged by both parties, the parties agree as follows:

1. Conceptual site plan and development standards. Development will be generally consistent with the conceptual site plan for FGCU's South Village ("SOVI") area as shown on the South Village Concept Plan (Exhibit "A") and development standards as set forth in Exhibit "B," attached hereto and incorporated herein. The SOVI conceptual site plan and development standards are hereby adopted.

2. South access road. The University Village Easement Agreement ("Easement Agreement") attached hereto is hereby approved. Miromar shall execute the Easement Agreement for the south access road within 15 days of approval of the Easement Agreement by the FGCU Board of Trustees. The form of the Easement Agreement shall be as set forth in Exhibit "C" attached hereto and incorporated herein.

3 Future dispute resolution process.

A. FGCU and MIROMAR agree that in the event of a dispute arising from the implementation of this Agreement, each party shall select one mediator and notify the other party in writing of the selection. Thereafter, within 15 days after their selection, the two mediators shall select a neutral third mediator to mediate the dispute.

B. Each party shall be responsible for all costs and fees payable to the mediator selected by it and shall equally bear responsibility for the costs and fees
payable to the third mediator for services rendered and costs expended in connection with resolving issues in dispute.

C. Within 10 days after the selection of the third mediator, proceedings must be convened by the mediator to resolve the issues in dispute. Within 60 days after the convening of the mediation, the mediator shall issue a report containing a recommended resolution of the issues in dispute.

D. If either FGCU or MIROMAR rejects the recommended resolution of the issues in dispute, the matter shall be forwarded to the FGCU President, MIROMAR's President/CEO, and the FGCU Board of Trustees for consideration at a public meeting of the Board.

4. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. If the dispute resolution process described in Paragraph 3 fails to resolve a dispute regarding this Agreement, the parties may seek enforcement of this Agreement, or any provision thereof, by instituting a proceeding for declaratory and injunctive relief, which shall be instituted and maintained only in a court of competent jurisdiction in Lee County, Florida. The prevailing party in any proceeding, inclusive of appellate proceedings, instituted for a violation of this Agreement in any way shall be entitled to recover its reasonable attorney's fees, costs and expenses, however, this recovery shall not exceed a total of $25,000.

5. In order to facilitate cooperation and coordination between the parties, the FGCU Director of Facility Planning and the Miromar Development Corporation Director of Planning shall meet at least once per year to discuss development plans in the South Village area of FGCU and development of the southern portion of the Miromar Lakes DRI, and other issues of mutual interest to the parties. An agenda and building plans, permit applications and other documentation relating to anticipated construction within the subject development areas shall be exchanged at least two weeks prior to each meeting. Such plans shall be of sufficient detail to determine compliance with this Agreement, as appropriate to the phase of design. Miromar will not be required to submit buildings plans to FGCU if the buildings are consistent with the DRI DO, zoning and final plan approvals.

6. MIROMAR agrees that it will dismiss the pending administrative proceeding, Case No. 12-1620, and will dismiss with prejudice the pending circuit court proceeding, Case No. 12-CA-002244, within 15 days of approval of this Agreement by FGCU.

7. FGCU agrees that upon dismissal of the aforementioned administrative and circuit court proceedings, FGCU will both publicly and privately support MIROMAR's pending Notification of Proposed Change ("NOPC") for the Miromar Lakes DRI and related zoning requests, including the University Village concept.
<table>
<thead>
<tr>
<th>Witnesses:</th>
<th>MIROMAR LAKES, LLC, a Florida limited liability company</th>
</tr>
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<tbody>
<tr>
<td>Witness</td>
<td>By: Miromar Development Corporation Its: Managing Member</td>
</tr>
<tr>
<td>Print/Type Name of Witness</td>
<td>By: Robert B. Roop, Vice President</td>
</tr>
<tr>
<td>Witness</td>
<td>FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a public body Corporate of the State of Florida</td>
</tr>
<tr>
<td>Print/Type Name of Witness</td>
<td>By: Robbie Roepstorff, Board Chair</td>
</tr>
<tr>
<td>Witness</td>
<td>[Notary acknowledgements set forth on the following page.]</td>
</tr>
</tbody>
</table>
STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this ____ day of January, 2013, by Robert B. Roop, as Vice President of Miromar Lakes, LLC, a Florida limited liability company, on behalf of the company. □ is personally known to me, or □ has produced as identification.

________________________________________
Signature of Notary Public
State of Florida

My Commission Expires:

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this ____ day of January, 2013, by Robbie Roepstorff, as Chair of the Florida Gulf Coast University Board of Trustees, a public body corporate, on behalf of the entity. □ is personally known to me, or □ has produced as identification.

________________________________________
Signature of Notary Public
State of Florida

My Commission Expires:
EXHIBIT B- – DEVELOPMENT STANDARDS

ZONE 1- Southwest:

DESCRIPTION:

This area is currently undeveloped and is designated for student housing, a recreational facility and associated parking. The exact configuration and composition of these facilities is unknown at this time.

Potential future development in this area includes the following facilities as generally shown on the attached South Village Concept Plan and restrictions.

1. Student housing unit(s) shall be limited to a maximum height of 6-stories and generally located on the North side of Zone One Parcel. The Student Housing Units shall be architecturally developed to be consistent with other campus housing.

2. A recreational building shall be limited to a maximum gross area of 180,000 square feet, with a maximum building footprint of 90,000 square feet and a maximum height of 65’. This building will be generally located on the South Side of the Zone One Parcel and may be constructed in multiple phases. Building character and articulation will be complimentary to the campus core facilities and contain architectural features on its south and west facing elevation in an effort to encourage compatibility between properties. The building is to be architecturally articulated similar in architectural detail to the attached conceptual exhibits. The attached conceptual exhibits are for illustrative purposes to demonstrate a level of building articulation and do not represent actual buildings or architectural styles. All services areas are to be located or screened from the adjacent property.

3. Surface parking lot or structured parking unit with a maximum of two elevated decks to support the parking needs of the recreational building. The Parking Structure shall have Architectural detailing consistent with other buildings within this zone. See attached exhibits. The parking deck may be designed and integrated into the design of the Student Recreational Building and articulated with features consistent with Garage 4.

4. Street and parking lot light poles shall be a maximum height of 30’ above finish grade.

5. Pole-mounted site and parking garage lighting shall be shielded to reduce light spill over at adjacent property line to zero foot-candles.

DEVELOPMENT STANDARDS:

Location:
Proposed development south and west of the existing South Bridge Loop Road.
Uses and Structures:
- Student Housing Units
- Intramural Athletic Building to be constructed in phases.
  - Maximum of 180,000 square feet
- Surface Parking / Parking Structure
- Water management

Setbacks / Heights:
- Intramural Athletic Building
  - Setback – 100’ Minimum from Miromar property line
  - Building Height – 65’ Maximum.
  - Located in the Southern portion of Zone One
- Student Housing Units
  - Maximum of 6 stories.
  - Located in Northern Portion of Zone One
- Parking Structure
  - Maximum of 2 levels and on the eastern portion of Zone One.
  - Lighting
    - Top parking deck lighting – Maximum 25 feet above parking deck
    - Building lights shielded and zero foot candles at property line

Lighting:
- Roadways / Common Areas
  - Parking Lot / Street Lights: Maximum 30’-0”
  - Fixtures to be properly shielded with full cut off luminaries
- All lighting standards shall meet the requirements as specified within the Lighting Standards for all zones section of this agreement.

Landscaping
- Surface Parking Internal Landscaping Requirement:
  - All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:
  - At least one tree must be planted or retained for every 250 square feet of required internal planting area, and no parking space may be more than 100 feet from a tree planted in a permeable island, peninsula or median of ten-foot minimum width.
  - Landscaped areas on the parking perimeter or internal islands must equal or exceed a minimum of ten percent of the total paved surface area.
- All other Landscaping Requirements within the zone to meet the standards within Landscape Standards for all zones section of this agreement.

Maintenance:
FGCU is responsible for maintaining the required landscaping in a healthy and vigorous condition at all times as appropriate to growing seasons.
ZONE 2 - South Central:

DESCRIPTION:
This area currently contains three existing 5-story housing units, an existing 6-story student housing unit, and existing structured parking unit with five elevated decks, and existing dining facility and associated surface parking lot, and existing central energy plant, and an existing outdoor play field and associated field lighting.

Potential future development in this area includes the following facilities as generally shown on the attached South Village Concept Plan and restrictions.

1. One additional student housing unit with a maximum height of 6-stories. Building to match existing Osprey Housing Unit and constructed at the location on the South Campus Housing Exhibit.

2. A recreational swimming pool complex and associated 1 story bath house.

3. One additional structured parking unit with a maximum of five elevated decks. Parking Structure A to be architecturally detailed to be consistent with the existing Student Housing within the South Campus Housing District. Articulation of Parking Structure B will be amended to match Parking Structure A at the time Parking Structure A is built. Architectural detail such as a three color painting scheme, parapets, stairwells detailing, banding and other architectural elements may be used. The structure is to be architecturally articulated similar in architectural detail to the attached conceptual exhibits. The attached conceptual exhibits are for illustrative purposes to demonstrate a level of building articulation and do not represent actual buildings or architectural styles.

4. Expansion of the existing central energy plant to accommodate the potential needs of facilities in zones one, two and three. The CEP to be buffered / screened with appropriate landscape treatment.

5. Expansion of the existing surface parking lots as required.

6. Pole-mounted and parking garage lighting shall be shielded to reduce light spill over at adjacent Miromar property line to zero foot candles.

DEVELOPMENT STANDARDS:

Location:
Existing Housing / Future proposed Housing / Services inside the Loop Road.

Uses and Structures:
• Phase II Student Housing
• Residential Dining Addition.
• Parking Garage A
• South Village CEP Addition

Setbacks / Heights:
• Parking Garage
  o Setback – 100’ Minimum from Miromar Property Line.
  o Height – 65’ Maximum
  o Top parking deck lighting – Maximum 25 feet above parking deck
  o Building lights shielded and zero foot candles at property line

• Student Housing
  o Setback – 250’ Minimum from Miromar Property Line.
  o Building Height – 78’ Maximum. Building to match existing Osprey Building.

Lighting:
• New Roadways / Common Areas
  o Parking Lot / Street Lights: Maximum 30’-0”
  o Fixtures to have be properly shielded with full cut off luminaries
• All lighting standard shall meet the requirements as specified within the Lighting Standards section of this agreement.
• Existing lighting shall be retrofitted to comply with all lighting standards as listed herein within six months after commencement of construction on the Miromar property.

Buffer / Landscape Requirements:
• Existing Native Buffer - Supplemented to increase the buffering of the existing Parking Structure B and future Parking Structure A, where gaps in the existing vegetation exists.
• Parking Structure Landscape Buffer Requirement (for sides facing and visible to the Miromar property):
  o Minimum 5 Trees / 100 Linear Feet.
    • Minimum 12’-14’ o.a., 5’ spr., 3” cal.,
• Maintenance:
  o FGCU is responsible for maintaining the required landscaping in a healthy and vigorous condition at all times as appropriate to growing seasons.

ZONE 3 - Southeast:

DESCRIPTION:

This area is currently undeveloped and is designated for student housing. The configuration and composition of this student housing is unknown at this time.
Potential future development in this area includes the following restrictions.

1. The existing natural areas along the shared property line shall be preserved as a buffer.

2. Buildings shall be limited to a maximum height of 3 stories.

3. Parking shall be surface lots only. Structured parking units are prohibited.

4. Pole-mounted site lighting shall be shielded to prevent direct view of the fixture light source from adjacent property.

5. Buildings shall be set back a minimum of 100 feet from the property line.

**LANDSCAPE STANDARDS FOR ALL ZONES:**

**Landscape Requirements:**

- Building Perimeter Planting - Sufficient Palm and Canopy tree planting shall also be planting adjacent to the elevations visible from the adjacent property to visually soften the intramural parking structure and student housing unit.
  - Building perimeter plantings at sides facing and visible to the Miromar property. All Buildings must provide building perimeter plantings.

- Parking Structure / Student Recreational Building & Housing Landscape Buffer Requirement:
  - Minimum 5 Trees / 100 Linear Feet.
  - Minimum 12'-14' o.a., 5' spr., 3” cal.

Landscape material for areas in Zone 3 will not be required until development of the Miromar property located east of the flowway commences construction.

**LIGHTING STANDARDS FOR ALL SOUTH VILLAGE ZONES AND SOUTH ACCESS ROADWAY EASEMENT :**

**Roadway/Street and Parking Lot Lighting Requirements:**

- All lighting in Zones 1, 2 and 3 shall be shielded and shall be consistent with International Dark Sky Association standards. No recreational field lights shall be developed at a height greater than 65 feet. A photometric analysis must be done to ensure no light spillage on adjacent conservation areas and areas under private ownership (Miromar). The photometric design analysis must demonstrate that there will be no more than zero foot-candles of light at the Miromar property line. Measurements shall be calculated at 30' intervals, with the meter 3' above grade.
Glare should not exceed 500 candelas at any time as measured from Miromar property lines.

- The approved lighting fixture shall be full cut-off type as measured by the Illuminating Engineering Society (IES LM-79-08, Approved Method: Electrical and Photometric Measurements of Solid-State Lighting Products, or IES LM-80-08, Approved Method: Measuring Lumen Maintenance of LED Light Sources).

Restrictions on Roadways, Street, and Parking Lot Lighting:

- All street lights shall be shielded and installed with full cut off luminaries that do not create any light pollution on adjacent privately owned lands and conservation areas. The street lighting will emit zero foot candles of light at the right of way line for that portion of the road on Miromar property. All other lighting will emit zero footcandles of light at the Miromar property line for street and parking lot lighting internal to FGCU.
- The standard 11’ pole mounted acorn fixtures may be used at pedestrian walkways.
CONCEPTUAL EXHIBIT TO DEVELOPMENT STANDARDS

PARKING STRUCTURE
IMAGE #1

PARKING STRUCTURE
IMAGE #2
UNIVERSITY VILLAGE EASEMENT AGREEMENT

THIS UNIVERSITY VILLAGE EASEMENT AGREEMENT ("Agreement") is entered into this _ day of January 2013, between MIROMAR LAKES, LLC ("Miromar"), a Florida limited liability company, whose address is 10801 Corkscrew Road, Suite 305, Estero, FL 33928 and FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES ("FGCU"), a public body corporate established pursuant to Chapter 1001, Florida Statutes, whose address is 10501 FGCU Boulevard South, Fort Myers, FL 33965-6565.

RECITALS

A. Miromar holds title to the real property described in Exhibit "A" attached and incorporated by reference ("Miromar Property");

B. FGCU leases a parcel of land from the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida on which it is developing and operating a state university, the property being described in that certain instrument recorded in O.R. Book 2497, Page 1564, Public Records of Lee County, Florida ("FGCU Campus");

C. FGCU desires to obtain an easement for ingress, egress, stormwater, utility and other purposes specified in this Agreement that will provide the FGCU Campus with access to the FGCU campus, as shown on the sketch attached and incorporated by reference as Exhibit "B"; and

D. Miromar is willing to convey a non-exclusive easement for ingress, egress, utility and other purposes described to FGCU, subject to the terms and conditions of this Agreement.

AGREEMENT

THEREFORE, the parties agree as follows:

1. Recitals. Miromar and FGCU acknowledge that the recitals set forth above are true and accurate as of the date of this Agreement and are incorporated into this Agreement by reference.

2. Easement. Miromar grants and conveys to FGCU, its successors and assigns, a 100-foot wide non-exclusive perpetual easement for ingress, egress, stormwater utility and other purposes described in this Agreement, over and across the Miromar Property for the benefit of the FGCU Campus ("Easement").

Exhibit "C"
3. **Roadway Improvements.** The Easement shall connect the FGCU Campus to Ben Hill Griffin Parkway, as shown on the sketch attached as Exhibit "B." The Easement may be constructed, maintained and used by FGCU, its successors and assigns, as a roadway (in the manner described in Section 5 below) for public purposes serving the needs of FGCU, subject to the terms and conditions of this Agreement. In connection with the construction of such roadway, FGCU may also construct any and all utilities deemed necessary by FGCU including, but not necessarily limited to, sewer, water, television and fiber optic cable, telephone, electrical, natural gas, and water management facilities, and may install and maintain landscaping, trees and shrubbery within the Easement.

4. **Non-Exclusive Use.** Notwithstanding the above, it is understood by the parties that the roadway and any improvements made within the Easement are non-exclusive and it is contemplated that the roadway will service the adjoining property owned by Miramar and the public. The construction of any and all improvements on the Easement shall be coordinated with Miramar in advance. Miramar shall have the right to connect to any utilities installed in the Easement. Either party may request the upsizing of a utility provided that such party pays for the cost of any increase in the size, number or quantity of the utility service. Miramar and FGCU agree to notify each other in advance of any installation of utilities in reasonably sufficient time to join in the installation of any utility service being installed. The parties agree to join in any joint utility agreement providing for the upsizing of utilities and working collaboratively with Lee County Utilities (LCU) or other utility service providers in establishing the appropriate sizing and location of the utilities.

5. **Landscaping.** FGCU shall install streetscape which is similar to the landscaping utilized by FGCU at its main entrance intersecting Ben Hill Griffin Parkway. All landscaping plans, including, without limitation, the installation of all trees and shrubbery, shall be submitted to Miramar in advance for review and comment. Miramar reserves, at its own cost and expense, the right to install an enhanced Landscape Planting and/or Streetscape and irrigation program within the Easement as part of the development of the University Village project. Miramar shall be responsible for the maintenance and irrigation of any enhancements made to the landscaping on the Easement.

6. **Lighting Installation and Maintenance.** FGCU shall install lighting on the Easement provided such street lighting is similar in style to the roadway lights presently located in the south campus area which shall not exceed thirty (30) feet in total height with full cutoff luminaries and subject to the lighting standards agreed to between the parties under separate agreement. The installation and maintenance of the lighting shall be at FGCU’s sole cost and expense. A Lighting Plan shall be submitted to Miramar in advance for review and comment showing style, quantity, location, height, photometric calculations and manufacturer catalog cut-sheets documenting full cut-off characteristics of the lighting fixtures.

7. **Construction of Improvements.** FGCU shall be responsible for obtaining any necessary building permits, development orders, environmental permits and/or approvals required for the installation of the roadway, stormwater, utility and lighting improvements. FGCU is expressly prohibited from and has no right to violate any law, ordinance, or regulation
controlling or otherwise dealing with the construction or maintenance of the roadway, stormwater facilities, utilities and lighting ("Improvements"). Any such violations shall be the sole responsibility of FGCU and FGCU shall defend, indemnify and hold Miramar harmless, to the extent allowable by law, from any costs, fines or expenses related to any such violation. FGCU shall be responsible for restoring, at its sole cost and expense, any adjacent property disturbed during the construction of the Improvements. FGCU shall be solely responsible for all utility charges, hookup fees or other costs resulting from the installation and operation of the Improvements. FGCU agrees to maintain the Improvements installed by FGCU within the Easement in good condition and repair, and FGCU shall be solely responsible for performing all maintenance and repairs to the Improvements installed by FGCU within the Easement.

8. **Agricultural Fencing.** FGCU shall be responsible for relocating and replacing the existing agricultural fencing located on the Miromar Property that will be impacted by the roadway and other improvements constructed on the Easement. FGCU shall relocate and replace the agricultural fencing upon commencement of construction on the roadway so as to not interfere with or cause there to be a lapse in Miromar's ability to maintain and continue its agricultural uses on the Miromar Property. The fencing shall run parallel to the southern boundary line of the Easement and connecting to the existing fencing on the Miromar Property. The fencing shall be constructed with three strands of barbed wire and wooden fence posts as a legal fence as defined under Section 588.011, Florida Statutes.

9. **Stormwater Drainage.** FGCU will be permitted to discharge its stormwater onto the Miromar Property at locations mutually agreeable to FGCU and Miromar. If FGCU constructs improvements on the Easement prior to Miromar installing its stormwater system, FGCU may construct at its cost a temporary berm-type system to pre-treat the stormwater runoff. Miromar grants FGCU a temporary license or a temporary easement, whichever is required by the permitting agency, for the construction and maintenance of the temporary water management area. The size of the water management area will be adequate to meet applicable requirements for pre-treatment of stormwater runoff. Upon Miromar's improvement of its property, FGCU will tie into the Miromar stormwater system. The point of connection will be at the Easement boundary. FGCU will be responsible for the cost of the stormwater system servicing its improvements on the Easement and to the point of connection with the Miromar stormwater system. The temporary license or temporary easement shall expire, without further action by either party, upon Miromar constructing the water management system and connection to FGCU. If so requested, FGCU shall execute a release of the temporary license or easement upon its expiration. If Miromar constructs the improvements on its property first, then FGCU, at its cost, shall tie into the Miromar stormwater system at the connection points provided by Miromar to be installed at the boundary of the Easement.

10. **Roadway Construction.** Any such roadway constructed by FGCU on the Easement shall be constructed to applicable standards and maintained at FGCU's sole cost and expense, and Miromar shall have no obligation to pay any of the construction or maintenance costs associated with the roadway. Such roadway will be designed and constructed with a minimum of two, and a maximum of four, motor vehicle travel lanes, and may include multi-modal transportation facilities for pedestrian, bicycle and public transit between the FGCU Campus and Ben Hill Griffin Parkway. The roadway plan shall be submitted to Miromar in advance for review and comment. All construction for the roadway will be provided within the
Easement, including all slopes, embankments, shoulders and guardrails constructed as part of the roadway. FGCU shall provide to Miromar, within thirty (30) days of receipt, the as-built drawings of the roadway, utilities, stormwater facilities and all improvements made within the Easement.

11. Curb Cuts and Utilities. In connection with the design and construction of the roadway described above, FGCU and Miromar will coordinate so as to: (a) provide appropriate curb cuts and median crossings that will provide Miromar with reasonable access to their lands to the north and south of the Easement, and (b) provide any reasonably necessary connections, sleeves and tie-ins to utility lines and service to the FGCU Campus and the Miromar Property. All curb cuts and utility tie-ins shall be coordinated between the parties prior to commencement of any construction by FGCU on the roadway. After FGCU constructs the roadway, Miromar shall pay for the construction of any curb cuts and the cost of any utility tie-ins required by Miromar.

12. Emergencies. Notwithstanding the foregoing, in the event of any emergency affecting the Improvements which Miromar reasonably believes poses an immediate threat of damage or injury to person or property or poses a substantial risk of interference with essential services, Miromar may take such corrective action and expend a reasonable amount of money to prevent or abate such damage or injury or to avoid or abate such interference; provided that (i) Miromar shall give FGCU prior notice as is practicable under the circumstances (which notice may be electronic or oral); and (ii) Miromar shall take only such steps as are reasonably necessary in order to prevent such damage, injury or interference with essential services.

13. Abandonment of Easement. In the event that the Easement is (1) abandoned by FGCU, (2) is determined by FGCU to be unusable for any reason, or (3) FGCU is dissolved, then this Easement shall automatically terminate and be of no further force or effect. Although the foregoing is intended to be self-operative, upon the happening of any of the foregoing events, FGCU agrees to execute a proper release and termination of this Easement and FGCU will convey back all rights, title and interests to the Easement to Miromar.

14. Indemnification. Without waiving its statutory defense of sovereign immunity or increasing its limits of liability as provided for in Section 768.28, Florida Statutes, and to the extent permitted by the aforementioned statute, FGCU shall indemnify and hold Miromar harmless from and against any claims, costs, losses, expenses, and liability, including reasonable attorney’s fees and costs of suit, for damages to persons or property, including, without limitation, damages to other utilities, stormwater management systems, preserve areas, or other improvements located on, within or adjacent to the Easement area, related to the negligent or willful acts or omissions of FGCU relating to the construction, installation or maintenance of the lights by FGCU, its agents and contractors.

15. Authority. Miromar represents that it is indefeasibly seized of the Miromar Property in fee simple, that Miromar has full power and lawful right to convey the interests conveyed, that the property is free and clear of all encumbrances whatsoever, and that Miromar fully warrants the title to the land and will defend it against the lawful claims of all persons whomsoever.
16. **Binding Effect.** The easements, rights and privileges conveyed under this Agreement shall be perpetual and non-exclusive. The Easement shall run with the land, shall be for the benefit of the FGCU Campus and shall be binding upon Miromar, its successors and assigns.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The venue for any legal or administrative proceeding regarding this Agreement shall be exclusively in Lee County, Florida.

18. **Entire Agreement.** This Agreement, executed in multiple and identical counterparts, all of which shall constitute part of the Agreement, contains the entire Agreement between the parties and supersedes all prior oral or written understandings and agreements.

19. **Construction of Agreement.** The parties acknowledge that this Agreement and the language contained in this Agreement are the result of negotiations between the parties. In the event that any ambiguity in any language in this Agreement arises, such ambiguity shall not be construed against anyone of the parties.

20. **Waiver.** The failure of either party to this Agreement to insist upon the performance of any terms of this Agreement or the waiver of any breach of any of the terms of this Agreement shall not be construed as a waiver, but the terms of this Agreement shall continue and remain in full force and effect as if the waiver had not occurred.

21. **Paragraph Headings.** The paragraph headings for each provision of this Agreement are not part of this Agreement nor shall they be used to construe, explain, modify, simplify or aid in the interpretation of the provisions of this Agreement.

22. **Necessary Documents.** The parties shall execute all necessary documents required to carry out the terms and intent of this Agreement.

23. **Modification of the Agreement.** Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

24. **Authority.** Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth in this Agreement.

25. **Attorneys' Fees.** In the event of any dispute or litigation arising out of this Agreement, then the prevailing party shall be entitled to reasonable attorneys' fees, including fees at trial and appellate levels, and all other costs incurred in connection with any such dispute or litigation.
26. **Severability.** The invalidity or unenforceability of any provision or part of this Agreement shall not affect the validity or enforceability of any other provisions or part of this Agreement.

The parties executed this Agreement the day and year first written above.

**Witnesses:**

[Names and titles of witnesses are filled in]

MIROMAR LAKES, LLC, a Florida limited liability company

By: Miromar Development Corporation
Its: Managing Member

By: ____________________________
Robert B. Roop, Vice President

FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a public body corporate established pursuant to Chapter 1001, Florida Statutes

By: ____________________________
Name: ____________________________
Title: ____________________________

[Notary acknowledgements set forth on the following page.]
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this ___ day of __________, 2013, by Robert B. Roop, as Vice President of Miromar Lakes, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me or who has produced ____________________________ as identification.

My Commission Expires: ____________________________

Notary Public

______________________________
Print/Type Name of Notary

Commission No: ____________________________

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this ___ day of __________, 2013, by __________, as ______ of Florida Gulf Coast University Board of Trustees, a public body corporate, on behalf of the entity, who is personally known to me or who has produced ____________________________ as identification.

My Commission Expires: ____________________________

Notary Public

______________________________
Print/Type Name of Notary

Commission No: ____________________________
DESCRIPTION

100 FOOT WIDE SOUTH ENTRANCE ROADWAY
LYING IN
SECTIONS 23 & 24, TOWNSHIP 46 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

A tract or parcel of land lying in Sections 23 and 24, Township 46 South, Range 25 East, Lee County, Florida, which tract or parcel is more particularly described as follows:

Commencing at the southeast corner of said Section 23 thence North 89° 44' 39" West on the south line of said Section 23 for 501.52 feet to an intersection with the easterly right-of-way line of Ben Hill Griffin Parkway (150 feet wide) as recorded in Official Records Book 2737, page 1041, public records of Lee County, Florida; thence North 00° 49' 43" West on said easterly right-of-way line for 603.03 feet to a point of curvature; thence northeasterly along said curve concave to the west and having a radius of 1,475.00 feet (delta 28° 47' 44") (chord bearing North 15° 13' 34" West) (chord 753.53 feet) for 741.30 feet to the Point of Beginning.

From said Point of Beginning continue northwesterly along a curve concave to the southwest and having a radius of 1,475.00 feet (delta 03° 30' 57") (chord bearing North 02° 44' 04" West) (chord 378.44 feet) for 385.44 feet; thence North 61° 04' 37" East for 100.00 feet to a point of curvature; thence northeasterly along said curve concave to the northwest and having a radius of 1,000.00 feet (delta 62° 00' 17") (chord bearing North 30° 04' 28" East) (chord 232.61 feet) for 232.61 feet; thence South 57° 24' 10" West for 25.63 feet to the Point of Beginning.

Parcel contains 174,228 square feet (4.00 acres), more or less.

Bearings shown hereon are based on the south line of Section 23, Township 46 South, Range 25 East to bear North 89° 44' 39" East.
NOTES:
1. BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH LINE OF SECTION 23, TOWNSHIP 46 SOUTH, RANGE 25 EAST TO BEAR NORTH 89' 44' 39" EAST.
2. THIS SKETCH DOES NOT MAKE ANY REPRESENTATION AS TO ZONING OR DEVELOPMENT RESTRICTIONS ON THE SUBJECT PARCEL.
3. POC = POINT OF COMMENCEMENT.
4. POB = POINT OF BEGINNING.
5. DESC. = DESCRIPTION
6. INSTR. = INSTRUMENT
7. NO. = NUMBER
8. OR = OFFICIAL RECORDS BOOK
9. PG = PAGE
10. PARCEL CONTAINS 174.228 SQUARE FEET (4.00 ACRES) MORE OR LESS.
11. DESCRIPTION ATTACHED.

NOT VALID WITHOUT SHEET 2 OF 2