Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: State Matching Grant Programs

PROPOSED BOARD ACTION
Endorse proposals regarding Florida’s state matching grant programs as outlined in the attached document.

BACKGROUND INFORMATION
The Florida Legislature will consider during the 2002 legislative session possible changes to the state’s matching grant programs, including the Major Gifts Trust Fund, and the Alec Courtelis Facilities Enhancement Challenge Grant Program. Due to the overwhelming success of universities raising private funds eligible for state match, the state’s funding supply is increasingly inadequate to handle the matching needs. The attached information outlines proposed amendments to the Major Gifts Trust Fund, and recommends no changes to the Alec Courtelis Facilities Enhancement Challenge Grant Program. Florida’s university boards of trustees are asked to consider endorsing the proposals.

Supporting Documentation Included: (1) Proposals regarding State Matching Grant Programs, and (2) Program Overview

Committee Review: Finance & Administration Committee

Prepared by: Interim Vice President for University Advancement Tom Healy

Submitted by: Interim Vice President for University Advancement Tom Healy
Proposals re: State Matching Grants Programs
December 2001

I. Alec Courtelis Facilities Enhancement Challenge Grant Program:

- No changes recommended.
- Vigorous pursuit of these projects to help “jump start” Florida’s economy.

II. Proposed Amendments to Major Gifts Trust Fund:

- $3 million cap of state dollars used to match a single gift in any given year.
- Total match for any single gift limited to $15 million ($3 million per year for five years).
- Matched endowment gifts must be for university priorities only, as set by each university’s board of trustees.

The above proposals have been endorsed and recommended by the 11 state university presidents.

Each institution is urged to seek endorsement of its board of trustees, and its Foundation board of directors. Once added to the legislative programs, vigorous lobbying will begin.
FACTS ABOUT STATE OF FLORIDA MATCHING GRANT PROGRAMS

Alec Courtelis Facilities Enhancement Challenge Grant Program

1989 – 2000*:

- Funded 83 academic construction or renovation projects
- State invested $89,251,418; State received return of $178,502,836 of academic buildings and renovations at 50¢/$1.00
- Average annual cost = $8,113,765
  Largest annual cost (99/00) = $20,898,512 (funded 21 projects)
  Smallest annual cost (94/95) = $2,375,160 (funded 8 projects)

Eminent Scholar/Major Gifts Trust Fund Programs

Through 3/31/01**:

- State has invested $368,766,992 to provide incentives for donors to create endowment gifts
- 1,907 private gifts have been matched
- State program has generated private investment in public higher education of at least $737,533,984 (assuming lowest match percent of 50%; true number is much greater)
- From 1996-3/31/00, average annual dollars of matches requested = $40,961,165
  Largest annual dollars of matches requested (99/00) = $68,084,927 (200 gifts)
  Smallest annual dollars of matches requested (96/97) = $16,930,017 (77 gifts)

*From BOR data
**From BOR and OPPAGA data
Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: Student Housing Operating Lease

PROPOSED BOARD ACTION

Approve operating lease documentation as described below.

BACKGROUND INFORMATION

Legislative action during the 2001 session devolved certain authority formerly vested in the Florida Board of Regents to university boards of trustees. Other authority was transferred to the Florida Board of Education. Before these legislative changes, the documents involved in the financing, construction and operation of student housing at Florida Gulf Coast University were:

1. Resolution by the Florida Board of Regents for the financing, construction and operation of additional student housing.
2. Approval of a Ground Lease between the FGCU Foundation Board of Directors and the State of Florida.
3. Approval of an Operating lease between the FGCU Foundation Board of Directors and the University.

Since the legislative actions have taken effect, additional documents are required to transfer responsibility for the Operating Lease to the FGCU Board of Trustees; a resolution approving the financing, construction and operation of additional student housing executed by the FGCU Board of Trustees, and approval of the Operating Lease by the FGCU Board of Trustees.

Each of these documents will be explained at the Board meeting, and approval is requested. Documents included are:

1. Item “14-A”: Resolution by the Florida Board of Education approving the financing, construction and operation of additional student housing. For information only.
RESOLUTION OF THE FLORIDA BOARD OF EDUCATION OF THE STATE OF FLORIDA APPROVING THE FINANCING OF THE COSTS OF THE CONSTRUCTION OF A NEW 280-BED STUDENT RESIDENCE FACILITY (PHASE IV) ON THE CAMPUS OF FLORIDA GULF COAST UNIVERSITY BY THE FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC. (THE "FOUNDATION"), A UNIVERSITY DIRECT SUPPORT ORGANIZATION, AND THE REFUNDING OF ALL OR A PORTION OF THE OUTSTANDING SERIES 2000 CERTIFICATES OF PARTICIPATION OF THE FOUNDATION; APPROVING FORMS OF A THIRD AMENDATORY MASTER GROUND LEASE AGREEMENT AND A THIRD AMENDATORY MASTER OPERATING LEASE; APPROVING THE ISSUANCE BY THE FOUNDATION OF CERTIFICATES OF PARTICIPATION, SERIES 2002, EVIDENCING AN UNDIVIDED PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN BASE RENT PAYMENTS TO BE MADE UNDER A MASTER OPERATING LEASE, IN AN AMOUNT NOT EXCEEDING $30,000,000 TO FINANCE THE PROJECT AND THE REFUNDING; APPROVING THE PURPOSES AND EXISTENCE OF THE FOUNDATION; AUTHORIZING CHAIRMAN AND STAFF TO TAKE FURTHER ACTIONS CONSISTENT WITH THE RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

The undersigned, being the duly acting and appointed Florida Board of Education of the State of Florida (the "Florida Board") at a meeting duly held pursuant to notice and a quorum being present, do hereby make the following resolutions:

BE IT RESOLVED:

1. Findings. The Florida Board hereby finds as follows:

(a) Pursuant to Chapter 229, Florida Statutes, the Florida Board has succeeded the Board of Regents (the "Board") of the Division of Universities of the Department of Education of the State of Florida and will operate on an interim basis under the direction of the State Board of Education. The Florida Board assumed all of the Board’s powers, duties, property, moneys and existing contracts effective July 1, 2001.

(b) The Florida Board is primarily responsible for adopting system-wide rules and policies; planning for the future needs of the State University System; planning the programmatic, financial and physical development of the system; reviewing and evaluating the instructional, research, and service programs at the Universities; coordinating program development among the Universities; and monitoring the fiscal performance of the Universities.

(c) The Legislature has approved the 2002 Improvements (as hereinafter defined) in the General Appropriations Act and Summary Statement of Intent for Fiscal Year 2001-2002.

(d) The Florida Gulf Coast University Foundation, Inc., a Florida not-for-profit corporation (the "Foundation"), was created for the purpose of providing direct support to Florida Gulf Coast University (the "University"), and was designated by the Board as a "University Direct Support Organization" as defined in Florida Statutes, Section 240.299 and continues to be so designated by the Florida Board.

(e) The Foundation proposes to issue Certificates of Participation, Series 2002 (the
“Series 2002 Certificates”), in an aggregate principal amount not to exceed $30,000,000, payable solely from and secured by a pledge of the net revenues of the housing system of the University (the “Housing System Revenues”). The Series 2002 Certificates will be issued to finance: (i) the construction of an addition to the housing system of the University consisting of a new 280 bed apartment style student residence facility (Phase IV) (the "2002 Improvements"), and (ii) the refunding of all or a portion of the outstanding Series 2000 Certificates of Participation (collectively, the “Prior Certificates”).

(f) In order to provide for the repayment of the Series 2002 Certificates, the Foundation has requested that the Florida Board: (i) amend the Master Ground Lease Agreement, dated as of August 1, 1997, as amended and supplemented by the First Amendatory Master Ground Lease Agreement, dated as of August 1, 1999 and by the Second Amendatory Master Ground Lease Agreement, dated as of September 1, 2000 (collectively, the “Original Master Ground Lease”), each by and between the Board, as predecessor to the Florida Board, acting on behalf of the University, and the Foundation, to provide for the construction of the 2002 Improvements to be located upon the land set aside and leased to the Foundation for such construction, as provided in a Third Amendatory Master Ground Lease Agreement, dated as of December 1, 2001, between the Florida Board and the Foundation attached hereto as Exhibit “A” (the “Third Amendatory Master Ground Lease Agreement” and, together with the Original Master Ground Lease, are collectively referred to herein as the “Master Ground Lease”), and (ii) approve amendment of the Master Operating Lease, dated as of August 1, 1997, as amended and supplemented by the First Amendatory Master Operating Lease, dated as of August 1, 1999 and by the Second Amendatory Master Operating Lease, dated as of September 1, 2000 (collectively, the “Original Master Operating Lease”), each by and between the Board, as predecessor to the Florida Board, acting on behalf of the University, and the Foundation, (a) to add the 2002 Improvements to the facilities leased to and operated by the University and (b) to provide for substitution of the University Board, as Lessee, all as provided in a Third Amendatory Master Operating Lease, dated as of December 1, 2001, between the Florida Board, acting on behalf of the University, and the Foundation attached hereto as Exhibit “B” (the “Third Amendatory Master Operating Lease” and, together with the Original Master Operating Lease, are collectively referred to herein as the “Master Operating Lease”).

The University Board, under the Master Operating Lease, is obligated to pay additional "base rent" equal to the debt service on the Certificates. Such rent would be payable solely from Housing System Revenues which will be pledged therefore. As used herein, the term "Housing System Revenues" shall mean generally, all fees, rentals or other charges and income received by the University from operation of the Housing System.

(g) The Florida Board declares that (i) the construction of the 2002 Improvements will serve a public purpose by providing additional residential facilities at the University, (ii) consolidation of the outstanding indebtedness through the refunding all or a portion of the Prior Certificates are in the best interest of the University by permitting marketing and repayment of the Certificates on a consolidated basis and (iii) that in order to provide for repayment of the proposed Series 2002 Certificates it is necessary to execute and deliver the Third Amendatory Master Ground Lease Agreement and to amend the Master Operating Lease.

2. Approval of the Project and the Refunding. (a) The Florida Board hereby approves construction of the 2002 Improvements by the Foundation. Title to the underlying property shall remain with the Trustees of the Internal Improvement Trust Fund and title to the 2002 Improvements shall vest in the State of Florida in accordance with the Master Ground Lease. The 2002 Improvements shall be used exclusively by the University in accordance with the Master Operating Lease.

(b) The Florida Board hereby approves the refunding of all or a portion of the outstanding Prior Certificates.

3. Authorization of Third Amendatory Master Ground Lease Agreement. In order to provide for issuance of the Series 2002 Certificates to finance the 2002 Improvements, the Florida Board is hereby authorized to amend the Original Master Ground Lease through the delivery of the Third Amendatory Master Ground Lease Agreement whereby the Florida Board, acting on behalf of the
University, shall lease the 2002 Improvements to the Foundation. The Third Amendatory Master Ground Lease Agreement, in substantially the form attached hereto as Exhibit "A", with such changes, alterations and corrections as may be approved by the Chairman of the Florida Board or the Chancellor of the Division of Colleges and Universities, such approval to be conclusively evidenced by the execution thereof by either the Chairman or Chancellor, are hereby approved by the Florida Board, and the Florida Board hereby authorizes and directs said Chairman or Chancellor to execute, and the Secretary of the Florida Board to attest under the seal of the Florida Board, the Third Amendatory Master Ground Lease Agreement, all of the provisions of which, when executed and delivered by the Florida Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

4. Approval of Third Amendatory Master Operating Lease. In order to provide for repayment of the Certificates issued to finance the Phase IV Improvements, the Florida Board hereby approves the amendment of the Original Master Operating Lease through the delivery by the University Board of the Third Amendatory Master Operating Lease, in substantially the form attached hereto as Exhibit "B". The Third Amendatory Master Operating Lease further provides for the pledge of the Housing System Revenues and that the University shall charge such rates and fees for the use of the dormitory facilities to produce an amount each year equal to one hundred percent (100%) of the cost of operating and maintaining the dormitory facilities plus one hundred twenty percent (120%) of the interest, principal and premium, if any, which may be due on the Series 2002 Certificates.

5. Assignment of Operating Lease. The Florida Board hereby authorizes the assignment of all its rights, duties and obligations under the Master Operating Lease to the University Board upon acceptance by the University Board of such assignment and the approval of the Credit Facility Provider for the Certificates. Such assignment, in the form of the Assignment and Assumption Agreement, attached hereto as Exhibit C, with such changes, alterations and corrections as may be approved by the Chairman of the Florida Board or Chancellor of the Division of Colleges and Universities, such approval to be conclusively evidenced by the execution thereof by either the Chairman or the Chancellor, is hereby approved by the Florida Board, and the Florida Board hereby authorizes and directs said Chairman or Chancellor to execute, and the Secretary of the Florida Board to attest under the seal of the Florida Board, the Assignment and Assumption Agreement, all of the provisions of which, when executed and delivered by the Florida Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

6. Approval of Series 2002 Certificates and the Foundation. The Florida Board hereby approves issuance of the Series 2002 Certificates by the Foundation acting on behalf the University and the Board, for the purposes described herein, in an amount not to exceed $30,000,000, said Series 2002 Certificates to have a final maturity not to exceed thirty (30) years from the date thereof and at an interest rate or rates acceptable to the Foundation. The Florida Board further affirms its approval of the existence and purposes of the Foundation. This approval is subject to the understanding that the Series 2002 Certificates do not create any obligation, direct or contingent, on the part of the University, the Florida Board, the State of Florida, or any political subdivision, department or agency thereof, to pay any part of the principal of, premium, if any, or interest on the Series 2002 Certificates, or to levy ad valorem taxation or any other form of taxation to repay the same, but rather such Series 2002 Certificates shall constitute undivided fractional interests in the obligation to pay base rent pursuant to the Master Operating Lease. Title to the 2002 Improvements shall vest in the State of Florida in accordance with the Master Ground Lease and the Series 2002 Certificates shall be used exclusively in the operation of the University’s housing program.

7. Repealing Clause. All resolutions of the Florida Board, or parts thereof, in conflict with the provisions herein contained, to the extent they conflict herewith, are, to the extent of such conflict, hereby superseded and repealed.
8. **Authorization of Further Actions Consistent Herewith.** The members of the Florida Board, attorneys, engineers or other agents or employees of the Florida Board are hereby authorized and directed to do all acts and things required of them by this resolution, the Third Amendatory Master Ground Lease Agreement and the Third Amendatory Master Operating Lease, or desirable or consistent with the requirements thereof, for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Series 2002 Certificates, the Third Amendatory Master Ground Lease Agreement and the Third Amendatory Master Operating Lease, and this resolution including execution of such documents, certificates, contracts and legal opinions and other material delivered in connection with construction of the 2002 Improvements, the sale of the Series 2002 Certificates or as necessary to preserve the tax-exemption thereon.

9. **Effective Date.** This resolution shall become effective immediately upon passage.

**CERTIFICATE OF THE SECRETARY**

The undersigned, Corporate Secretary of the Florida Board of Education, does hereby certify that the attached resolution relating to the issuance of Series 2002 Certificates by Florida Gulf Coast University Foundation, Inc. is a true and accurate copy as adopted by the Florida Board of Education on January 17, 2002.

**FLORIDA BOARD OF EDUCATION**

By: ____________________________
                 Corporate Secretary

366841
THIRD AMENDATORY MASTER GROUND LEASE AGREEMENT

THIS THIRD AMENDATORY MASTER GROUND LEASE AGREEMENT (herein called the "Agreement") is made and entered into this first day of _______________ 2002, by and between the FLORIDA BOARD OF EDUCATION, STATE OF FLORIDA (hereinafter called the "Lessor" or the "Board"), as successor in interest to the Board of Regents of the State University System, State of Florida acting for and on behalf of FLORIDA GULF COAST UNIVERSITY (herein called "University"), and the FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC., a Florida corporation not-for-profit having its principal place of business at 10501 FGCU Blvd. South, Fort Myers, Florida 33965-6565 (hereinafter referred to as the "Lessee").

Section 1. RECITALS.

(a) This Agreement modifies the Master Ground Lease Agreement, dated as of August 1, 1997, as amended and supplemented by the First Amendatory Master Ground Lease Agreement, dated as of August 1, 1999 and the Second Amendatory Master Ground Lease Agreement, dated as of September 1, 2000 (collectively, the "Master Ground Lease") each by and between the Lessor and the Lessee hereunder. Such parties hereby agree that the Master Ground Lease, except as modified herein, shall remain in full force and effect.

(b) The Lessee's $22,000,000 Certificates of Participation, Series 2000 (the "Prior Certificates") are currently outstanding.

(c) The Lessee intends to (i) build an additional 280 bed student residence facility (Phase IV) (the "2002 Improvements") on the Leased Premises located at the University campus, more particularly described in Exhibit “A” attached hereto, (ii) finance the same from the proceeds of Certificates of Participation, Series 2002 issued in the aggregate principal amount of $30,000,000 (the "Series 2002 Certificates"), and (iii) refund all or a portion of the Prior Certificates.

(d) The Lessor and the Lessee hav, by resolutions duly adopted on January 17, 2002 and October ____, 2001, respectively, approved: (i) the construction of the 2002 Improvements, (ii) the refunding of all or a portion of the outstanding Prior Certificates, and (iii) this Agreement.

(e) Simultaneously with the execution hereof, Lessee and the Board of Trustees of Florida Gulf Coast University, acting for and on behalf of the University, intend to enter into a modification of its Master Operating Lease, dated as of August 1, 1997, as amended and supplemented by the First Amendatory Master Operating Lease, dated as of August 1, 1999 and the Second Amendatory Master Operating Lease, dated as of September 1, 2000, and as further amended and supplemented by a Third Amendatory Master Operating Lease (the "Third Amendatory Master Operating Lease"), dated as of ____________ 1, 2002 (collectively, the “Master Operating Lease”) pursuant to which the 2002 Improvements shall be leased back to the Lessor hereunder for base rent payments sufficient to pay the debt service on the Series 2002 Certificates.

(f) All of Lessee's interest in this Agreement and the Third Amendatory Master Operating Lease shall be assigned to a trustee under a Trust Indenture ("Trust Indenture") entered into by the Lessee with a trustee providing for the issuance (from time to time) of and security for the repayment of the Series 2002 Certificates including repayment of obligations to the Credit Facility Provider (as defined in the Trust Indenture).
Section 2. MASTER GROUND LEASE MODIFICATION. The Master Ground Lease is hereby modified as follows:

(a) Housing System Facilities. The housing system facilities shall consist of the student residence facilities described in the consolidated Exhibit B attached hereto and made a part hereof by reference, which housing system facilities are located on the land set aside which is located on the main campus of Florida Gulf Coast University as described in Exhibit A attached hereto (the “Leased Premises”).

(b) Term. The term of the Master Ground Lease shall be extended until September 1, 2032 unless sooner terminated as provided in the Master Ground Lease.

(c) Rental. During the term of this Agreement, as provided in Master Ground Lease, rent shall be payable by Lessee to Lessor at the rate of One Dollar ($1.00) per year.

Section 3. APPLICABILITY OF MASTER GROUND LEASE. Except as modified by this Agreement, the terms of the Master Ground Lease shall apply to the combined housing system facilities consisting of all prior improvements and the 2002 Improvements without further modification. The 2002 Improvements shall consist of a 280-bed student residence facility (Phase III) and such other appurtenances as described in Exhibit B hereto. It shall be constructed in accordance with plans and specifications to be approved by the Lessor in accordance with a budget as set forth in Exhibit C hereof as soon as practicable after the execution of this Agreement. The requirements of the Master Ground Lease with respect to construction of prior improvements shall apply to construction of the 2002 Improvements.

Section 4. TERMINATION. Notwithstanding anything to the contrary in the Master Ground Lease (including any default by the Lessee), the Lessor agrees not to terminate this Agreement, as long as there remains unpaid any obligations of the Lessee under the Series 2002 Certificates pursuant to the terms of any loan agreements, indentures or other documents relating thereto, or under any obligations issued in replacement thereof or substitution therefor, it being acknowledged that the continuing validity and enforceability of this Agreement may be essential to the collateral security for such obligations. The Lessor and the Lessee shall not terminate this Agreement or modify this Agreement in any manner that would impair or adversely affect the holders of any such obligations. The holders of such obligations shall be deemed to be third-party beneficiaries of this covenant. Notwithstanding the foregoing, this Agreement cannot extend beyond the term of the Lease Agreement, dated November 15, 1994 with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida described in the Master Ground Lease.

Section 5. MORTGAGE. The Lessee shall not execute any mortgage of the Leased Premises whether permitted by Section 11 of the Master Ground Lease or otherwise, unless it shall have obtained the written consent of the holders of the Series 2002 Certificates.
IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in duplicate, either of which may be considered an original, the day and year first above written.

LESSOR:

FLORIDA BOARD OF EDUCATION, STATE OF FLORIDA, successor in interest to the BOARD OF REGENTS OF THE STATE UNIVERSITY SYSTEM, STATE OF FLORIDA for and on behalf of FLORIDA GULF COAST UNIVERSITY

By: ______________________________________
    Chairman

WITNESSES AS TO LESSOR:

________________________________________
Print Name:

________________________________________
Print Name:

LESSEE:

FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC.

By: ______________________________________
    Assistant Treasurer

WITNESSES AS TO LESSEE:

________________________________________
Print Name:

________________________________________
Print Name:
CONSENT OF BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT TRUST FUND
OF THE STATE OF FLORIDA (the “Trustees”)
TO THIRD AMENDATORY MASTER GROUND LEASE AGREEMENT

The foregoing Third Amendatory Master Ground Lease Agreement has been consented to by the Trustees on the __________ day of ____________, 2002.

________________________________________
CHIEF, BUREAU OF LAND
MANAGEMENT SERVICES,
DIVISION OF STATE LANDS,
DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Approved as to Form and
Legality

By: ______________________________
DEP Attorney
EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

SUBJECT PARCEL

A PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE QUARTER CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST; THENCE N88°41'31"W, A DISTANCE OF 354.67 FEET; THENCE S14°12'35"E, A DISTANCE OF 1,348.50 FEET; THENCE N88°02'56"E, A DISTANCE OF 2,891.84 FEET; THENCE N47°45'12"E, A DISTANCE OF 1,504.15 FEET; THENCE N01°42'48"W, A DISTANCE OF 306.16 FEET; THENCE N88°01'12"E, A DISTANCE OF 927.78 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N88°17'12"E, A DISTANCE OF 100.00 FEET; THENCE N03°10'23"W, A DISTANCE OF 430.68 FEET; THENCE N89°01'42"E, A DISTANCE OF 450.44 FEET; THENCE S00°58'18"E, A DISTANCE OF 320.18 FEET; THENCE N88°44'00"E, A DISTANCE OF 1,787.18 FEET; THENCE S01°16'00"E, A DISTANCE OF 752.01 FEET; THENCE S59°05'40"W, A DISTANCE OF 480.98 FEET; THENCE N75°05'46"W, A DISTANCE OF 947.65 FEET; THENCE S65°52'39"W, A DISTANCE OF 487.08 FEET; THENCE N45°32'55"W, A DISTANCE OF 777.21 FEET; THENCE N01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.72 ACRES MORE OR LESS.
EXHIBIT "B"

DESCRIPTION OF THE STUDENT RESIDENCE FACILITIES

MASTER GROUND LEASE AGREEMENT (SERIES 1997 CERTIFICATES)

The initial Improvements of the University’s housing system shall be composed of a single facility containing approximately 250 bed spaces in apartment style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas, and appropriate personal storage areas. The facility will be multi-story construction using masonry exterior walls, stucco exterior, and poured slab floors. All construction shall comply with Board of Regents Cost Containment Guidelines, all applicable codes and regulations, and other such construction guidelines as appropriate. The overall Improvements shall contain laundry facilities, storage facilities, assembly facilities, furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of a university housing facility.

All future Improvements shall be described by amendment to the Lease and to this Exhibit "B".

FIRST AMENDATORY MASTER GROUND LEASE AGREEMENT (SERIES 1999 CERTIFICATES)

The Phase II Improvements of the University’s housing system shall be composed of a facility containing six (6) three-(3)-story buildings which shall house 280 single-bed spaces in apartment-style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas and appropriate personal storage areas. The facilities shall be multi-story construction using masonry exterior walls, stucco exterior, and poured slab floors. All construction shall comply with Board of Regents Cost Containment Guidelines, all applicable codes and regulations and other such guidelines as appropriate. The overall Improvements shall contain furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of a University housing facility.

SECOND AMENDATORY MASTER GROUND LEASE AGREEMENT (SERIES 2000 CERTIFICATES)

The 2000 Improvements (Phase III) of the University’s housing system shall be composed of a facility containing six (6) three-(3)-story buildings which shall house 280 single-bed spaces in apartment-style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas and appropriate personal storage areas. The facilities shall be multi-story construction using masonry exterior walls, stucco exterior, and poured slab floors. All construction shall comply with Board of Regents Cost Containment Guidelines, all applicable codes and regulations and other such guidelines as appropriate. The overall 2000 Improvements shall contain furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of a University housing facility.
THIRD AMENDATORY MASTER GROUND LEASE AGREEMENT
(SERIES 2002 CERTIFICATES)

The 2002 Improvements (Phase IV) of the University's housing system shall be composed of a facility containing six (6) three-(3)-story buildings which shall house 280 single-bed spaces in apartment-style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas and appropriate personal storage areas. The facilities shall be multi-story construction using masonry exterior walls, stucco exterior, and poured slab floors. All construction shall comply with Florida Board of Education Cost Containment Guidelines, all applicable codes and regulations and other such guidelines as appropriate. The overall 2002 Improvements shall contain furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of a University housing facility.
**Florida Gulf Coast University**

**Student Residences Phase IV**

**Project Budget**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financing/Closing/Issuance Costs</td>
<td>160,000</td>
</tr>
<tr>
<td>Net Interest</td>
<td>135,000</td>
</tr>
<tr>
<td>Permitting, Testing, Surveying</td>
<td>24,000</td>
</tr>
<tr>
<td>Professional Fees</td>
<td>541,000</td>
</tr>
<tr>
<td>Construction</td>
<td>6,290,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>690,000</td>
</tr>
<tr>
<td>Contingency</td>
<td>160,000</td>
</tr>
<tr>
<td><strong>TOTAL OF ALL ANTICIPATED COSTS</strong></td>
<td><strong>8,000,000</strong></td>
</tr>
</tbody>
</table>
EXHIBIT "D"

FURNISHINGS, DECORATIONS AND EQUIPMENT

On File With Florida Gulf Coast University
EXHIBIT "E"

THIRD AMENDATORY MASTER OPERATING LEASE

To be Filed With the Florida Gulf Coast University Board of Trustees
CONSENT OF CREDIT FACILITY PROVIDER

First Union National Bank, in its capacity as Credit Facility Provider, does hereby consent to the foregoing modifications to the Master Ground Lease Agreement pursuant to Section 7.28 of the Trust Indenture, dated as of September 1, 2000, between the Lessee and a trustee.

FIRST UNION NATIONAL BANK
Credit Facility Provider

By: ______________________________

Its:
A RESOLUTION REQUESTING THE FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC. (THE "FOUNDATION") TO ISSUE CERTIFICATES OF PARTICIPATION, SERIES 2002, EVIDENCING AN UNDIVIDED PROPORTIONATE INTEREST OF THE OWNERS THEREOF IN BASE RENT PAYMENTS TO BE MADE UNDER A MASTER OPERATING LEASE, IN AN AMOUNT NOT EXCEEDING $30,000,000 FOR THE FINANCING OF THE COSTS OF THE CONSTRUCTION OF A NEW 280-BED STUDENT RESIDENCE FACILITY (PHASE IV) ON THE CAMPUS OF FLORIDA GULF COAST UNIVERSITY BY THE FOUNDATION, A UNIVERSITY DIRECT SUPPORT ORGANIZATION, AND THE REFUNDING OF ALL OR A PORTION OF THE OUTSTANDING SERIES 2000 CERTIFICATES OF PARTICIPATION OF THE FOUNDATION; AND PROVIDING AN EFFECTIVE DATE.

The undersigned, being the duly acting and appointed Board of Trustees of Florida Gulf Coast University (the "Board of Trustees") at a meeting duly held pursuant to notice and a quorum being present, do hereby make the following resolutions:

WHEREAS, the Florida Board of Education (the “Florida Board”) succeeded the Board of Regents of the Divisions of Universities, of the Department of Education of the State of Florida (the “Board”) and assumed all of the Board’s powers duties, property, moneys and existing contracts, effective July 1, 2001; and

WHEREAS, the Florida Board has authorized the issuance by the Foundation of its Certificates of Participation, Series 2002 (the “Series 2002 Certificates”), in an aggregate principal amount not to exceed $30,000,000, payable solely from and secured by a pledge of the net revenues of the housing system of the University (the “Housing System Revenues to finance: (i) the construction of an addition to the housing system of the University consisting of a new 280 bed apartment style student residence facility (Phase IV) (the "2002 Improvements"), and (ii) the refunding of all or a portion of the outstanding Series 2000 Certificates of Participation (collectively, the “Prior Certificates”). The foregoing plan to finance the acquisition and construction of the 2002 Improvements and refunding of the Prior Certificates, is referred to herein as the “Financing Plan”; and

WHEREAS, the Florida Board has (i) authorized the execution and delivery of an amendment to the Master Ground Lease Agreement, dated as of August 1, 1997, as amended and supplemented by First and Second Amendatory Master Ground Lease Agreements, respectively dated as of August 1, 1999 and September 1, 2000, each by and between the Board, as predecessor to the Florida Board, acting on behalf of the University, and the Foundation, and by a Third Amendatory Master Ground Lease Agreement (the “Third Amendatory Master Ground Lease Agreement”), between the Florida Board and the Foundation, and has (ii) approved the an amendment to the Master Operating Lease, dated as of August 1, 1997, as amended and supplemented by First and Second Amendatory Master Ground Lease Agreements, respectively dated as of August 1, 1999 and September 1, 2000, each by and between the Foundation and the Board, as predecessor to the Florida Board, and by a Third Amendatory Master Operating Lease (the “Third Amendatory Master Operating Lease”), between the University Board and the Foundation (collectively, the “Financing Documents”); and

WHEREAS, the University Board desires to authorize the execution and delivery of (i)
Third Amendatory Master Operating Lease, as Lessee and (ii) an Assignment and Assumption Agreement, dated as of January 1, 2002.

BE IT RESOLVED:

Section 1. Approval of Financing Plan and Request to the Foundation. The Board of Trustees hereby approves the Financing Plan and requests the Foundation to consummate the transactions described in this resolution and the Financing Documents.

Section 2. Authorization of Third Amendatory Master Operating Lease. In order to provide for repayment of the Certificates issued to finance the 2002 Improvements, the University Board hereby authorizes the execution and delivery of the amendment of the Original Master Operating Lease through the delivery by the University Board of the Third Amendatory Master Operating Lease, in substantially the form attached hereto as Exhibit "A", with such changes, alterations and corrections as may be approved by the President of the University Board, such approval to be conclusively evidenced by the execution thereof by the President, are hereby approved by the University Board, and the University Board hereby authorizes and directs said President to execute, and the Secretary of the University Board to attest under the seal of the University Board, the Third Amendatory Master Operating Lease, all of the provisions of which, when executed and delivered by the University Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

Section 3. Authorization of Assignment and Assumption Agreement. The University Board hereby authorizes the assumption of all the rights, duties and obligations of the Florida Board under the Master Operating Lease in the manner set forth in the Assignment and Assumption Agreement, in the form attached hereto as Exhibit “B”. The University Board hereby authorizes and directs said President to execute, and the Secretary of the University Board to attest under the seal of the University Board, the Assignment and Assignment Agreement with such changes, alterations and corrections as may be approved by the President of the University Board, such approval to be conclusively evidenced by the execution thereof by the President, all of the provisions of which, when executed and delivered by the University Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

Section 4. Authorization of Further Actions Consistent Herewith. The President and such authorized officers of the University are hereby authorized and directed to do all acts and things required of them by this resolution, the Financing Documents, or desirable or consistent with the requirements thereof, for the full, punctual and complete performance of all the terms, covenants and agreements contained in the Certificates, the Financing Documents, and this resolution including execution of such documents, certificates, contracts and legal opinions, in such form and content as shall to the President or authorized officers executing the same seem necessary, desirable or appropriate.

Section 5. Repealing Clause. All resolutions of the Board of Trustees, or parts thereof, in conflict with the provisions herein contained, to the extent they conflict herewith, are, to the extent of such conflict, hereby superseded and repealed.

Section 6. Effective Date. This resolution shall become effective immediately upon passage.
CERTIFICATE OF THE SECRETARY

The undersigned, Corporate Secretary of the Board of Trustees of Florida Gulf Coast University, does hereby certify that the attached resolution is a true and accurate copy as adopted by the Board of Trustees of Florida Gulf Coast University on _________________, 2002.

BOARD OF TRUSTEES OF FLORIDA GULF COAST UNIVERSITY

By: ________________________________
Secretary
ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (herein called the "Agreement") is made and entered into this first day of _____________, 2002, by and between the FLORIDA BOARD OF EDUCATION, STATE OF FLORIDA, as the successor in interest to the Board of Regents of the Division of Universities, Department of Education of the State of Florida (the “Florida Board of Regents”) (herein called the “Assignor” or the "Board"), acting for and on behalf of the FLORIDA GULF COAST UNIVERSITY (herein called "University"), and the BOARD OF TRUSTEES OF FLORIDA GULF COAST UNIVERSITY (hereinafter referred to as the "Assignee").

Section 1. RECITALS.

(a) Florida Gulf Coast University Foundation, Inc. (the “Foundation”) has issued its $22,000,000 Certificates of Participation, Series 2000 (collectively the “Prior Certificates”) to finance the construction of the initial housing facilities projects (the “Phases I, II and III Projects”).

(b) To provide for the operation of the Phases I, II and III Projects and repayment of the Prior Certificates the Foundation, as Lessor, has leased its possessory interests in the Phases I, II and III Projects to the Florida Board of Regents, as Lessee, under the Master Operating Lease, dated as of August 1, 1999 and the Second Amendatory Operating Lease, dated as of September 1, 2000 (the “Master Operating Lease”). Assignor has agreed to assign to Assignee all of its rights, title, interest, duties and obligations under the Master Operating Lease.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 2. ASSIGNMENT AND ASSUMPTION. Assignor hereby assigns to Assignee, and the Assignee hereby assumes, all of Assignor's rights, title, interest, duties and obligations, as lessee under the Master Operating Lease as if the Master Operating Lease was originally executed and delivered by Assignee.

Section 3. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon Assignor and Assignee and their respective legal representatives, successors and permitted assigns and shall inure to the benefit of Assignor and Assignee and their legal representatives, successors and permitted assigns.

Section 4. COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5. MODIFICATIONS AND GOVERNING LAW. This Agreement shall not be modified or amended except by written instrument by the parties hereto and shall be governed by, and construed in accordance with, the laws of the State of Florida.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, either of which may be considered an original, the day and year first above written.

ASSIGNOR:

FLORIDA BOARD OF EDUCATION,
STATE OF FLORIDA for and on behalf of
FLORIDA GULF COAST UNIVERSITY

By: ____________________________
Chairman
(SEAL)

Attest:

By: ____________________________
Its: ____________________________

ASSIGNEE:

BOARD OF TRUSTEES OF THE
FLORIDA GULF COAST UNIVERSITY

By: ____________________________
President of the University on behalf
of the Assignee
(SEAL)

Attest:

By: ____________________________
Its: ____________________________
CONSENT OF FOUNDATION

The Florida Gulf Coast University Foundation, Inc., as Lessor under the Master Operating Lease, does hereby consent to the foregoing Assignment and Assumption Agreement.

FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC.

By: ____________________________
CONSENT OF CREDIT FACILITY PROVIDER

First Union National Bank, in its capacity as Credit Facility Provider for the Prior Certificates, does hereby consent to the foregoing Assignment and Assumption Agreement.

FIRST UNION NATIONAL BANK
Credit Facility Provider

By: ________________________________
   Its:

Housing Lease Assign and asumpt agree 14.D CB
ACKNOWLEDGE AND ACCEPTANCE OF TRUSTEE

First Union National Bank, in its capacity as Trustee and Assignee of the Master Operating Lease, does hereby acknowledge and accept the foregoing Assignment and Assumption Agreement.

FIRST UNION NATIONAL BANK
Trustee

By: _____________________________
Its:
THIRD AMENDATORY MASTER 
OPERATING LEASE

THIS THIRD AMENDATORY MASTER OPERATING LEASE (herein called the "Agreement") is made and entered into this first day of December, 2001 by and between the FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC., a Florida corporation not-for-profit having its principal place of business at 10501 FGCU Blvd. South, Fort Myers, Florida 33965-6565 (hereinafter referred to as the "Lessor") and the BOARD OF TRUSTEES OF FLORIDA GULF COAST UNIVERSITY (herein called the "Lessee" or the "University Board"), as successor by assignment from the FLORIDA BOARD OF EDUCATION, STATE OF FLORIDA (the "Florida Board"), acting for and on behalf of the FLORIDA GULF COAST UNIVERSITY (herein called "University"), successor in interest to the BOARD OF REGENTS OF THE STATE UNIVERSITY SYSTEM, STATE OF FLORIDA (the "Florida Board of Regents").

Section 1. RECITALS.

(a) This Agreement modifies the Master Operating Lease made and entered into August 1, 1997 (the "Master Operating Lease"), as amended and supplemented by the First Amendatory Master Operating Lease, dated as of August 1, 1999 and the Second Amendatory Operating Lease, dated as of September 1, 2000, each by and between the Lessor and the Florida Board of Regents, as predecessor to the Florida Board. Simultaneously with the execution and delivery of this Agreement, the Florida Board has assigned all of its rights, duties and obligations under the Master Operating Lease to the Lessee hereunder. Such parties hereby agree that the Master Operating Lease, except as modified herein, shall remain in full force and effect.

(b) The Lessor’s $22,000,000 Certificates of Participation, Series 2000 (the “Prior Certificates”) are currently outstanding.

(c) The Lessor intends to: (i) build an additional 280-bed student residence facility (Phase IV) (the "2001 Project"). (ii) to finance the same from the proceeds of Certificates of Participation, Series 2001 issued in the aggregate principal amount of $30,000,000 (the “Series 2002 Certificates”), and (iii) refund all or a portion of the outstanding Prior Certificates.

(d) The Lessor and Lessee have, by resolutions duly adopted on October ____ , 2001 and January 17, 2002, respectively, approved: (i) the construction of the 2002 Improvements (ii) the refunding of all or a portion of the outstanding Prior Certificates, and (iii) this Agreement.

(e) Simultaneously with the execution hereof, Lessee intends to enter into a modification of its Master Ground Lease Agreement, dated as of August 1, 1997, as amended and supplemented by the First Amendatory Master Ground Lease Agreement, dated as of August 1, 1999 and by the Second Amendatory Master Ground Lease Agreement, dated as of September 1, 2000, and as further amended and supplemented by a Third Amendatory Master Ground Lease Agreement (the “Third Amendatory Master Ground Lease”), dated as of December 1, 2001 (collectively, the “Master Ground Lease”) pursuant to which the land set aside for the construction of the 2002 Improvements shall be leased to the Lessor hereunder.

(f) All of Lessor’s interest in this Agreement and the Third Amendatory Ground Lease Agreement of even date herewith by and between the Lessor and the Lessee shall be assigned to a trustee under a Trust Indenture (the 'Trust Indenture') entered into by the Lessee with a trustee providing for the issuance (from time to time) of and security for the
Section 2. MASTER OPERATING LEASE MODIFICATION. The Master Operating Lease is hereby modified as follows:

(a) Definitions. Unless specifically set forth herein, the words set forth below shall have the following meanings as used herein and in the Master Operating Lease:

“Series 2002 Certificates” shall mean the Certificates of Participation, Series 2002, in the form attached hereto as Exhibit B, evidencing an undivided proportionate interest of the Owners thereof in Base Rent payments made hereunder, issued by the Lessor in the aggregate principal amount of $30,000,000.

“Certificates” shall include the Series 2002 Certificates and any Additional Parity Obligations.

“Related Financing Documents” shall mean all documents and certificates contained in the transcript for the Series 2002 Certificates or any Additional Parity Obligations, including any documents entered into in connection with any Credit Facility (as defined in a related Trust Indenture) as it may be amended (the “Reimbursement Agreement”).

(b) Improvements. All references to Improvements shall be deemed to include all prior projects, the 2002 Improvements, and any additional project from time to time included within the definition of the term Improvements pursuant to a written modification of the Master Operating Lease by Lessor and Lessee. The 2002 Improvements shall be as described in the Third Amendatory Master Ground Lease of even date herewith.

(c) Term. The term of the Master Operating Lease shall be extended until September 1, 2032 or (ii) the date on which all Certificates have been paid and canceled; unless sooner terminated as provided in the Master Ground Lease.

(d) Base Rent. Section 6(a) of the Master Operating Lease relating to the payment of Base Rent shall be amended in its entirety to read as follows:

During the term of this Agreement the Lessee agrees to pay to the Lessor all amounts due and payable under the Certificates. The Principal Component of the Base Rent shall be equal to the principal amount due on the Certificates. The Interest Component of the Base Rent shall be equal to the interest due on the Certificates. Base Rent shall additionally include (to the extent not included in the above) all amounts (including, without limitation all fees, expenses and indemnities) required to be paid to any person pursuant to the Related Financing Documents, payable at such times as such amounts (including amounts due on account of acceleration) as are required to be paid under such Related Financing Documents and/or other agreements relating to Indebtedness. The obligation of the Lessee to pay the sums provided for herein, to make all other payments provided for herein, and to perform and observe all other agreements and covenants on its part contained herein shall be absolute and unconditional, irrespective of any rights of setoff, recoupment or counterclaim which the Lessee may otherwise have against the Lessor. The Lessee will not suspend or discontinue any such
payment or fail to perform or observe any other agreements or covenants contained herein or terminate this Agreement so long as any part of the principal of and the interest on the Certificates or such other obligations remain outstanding and unpaid.

Section 3. APPLICABILITY OF MASTER OPERATING LEASE. Except as modified by this Agreement, the terms of the Master Operating Lease shall apply to the combined housing system facilities consisting of all prior improvements and the 2002 Improvements without further modification. The 2002 Improvements shall consist of a 280-bed student residence facility (Phase IV) and such other appurtenances as described in Exhibit B to the Third Amendatory Master Ground Lease. It shall be constructed in accordance with plans and specifications to be approved by the Lessor in accordance with a budget as set forth in Exhibit C to the Third Amendatory Master Ground Lease as soon as practicable after the execution of this Agreement. The requirements of the Master Ground Lease with respect to construction of all prior projects shall apply to construction of the 2002 Improvements.

Section 4. TERMINATION. Notwithstanding anything to the contrary in the Master Operating Lease (including any default by the Lessee), the Lessor agrees not to terminate this Agreement, as long as there remains unpaid any obligations of the Lessee under any outstanding Certificates pursuant to the terms of Indebtedness or any loan agreements, indentures or other documents relating thereto, or under any obligations issued in replacement thereof or substitution thereof, it being acknowledged that the continuing validity and enforceability of this Agreement may be essential to the collateral security for such obligations. The Lessor and the Lessee shall not terminate this Agreement or modify this Agreement in any manner that would impair or adversely affect the holders of any such obligations. The holders of such obligations shall be deemed to be third-party beneficiaries of this covenant. Notwithstanding the foregoing, this Agreement cannot extend beyond the term of the Lease Agreement, dated November 15, 1994 with the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida described in the Master Ground Lease.

Section 5. OBLIGATIONS LIMITED. The University Board’s obligation to make payments under this Agreement does not constitute a debt, liability or obligation of the University Board or of the State of Florida or any political subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any political subdivision thereof. Neither the Lessee nor the State shall be obligated or required to levy any ad valorem taxes on any property to pay the principal, premium, if any, or interest on the Certificates or to make payments under this Agreement except from the revenues pledged for the payment thereof, in the manner and on the conditions contained herein. Neither the Certificates nor this Agreement shall constitute a lien upon property owned by or situated with the territorial limits of the State of Florida.
IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed in duplicate, either of which may be considered an original, the day and year first above written.

LESSOR:

FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC.

By: ________________________________
    Assistant Treasurer

WITNESSES AS TO LESSEE:

________________________________________
Print Name:

________________________________________
Print Name:

LESSEE:

BOARD OF TRUSTEES OF FLORIDA GULF COAST UNIVERSITY acting for and on behalf of FLORIDA GULF COAST UNIVERSITY

By: ________________________________
    President of the University on behalf of the University Board

WITNESSES AS TO LESSOR:

________________________________________
Print Name:

________________________________________
Print Name:
EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

SUBJECT PARCEL

A PARCEL OF LAND LYING IN SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST ONE QUARTER CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST; THENCE N88°41'31"W, A DISTANCE OF 354.67 FEET; THENCE S14°12'35"E, A DISTANCE OF 1,348.50 FEET; THENCE N88°27'56"E, A DISTANCE OF 2,891.84 FEET; THENCE N47°45'12"E, A DISTANCE OF 1,504.15 FEET; THENCE N01°42'48"W, A DISTANCE OF 306.16 FEET; THENCE N88°17'12"E, A DISTANCE OF 927.78 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N88°17'12"E, A DISTANCE OF 100.00 FEET; THENCE N03°10'23"W, A DISTANCE OF 430.68 FEET; THENCE N89°01'42"E, A DISTANCE OF 450.44 FEET; THENCE S00°58'18"E, A DISTANCE OF 320.18 FEET; THENCE N88°44'00"E, A DISTANCE OF 1,787.18 FEET; THENCE S01°16'00"E, A DISTANCE OF 752.01 FEET; THENCE S59°05'40"W, A DISTANCE OF 480.98 FEET; THENCE N75°05'46"W, A DISTANCE OF 947.65 FEET; THENCE S65°52'39"W, A DISTANCE OF 487.08 FEET; THENCE N45°32'55"W, A DISTANCE OF 777.21 FEET; THENCE N01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.72 ACRES MORE OR LESS.
EXHIBIT "B"
SERIES 2002 CERTIFICATE

To be issued following action by Florida Gulf Coast University Board of Trustees
CONSENT OF CREDIT FACILITY PROVIDER

First Union National Bank, in its capacity as Credit Facility Provider, does hereby consent to the foregoing modifications to the Master Operating Lease pursuant to Section 7.28 of the Trust Indenture, dated as of September 1, 2000, between the Lessor and a trustee.

FIRST UNION NATIONAL BANK
Credit Facility Provider

By: ________________________________
   Its:

366822
Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: Student Housing Rental Rates

PROPOSED BOARD ACTION

Approve an increase in student housing rental rates, as described in the attached documentation.

BACKGROUND INFORMATION

Each university president is required to submit proposed student housing rental rates effective beginning July 1, 2002 to their board of trustees for adoption. The housing rental rates adopted by the board then are to be submitted to the Division of Colleges and Universities by April 1, 2002 for approval by the Chancellor. The attached proposal to increase FGCU student housing rental rates is submitted to the FGCU Board of Trustees for consideration.

Supporting Documentation Included: FGCU Student Housing Rental Rates Proposal

Committee Review: Finance & Administration Committee

Prepared by: Interim Dean of Student Affairs Joe Shepard

Submitted by: Vice President Curtis Bullock
Student Housing Rental Rates – Increase Proposal

Florida Gulf Coast University Housing and Residence Life is proposing a rate increase for the terms Summer 2002, Fall 2002 and Spring 2003. The on-campus rental rates have not been increased for two years. The cumulative CPI during that timeframe was 6.1%. After discussion and input from students living in Housing as represented by the student organization, Residents Housing Association, along with public hearings in the Housing Commons held October 15 and October 22, 2001, the university proposes the following rates:

- Summer 2002 double bedroom occupancy: $1,440
- Summer 2002 single bedroom occupancy: $1,780
- Fall 2002 double bedroom occupancy: $1,710
- Fall 2002 single bedroom occupancy: $2,110
- Spring 2003 double bedroom occupancy: $1,710
- Spring 2003 single bedroom occupancy: $2,110

Included is a chart showing the rate increase trends since the opening of Housing:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Double</td>
<td>$ 1,604</td>
<td>$ 1,604</td>
<td>$ 1,650</td>
<td>$ 1,650</td>
<td>$ 1,710</td>
</tr>
<tr>
<td>Variance of change</td>
<td>0.00%</td>
<td>2.87%</td>
<td>0.00%</td>
<td>3.64%</td>
<td></td>
</tr>
<tr>
<td>Single</td>
<td>$ 1,937</td>
<td>$ 1,937</td>
<td>$ 2,000</td>
<td>$ 2,000</td>
<td>$ 2,110</td>
</tr>
<tr>
<td>Variance of change</td>
<td>0.00%</td>
<td>3.25%</td>
<td>0.00%</td>
<td>5.50%</td>
<td></td>
</tr>
<tr>
<td>Consumer Price index</td>
<td>2.70%</td>
<td>3.40%</td>
<td>3.40%</td>
<td>3.40%</td>
<td></td>
</tr>
<tr>
<td>Cumulative CPI between rental increases</td>
<td>6.10%</td>
<td>3.40%</td>
<td>6.80%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Summer Double</td>
<td>$1,353</td>
<td>$1,353</td>
<td>$1,391</td>
<td>$1,440</td>
<td>$1,440</td>
</tr>
<tr>
<td>Summer Single</td>
<td>$1,634</td>
<td>$1,634</td>
<td>$1,690</td>
<td>$1,780</td>
<td>$1,780</td>
</tr>
</tbody>
</table>
Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: President’s Performance Accountability Measures

PROPOSED BOARD ACTION

Board determination.

BACKGROUND INFORMATION

Performance accountability measures for the FGCU president were presented to and approved by the Board at its October 25, 2001 meeting. One change was made to the measures as presented (Goal #1: Grow Student Enrollment was changed to 2,350 projected FTE for 2001-02). Trustee Linda Taylor asked that the item be placed on the agenda for the next Board meeting in case trustees recommend any additional revisions. The document as revised is presented for trustees’ review.

Supporting Documentation Included: President’s Performance Accountability Measures, as Revised October 25, 2001

Committee Review: N/A

Prepared by: President Bill Merwin

Submitted by: President Bill Merwin
FLORIDA GULF COAST UNIVERSITY

Performance Measures for
July 1, 2001 – Fall 2002

President Bill Merwin
1. GOAL: Grow Student Enrollment

A. Fall Term Headcount:

<table>
<thead>
<tr>
<th></th>
<th>Fall 2001</th>
<th>Fall 2002</th>
<th>(Projected)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>4238</td>
<td>4747</td>
<td>12% increase</td>
</tr>
</tbody>
</table>

(Continued)
1. GOAL: Grow Student Enrollment (Cont.)

B. Full-Time Equivalent:

2001-02 Projection
2350
2. **GOAL: Diversify Student Enrollment**

### A. Students of Color:

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>Projected</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>593</td>
<td>664</td>
<td>12% increase</td>
</tr>
</tbody>
</table>

### B. International Students:

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>228</td>
<td>235</td>
<td>3% increase</td>
</tr>
</tbody>
</table>
3. GOAL: Increase Number of Undergraduate & Graduate Degrees Awarded

<table>
<thead>
<tr>
<th>Degree</th>
<th>2000-2001</th>
<th>2001-2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor:</td>
<td>434</td>
<td>486</td>
</tr>
<tr>
<td>Masters:</td>
<td>186</td>
<td>208</td>
</tr>
<tr>
<td>Total:</td>
<td>620</td>
<td>694</td>
</tr>
</tbody>
</table>

12% Increase
4. GOAL: Improve Freshman to Sophomore Retention Rates

<table>
<thead>
<tr>
<th></th>
<th>Fall 2001</th>
<th>Fall 2002</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>68%</td>
<td>69%</td>
<td>1%</td>
</tr>
</tbody>
</table>
5. GOAL: Build New Facilities on Campus

- Gymnasium – Fall 2002 (Completion)
- Student Center – Fall 2002
- Art and Music Building – Fall 2002
- Aquatics Center – Fall 2002
- Sugden Welcome Center – Fall 2002
- Green Building – Fall 2002
- Library Expansion – Summer 2004
6. GOAL: Increase Non-State Funding Support

A. Sponsored Research Funds:

2000-2001: $6.2 Million (141 Proposals)
2001-2002: $7.0 Million 15% Increase

B. Private Contributions & Gifts:

2000-2001: $12 Million
2001-2002: $12 Million
7. GOAL: Increase/Improve Academic/Community Outreach

- With Edison Community College & local school districts explore expanding secondary education degrees in areas of critical need.
- Explore an academic research relationship with Naples Botanical Garden.
- Launch the Naples Center.
- Increase memberships and participation in the Renaissance Academy.
- Launch a Center for Civic Engagement through community partnerships.
- Launch a Center for Health Education with private funds matched by state.
8. GOAL: Develop Research Park

- Secure land and associated infrastructure funding for a research, development, business & technology park near FGCU campus.
9. GOAL: Develop Environmental Program

- Develop a five-year plan for campus environmental programs, practices & policies.
10. GOAL: Launch New Intercollegiate Athletics Programs

- Successfully launch new intercollegiate athletic programs for men and women in basketball, softball, baseball and cross country.
11. GOAL: Balance the Budget

- End with a balanced budget June 30, 2002.
12. GOAL: Alliance of Educational Leaders

- The Alliance of Educational Leaders working in partnership with regional economic development councils and Southwest Florida Workforce Development Board will (a) conduct a major Summit III meeting to develop a common vision, mission and new term goals to accomplish regional workforce objectives, and (b) complete the interactive Internet website for The Alliance of Educational Leaders.
13. GOAL: Complete Educational Governance Transition

- Complete the education governance transition by developing a fully functioning FGCU Board of Trustees.
Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: President’s Performance Evaluation Process, and President’s Employment Contract

PROPOSED BOARD ACTION

Consider Board Chair’s Recommendation for assistance from Dr. James Koch for developing an evaluation process for the university president’s performance, and developing an employment contract for the university president.

BACKGROUND INFORMATION

Florida law requires university boards of trustees to conduct performance evaluations of university presidents in their role as chief executive officers of the institutions. In addition, university boards are responsible for the employment of the university president, including hiring, firing, compensating, etc. With the advent of a new governing board for FGCU, these two items need to be developed and implemented through Board consensus. At the request of FGCU Board Chair Scott Lutgert, Board consultant Dr. James Koch has outlined a recommended scope of services to accomplish these tasks. In addition, Board attorney Guy Whitesman has providing a legal opinion regarding the use of a consultant to assist with the process for evaluating the university president. These items are presented for trustees’ review and consideration.

Supporting Documentation Included: (1) Memo from Scott Lutgert to Trustees, with Attachments

Committee Review: N/A

Prepared by: Board Chair Scott Lutgert, Board Attorney Guy Whitesman, Board Consultant Dr. James Koch, and Susan Evans, Office of the President

Submitted by: Vice President Curtis Bullock
MEMORANDUM

TO: FGCU Board of Trustees
FROM: Scott Lutgert
DATE: January 2, 2002

SUBJECT: University President’s Performance Evaluation Process, and Employment Contract

The legislation that created boards of trustees for Florida’s state universities specifies powers and duties of the boards with respect to the university president. As members of the FGCU Board of Trustees, we have this responsibility, which is specified in Chapter 229.0081(2)(a)(b)(c)(d) as:

(2) Notwithstanding the provisions of chapter 240, each university board of trustees may adopt rules and policies consistent with the university mission, with law, and with rule of the Florida Board of Education, including rules and policies for the following:

(a) Selecting the president to serve at the pleasure of the board and perform such duties as are assigned by the board or otherwise provided by law or by rule.

(b) Fixing the compensation and other conditions of employment of the president.

(c) Conducting periodic evaluations of the president, submitting such evaluations to the Chancellor for review, and suspending or removing the president in accordance with guidelines established by the Chancellor.

(d) Appointing a presidential search committee to make recommendations to the full board of trustees, from which the board shall select a candidate for reference to the Chancellor and ratification by the Florida Board of Education.

FGCU Board consultant Dr. Jim Koch has wide experience in presidential evaluation, employment contracts and compensation. Because of this, I have asked him to outline a suggested scope of services to assist us with developing the processes we will use to carry out our responsibilities with respect to the university president, and also to propose how he could further assist us with the
evaluation itself. Dr. Koch is under University retainer for assistance with the FGCU Board of Trustees, and the proposed scope of services described here would be covered under his current contract, with no additional expenses incurred.

We have obtained from Board attorney Guy Whitesman a legal opinion regarding the use of a consultant with the presidential evaluation process, and this information is attached along with a memo from Dr. Koch. Although Dr. Koch is unable to attend our January 17 meeting due to a scheduling conflict, I have placed this item on our agenda for the Board's consideration.

I believe that Dr. Koch's assistance would be very valuable as we develop and implement these important mechanisms for which we are legally responsible, and I look forward to talking with you about this during our meeting in January. Thank you.

Attachments
MEMORANDUM

TO: FGCU Board of Trustees Chair Scott Lutgert
FROM: Dr. James Koch
DATE: December 18, 2001
SUBJECT: University President’s Performance Evaluation Process, and Employment Contract

Few duties of the FGCU Board of Trustees are more important than the evaluation of the FGCU President and the negotiation of the President’s contract. It seems likely that the Board could benefit from assistance in both of these areas. Only a few college boards have the time and knowledge to undertake a valid evaluation of their president and even fewer have the background and expertise to propose an appropriate contract with their president that will meet the board’s goals. My proposed role in both of these areas will be to provide assistance, recognizing that any and all decisions concerning President Merwin’s performance and contract are the exclusive province of the FGCU Board. I propose to function as:

- A knowledgeable resource and source of background information for the Board
- The individual who as necessary will take the time to talk individually to Board members and other interested parties concerning President Merwin’s evaluation and contract
- The person who will summarize information and inform the Board of what I believe its best of action might be in light of my findings.

It will then be up to the Board at its discretion to take any actions it deems necessary.

President Merwin’s Annual Evaluation

While I believe the Board should commission a comprehensive, thorough, and complete evaluation of the entire institution (and its President) every four to five years, it also must evaluate the President annually. To assist the FGCU Board in this regard, I will:

- Talk individually with each member of the Board concerning President Merwin’s performance
January 7, 2002

VIA E-MAIL: sevans@fgcu.edu
and FIRST CLASS MAIL

Susan Evans
Florida Gulf Coast University Foundation, Inc.
10501 FGCU Boulevard South
Fort Myers, FL 33965-6565

Re: Board of Trustee's Use of Consultants to Evaluate President

Dear Susan:

Please find enclosed a memorandum by Jennifer L. Kratochvil, Esquire of our office addressing the issue you posed as to whether a consultant could conduct a performance evaluation of the President and whether those notes or reports are subject to disclosure.

After you have had an opportunity to the review the memo, please let me know if you have any questions or comments.

Very truly yours,

Guy E. Whitesman

GEW/tts
Enclosure
cc: Jennifer L. Kratochvil, Esquire
MEMORANDUM

January 7, 2002

TO: Guy E. Whitesman, Esquire

FROM: Jennifer L. Kratochvil, Esquire

RE: Florida Gulf Coast University Board of Trustees' Use of Consultants to Evaluate President

Issues Presented: Whether Florida Gulf Coast University's ("FGCU") Board of Trustees ("BOT") can utilize an outside consultant to conduct a performance evaluation of the President and whether the consultant's performance evaluation notes or reports are subject to disclosure under Florida's Government in the Sunshine Law (" Sunshine Law").

Brief Answer: Florida Stat. § 229.0081(1)(c), (2001), expressly requires the BOT to conduct "periodic evaluations of the President." The statute places the sole responsibility for the President's performance evaluation with the BOT. As such, the BOT cannot delegate this decision-making authority. However, the BOT can utilize consultants, staff, and personnel for the purpose of "fact-finding" to assist the BOT in the execution of this non-delegable duty. Fact-finding is defined in the case law as investigating and gathering the necessary information, while decision-making is defined as the authority to screen, interview, and make recommendations. See Wood v. Marston, 442 So.2d 934 (Fla. 1983). The act of ranking candidates is also considered a decision-making function. See Silver Express Co. v. District Board of Tribal Trustees of Miami-Dade Community College, 691 So.2d 1099 (Fla. 3d DCA 1997).

Furthermore, the consultant's notes and reports as well as the President's performance evaluations are public records and therefore, subject to disclosure under the Sunshine Law. See AGO 97-23 (April 15, 1997).

Discussion: As the court commented in Bennett v. Warden, 333 So.2d 97 (Fla. 2d DCA 1976), "...frequent and unpublicized meetings between an executive officer and advisers, consultants, staff or personnel under his direction, for the purpose of "fact-finding" to assist him in the execution of those duties are not meetings within the contemplation of the Sunshine Law." emphasis added. The court continued by stating that, "It would be unrealistic, indeed intolerable, to require of such professionals that every meeting, every contact, and every discussion with anyone from whom they would seek counsel or consultation to assist in acquiring the necessary information, data, or intelligence needed to advise or guide the authority by whom they are employed, be a public meeting within the disciplines of the Sunshine Law. Neither the letter nor the spirit of the law require it."

The Sunshine Law prohibits the use of consultants, staff, committee, or other personnel if the fact-finding function is combined with the ability for decision-making. For example, in Wood v. Marston, 442 So.2d 934 (Fla. 1983), the Florida Supreme Court held that a "search-and-screen"
committee established by the University's President for the purpose of soliciting and selecting applicants to fill the vacant position of dean of the law school was prohibited because the committee served both fact-finding and decision-making functions.

Fact-finding is defined in the case law as investigating and gathering the necessary information, while decision-making is defined as the authority to screen, interview, and make recommendations. See Wood v. Marston. The act of ranking candidates is also considered a decision-making function. See Silver Express Co. v. District Board of Tribunal Trustees of Miami-Dade Community College, 691 So.2d 1099 (Fla. 3d DCA 1997).

The Attorney General has specifically opined in AGO 97-23 (April 15, 1997), that the written comments and performance memoranda prepared by individual board members regarding an appointed school superintendent and the summation evaluation prepared by the board are subject to the Sunshine Law. The opinion states that where the board has the "sole authority and responsibility to remove its employed superintendent who is subject to the direction, hiring and firing by the employing authority" the evaluations must be disclosed as public records. See also AGO 89-37 (June 9, 1989)(holding that the Sunshine Law applies to meetings of the board of county commissioners conducting job evaluations of county employees that serve at the board's discretion). Furthermore, the statutory exemption for employee evaluation records is inapplicable to the written comments of each board member evaluating the appointed superintendent, as well as the "summative evaluation" prepared by the board. See e.g., Fla. Stat. § 240.253(a), (2001). However, the use of an informational report by one member to inform other board members of a subject that would be discussed at a public meeting does not violate the Sunshine Law, if prior to the meeting there is no interaction related to the report among the board members.

Note that the Attorney General in AGO 93-90 (December 13, 1993) as quoted in AGO 97-23 (April 15, 1997), specifically concluded that "...where a board is responsible for assessing the performance of its chief executive officer (CEO), it may not use a proceeding in which the individual board members evaluate the CEO and such individual written comments, which are sent to the board chairman for compilation, constitute (sic) the board's evaluation."

Accordingly, an individual board member may meet with the CEO to discuss the board member's written comments and written performance evaluation of the CEO, which are public records, without violating the Sunshine Law, when such evaluation does not become the board's evaluation until all the evaluations are compiled and discussed at a public meeting by the board for adoption by the board. See AGO 97-23 (April 15, 1997).

**Conclusion:** The BOT can utilize consultants to perform "fact-finding" functions, such as performance evaluations of the President, as long as the BOT refrains from delegating any of its decision-making authority. A consultant is limited to gathering information, data, or other material necessary for the BOT to evaluate the President. A consultant may not rank or screen the President as established by the case law. The consultant's reports or other performance evaluation memoranda constitute public records under the Sunshine Law and are therefore subject to disclosure. Furthermore, the President's performance evaluations are not exempt from disclosure.
Note: This memorandum should be read in light of the opinion written by Guy Whitesman dated October 31, 2001, that outlines the necessary background information of Florida's Sunshine Law.
Florida Gulf Coast University Board of Trustees
January 17, 2002

SUBJECT: Resolution in Memory of Jetta Glover

PROPOSED BOARD ACTION

Approve resolution in memory of FGCU employee Jetta Glover, who died in December 2001.

BACKGROUND INFORMATION

FGCU employee Jetta Glover served as the University’s minority business enterprise consultant and staff member since July 1997. Her untimely passing in December prompted a suggestion for a Board resolution in memory of and appreciation for her years of service to FGCU and to the minority business community. A draft resolution is provided for the Board’s adoption consideration.

Supporting Documentation Included: Resolution of the FGCU Board of Trustees in Memory of Jetta Glover

Committee Review: N/A

Prepared by: Susan Evans, Office of the President

Submitted by: President Bill Merwin
A Resolution of the
Florida Gulf Coast University Board of Trustees

WHEREAS, Jetta Glover served with distinction as a minority business enterprise consultant and staff member for Florida Gulf Coast University since its early days in 1997; and

WHEREAS, Jetta was a tireless and passionate advocate for improving opportunities for minority and disadvantaged businesses; and

WHEREAS, Jetta’s professionalism and dedication were highly regarded not only within the University, but also throughout Lee County and the State of Florida; and

WHEREAS, Jetta’s untimely passing at age 38 leaves a void in the lives of her husband and children, other family members, friends, professional colleagues, and many other individuals whose lives also were enriched by hers;

NOW, THEREFORE BE IT RESOLVED that the Florida Gulf Coast University Board of Trustees wishes to express great respect and appreciation for Jetta Glover’s service, and wishes to recognize an especially meaningful life marked by commitment and advocacy for others that were an inspiration to all who knew her.

DULY ADOPTED THIS 17th DAY OF JANUARY IN THE YEAR 2002.

SIGNED:

______________________________________________
Scott F. Lutgert, Chair
Florida Gulf Coast University Board of Trustees