ITEM: 5

Florida Gulf Coast University Board of Trustees
April 10, 2003

SUBJECT: Certification of a New Direct Support Organization (DSO) of Florida Gulf Coast University.

PROPOSED BOARD ACTION

Certify the Florida Gulf Coast University Financing Corporation as a direct support organization, approve the Articles of Incorporation and Bylaws, and authorize the President or designee to file the Articles of Incorporation with the Secretary of State.

BACKGROUND INFORMATION

FGCU is requesting the certification of a new direct support organization to be known as the Florida Gulf Coast University Financing Corporation. The DSO will finance current and future needs of FGCU such as student housing, parking facilities, research facilities, and/or other improvements. The new DSO will combine University revenue streams such as housing, parking, telephones, copies, contract & grant overhead etc. under one umbrella for debt issuing purposes. The new DSO will issue general obligation debt or guarantees to replace or enhance debt backed by a single revenue stream (housing). The new DSO Board of Directors will be composed of five to seven directors to include two University Foundation Board members, one University Board of Trustee member and two University staff members (one of which will be the University President who will monitor the day-to-day operation of the DSO).

Existing University Foundation student housing liabilities and assets will be transferred to the new DSO. University Foundation restricted revenues and assets will not be included in the debt umbrella, however University Foundation unrestricted revenues will be included. The FGCU Foundation has approved the transfer of the student housing assets and liabilities and the inclusion of Foundation unrestricted revenues in the debt umbrella, contingent upon this Board’s approval.
Supporting Documentation Included: (1) PowerPoint Presentation; (2) Legal Authority for Direct Support Organizations; (3) University Foundation Minutes of March 12, 2003; (4) Articles of Incorporation for the New DSO, and (5) Bylaws of the New DSO.

Prepared by: Curtis Bullock, Vice President for Administrative Services

Legal Review by: Wendy Morris, General Counsel  (March 18, 2003)

Submitted by: Curtis Bullock, Vice President for Administrative Services
Legal Authority for Direct Support Organizations.

1001.74. Powers and duties of university boards of trustees

* * *

(37) Each board of trustees shall prescribe conditions for direct-support organizations and university health services support organizations to be certified and to use university property and services. Conditions relating to certification must provide for audit review and oversight by the board of trustees.

1004.28. Direct-support organizations; use of property; board of directors; activities; audit; facilities

(1) Definitions.--For the purposes of this section:
   (a) "University direct-support organization" means an organization which is:
      1. A Florida corporation not for profit incorporated under the provisions of chapter 617 and approved by the Department of State.
      2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159.
      3. An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.
   (b) "Personal services" includes full-time or part-time personnel as well as payroll processing.

(2) Use of property.--
   (a) Each state university board of trustees is authorized to permit the use of property, facilities, and personal services at any state university by any university direct-support organization, and, subject to the provisions of this section, direct-support organizations may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218.
   (b) The board of trustees shall prescribe by rule conditions with which a university direct-support organization must comply in order to use property, facilities, or personal services at any state university. Such rules shall provide for budget and audit review and oversight by the board of trustees.
   (c) The board of trustees shall not permit the use of property, facilities, or personal services at any state university by any university direct-support organization that does not provide equal employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(3) Board of directors.--The chair of the university board of trustees may appoint a representative to the board of directors and the executive committee of any direct-support organization established under this section. The president of the university for which the direct-support organization is established, or his or her designee, shall also serve on the board of directors and the executive committee of any direct-support organization established to benefit that university.

(4) Activities; restriction.--A university direct-support organization is prohibited from giving, either directly or indirectly, any gift to a political committee or committee of continuous existence as defined in s. 106.011 for any purpose other than those certified by a majority roll call vote of the governing board of the direct-support organization at a regularly scheduled meeting as being directly related to the educational mission of the university.

(5) Annual audit.--Each direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and by the university board of trustees. The annual audit report shall be submitted, within 9 months after the end of the fiscal year, to the Auditor
General and the State Board of Education for review. The State Board of Education, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall have the authority to require and receive from the organization or from its independent auditor any records relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report. All records of the organization other than the auditor's report, management letter, and any supplemental data requested by the State Board of Education, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from the provisions of s. 119.07(1).

(6) Facilities.--In addition to issuance of indebtedness pursuant to s. 1010.60(2), each direct-support organization is authorized to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the university, as determined by the systemwide strategic plan adopted by the State Board of Education. Such agreements are subject to the provisions of s. 1013.171.

(7) Annual budgets and reports.--Each direct-support organization shall submit to the university president and the State Board of Education its federal Internal Revenue Service Application for Recognition of Exemption form (Form 1023) and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form (Form 990).

1010.34. Audits of direct-support organizations

Audits of school district, community college, and state university direct-support organizations are subject to the audit provisions of ss. 1001.453(4), 1004.28(5), and 1004.70(6), as applicable.

6C10-1.005 Florida Gulf Coast University; Direct Support Organizations

(1) The President shall recommend to the Florida Gulf Coast University Board of Trustees that an organization meeting the requirements of Section 1004.28, F.S., be certified as a Florida Gulf Coast University Direct Support Organization (“DSO”).

(2) To be considered for certification, the Articles of Incorporation and Bylaws of the proposed DSO together must provide:

(a) The DSO is a Florida not for profit corporation under the provisions of Chapter 617, FS, or the DSO will, upon certification by the Board of Trustees, file for such incorporation with the Department of State.

(b) Any person employed by the DSO shall not be considered to be an employee of the University by virtue of employment by the DSO.

(c) The chief executive officer or director of the DSO shall be selected by the President and shall report to the President or a designee reporting directly to the President.

(d) Any amendments to the Articles of Incorporation or Bylaws shall be submitted by the President to the Board of Trustees for approval prior to becoming effective.

(e) The President or designee shall have the following powers and duties:

1. Monitor and control the use of University resources by the DSO.
2. Control the use of the University name by the DSO.
3. Monitor compliance of the DSO with federal and state laws.
4. Recommend to the governing board of the DSO an annual budget.
5. Review and approve quarterly expenditure plans.
6. Approve contributions of funds or supplements to support intercollegiate athletics.

(3) Upon approval by the Board of Trustees, a DSO is certified and authorized to use the property, facilities and personal services of the University, to receive, hold, invest or administer assets or property and to make expenditures for the benefit of the University. A DSO is further authorized to issue revenue bonds or other forms of Indebtedness upon approval of the Board of Trustees in accordance with Section 1010.60, FS, and to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of
the University.

(4) The Chair of the Board of Trustees shall appoint a representative to the
governing body and the executive committee of each DSO. The President or designee shall also serve on
the governing body and executive committee of each DSO.

(5) Each DSO shall prepare and submit to the President or designee no later than
the first day of each quarter of the organization’s fiscal year a quarterly expenditure plan that delineates
planned actions which would cause a commitment of University resources or represent a significant
commitment of the resources of the DSO, including:
1. Major fund raising events and campaigns and their purpose.
2. Compensation and benefits to University employees and employees of the organization.
3. Capital projects, including land acquisition, construction, renovation or repair.
4. Other major commitments of the resources of the organization.

(6) Each DSO shall conduct its financial operation observing a fiscal year ending on June 30 of each
year and shall cause a financial audit of its accounts and records to be conducted by an
independent certified public accountant after the close of each fiscal year as follows.
1. Audits shall be conducted pursuant to Section 1004.28, F.S. and in accordance with rules
   adopted by the Auditor General pursuant to Section 11.45, F.S.
2. The President of the University shall submit the annual audit report to the Board of Trustees
   and the Auditor General within nine months after the end of the fiscal year.

(7) The President of the University shall recommend to the Board of Trustees
that a DSO be decertified if the President determines that the organization is no longer serving the best
interests of the University. The recommendation for decertification shall include a plan for disposition of
the organization’s assets and liabilities.

Specific Authority 1001.74(4), 1004.28(2) FS.
Law Implemented 1001.74(37), 1004.28 FS.
History--New ________
ARTICLES OF INCORPORATION
OF
FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION

The undersigned, acting as incorporator of a corporation pursuant to Chapter 617, Florida Statutes, adopts the following Articles of Incorporation:

ARTICLE I-NAME

The name of the Corporation is Florida Gulf Coast University Financing Corporation.

ARTICLE II-PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS

The address of the Corporation's principal office is 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565.

ARTICLE III-PURPOSES

The specific purposes for which this Corporation is organized are:

(a) To exist and operate solely for scientific, educational, religious and charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (the "Code") and no part of the income or assets of this Corporation shall be distributed to, nor inure to the benefit of, any individual;

(b) To operate without regard to race, age, religion, sex or national origin;

(c) To be organized and operated as a University direct-support organization, as defined in Section 1004.28 of the Florida Statutes, as may be amended or supplemented;

(d) To receive, hold, invest and administer property and to make expenditures to or for the exclusive benefit of (i) Florida Gulf Coast University (the "University"), a member of the state university system of the State of Florida, or (ii) a research and development park or research and development authority affiliated with the University and organized under part V of Chapter 159 of the Florida Statutes.

(e) To exercise all the powers enumerated in Section 617, Florida Statutes, as it now exists or is subsequently amended or superseded, and to do and perform such acts and to have such powers as shall be desirable and necessary in furtherance of any of the powers herein above enumerated which are not in derogation of the laws of the State of Florida;
To carry out its functions such that no substantial part of the Corporation's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office; and

To operate, participate in or manage any other programs or activities that are not prohibited by law and that do not conflict with the provisions of Section 501(c)(3) of the Code.

ARTICLE IV-POWERS

The Corporation shall have and exercise all powers of a corporation not for profit as the same now exist or may hereinafter exist under the laws of the State of Florida. No part of the assets, income or profits of the Corporation shall be distributable to, or inure to the benefit of, its members, directors or officers or any private individual, except that the Corporation shall be authorized and empowered to pay reasonable compensation to its employees for services rendered and to make payments and distributions in the furtherance of the purposes set forth herein. Notwithstanding any other provision hereof, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt from federal income taxation under Section 501(c)(3) of the Code or by an organization, contributions to which are deductible under Section 170 of the Code.

Upon certification as a direct support organization by The Florida Gulf Coast University Board of Trustees (the "Board of Trustees"), the Corporation shall be authorized to use the property, facilities and personal services of the University, to receive, hold, invest or administer assets or property and to make expenditures for the benefit of the University. The Corporation further shall be authorized to issue revenue bonds, certificates of participation or other forms of indebtedness upon approval of the Board of Trustees and in accordance with the applicable laws of the State of Florida, and to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the University.

ARTICLE V-MEMBERS

The Corporation shall have no Members.

ARTICLE VI
DIRECTORS AND THE MANNER OF ELECTION OF DIRECTORS

The Corporation shall be managed by or under the direction of a Board of Directors. At all times, there shall be at least five but no more than seven members of the Board of Directors. The Board of Directors shall carry out the purposes of the Corporation in compliance with these Articles
of Incorporation and the Corporation’s Bylaws. The method of appointment or election of directors shall be as stated in the Bylaws of this Corporation.

ARTICLE VII-DISSOLUTION

In the event of dissolution of the Corporation, the winding up of its affairs, the decertification of the Corporation as a direct support organization by the Board of Trustees of the University, or other liquidation of its assets, the Corporation's property shall not be conveyed to any organization created or operated for profit or to any individual, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed at the direction of the then Directors of the Corporation to The Florida Gulf Coast University Board of Trustees, or if such organization has ceased to exist, to Florida Gulf Coast University, or if such organization has ceased to exist, to such other organization or organizations that are exempt from federal income tax under Section 501(c)(3) of the Code as directed by the Board of Governors of the State of Florida.

ARTICLE VIII-AMENDMENT

The Board of Directors of the Corporation may amend, alter or repeal any provision of these Articles of Incorporation in the manner now or hereinafter provided by Florida law; provided, however, that amendments shall not become effective until approved by the Board of Trustees after submission to them by the President of the University.

ARTICLE IX- INITIAL REGISTERED AGENT AND STREET ADDRESS

The name and the street address of the initial registered agent are Curtis D. Bullock, 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565.

ARTICLE X - INCORPORATOR

The name and street address of the incorporator for these Articles of Incorporation are Richard E. Klein, 225 Water Street, Suite 1800, Jacksonville, Florida 32202.

ARTICLE XI - INDEMNIFICATION

Directors, officers, employees and agents of the Corporation shall be indemnified to the full extent permitted by Florida law.
BYLAWS

OF

FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION

Effective _____________, 2003
# BYLAWS

## OF

### FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION

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BYLAWS
OF
FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION

ARTICLE 1
NAME

The name of the Corporation shall be Florida Gulf Coast University Financing Corporation, a Florida not for profit corporation (the “Corporation”). The Corporation shall maintain a registered office in the State of Florida and a registered agent at such office and may have other offices within or without the state.

ARTICLE 2
MEMBERS

The Corporation shall have no Members.

ARTICLE 3
BOARD OF DIRECTORS

SECTION 3.1 General Powers. The business, property, affairs and funds of the Corporation shall be managed, supervised and controlled by its Board of Directors subject only to applicable law and the limitations contained in the Articles of Incorporation of the Corporation and these Bylaws and the powers and duties reserved to The Florida Gulf Coast University Board of Trustees (the “Board of Trustees”) and the President of Florida Gulf University (the “University”) or his or her designee in regards to this Corporation. The Board of Directors shall have the authority to adopt policy for the Corporation, consistent with the Articles of Incorporation of the Corporation and these Bylaws.

SECTION 3.2 Reserved Powers. The President of the University or his or her designee shall have the following specific powers and duties with regard to this Corporation:

(a) To monitor and control the use of the University’s resources by this Corporation;
(b) To control the use of the University name by this Corporation;
(c) To monitor compliance of this Corporation with federal and state laws;
(d) To recommend an annual budget to the Board of Directors of this Corporation;
(e) To review and approve quarterly expenditure plans of this Corporation; and

(f) To approve the contribution of funds or supplements to support intercollegiate athletics.

SECTION 3.3 Number. The Board of Directors of the Corporation shall consist of at least five but no more than seven directors.

SECTION 3.4 Appointment of Directors and Tenure. The directors of the Corporation shall be appointed in the following manner:

1. One director shall be appointed by the Chair of the Board of Trustees;
2. One director shall be the President of the University or his or her designee;
3. One director shall be appointed by the President of the University (in addition to (2) above);
4. Two directors shall be appointed by the Chair of the Florida Gulf Coast University Foundation, Inc., a Florida not for profit corporation (the “Foundation”); and
5. Up to two additional directors may be elected at the annual meeting of the Board of Directors by the then current members of the Board of Directors.

Terms of office of the members of the Board of Directors shall be four years in length. A director shall not be eligible to serve more than two consecutive terms. A director who has served two terms consecutively may be re-appointed or re-elected to the Board of Directors after the expiration of one-year following the end of his or her last previous term and will have the status of a new member. Notwithstanding the foregoing, the President of the University or his or her designee and the director appointed by the President of the University pursuant to Section 3.4(3) above, shall serve until the earlier of his or her resignation, removal from office or death. A vacancy on the Board of Directors with respect to elected members may be filled by a vote of the remaining directors at their sole and absolute discretion, however, the Chair of the Board of Trustees, the President of the University, and the Foundation shall designate replacements for the directors appointed by them. If a director is appointed to fill a vacancy before the end of the term of their predecessor, such director shall serve for the remainder of the term of the director being replaced.

SECTION 3.5 Removal of Directors. A director may resign at any time by submitting a written resignation to the Chairperson and the Executive Director. Any director, other than the director appointed by the Chair of the Board of Trustees or the President of the University or his or her designee, may be removed from the Board of Directors at any time with or without cause by a two-thirds vote of the Board of Directors.
SECTION 3.6 Conflicts and Duality of Interest. No contract or other transaction between the Corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the Board of Directors or a committee thereof that authorized, approved or ratified such contract or transaction, or because his or their votes are counted for such purpose, if the contract or transaction is approved in compliance with the provisions of Section 617.0832 of the Florida Not For Profit Corporation Act, or any successor provision.

SECTION 3.7 Conflict of Interest Policy. The Board of Directors shall adopt and keep in full force and effect a substantial conflict of interest policy for its directors and principal officers in accordance with rules and regulations of the Internal Revenue Service applicable to tax exempt organizations.

SECTION 3.8 Directors' Meetings. An annual meeting of the Board of Directors shall be held within the State of Florida. Regular meetings of the Board of Directors may be held, with or without notice, at such time and place as from time to time shall be determined by the Chairperson of the Board or by the Executive Director. Special meetings of the Board of Directors may be called by the Chairperson of the Board or the Executive Director or Secretary of the Corporation or any two directors. Unless waived as provided by statute, written notice of the time and place of special meetings of the Board of Directors shall be given to each director either by personal delivery or by mail, facsimile, telegram or email at least three days before the meeting.

At all meetings of the Board of Directors, the presence of a majority of the total number of directors shall be necessary and sufficient to constitute a quorum for the transaction of business. Unless otherwise required by the Articles of Incorporation, these Bylaws or Florida Statutes, the act of a majority of the directors present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present for the transaction of business.
ARTICLE 4
OFFICERS

SECTION 4.1 Officers. The officers of this Corporation shall be a Chairperson, an Executive Director, a Secretary, a Treasurer and such other officers as may be determined by the Board of Directors. Only members of the Board of Directors of the Corporation may be appointed or elected as an officer of the Corporation pursuant to this Article 4. All officers shall have such authority and perform such duties as described below:

(1) Chairperson. The Chairperson shall preside at all meetings of the Board of Directors and shall do and perform such other duties as may be assigned by the Board of Directors.

(2) Executive Director. The Executive Director shall be responsible for the general, day-to-day management of the affairs of the Corporation. He or she shall exercise such authority to accept gifts, collect revenues and make expenditures as he or she deems necessary. The Executive Director is authorized to direct the sale of real estate of the Corporation and is also authorized to execute, in the name of Florida Gulf Coast University Financing Corporation, with the Secretary attesting, all certificates, contracts, leases, deeds, notes and other documents or legal instruments. He or she shall be responsible for the maintenance and management of the Corporation’s activities and personnel.

(3) Secretary. The Secretary shall keep full and accurate minutes for all meetings of the Board of Directors and the Executive Committee. He or she shall transmit all notices required by these Bylaws as may be amended. He or she may sign documents with the Executive Director in the name of the Corporation. The Secretary shall have charge of all official records of the Corporation that shall be at all reasonable times open to examination of any director, and shall in general perform all duties incident to management of the office of Secretary for the Board of Directors.

(4) Treasurer. The Treasurer shall be a member of the Finance Committee, if any, of the Corporation. He or she shall present the financial statements of the Corporation to the Board of Directors at each regular meeting of the Board of Directors and at such other times as the Board of Directors may determine. He or she shall ascertain that a full and accurate account is made of all monies received and paid out on accounts administered by the Corporation, and shall in general perform all duties incident to management of the Office of Treasurer for the Board of Directors.

SECTION 4.2 Appointment and Term of Office. The Executive Director of the Corporation shall be appointed by the President of the University. Other officers of the
Corporation shall be elected as necessary by the Board of Directors at the annual meeting. The Executive Director shall hold office until his successor shall have been appointed or until his death, resignation or removal from office and each of the other officers shall serve terms of two years, each commencing immediately following their election or appointment.

SECTION 4.3 Removal. Any officer, other than the Executive Director, may be removed with or without cause by the Board of Directors whenever in its judgment the best interests of the Corporation would be served.

SECTION 4.4 Vacancies. A vacancy in any office, other than Executive Director, because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors. A vacancy in the office of Executive Director shall be filled by the President of the University.

ARTICLE 5
COMMITTEES

SECTION 5.1 Creation of Committees. The Board of Directors may, by resolution passed by a majority of the whole Board, designate an Executive Committee and one or more other committees, each to consist of one or more of the directors of the Corporation.

SECTION 5.2 Executive Committee. The Executive Committee, if there shall be one, shall consult with and advise the officers of the Corporation in the management of its business and shall have and may exercise to the extent provided in the resolution of the Board of Directors creating such Executive Committee such powers of the Board of Directors as can be lawfully delegated by the Board. The Chair of the Board of Trustees of the University shall appoint a representative to the Executive Committee and the President of the University, or his or her designee, shall also serve as a member of the Executive Committee.

SECTION 5.3 Other Committees. Such other committees shall have such functions and may exercise the powers of the Board of Directors as can be lawfully delegated and to the extent provided in the resolution or resolutions creating such committee or committees.

SECTION 5.4 Meetings of Committees. Regular meetings of the Executive Committee and other committees may be held without notice at such time and at such place as shall from time to time be determined by the Executive Committee or such other committees, and special meetings of the Executive Committee or such other committees may be called by any member thereof upon two days’ notice to each of the other members of such committee, or on such shorter notice as may be agreed to in writing by each of the other members of such committee, given either personally or by mail, facsimile, telegram or email.
SECTION 5.5 Vacancies on Committees. Vacancies on the Executive Committee or on such other committees shall be filled by the Board of Directors then in office at any regular or special meeting except that if the vacancy on the Executive Committee is with respect to the director appointed by the Chair of the Board of Trustees, then the Chair of the Board of Trustees shall designate a replacement and if the vacancy is with respect to the designee of the President of the University then the President shall appoint a replacement.

SECTION 5.6 Minutes of Committees. The Executive Committee, if there shall be one, and such other committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required.

ARTICLE 6 INDEMNIFICATION

SECTION 6.1 Indemnification. The Corporation shall indemnify each director, officer, employee and agent of the Corporation, and may indemnify any other person, to the full extent permitted by the Florida Not For Profit Corporation Act and other applicable laws. The rights conferred by this Section 6.1 shall not be exclusive of any other right that any director, officer, employee, agent or other person may have or hereafter acquire under the Florida Not For Profit Corporation Act, any other statute or agreement, pursuant to a vote of disinterested directors, or otherwise. No repeal or modification of this Section 6.1 shall limit the rights of any director, officer, employee or agent to indemnification with respect to any action or omission occurring prior to such repeal or modification.

ARTICLE 7 AMENDMENT

These Bylaws may be amended by the vote of a majority of the Board of Directors of this Corporation, but only if confirmed by the Board of Trustees of the University after submission to them by the President of the University.

ARTICLE 8 QUARTERLY EXPENDITURE PLANS

This Corporation shall prepare and submit to the President of the University or his or her designee, no later than the first day of each quarter of the Corporation’s fiscal year, a quarterly expenditure plan that delineates planned actions that would cause a commitment of University resources or represent a significant commitment of the resources of this Corporation, including:
ARTICLE 9
FISCAL YEAR AND FINANCIAL AUDITS

SECTION 9.1 Fiscal Year. The fiscal year of the Corporation shall be the period ending on June 30 of each year.

SECTION 9.2 Financial Audits. After the close of each fiscal year, the Corporation shall cause a financial audit of its accounts and records to be conducted by an independent certified public accountant pursuant to Section 1004.28, Florida Statutes, as may be amended or supplemented, and in accordance with the rules adopted by the Auditor General pursuant to Section 11.45, Florida Statutes, as may be amended or supplemented. The President of the University shall submit the annual audit report to the Board of Trustees and the Auditor General within nine months after the end of the fiscal year. In addition, the Corporation shall provide a copy of its federal Application for Recognition of Exception (form 1023) and each year shall provide a copy of its Form 990, Return of Organization Exempt from Federal Income Tax, to the President of the University and the State Board of Education and/or the Board of Governors, as required by applicable laws of the State of Florida.

ARTICLE 10
EMPLOYEES

Any person employed by the Corporation shall not be considered an employee of the State of Florida or an employee of the University by virtue of his or her employment by the Corporation. The Corporation shall provide equal employment opportunities to all persons regardless of race, color, religion, gender, age or natural origin.
ARTICLE 11
PARLIAMENTARY RULES

The most recent edition of “Roberts Rules of Order” shall be followed in conducting the meetings of the Board of Directors, unless otherwise provided in these bylaws.
Florida Gulf Coast University Board of Trustees
April 10, 2003

SUBJECT: Operating Budget Authority

PROPOSED BOARD ACTION

Approve increase in operating budget authority.

BACKGROUND INFORMATION

Since the start of the fiscal year, numerous events have occurred which impact the operating budget of Florida Gulf Coast University. The expansion of student related activities, increased grant awards, and dramatic growth in enrollments and tuition income leave the University in a position of requiring additional budget expenditure authority.

On June 20, 2002 the trustees approved the FGCU operating budget for 2002-2003. That agenda item stated in part:

As of the writing, the exact allocation to be distributed to the University is not fully known. Allocations of standard issues such as cost to continue and salary increases have not yet been made. Additionally, enrollment has a substantial impact on the operations of the University and its revenues, and is a variable that will be monitored. Therefore, it should be noted that during the course of the fiscal year, non-substantive issues and amendments occur periodically along with items referenced that will alter the budget as the year progresses. Accounting for the above variables, the University does have enough detail to project an operating budget for the 2002-03 fiscal year.

The University is requesting that the Board of Trustees approve the 2002-2003 operating budgets as presented and delegate to the President the authority to amend these budgets as appropriate during the operating
The flexibility to amend the budget as appropriate will allow the institution to manage daily operations and allocate resources to best meet the mission of the institution.

2002-03 Projected Budget
Approved by University Board of Trustees June 20, 2002

Summary

<table>
<thead>
<tr>
<th></th>
<th>2002-03 Projected</th>
<th>2001-02 Initial</th>
<th>% Change</th>
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<tbody>
<tr>
<td>Education and General</td>
<td>37,398,327</td>
<td>36,586,200</td>
<td>2.17%</td>
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<td>Auxiliary Trust fund</td>
<td>7,982,356</td>
<td>5,750,427</td>
<td>27.96%</td>
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<tr>
<td>Contracts &amp; Grants</td>
<td>715,353</td>
<td>434,130</td>
<td>39.31%</td>
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<td>Sponsored Research</td>
<td>6,897,571</td>
<td>6,271,397</td>
<td>9.08%</td>
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<td>Local Funds</td>
<td>5,193,350</td>
<td>4,227,351</td>
<td>18.60%</td>
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<tr>
<td>Total</td>
<td>58,186,957</td>
<td>53,269,505</td>
<td>8.45%</td>
</tr>
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The operating budget was approved with the following changes as noted below in the minutes to the June 20, 2002 meeting:

Mr. Curtis Bullock introduced Budget Analyst, David Vazquez, to present the 2002-03 Operating Budget. (Appendix J) He requested approval of the Operating Budget and the delegated authority to the president to make changes as necessary when budget amendments are received from Tallahassee. A motion was made by Trustee Lee to approve the Operating Budget to include the delegation of authority for the President to make amendments as necessary. Motion was seconded by Trustee Hart. Trustee Cobb recommended the motion be amended to include that if these changes exceed 5%, they require approval of the Board. Trustee Lee accepted the amendment to the motion. Motion carried unanimously.

The University is requesting an increase in budget authority in the amount of $4,580,559. There have been anticipated revenues realized, unanticipated revenues and related expenses. The request for a budget authority increase is driven by several factors.

1. Student enrollment growth has been in excess of 20% for the current academic year. Such growth brings increased revenue and increased teaching expenditures, along with a rise in campus support functions. In order to maintain class sections and program offerings, the University had
to hire additional faculty and staff. Therefore, additional budget expenditure authority is needed. Furthermore, the summer of 2003 promises to be more heavily enrolled than anticipated, requiring additional budget authority.

2. The increase in enrollment triggers an increase in the student related activities, such as student government association, athletics, and health services. Additional budget authority is required to properly record and utilize the associated student revenues.

3. The final component of the request is associated with grant activities. As a growing institution Florida Gulf Coast University is actively seeking new grant opportunities. Due to the work of our faculty and staff, numerous grants have been awarded. The University requires additional budget authority in order to process these awards as granted.

A summary of the changes is reflected below:

Florida Gulf Coast University
2002-03 Amended Budget
Summary

<table>
<thead>
<tr>
<th></th>
<th>2002-03 Original Budget</th>
<th>2002-03 Additions</th>
<th>2002-03 Amended</th>
<th>% Change</th>
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</thead>
<tbody>
<tr>
<td><strong>Education and General Revenue</strong></td>
<td>37,398,327</td>
<td></td>
<td></td>
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<tr>
<td>Insurance Premiums</td>
<td>98,652</td>
<td></td>
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<td>Salary Increases</td>
<td>490,839</td>
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<td>Health Insurance</td>
<td>125,338</td>
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<tr>
<td>Enrollment Increases</td>
<td>1,800,000</td>
<td></td>
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<tr>
<td><strong>Total General Revenue Fund</strong></td>
<td>37,398,327</td>
<td>2,514,829</td>
<td>39,913,156</td>
<td>6.72%</td>
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<tr>
<td><strong>Sponsored Research</strong></td>
<td>6,897,571</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Digital TV</td>
<td>1,100,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Grants</td>
<td>500,000</td>
<td></td>
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<td></td>
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<tr>
<td><strong>Total Sponsored Research</strong></td>
<td>6,897,571</td>
<td>1,600,000</td>
<td>8,497,571</td>
<td>23.20%</td>
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<tr>
<td><strong>Local Funds</strong></td>
<td>5,193,350</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SGA Activities</td>
<td>465,730</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total Local Funds</strong></td>
<td>5,193,350</td>
<td>465,730</td>
<td>5,659,080</td>
<td>8.97%</td>
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<tr>
<td><strong>Total</strong></td>
<td>49,489,248</td>
<td>4,580,559</td>
<td>54,069,807</td>
<td>9.26%</td>
</tr>
</tbody>
</table>
In conclusion, the University is requesting an increase in budget authority in the amount of $4,580,559.

Supporting Documentation Included: N/A

Prepared by: David Vazquez, Director of University Budgets

Legal Review by: Wendy Morris, General Counsel (March 21, 2003)

Submitted by: Curtis Bullock, Vice President for Administrative Services
Florida Gulf Coast University Board of Trustees  
April 10, 2003

SUBJECT:  Lease Modification Agreement

PROPOSED BOARD ACTION

Approve:  Lease Modification Agreement

BACKGROUND INFORMATION

The State of Florida Board of Trustees of the Internal Improvement Trust Fund leased lands to the Florida Board of Regents (BOR) on November 15, 1994 for the FGCU campus.  The Florida Board of Education (FLBOE) succeeded the BOR and were the recipient of a type two statutory transfer from the BOR.  On January 7, 2003, the Florida Statutes that created the FLBOE were repealed and the FLBOE was dissolved and no successor was named for universities.  The University Board of Trustees were created and designed as the public body corporate with the power to own real property.  The Lease Modification Agreement provides for the transfer of the existing lease between the State of Florida Board of Trustees of the Internal Improvement Trust Fund and the non-existent BOR/FLBOE to the Florida Gulf Coast University Board of Trustees.

Supporting Documentation Included:  Lease Modification Agreement

Prepared by:  Curtis Bullock, Vice President for Administrative Services

Legal Review by:  Wendy Morris, General Counsel  (March 18, 2003)

Submitted by:  Curtis Bullock, Vice President for Administrative Services
LEASE MODIFICATION AGREEMENT

THIS LEASE MODIFICATION AGREEMENT (herein called the "Agreement") is made and entered into as of January 7, 2003, by and between the STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND, (herein called the "Lessor") and THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES (hereinafter referred to as the “University Board” or the "Lessee").

RECITALS.

WHEREAS, the Lessor and the State of Florida Board of Regents (the “Board of Regents”) entered a Lease Agreement, No. 4051, dated November 15, 1994, as amended by Amendment Number 01 To Lease Number 4051, dated January 12, 1999 (collectively, the “Lease”), whereby the Lessor leased to the Board of Regents certain public lands constituting the Florida Gulf Coast University (the “University”) campus as more particularly described in Exhibit A attached hereto and hereinafter referred to as the “Leased Premises”;

WHEREAS, the Florida Board of Education (the “Board”) succeeded the Board of Regents (as the recipient of a statutory type two transfer from the Board of Regents);

WHEREAS, on January 7, 2003 the Florida Statutes that created and governed the Board were repealed and the Board was dissolved; and

WHEREAS, the University Board has been created and designated as the public body corporate for the University with all the powers, rights and duties of such designation, including the power to enter into leases, contract and own real property.

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

Section 1. GRANT CLAUSE. The Lessor hereby declares that the Lessee shall be granted all of the rights, title, interest, duties and obligations of the Board under the Lease, and the Lessee hereby agrees to assume, all of the Board's rights, title, interest, duties and obligations under the Lease as if the Lease was originally executed by and delivered to Lessee.

Section 2. APPLICABILITY OF LEASE. The Lease, except as modified by this Agreement, shall remain in effect and unchanged.

Section 3. 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 without regard to conflict of law principles.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed, in one or more counterparts, as of the day and year first above written.

LESSOR:

STATE OF FLORIDA BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

By: ______________________________

Its:

WITNESSES:

____________________________________
Print Name:

____________________________________
Print Name:

LESSEE:

THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES

By: ______________________________

Corporate Secretary

WITNESSES:

____________________________________
Print Name:

____________________________________
Print Name: